STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
Case No. App. Div. 14-0004
Decision No. 14-31

RENA M. DAIGLE
(Appellee)

v.

HIGH VIEW MANOR
(Appellant)

and

MAINE HEALTH CARE ASSOCIATION
(Insurer)

Argued: August 26, 2014
Decided: November 13, 2014

EN BANC PANEL MEMBERS:

Majority: Hearing Officers Greene, Collier, Elwin, Goodnough, Jerome, Knopf, and Stovall
Concurrence: Hearing Officer Greene

BY: Hearing Officer Collier

[¶1] High View Manor appeals from a decision of a WCB hearing officer (*Pelletier, HO*) granting Rena M. Daigle's Petitions for Award and for Payment of Medical and Related Services for an injury to her right knee sustained after she fell while walking down a set of stairs on the employer's premises.[1] At issue is whether the injury arose out of her employment, pursuant to 39-A M.R.S.A. § 201 (2001). We affirm the hearing officer's decision.

[1] Ms. Daigle also filed a Petition to Remedy Discrimination, which the hearing officer denied. She has not appealed the denial of that petition.

I. BACKGROUND

[¶2] Rena Daigle worked as a licensed practical nurse for High View Manor at its nursing and rehabilitation center in Madawaska on two separate occasions beginning in December 2009. Ms. Daigle worked as a charge nurse on the third floor of the employer's facility from October 22, 2010, until her employment was terminated on August 10, 2011.

[¶3] Ms. Daigle suffered from preexisting osteoarthritis in both knees. She had arthroscopic surgery on her right knee in August 2004, and on her left knee in January 2009. She also had three sessions of Synvisc injections to both knees, the last occurring six months before the injury date.

[¶4] The hearing officer found the following facts related to the injury, which are supported in the record:

> On May 6, 2011, employee worked the 3 PM to 11 PM shift on the 3rd floor of the nursing home. Because of the demands of the patients in the nursing home, her shift ended late and the elevator she would normally use to descend to the ground floor was "locked-out." She was tired and her knees were sore due to the press of business that night. She descended the 3 floors on the institution's staircase favoring her left knee which on that date was giving her more problems than her right knee. As she reached the staircase near the first floor, her left leg gave way and she tripped, causing her right knee to twist. She fell striking the inner part of her right knee on the metal edge of the stairs. The employee suffered immediate pain and swelling of her right knee as the result of this incident.

[¶5] Ms. Daigle was seen and evaluated at the emergency room and diagnosed with an internal derangement of the knee. Emergency room staff gave her an injection of Toradol, immobilized her knee, and gave her crutches along with a restriction of no weight-bearing. Ms. Daigle sustained a contusion and an acute torn meniscus in her right knee.

[¶6] Ms. Daigle filed Petitions for Award and for Payment of Medical and Related Services. High View argued that the injury was due to the underlying non-work related condition of her left knee—a personal risk—and therefore Ms. Daigle's fall did not "arise out of" the employment and was not compensable. The hearing officer disagreed and granted both petitions awarding Ms. Daigle 100% partial incapacity benefits from May 6, 2011, to September 26, 2011, and total incapacity benefits from September 27, 2011, to January 18, 2012, the date Ms. Daigle was released for regular duty by her treating orthopedic surgeon. High View filed a motion for additional findings of fact and conclusions of law, which the hearing officer denied by decision dated January 2, 2014. High View filed this appeal.

II. DISCUSSION

A. Standard of Review

[¶7] The Appellate Division accords deference to hearing officer decisions addressing whether an injury is compensable under the Act. *See Cox v. Coastal*

Prods. Co., 2001 ME 100, ¶ 12, 774 A.2d 347, *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995). The panel's role on appeal is "limited to assuring that the [hearing officer's] findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation." *Id*. (quotation marks omitted). When a party requests and proposes findings of fact, as in this case, the panel reviews only the factual findings actually made and the legal standards actually applied by the hearing officer. *Daly v. Spinnaker Inds., Inc*., 2002 ME 134, ¶ 17, 803 A.2d 446.

B. Legal Causation

[¶8] Title 39-A M.R.S.A. § 201(4) "provides the standard for determining liability in cases when an alleged work-related injury combines with a preexisting condition." *McAdam v. United Parcel Serv.*, 2001 ME 4, ¶ 11, 763 A.2d 1173, 1177. Title 39-A M.R.S.A. § 201(4) provides:

> **Preexisting condition.** If a work-related injury aggravates, accelerates or combines with a preexisting physical condition, any resulting disability is compensable only if contributed to by the employment in a significant manner.

[¶9] "When a case appears to come within section 201(4), the hearing officer must first determine whether the employee has suffered a work-related injury, . . . then subsection 201(4) is applied if the employee has a condition that preceded the

injury." *Celentano v. Dep't of Corr.*, 2005 ME 125, ¶ 9, 887 A.2d 512 (quotation marks omitted).

[¶10] A work-related injury is one that "arise[s] out of and in the course of employment." 39-A M.R.S.A. § 201 (2001). There is no dispute in this case that Ms. Daigle's injury arose *in the course of* employment. The issue is whether her injury from a fall on the stairs arose *out of* employment. "[T]he term 'arising out of' employment means that there must be some causal connection between the conditions under which the employee worked and the injury, or that the injury, in some proximate way, had its origin, its source, or its cause in the employment." *Standring v. Town of Skowhegan*, 2005 ME 51, ¶ 10, 870 A.2d 128, 130; *see also Comeau v. Maine Coastal Services*, 449 A.2d 362, 367 (Me. 1982).

[¶11] Incapacity "that is shown to result from the combined effects of work-related activity and a pre-existing condition" is compensable only when it "results from some sufficient causal relationship to the conditions under which the employee works." *Bryant v. Masters Machine Co.*, 444 A.2d 329, 335-37 (Me. 1982). In a combined effects case, the "arising out of and in the course of employment" requirement is satisfied by showing both medical and legal cause. *Id.* at 336.

[¶12] The hearing officer determined that Ms. Daigle established medical causation, and that determination has not been appealed. With regard to legal

cause, "where the employee bears with [her] some 'personal' element of risk because of a pre-existing condition, the employment must be shown to contribute some substantial element to increase the risk, thus offsetting the personal risk which the employee brings to the employment environment." *Bryant*, 444 A.2d at 337. The comparison of the employment to personal risk is made against an objective standard, comparing the risk that arises out of the conditions of employment with the risk present in an average person's non-employment life. *Id*.

C. The Hearing Officer's Decision

[¶13] The hearing officer determined that the conditions under which Ms. Daigle worked increased the risk of injury above that experienced in everyday life, so she established legal cause. He reasoned:

> [T]he risk of injury was substantially increased by the building in which she worked, which was 3 stories high and had institutional stairs leading from the third floor to the first. The stairs posed an increased risk of injury to both of her knees. These are not the stairs one finds in a typical residence. The lack of a functioning elevator when the employee was finished [with] her shift enhanced the risk of injury. The lock-out of the elevator was a condition of the premises within the employer's control. Notwithstanding the personal risk Ms. Daigle brought to her workplace, the premises of the employer exposed the employee to a risk of injury substantially greater than the risk of everyday life.[2]

[2] The hearing officer further concluded that "employee's work made a significant contribution to her disability . . . and it is therefore compensable pursuant to 201(4)." This conclusion is not challenged on appeal; High View focuses on legal causation. This conclusion was based on the medical records, including the results of the MRI scan, and on Dr. Michaud's testimony that the work injury caused an acute tear of the meniscus in Ms. Daigle's knee for which she required surgery. *Id*

D. Analysis

[¶14] High View asserts that the mere fact that Ms. Daigle was on the stairs at the time of the injury, without more, is insufficient to establish that the employment contributed any substantial element to increase the risk of injury thus offsetting the personal risk she brought to the employment. It contends there was nothing about Ms. Daigle's work duties that affected her use of the stairs or the injury: she was not hurrying to complete any work-related task; she was not carrying anything heavy or awkward; there was no hazard or causative condition on the stairs; and she fell simply because of the preexisting problem with her left knee, which gave way and caused her to strike her right knee. Thus, High View contends, the injury was occasioned by a personal risk, and did not arise out of employment.

[¶15] High View further contends that the "unexplained fall" line of cases should control this case. In those cases, the Law Court rejected the positional risk theory of liability (that "but for" the employee's being at work, the injury would not have occurred) and instead required that causation by the employment be established. For example, in *Morse v. LaVerdiere's Super Drug Store*, 645 A.2d 613 (Me. 1994), Morse injured her knee while walking on a public sidewalk on an errand for her employer. *Id*. at 614. The hearing officer concluded that Morse's injury did not arise out of her employment because she gave conflicting accounts

of the incident and could not explain the cause of her injury; therefore, she did not meet her burden "to show that a causal connection existed between her injury and her work activity (walking)." *Id* at 615; *see also Feeney v. Saco & Biddeford Savings Inst.*, 645 A.2d 613 (Me. 1994) (consolidated with *Morse;* rejecting the positional risk presumption of liability and reasoning that the employee must prove that the fall arose out of and in the course of employment); *Barrett v. Herbert Eng'g, Inc*., 371 A.2d 633, 636 (Me. 1977) (affirming denial of benefits to employee who, while walking to pick up tools at work, suddenly experienced severe low back pain; holding record supports finding that disabling condition was not brought about by reason of the employment).

[¶16] Ms. Daigle does not argue that the positional risk theory should apply. She contends that she established legal causation pursuant to *Bryant,* 444 A.2d at 343 (determining that employment created a risk of injury over that of everyday life when employee's job involved sitting on a stool with other employees walking in the vicinity) and *Celentano*, 2005 ME 125, ¶ 14, 887 A.2d 512 (affirming determination that legal cause had been established when employee's trip over a table leg lit up a preexisting asymptomatic knee condition based on description of the table leg and the fact that another employee had tripped over the table leg). In short, she argues that her injury resulted from "a risk attributable to the work activity." *Bryant*, 444 A.2d at 337.

[¶17] The only Law Court case addressing a fall on stairs is *Gilbert v. Maheux*, 391 A.2d 1203 (Me. 1978). In *Gilbert*, the employee worked as a chambermaid and resided in a second floor room at the hotel and was considered to be "continuously on call" while on the property. *Id.* at 1207. While descending the stairs for dinner in the first floor kitchen, the employee "missed a step and fell" on a stairway. *Id*. at 1204.

[¶18] Although the award of compensation was affirmed in *Gilbert*, the precedent is of limited utility in this case. The decision centered on whether the employee's on-call status outweighed the fact that she was not required to reside at the hotel but was permitted to do so as a matter of convenience. The fact that the injury occurred on stairs played no role in the Court's analysis. *Id.* at 1204-05.[3] Moreover, the case did not involve an employee who had a preexisting condition.

[¶19] The hearing officer's decision is nevertheless consistent with Law Court precedent. Ms. Daigle's use of the stairs on that day was neither a deviation from her duties nor prohibited by her employer. *See Comeau*, 449 A.2d at 367. Because the elevator was (at least temporarily) unavailable to her at the end of her shift, she used the stairs to descend from her assigned work area on the third floor and leave the facility. The hearing officer found that her shift had ended late and

[3] In addition, *Gilbert* was decided under former Title 39 M.R.S.A. § 92, which required the Act to be construed liberally in favor of the employee. *Gilbert*, 391 A.2d at 1205. Section 92 has been repealed and replaced. P.L. 1991, ch. 885, §§ A-7, A-8 (effective January 1, 1993) (codified at 39-A M.R.S.A. § 153(3) (Supp. 2013) ("In interpreting this Act, the Board shall construe it so as to ensure the efficient delivery of compensation to injured employees at a reasonable cost to employers.")).

she "was tired and her knees were sore due to the press of business that night." He also found that these were "institutional stairs" that were "not the stairs one finds in a typical residence," and that Ms. Daigle descended them favoring her left knee. In this situation, the conditions and particular circumstances of her employment exposed this employee to a risk of injury greater than the risk of ordinary life. Like the employee seated on a stool with others working around him in *Bryant*, or the employee arising from the table in *Celentano*, Ms. Daigle's risk of injury was increased as a result of her employment as she descended those stairs.

III. CONCLUSION

[¶20] The hearing officer found, notwithstanding the personal risk Ms. Daigle brought to her workplace, that the premises of the employer exposed her to a risk of injury substantially greater than the risk of everyday life. That is, the particular stairs in this case, and the employment-related circumstances in which she fell, created a higher than neutral risk of injury. The hearing officer found the following facts in support of this conclusion: (1) the elevator was not available for use when Ms. Daigle finished her shift; (2) the lock-out of the elevator was a condition of the premises within the employer's control; (3) the building in which Ms. Daigle worked was three stories high, with institutional stairs leading from the third floor to the first; (4) the stairs were not the type one finds in a typical residence; (5) because of the demands of the patients in the nursing home, Ms.

Daigle's shift ended late; and (6) she was tired and her knees were sore due to the press of business that night. These facts are supported by competent evidence.

[¶21] Based on these findings, we conclude that the hearing officer's decision that the employment conditions in the nursing home objectively presented a risk of injury greater than that in an ordinary person's everyday life was neither arbitrary nor without rational foundation.

The entry is:

The hearing officer's decision is affirmed.

Hearing Officer Greene, concurring

[¶22] I concur in the panel's decision to affirm the hearing officer's determination that Ms. Daigle suffered a work-related injury to her right knee on May 6, 2011, that aggravated a preexisting osteoarthritic condition and significantly contributed to her subsequent disability. I write separately to emphasize that my decision is based on what I understand to be the limited scope of appellate review applicable to rulings by hearing officers on determinations of (1) whether an injury is due to an increased risk attributable to the employment and (2) whether an aggravation of a preexisting condition due to work activities is the legal cause of an injury and, (3) in the event of such a compensable injury, is also a significant contributor to an employee's subsequent disability.

[¶23] The hearing officer made the following findings of fact. Ms. Daigle, then 51, had preexisting osteoarthritis in both knees, had undergone prior surgeries in both knees, and had received injections in both knees as recently as six months prior to her fall at work on May 6, 2011. She finished her work shift late that night and, because the elevator had been "locked out" to permit supplies to be moved from one floor to another, she used the stairway to go down from the third floor as she was leaving for the day. The hearing officer noted that Ms. Daigle "was tired and her knees were sore due to the press of business that night." Therefore, while descending the stairs she favored her more painful left knee by stepping onto each step with her right foot and then bringing her left foot to the same step. The hearing officer stated: "As she reached the staircase near the first floor, her left leg gave way and she tripped, causing her right knee to twist. She fell striking the inner part of her right knee on the metal edge of the stairs." As a result, she aggravated the preexisting right knee condition such that she required surgery to repair a torn medial meniscus.

[¶24] Based on these facts the hearing officer concluded that, despite the preexisting conditions in both knees affecting her ability to ambulate, the conditions in the workplace, including (1) the "institutional stairs leading from the third floor to the first," (2) the unavailability of the elevator as she was leaving, and (3) the sore and fatigued state of her knees at the end of her shift, constituted

conditions of her employment that increased the risk of injury above that in ordinary non-employment life. *See Bryant v. Masters Machine*, 444 A.2d 329, 337 (Me. 1982) (requiring that "some condition of [the] employment increase[ ] the risk that [the employee] will sustain a disability above that level of risk which, because of his condition, he faces in his normal everyday life"). The hearing officer then concluded that, because the work injury caused the meniscal tear in her right knee, the employment was a significant contributor to Ms. Daigle's disability. *See* 39-A M.R.S.A. § 201(4).

[¶25] The Law Court, when reviewing hearing officer decisions determining that an injury "arose out of" the employment due to an increased risk of injury created by employment activities or conditions, has held that "the Board need not reach the 'correct' conclusion, but a conclusion that is 'neither arbitrary nor without rational foundation.'" *Morse v. Laverdiere's Super Drug Store*, 645 A.2d 613, 615 (Me. 1994) (quoting *Comeau v. Maine Coastal Servs*., 449 A.2d 362, 368 (Me. 1982); *see also Husvar. v. Engineered Products, Inc.*, 2000 ME 132, ¶ 9, 755 A.2d 498 (referring to this as a "highly deferential standard of review"). The Court had previously held that this same deferential standard of review applied to appeals heard by the former Appellate Division of the Workers' Compensation Commission, which was abolished by the 1992 Act. *Dorey v. Forster Mfg. Co.*, 591 A.2d 240, 241-42 (Me. 1991). The Court stated in *Dorey*:

> Parties to workers' compensation cases are not entitled to a *de novo* review at each stage of the appellate process. The nature of workers' compensation creates numerous fact-specific situations that require more than simple application of undisputed facts to unambiguous law. This often complex task is entrusted to the Commission, and appellate review must recognize the exercise of judgment in making these determinations as well as the fact-finding advantage of the Commission. In accord with this deference for the Commission's decision, we limit ourselves to a "narrow" review of the Commission's "conclusions if they are supported by competent evidence." *Dunton v. Eastern Fine Paper Co.*, 423 A.2d 512, 517 (Me. 1980). In essence, this permits appellate reviewers to upset the decision of the Commission only if it can be shown that the Commission did not have a rational basis for its application of law to the facts.

591 A.2d at 241-42. *See also Jacobsky v. C. D'Alfonso & Sons, Inc.*, 358 A.2d 511, 513-15 (Me. 1976) (articulating similar standard of judicial review to be applied in appeal of Commissioner's conclusion as to reasonableness of the employee's efforts to find work)**.**

[¶26] In its only decision since *Bryant* (23 years earlier) addressing an appeal of a fact-finder's determination of legal causation in the case of a preexisting condition, *Celentano v. Department of Corrections*, 2005 ME 125, ¶ 7, 887 A.2d 512, the Law Court also stated that it was applying the *Dorey* standard of review, requiring that a board decision be affirmed "unless it can be said that the Board lacks a rational basis for its application of law to the facts." *See also Plummer v. Contel of Me.*, Me. W.C.C. 92-102 (Me. App. Div. 1992) (applying *Dorey* deferential standard in affirming Commission's decision that "the

act of bending or lifting a box weighing 15 pounds" by an employee with a preexisting low back condition was not the legal cause of an injury under *Bryant*); *Gray v. RSU #38*, Me. W.C.B. No. 14-4 (App. Div. 2014). *But see Murray v. Utah Labor Comm'n*, 2013 UT 38, ¶¶ 40, 46, 308 P.3d 461 (explaining that "traditional standards of review" in "mixed question of fact and law" cases accord no deference to "law-like" determinations, such as "reasonable search and seizure" cases and, in the case at hand, whether, based on undisputed facts, an employee with a preexisting condition was engaged in work activity which "contributed something substantial to increase the risk he already faced in everyday life because of his condition," and, thus, was the "legal cause of his injury").

[¶27] The facts as found by the hearing officer here implicate questions of (1) "legal cause," in view of the preexisting conditions in both of Ms. Daigle's knees, *see Bryant*, 444 A.2d at 336-37; *Riley v. Oxford Paper Co.*, 149 Me. 418, 103 A.2d 111 (1954) (idiopathic fall); and (2) "increased risk" in the use of stairs in the workplace, *see Gilbert v. Maheux*, 391 A.2d 1203 (Me. 1978); *compare Appeal of Margeson*, 27 A.3d 663, 672 (N.H. 2011) *with Lakeside Casino v. Blue*, 743 N.W. 2d 169, 177 (Iowa 2007).

[¶28] The hearing officer concluded, in essence, that fatigue and soreness in Ms. Daigle's knees, due in part to her work activities during the course of her

lengthy work shift and in part to her reasonable use of the stairs to exit at the end of her shift because the elevator was not available, were employment factors that increased the risk that her left knee would give way and that she would fall as a result. The fall was not caused solely by the preexisting condition without regard to the impact of her work activities on that condition. Nor was it due to the inherent risk presented by the use of stairs generally. Even if stairs in the workplace are not considered to create an "increased risk" of injury absent a defect, design flaw or other work-related circumstance affecting the ability of the employee to safely navigate their use, in this case the hearing officer found that use of the stairs, in combination with Ms. Daigle's pain and fatigue, attributable, in part, to her work activities, caused her left knee to give way. *See Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995) (holding that paraplegic's fall in restroom, marked as "handicapped accessible" but lacking adequate space, arose out of the employment, because "[t]here is no requirement that the work-created hazard be the sole or predominant cause of the injury. The work-hazard need only be a cause of the injury to satisfy the work-relation standard. . . . Moore's injury cannot be attributed solely to his paraplegic condition").

[¶29] Although the hearing officer rationally and correctly could have concluded otherwise, I agree with the majority that "the *hearing officer's decision* that employment conditions in the nursing home objectively presented a risk of

injury greater than that in an ordinary person's life was neither arbitrary nor without rational foundation." (Emphasis added.) The requirement that, similar to the "reasonableness" standard in negligence cases, the fact-finder, under *Bryant*, use an "objective standard" in its "comparison of the employment to personal risk," as stated by the majority, does not mean that the issue of legal causation, a mixed question of fact and law, is subject to *de novo* review on appeal.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2013).

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