KATHARINE ATWOOD
(Appellant)

v.

THE SLOANE GROUP, LLC d/b/a PAPIER GOURMET
(Appellee)

and

MAINE EMPLOYERS' MUTUAL INSURANCE CO.
(Insurer)

Argued: March 18, 2015
Decided: April 20, 2016

PANEL MEMBERS: Administrative Law Judges[1] Knopf, Elwin, and Jerome
BY: Administrative Law Judge Knopf

[¶1] Katharine Atwood appeals from a decision of an administrative law judge (*Collier, ALJ*), denying her Petitions for Award and for Order of Payment. Ms. Atwood experienced a seizure at work that caused her to fall and suffer an injury. The ALJ determined that Ms. Atwood failed to demonstrate that her injury arose out of her employment, and denied the petitions. Ms. Atwood contends that the ALJ erred (1) when determining that the injury did not arise out of the employment and (2) by not issuing findings of fact on the issue of whether the

[1] Pursuant to P.L. 2015, ch. 297 (effective October 15, 2015) Workers' Compensation Board hearing officers licensed to practice law are now designated administrative law judges.

work environment was a causal factor in her injury. We agree with the latter contention, and remand for additional findings of fact.

I. BACKGROUND

[¶2] In September of 2011, Katharine Atwood was hired to work as a graphic designer and typesetter at Papier Gourmet, a paper store that also offers custom design and printing services. On September 29, 2011, Ms. Atwood was working at her desktop computer and eating her lunch. She testified that she remembered a question she wanted to go ask a co-worker, and when she pushed her chair back to stand up, the chair stopped rolling abruptly, pitching her forward. She further testified that she then hit her face on the desk, and fell to the floor. She suffered a seizure, which she contended resulted from hitting her head on the desk. Ms. Atwood testified that her memory of the events was incomplete and had come back to her piecemeal over time. After the incident, Ms. Atwood developed post-concussive symptoms and dental problems.

[¶3] The testimony of two coworkers regarding the circumstances of the injury conflicted with that of Ms. Atwood. They stated that they heard a gurgling noise before the sound of impact. The witnesses further stated that they arrived at Ms. Atwood's work station to find her lying on the office floor with some foam and blood in and around her mouth, and a small cut or abrasion on her forehead.

[¶4] The ALJ rejected Ms. Atwood's version of events, and based on the testimony of the two coworkers and the opinions of Ms. Atwood's treating physicians, found that it was not the fall that caused the Ms. Atwood's seizure, but the seizure that caused the fall and consequent injury to her head and mouth. The ALJ thus concluded that Ms. Atwood did not meet her burden to prove that her head and mouth injuries were caused by her employment, and denied her petitions.

[¶5] Ms. Atwood filed a motion for additional findings of fact and conclusions of law, in which she raised new theories of liability: (1) that even if the fall was caused by the seizure, her injuries were caused by the work environment when her head hit the desk; and (2) that the seizure was a preexisting condition that combined with the injuries from the fall pursuant to 39-A M.R.S.A. § 201(4) (Supp. 2015).[2] The ALJ denied the motion, and Ms. Atwood now appeals.

[2] The fact that Ms. Atwood did not raise the argument regarding the work environment until the motion for findings of fact might suggest that the issue had been waived as a theory of liability. *See Waters v. S.D. Warren Company* Me. W.C.B. No. 14-26 (App. Div. 2014) (constitutional issue raised in a motion for findings is waived). In this case, the general issue of legal causation was before the ALJ from the outset, unlike the issue in *Waters*. Further, waiver was not raised as a defense in a timely manner in this case, as it was not discussed until oral argument.

II. DISCUSSION

[¶6] The Appellate Division's role on appeal is limited to ensuring "that the [ALJ'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." *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995). The ALJ's findings of fact are not subject to appeal. 39-A M.R.S.A § 321-B(2) (Supp. 2015).

[¶7] There is no question in this case that the injury arose in the course of employment. At issue is whether the injury 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. [The Law Court] further noted that the employment need not be the sole or predominant causal factor for the injury and that the causative circumstance need not have been foreseen or expected.

Standring v. Town of Skowhegan, 2005 ME 51, ¶ 10, 870 A.2d 128.

[¶8] In Ms. Atwood's motion for additional findings of fact and conclusions of law, she requested findings on the issue of whether the injury arose out of employment, arguing that her injury, although precipitated by the seizure, resulted from the conditions of her employment because she hit her head on her

desk before falling to the ground. On appeal, she contends that the ALJ's findings on this issue are inadequate for appellate review.[3] We agree.

[¶9] Because Ms. Atwood requested additional findings of fact and conclusions of law pursuant to 39-A M.R.S.A. § 318 (2001), and submitted proposed additional findings, we do not assume that the ALJ made all the necessary findings to support the conclusion that Ms. Atwood's injury was not causally connected to the conditions of her employment. *See Spear v. Town of Wells*, 2007 ME 54, ¶ 10, 922 A.2d 474. "Instead, we review the original findings and any additional findings made in response to a motion for findings to determine if they are sufficient, as a matter of law, to support the result and if they are supported by evidence in the record." *Id*. (quotation marks omitted). When requested, an ALJ is under an affirmative duty under 39-A M.R.S.A. § 318 (Supp. 2015) to make additional findings to create an adequate basis for appellate review. *See Coty v. Town of Millinocket*, 444 A.2d 355, 357 (Me. 1982).

[¶10] The ALJ found as fact that Ms. Atwood's fall was caused by a seizure, an idiopathic, non-occupational condition. This fact is supported by competent evidence in the record and we will not disturb it on appeal. Ms. Atwood,

[3] Ms. Atwood also contends that the ALJ erred when failing to make findings of fact regarding whether the seizure disorder was a pre-existing condition, requiring the case to be analyzed pursuant to 39-A M.R.S.A. § 201(4) (2001), and *Bryant v. Masters Mach. Co.*, 444 A.2d 329, 336 (Me. 1982). Because there is no competent evidence supporting the contention that Ms. Atwood had a preexisting seizure disorder, or that the effects of the seizure aggravated, accelerated, or combined with the injuries from the fall to result in disability, we find no basis for determining that the ALJ erred when not making findings of fact on this issue.

however, requested further findings regarding whether her head hit the desk when she fell and if so, whether the collision with the desk was an employment-related cause of her injuries. The ALJ declined to make any further findings.

[¶11] Professor Larson discussed the distinction between injuries resulting from the internal effects of a non-occupational or idiopathic condition and injuries arising from the employment:

> When an employee, solely because of a nonoccupational heart attack, epileptic fit, or fainting spell, falls and sustains a skull fracture or other injury, the question arises whether the skull fracture (as distinguished from the internal effects of the heart attack or disease, which of course are not compensable) is an injury arising out of the employment.
>
> The basic rule, on which there is now general agreement, is that the effects of such a fall are compensable if the employment places the employee in a position increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle. . . .
>
> One line of cases finds the employment contribution in the presence of the employee near moving machinery or other dangerous objects. . . . [I]t was held in one of the earliest cases that an idiopathic fall into a moving machine was compensable. When cases next arose in which the fall was into a machine or motor box which was not moving, there seemed to be no reason to draw a distinction, since the employment had placed in the path of the fall a large, metal object with dangerous corners and projections. But wooden objects have corners too, and when it became necessary to consider falls onto sawhorses and posts and tables and even bookcases, the courts in each instance felt that no valid ground could be shown for drawing a line between machines and tables, or between motor boxes and bookcases. *And so the end product of the process is a well-settled rule of law that idiopathic falls onto such familiar household objects as tables and*

> *bookcases are compensable.* Falls on or against such common workplace objects as a concrete wall are also compensable.

1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law*, § 9.01 (2012) (emphasis added). The Law Court adopted this approach in *Riley v. Oxford Paper Co.*, 149 Me. 418, 420-21, 103 A.2d 111, 113-14 (1954) (holding that injury caused by an idiopathic fall onto hard floor not compensable; distinguishing falls from heights or falls onto an object from falls onto the floor).[4]

III. CONCLUSION

[¶12] We determine that the ALJ's findings in the original decree and in response to the motion for additional findings of fact and conclusions of law did not adequately address the arguments raised by Ms. Atwood in her motion, and are inadequate for appellate review. Therefore, we remand this case to allow the ALJ to make additional findings regarding whether Ms. Atwood's head hit the desk when she fell and if so, whether the collision with the desk was an employment-related cause of her injuries.

[4] This is distinguishable from the analysis applied to unexplained falls. *See Morse v. Laverdiere's Super Drug Store*, 645 A.2d 613, 615 (Me. 1994).

The entry is:

> The administrative law judge's decision is vacated in part and remanded for additional findings of fact and conclusions of law.

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. 2015).

Attorneys for Appellant:
James J. MacAdam, Esq.
Nathan A. Jury, Esq
MACADAM JURY, P.A.
208 Fore Street
Portland, ME 04101

Attorney for Appellee:
Elizabeth Eddy Griffin, Esq.
MEMIC
261 Commercial Street
P.O. Box 3606
Portland, ME 04101