GARY SCOTT
(Appellee)

v.

BODWELL CHRYSLER DODGE, INC.
(Appellant)

and

MADA WORKERS' COMPENSATION TRUST
(Insurer)

Argued: April 12, 2018
Decided: December 20, 2019

PANEL MEMBERS: Administrative Law Judges Pelletier, Collier, and Hirtle
BY: Administrative Law Judge Pelletier

[¶1] Bodwell Chrysler Dodge (Bodwell) appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Knopf, ALJ*) granting Gary Scott's Petitions for Award of Compensation and Payment for Medical and Related Services for an injury to his left knee when he fell in a hallway at Bodwell's auto dealership. At issue is whether the injury arose out of his employment, as required by 39-A M.R.S.A. § 201(1) (Supp. 2018). We affirm the ALJ's decision.

I. BACKGROUND

[¶2] Gary Scott worked selling vehicles at Bodwell Chrysler Dodge for 28 years. In 2014 Mr. Scott's right leg was amputated above the knee for reasons unrelated to his work. Afterward, he continued to work for Bodwell but changed

jobs from salesman to sales administrator. While at work, Mr. Scott used his wheelchair nearly all the time. However, he used his prosthetic leg when using the bathroom.

[¶3] The nearest wheelchair-accessible bathroom to Mr. Scott's office was about 100 feet away and required crossing the dealership's showroom. Mr. Scott more often used a bathroom that was much closer to his office. Because that bathroom did not practically accommodate Mr. Scott's wheelchair, he relied on his prosthetic leg to get there and back.

[¶4] On August 3, 2015, Mr. Scott was processing paperwork for a sale late in the day when he needed a bathroom break. As he usually did, Mr. Scott chose to walk to the bathroom near his office using his prosthetic leg. While returning to the office, his prosthetic leg got caught on a carpet in the hallway causing Mr. Scott to fall to the floor. He injured his left side, especially his left knee. Mr. Scott was out of work for some time. After treatment he returned to work for a relatively short time before retiring three months early.

[¶5] Mr. Scott filed Petitions for Award and for Payment of Medical and Related Services, seeking total incapacity benefits for the period he was out of work, and reimbursement for medical bills. The ALJ granted the petitions. She found that Bodwell neither encouraged nor required that Mr. Scott use the wheelchair accessible bathroom, but his use of the closer bathroom benefited the employer. She

further found that the difficulty accessing the nearby bathroom in a wheelchair, necessitating the use of his prosthetic leg, and the presence of the rug, "were work-related causes of Mr. Scott's fall and resulting injuries."

[¶6] The ALJ concluded that Mr. Scott's case is governed by *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156 (Me. 1995). In that case, the employee was awarded compensation for an injury at work suffered while navigating a wheelchair-inaccessible bathroom. *See id.* at 158-59. Bodwell appeals, arguing that that this case is distinct from *Moore*, and that Mr. Scott did not establish legal causation.

II. DISCUSSION

[¶7] The Appellate Division accords deference to ALJ decisions addressing whether an injury is compensable under the Act. *See Cox v. Coastal Marine Prod. Co.*, 2001 ME 100, ¶12, 774 A.2d 347; *Moore*, 669 A.2d at 158. The panel's role on appeal is "limited to assuring that the [ALJ's] findings are supported by competent evidence, that the decision involved no misconception of applicable law and the application of the law to the facts was neither arbitrary nor without rational foundation." *Moore*, 669 A.2d at 158.

[¶8] A work-related injury is one that "arises[s] out of and in the course of employment." 39-A M.R.S.A. § 201 (Supp. 2018). There is no dispute in this case that Mr. Scott's injury occurred "in the course of" employment. The issue is whether his injury from a fall on the rug in the hallway "arose out of" employment. "[T]o

satisfy the 'arising out of' requirement there must be some causal connection between the conditions under which the employee worked and the injury which arose, or that the injury, in some proximate way had its origin, its source, its cause in the employment." *Comeau v. Maine Coastal Services*, 449 A.2d 362, 365 (Me. 1982); *see also Standring v. Town of Skowhegan*, 2005 ME 51, ¶ 10, 870 A.2d 128.

[¶9] Incapacity that is shown to result from the combined effects of work-related activity and a preexisting condition is compensable only when it "results from sufficient causal relationship to the conditions under which the employee works." *Bryant v. Masters Machine Co.*, 444 A.2d 329, 337 (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. In this case there is no dispute regarding medical causation.

[¶10] With regard to legal cause, the Law Court addressed it in an analogous case, *Moore v. Pratt and Whitney Aircraft*, 669 A.2d 156 (Me. 1995), where the employee fell while transferring himself from his wheelchair to a toilet in the workplace. *Id.* at 158. The restroom was not big enough to properly accommodate his wheelchair. The Law Court observed that employee's injury could not be attributed solely to his non-work-related need for a wheelchair. *Id.* The Court held:

> There 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.

Id. More specifically, the Court held that when an employee in the course of his employment uses a bathroom whose condition is a cause of injury, the injury arises out of employment. *Id.* at 158-59.

[¶11] Bodwell correctly points out that Mr. Scott's accident did not occur in the bathroom, but rather on the rug just outside the bathroom. The rug was not defective or otherwise in a dangerous condition. Bodwell contends that because the risk of injury occasioned by the rug was no greater than the risk present in an average person's non-employment life, *see Bryant*, 444 A.2d at 337, Mr. Scott's injury did not arise out of his employment.

[¶12] Bodwell characterizes the ALJ's reasoning as applying the "positional risk" theory of liability, wherein "but for" the employee being at work, the injury would not have occurred. The Law Court has rejected this theory. *See Feeney v. Saco & Biddeford Savings*, 645 A.2d 613, 615 (Me. 1994). Bodwell therefore argues that Mr. Scott has not shown a causal connection between work activity and his injury. We disagree with Bodwell's contentions.

[¶13] The ALJ found that Mr. Scott relied on his prosthetic only to use the bathroom nearer his office, which was not wheelchair accessible. Bodwell's argument mischaracterizes the ALJ's reasoning as focused on the hallway rug as the only relevant cause of Mr. Scott's injury. However, this misses the ALJ's reasoning

that the distant location of the wheelchair-accommodated bathroom was a key condition causing the increase of risk of injury. The ALJ wrote:

> Mr. Scott spent nearly all of his time at work in a wheelchair except when going to the bathroom. Mr. Bodwell indicated that Mr. Scott spent in excess of 99% of his time at work in a wheelchair. Mr. Scott would don his prosthetic to use the bathroom far closer to his office and that did not require him to wheel through the showroom. . . . [T]he nearby bathroom could accommodate his wheelchair, but only with difficulty. The condition of the bathroom, and going to and from the bathroom, therefore, as in *Moore*, was a cause of an injury to Mr. Scott.

[¶14] Importantly, the risk created by leaving his wheelchair on the night he was injured was not diminished by the fact that it was Mr. Scott's usual practice to do so in order to use the nearer bathroom. Based on the evidence, the ALJ could reasonably have concluded that the wheelchair-inaccessible condition of the closer bathroom regularly placed Mr. Scott into circumstances where injury was more likely. *See Moore*, 669 A.2d at 158-59.

[¶15] Moreover, the ALJ also noted that using the nearby bathroom was also occasioned in substantial part by the circumstances that this was a "late-in-the-day sale" and Mr. Scott likely was aware that "customers become anxious while waiting" for the paperwork to be completed. Indeed, Mr. Bodwell testified that he witnessed Mr. Scott fall because, he said, "a lot of times I check on Gary to see how the paperwork is coming . . . you know, because people get nervous when they're

waiting."[1] This was a valid consideration for the ALJ in assessing work-relatedness, and to the extent that her conclusion relied on this fact, her reasoning that "Mr. Scott was likely aware" of the customers' anxiety was a permissible inference from the evidence. *See Dumont v. AT&T Mobility Servs.*, Me. W.C.B. No. 19-11, ¶ 14 (App. Div. 2019).

III. CONCLUSION

[¶16] The ALJ neither misapplied not misconstrued the law as set forth in *Moore v. Pratt & Whitney Aircraft*, and the factual findings are supported by competent evidence in the record.

The entry is:

The administrative law judge's decision is affirmed.

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. 2018).

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A. § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that

[1] Mr. Scott also argues that Bodwell's arguments should be dismissed as waived to the extent that those arguments exceed the scope of the statement of issues included with its Notice of Intent to Appeal. We disagree, and conclude that the issue as stated is broad enough to encompass the arguments presented by Bodwell.

are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

Attorney for Appellant:
Evan M. Hansen, Esq.
John J. Cronan III, Esq.
PRETI, FLAHERTY, BELIVEAU & PACHIOS, LLP
P.O. Box 9546
Portland, ME 04112

Attorney for Appellee:
Michael J. Dunn, Esq.
WCB Employee Advocate Division
State House Station 71
Augusta, ME 04333