

LORRIE JOHNSON
(Appellee)

v.

VESCOM CORPORATION
(Appellant)

and

LIBERTY MUTUAL
(Insurer)

Argument held: December 10, 2015
Decided: November 17, 2016

Panel Members: Administrative Law Judges Jerome, Elwin, and Stovall
By: Administrative Law Judge Jerome

[¶1] Vescom Corp. appeals from a decision of a Workers' Compensation Board administrative law judge (*Pelletier, ALJ*) granting Lorrie Johnson's Petition for Award and finding that the heart attack she suffered on December 14, 2011, was work-related. Vescom argues that the ALJ erred (1) by not applying 39-A M.R.S.A § 201(3) (2001) because the alleged injury was the result of mental stress, and (2) by concluding that Ms. Johnson's heart attack was a work-related aggravation of her preexisting physical condition when the ALJ had acknowledged that the heart attack could have happened while she was at rest or asleep. We disagree, and affirm the ALJ's decision.

I. BACKGROUND

[¶2] Lorrie Johnson worked as a security guard for Vescom Corp., which provided security services at the pulp and paper mill in Baileyville. Ms. Johnson's job involved checking vehicles at the main gate, filling out paperwork related to material delivery, and checking visitors at the gate. Ms. Johnson suffered a myocardial infarction while at work on December 14, 2011, and has not returned to work since that time.

[¶3] Pursuant to 39-A M.R.S.A § 312(7) (Supp. 2015), the ALJ adopted the report of the independent medical examiner, Dr. Teufel, who found that Ms. Johnson suffered from preexisting coronary disease but opined that the stress Ms. Johnson experienced at work likely led to a rupture of plaque, causing her cardiac event. The ALJ found that this physical injury was brought about by mental stress that Ms. Johnson suffered in the workplace. It was determined that Ms. Johnson, who was described by the ALJ as having an "eggshell" psyche, believed rumors that she might be laid off next, and that her supervisor was looking for a reason to fire her. The ALJ determined that although Ms. Johnson's subjective perceptions were, in fact, unfounded, the objective existence of work-related stress was not relevant because no mental injury was claimed.

[¶4] The ALJ determined that Ms. Johnson had carried her burden of demonstrating that her injury was work-related under the general compensability

standard set forth in section 201(1). Ms. Johnson was awarded total incapacity benefits subject to statutory offset for unemployment benefits received pursuant to 39-A M.R.S.A § 220 (2001). Vescom filed a motion for additional findings of fact and conclusions of law, which the ALJ denied. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶5] The role of the Appellate Division “is limited to assuring 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) (quotation marks omitted). When faced with a question of statutory interpretation, the Appellate Division first turns to the plain language of the statute and “construe[s] that language to avoid absurd, illogical or inconsistent results.” *Estate of Joyce v. Commercial Welding Co.*, 2012 ME 62, ¶ 12, 55 A.3d 411. We will look beyond a statute’s plain meaning only “if the statutory language is ambiguous;” that is, “if it is reasonably susceptible to different interpretations.” *Id.*

B. Application of Section 201(3)

[¶6] Vescom argues that the ALJ erred by not applying 39-A M.R.S.A § 201(3) because the alleged injury was the result of mental stress. Vescom further

argues that the ALJ erred in determining that the injury was compensable when Ms. Johnson's stress was based on misperception and was not extraordinary or unusual.

[¶7] The Legislature has set forth a specific standard against which work-related stress claims must be measured:

3. Mental injury caused by mental stress. Mental injury resulting from work-related stress does not arise out of and in the course of employment unless it is demonstrated by clear and convincing evidence that:

A. The work stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee; and

B. The work stress, and not some other source of stress, was the predominant cause of the mental injury.

The amount of work stress must be measured by objective standards and actual events rather than any misperceptions by the employee.

A mental injury is not considered to arise out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action, taken in good faith by the employer.

39-A M.R.S.A § 201(3).

[¶8] The statute, by its express terms applies to "mental injury" resulting from work-related stress. The ALJ declined to impose the standards set forth in section 201(3) because the injury at issue, a heart attack, was not a "mental injury." The plain language of the statute restricts its application to "mental injuries." Ms.

Johnson did not seek benefits for a mental injury; she sought benefits for the heart attack she suffered: a physical injury. While the legislature could have chosen to include such an injury within the scope of section 201(3), the plain meaning of the statute does not support such an interpretation.

[¶9] Moreover, pursuant to section 201(3), a mental injury does not arise out of employment unless it results predominantly from extraordinary and unusual work stress measured on an objective basis and cannot be related to disciplinary action. Here, even though the stress at issue was based on Ms. Johnson's misperceptions regarding potential lay off, her claim was not for a mental injury. Ms. Johnson's physical injury claim was found compensable because it otherwise met the general compensability provisions of section 201. We find no error in the ALJ's analysis.

C. Application of Section 201(4)

[¶10] Vescom also argues that the ALJ erred in concluding that Ms. Johnson's heart attack was a work-related aggravation of her preexisting condition when the ALJ acknowledged that the heart attack could have happened while she was at rest or asleep. Specifically, Vescom contends that Ms. Johnson failed to establish legal causation.

[¶11] To establish legal causation when "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 v. Masters Machine Co.*, 444 A.2d 329, 337 (Me. 1982). The comparison of the employment to personal risk is made against an objective standard; thus, an ALJ must compare the risk that arises out of the conditions of employment and the risk present in an average person’s non-employment life. *Id.* The element of legal causation distinguishes “situations in which the employee just happened to be at work when the disability arose from those where the disability occurred only because an employment condition increased the risk of disability above the risks that the employee faced in everyday life.” *Celentano v. Dep’t of Corr.*, 2005 ME 125, ¶ 12, 887 A.2d 512.

[¶12] The ALJ applied the objective standard and determined that while the injury could have occurred at home, “the fact is that it was proximately caused by stress which arose out of and in the course of employment.” In this case, the injury arose because of work-related stress that not only increased Ms. Johnson’s risk of disability, but increased her actual disability. *See Bowker v. NFI North*, Me. W.C.B. No. 16-10, ¶ 18 (App. Div. 2016). The work-related stress caused a rupture of plaque, while and because Ms. Johnson was at work, resulting in a heart attack. The ALJ’s analysis was adequate to demonstrate legal causation, and we find no error.

III. CONCLUSION

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. 2015).

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