DAVID CHASE
(Appellant)

v.

LEEN, CHASE & DUFOUR
(Appellee)

and

MAINE EMPLOYERS' MUTUAL INSURANCE CO.
(Insurer)

Argued: December 4, 2019
Decided: December 20, 2021

PANEL MEMBERS: Administrative Law Judges Collier, Chabot, and Stovall
BY: Administrative Law Judge Collier

[¶1] David Chase appeals from a decision of a Workers' Compensation Board administrative law judge (*Jerome, ALJ*) denying his Petition for Award and Petition for Payment of Medical and Related Services. Mr. Chase contends that the ALJ erred in concluding that he failed to show that his injury arose out of and in the course of his employment because it fell within the "going and coming rule." We disagree and affirm the decision.

I. BACKGROUND

[¶2] David Chase is an attorney at the law firm of Leen, Chase & Dufour in Bangor. He lives in Orono. Mr. Chase's practice concentrates on representing clients seeking Social Security benefits and he regularly attends hearings at the Social

Security Administration offices in the Margaret Chase Smith Federal Building in Bangor. He sometimes works at home in the evenings or on weekends. His usual weekday practice is to make a lunch at home in the morning and eat it in his office at lunchtime.

[¶3] On July 13, 2017, Mr. Chase neglected to make his lunch in the morning. He had hearings scheduled at 8:15 and 9:30 a.m. at the federal building, as well as a client meeting scheduled for 1:00 p.m. at his office. He drove from his home to his office on Mount Hope Avenue in Bangor to pick up the necessary files. His office is located between his home and the federal building. He then drove from his firm's offices to the federal building at 202 Harlow Street. After the second hearing concluded, just after noon, Mr. Chase texted his assistant to say that he was returning home to make his lunch and would be back at the office by 1:00 for his meeting. He drove to his home in Orono, a trip which is longer in distance than simply returning to his office in Bangor, but one that takes about the same amount of time because he could travel via the highway. Once home, Mr. Chase made a sandwich, took a soda, and went out the door to return to his office. He slipped on his wet front steps and fell, injuring his right leg. He was eventually diagnosed with a ruptured quadriceps muscle, which required surgery on July 25, 2017. Fortunately, Mr. Chase recovered.

[¶4] The ALJ found that Mr. Chase did not do any specific work while at home that day, although he may have thought about what was needed to finish up the work from that morning and about his upcoming client meeting.

[¶5] The ALJ denied Mr. Chase's petitions, concluding that he did not meet his burden to show that the injury arose out of and in the course of his employment. Specifically, the ALJ concluded that the claim was not compensable under the "going and coming rule." In response to the decision Mr. Chase filed a Motion for Findings of Fact and Conclusions of Law, which the ALJ denied. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶6] The Appellate Division is "limited to assuring that the [ALJ's] factual 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." *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983) (quotation marks omitted). Because Mr. Chase requested findings of fact and conclusions of law, the Appellate Division may review only the findings actually made and the legal standards actually applied by the ALJ. *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446.

B. Analysis

[¶7] The ALJ concluded that Mr. Chase's claim fails because it falls within the "going and coming rule." She found that the injury occurred when he returned to his home for a personal reason—to get some lunch—and was therefore not compensable. Mr. Chase contends this was error because the ALJ improperly focused on the location of the injury rather than the circumstances of Mr. Chase's work customs and travel that day. We disagree.

[¶8] When evaluating whether injuries that occur during travel arise out of and in the course of employment, we first consider whether the "going and coming rule," also known as the "public street" rule, applies. *Feiereisen v. Newpage Corp*., 2010 ME 98, ¶ 7, 5 A.3d 669. The rule provides "that an accident occurring off the employer's premises while an employee is merely on his way to or from his place of business is not, without more, compensable." *Waycott v. Beneficial Corp*., 400 A.2d 392, 394 (Me. 1979). The Court explained the rationale for the rule:

> Whether stated that in going and coming to work an employee is "exposed to the same hazards, and no more, as other members of the traveling public," or that while outside the business premises and not engaged in any work-related activity an employee is not within the spatiotemporal boundaries of employment, the rule is ultimately grounded in the notion that there is an insufficient connection with the employment context to warrant compensation for an injury occurring in such circumstances.

Id. (citations omitted).

[¶9] In *Waycott*, the employee had driven from her office to an off-site business for lunch. *Id.* at 393. After exiting her car she slipped and fell on the sidewalk. *Id.* The Law Court vacated an award of benefits, stating:

> We perceive no reason why an off-premises injury sustained during lunchtime should not be subject to the public street rule and its exceptions. When an employee is going to or coming from work, as when he is lunching off premises, he is not exposed to any different risk than that of the public generally. In both situations, the time is the employee's to do with as he wishes. In neither case is the employee promoting any interest of the employer nor is he subject to any constraints or control on his freedom of movement. In short, it cannot meaningfully be said that such an injury arises out of and is in the course of the employment.

Id. at 394-95.

[¶10] Like the employee in *Waycott*, Mr. Chase was getting his lunch away from his employer's premises. The ALJ specifically found that he returned to his home for personal reasons, to grab some lunch, and then exited his home to travel back to his workplace when the injury occurred. The ALJ did not err when determining that his claim is not compensable pursuant to the going and coming rule.

[¶11] When a sufficient connection exists between the employee's presence on the highway and her employment, however, the law court has recognized exceptions to the going and coming rule. *See e.g., Cox v. Coastal Prods. Co*., 2001 ME 100, ¶ 10, 774 A.2d 347. Mr. Chase argues that the ALJ should have applied the "traveling employee" exception, because he traveled to the federal building on a regular basis, and he had gone to the federal building to conduct business and had

yet to return to his employer's place of business (his firm's offices) when the injury occurred.[1]

[¶12] The traveling employee exception "applies when an employee is traveling as part of the employee's work duties, and generally allows compensation for injuries suffered because of conditions or activities directly related or incidental to such travel, including taking rest breaks, eating, and using lodging." *Levasseur v. Albert Farms, Inc*., Me. W.C.B. No. 14-7, ¶ 13 (App. Div. 2014). The Law Court has stated:

> Traveling employees are employees for whom travel is an integral part of their jobs . . . as differentiated from employees who commute daily from home to a single workplace. . . . In these respects, they differ from ordinary commuters, and are exposed, by virtue of their employment, to risks greater than those encountered by the traveling public.

Boyce v. Potter, 642 A.2d 1342, 1343 (Me. 1994) (citations omitted). The traveling employee exception applies "when the injury has its origin in a risk created by the necessity of sleeping and eating away from home." *Brown v. Palmer Constr. Co*.,

[1] The ALJ also concluded that the claim did not fit within the "special errand" exception to the going and coming rule. The special errand exception has been defined as follows:

> When an employee, having identifiable time and space limits on his employment, makes an off-premises journey which would not normally be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself. (Original footnotes omitted).

Abshire v. City of Rockland, 388 A.2d 512, 514-15 (Me. 1978) (quoting 1 A. Larson, The Law of Workmen's Compensation § 16.10 (1978)(footnotes omitted) (concluding that the "special errand" exception applies to travel undertaken at the special request of the employer)). The ALJ did not err when concluding that Mr. Chase was not on a special errand when he returned home for lunch.

295 A.2d 263, 267 (Me. 1972) (quotation marks omitted). Traveling employees generally include such occupations as truck drivers, *Levasseur*, Me. W.C.B. No. 14-7, ¶ 17; traveling salespeople, *Larou v. Table Talk Distributors, Inc.*, 153 Me. 504, 509, 138 A.2d 475, 478 (1958); or employees assigned to a workplace remote from their residence, *Brown*, 295 A.2d at 264.

[¶13] The ALJ specifically considered and rejected Mr. Chase's argument, concluding that he "does not fit into the category of 'travelling [sic] employee' at the time of the incident in question because he had returned home for personal reasons and was not 'travelling' because of or on account of his work." We find no error in this conclusion. *See Feiereisen*, 2010 ME 98, ¶ 13, 5 A.3d 669 (holding that an employee injured while traveling to a mediation for his workers' compensation case was not a traveling employee).[2]

[¶14] Finally, the ALJ also considered, as an alternative, the eight-factor work-relationship analysis from *Comeau v. Maine Coastal Services*, 449 A.2d 362,

[2] Additionally, because we conclude that the ALJ did not err when determining that the traveling employee exception to the going and coming rule did not apply, we do not need to address Mr. Chase's argument that he did not substantially deviate from his business travel purpose. "Substantial deviation" is essentially an exception to the traveling employee exception to the going and coming rule. *See Larou*, 153 Me. 504, 510, 138 A.2d 475, 478 ("Whether a deviation by a traveling employee from his usual or prescribed route, schedule, or mode of travel constitutes such a departure from the scope or course of his employment as to deprive him of the right to compensation for an injury sustained during or as the result of such deviation depends ordinarily upon the extent, purpose, or effect thereof." (quotation marks omitted)); *Cox v. Coastal Products Co.*, 2001 ME 100, ¶ 11, 774 A.2d 347 ("[W]hen an employee deviates from the business route by taking a side-trip that is clearly identifiable as such, the employee is unquestionably beyond the course of employment while going away from the business route and toward the personal objective.").

367 (Me. 1982), concluding that the application of these factors would not support a different result from the application of the "going and coming rule."

[¶15] The review of an ALJ's application of the *Comeau* test is "highly deferential." *Cox*, 2001 ME 100, ¶¶ 12, 13, 774 A.2d 347 (stating that even if "the evidence would support the [ALJ's] coming to a different conclusion, we cannot say that the [ALJ's] conclusion is impermissible or clearly erroneous"). The ALJ carefully considered the *Comeau* factors and determined that they weigh in favor non-compensability. We discern no error in the application of those factors.

III. CONCLUSION

[¶16] When determining that Mr. Chase did not establish that his injury arose out of and in the course of his employment, the ALJ neither misapplied nor misconstrued the law, and the decision is neither arbitrary nor without rational foundation.

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. 2020).

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

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