

CATHY DASZKIEWICZ
(Appellant)

v.

PENOBSCOT BAY MEDICAL CENTER
(Appellee)

and

SYNERNET
(Insurer)

Conference held: September 22, 2016
Decided: October 25, 2016

PANEL MEMBERS: Administrative Law Judges Knopf, Goodnough, and Jerome
BY: Administrative Law Judge Goodnough

[¶1] Cathy Daszkiewicz appeals from a decision of a Workers' Compensation Board administrative law judge (*Elwin, ALJ*) denying her Petitions for Award of Compensation for alleged aggravations of her preexisting, multiple chemical sensitivities. Ms. Daszkiewicz, a medical assistant, contends that the ALJ committed legal error in determining that her employment did not contribute some substantial element to increase the risk of illness or injury to offset the personal risk she brought to the employment, and thus, the employment was not the legal cause of her injuries. Specifically, Ms. Daszkiewicz contends that the ALJ applied an incorrect legal standard when determining that her employment was not the legal cause of her incapacity. We disagree.

[¶2] 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. *Bryant*, 444 A.2d at 337. 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.

[¶3] The ALJ applied the objective standard and determined that Ms. Daszkiewicz “just happened to be at work” when her disability arose. The ALJ made factual findings regarding the chemical exposures at work and compared those findings to the risk of exposures in an average person’s everyday life. Having made these findings and comparisons, the ALJ determined that it was Ms. Daszkiewicz’s hypersensitivity to ordinary fragrances and odors that caused her to develop symptoms in reaction to minimal exposures. She then found that Ms.

Daszkiewicz's workplace did not present an enhanced risk of exposure to substances that could trigger a reaction any more than an average person faces by going out in public. We find no error.

[¶4] Moreover, the ALJ's decision is supported by competent evidence, involved no misconception of applicable law, and 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 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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