JOSEPH MARCELLO
(Appellant)
v.

CITY OF PORTLAND
(Appellee)

and

MAINE MUNICIPAL ASSOCIATION
(Insurer)

Argued: July 9, 2013
Decided: August 1, 2013

PANEL MEMBERS: Hearing Officers Stovall, Knopf, and Jerome
BY: Hearing Officer Knopf

[¶1] Joseph Marcello appeals from a decision of a Workers' Compensation Board hearing officer (*Collier, HO*) denying his claim for benefits based on a June 5, 2005, date of injury and declining to sanction the employer, the City of Portland, pursuant to 39-A M.R.S.A § 205(3), (5) (Supp. 2012). Mr. Marcello contends that the hearing officer erred by (1) failing to find that his work for the City of Portland caused his current low back and hemorrhoid conditions, and (2) not sanctioning the City for failing to pay benefits promptly or notify its insurer. We affirm the hearing officer's decision.

I. BACKGROUND

[¶2] Joseph Marcello worked for the City of Portland in the laundry department at the Barron Center, a long term care facility. As part of his duties, he loaded and unloaded laundry from bins and drove a truck to collect laundry and trash from other facilities. The laundry bins fell below waist-level for Mr. Marcello, who is 6'2" tall, requiring him to bend repeatedly throughout the day.

[¶3] According to Mr. Marcello, he started experiencing low back pain in the weeks or months leading up to May of 2005, due to the low laundry bins. He did not seek treatment or notify the City of any back problems at that time. In June of 2005, he underwent treatment for hemorrhoids, and was briefly taken out of work by one of his doctors. He returned to work with restrictions, but his symptoms resolved quickly. His doctor lifted the restrictions after a brief period.

[¶4] In the spring of 2005, the City disciplined Mr. Marcello for absenteeism, including a brief suspension in the summer of 2005. On September 8, 2005, Mr. Marcello terminated his employment with a letter of resignation to the City citing "irreconcilable inconveniences."[1] Mr. Marcello testified that on September 9, 2005, the day after he resigned from the City, a fire started in his room at the YMCA; he jumped out of a fourth floor window and fell fifty or so feet

[1] Mr. Marcello explained in his brief that "irreconcilable inconveniences" referred to the incompatibility of his height with the low level of the laundry bins, which he asserts caused his back and hemorrhoid problems. The letter itself, however, did not contain this explanation of the term.

to the ground. He suffered significant trauma to his lower body, including multiple breaks of both legs, and lower thoracic and upper lumbar fractures. Mr. Marcello was hospitalized for three months and has been disabled since.

[¶5] Mr. Marcello filed a Petition for Award and a Petition for Medical and Related Services. He asserted that he suffers from an ongoing low-back condition that was caused by his work at the Barron Center, and sought sanctions against the City pursuant to 39-A M.R.S.A. § 205(3) and (5). Hearings were held on July 12, 2012, and August 21, 2012. The hearing officer denied the petitions, determining that (1) Mr. Marcello did not establish that it was more probable than not that his condition arose out of and in the course of employment, and (2) the City had no obligation to pay benefits or report any injury to its insurer. Mr. Marcello filed a Petition to Reopen the Evidence pursuant to 39-A M.R.S.A. § 319 (2001), which was denied. He now appeals.

II. DISCUSSION

[¶6] Mr. Marcello contends that the hearing officer erred when failing to find that his current back condition is causally connected to the conditions of his work at the Barron Center, namely, that he repeatedly had to bend too low when handling laundry. We disagree.

[¶7] The Appellate Division accords deference to hearing officer decisions addressing whether an injury is compensable under the Act. *See Cox v. Coastal*

Prods. Co., Inc., 2001 ME 100, ¶ 12, 774 A.2d 347, *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995). "[O]ur role on appeal is limited to assuring that the [hearing officer'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*, 669 A.2d at 158 (quotation marks omitted); *see also Haskell v. Katahdin Paper*, Me. W.C.B. No. 13-3, ¶ 6 (App. Div. 2013).

[¶8] To be covered by the Workers' Compensation Act, an injury must "aris[e] out of and in the course of employment." 39-A M.R.S. § 201(1) (2001).

> [T]he term "in the course of" employment relates to the time, place, and circumstances under which an injury occurs, the place where the employee reasonably may be in performance of the employee's duties, and whether it occurred while fulfilling those duties or engaged in something incidental to those duties. . . . [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*. . . . [T]he 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 (emphasis added) (citing *Comeau v. Me. Coastal Servs.*, 449 A.2d 362, 365-67 (Me. 1982)).

[¶9] The hearing officer determined that Mr. Marcello did not prove by a preponderance of the evidence that the conditions under which he worked caused

his claimed injuries.[2] In reaching his decision, the hearing officer focused on whether the evidence presented sufficiently demonstrated that Mr. Marcello's medical condition was caused by his work at the Barron Center.

[¶10] The hearing officer made the following findings that are supported by evidence in the record: Mr. Marcello, who testified that he began to have low back pain before May of 2005, did not mention his back pain to his doctors even though he was actively treating for his hemorrhoids around the same time. Further, he did not tell his employer about his back problems until 2011, even though he testified that he attributed those problems to his work while he was still working for the City. Mr. Marcello did report his hemorrhoid condition to the City in June of 2005, but did not report that he believed this condition was caused by his work. Although Mr. Marcello believed both the role of work in his hemorrhoid condition and a connection between the hemorrhoid condition and his low back pain were self-evident, under the law, he was required to notify the employer that he was claiming the conditions were work-related. *See* 39-A M.R.S.A. § 301 (Supp. 2012).

[¶11] Mr. Marcello did not receive treatment for his back condition or mention injuring his back at work to any health care provider until he saw Allyson Howe, M.D., in August of 2010. At that time, he told her that his back pain was from repetitive work that was made worse by his fall in 2005. On September 10,

[2] Because the issue of causation is dispositive of all other issues raised, the hearing officer did not reach other issues related to Mr. Marcello's claim for benefits.

2010, Dr. Howe noted that the vertebral fracture Mr. Marcello sustained jumping from the building in 2005 "is the likely cause of his chronic back pain which has been virtually unchanged since." A year later, in October 2011, Dr. Howe acknowledged that Mr. Marcello had reported to her that his back pain started in 2005 before the accident, and he related it to repetitive work. Because she first saw him five years after the onset of symptoms, however, Dr. Howe was "not able to say whether the initial pain was in fact work related other than to follow Joseph's history as stated." Similarly, Raymond White, M.D., with whom Mr. Marcello treated after the fall of 2005, noted in a letter of November 7, 2011, that he could not relate Mr. Marcello's present back pain to the fall in 2005, but was unable to identify its cause.

[¶12] Alexander Mesrobian, M.D., who performed a records review pursuant to 39-A M.R.S.A. § 207 (2001), concluded that there "is no basis to presume that [Mr. Marcello] suffered an injury . . . at the Barron Center, nor is there any evidence to presume a significant aggravation of a preexisting low back condition." Rather, he noted that Mr. Marcello "had a devastating injury after jumping from the 4th floor of the YMCA in September of 2005" and concluded that he had probably been totally disabled as the result of that fall with no contribution from any prior low back problem.

[¶13] Accordingly, we conclude that the hearing officer based his decision that the alleged injury was not caused by Mr. Marcello's work at the Barron Center on competent evidence, and neither misconceived nor misapplied the law when denying the petitions for award and for payment of medical and related services.

[¶14] Mr. Marcello also contends that the hearing officer erred when declining to order sanctions against the City pursuant to 39-A M.R.S.A. § 205(3) and (5), for failing to pay benefits or report the injury to its insurer. The hearing officer found, however, that Mr. Marcello did not notify the City of a work injury or make a claim for benefits for his back or hemorrhoids until August of 2011. That finding is based on competent evidence in the record. As such, the hearing officer did not err when deciding not to impose sanctions.

II. CONCLUSION

The entry is:

The hearing officer'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. 2012).

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