CHERYL PARKER
(Appellant)

v.

RIVERVIEW PSYCHIATRIC CENTER
(Appellee)

and

STATE OF MAINE WORKERS' COMPENSATION DIVISION
(Insurer)

Conference held: February 7, 2019
Decided: June 25, 2020

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

[¶1] Cheryl Parker appeals from a decision of a Workers' Compensation Board administrative law judge (*Elwin, ALJ*) denying her Petitions for Award and for Payment of Medical and Related Services concerning injuries she suffered when she fell at work on September 27, 2016. The ALJ concluded that Ms. Parker had failed to carry her burden of demonstrating that her injury arose out of her employment. Finding no error, we affirm the decision.

I. BACKGROUND

[¶2] Cheryl Parker worked as an intensive case manager at Riverview Psychiatric Center, coordinating services for patients after their discharge from the civil unit. On September 27, 2016, Ms. Parker was walking to a meeting in a locked

hallway adjacent to the treatment unit and near her office. She pitched forward and fell, fracturing bones in both wrists and her left knee, bruising her ribs, and inflaming her right lung.

[¶3] Ms. Parker filed Petitions for Award and for Payment of Medical and Related Services. The only disputed issue in the case was whether Ms. Parker's injuries arose out of her employment. *See* 39-A M.R.S.A. § 201 (Pamph. 2020). Ms. Parker contended that her injuries were caused, at least in part, by the condition of the floor in her building. She testified that the floor was particularly sticky, and that her shoe stuck to the floor, causing her to fall.

[¶4] The ALJ denied the petitions. She determined that Ms. Parker's injuries did not arise out of her employment because the floor was not excessively sticky or in a defective condition, and Ms. Parker's job duties did not contribute to the fall. To conclude otherwise, she reasoned, would result in accepting the positional risk theory of liability that has been rejected by the Law Court. *See, e.g., Morse v. Laverdiere's Super Drug Store,* 645 A.2d 613, 614 (Me. 1994) (concluding that an employee who would not have been injured "but for" their presence on the employer's premises has not met their burden of proof, and requiring the employee establish to causation by the employment).

[¶5] Ms. Parker filed a Motion for Additional Findings of Fact and Conclusions of Law, which was denied. She then filed this appeal.

II. DISCUSSION

[¶6] An injury "arises out of" employment when there is "'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. Me. Coastal Servs.*, 449 A.2d 362, 365 (Me. 1982) (quoting *Barrett v. Herbert Engineering, Inc.*, 371 A.2d 633, 636 (Me. 1977)).

[¶7] Ms. Parker contends that the ALJ applied an incorrect legal standard when determining whether her injury arose out of her employment. She asserts it was error to focus on whether a defect in the floor caused Ms. Parker's fall; instead, the ALJ should have focused on whether the conditions of the premises contributed to her fall. Because the floor had been waxed and had a slip-resistant surface not ordinarily found in facilities of general use, and the stickiness contributed to the fall, she contends that her injuries are compensable, citing *Celentano v. Dep't of Corrections*, 2005 ME 125, ¶ 9, 887 A.2d 512.

[¶8] Our review of an ALJ decision addressing whether an injury arose out of and in the course of employment is highly deferential. *See Cox v. Coastal Prods. Co., Inc.*, 2001 ME 100, ¶ 12, 774 A.2d 347. The question on appeal is not whether the ALJ reached the "correct" conclusion, but whether she reached "a conclusion that is neither arbitrary nor without rational foundation." *Id.* (quotation marks omitted).

[¶9] The ALJ found as fact that there were no flaws in or foreign objects on the floor and that the floor was not otherwise defective. The ALJ accepted testimony from a Maine Bureau of Labor Standards representative that the floor did not appear to tack when dragging or scuffing a shoe across its surface and was not excessively sticky under applicable regulations. The ALJ found credible the testimony of three of Ms. Parker's co-workers that they had never had a problem with their shoes sticking to the floor. Rather than the floor, the ALJ found that it was Ms. Parker's shoes (in which the toe was higher than the heel) that may have caused the fall. Finally, the ALJ found that Ms. Parker was not rushing to a meeting, did not turn abruptly, and was not distracted; thus, her job duties did not create any enhanced risk of injury.

[¶10] As apparent from these findings, the ALJ considered and rejected the argument that the conditions of the premises contributed to Ms. Parker's fall. The ALJ rationally concluded that the fall resulted from a risk encountered in everyday life, rather than an employment-related risk of injury. *See Feiereisen v. Newpage Corp.*, 2010 ME 98, ¶ 6, 5 A.3d 669.

[¶11] Because competent evidence in the record supports the ALJ's factual findings, and the ALJ reached "a conclusion that is neither arbitrary nor without rational foundation," we affirm the decision. *See Cox*, 2001 ME 100, ¶ 12, 774 A.2d 347.

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 (Pamph. 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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