GARY JOHNSON
(Appellant)

v.

SURE WINNER FOODS
(Appellee)

and

WILLIS OF NORTHERN NEW ENGLAND
(Insurer)

Conferenced: September 4, 2013
Decided: May 9, 2014

PANEL MEMBERS: Hearing Officers Pelletier, Elwin, and Greene
BY: Hearing Officer Pelletier

[¶1] Gary Johnson appeals from a decision of a Workers' Compensation Board Hearing Officer (*Jerome, HO*) denying his Petition for Award of Compensation for a July 7, 2010, date of injury. Mr. Johnson contends that the hearing officer erred as a matter of law when determining that his injury did not arise out of and in the course of employment. Sure Winner Foods cross appeals, contending that the hearing officer erred when concluding that the board has subject matter jurisdiction over the claim. We affirm the hearing officer's decision.

I. SUBJECT MATTER JURISDICTION

[¶2] Gary Johnson was a delivery truck driver for Sure Winner Foods. Mr. Johnson is a resident of Vermont, and he performed all driving and delivery duties outside the State of Maine. He claims that he suffered a work-related injury as the result of a motor vehicle accident near his home in Vermont. Sure Winner contends that the board lacks subject matter jurisdiction over the claim because Mr. Johnson was employed and was injured outside of Maine. We disagree.

[¶3] The board's subject matter jurisdiction is coextensive with that allowed by the United States Constitution. *Dissell v. Trans World Airlines*, 511 A.2d 441, 443 (Me. 1986); *Harlow v. Emery-Waterhouse Co*., 484 A.2d 1002, 1004-05 (Me. 1984). We analyze the limits imposed on the board's subject-matter jurisdiction in terms of the following relevant contacts:

> (1) place injury occurred; (2) place contract of employment was entered into; (3) place employment relationship exists or is carried out; (4) place in which the business or industry is localized; (5) place of employee's residence; (6) the place the parties might have expressly designated in their employment contract to govern (by its law) their workmen's compensation rights and liabilities.

Dissell, 511 A.2d at 443-44 (quoting *Harlow*, 484 A.2d at 1004).

[¶4] The hearing officer determined that sufficient contacts exist to allow the board's exercise of subject matter jurisdiction over this workers' compensation claim, based on the following factual findings that are supported in the record: Sure Winner's main office and place of business are in Maine, its personnel

functions (such as payroll) are performed in Maine, and its dispatcher is in Maine; Mr. Johnson traveled to Maine twice in relation to his employment with Sure Winner, first to apply and interview for the job, and second to take a drug test and complete paperwork related to securing full-time employment; and all of the product that Mr. Johnson delivered on his truck-driving route was shipped to him from Sure Winner's place of business in Maine.

[¶5] In *Harlow*, the Law Court affirmed the exercise of subject matter jurisdiction by the former Workers' Compensation Commission, despite that the employee worked and the injury occurred outside of Maine, because the employer's business was based in Maine and the employee had traveled to Maine from time-to-time for business meetings. 484 A.2d at 1004. Based on *Harlow*, and given both Sure Winner's and Mr. Johnson's contacts with Maine, we conclude that the hearing officer did not err when exercising subject matter jurisdiction in this case.

II. ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT

[¶6] The following findings of fact by the hearing officer are supported by substantial evidence in the record. Mr. Johnson was seriously injured in a traffic accident on June 7, 2010, at around 6:50 P.M. After completing his delivery route and parking the company vehicle, Mr. Johnson had driven his own vehicle to a co-worker's house. He and his co-worker were friends, and the two had worked

together that day making deliveries. Mr. Johnson went to the co-worker's house both to socialize and to pick up a company-issued, hand-held device used to scan product delivered to retail stores. Mr. Johnson and his co-worker had not used the scanner on the day of the injury, but Mr. Johnson planned to use it the next day when working alone. The scanner was most useful at big box stores, where the drivers delivered large quantities of goods. The device likely would have saved Mr. Johnson 25 to 30 minutes on the next day's route. Sure Winner did not require the drivers to use the scanner; it considered paper documentation of deliveries to be sufficient.

[¶7] After one to two hours spent socializing and drinking at his friend and co-worker's home,[1] Mr. Johnson left with the scanner and was injured in an accident on his way home. There is no question that Mr. Johnson obtained the scanner from the co-worker's home, and that he intended to use it when making deliveries the next day. However, the hearing officer found that Mr. Johnson's supervisor at Sure Winner had no advance knowledge of Mr. Johnson's intent to use the scanning device, and thus, did not authorize Mr. Johnson to go to the co-worker's house to get it.

[1] The hearing officer expressly found that employee was not intoxicated when the motor vehicle accident occurred.

[¶8] The Law Court has outlined parameters for resolving whether an injury arises out of and occurs in the course of employment:

> [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. We then noted that the 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. We further noted that the 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 (citations omitted). In *Comeau v. Maine Coastal Services*, 449 A.2d 362, 367 (Me. 1982), the Court listed a number of nonexclusive considerations that may be examined in determining whether a particular injury arises out of and in the course of employment, including:

> (1) Whether at the time of the injury the employee was promoting an interest of the employer or the activity of the employee directly or indirectly benefited the employer.
> (2) Whether the activities of the employee work to the benefit or accommodate the needs of the employer.
> (3) Whether the activities were within the terms, conditions or customs of the employment, or [were] acquiesced in or permitted by the employer.
> (4) Whether the activity of the employee serves both a business and personal purpose, or represents an insubstantial deviation from the employment.
> (5) Whether the hazard or causative condition can be viewed as employer or employee created.

> (6) Whether the actions of the employee were unreasonably reckless or created excessive risks or perils.
> (7) Whether the activities of the employee incidental to the employment were prohibited by the employer either expressly or implicitly.
> (8) Whether the injury occurred on the premises of the employer.

(Citations omitted).

[¶9] Applying these factors in light of her factual findings, the hearing officer concluded that Mr. Johnson was not accommodating Sure Winner's needs by going to his friend and co-worker's home to pick up the hand-held scanner. Although the use of the device may have been of some "small benefit" to Sure Winner, its use was not required, and the specific trip Mr. Johnson made to his co-worker's home to pick up the device was neither expressly permitted nor acquiesced in by Sure Winner. The hearing officer further found no evidence that Sure Winner created or caused the hazard which led to the motor vehicle accident and bore no responsibility for it.

[¶10] The hearing officer also specifically considered and rejected Mr. Johnson's argument that the "dual purpose" doctrine applied to make this injury compensable. The dual purpose rule, encompassed within the fourth *Comeau* factor, directs the fact-finder to consider "whether the activity of the employee serves both a personal and business purpose, or represents an insubstantial deviation from employment." *Comeau,* 449 A.2d at 367; *see also* 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law*, §16.02 (2013); *Cox*

v. Coastal Prods. Co., Inc., 2001 ME 100, ¶ 10, 774 A.2d 347. The rule does not require that the business purpose be the dominant purpose for the trip, but that the relative importance of the business errand in relation to the personal errand be considered in light of whether the business errand would have been undertaken in the absence of the personal errand. Larson, §§ 16.03-16.04.

[¶11] The hearing officer found that Mr. Johnson's trip to his co-worker's house had both a personal (social) and a business purpose. She further found that the business purpose was small relative to the personal purpose, and the trip likely would not have been undertaken in the absence of the personal purpose. She also found that Sure Winner did not send Mr. Johnson to the co-worker's home to retrieve the device; use of the device was not mandatory and its benefit is relatively small to Sure Winner.

[¶12] Based on these findings, the hearing officer did not err when determining that Mr. Johnson's the trip was not compensable based on the dual purpose doctrine. *Cf. Cox*, 2001 ME 100, ¶ 12, 774 A.2d 347 (Me. 2001) (affirming a hearing officer's determination that the employee's injury in a traffic accident was compensable pursuant to the dual purpose doctrine when the employer had expressly authorized the employee to use a company vehicle during regular business hours to perform a personal errand, provided that the employee made a delivery of product to a customer on behalf of his employer first).

[¶13] The Appellate Division's review of a hearing officer's decision regarding whether an injury arises out of and in the course of employment is highly deferential. *Comeau*, 449 A.2d at 368. The hearing officer need not reach the "correct" conclusion, but only a conclusion that is "neither arbitrary nor without rational foundation." *Id*. We cannot say that the hearing officer's conclusion in this case is arbitrary or without rational foundation.

III. CONCLUSION

[¶14] The hearing officer did not err in concluding that (1) the board has subject matter jurisdiction over this claim, and (2) the injury in this case did not arise out of and in the course of employment.

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. 2013).

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