

NORMA FULLER  
(Appellant)

v.

HANNAFORD BROTHERS COMPANY  
(Appellee)

Conference held: June 8, 2016  
Decided: February 17, 2017

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

[¶1] Norma Fuller appeals from a decision of a Workers' Compensation Board administrative law judge (*Stovall, ALJ*) denying her Petition for Review regarding an alleged aggravation of her preexisting low back condition. Ms. Fuller, a cashier at Hannaford, was putting a small piece of paper in the garbage when her injury occurred. The ALJ concluded that Ms. Fuller's low back injury did not arise out of and in the course of her employment because the movement involved was nothing out of the ordinary performed repeatedly in daily living. Ms. Fuller contends that the ALJ applied an incorrect legal standard when determining that her employment was not the legal cause of her incapacity. We disagree and affirm the decision.

[¶2] Norma Fuller worked for Hannaford for 23 years, primarily as a cashier, until May 24, 2010. On that date, Ms. Fuller was waiting on a customer

and at the end of the transaction offered the customer a receipt. When the customer declined the receipt, Ms. Fuller reached and twisted to her right side to put the receipt in a trash receptacle and while doing so she felt a pop and pain in her low back. Subsequent imaging studies revealed that Ms. Fuller had sustained a herniated disc in her low back at the L5-S1 level and she required surgery on September 30, 2010. Ms. Fuller has not been able to work since May 24, 2010, and brought a claim for benefits under the Workers' Compensation Act.

[¶3] After a hearing, the ALJ issued a decision on April 30, 2015, describing the legal and medical causation standard that Ms. Fuller was required to demonstrate: “that the employee’s injury ‘occurred because some condition of employment increased the risk that she would sustain a disability above the level of risk which, because of her condition, she faced in her normal daily life...thus offsetting the personal risk the employee brought to her employment environment.’ *Bryant v. Masters Machine Co.*, 444 A.2d 329, 337 (Me. 1982).” After considering this standard, the ALJ found that because Ms. Fuller’s work activity at the time of the injury required only slight twisting and bending, was not an awkward or strenuous motion, involved only a small piece of paper, required no hastened speed or extra weight, and was nothing out of the ordinary from movements performed repeatedly in daily living, that Ms. Fuller had not demonstrated an injury arising out of her employment. The ALJ specifically concluded that she had not shown

any increased level of risk because of the conditions of her employment, as discussed in *Bryant*. Ms. Fuller's petitions were therefore denied. Following Ms. Fuller's unsuccessful motion for further findings of fact and conclusions of law pursuant to 39-A M.R.S.A. § 318 (Supp. 2016), this appeal followed.

[¶4] 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*, 444 A.2d at 337. 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. *Id.* 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. In cases where the Appellate Division reviews legal causation, the Law Court has stated that “[o]ur task is not to determine whether the [ALJ] reached the only correct conclusion but rather, whether [the ALJ's] conclusion is

permissible on the record before us.” *Comeau v. Maine Coastal Services*, 449 A.2d 362, 369 (Me. 1982).

[¶5] The ALJ applied the objective standard and determined that Ms. Fuller “just happened to be at work” when her disability arose. The ALJ made factual findings regarding the work injury and compared those findings to the risk of injury in an average person’s everyday life. Having made these findings and comparisons, the ALJ concluded that Ms. Fuller’s work activity at the time of the injury required only slight twisting and bending, was not an awkward or strenuous motion.

[¶6] This case is distinguishable from *Bowker v. NFI North, Inc.*, Me. W.C.B. No. 16-10 (App. Div. 2016), where an ALJ’s finding of no legal causation was vacated. In *Bowker*, a worker experienced back pain after lifting and twisting with an eight to ten pound box, an “action [that] involved both reaching, twisting and bending” which resulted in an injury described as “primarily one of bad posture and mechanics in a back that was vulnerable to re-injury.” *Id.* at ¶ 17. The Appellate Division found that the requirements of legal causation had been met in that case because “the disability occurred because he engaged in required, employment-related activity that not only increased his risk of disability but increased his actual disability.” *Id.* at ¶ 18. The work activity in this case, putting a small piece of paper in the garbage, was less demanding than described in *Bowker*.

*See, e.g., Barrett v. Herbert Eng 'g, Inc.*, 371 A.2d 633, 636 (Me. 1977) (where the onset of back pain while walking across a level surface at work was held not to satisfy the legal causation requirement).

[¶7] The ALJ in this case applied the correct legal standard as discussed in *Bryant and Bowker*. Under the applicable standard of review, we find no reversible error in this case. 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.

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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. 2016).

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