

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 036316-00

Adam P. Carey (deceased)	Employee
Richard A. Carey and Margaret L. Carey	Claimants
Kernwood Country Club	Employer
Eastern Casualty Insurance Company	Insurer

REVIEWING BOARD DECISION ON REMAND

(Judges Costigan, McCarthy and Fabricant¹)

APPEARANCES

Kevin T. Daly, Esq., for the claimants
Carl F. Schmitt, Esq., for the insurer
Martin B. Schneider, Esq., for the employer

This case returns to the reviewing board on remand from the Appeals Court, Carey's (dependents') Case, 66 Mass. App. Ct. 749 (2006), which decision affirmed in part, reversed in part, and vacated in part the decision of the reviewing board.² The court affirmed the administrative judge's calculation of the employee's average weekly wage, as summarily affirmed by the reviewing board, but reversed our decision, and ruled in the claimants' favor, as to the employer's violation of G. L. c. 149, § 62, and the claimants' entitlement to double compensation pursuant to G. L. c. 152, § 28.

In vacating our decision that the claimants were entitled to the maximum benefits allowed by G. L. c. 152, §§ 31 and 32, the court directs us to remand this matter to the administrative judge "for a determination as to the claimants' entitlement to maximum benefits, and a recalculation of compensation due the claimants in accordance with [its] opinion." Id. at 758. We do so. As authorized

¹ As two members of the original panel no longer serve on the reviewing board, the panel has been reconstituted.

² 18 Mass. Workers' Comp. Rep. 77 (2004). See also, 19 Mass. Workers' Comp. Rep. 265 (2005)(prior award of attorney's fee vacated following single justice decision).

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by the Appeals Court, the administrative judge may take new evidence as to the claimants' dependence upon the employee at the time of his injury.

So ordered.

Patricia A. Costigan
Administrative Law Judge

William A. McCarthy
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

Filed: **August 21, 2006**