COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS	**BOARD NOS. 035764-15 037437-14**
Adelino M. Silva	Employee
Atlantis Charter School	Employer
AIM Mutual Insurance	Insurer
New Hampshire Employers Insurance Company	Insurer

REVIEWING BOARD DECISION
(Judges Long, Fabricant and Calliotte)

This case was heard by Administrative Judge Braithwaite.

APPEARANCES
Goncalo M. Rego, Esq., for the employee
Linda C. Scarano, Esq., for the insurers at hearing
Paul M. Moretti, Esq., for the insurers on appeal[1]

LONG, J. This appeal by the employee involves two separate alleged dates of injury and two separate, but interrelated, allegedly disabling conditions: one emotional and one physical. The employee contends that he suffers a mental disability causally related to an incident at work, and that he is also incapacitated due to the physical and emotional effects of a work-related heart attack suffered a few weeks following his termination of employment. The employee presents seven issues on appeal, six of which we summarily affirm, and one which requires discussion. Upon review of the decision and extensive hearing record, we agree with the employee that the judge erred by applying the "bona fide personnel action" standard to his heart attack claim. However,

[1] The employee claimed two dates of injury while working for the same employer. The insurer for the August 28, 2014, date of injury is New Hampshire Employers Insurance, (Board No. 037437-14) and the insurer for the July 9, 2015 claim is AIM Mutual Insurance (Board No. 035764-15). Counsel for the insurer indicated that New Hampshire Employers Insurance is a subsidiary of AIM Mutual Insurance, and he therefore represents the interest of both. (Tr. I, 16.) The hearing took place on the following dates: April 11, 2017 (Tr. I); May 18, 2017 (Tr. II [a.m.] and [p.m.]); July 26, 2017 (Tr. III); August 10, 2017 (Tr. IV); September 22, 2017 (Tr. V); October 27, 2017 (Tr. VI); January 3, 2018 (Tr. VII); February 2, 2018 (Tr. VIII); and March 16, 2018 (Tr. IX).

we also find the error to be harmless in light of the judge's findings regarding the employee's credibility.

The employee filed claims for benefits pursuant to §§ 34, 13, 30, and 36 for alleged work-related emotional and psychiatric issues, stemming from an alleged incident at work on August 28, 2014, and for an acute myocardial infarction (hereinafter "heart attack") resulting from alleged work-related emotional and psychiatric issues, including his termination on July 9, 2015. The claims came before an administrative judge under § 10A on May 26, 2016; on May 27, 2016, that judge filed an order denying each of the employee's two claims. The employee timely appealed. (Dec. 6.) Pursuant to § 11A(2), the employee was examined on September 27, 2016, by Dr. James W. Todd, a § 11A impartial physician, whose report was admitted into evidence. The insurer moved to introduce additional medical evidence due to the inadequacy of Dr. Todd's report, and because no evaluation of the psychiatric complaints raised by the employee had been completed. The current judge, to whom the case had been transferred, allowed the insurer's motion, and the parties were permitted to introduce additional medical evidence and/or medical deposition testimony. (Dec. 8.) Five medical deposition transcripts were submitted into evidence, consisting of testimony by two cardiologists, two psychiatrists and the employee's primary care physician. (Dec. 1.)

The hearing took place over nine days, between April 11, 2017, and March 16, 2018, with the employee testifying through an interpreter, and four witnesses testifying on behalf of the insurer. At hearing, the employee claimed § 34 benefits from August 1, 2015, to date and continuing, and §§ 13 and 30 medical benefits for emotional, psychiatric, and cardiac issues and treatment. The insurer raised the issues of, liability, disability and extent of incapacity, causal relationship, § 1(7A) pre-existing condition (regarding the heart attack), the predominant cause standard of § 1(7A), bona fide personnel action pursuant to § 1(7A), late notice, receipt of unemployment benefits pursuant to § 36B, and entitlement to §§13 and 30 medical benefits. (Dec. 7-8.)[2] The

[2] General Laws, c. 152, § 1(7A) provides in pertinent part:

hearing decision dated February 21, 2019, denied and dismissed the employee's claims for both the August 28, 2014, and July 9, 2015, dates of injury. (Dec. 23.)

The judge found the employee was fifty-nine years old, married with two children, and had immigrated to the United States from the Azores at the age of nineteen. The employee does not have a high school degree or GED, and, although he has a basic understanding of English, he testified with the assistance of an interpreter. In September 2007, the employee was hired by the employer, Atlantis Charter School, as a night custodian at its Park Street location, a school for grades 5 through 8, where his regular shift was from 3:00 p.m. to 11:00 p.m. The employee worked at Park Street until the end of 2014, when he was transferred to a K-4 school located at South Main Street, again as the night custodian. He worked there until he was terminated for poor performance on July 9, 2015. The person in charge of the custodians at both schools was Troy Mitchell. Mr. Mitchell gave the employee directions on how to perform his job. (Dec. 10-11.)

With respect to the alleged incident on August 28, 2014, the employee claimed that during his shift at the Park Street location, he encountered his supervisor, Troy Mitchell, in an intoxicated state. According to the employee, Mr. Mitchell went to his office on the fourth floor, and upon returning to the employee's location in the basement, told the employee to go upstairs to clean up the "vomit and diarrhea" in the bathroom across from his office. When the employee refused to clean the mess, Mr. Mitchell got upset, waved a finger at him, and told him to clean the bathroom. The judge recited the

---

> Personal injuries shall include mental or emotional disabilities only where the predominant contributing cause of such disability is an event or series of events occurring within any employment. If a compensable injury or disease combines with a pre-existing condition, which resulted from an injury or disease not compensable under this chapter, to cause or prolong disability or a need for treatment, the resultant condition shall be compensable only to the extent such compensable injury or disease remains a major but not necessarily predominant cause of disability or need for treatment. No mental or emotional disability arising principally out of a bona fide, personnel action including a transfer, promotion, demotion, or termination except such action which is the intentional infliction of emotional harm shall be deemed to be a personal injury within the meaning of this chapter.

employee's testimony that when he went to the bathroom, he found it in an extremely messy condition and took extra time to clean. (Dec. 12-13.) The employee did not report this alleged incident with Mr. Mitchell to human resources while he worked at the school through July 9, 2015. (Dec. 13.) The judge did not credit the employee's testimony regarding this incident and found that Mr. Mitchell was working his second job on the date and time of the alleged incident. The judge also found, based upon witness testimony and payroll records, that the employee was actually out of the country on the date of the alleged incident. The judge found "that the employee was on vacation in Portugal on August 28, 2014. His testimony of an incident on that date, which he testified to over several days of hearing, is clearly fabricated." (Dec. 22.)

Having found no incident occurred on August 28, 2014, the judge did not address the issues of emotional injury or the insurer's various § 1(7A) defenses to said claim. We do not disturb the judge's findings regarding the alleged incident of August 28, 2014, since they are based upon the judge's properly exercised assessment of witness credibility. Credibility determinations are the sole province of the hearing judge, and we will not disturb them when, as here, they are based on the evidence and reasonable inferences drawn therefrom. Ormonde v. Choice Communications, 24 Mass. Workers' Comp. Rep. 149, 153 (2010).

Turning to the other alleged injury date of July 9, 2015, the employee's termination date, the judge properly invoked § 1(7A)'s "bona fide personnel action" exception to find the employee did not sustain an emotional injury. The judge detailed numerous and varied warnings and other "bona fide personnel actions" taken by the employer over the course of the employee's tenure, including the actual termination.[3] See Upton's Case, 84 Mass. App. Ct. 411 (2007)(employer conduct need not alter

[3] We summarily affirm the judge's findings that the series of employer investigations, disciplinary meetings, warnings, and actions were bona fide personnel actions and excluded from the definition of personal injury. (Dec. 21-22).

employee's status or employment relationship to be bona fide personnel action which precludes award of benefits for mental or emotional disability). He found:

> The Employee was discharged from his position as custodian on July 9, 2015. (*Id*. at 48; Ex. 22.) The Employee was called to a meeting with Mr. Mitchell, Mr. Beatty, and Ms. Oliveira. Mr. Beatty told the Employee he was not doing a good job and fired him. (*Id*. at 48-49.) The Employee was very upset about being fired and cried as he left the meeting. (*Id*. at 49.)
>
> Again, I do not credit the Employee's testimony that he sustained any personal injury on July 9, 2015. I find that the termination was a bona fide personnel decision pursuant to § 1(7A) due to the repeated number of criticisms against the Employee through 2014.

(Dec. 16.)

Upon review of the hearing transcripts and decision, we find the judge adequately supported his denial of the alleged emotional injury of July 9, 2015, with detailed findings of fact grounded in the evidence. Additionally, the judge's further and continued questioning of the employee's credibility was clearly a factor in his analysis of the alleged injury, and we do not disturb the denial on appeal. Ormonde, supra.

In addressing the heart attack claim, the judge found that from 2007 until July 9, 2015, the medical records of his primary care physician, Dr. Andrade, do not mention any stress or anxiety at work, (Tr. III at 54), and that at his last visit with Dr. Andrade on May 11, 2015, prior to his employment termination, the employee acknowledged he told the doctor he was not depressed or feeling hopeless. (Tr. III at 57-58.) The judge found:

> The Employee had been diagnosed with high blood pressure (hypertension) in 2007. His primary care physician (PCP), Dr. Andrade, prescribed Diovan from 2007 to date. (Ex. 62; Andrade Dep. at 48.) The prescriptions were given in 3-month dosages. (Andrade Dep. at 88.) The Employee claimed to have taken the medications religiously (Tr. II [a.m.] at 21-22), and testified that he always filled those prescriptions. (*Id.* at 22.) However, the medical evidence flatly contradicts that. (Compare Tr. III at 53-54 to Tr. III at 59-60 and Ex. 62.)
>
> The medical records with Dr. Andrade, from 2007 to July 9, 2015, make no mention of any stress or anxiety at work. (Tr. III at 54.) The last visit with Dr. Andrade prior to the Employee's termination was on May 11, 2015. (Ex. 62.) At

> that visit, the Employee acknowledged he told the doctor he was not depressed or feeling hopeless. (Tr. III at 57-58.)

(Dec. 17.) These findings support the judge's conclusion that, prior to his termination on July 9, 2015, the employee had pre-existing hypertension, that he was NOT a credible witness regarding his treatment of his hypertension, and that he was not suffering from any emotional/psychiatric conditions. (Dec. 14, 22.)

The judge then made extensive findings regarding the employee's medical treatment from the date of his termination, July 9, 2015, until July 30, 2015, the day before his heart attack at home on July 31, 2015. The judge found that the employee was hired for another job at Stop and Shop almost immediately after he was fired from his job with the employer, but was prevented from starting due to a determination that he had excessively high blood pressure. A subsequent visit to Dr. Andrade revealed that he had not taken prescribed medication for over four months and that he was not under stress at work.[4]

---

[4] The judge made the following findings regarding the employee's post-termination treatment and activities:

> The Employee's first medical visit after the termination occurred on July 13, 2015. (Tr. III at 58; Ex. 62, medical record of July 13, 2015, 9-12 of 82.) It was discovered by Dr. Andrade's office that the Employee had not been taking Diovan since March 2015, four months earlier. (Tr. III at 60-61.) In fact, the Employee did not fill the new prescription for Diovan that was written on July [sic] 13, 2015, until July 30, 2015 – a total of over 4 ½ months later. (Tr. III at 61, 67.)
>
> Shortly after he was terminated, the Employee applied for a job with Stop & Shop in a freezer warehouse. He was temporarily hired to perform 8 hours of work for a total of 40 hours. (Tr. I at 79.) The Employee went for a pre-employ[ment] medical evaluation at Charlton Memorial Hospital (hereinafter "Charlton"). (Tr. I at 80; see Ex. 61, medical record dated July 29, 2015.) The doctor at Charlton noted that the Employee had high blood pressure and sent him back to see his PCP. (Tr. I at 82.) He would have taken the job at Stop & Shop but for the fact he had neglected to take his high [blood] pressure medication for months and was thus disqualified.
>
> The Employee's visit to Dr. Andrade's office on July 30, 2015 was in response to Stop & Shop's decision not to give him a job in their freezer warehouse based on his pre-employment physical examination. (Id. at 80, 82.) Dr. Andrade's office learned that the

Regarding the day of the employee's heart attack, July 31, 2015, the judge found:

> The Employee reported to Charlton on July 31, 2015, for "recheck of his BP," which was done by Dr. Damir Mazlagic. (Ex. 61, medical report dated July 31, 2015.) He started taking Lisinopril, based on NP Reis's prescription, on July 30, 2015. (Id.) "BP taken today in our clinic multiple times over course of 30-40 minutes. Measurements from 148/98 R and 144/96 L for 200/100 and 172/90, respectively. The last values at 10:40 AM were 160/95 L and 165/100 R." (*Id*.) "He is advised to check his BP at home and contact his PCP i[f] still higher than 160/100 by Monday, 8/3/15." (*Id*.)
>
> That afternoon, the Employee had his heart attack while mowing his lawn.
>
> *I do not credit the Employee's testimony regarding emotional distress leading to his heart attack on July 31, 2015, based upon his termination of July 9, 2015.*

(Dec. 19; emphasis added.)

Finally, the judge outlined his analysis of the evidence and applicable statutory provisions and denied and dismissed the employee's claims based on initial liability only. The judge specifically did not address causal relationship, disability, extent of disability

---

> Employee did not obtain <u>any</u> medication for high blood pressure for at least 4 1/2 months in 2015, from March 2015 until July 30, 2015. (Ex. 62, medical record dated July 30, 2015, pages 5-7 of 82.) Maria Reis, the Nurse Practitioner (NP) in the office, documented this. (*Id*.) At his deposition, Dr. Andrade stated that he had full confidence in NP Reis' notations and the record of July 30, 2015 is accurate. (Andrade Dep. at 86-87.) She noted the Employee had elevated blood pressure of 220/110. (Ex. 62, medical record dated July 30, 2015, 5 of 82.) NP Reis wrote that she called Lisa at the pharmacy at Stop & Shop, who reported the Employee has not filled any medications since March 2015. (*Id*.) The Employee's wife, who attended the appointment, said that the Employee was not taking blood pressure medications correctly. (*Id*.) NP Reis notes that he was seen at "(Charlton) occupational health for work clearance and was declined due to his B/P." (*Id*.) NP Reis's cardiology readings were "negative for chest pain, palpitations, dizziness." (Id.) She noted that the Employee was "(v)ery concerned as of tomorrow he has no health care coverage." (*Id*.; Tr. III at 75.) The Employee was to return to Charlton for a blood pressure check the next morning. (Ex. 62, medical record dated July 30, 2015, 5 of 82.) She prescribed Benicar. (*Id.)*

(Dec. 17-19.) Footnote 17 of the decision indicates that "Lisinopril may have been another name for Benicar." Id. 19, n. 17. None of the parties takes issue with this finding.

or § 1(7A), other than finding the events complained of were "bona fide personnel actions," consistent with the holding in Upton's Case, supra at 415-419.

The employee rightfully argues that the judge erred by dismissing the heart attack claim, a physical injury, based upon the bona fide personnel action defense of § 1(7A). The insurer counters by arguing that the only claim pursued by the employee at hearing was for an emotional injury, the sequela of which was the heart attack, and that the employee is now precluded on appeal from claiming a physical injury in the form of the heart attack. (Ins. br. 14-15.) We disagree with the insurer's contention that the employee is precluded from pursuing the heart attack claim on appeal. A review of the decision and transcripts reveals that the claim for the heart attack is, by its very nature, a "physical injury" and was consistently pursued during the hearing, albeit its alleged cause was emotional stress at work.

It has long been recognized that a physical injury may result from emotional stress or strain, just as it may be caused by physical exertion. See McMurray's Case, 331 Mass. 29 (1954)(award of benefits upheld where physician testified that emotional stress or strain, brought about by investigation employee conducted at work, aggravated employee's pre-existing heart condition and caused death). In addition, it is well settled that the "bona fide personnel action" defense of § 1(7A) applies only to emotional disability claims and is unavailable to an insurer/self-insurer in claims that involve a physical disability, such as the heart attack claimed here. Retirement Board of Salem v. Contributory Retirement Appeal Board & another, 453 Mass. 286 (2009). See Freeman v. U. of Mass., Boston, 18 Mass. Workers' Comp. Rep. 138 (2004); Lavin v. Automotive Parts Warehouse, 10 Mass. Workers' Comp. Rep. 745, 748 (1996), Lipson v. Raytheon Co., 6 Mass. Workers' Comp. Rep. 157 (1992). In Retirement Board of Salem, the employee suffered a fatal heart attack at home less than an hour after being notified at work that she was being terminated. The Supreme Judicial Court observed:

> Decisions of this court and the Appeals Court . . . have consistently turned to the definition of "personal injury" in G.L. c. 152, the workers' compensation statute. In defining the term "personal injury," G.L. c. 152, § 1(7A), provides, in relevant part: "No mental or emotional disability arising principally out of a bona

> fide, personnel action including a … termination . . . shall be deemed to be a personal injury within the meaning of this chapter." The board argues that the employee in this case did not sustain the requisite "personal injury" because she suffered only an emotional injury as a result of the personnel action at issue, viz., the notification of her forthcoming termination. The board claims that the heart attack was not a "job-related physical injury," but merely a "physical sequellum [sic] … of her pre-existing, work-related mental and emotional condition."
>
> As the first Superior Court judge noted, however, the statutory language regarding the bona fide personnel exception to the definition of personal injury focuses not on the cause of a disability, but on its nature; only disabilities that are emotional or mental in nature are excluded. We conclude, as did the Superior Court judge and CRAB, that this personnel action exception does not bar the employee here from receiving benefits because the exception applies only to emotional or mental disabilities and the employee's heart attack, although caused by the emotional stress of hearing from her supervisor of her forthcoming termination, resulted in a physical disability.

Id. at 290 (citations omitted).

Here, the judge correctly applied § 1(7A)'s "bona fide personnel action" defense to the claimed emotional/mental disability, since he found the disciplinary actions and eventual termination were bona fide personnel actions and thus, were not personal injuries. However, the judge erred when he simply dismissed the physical disability claim of a heart attack on the basis of the same "bona fide personnel action" defense used to dismiss the emotional/mental disability claim stemming from the July 9, 2015, termination. In doing so, the judge failed to make any findings whatsoever regarding the causal relationship of the employee's heart attack to work, extent of disability or the insurer's § 1(7A) defense to the heart attack. As a result, the physical aspect of the employee's claim appears to remain unresolved. See Lavin, supra (although judge appropriately disposed of employee's mental/emotional disability claim by finding stressful events at work were bona fide personnel actions which were not a significant contributing cause of employee's disability, he failed to make express findings about employee's claim of physically incapacitating headaches, leaving physical aspect of claim unresolved).

However, the judge's credibility findings and their effect upon the medical evidence in the claim, render any error flowing from the misapplication of the "bona fide personnel action" exception harmless. The hearing decision is replete with references to the employee's lack of credibility and the judge's disbelief of his testimony in relation to significant events and, importantly, histories provided to medical experts. In addition, the finding that the August 28, 2014, incident with Mr. Mitchell was fabricated has a ripple effect throughout the evidence, lay and medical, upon which the employee relies in support of his case. "If the [factfinder][was] satisfied that [the employee] testified falsely as to a material issue in the case, [he] had a right to consider it in determining the weight and degree of credibility to be given to all his testimony, including not only that which related to damages, but that which referred to any other issue involved in the trial." Welenc v. Verizon New England, Inc., 34 Mass. Workers' Comp. Rep. ___ (May 29, 2020), quoting Peck v. New England Tel. & Tel. Co., 225 Mass. 464, 466 (1917). The judge did not abuse his discretion when finding the employee's testimony regarding stress and anxiety not credible, especially where he found the employee fabricated the entire "bathroom incident," that was undoubtedly a "material issue" in the case.

Moreover, "The weight assigned an expert's opinion is dependent upon the accuracy of the facts assumed by the expert." Tucker v. Stanley and Sons, Inc., 24 Mass. Workers' Comp. Rep. 239, 243 (2010), citing, Tran v. Constitution Seafoods, Inc., 17 Mass. Workers' Comp. Rep. 312, 318 (2003). In fact, a medical expert's opinion "is not entitled to any weight unless the fact finder believes the facts on which the report is based." Brommage's Case, 75 Mass App. Ct. 825, 828 (2009); see also Dalbec's Case, 69 Mass. App. Ct. 306, 313-316 (2007). In Brommage, the judge found that the employee's testimony with respect to his psychiatric complaints "was not credible, concluding that it was exaggerated and concocted to maintain compensation benefits." Id. at 826.

Here, the judge credited the supervisor's testimony that he was not at the school on August 28, 2014, that the incident did not occur, and that the employee never reported the incident prior to his termination. (Dec. 10-13, 22.) The judge expressly found, "The

employee did not have any medical treatment for his alleged emotional and psychiatric distress after the claimed injury on August 28, 2014. The medical records of Dr. Andrade make no mention of stress or anxiety at work prior to the employee's termination on July 9, 2015." (Dec. 14.) In essence, the judge did not credit the employee's testimony that he developed stress and anxiety after the incident of August 28, 2014, since it did not occur, nor did he credit any allegation that he developed stress and anxiety prior to his termination.

The judge also found the employee's testimony alleging unwavering compliance with taking his hypertension medication was completely at odds with the medical evidence. These findings amply support the judge's decision to discredit any of the employee's alleged complaints. He then flatly rejected the employee's medical experts at footnote 20 of the decision because of the "incorrect medical facts supplied by the employee." (Dec. 22.) A review of each deposition transcript reveals that each physician relied upon the history, supplied by the employee, that was found to be fabricated, i.e., the August 28, 2014, "bathroom incident" with Mr. Mitchell.[5] In addition, despite the employee's testimony that he felt pressure and stress related to work prior to his termination, the judge again did not credit his testimony and, in support of his finding, cites to the May 11, 2015, medical record of the employee's PCP, Dr. Andrade, (Ex. 62), and the employee's acknowledgment that he told Dr. Andrade at that visit that he was not depressed or feeling hopeless. (Dec. 17; Tr. III at 57-58.)

Further compromising the employee's claim for benefits due to a physical disability is the judge's finding that, "I do not credit the Employee's testimony regarding emotional distress leading to his heart attack on July 31, 2015, based upon his termination

[5] Drs. Andrade, Alfonso, Rater and Johnstone each specifically referenced the "bathroom incident" and its alleged aftermath as part of the history that formed the basis of their opinions. Dr. Nasser did not specifically reference the "bathroom incident" but did rely on "his (employee's) version of events that might have happened at work." (Nasser dep. at 6-7.) As noted, the judge rejected the employee's version of events that might have happened at work, not just the "bathroom incident."

of July 9, 2015." (Dec. 19.) Here, as in Eterly v. Nypro, 24 Mass. Workers' Comp. Rep. 263 (2010),

> [T]he judge found the incident[s], and events occurring immediately after the incident[s], did not occur in the manner reported by the employee. "The [medical] report[s][are] not entitled to any weight unless the fact finder believes the facts on which the report is based." Brommage's Case, 75 Mass. App. Ct. 825, 828 (2009); Tucker v. Stanley & Sons, Inc., 24 Mass. Workers' Comp. Rep. 239 (2010). Indeed, this was the reason the judge rejected the [] physician[s'] opinions."

Id. at 265.

The judge rejected the employee's history provided to the physicians and specifically disregarded the physicians' deposition testimony that relied upon the rejected history. (Dec. 22, n. 20.) As in Eterly, the medical experts all testified that their opinions were based in part on the history obtained from the employee, and they were "not asked to render . . . opinion[s] assuming the facts ultimately found by the judge. As a result, the doctor[s] did not provide any opinion[s] based on those facts. . . . Without a medical opinion based on the facts found by the judge, the employee cannot prevail." Eterly, supra at 265-266.

As in Eterly, we view this claim as distinguishable from Payton v. Saint Gobain Norton Co., 21 Mass. Workers' Comp. Rep. 297 (2007), where we held that the judge impermissibly substituted his lay opinion for that of the § 11A impartial medical examiner regarding the employee's emotional injury. In Payton, the judge and physician both utilized the history provided by the employee, which they accepted as true. The judge erred when he then substituted his own causation opinion for that of the impartial physician as to how the "accepted as true" events affected the employee's mental health. Here, as in Eterly, the analysis is different because the judge and doctors did not utilize the same "accepted as true" history that comprised the foundational core of the expert medical opinions. The judge, as the finder of fact, clearly made credibility findings in this case that were within his sole province to make. Indeed, "[i]t is improper for the doctor to assess and comment on the credibility of the employee, as it is the judge's role

to make this assessment." Aguinaga v. Sage Engineering and Contracting, Inc., 32 Mass. Workers' Comp. Rep. 29, 31-32 (2018).

Since the judge found the employee not credible with respect to any alleged stressful response to the disciplinary actions or his termination, the employee could not establish his burden of proving causal relationship for either the heart attack itself or the alleged emotional sequela, by using expert medical opinion based on the employee's discredited reports.

As a result, we hold that any error occasioned by the judge's dismissal of the heart attack claim based on the bona fide personnel action defense of § 1(7A) was harmless.[6]

Accordingly, the decision of the administrative judge is affirmed.

So ordered.

Martin J. Long
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

Carol Calliotte
Administrative Law Judge

Filed: **September 1, 2020**

[6] Additionally, we note that it does not appear that the employee could sustain his burden of proving that his heart attack arose in the course of his employment. See Larocque's Case 31 Mass. App. Ct. 657 (1991). In denying and dismissing the claim, the court stated "The key to coverage in all these cases is that the post-termination activity is closely related to the employment, both in time and place. . . Larocque's fatal heart attack . . . lacked proximity, both in time and place, to his employment because it occurred two weeks after his termination and at home." Id. at 659-660.