

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 047241-03

Anna Diaz
Professional Profiles, Inc.
Granite State Insurance Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION
(Judges Carroll, Horan and Fabricant)

APPEARANCES

Scott L. Masse, Esq., for the employee
Thomas F. Finn, Esq., for the insurer

CARROLL, J. The insurer appeals from a decision in which an administrative judge awarded the employee workers' compensation benefits for an injury that the insurer argues was subject to the heightened causation provisions of § 1(7A) for industrial injuries that combine with pre-existing non-compensable medical conditions.¹ Because the judge failed to address the many elements of that fourth sentence of § 1(7A), we recommit the case.

Anna Diaz suffered an industrial accident in mid-November 2003 when, while working as a home health aide she wrenched her left shoulder assisting a client. Prior to this injury, the employee had injured that shoulder in a fall at home, received treatment but continued to work, and ultimately scheduled an MRI. Ms. Diaz continued to work after her November injury, but her shoulder pain worsened. She sought treatment, and the previously scheduled MRI was

¹ General Laws c. 152, § 1(7A), provides, in relevant part:

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.

Anna Diaz
Board No. 047241-03

performed. On December 5, 2003, the employee's treating physician took her out of work, and she has not returned. (Dec. 459.)

The insurer resisted the employee's claim for workers' compensation benefits, and raised the heightened "a major" causation standard of § 1(7A) at hearing. (Dec. 457.) See Saulnier v. New England Window and Door, 17 Mass. Workers' Comp. Rep. 453, 459-460 (2003). The employee underwent an impartial medical examination. The impartial physician diagnosed left shoulder supraspinatus tendinopathy with a partial supraspinatus tendon tear, and pre-existing left shoulder tendinitis. The doctor causally related the first diagnosis to the work injury, and stated that the work injury aggravated the second diagnosis. He disabled the employee from working as a home health aide and limited her to lifting 15-20 pounds, with no repetitive use of her left arm. (Dec. 460.)

The judge awarded benefits for the November 2003 injury. (Dec. 460-461.) However, **he** made no findings as to whether the § 1(7A) standard of "a major" cause applied to neither or either diagnosis, or to both, and, if it did apply, whether the employee met the heightened causal standard of § 1(7A). (Dec. 7-8.)

The absence of findings parsing out the diagnosed conditions, and addressing the various elements of § 1(7A), requires a recommittal of the case for the judge to perform that task. In Vieira v. D'Agostino Assocs., 19 Mass. Workers' Comp. Rep. 50 (2005), we set out a detailed map of the analysis needed to address the heightened § 1(7A) standard of "a major cause." In a nutshell, that analysis requires findings as to:

[W]hether the employee's [tendinitis] is 1) "a pre-existing condition, which resulted from an injury or disease not compensable under the chapter," which 2) "combines with" the [November 2003] work injury ("a compensable injury or disease") "to cause or prolong disability or a need for treatment:" and, if so, 3) whether that "compensable injury or disease remains a major but not necessarily predominant cause of disability or need for treatment." § 1(7A).

Anna Diaz
Board No. 047241-03

Vieira, supra at 52-53. Each stage of the analysis includes its own set of pitfalls, as we noted in Vieira and the cases cited therein. See id. at 53. Particularly where there are multiple diagnoses, the judge must specify to which diagnoses, if any, the “a major cause” standard applies, and to which diagnoses the “as is” causation standard applies. See Dorsey v. Boston Globe, 20 Mass. Workers’ Comp. Rep. ____ (2006)(judge parsed out seven diagnoses, concluding the “a major” cause standard did not apply to certain “new” diagnoses, as they were directly caused by the industrial accident, and did not combine with a pre-existing condition).

Because the judge failed to address § 1(7A), we recommit the case for further findings consistent with Vieira and Dorsey, supra.

So ordered.

Martine Carroll
Administrative Law Judge

Mark D. Horan
Administrative Law Judge

Filed: **February 22, 2007**

Bernard W. Fabricant
Administrative Law Judge