COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS	**BOARD NO. 026987-95**
Arimola Okemla Kakamfo	Employee
Hillhaven West Roxbury Manor Nursing Home	Employer
Insurance Company of the State of PA	Insurer

REVIEWING BOARD DECISION
(Judges Wilson, McCarthy and Smith)

APPEARANCES
Ronald W. Stoia, Esq., for the Employee
Terence P. Reilly, Esq., for the Insurer

WILSON, J. The employee appeals the denial and dismissal of her claim for a closed period of G. L. c. 152, § 34, weekly benefits. On our review of the evidentiary record, the decision is affirmed.

At the time of the administrative judge's decision, Arimola Okemla Kakamfo was a married, thirty-six year-old mother of four, minor children. In 1981, she emigrated from Nigeria to the United States. While in the United States, she completed two years at a state community college and acquired twelve years of work experience as a home health aide and nurse's aide. Ms. Kakamfo was employed as a nurse's aide by Hillhaven West Roxbury Manor. Her job duties required constant lifting, pushing and pulling, and caring for patients, many of whom were entirely dependent on assistance for their daily living needs. (Dec. 3.)

On July 20, 1995, while in the course of her employment, Ms. Kakamfo sustained injuries to her low back, left hip, neck and left shoulder when she slipped and fell. Following the incident, Ms. Kakamfo was treated at the Faulkner Hospital emergency room. Complaining of continuing pain, she was also evaluated at the West Roxbury Health Stop. The employee was later treated by Dr. Millender at the New

England Baptist Hospital and ultimately came under the medical care of Dr. Warren Courville. Mrs. Kakamfo treated with Dr. Courville until November 11, 1995, at which time she discontinued treatment due to pregnancy. (Dec. 3.)

Initially, the insurer accepted the employee's claim without prejudice and provided payment of workers' compensation benefits from July 21, 1995 to July 27, 1995. Following this period, the employer offered the employee modified work that would restrict pulling and lifting.[1] Ms. Kakamfo claimed that she was unable to perform such duties. She then filed a claim for additional compensation benefits. A § 10A conference was held and the employee was awarded a closed period of § 34 benefits for total incapacity, which terminated on August 28, 1995. The employee appealed to a hearing de novo. (Dec. 2.)

On February 28, 1996, the employee was examined pursuant to § 11A by Dr. Peter P. Anas, whose medical report was admitted into evidence. (Dec. 1, 4.) Neither party opted to depose the impartial physician, but the parties were authorized to submit additional medical evidence for the period prior to the date of the impartial examination. (Dec. 2.) Although medical reports of Dr. Warren Courville were submitted on behalf of the employee, the insurer did not submit any additional medical documentation. (Dec. 1.)

Doctor Anas diagnosed a chronic lumbosacral strain with reactive pain and left shoulder contusion as a result of the July 1995 fall. He further opined that the employee could return to light duty work and that, despite the employee's subjective complaints of pain, there were no objective signs of neurological deficits.[2] (Impartial Report 2-3; Dec. 4.)

---

[1] Several employer representatives testified at hearing as to the job offers extended. (Dec. 1, 4.)

[2] We note that the impartial examiner also opined that the employee "has major emotional and functional pain behavior . . . ." (Impartial Report 3.)

For the period preceding the impartial exam date, the employee's treating physician, Dr. Courville, found the employee totally disabled from nurse's aide work activities, including repetitive lifting and bending. (Employee Ex. 2; Dec. 3-4.)

Based on the medical evidence for the period claimed prior to the § 11A examination, the administrative judge was persuaded that the employee was totally incapacitated from performing her regular duties as a nurse's aide, but was only partially impaired with restrictions in lifting, pushing and pulling. This partial impairment, along with the enumerated restrictions, was found to be causally related to the July 20, 1995 work incident. Additionally, the judge was persuaded by the testimony of the employer's representatives that the bona fide job offers of modified work not only would accommodate the employee's physical restrictions but also were available at the time of the hearing. The judge concluded that the modified work offered would enable the employee to earn her pre-injury wages for the closed period claimed within the imposed physical restrictions.[3] (Dec. 4.) She awarded payment for the employee's reasonable and necessary medical treatment and denied the balance of the employee's claim. (Dec. 5.)

The employee contends that the administrative judge placed undue reliance on the job offers and that there was no evidence that the employee could work an eight-hour day or earn her pre-injury wage. Further, the employee maintains that the job offers were not legitimate in that they were "totally unspecific" and "not fleshed out by testimony." (Employee brief, 5.) Next, the employee asserts that the judge did not reconcile the physical restrictions imposed upon the employee with the second job offer requiring the employee to lift up to fifty pounds and push or pull up to one-hundred pounds. (Employee brief, 5-6.) Additionally, the employee alleges that the judge did

[3] On October 30, 1997, the employee filed a motion to amend her claim for compensation benefits to a closed period running from August 29, 1995 through July 6, 1997. This motion was allowed on November 4, 1997. (Dec. 1-2.)

not refer to the § 11A examiner's report in evaluating the medical evidence and making vocational assessments. The employee then contends that the only medical evidence submitted for the period prior to the impartial examination was the medical opinion of Dr. Courville, that Dr. Courville found the employee to be totally disabled and there was no contrary medical evidence for the period in question. Finally, the employee states that there was no evidence that she would earn her hourly rate or receive enough hours to earn her pre-injury wage. (Employee brief, 6.)

At this juncture, it bears repeating that we will affirm a decision where it is "based on evidence and reasonable inferences therefrom and is supported by adequate subsidiary findings." See Kolkowski v. Sapphire Engineering, 9 Mass. Workers' Comp. Rep. 295, 296 (1995). It is the administrative judge's responsibility "to weigh the evidentiary value of each of the factors in the record bearing on determination of earning capacity of the employee. We may not substitute our judgment of such weight for that of the judge who heard the case." Id.

Each of the multiple arguments advanced by the employee shares the common thread that the modified jobs offered were non-specific and inconsistent with the medical evidence presented. A review of the record shows that the judge based her conclusions on both medical and lay evidence. The impartial examiner found the employee could return to light duty work. Although Dr. Courville opined that the employee was totally disabled from her former nurse's aide work activities and from repetitive lifting and bending, he also opined that the employee was capable of a light duty trial of work. (Employee's Ex. 2; Dec. 3-4.) It is noteworthy that the treating physician's opinion of total impairment proscribed only a return to nurse's aide work. See Ashman v. Sky Chef, 4 Mass. Workers' Comp. Rep. 78, 79 (1990) (the fact that an employee cannot return to her former work does not necessarily exclude all remunerative work of a substantial and not merely trifling nature). Dr. Courville further stated that the employee was not bedridden and that she was capable of performing several hours of light housekeeping chores and care of her four children. (Employee Ex. 2; Dec. 3-4.) The administrative judge also found that, despite any pain and

physical limitations, the employee's lifestyle was not sedentary, and she was physically able to attend college classes twice a week during part of the claimed period of incapacity. (Dec. 3.) The evidentiary record supports this finding that the employee's lifestyle was not sedentary, (Tr. 21-23, 24-25; Employee Ex. 2), and the judge acted within the bounds of her responsibility by placing more weight on the medical opinions and the employee's account of her daily activities than on her complaints of pain and limitations.

Turning to the employer's offer of two modified work positions, we examine them to ascertain whether they conform to the requirement that a job be within that employee's performance capabilities. G. L. c. 152, § 35D(3) & (5); Cassidy v. Sodexho USA, 14 Mass. Workers' Comp. Rep. __, __ (February 14, 2000). ("The employer must under § 35D(3) put forward a job offer in which the required duties are within the employee's medical restrictions."). Arguably, the second job offered may have involved some activity beyond the employee's physical capabilities. The first job offer, however, was well within the employee's physical restrictions. Ms. Patricia Carroll, the employer's staff development coordinator, testified at hearing that the modified work position entailed sitting while separating doctors' orders and labeling them. The employee would be expected to utilize a label machine to put residents' names on items. "There was no bending, no squatting, no lifting, with rest periods in between. Basically the job entailed just sitting." (Tr. 31.) Ms. Carroll further testified that the employee would have received her pre-injury wages and that the position extended in the first job offer was still available as of the date of her testimony. (Tr. 31, 33; Dec. 4.) The judge stated, "I found persuasive Ms. Carroll's description of the sedentary desk duties employee would be performing." (Dec. 4.)

A comparison of the sedentary character of the first modified job offer with the employee's daily activities, as well as consideration of both the impartial physician's opinion that the employee was capable of light duty work and the physical restrictions placed on the employee by her treating physician, reveals that the job is well within the employee's physical capacity and consistent with the medical opinions.

The employer complied with the statutory requirements of § 35D (3). Hence the employee has not met her burden of demonstrating that she was incapable of remunerative work of a non-trifling nature. Frennier's Case, 318 Mass. 635, 639 (1945). The decision of the administrative judge is affirmed.

So ordered.

_____
Sara Holmes Wilson
Administrative Law Judge

Filed: July 20, 2000

_____
William A. McCarthy
Administrative Law Judge

_____
Suzanne E. K. Smith
Administrative Law Judge