

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 008792-09

Barbara Beth Soucy
Beacon Hospice, Inc.
Ins. Co. of the State of Pennsylvania

Employee
Employer
Insurer

REVIEWING BOARD DECISION
(Judges Horan, Koziol and Fabricant)

The case was heard by Administrative Judge Bean.

APPEARANCES

Daniel C. Finbury, Esq., for the employee
Merlene J. Rangulong, Esq., for the insurer

HORAN, J. The insurer appeals from a decision awarding the employee ongoing § 34 total incapacity and §§ 13 & 30 medical benefits. Because the decision fails to reveal how the employee's lower back and right leg injury claim yielded an award based, apparently, on sixteen separate diagnoses, and because it does not address whether the insurer's § 1(7A)¹ defense applies to the employee's myriad medical conditions, we reverse the decision, vacate the benefit award, and recommit the case for further findings of fact.

On July 2, 2009, the employee filed a claim seeking § 34 benefits, based on a date of injury of February 15, 2009, for a "back, right leg" injury.² At the September 14, 2009, § 10A conference on that claim, the employee sought

¹ General Laws c. 152, § 1(7A), provides, in pertinent 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.

² We take judicial notice of the board file. Rizzo v. M.B.T.A., 16 Mass. Workers' Comp. Rep. 160, 161 n.3 (2002).

benefits owing to a back injury only. The judge issued a conference order awarding the employee § 34 benefits, and the insurer appealed. Prior to the hearing, the employee underwent a § 11A examination by Dr. Nagagopal Venna. (Ex. 3.) The judge subsequently allowed the employee's motion to submit additional medical evidence, and both parties did so. (Dec. 311.)

The record does not reveal how the employee's claim at hearing was broadened to include multiple physical and psychiatric injuries. What is clear is that the insurer raised the defenses of liability, disability, extent of disability and causal relationship, including § 1(7A). (Dec. 310.)

In his decision, the judge found that on February 15, 2009, while working as a nurse, the employee felt back pain "[a]s she rolled the body" of a deceased patient. Shortly thereafter, the employee experienced right leg numbness. (Dec. 312.) She worked until February 27, 2009, when she went to an emergency room "due to her severe pain." *Id.* After chronicling the employee's medical history which included, inter alia, lumbar degenerative joint disease, neck surgery, and treatment for fibromyalgia, anxiety, and bipolar disorder, the judge summarized the numerous medical opinions in evidence. (Dec. 312-317.) He concluded that "[t]he several doctors in this case have made 16 diagnoses. . . ." (Dec. 318.) He found that "[t]he physical injury remains a major cause of [the employee's] disabling pain," and took "note of the temporal relationship of the employee's disability to the February 15, 2009 industrial accident." *Id.* He then adopted the opinions of at least four physicians,³ and credited the testimony of a licensed social worker, to support his award of ongoing § 34 incapacity and §§ 13 & 30 medical benefits. (Dec. 318-319.)

³ The judge did not specifically identify the substance of the adopted medical opinions relied upon to support his award of benefits to the employee. Because the doctors' opinions varied widely respecting the medical issues presented, additional findings of fact are required.

We agree with the insurer that the judge failed to identify which of the sixteen diagnoses were causally related to the employee's work, in part because the judge failed to analyze the medical evidence respecting each medical condition in light of the insurer's § 1(7A) defense.⁴ See, e.g., MacDonald's Case, 73 Mass. App. Ct. 657 (2009); Skaff v. Division of Medical Assistance/Comm. of Mass., 24 Mass. Workers' Comp. Rep. ____ (November 15, 2010); Hart v. G.V.W. Inc., 23 Mass. Workers' Comp. Rep. 421 (2009); Stecchi v. Tewksbury State Hosp., 23 Mass. Workers' Comp. Rep. 347 (2009); Baldini v. Department of Mental Retardation/DMR3, 23 Mass. Workers' Comp. Rep. 159 (2009); Vieira v. D'Agostino Assoc., 19 Mass. Workers' Comp. Rep. 50 (2005); see also Dorsey v. Boston Globe, 20 Mass. Workers' Comp. Rep. 391 (2006)(affirming, with one modification, judge's disposition of § 1(7A) issue in light of multiple diagnoses). Without these additional findings, we cannot "determine with reasonable certainty whether correct rules of law have been applied to facts that could be properly found." Praetz v. Factory Mut. Eng'g & Research, 7 Mass. Workers' Comp. Rep. 43, 47 (1993)(and cases cited).

Accordingly, we reverse the decision, vacate the benefit award, and recommit the case for further findings of fact.⁵

So ordered.

Mark D. Horan
Administrative Law Judge

Catherine Watson Koziol
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

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⁴ We therefore decline presently to address the insurer's remaining appellate arguments.

⁵ In the interim, we reinstate the conference order.