

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 052333-97

Bashir Mehmud
General Electric Company
General Electric Company

Employee
Employer
Self-insurer

REVIEWING BOARD DECISION

(Judges Carroll, Wilson and Levine)

APPEARANCES

Bashir Mehmud, pro se
Janice Lenczycki-Toole, Esq., for the employee at hearing
Thomas P. O'Reilly, Esq., for the self-insurer at hearing
Paul M. Moretti, Esq., for the self-insurer on appeal

CARROLL, J. The employee appeals from a decision of an administrative judge who denied and dismissed his claim for § 34 benefits. The employee, now pro se, did not file a brief. He did, however, file a letter setting out his reasons for the appeal, which we treat as a brief. The outcome reached by the administrative judge turned largely on credibility determinations, which we have no power to change absent a specious basis, and on the fact that there was no expert medical opinion which met the standard of compensability under G. L. c. 152, § 1(7A). Seeing no legal error, we affirm the judge's decision.

The employee, a fifty-nine year old native of Pakistan, completed two years of college in that country and acquired special training and/or skills in mechanical engineering for railroading in Pakistan. He was working as a shipper/receiver when he alleged that, as a result of exposure to tobacco smoke and "fumes" in the workplace, he developed a respiratory condition that eventually led to his leaving work in January of 1998. (Dec. 4-5.)

The employee alleges that, on October 20, 1997 while at work, he began to experience breathing difficulties along with tightness in his chest as a result of the presence of cigar smoke. He was subsequently transported by ambulance to Burbank Hospital for treatment. (Dec. 5.) The employee continued to work without further incident between October 20, 1997 and January 28, 1998. (Dec. 18.) The employer accommodated the employee's need to avoid smoke and fumes by assigning him to the stockroom, tool crib area and warehouse. The last of these attempts was an assignment to a warehouse area to perform inventory work. The employee felt that assignment, though smoke-free, left him in jeopardy as he was working alone and without communication to other parts of the plant in the event of an emergency. He testified that the warehouse did not have a bathroom facility. The employee remained dissatisfied with the alternative arrangements over the next three months. (Dec. 15-17.) The employee left his job before his supervisor, Richard Morin, was able to comply with the employee's request for bottled water and a communication device in the warehouse. Mr. Morin, whom the judge found credible, contradicted the employee's testimony that there was no restroom facility located in the warehouse. (Dec. 17.) The judge was not persuaded by the employee's claim that he left his job in January 1998 because of exposure to tobacco smoke and unidentified "fumes." (Dec. 17-18.)

Although the judge adopted the opinion of the impartial examiner, who opined that the employee is limited in his employability in that he should avoid smoke and caustic or irritant chemicals, (Dec. 7), he also found that the employer made several good faith efforts to place the employee in smoke-free environments in the plant, the last of which the employee left for reasons unrelated to his restrictions. (Dec. 17-18.) Further, the judge adopted Dr. Dorris' opinion that the employee's restrictive lung disease is secondary to the damage caused by the employee's tuberculosis condition which he had contracted and treated for in Pakistan, and that the employee's claimed exposures to smoke and fumes in the workplace were not a major cause of his restrictive lung disease condition. (Dec. 8, 18.)

Our review of the administrative judge's decision is narrow. We may reverse his decision only if we determine that it is beyond the scope of his authority, arbitrary or capricious or contrary to law.¹ If there is competent evidence on the record that supports the facts found, and if the judge makes findings of credibility that preclude the award of compensation to the employee, we have no power to change those findings. We may not substitute our judgement for that of the administrative judge as to credibility of witnesses. See G.L. c. 152, § 11C.

The judge's credibility determinations support his decision to deny benefits. The judge did not believe that the employee left his job with the employer because he was medically disabled by his work injury. (Dec. 17-18.) Rather, consistent with the opinion of the impartial medical examiner, the judge determined that the employee was able to work within the restrictions placed upon him and that he left the employer for reasons unrelated to any physical disability causally related to his work. (Dec. 17-18.) Credibility determinations are the sole province of the hearing judge; and, unless ungrounded or arbitrary, the reviewing board lacks the power to disturb such findings. Brade v. Lorenzo & Pitts, Inc., 10 Mass. Workers' Comp. Rep. 366, 368 (1996); Lettich's Case, 403 Mass. 389, 394 (1988); cf. Melendez v. City of Lawrence, 16 Mass. Workers' Comp. Rep. _____ (September 23, 2002). Moreover, the expert medical opinion adopted by the judge did not support that the standard of compensability had been met under G.L. c. 152, § 1(7A). Consequently, we affirm the decision of the administrative judge.

So ordered.

Martine Carroll
Administrative Law Judge

¹ The reviewing board may also, when appropriate, recommit a case to an administrative judge for further findings of fact. Recommittal would be inappropriate in this case.

Bashir Mehmud
Board No. 033140-95

Filed: December 3, 2002
MC/jdm

Frederick E. Levine
Administrative Law Judge

Sara Holmes Wilson
Administrative Law Judge