COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 035366-95**

Berkys Padilla	Employee
Mellon Bank Corporation	Employer
Aetna Casualty & Surety	Insurer

REVIEWING BOARD DECISION
(Judges Carroll, Levine and Maze-Rothstein)

APPEARANCES
Lazar Lowinger, Esq., for the employee at hearing
Martin J. Long, Esq., for the employee on appeal
Gail E. Quinn, Esq., for the insurer

CARROLL, J. The employee appeals a decision awarding her a closed period of weekly benefits for a work related injury to her back, neck and head, but denying her claim for an emotional injury arising out of that accident. The employee argues that the administrative judge erred by rejecting, for reasons not based in the evidence, the uncontroverted medical opinions of two expert psychiatrists causally connecting the employee's emotional impairment with the industrial injury. The employee's argument has merit and we therefore recommit the case for further proceedings.

The employee, Berkys Padilla, worked for Mellon Bank Corporation ("the employer"), doing data entry, record keeping, bookkeeping and filing. (Dec. 4.) On August 22, 1995, she fell down stairs at work, sustaining a cervical strain, lumbar strain and post-concussive headaches. (Dec. 2, 4, 7.) The insurer initially denied liability, but accepted the claim for physical injury at hearing. (Dec. 4.) At hearing, the employee alleged that she was temporarily and totally incapacitated by virtue of both physical injuries and an emotional injury which she alleged was related to her physical injuries.

The judge allowed the employee's motion to join a claim for emotional injury prior to the hearing.

The judge's decision ordered a closed period of § 34 temporary total benefits for the physical injuries only. The judge terminated benefits on the date of the § 11A(2) medical examination, when the impartial examiner, Dr. Kenneth Gorsen, found "the employee with some discomfort only which does not impair her from a return to work." (Dec. 8.) The judge rejected the employee's claim for emotional sequelae to the accepted physical injuries. The focus of the employee's appeal concerns the denial of the employee's claim for an emotional injury.

The judge concluded that the employee's emotional claim:

> fail[ed] because the treating doctor relie[d] on the history from the employee as to causal relationship and the employee's testimony is not credible as [the judge found] the employee has had marital problems and the testimony indicate[d] her husband had been 'cheating' on her and had been unemployed also.

(Dec. 8.) (Emphasis added.) The employee's treating psychiatrist, Dr. Jonathan Sporn, opined that the fall at work caused the employee's emotional injury. "Based on the information that I have, which is based on the patient's history, to the best of my clinical judgment, I believe that the patient's psychotic symptoms, memory disturbance and depressive symptoms are directly related to subtle brain injury after a fall." (Joint Ex. 1.)[1]

[1] Since this case presents a fact pattern of emotional sequelae to a physical injury, the liability-narrowing provisions of § 1(7A) do not apply, and the simple "as is" causation standard governs. Cirignano v. Globe Nickel Plating, 11 Mass. Workers' Comp. Rep. 17, 23-24 (1997)(rejecting application of "predominant contributing cause" standard of causation for emotional sequelae to physical injury cases). Even if there were non-work-related causes to the employee's emotional condition, the question remains as to whether the industrial accident contributed, in any way, to that condition. But see Nagy v. AT&T Technologies, 11 Mass. Workers' Comp. Rep. 590, 592 n.1 (1997) discussing emotional injuries, which are sequelae of industrial injuries, that combine with a pre-existing emotional condition. The pre-existing emotional condition discussed in Nagy is not the circumstance of the case before us. In the case before us, there was no evidence presented that the employee's emotional injuries arose before her injury of August 22, 1995. See generally n.2 and Joint Exhibits 1 and 2.

The judge rejected Dr. Sporn's opinions on causal relationship between the emotional injury and the industrial accident ostensibly because the judge believed that the doctor relied on an incredible history reported by the employee in forming his opinion. We find error where the judge articulated his reasoning that the employee's testimony was not credible, because "the employee has had marital problems and the testimony indicates her husband had been 'cheating' on her and had been unemployed also." (Dec. 8. emphasis added.) The statement is inconclusive and puzzling. If the judge inferred that the employee's marital problems and her husband's infidelity arose before the work injury and claimed emotional sequelae, the inference is unsupportable, as there is not a scintilla of evidentiary support for such an inference. There is no basis in the evidence to support such speculation. New Boston Garden Corp. v. Bd. of Assessors, 383 Mass. 456, 472 (1981) (disbelief of any particular evidence does not constitute substantial evidence to the contrary). See Yates v. ASCAP, 11 Mass. Workers' Comp. Rep. 447, 454-455 (1997) (judge's credibility finding was arbitrary and capricious because there was nothing in the record to support it.)[2] Moreover, whether the marital problems occurred before (which we have said is unsupportable) or after the industrial accident[3], we do not see how the employee's marital problems, her husband's infidelity and his unemployment make the employee incredible. The judge's reasoning in denying the emotional claim on the basis stated is legally unsound, illogical, arbitrary and capricious.

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[2] In fact, the evidence points only to a finding that the employee's marital problems and husband's infidelity arose after the work injury. See generally Tr.15-16, 29-30, 35-37, dated April 8, 1997. See also Joint Exhibit 2 wherein the only reference, in Dr. Lurie's report, to marital difficulties is that the employee was separated in 1996, the year following her work injury. Finally, Dr. Sporn's report (Joint Exhibit 1) is replete with references to marital difficulties arising after the work injury and not before. For example, the employee "felt that her life had changed radically since the accident that she had[,]" and she "would get violent with her husband if he was early or late coming home." Id. Moreover, during the course of her treatment for the work injury, the employee's husband filed for divorce which the employee "related to her difficulty with loss of interest in sex, as well as one would guess her mood lability and irritability." Id.

[3] See n.2.

The insurer's expert psychiatrist, Dr. Melvyn Lurie, also provides a medical opinion causally connecting the employee's psychiatric condition to the industrial accident.[4] The judge does not adopt Dr. Lurie's opinion stating that he finds the " . . . employee's injury history as given to Dr. Lurie and Dr. Sporn at odds with her less than persuasive testimony." (Dec. 8.) While it is the prerogative of the judge to find some or all of the employee's testimony not credible, the judge's arbitrary finding, that the employee was not credible because she had marital problems and her husband had been cheating on her, is inextricably entwined in the judge's analysis of the uncontradicted medical evidence and therefore the case must be recommitted.

"Where there is uncontradicted medical evidence [as here], a judge may reject it only if he clearly and sufficiently states his reasons for doing so in findings with an adequate basis in the record." Wenetta v. J.C. Penney Catalogue Outlet Store, 10 Mass. Workers' Comp. Rep. 403, 406 (1997), citing Galloway's Case, 354 Mass. 427, 431 (1968). The findings are not sufficiently clear and specific for us to discern the judge's logic for his conclusions. Crowell v. New Penn Motor Express, 7 Mass. Workers' Comp. Rep. 3, 4 (1993). The decision should "disclos[e] reasoned, not irrational, decision making governing a workers' compensation dispute." Scheffler's Case, 419 Mass. 251, 258 (1994). It does not, and we therefore reverse the decision and recommit the case.

As the judge who wrote this decision no longer serves as such, we transfer the case to the senior judge for reassignment and for a hearing *de novo*.

So ordered.

[4] Dr. Lurie opined, "In terms of causation, based on the information available it would appear that her organic problems developed from a fall and her psychiatric problems did as well." (Joint Ex. 2.) However, Dr. Lurie goes on to state, "This woman's primary pathology is organic and not psychiatric" and that "[s]trictly from a psychiatric standpoint, she would be capable of her regular work." (Joint Ex. 2.) Dr. Lurie places the organic component in the specialty of a neurologist, stating that he cannot comment neurologically because that is not his specialty. He felt that the employee should have a neurological evaluation. Indeed, the impartial physician, Dr. Kenneth Gorson, is a neurologist; he opined that the employee has no evidence of medical disability. Although Dr. Lurie's opinion on the psychiatric aspect would not support incapacity, it could support a finding of compensability of psychiatric treatment.

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Martine Carroll
Administrative Law Judge

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Frederick Levine
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge

Filed: January 26, 1999
MC/jdm