COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS	**BOARD NOS. 087760-89, 006376-95, 077658-91, 0054047-91**
Bogumila Niedzwiadek	Employee
Smith and Wesson	Employer
Wausau Insurance Company	Insurer

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

APPEARANCES
Thomas H. O'Neill, Esq., for the employee at hearing
Paul G. Lalonde, Esq., for the employee on brief
Amy Scarborough, Esq., for the insurer at hearing
Patricia M. Vachereau, Esq., for the insurer on brief

CARROLL, J. The employee appeals from a decision in which an administrative judge denied and dismissed her claim for further compensation benefits attributable to an accepted 1991 industrial injury. The employee's ongoing partial incapacity benefits, which payment the parties had agreed to in 1992, had been terminated as of March 25, 1994 by way of an unappealed hearing decision. (Dec. 5.) The employee then claimed psychological disability stemming from physical injuries she sustained while in the course of her employment with the employer. The denial of that claim was summarily affirmed by the reviewing board and thereafter affirmed by a non-published order of a single justice of the Appeals Court. In the present appeal from the decision denying her most recent claim, the employee asserts that the judge erroneously failed to allow additional medical evidence in light of an inadequate impartial physician's opinion. We disagree and affirm the decision.[1]

[1] We summarily affirm the other issue raised by the employee – that the administrative judge's decision did not show a badge of personal analysis.

The employee developed pain in her left arm and upper body due to repetitive stress at her job with the employer. She stopped working on October 11, 1991. (Dec. 4.) In 1998, after weekly benefits had been terminated in March 1994, (Dec. 5), the employee claimed further benefits under §§ 34 and/or 35 from March 26, 1994 to date and continuing,[2] as well as medical benefits under § 30 and specific injury benefits under § 36. The insurer resisted the claim, and the employee underwent an impartial medical examination by orthopedic surgeon Dr. Alan Bullock, pursuant to § 11A(2), on November 3, 1998. (Dec. 2.) The employee complained of pain in her head, neck, face, shoulder and down her arm. (Dec. 4-5.) The impartial physician opined that he could make no objective findings and could find no orthopedic reason for the employee's ongoing complaints of pain and limitations. Based on his review of the employee's records, the doctor found that the employee's condition had not changed in the four years preceding the examination. (Dec. 5.) The employee deposed the impartial physician. (Dec. 3.) The judge denied the employee's "Motion to Find Impartial Examiner's Report Inadequate." (Dec. 4.)

The judge denied the employee's claim, relying on the opinion of the impartial physician. The judge concluded that the employee had failed to meet her burden of proving the necessary causal relationship between her allegedly worsening present medical disability and her workplace. (Dec. 6.)

The employee contends on appeal that the judge erred by denying her motion for additional medical evidence due to the impartial physician's inadequate opinion on causal relationship and loss of function. While we consider that the doctor's report and

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[2] General Laws c. 152, § 16, reads, in pertinent part, as follows:

> When in any case before the department it appears that compensation has been paid . . , no subsequent finding by a member . . . discontinuing compensation on the ground that the employee's incapacity has ceased shall be considered final as a matter of fact or res judicata as a matter of law, and such employee . . , may have further hearings as to whether his incapacity . . . is or was the result of the injury for which he received compensation . . . .

deposition testimony raise questions as to the possible nature of the employee's medical disability[3], the impartial orthopedic doctor's opinions adequately addressed those issues from an orthopedic standpoint and supported the judge's conclusion denying benefits.

The doctor opined that the employee's complaints pointed to nothing orthopedic, and was unable to find anything objective to explain the employee's symptoms:

> Q: [C]an you offer an opinion as to what you think the cause of her present complaints are?
>
> A: No. I really couldn't on the objective findings. They did not point to any current, ongoing specific orthopedic problem. If I had to push and said what is your best guess if she was a patient of mine, I would tell her I think you overuse[d] the muscles and ligaments years ago. I think they were irritated, and in some way this irritation has continued and is causing your discomfort. I would qualify that saying that that would be my best guess as why she's having the pain. I would tell her, you know, I am not coming up with anything else and that diagnosis is not – it's nothing I can say to do about it.

(Dep. 33-34.) In rejecting the existence of any orthopedic condition, the impartial physician answered the question of causal relation in the negative: Insofar as the orthopedic work up was concerned, there was nothing to causally relate her complaints to the workplace. Indeed, the employee's contention regarding the lack of an opinion on causal relation is misplaced. The "omission" in the doctor's opinion -- fatal to the employee's claim -- is actually his inability to detect any orthopedic *diagnosis*. Because the doctor could find nothing orthopedically wrong with the employee, the determination of causal relation was not *feasible* under § 11A(2),[4] and raises no legal question.

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[3] The doctor speculated that there could be a neurological basis for the employee's complaints. (See Dep. 9, 15.) The employee has not undergone neurological evaluation or treatment. (Dep. 34.)

[4] General Laws c. 152, § 11A(2), reads, in pertinent part as follows:

> The report of the impartial medical examiner shall, *where feasible*, contain a determination of the following: (1) whether or not a disability exists, (ii) whether or not any such disability is total or partial and permanent or temporary in nature and (iii) whether or not within a reasonable degree of medical certainty any such disability has as its major or predominant contributing cause a personal injury arising

This case is unlike Safford v. Worcester Hous. Auth., 10 Mass. Workers' Comp. Rep. 339 (1996). "In [that] case, the doctor felt that, based on the available information, he could not render a diagnosis or causation opinion." Id. at 342. "He testified that he needed more information to determine whether the employee suffered from writer's cramp and with the information he had, he could not support that diagnosis nor could he rule it out." Id. Moreover, the Safford doctor's neurological expertise was unrelated to the employee's hand problem. Id. As a matter of orthopedics, the impartial physician in this case was clear that there was simply nothing going on: that the employee presented no orthopedic disease process warranting further treatment or studies. (Impartial Report; Dep. 28-29.)

The impartial physician's failure to specifically address the employee's alleged orthopedic loss of function is also rendered inconsequential by the lack of any orthopedic findings in the first place. (Dep. 26-29.)

We affirm the decision.

So ordered.

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Martine Carroll
Administrative Law Judge

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Frederick E. Levine
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge

Filed: **November 17, 2000**
MC/jdm

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out of and in the course of the employee's employment. Such report shall also indicate the examiner's opinion as to whether or not a medical end result has been reached and what permanent impairments or losses of function have been discovered, if any. (Emphasis added.)