

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS

BOARD NO. 036728-97

Candice Lockheart
Wakefield Engineering
AIU Insurance Company

Employee
Employer
Insurer

REVIEWING BOARD DECISION

(Judges Wilson, Carroll and Levine)

APPEARANCES

Winfred A. Eckenreiter, Esq., for the employee
Diane J. Bonafede, Esq., for the insurer

WILSON, J. The insurer appeals the decision of an administrative judge in which the employee was awarded ongoing § 34 benefits, reasonable and necessary medical treatment, and attorney's fees and costs. After a review of the record we recommit the case for hearing de novo.¹

The employee, Candice Lockheart, is presently thirty-three years of age and has obtained her G.E.D. Her prior employment was varied and included employment in restaurant settings. In July 1997, Ms. Lockheart commenced employment with Wakefield Engineering as a setup technician. Her classification as of the date of injury was technician with general duties of cleaning and fixing machinery. (Dec. 4.)

On September 17, 1997, a supervisor requested that the employee check a co-worker's saw. As a result of the request, the employee became involved in a confrontation with several co-workers during which one co-worker held her left wrist, another held her right arm, and a third physically assaulted her. Three days later, on September 20, 1997, Ms. Lockheart treated at St. Luke's Hospital for injuries to her right arm and right shoulder. (Dec. 4-5.)

¹ The hearing judge no longer serves in the Department.

A conference on the employee's unaccepted claim was held before an administrative judge. The employee appealed the denial of her claim to a hearing de novo before the same administrative judge. (Dec. 2.) The report and deposition of the § 11A impartial medical examiner were admitted into evidence. (Dec. 2, 3.) Although the administrative judge found that the examiner's report was adequate, he also found that the medical issues involved were complex and he allowed additional medical evidence. Neither party, however, submitted any additional medical evidence. (Dec. 3.)

The judge made the following findings on the medical evidence. The § 11A examiner opined that the employee sustained both psychological and physical injuries as a result of the workplace incident. He diagnosed a right shoulder strain and reflex sympathetic dystrophy, and opined that the employee's shoulder injury was causally related to the work incident. (Dec. 5.)

The administrative judge determined that the employee sustained a compensable work injury on September 17, 1997, and that she was temporarily, totally disabled as a result of reflex sympathetic dystrophy of her right shoulder and arm. (Dec. 6-7.) Accordingly, the judge awarded continuing § 34 benefits from September 17, 1997, medical benefits and legal fees and costs. (Dec. 7-8.)

The insurer raises numerous issues on appeal. First, the insurer argues that the judge failed to list or consider the testimony of one of its witnesses. Next, the insurer contends that the judge listed only the first of three days of testimony, thus omitting the day the employee was cross-examined and several other witnesses testified. The insurer points out that the decision shows little, if any, consideration of the latter two days of testimony. Third, the insurer states that the judge failed to properly identify the procedural background and issues, as well as the stipulations in the case. Fourth, the insurer maintains that the judge mischaracterized the § 11A medical opinion and that the medical opinion was inadequate as to psychiatric matters. As a final matter, the insurer asserts that the judge

mischaracterized the § 11A medical expert's opinions on both diagnosis and degree of medical disability.

It is the duty of the administrative judge to make such specific and definite findings as will enable the reviewing board "to 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. 45, 47 (1993); G. L. c. 152, §§ 11B, 11C. This decision, however, exhibits numerous deficiencies that require recommitment. We need not address each one. Suffice it to say that the failure to list a witness, John Skrzypike, coupled with no reference to the testimony of that witness, is by itself often dispositive. See Saccone v. Department of Pub. Health, 13 Mass. Workers' Comp. Rep. 280, 282-283 (1999). That omission is compounded by the failure both to list two of the three actual days of hearing testimony and to discuss any of the testimony given on the two omitted days.

Moreover, the insurer asserts that the judge mischaracterized the opinion of the impartial examiner both as to diagnosis and basis for physical disability. During his deposition, Dr. Galvin, the § 11A impartial physician, agreed with questions concerning the St. Luke's Hospital emergency room diagnosis on September 20, 1997.

Q. And now, doctor, the preliminary diagnosis on this record is reflex sympathetic dystrophy?

A. Yes.

(Dep. 21.)

Q. [quoting from the impartial examiner report at 4] This has left her with a disabled right shoulder which for some may be called a reflex sympathetic dystrophy although she lacks some of the classical findings including trophic changes. That's basically the same diagnosis that you saw in the St. Luke's [emergency room] record from September 20, 1997, isn't it doctor?

A. Yes.

(Dep. 25.) Dr. Galvin's diagnosis, however, as stated in his report and confirmed in his deposition, was that the employee had a shoulder strain and *possibly* some reflex sympathetic dystrophy. (Dep. 8, 38; Impartial examiner report 4.) The judge, without any examination and analysis of this testimony, found that the employee had a shoulder strain and reflex sympathetic dystrophy, noted that Dr. Galvin found a causal relationship between the shoulder and the work incident, and then, without any subsidiary findings on the medical disability testimony, concluded that the employee was "temporarily totally disabled due to reflex sympathetic dystrophy of the shoulder and arm." (Dec. 5.) On recommittal, the judge should revisit these issues of diagnoses and medical disability and, hence, incapacity.

As the administrative judge no longer serves with the Department, we forward the case to the senior judge for assignment to a different administrative judge for a hearing de novo. The decision is vacated.

So ordered.

Filed: **June 25, 2002**

Sara Holmes Wilson
Administrative Law Judge

Martine Carroll
Administrative Law Judge

Frederick E. Levine
Administrative Law Judge