

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS

BOARD NO. 019620-00

Chang Son Yim
Microtek, Inc.
Arbella Indemnity Insurance Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION

(Judges Carroll, Costigan and Horan)

APPEARANCES

Donald W. Blakesley, Esq., for the employee at hearing

Peter J. Moran, Esq., for the employee on appeal

Wayne A. Gallo, Esq., for the insurer

CARROLL, J. The employee appeals from a decision in which an administrative judge denied and dismissed his claim for psychiatric disability stemming from a physical work injury, an electrical shock. Because we agree with the employee that the additional medical evidence allowed by the judge contains a medical opinion which arguably satisfies the appropriate burden of causation in this physical trauma/mental disability case, we recommit the case for reconsideration of the medical evidence and further findings.

The employee, who had a significant depressive condition pre-existing the work-related electrical shock, became totally disabled by his depression about a year after he sustained his work injury. (Dec. 2-3.) The issue at the hearing was whether the work-related shock caused the employee's depression, within the meaning of the combination injury provisions of the fourth sentence ¹ of G. L. c. 152, § 1(7A):

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.

See Lagos v. Mary A. Jennings, Inc., 14 Mass. Workers' Comp. Rep. 21, 23 (2000). The judge allowed additional medical evidence under G. L. c. 152, § 11A(2), because the impartial medical examiner could not "clearly state

¹ Because the employee's psychiatric claim emanated from a physical work injury, he was not subject to the predominant contributing cause standard of § 1(7A), governing purely mental disabilities arising out of "an event or series of events occurring within any employment." See Cirignano v. Globe Nickel Plating, 11 Mass. Workers' Comp. Rep. 17 (1997).

whether the shock is a major cause of [the employee's] depression." (Dec. 3.) The employee submitted medical testimony of his treating physician, Dr. Bernard Price, and his treating psychologist, Dr. Young K. Kim. (Dec. 4.)

Suffice it to say that the judge concluded the employee's medical evidence fell short of establishing the requisite causal connection between the electrical shock at work and his ongoing depression. (Dec. 5.) On this basis the judge denied and dismissed the employee's claim. (Dec. 6.)

We agree with the employee that the deposition testimony of the employee's treating physician, Dr. Price, raises a question of whether the employee's psychiatric sequelae claim might be sustained. That testimony is found on pages 20 and 21, as cited by the employee:

Q: Just a couple of follow-ups. Doctor, you indicated that you believe that the origin of his depression is multifactorial, that there are a number of contributing factors. Would you be able to say that the shock episode that he describes to you is a major, though not necessarily predominant cause of his depression based on the history?

A: Based on the history, yeah, he centers a lot of his - he centers it on the shock.

Q: Okay. And when you're rendering an opinion like that, it's essentially based on history, is that fair to say?

A: Yes.

The assessment of causal relationship in psychiatric injuries is uniquely based on the history that the employee recounts to the § 11A examiner. See LaFlash v. Mt. Wachusett Dairy, 18 Mass. Workers' Comp. Rep. 254, 260 - 262 (2004)(judge could reject § 11A opinion on psychiatric component of physical injury, where it was based on continuing physical impairment that judge did not find). We therefore agree with the employee's argument that the above-quoted testimony might meet the applicable § 1(7A) causation standard - "a major but not necessarily predominant cause" - in this physical/psychiatric case with pre-existing psychiatric factors. The judge credited the employee's account of his electrical shock at work. (Dec. 5.) Cf. LaFlash, supra. We need to see more findings as to how the judge concluded that Dr. Price "simply will not make an opinion as to causal connection of the shock to the depression," in light of the above-quoted testimony. (Dec. 4.)

Accordingly, we recommit the case for the judge to make further findings as to whether the electrical shock at work meets the "a major" cause standard applicable to the employee's psychiatric disability.

So ordered.

Chang Son Yim
Board No. 019620-00

Martine Carroll
Administrative Law Judge

Patricia A. Costigan
Administrative Law Judge

Mark D. Horan
Administrative Law Judge

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