COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 037772-96**

Charlene Schwartz	Employee
Partners Healthcare System, Inc.	Employer
Partners Healthcare System, Inc.	Self-insurer

REVIEWING BOARD DECISION
(Judges Carroll, McCarthy and Levine)

APPEARANCES
James A. McDonald, Jr., Esq., for the employee
Joseph S. Buckley, Jr., for the self-insurer at hearing and on appeal
Patricia Costigan, Esq., for the self-insurer at hearing

CARROLL, J. The self-insurer appeals from a decision in which an administrative judge awarded the employee ongoing temporary total incapacity benefits for an accepted industrial knee injury. We agree with the self-insurer that the judge failed to address the application of the properly raised § 1(7A) standard of "major" causation. However, because the judge adopted the impartial physician's opinion, which was to the effect that the industrial injury was "a major" cause of the resultant disability, the employee has met that heightened causation standard as a matter of law. We also summarily affirm the decision as to the self-insurer's other argument on appeal regarding the extent of the employee's incapacity.

The employee injured her right knee at work on June 25, 1996. The self-insurer accepted the injury, for which the employee underwent an arthroscopy on September 24, 1996. The employee's surgeon found a right knee lateral meniscal tear and extensive chondral changes at the medial femoral condyle, lateral tibial plateau, and patella. The employee continued to experience persistent pain in her knee, aggravated by standing and walking. She returned to work part-time, but as she increased her work activities, so too increased her knee pain. Finally, the employee was forced to stop working altogether on

January 8, 1999. The employee claimed further compensation benefits, which the self-insurer resisted. (Dec. 3-4.)

The employee underwent an impartial medical examination on March 24, 1999. The impartial physician opined that the employee suffered from a torn meniscus causally related to the industrial injury, and that chondral changes probably were post-traumatic in part and attritional wear and tear in part. (Dec. 4-5.) The impartial physician opined that the chondral changes, to the extent that they pre-existed the industrial injury, were not significant. (Dep. 41-45; Impartial Medical Report.) Simply because the self-insurer raised the issue of the impartiality of the § 11A physician, the judge permitted the parties to submit additional medical evidence. The judge took this action before the impartial physician's deposition was taken and before the judge ruled on the issue of bias. The judge cited a concern that the parties receive due process. (Dec. 2, 6, Tr. 5.) The judge adopted the medical opinions of the impartial physician, and awarded ongoing temporary total incapacity benefits.

We turn first to the judge's allowance of additional medical evidence, which, although not raised as an issue on appeal, merits our attention.[1] Where the judge explicitly found that the § 11A evidence was adequate, the doctor not biased, and the medical issues not complex, she had no authority to allow additional medical evidence:

> [N]o additional medical reports or depositions of any physicians [other than the impartial physician] shall be allowed by right to any party; provided, however, that the administrative judge may, on his own initiative or upon motion by a party, authorize the submission of additional medical testimony *when such judge finds that said testimony is required due to the complexity of the medical issues involved or the inadequacy of the report submitted by the impartial medical examiner.*

G.L. c. 152, § 11A(2)(Emphasis added). The judge's generalized concern with the parties' due process rights cannot be an excuse to "gut the requirements of § 11A(2)." Joseph v. City of Fall River, 15 Mass. Workers' Comp. Rep. 31, 35 (2001).

[1] "The Reviewing Board *need not* decide questions or issues not argued in the brief." 452 Code Mass. Regs. §1.15(4)(a)(3)(Emphasis added).

However, since the judge adopted the § 11A medical evidence, (Dec. 6), the question of § 1(7A)'s application is straightforward. Unfortunately, the judge neither listed § 1(7A) as an issue put in dispute on the self-insurer's Issues/Defense Form, (Self-insurer's Exhibit #1; Tr. 7), nor did she apply it in the decision, even inferentially. The pertinent provision of § 1(7A) reads:

> 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.

The employee argues, with some persuasiveness, that § 1(7A) does not apply to this case, due to the lack of proof of a knee condition that pre-existed the industrial injury. Indeed, the impartial physician testified as to his uncertainty that the chondral changes were pre-traumatic. (Dep. 42-44.) However, we do not need to address that. The impartial medical evidence cannot reasonably be read to support any other conclusion than that the industrial injury was "a major cause" of the employee's resultant disability. Although he never was asked to opine directly on that causation standard, he effectively did so as follows:

> The torn meniscus is related to the work injury described by the patient. The chondral changes probably were in part post traumatic and in part attritional wear and tear changes. . . .
> The reason for the causal relationship is the absence of knee symptoms that might be expected with a torn meniscus such as locking or intermittent swelling prior to the work accident. The chondral changes if pre-existing certainly were not symptomatic according to the patient. Her job as a pharmacy tech in a large teaching hospital certainly involved considerable standing and walking implying that any pre-existing chondral changes were not significant.

(Impartial Medical Report.)

The chondral changes and the meniscus tear were the only two causes in this case. Chondral changes, only partially pre-existing and "not significant" at that, cannot reasonably be interpreted as representing either "a major cause," or a causal factor that would render the industrial injury conversely *not* "a major cause" of incapacity. Where

the evidence supports only one result, recommittal is not appropriate. See Roney's Case, 316 Mass. 732, 739 (1944). On this evidence, the employee satisfied § 1(7A) as a matter of law, because the industrial injury was necessarily "a major cause" of her incapacity.

Accordingly, while the judge was wrong in allowing additional medical evidence without regard for § 11A's requirements, and erred by failing to address the properly raised defense of § 1(7A) "major cause," the errors were ultimately harmless. We affirm the decision. Pursuant to § 13A(6), the self-insurer is ordered to pay employee's counsel a fee of $1,285.63.

So ordered.

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Martine Carroll
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge

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Frederick E. Levine
Administrative Law Judge

Filed: **July 23, 2002**
MC/jdm