COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **NO. 08526-87**

Craig Goulet	Employee
APA Transportation Corp.	Employer
APA Transportation Corp.	Self-insurer

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

APPEARANCES
John F. Trefethen, Jr., Esq., for the employee at hearing
Scott E. Richardson, Esq., for the self-insurer at hearing
Paul M. Moretti, Esq., for the self-insurer on appeal

WILSON, J. A rudimentary error necessitates the return of this second hearing decision to the administrative judge. The self-insurer has appealed the decision on various grounds, but we see merit in only one: The decision lacks a vocational analysis under Frennier's Case, 318 Mass. 635 (1945), and Scheffler's Case, 419 Mass. 251, 256 (1994), in support of the employee's earning capacity. We recommit the case as a result.

We visited this case in Goulet v. APA Transportation Corp., 8 Mass. Workers' Comp. Rep. 338 (1994). At that time we recommitted the case for findings on the judge's reopening of the record ten months after the close of the evidence. Id. at 339. In that decision, we allowed that the judge on recommittal could address present incapacity in the interest of judicial economy. Id. The decision emanating from that 1994 recommittal is the subject of the present appeal.

The employee claimed a new period of incapacity benefits, ongoing from February 24, 1992, causally related to his industrial injury on March 11, 1987. (Dec. 4-5.) The judge found the employee's claim to be meritorious, and awarded benefits under §§ 34 and 35. The § 35 award was for a closed period through October 24, 1993, when the employee underwent arthroscopic surgery on his shoulder, and then from December 29,

1993 to date and continuing. The judge assigned the employee a weekly earning capacity of $325.00 for both of these periods. (Dec. 10-11.) It is this assessment that the self-insurer challenges.

The medical evidence that supports the judge's earning capacity assignment is the impartial medical report, in which the doctor opined that the employee could perform sedentary work, (Dec. 9; Employee Ex. 9), and the reports and records of the employee's treating physician, Dr. Warren Courville. Dr. Courville opined that the employee was partially disabled, with restrictions on repetitive bending, lifting, and prolonged sitting or standing. The impartial physician causally related the employee's partial disability to the industrial accident. The judge adopted these opinions. (Dec. 8-10.)

On appeal the self-insurer puts at issue the dearth of findings on the well-known Frennier factors – age, education, training and work history – within this decision. The error is noteworthy, as the judge has not included *any* findings on these basic matters underlying vocational analysis. This lapse might be explained by the fact that the recommittal decision, in many ways, simply takes up where the 1992 decision left off. (Board Ex. 1.) Although there is a short recitation of the Frennier factors in that earlier decision, there is no explanation in the present decision as to how this employee's vocational profile, along with his partial medical disability, equates to an earning capacity of $325.00 per week. See Russell v. Micron Eng'g, 12 Mass. Workers' Comp. Rep. 183, 184-185 (1998). We also take note of the self-insurer's argument that this employee's earning capacity from *1987* was only twenty-five dollars less than that assigned by the judge in this *1999* decision. (Board Ex. 3.) Even with the employee's medical status unchanged throughout, (Dec. 10), the upward adjustment of merely twenty-five dollars hardly reflects inflation over time. The self-insurer also raises the issue of the relative strength of the economy during the same period. (Insurer's Brief, 19.) See Scheffler's Case, supra at 256, quoting L. Locke, Workmen's Compensation § 321, at 375-376 (2d ed. 1981) ("the strength or weakness of the economy also influence an injured employee's ability to hold a job or obtain a new position").

Accordingly, we recommit the case for further findings consistent with this opinion. The decision is summarily affirmed as to the remaining issues raised by the self-insurer.

So ordered.

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Sara Holmes Wilson
Administrative Law Judge

Filed: **June 24, 2002**

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Martine Carroll
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge