COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **Board No.:** 001342-05

David Carpenter (deceased)	**Employee**
Susan Carpenter	**Claimant**
City of Woburn	**Employer**
MIIA Workers' Compensation SIG	**Insurer**

REVIEWING BOARD DECISION

(Judges Koziol, McCarthy, and Horan)

The case was heard by Administrative Judge Tirrell.

APPEARANCES

Peter T. Toland, Esq., for the claimant
John F. Keefe, Esq., for the insurer at hearing
John J. Canniff, Esq., for the insurer on appeal

KOZIOL, J. The insurer appeals from a decision awarding § 33 burial expenses and § 31 survivor's benefits to the claimant widow. The insurer argues that the judge improperly applied the provisions of § 7A[1] to find a work injury established by virtue of that section's prima facie effect, and erred in failing to apply the

[1] General Laws c. 152, § 7A, provides:

> In any claim for compensation where the employee has been killed or found dead at his place of employment or, in the absence of death, is physically or mentally unable to testify, and such testimonial incapacity is causally related to the injury, it shall be prima facie evidence that the employee was performing his regular duties on the day of injury or death and that the claim comes within the provisions of this chapter, that sufficient notice of the injury has been given and that the injury or death was not occasioned by the willful intention of the employee to injure or kill himself or another.

"major" causation provision of § 1(7A).[2] We disagree with both contentions and affirm the decision.

On January 24, 2005, the employee, a school custodian, was working with a co-worker, clearing a large amount of heavy snow from the school grounds. (Dec. 5-6.) After arriving at work at 7:00 A.M., the employee spent the morning operating a large industrial snow blower, shoveling a large snow drift with this co-worker, and replacing a broken cotter pin on the snow blower. Although self-propelling, the snow blower weighed about two hundred pounds and had to be manually maneuvered from side to side and around sharp corners which, the judge found, "takes some doing." (Dec. 6.) At approximately 1:30 P.M., the employee resumed operating the snow blower to improve the paths he had completed prior to lunch. (Dec. 7.) At that time, the temperature was between nineteen and thirty-three degrees. (Dec. 5.) After the employee returned to this task, his co-worker heard the snow blower running continuously and, at approximately 1:50 P.M., he found the employee, motionless, "leaning against a snowdrift higher than a man, very close to the running snow blower." (Dec. 7.) The employee had died from a sudden cardiac arrest. (Dec. 9.)

The judge properly determined that § 7A applied to this case. (Dec. 9.) Because the employee was "found dead at his place of employment," pursuant to § 7A, the claimant had established prima facie evidence of a causal relationship between the employment and the fatality. Anderson's Case, 373 Mass. 813, 816-817 (1977)("In a case such as this one, where the employee was found dead at his place of employment, we construe the statute, § 7A as establishing, inter alia, prima facie evidence of causal relationship between the employment and the injury or

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[2] General Laws c. 152, § 1(7A), provides, in pertinent part:

> 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.

fatality."); Costa's Case, 52 Mass. App. Ct. 105, 108-109 (2001). It was the insurer's burden to meet and overcome the prima facie evidence of compensability, which it attempted to accomplish by offering the medical opinions of internist Dr. Milo F. Pulde.

Both parties' medical experts agreed the employee's sudden cardiac arrest was due to ventricular arrhythmia. (Dec. 9-10.) The employee's primary care physician, Dr. Arthur Kress, stated the employee exhibited classic symptoms of unstable angina weeks prior to his death. The autopsy indicated the employee had a severely diseased coronary anatomy, causing fibrosis or scarring to the heart muscle, and that he was suffering from an occlusion of over ninety percent of the left anterior descending coronary artery. (Dec. 9.) The judge adopted Dr. Pulde's opinion that the employee's pre-existing, non-work-related conditions of coronary disease and unstable angina, acted upon by any type of exertion, would have resulted in ischemia or substrate related tachycardia and sudden death. (Dec. 10.) The judge noted that Dr. Pulde opined the employee's work activity at the time of his death "certainly can induce ischemia," and his "sudden death was likely to occur in any context any type of physical activity. . . ." (Dec. 10.) He then expressly rejected Dr. Pulde's opinion that the employee's work activity at the time of his death "should not be considered a trigger based on our definition of what represents triggers." (Dec. 10-11.) Noting that Dr. Kress recognized the employee had several cardiac risk factors along with pre-existing cardiac conditions, the judge adopted Dr. Kress's opinion that the work the employee was performing on January 24, 2005, was a major contributing cause of his death. (Dec. 10-11.)

The judge's conclusion that Dr. Pulde's opinion did not overcome the § 7A prima facie evidence of compensability flows logically from the findings and is consistent with § 7A's application. Cf. Herbert v. Harvard Univ., 12 Mass. Workers' Comp. Rep. 382, 383 (1998)(prima facie effect of § 7A overcome where judge adopted medical evidence that stress would not cause the type of sudden and fatal cardiac arrest suffered by employee at work). This is particularly so in light of the judge's adoption of Dr. Kress's opinion that the work exertion was a major contributing cause of the employee's death. (Dec. 11.) Moss's Case, 451 Mass. 704, 709 (2008)("We interpret § 7A's establishment of prima facie evidence that a claim 'comes within the provisions of' c. 152 as reflecting a legislative intent that employees who have been injured or killed while at work and who have thereby

been rendered unable to testify should qualify for workers' compensation benefits unless persuasive contrary evidence indicates otherwise."). Contrary to the insurer's assertions, the judge's extensive findings provide the necessary factual predicate to support his adoption of Dr. Kress's opinion.

The insurer also argues the judge erred in failing to analyze the compensability of the employee's death under § 1(7A), finding instead that its § 1(7A) defense was without merit. (Dec. 12.) The narrow issue presented here is whether a claim for survivor's benefits must be analyzed under the fourth sentence of § 1(7A) where the employee is found dead at his place of employment and § 7A applies. For the following reasons, we conclude that where the employee is "killed or found dead at his place of employment" pursuant to § 7A, the analysis under the fourth sentence of § 1(7A) does not need to be performed because these statutory provisions are mutually exclusive.

The fourth sentence of § 1(7A) provides that where a "compensable injury . . . combines with a pre-existing" non-compensable condition "to cause or prolong disability or need for treatment, the resultant condition" is compensable "only to the extent" that such industrial injury "remains a major but not necessarily predominant cause" of the disability or treatment. Absent from § 1(7A)'s language is a workplace death where no disability or need for medical treatment intercedes. This is true despite the legislature's amending both §§ 1(7A) and 7A in 1991, and knowing § 7A is interpreted as establishing the critical element of causal relationship between the employment and the death. Anderson's Case, supra. We are disinclined to infer that a death occurring at the workplace is subject to § 1(7A)'s coverage.

Moreover, a review of the language of the fourth sentence of § 1(7A) demonstrates that where § 7A applies, the inquiry under § 1(7A) has no practical application. Pursuant to § 7A, the employee's sudden death was the "compensable injury" in this case. As a result, it is illogical to say that the death somehow "combines with a pre-existing" non-compensable condition "to cause or prolong disability or the need for treatment."

Notwithstanding this fact, and accepting the proposition that death is the ultimate disability, even if we were to construe the word "disability" to include workplace deaths, the same result is reached. Section 1(7A) conditions the compensability of

the "resultant condition" upon whether the compensable injury "remains a major but not necessarily predominant cause of disability or a need for treatment," thereby tacitly acknowledging that in certain situations, the relative weight of the medical causes of the "resultant condition" may be susceptible to change over time. Robles v. Riverside Mgmt. Co., 10 Mass. Workers' Comp. Rep. 191, 196 (1996)("the 1991 revision to the language of § 1(7A) now contemplates situations where work injuries, regardless of magnitude may fade to the status of less than a major cause."). "The primary definition of 'remain' is '[t]o continue without change of condition, quality or place.' " Id. at 196, quoting from American Heritage Dictionary, 2d College Ed. (1985). Death, a permanent static condition, cannot change in quality or place, and where it is both the injury and the "disability," consideration of whether its cause has changed over the course of time is obviated. Simply put, where no period of disability or a need for medical treatment occurs, all that matters is the question of initial causation for which analysis under § 1(7A) is inapplicable. Larkin v. Feeney's Fence, Inc., 19 Mass. Workers' Comp. Rep. 78, 82 n.10 (2005)("The legislature's inclusion of the word "remains" would appear to have no practical application where the sole issue is original causation."). The judge's conclusion regarding the § 1(7A) defense evinces no error under § 11C.

The decision is affirmed. Pursuant to G. L. c. 152, § 13A(6), the insurer shall pay claimant's counsel a fee in the amount of $1,495.34.

So ordered.

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Catherine Watson Koziol
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge

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Mark D. Horan
Administrative Law Judge

Filed: ***January 29, 2009***