COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS	**BOARD NO. 055509-95**
David Casey	Employee
Town of Natick Police Department	Employer
Town of Natick	Self-Insurer

REVIEWING BOARD DECISION
(Judges Smith, McCarthy & Wilson)

APPEARANCES
Theresa M. Meltzer, Esq., for the employee
David A. DeLuca, Esq., for the self-insurer

SMITH, J. The self-insurer appeals an award of further compensation commencing the date that prior compensation ended. Because G.L. c. 152, § 16 abrogates the traditional rule of res judicata in claims for further compensation, the further award is not precluded by the earlier conference order terminating benefits. As the judge's decision is rationally grounded in the record evidence and consistent with law, we affirm it.

David Casey received a personal injury arising out of and in the course of his employment by the Town of Natick on July 25, 1995. He filed a claim for compensation, which was initially disputed by the Town. The case went to conference on June 13, 1996, at which time Casey was awarded § 35 partial compensation from June 13, 1996 prospectively until October 13, 1996. Casey appealed the conference order, and then a month later withdrew the appeal. When his compensation ceased, in October 1996, Casey again asserted entitlement to benefits. Casey claimed total compensation from October 14, 1996 and continuing. After conference held on June 3, 1997, Casey was again awarded a closed period of partial benefits, from October 14, 1996 prospectively until December 3, 1997. Both parties appealed the conference order.

After hearing de novo, the judge made the following factual findings: David Casey was forty-nine years old at the time of hearing and a high school graduate. Casey began working for the Town of Natick in 1989 and became a maintenance worker with the po-

lice department in April 1995. He had previously been employed in a hospital laundry department, a job involving heavy lifting, and as a 911 dispatcher. (Dec. 3.)

In 1985, Casey sustained a job related back injury while lifting laundry. He underwent back surgery and remained out of work for approximately four years. When he returned to work he continued to suffer from back pain but was able to perform his work, both as a 911 dispatcher and as a maintenance worker. (Dec. 4.)

On July 15, 1995, Casey was pushing a dolly when he felt pain in his back. He did not seek medical treatment and did not lose time from work. On July 25, 1995, Casey slipped from a ladder onto the cement floor injuring his back and right ankle. After this incident he left work and has not returned. Since his July 25, 1995 accident he experiences pain, more severe and persistent than before, tires easily, has lost weight and uses a cane. (Dec. 4.)

Pursuant to § 11A, Dr. Stephen Sand examined Casey. Dr. Sand opined that Casey suffers from low back sprain and lumbar radiculopathy causally connected to his July 1995 fall. Dr. Sand acknowledged that the fall aggravated Casey's preexisting back condition but further stated that the post-July, 1995 diagnostic testing revealed a problem at a different level and on a different side than the pre-July, 1995 testing showed. Dr. Sand went on to say the following: Casey is incapable of sitting, standing or walking for any extended period of time and is restricted from doing any bending or lifting. He is totally disabled and has reached an end point with no improvement anticipated. Casey's condition has remained as described since October 1996. Casey has been totally disabled since October 21, 1996. (Dec. 4-5; Impartial Examiner Ex. 1-2.)

Adopting the opinions of Dr. Sand, the administrative judge ordered the self-insurer to pay § 34 weekly incapacity benefits from October 14, 1996 to date and continuing, together with § 30 medical benefits. (Dec. 5-6.) The self-insurer now appeals to the reviewing board.

The self-insurer raises four arguments, two of which merit comment. First the self-insurer argues that the judge erred in not requiring Casey to show a worsening of his condition in order to increase his benefits. We do not agree. "Extent of incapacity is an is-

sue not amenable to disposition once and for all." Azor v. V & R Inc., 9 Mass. Workers' Comp. Rep. 576, 577 (1995). Section 16 of G.L. c. 152 articulates this rule of law by providing that a further award is not precluded by the earlier order terminating benefits:

> When in any case before the department it appears that compensation has been paid or when in any such case there appears of record a finding that the employee is entitled to compensation, no subsequent finding by a member or the reviewing board discontinuing compensation on the ground that the employee's incapacity has ceased shall be considered final as a matter of fact or res adjudicata as a matter of law . . . .

In the instant case, the unappealed conference order, dated June 14, 1996, established that Casey suffered an industrial injury entitling him to compensation. Liability for a work injury having thus been established, the prospective discontinuance of compensation in that conference order did not establish with finality that no further incapacity would occur. See Russo's Case, 46 Mass. App. Ct. 923 (1999) (an unappealed conference order of a closed period of compensation does not bar a claim for further weekly benefits for any period of incapacity which occurs after the date of the order). To recover further benefits, Casey needed only to prove that he suffered subsequent incapacity causally related to the work injury. Azor v. V & R Inc., 9 Mass. Workers' Comp. Rep. at 577.

The self-insurer next argues that the decision fails to contain adequate factual findings to support the award of medical benefits. We disagree. Section 11B of c. 152 only requires the administrative judge to set forth the issues in controversy, the decision on each issue and a brief statement of the grounds for each decision. The sole medical issue in controversy was Casey's generic entitlement to medical care. No specific medical bills were presented for payment. (Dec. 1.) Nor was any issue about specific treatment presented. (Dec. 3.) The medical issue, as presented, did not require additional findings beyond those rendered by the judge.

There is no merit to the other two issues raised by the self-insurer.

Because the decision is adequate for proper appellate review and is not arbitrary or capricious, or contrary to law, we affirm it. G.L. c. 152, § 11C. The self-insurer shall pay

a fee to the employee's attorney in the amount of $ 1,193.20, plus necessary expenses, pursuant to G.L. c. 152, § 13A(6).

So ordered.

Suzanne E.K. Smith
Administrative Law Judge

William A. McCarthy
Administrative Law Judge

Sara Holmes Wilson
Administrative Law Judge

Filed: May 20, 1999