

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS

BOARD NO.: 02380504

David Rodriguez
Palm Manor Nursing Home
Liberty Mutual Insurance Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION (Judges Horan, Costigan and Fabricant)

The case was heard by Administrative Judge Hernandez.

APPEARANCES

Charles E. Berg, Esq., for the employee at hearing
James N. Ellis, Esq., for the employee on appeal
Joseph J. Durant, Esq., for the insurer at hearing
Jean Shea Budrow, Esq., for the insurer on appeal

HORAN, J. The employee appeals from a decision awarding him § 34 total incapacity benefits from August 11, 2004 through August 20, 2004, and § 35 partial incapacity benefits from August 21, 2004 through August 24, 2004. We recommit the case.

The facts pertinent to the issue we address are few.¹ After the hearing and the deposition of the § 11A impartial medical examiner, the judge allowed the parties to introduce additional medical evidence concerning the "gap" period between the employee's accepted work-related injury of August 11, 2004, and the impartial medical examination of September 9, 2005. (Dec. 3.) Our review of the board file²

¹ In light of our decision to recommit the case, we do not reach the employee's remaining appellate issues.

² We take judicial notice of the documents in the board file. Rizzo v. M.B.T.A., 16 Mass. Workers' Comp. Rep. 160, 161 n.3 (2002).

indicates the employee submitted voluminous medical records addressing his medical condition during the gap period.³ The hearing decision does not list or discuss this evidence. Accordingly, we recommit the case for consideration of the employee's medical evidence. Pelchat v. Demoulas Supermarkets, 23 Mass. Workers' Comp. Rep. ____ (February 3, 2009), and cases cited.

So ordered.

Mark D. Horan
Administrative Law Judge

Patricia A. Costigan
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

Filed: April 22, 2009

³ The employee's medical evidence, received by the board on May 23, 2006, included the report of Dr. Roger L. Kinnard, and records from the Saints Memorial Medical Center, Dr. Lawrence Johnson, and Dr. Nidhi K. Lal. The insurer submitted the June 21, 2005 report of Dr. John Chaglassian. Only Dr. Chaglassian's report is listed as an exhibit. (Dec. 1.)