

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS

BOARD NO.: 047330-03

Deborah Gray
Sunshine Haven, Inc.
Royal Insurance Company of America

Employee
Employer
Insurer

REVIEWING BOARD DECISION

(Judges McCarthy, Horan and Fabricant)

APPEARANCES

Elizabeth W. Morse, Esq., for the employee
Melissa A. Padula, Esq., for the insurer
John J. Canniff, Esq., for the insurer on brief

McCARTHY, J. The insurer appeals from a decision in which the administrative judge awarded the employee a closed period of weekly partial, and ongoing total, incapacity benefits. Because the decision lacks sufficient subsidiary findings of fact to support the judge's conclusion that the work injury remains a major cause of the employee's disability under G. L. c. 152, § 1(7A), we recommit the case.¹

On December 1, 2003, the employee injured her back while lifting a client at her work site, a group home for severely handicapped individuals. (Dec. 5.) The employee underwent an unsuccessful disc decompression at L4-5 on June 2, 2004. She subsequently was treated by a neurosurgeon, Dr. James Macon, who diagnosed a syrinx in the thoracic area.² (Dec. 6.) At the time of the impartial medical examination, the employee's diagnosis was post-operative lumbar scarring, dural tear, and chronic pain with radicular pain down both legs with left foot weakness.

¹ The judge who authored this decision no longer serves with the department. Therefore, the recommittal proceedings must be de novo.

² A syrinx is defined as "a tube or pipe; also a fistula." Dorland's Illustrated Medical Dictionary, Twenty-sixth Edition, p. 1303. The same source defines a fistula as an abnormal passage between two internal organs. p. 506.

The impartial physician considered the employee capable of restricted light duty work, with no lifting over twenty pounds, and the option of sitting or standing. The doctor determined the employee's syrinx to be a pre-existing condition unrelated to her work injury and opined that it was difficult to determine which symptoms were related to the work-related lumbar condition, as opposed to the non-work-related syrinx. (Dec. 7-8.) The judge allowed additional medical evidence due to the inadequacy of the impartial physician's report and the complexity of the medical issues. (Dec. 3.) The additional medical evidence introduced by both parties added nothing to the question of the interplay between the pre-existing thoracic syrinx and the work-related lumbar impairments. (Dec. 8-14.) The judge adopted the opinion of the impartial physician. (Dec. 17.)

At hearing, the insurer raised the § 1(7A) causation standard applicable to "combination" injuries.³ (Dec. 2.) With respect to that issue, the judge found:

That the chronic pain that [the employee] suffers and her need for pain medication are due to the disc herniation and the nerve root compression that she suffered in the industrial accident of December 1, 2003.

That the spinal cord syrinx is most likely to be a pre-existing condition.

That the compensable industrial injury of December 1, 2003 did combine with the spinal cord syrinx such that the industrial injury of December 1, 2003 remains a major cause of [the employee's] disability and total incapacity.

(Dec. 16.)

The insurer argues that the judge erred in finding that the employee's work injury was "a major" cause of her incapacity, pursuant to § 1(7A), because no medical evidence supported such a finding. We agree that the adopted medical opinion of the impartial physician does not satisfy the

³ 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.

causation standard in § 1 (7A), nor does the employee point to any opinion in the additional medical evidence that carries that burden. Therefore, it would appear that the judge did err in finding that the work injury was "a major" cause, satisfying the heightened standard applicable to "combination injuries" under § 1(7A).

However, we consider this particular error harmless. As a matter of law, the medical presentation in this case does not satisfy the "combination" requirement of § 1(7A) and § 1(7A) therefore does not apply to raise the employee's burden of proof above the traditional "as is" standard of simple causation. The employee's pre-existing syring, while being a condition that apparently resulted from a non-compensable disease, is a specific defect that has nothing to do with the L4-5 disc injury at work, for which the employee underwent unsuccessful decompression surgery. Here, "there are two co-existent, but entirely independent, medical conditions, that separately cause different disabilities in the same person." Resendes v. Meredith Home Fashions, 17 Mass. Workers' Comp. Rep. 490, 492 (2002). According to the impartial physician, the lumbar disc causes some symptoms; the thoracic syring causes others. There is no expert medical opinion in evidence that the lumbar condition combined with the thoracic condition, i.e., aggravated or triggered its activation into a disabling factor. Section 1(7A) therefore should not have been applied to this case.

The analysis does not stop there. The insurer also argues that the judge should have assessed the employee's incapacity under the rule of Hummer's Case, 317 Mass. 617 (1945). In that case, the court determined that the judge must view the disabling effects of the work injury isolated from non-work-related disabling factors, and award incapacity based only on the work injury. Id. at 620. The judge's failure to do so in the present case is not harmless. The judge should have looked only to the disabling effects of the work-related lumbar condition, without regard for whatever impairment was caused by the syring. See Resendes, supra (recommittal required where judge mixed non-work related disability with work-related disability to find § 34 entitlement).

Accordingly, we transfer the case to the senior judge for reassignment to another administrative judge for hearing de novo on the disputed issues.

So ordered.

William A. McCarthy
Administrative Law Judge

Deborah Gray
DIA Board No. 047330-03

Mark D. Horan
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

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