COMMONWEATLH OF MASSACHUSETTS

**DEPARTMENT OF INDUSTRIAL ACCIDENTS** **BOARD NO. 003785-02**

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| Deborah Skaff | Employee |
| Division of Medical Assistance/Comm. of MA | Employer |
| Commonwealth of Massachusetts | Self-insurer |

**REVIEWING BOARD DECISION**
(Judges Horan, Costigan and Fabricant)

The case was heard by Administrative Judge Bean.

**APPEARANCES**
Charles F. Perrault, Esq., for the employee at hearing
Michael A. Torrisi, Esq., for the employee on appeal
Arthur Jackson, Esq., for the self-insurer

**HORAN, J.** The parties cross appeal from a decision awarding the employee § 34 benefits from July 8, 2008 to January 12, 2009,[1] and medical benefits pursuant to §§ 13 and 30 for a right knee injury. (Dec. 887.) We recommit the case for further findings consistent with this opinion.[2]

The facts pertinent to this appeal follow. The parties stipulated the employee injured her right knee in a work-related accident on January 16, 2002. (Dec. 882.) Because the employee injured her right knee "at home when she slipped on a wet floor," in 1996, (Dec. 884), the self-insurer raised, inter alia,

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[1] The employee claimed § 34 (temporary total) benefits ongoing from July 8, 2008, the date she stopped work to undergo a third surgery on her right knee. (Dec. 885.)

[2] Following oral argument on July 13, 2010, the parties requested we defer our decision to give them time to resolve the case. We were later informed they could not do so.

§ 1(7A) in defense of the employee's claim.[3] (Dec. 882.) Because the parties agreed the report of the impartial medical examiner, Dr. David C. Morley, Jr., was inadequate, the judge permitted the parties to submit additional medical evidence. (Dec. 885.) After considering all the medical evidence, the judge awarded the employee § 34 benefits for "an industrial injury to her right knee on January 16, 2002," but authorized the self-insurer to terminate the employee's § 34 benefits as of January 12, 2009. (Dec. 887.) The judge also ordered the self-insurer to pay for the employee's proposed right knee surgery. (Dec. 887-888.)

On appeal, both parties argue the date chosen by the judge to support the termination of the employee's § 34 benefits is not adequately grounded in the evidence. See, e.g., Bowie v. Matrix Power Servs. Inc., 23 Mass. Workers' Comp. Rep. 351 (2009); O'Neil v. MCI Cedar Junction, 23 Mass. Workers' Comp. Rep. 203 (2009); DeMoura v. Montaup Elec., 12 Mass. Workers' Comp. Rep. 494 (1998); D'Angeli v. McDonalds Restaurant, 1 Mass. Workers' Comp. Rep. 193 (1987). We agree, and therefore recommit the case for a reconsideration of this issue.

The self-insurer also argues the judge failed to properly address its § 1(7A) defense. In light of the medical evidence submitted, we agree the decision lacks specific findings concerning the nature of the employee's prior non-industrial right knee condition, the nature of her work injury, and the elements of the statute in light of the relevant caselaw. See, e.g., MacDonald's Case, 73 Mass. App. Ct. 657

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[3] General Laws c. 152, § 1(7A), provides, in sentences three and four:

> Personal injuries shall include mental or emotional disabilities only where the predominant contributing cause of such disability is an event or series of events occurring within any employment. 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.

(2009); Hart v. G.V.W. Inc., 23 Mass. Workers' Comp. Rep. 421 (2009); Stecchi v. Tewksbury State Hosp., 23 Mass. Workers' Comp. Rep. 347 (2009); Baldini v. Department of Mental Retardation/DMR3, 23 Mass. Workers' Comp. Rep. 159 (2009). Accordingly, we also recommit the case for further findings respecting the insurer's § 1(7A) defense.[4]

So ordered.

Mark D. Horan
Administrative Law Judge

Patricia A. Costigan
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

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[4] In light of our decision to recommit the case on two distinct grounds, we express no opinion presently concerning the employee's remaining appellate argument, to wit: that the judge's decision is "internally inconsistent." (Employee br. 7-12.)