

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 024634-95

Diana Stasinos
Cherry, Webb & Touraine Specialty Stores
Fireman's Fund Insurance Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION
(Judges Wilson, Levine and McCarthy)

APPEARANCES
Kevin T. Daly, Esq., for the employee
Gerard A. Butler, Esq., for the insurer

WILSON, J. The employee appeals the denial of her claim for permanent and total incapacity benefits under G. L. c. 152, § 34A.

At a pre-transcript conference held on February 28, 2002, the parties appeared and agreed that the October 24, 2001 decision was issued prior to a confirmed § 11A motion hearing that was to be held on October 31, 2001, subsequent to the October 16, 2001 deposition of the impartial examiner.

The employee moves for an expedited recommittal of the case, arguing that the decision was inadvertently filed prior to the completion of proceedings and the close of the record. Attached to the motion is a joint stipulation of facts that states as follows:

- 1) The Employee was injured on June 21, 1995 and received Section 34 benefits until they exhausted. The claim for Section 34A benefits is pending.
- 2) As a result of a conference, Section 34A benefits were awarded on December 14, 2000.
- 3) The Insurer filed a timely appeal and a hearing was held July 17, 2001.

- 4) At the conclusion of testimony on July 17, 2001, the administrative judge gave the parties sixty days within which to conduct the deposition of the impartial physician and a Section 11A motion hearing was scheduled for September 20, 2001.
- 5) Because of scheduling difficulties, the parties were unable to conduct the impartial physician's deposition within the time ordered.
- 6) Counsel for the Employee had telephone conferences with the assistant to the administrative judge regarding the scheduling difficulties and the Section 11A motion hearing was rescheduled to October 31, 2001. This was confirmed in writing by counsel. (See attached [letter].)
- 7) The deposition of the impartial physician occurred on October 16, 2001.
- 8) Prior to the Section 11A motion hearing, the parties received the decision of the administrative judge dated October 24, 2001.

Because it is clear that the decision was unintentionally filed prematurely, we allow the motion and vacate the decision. The case is recommitted for the necessary § 11A motion hearing and a decision anew.

So ordered.

Sara Holmes Wilson
Administrative Law Judge

Filed: **March 22, 2002**

Frederick E. Levine
Administrative Law Judge

William McCarthy
Administrative Law Judge