

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF  
INDUSTRIAL ACCIDENTS**

**BOARD NO. 056771-93**

Diane Pease Mongur  
Martin-Marietta  
CIGNA Companies

Employee  
Employer  
Insurer

**REVIEWING BOARD DECISION**  
**(Judges Carroll, Levine & Maze-Rothstein)**

**APPEARANCES**

Thomas M. Libbos, Esq., for the employee  
Jennifer A. Hylemon, Esq., for the insurer

**CARROLL, J.** The employee appeals the decision of an administrative judge awarding §§ 13 and 30 medical benefits for her carpal tunnel syndrome, cubital tunnel syndrome and ganglion condition of the right wrist but denying her claim for other physical conditions and for § 34 weekly total temporary incapacity benefits.

Although a transcript was requested at the reviewing board pre-transcript conference, the hearing stenographer has left the department, and neither her stenographic notes nor an audio backup can be located. Without a transcript we are unable to perform our appellate function.

When neither a full nor a partial transcript can be produced, due process requires reconstruction of the record sufficient to allow for evaluation of the merits of the appeal as well as the correctness of the rulings. Fitzsimmons v. Sigma Instruments, Inc., 7 Mass. Workers Comp. Rep. 12 (1993). The reconstruction need not be total. Rather, there need only be so much reconstruction of the record as to allow for review. Id. at 14. The judge to whom this case is assigned shall determine the extent of reconstruction necessary for proper appellate review. To do so, he may in his discretion require the parties to delineate the issues on appeal with more specificity. There is nothing before us to indicate that reconstruction of the record has been attempted, although counsel for both

parties as well as the hearing judge are available. We note that the exhibits and the depositional testimony of the physicians are also available.

We therefore return this case to the senior judge and ask that he assign the case to the original hearing judge to oversee the reconstruction effort. The parties are charged with preparing as completely and expeditiously as possible a stipulation of the agreed upon salient facts and documentary evidence. We remind the parties that they have an “ ‘affirmative duty to use their best efforts to ensure that a sufficient reconstruction is made if at all possible.’ ” Fitzsimmons, supra at 15, quoting Commonwealth v. Harris, 376 Mass. 74, 79 (1978). The prepared stipulation shall be presented to the judge.

When the administrative judge is satisfied that the reconstruction effort sufficiently sets forth the evidentiary basis for the rulings and filings so that we may perform our appellate review, he shall return the case to us. If, in the opinion of the administrative judge, any portion of the reconstruction endeavor falls short, he may conduct a limited hearing.

So ordered.

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Martine Carroll  
Administrative Law Judge

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Frederick E. Levine  
Administrative Law Judge

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Susan Maze-Rothstein  
Administrative Law Judge

Filed: May 25, 1999