COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 047149-02**

Dinarte Alves	Employee
WareRite Distributors	Employer
Arrow Mutual Insurance Co.	Insurer

REVIEWING BOARD DECISION
(Judges Horan, Carroll and Costigan)

APPEARANCES
John J. King, Esq., for the employee
John A. Morrissey, Esq., for the insurer

HORAN, J. The insurer appeals the decision of an administrative judge awarding the employee a closed period of § 34 benefits and ongoing § 35 benefits. We affirm the decision.

Dinarte Alves, fifty-nine years old at the time of hearing, is a Portuguese immigrant with an elementary grade education. In 1975, he became a naturalized U.S. citizen. Since then, he has had no formal education or training. His English language skills are limited. (Dec. 4; Tr. 10.)

In 1988, the employer hired Mr. Alves to install countertops. Daily job duties included cutting, sanding, gluing and filling cracks, and lifting countertops weighing up to two hundred pounds. (Dec. 4.) On June 16, 2002, the employee lifted a countertop, injured his left shoulder, and then fell, sustaining additional injuries to his left elbow and back. (Dec. 5.)[1] The employee initially treated at the Good Samaritan Hospital. Dr. Stephen McNeil then treated the employee and diagnosed a traumatic olecranon bursa of the left elbow, and internal derangement

[1] The employee had previously sustained several injuries to his back. In 1991, he was involved in a non-industrial motor vehicle accident for which he received medical attention and in 1998, he injured his low back at work, however, no medical treatment was obtained. (Dec. 4-5; Tr. 12.) The employee did not contest the application of the heightened causation standard of § 1(7A). We express no opinion on what effect, if any, the 1998 work incident would have had on determining the proper causation standard.

of the left shoulder. A MRI revealed a torn biceps tendon, tendonopathy of the supraspinatus and infraspinatus muscles, and degenerative arthritis of the acromio-clavicular joint. In November 2002, Dr. McNeil performed arthroscopic surgery on the employee's left shoulder. (Dec. 5.)

The employee continued to have back pain and underwent a MRI in May 2003. It revealed a small left-sided disc protrusion at L5-S1 touching the S1 nerve root. On March 8, 2004, Dr. Michael Ditullio operated on the employee's back. On August 31, 2004, following physical therapy, the employee returned to work in a light duty capacity. (Dec. 6; Tr. 60-61.)

The insurer accepted only the left shoulder condition as work-related. On March 18, 2002, the insurer filed a request to modify benefits, which was denied at conference. The insurer appealed. (Dec. 2.)

Pursuant to § 11A, Dr. John McConville examined the employee. (Dec. 2, 6.) Dr. McConville opined the employee suffered a ruptured biceps tendon of the left shoulder, tendinosis of the supraspinatus and infraspinatus muscles of the left shoulder, an impingement syndrome with Grade III acromioclavicular arthritis, multiple lumbar spondylosis, degenerative disc disease with spinal stenosis, and bilateral lumbar radiculopathy. The doctor further opined the employee's recurrent low back problem was aggravated and worsened by his June 16, 2002 fall at work. (Dec. 6-7; Rep. 4; Dep. 27.) He also opined the employee's industrial accident was one of the major contributing causes of the employee's ongoing back symptoms. (Dep. 27, 40; Dec. 8.) The judge adopted Dr. McConville's medical opinion, and further found the employee had the ability to work on a modified basis for twenty hours per week. (Dec. 10, 12.)

The insurer contends the judge erred in finding a causal relationship between the employee's industrial injury and his back condition. It does not contend the issue was not *sub judice*. In fact, the parties asked the judge to address this issue at the hearing. (Dec. 3.) Instead, the insurer argues the

employee failed to carry his burden of proof under § 1(7A).[2] We see no error concerning the judge's analysis and conclusion on this issue. The judge's finding that the employee's industrial accident was "a major cause" of the employee's disability was properly based upon the medical opinion of the impartial examiner, who opined the work incident was one of several major causes of the employee's ongoing back symptoms. (Dep. 27, 40; Dec. 6-12.) The insurer correctly points out that Dr. McConville also testified the industrial accident was not the "major predominant cause" of the employee's back condition. (Dep. 11.) However, § 1(7A) does not require the work incident be "the major and predominant" cause of incapacity, only that it be "a" major cause. (See footnote 2, supra). The medical opinion of Dr. McConville clearly satisfies the employee's burden under § 1(7A). See Siano v. Specialty Bolt and Screw, Inc., 16 Mass. Workers' Comp. Rep. 237 (2002)(although there can be only one "predominant" cause, there can be several "major" causes of a medical disability).

We affirm the decision of the administrative judge. Pursuant to § 13A(6), employee's counsel is awarded a fee of $1,357.64.

So ordered.

_____
Mark D. Horan
Administrative Law Judge

_____
Martine Carroll
Administrative Law Judge

_____
Patricia A. Costigan
Administrative Law Judge

Filed: June 13, 2006

[2] 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.