

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO.: 036436-06

Donna M. Stecchi
Tewksbury State Hospital
Commonwealth of Massachusetts

Employee
Employer
Insurer

REVIEWING BOARD DECISION

(Judges Koziol, Costigan and Horan)

The case was heard by Administrative Judge Bean.

APPEARANCES

Michael A. Torrisi, Esq., for the employee
Arthur Jackson, Esq., for the self-insurer

KOZIOL, J. The self-insurer appeals from a decision awarding the employee § 34 total incapacity benefits from October 7, 2006 to date and continuing. After review, we recommit the case for further findings.

The employee began working for the employer, Tewksbury State Hospital, as a licensed nursing assistant on April 6, 2006. (Dec. 456.) On July 1, 2006, while in the course of her employment, the employee twisted her right knee.¹ Despite pain, she completed her shift and continued to work thereafter for fear of being fired. (Dec. 457.) On October 6, 2006, within the employment's six month probationary period, the employee was fired.² (Dec. 457.) The self-insurer opposed the employee's subsequent claim for weekly incapacity and medical benefits from and after October 7, 2006, and raised a defense under § 1(7A).³

¹ In 1988, the employee injured her right knee in a non-work-related motor vehicle accident. In October 2004, after several surgeries, she had a total right knee replacement. (Dec. 456.)

² Neither party challenges the judge's findings pertaining to the termination of the employee's employment.

³ General Laws c. 152, § 1 (7A), provides, in pertinent part:

On appeal, the self-insurer contends the expert medical opinions adopted by the judge did not satisfy § 1(7A)'s heightened standard of causation. (Self-ins. br. 1, 6-10.) We agree. Although not posited by the self-insurer on appeal, we observe that certain structural defects in the judge's opinion foreshadowed, and likely led to, the error in this case. First, the decision does not list § 1(7A) as an issue in the case.⁴ (Dec. 454.) Second, without performing the necessary analysis set forth in Vieira v. D'Agostino Assocs., 19 Mass. Workers' Comp. Rep. 50, 52-53 (2005), the judge made the following general findings:

[The employee] had a pre-existing knee condition that required a total knee replacement in 2004. That condition is a major factor in her present condition, but the work incident of July 1, 2006 is also a major causative factor in her continuing total disability. In making these determinations, I rely on the credible testimony of the employee and the persuasive medical opinions of Doctors Wolf, Gerber and Joseph.

(Dec. 459.)

In his subsidiary findings of fact, the judge recited the opinions of the § 11A impartial medical examiner, Dr. Ralph R. Wolf, the employee's evaluating physician, Dr. Samuel D. Gerber, the employee's treating surgeon, Dr. Douglas M. Joseph, and the insurer's evaluating physician, Dr. Ronald E. Rosenthal. (Dec. 457-458.) In regard to Dr. Wolf's opinion, the judge stated:

He offered a diagnosis of a right knee strain status post total knee replacement. He found no right hip pathology. He causally related the right knee strain to the July 1, 2006 industrial injury.

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.

⁴ At hearing, the judge acknowledged, "[t]he issues before me today are disability, extent of disability, causal relationship and Section 1(7A)." (Tr. 6.)

(Dec. 457.) In regard to Dr. Gerber's opinion, the judge stated:

He offered a diagnosis of a rupture of the posterior cruciate ligament and chronic hip bursitis and a gait abnormality, which he causally related to the industrial injury of July 1, 2006.

(Dec. 458.) In regard to Dr. Joseph's opinion, the judge stated:

He concluded that the employee's knee and hip injuries are causally related to the industrial injury.

(Dec. 458.) The recited medical opinions of Drs. Wolf, Gerber, and Joseph provide a basis for simple causal relationship but do not satisfy § 1(7A)'s heightened standard of causation.⁵ See Stewart's Case, 74 Mass. App. Ct. 919, 920 (2009)(no need for "magic words" but a combination injury case requires opinion "as to the relative significance of the incident-related causes of the employee's disability as compared with her significant pre-existing condition.") The doctors' opinions, as summarized by the judge, do not support the finding that, "[the pre-existing knee condition that required a total knee replacement] is a major factor in her present condition, but the work incident of July 1, 2006 is also a major causative factor in her continuing total disability." (Dec. 459.) Accordingly, we recommit the case to the administrative judge for further findings of fact and a more thorough analysis of those facts as indicated in this opinion.

So ordered.

Catherine Watson Koziol
Administrative Law Judge

⁵ As a threshold matter, the judge did not make a finding identifying the precise injury or injuries the employee sustained as a result of the industrial accident. Such a finding is particularly important in light of the varied diagnoses set forth in the recited opinions of Drs. Wolf, Gerber, and Joseph, and in order to adequately address the question as to what, if any, pre-existing noncompensable injuries or diseases combined with the work injury to cause or prolong disability or the need for treatment. Vieira, at 52-53; Dorsey v. Boston Globe, 20 Mass. Workers' Comp. Rep. 391 (2006).

Donna M. Stecchi
DIA Board No. 036436-06

Patricia A. Costigan
Administrative Law Judge

Mark D. Horan
Administrative Law Judge

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