**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF INDUSTRIAL ACCIDENTS** **BOARD NO. 03076896**

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| Edward A. Goodsell | Employee |
| Nashoba Painters, Inc. | Employer |
| Eastern Casualty Insurance Company | Insurer |

**REVIEWING BOARD DECISION**
(Judges Maze-Rothstein, Wilson and Carroll)

**APPEARANCES**
Melissa Shufro, Esq., for the employee at hearing
Sean T. McGrail, Esq., for the employee on brief
Thomas M. Dillon, Esq., for the insurer at hearing
Kerry G. Nero, Esq., for the insurer on brief

**MAZE-ROTHSTEIN, J.** The insurer appeals a decision that awarded the employee G. L. c. 152, § 34, temporary total weekly incapacity benefits; payment of § 30 medical expenses; attorney's fees, costs; and § 50 interest. The insurer makes three arguments on appeal. First, it contends that the administrative judge exceeded his authority by ruling on issues not in dispute. That error was exacerbated, it argues, when he causally related four diagnoses without the support of any expert medical evidence. Finally, the insurer makes a weight of the evidence argument as to the liability findings. The latter argument has not been in our purview since before the 1991 amendment to the Act. Compare G. L. c. 152, § 11C, amended by St. 1991, c. 398, § 31, and G. L. c. 152, § 11C, as amended by St. 1987, c. 691, § 7. We agree with the first two contentions and reverse in part and recommit the case for further findings. We summarily affirm the findings on liability.

At the time of hearing, Edward Goodsell was a forty-year-old high school graduate; he worked as a carpenter prior to commencing work with the employer as a painter in March of 1996. (Dec. 5.) On August 5, 1996, after about an hour of painting

the back walls of a residence, he jumped from a scissors lift two or three feet to the ground, lost his footing and slipped backwards injuring his lower back. (Dec. 6.) The employee immediately reported this incident to his supervisor who invited him to leave the jobsite. Id. Later that morning, he received emergency room care for severe back pain, tingling in the right foot and right sided paralumbar spasms. (Dec. 7.) Since that time, the employee has treated with no less than thirteen physicians, had four inpatient hospital stays and twenty-six outpatient treatments, which included pain management, neurosurgical, urologic and orthopedic follow-up. (Dec. 9.)

The employee's claim for benefits was not accepted. After a § 10A conference an order issued for benefits pursuant to § 34, which the insurer appealed contesting liability, incapacity, causal relationship and appropriate average weekly wage. (Dec. 3.) An orthopedic § 11A physician concluded that the employee is totally medically disabled, with continued worsening chronic low back pain, bilateral radicular leg pain, weakness predominately of the right leg, and a neurogenic bladder with incontinence. (Dec. 10-11.)[1] Adopting that opinion, and in conjunction with the lay testimony of the employee, his wife and co-workers, the judge found causality between the employee's work and the back injury and, further, found significant bilateral carpal tunnel syndrome as a result of the use of a wheelchair; vascular edema in his right leg; cellulitis in his right arm; and, depression as a sequelae of his work related physical problems. The judge awarded § 34 temporary total incapacity benefits as of the date of injury and continuing. (Dec. 12.) Aggrieved, the insurer appeals.[2]

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[1] The § 11A physician also noted that the employee underwent steroid blocks, the last of which caused him to develop urinary incontinence. The § 11A physician was not exactly sure what happened and why he developed the incontinence, however the judge ruled that the epidural injection was a reasonable and necessary treatment and that this subsequent complication was causally related to the industrial accident. (Dec.11, 13.)

[2] Subsequent to the filing of this appeal, a claim for § 34A benefits was filed by the employee. At conference, the same judge that heard this case issued an order awarding § 34A benefits. The insurer filed a timely appeal, which prompted a § 11A examination. The same § 11A physician who conducted the examination in this case, re-examined the employee and confirmed the four diagnoses, which are at issue here. Prior to hearing on the employee's § 34A award, the insurer withdrew its appeal. (Employee br. 5.)

The insurer contends error in the finding of causal relationship of four diagnoses: depression, bilateral carpal tunnel syndrome, vascular edema in the leg, and cellulitis in the right arm, without either a claim that the conditions were work related or the requisite expert medical evidence. (Insurer's br. 5-6.) We agree. At the outset of a hearing the first § 11 job of the judge is to "make such inquiries as . . . shall enable him to issue a decision with respect to the issues before him." G. L. c. 152, § 11.[3] Once the issues are clearly defined, that is where all adjudicatory energies must flow. See G. L. c. 152, § 11B ("Decisions . . . shall set forth the issues in controversy, the decision on each and a brief statement of the grounds for each such decision"). In Lemieux v. Flexcon Co., _____ Mass. Workers' Comp. Rep. _____ (2001), we held that where the employee had made no claim for a causally related emotional injury, there could be no issue in controversy under § 11B regarding treatment for such an injury. Therefore, the judge had gone beyond the scope of his authority in ordering medical benefits for that condition. See Hall v. Boston Park Plaza Hotel, 12 Mass. Workers' Comp. Rep. 188, 190 (1998) ("in order to properly present a dispute over medical benefits, an employee must actually file a claim for them"); Gebeyan v. Cabot's Ice Cream, 8 Mass. Workers' Comp. Rep. 101, 103 (1994) ("Where there is no claim and, therefore, no dispute, … the judge strayed from the parameters of the case and erred . . .").

Here, the record clearly reflects that the controversial issues were liability, disability and causal relationship of a back injury sustained upon jumping from the scissors lift. Furthermore, there was no challenge to the admission of the § 11A examiner's report, which the judge adopted and found to be adequate. (Dec. 13.) The doctor causally related the back injury and associated chronic pain. He proffered no causation opinion on the bilateral carpal tunnel syndrome, vascular edema in the right

[3] 452 Code Mass. Regs. § 1.11(3) reads in pertinent part:

> Before the taking of testimony in a hearing before an administrative judge, the insurer shall state clearly the grounds on which the insurer has . . . declined to pay compensation . . . provided that such statements are based on grounds and factual basis reported by the insurer or based on newly discovered evidence within the provisions of M.G.L. c. 152, §§ 7 and 8, and 452 CMR 1.00 . . . .

leg, cellulitis in the right arm and depression. Despite the absence of any record medical evidence relating these four medical diagnoses, the judge found that due to use of a wheelchair the employee developed significant bilateral carpal tunnel syndrome; and that other sequelae of the work injury include, vascular edema in his right leg, cellulitis in his right arm and depression. (Dec. 12.)

Expert testimony is required to establish medical disability and causal relationship to an industrial injury where medical issues are beyond the expertise of the lay person. Koonce v. Bay State Bus Corp., 14 Mass. Workers' Comp. Rep. 238, (2000), citing Miller v. M.D.C., 11 Mass. Workers' Comp. Rep. 355, 357 (1997). Because the gratuitous conclusion that the four additional diagnoses were causally related to the industrial injury lacked the requisite evidentiary support, the conclusion, and any order of benefits based thereon, cannot stand.

Accordingly, we reverse the decision as to the causation ruling on the four additional diagnoses, which has bearing on the issue of the award of weekly and § 30 medical benefits, for the period then disputed and recommit the case for further findings on the extent of incapacity grounded in the record evidence and within the bounds of the claim. In light of the § 11A opinion and the subsequent proceedings, the benefits award shall remain intact during the pendency of the recommittal.[4] We summarily affirm the finding of liability for the lower back injury.

So ordered.

Susan Maze-Rothstein
Administrative Law Judge

Martine Carroll
Administrative Law Judge

[4] In light of the fact that the insurer withdrew its appeal of the conference order directing payment of § 34A weekly incapacity benefits, the insurer may only be contesting its responsibility to pay medical expenses for the four additional medical problems.

Sara Holmes Wilson
Administrative Law Judge

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