COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 007205-96**

Efrain Rodriguez	Employee
Western Staff Services	Employer
Travelers Insurance Company (Travelers Property Casualty Corp.)	Insurer

REVIEWING BOARD DECISION
(Judges Smith, Wilson and McCarthy)

APPEARANCES
Michael J. Bailey, Esq., for the Employee
Lisa M. Carmody, Esq., for the Insurer

SMITH, J. The insurer appeals from a decision awarding § 34 total incapacity benefits and § 30 medical benefits. Because the judge failed to adequately define the work injury and separate its impact on the employee's ability to work from the employee's unrelated medical conditions, we cannot determine whether the decision is contrary to law. We therefore find it appropriate to recommit the case for further factual findings on the nature and extent of incapacity caused by the work injury and the medical treatment necessitated thereby.

On February 22, 1996, while loading a trailer truck, a large roll of plastic struck Efrain Rodriguez on the head. As he was falling from the impact, Rodriguez tried to hold on to some other rolls. He twisted and felt something happen in the back of his head. His vision became blurry. His supervisor sent him to the Leominster Hospital. (Dec. 5; Tr. 10.) At the emergency room, Rodriguez was given a neck collar and a prescription for Motrin. Dr. Murphy prescribed light work for no more than four hours a day, but there was no light duty available. Rodriguez has not returned to work since the accident. He complains of neck and low back pain, shoulder pain and headaches, numbness and tingling in his extremities, dizziness, decreased vision, and exacerbation of pain with noise. He has been treated

by an internist, a chiropractor and a neurologist. He currently takes Tylenol and Elavil medication. (Dec. 6.)

Rodriguez filed a claim for § 34 benefits and the matter was conferenced before an administrative judge on August 22, 1996. An order was issued which directed the insurer to pay § 34 compensation in addition to medical benefits. The insurer appealed to a hearing de novo. (Dec. 2.) At the hearing, the insurer conceded that a work injury had occurred but disputed that it caused any medical condition limiting Rodriguez's ability to work. (Dec. 3.)

Pursuant to G.L. c. 152, § 11A, Rodriguez underwent an impartial medical examination. The impartial medical examiner's report and deposition were admitted into evidence. Due to the complexity of the medical issues, the judge authorized the admission of additional medical evidence. (Dec. 3.)

In his decision, the judge recited the medical evidence. (Dec. 6-11.) After weighing all the medical opinions, the judge adopted the opinion of Dr. Tanenbaum, the impartial examiner. In Dr. Tanenbaum's view, Rodriguez had not reached a medical end result, had not received adequate treatment for his injuries, and the chiropractic treatment he received had not been necessary or reasonable. (Dec. 11.) The judge further found "based on the report of Dr. Tanenbaum that the MRI scan of the brain was positive for small ischemic sulci and lacunar infarcts and small vessel disease though this has not been shown to be related to the industrial injury of February 1996." (Dec. 12.)

In discussing his determination of the extent of incapacity, the judge rejected the opinions of the treating physicians that Rodriguez was totally medically disabled and instead adopted the partial disability opinion of Dr. Tanenbaum. (Dec. 12.) Dr. Tanenbaum reported that "based on the disc disease in his neck, based upon the ischemic disease in his brain and based on his history that he had not been active for quite sometime, I felt that heavy activity would potentially be contradicted and potentially would be dangerous." (Dec. 8-9, quoting Dep. 24.) Dr. Tanenbaum limited Rodriguez from heavy lifting, prolonged sitting, prolonged

standing and repetitive activities. (Dec. 12-13.) The judge considered Rodriguez's vocational history of difficult and mostly manual labor, (Dec. 11), together with his partial medical limitations, and concluded that Rodriguez had no ability to earn. (Dec. 12-13.) He determined that the chiropractic services rendered beyond October 15, 1996, the date of Dr. Copelli's report, were not reasonable or necessary. (Dec. 13.) The judge awarded § 34 benefits from February 26, 1996 and continuing and § 30 benefits for "the diagnosed condition," excluding chiropractic care beyond October 15, 1996. (Dec. 14.) We have the case on appeal by the insurer.

First, the insurer contends that the administrative judge relied upon a medical opinion that lacks the required degree of certainty to support a finding that Rodriguez's partial disability is causally related to the industrial injury. (Insurer's brief, 3.) Additionally, the insurer proffers that the decision is arbitrary and capricious as the administrative judge misconceived the medical opinion of Dr. Tanenbaum. (Insurer's brief, 7.) Because the decision is inadequate for proper appellate review of these questions, we recommit the case.

The judge has not defined the work-related "diagnosed condition." Rodriguez complained of many symptoms. The impartial medical examiner opined that he could not make a firm diagnosis which corresponded to all the signs and symptoms. (Ex. 1 at 3;[1] Dep. 17-20, 22.) The record contains medical diagnoses of disc disease at C7-T1, disc herniation at C7-T1, (Dec. 7), lacunar infarcts (ischemic brain disease), post concussive syndrome, (Dec. 8, 11), CNS injury, post-traumatic syndrome, (Dec. 10), chronic cervical sprain/strain, and lumbosacral sprain/strain, (Dec. 11), complicated by deconditioning. (Dec. 8, 11.) The judge found the condition of lacunar infarcts (ischemic brain disease) unrelated to the

[1] "Radiologic studies have also demonstrated a C7-T1 disc protrusion but symptoms are bilateral and include the face and head. Therefore it is difficult to ascribe all the symptoms and signs to this one finding. There are inconsistencies on physical examination. Posturing is very bizarre, suggestive of torticollis. Sensory loss is non-anatomic. There is give way weakness throughout."

work injury. (Dec. 12.) However, it is unclear from the decision what other medical conditions are found to be causally related and responsible for the work limitations the judge adopts.

Sections 34 and 35 provide weekly benefits for incapacity for work *resulting from the injury*. Thus, an administrative judge may only rely on symptoms and limitations caused by the work injury in assessing the nature and extent of incapacity. See Hummer's Case, 317 Mass. 617, 620, 623 (1945); Patient v. Harrington & Richardson, 9 Mass. Workers' Comp. Rep. 679, 682-683 (1995). Here, the judge adopted the impartial medical examiner's opinion limiting heavy activity, which was based at least in part on the non-work-related condition of ischemic brain disease. (Dec. 8-9, 12-14; Dep. 24.) Incapacity due to ischemic brain disease found not to have a causal connection with the work accident cannot be considered in determining Rodriguez's incapacity. See Hummer's Case, *supra.* To the extent that the impartial physician lumped together all Rodriguez's medical disabilities—both causally related and not—in rendering his opinion about work restrictions, the judge erred in relying on that opinion in his incapacity analysis. Anderson v. Norwood Hospital, 12 Mass. Workers' Comp. Rep. 388, 389 (1998).

For these reasons, we reverse the judge's award of incapacity benefits and recommit the case for further findings of fact and conclusions of law consistent with this opinion. The judge, in his discretion, may take such additional evidence as he deems necessary to do justice.

So ordered.

Filed: April 1, 1999

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Suzanne E. K. Smith
Administrative Law Judge

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Sara Holmes Wilson
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge