COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 005559-04**

Frank Mastrogiacomo	Employee
Eastware, Inc.	Employer
Utica Mutual Insurance Company	Insurer

REVIEWING BOARD DECISION
(Judges Carroll, Costigan and Horan)

APPEARANCES
Sean T. McGrail, Esq. For the employee
Martin J. Long, Esq., for the insurer

CARROLL, J. The insurer appeals from a decision in which an administrative judge awarded the employee partial incapacity benefits for work-related carbon monoxide poisoning. For the reasons that follow, we affirm the decision.

Frank Mastrogiacomo worked in a warehouse with no open windows or ventilation system, using a gas powered forklift. Trucks entered through large doors that would be opened and closed depending on the weather and delivery schedule. The employee began experiencing symptoms of pain and fatigue in the fall of 2002. He was diagnosed as having carbon monoxide (CO) poisoning in February 2004, and was advised by his doctor to stay out of work. (Dec. 6.)

Mr. Mastrogiacomo filed a claim for workers' compensation benefits, which the insurer denied. The judge issued a conference order for payment of medical benefits only, and both parties appealed to a full evidentiary hearing. The insurer raised § 1(7A) in defense of the claim. (Dec. 3-4.) The employee's symptoms at the time of hearing were fatigue, low back pain, perineum, colon and chest pain, and pain with bowel movements and urination. (Dec. 7.)

The employee underwent an impartial medical examination. The impartial physician diagnosed non-occupational irritable bowel syndrome, some degree of unexplained irritable urethral/prostatic disorder, loss of taste, smell and hair, and workplace CO exposure. The doctor restricted the employee from working in a poorly ventilated workplace. The judge adopted the impartial physician's diagnosis of workplace CO exposure, and his restrictions. The judge allowed additional medical evidence due to medical complexity. § 11A(2). (Dec. 7-8.)

The employee submitted the deposition testimony of his treating physician, Dr. Peter C. Linblad. Dr. Linblad opined that the employee suffered from chronic CO poisoning from his work exposure, and that this condition caused "a lot" of his symptoms. (Dec. 8.)

The judge found that the employee's workplace was the source of his carbon monoxide exposure, based on his credible testimony and test results indicating an elevated CO blood level in February 2004. (Dec. 6-7, 9.) The judge found the employee should not return to his former employment, the only job of his working life, due to the harmful effects of continued CO exposure. The judge found the employee had the capacity to re-enter the work force at an entry-level position doing something else, but that he would need vocational rehabilitation to attain an earning capacity equivalent to his past earnings. (Dec. 8.)

As to causal relationship, the judge relied on the medical opinion of Dr. Linblad to find that the workplace exposure caused the employee's symptoms. Although there was a question as to which symptoms were attributable to the CO poisoning, the judge considered that Dr. Linblad's opinion that "a lot" of the symptoms were causally related was sufficient to establish that the exposure was injurious to the employee, and that he should not return to the workplace. (Dec. 8.) Among those symptoms are headache, dizziness, weakness, nausea, chest pain, abdominal pain, shortness of breath, difficulty concentrating, and confusion, all of which are consistent with CO poisoning according to Dr. Linblad. (Linblad Dep. 15.) The administrative judge found that the employee had heavy metal

exposure but that he failed to provide sufficient medical opinion to causally relate that exposure to his symptoms. (Dec. 6-7.) The judge adopted the impartial physician's opinion ruling out any causal relation between the employee's symptoms and the heavy metal exposure. (Dec. 7-8.)

The judge concluded that the employee was partially incapacitated due to his restriction from returning to work for the employer. He assigned a full time entry level earning capacity of $400.00 per week, and awarded $252.00 per week in § 35 benefits, based on the employee's $820.00 average weekly wage. (Dec. 9-10.)

The insurer argues that the judge erred by adopting the medical opinion of Dr. Linblad. We disagree. The opinion was adequate to address the medical issues of diagnosis, causal relationship and disability. "It was for the [judge] to evaluate [Dr Linblad's] testimony and weigh its infirmities in the context of all the evidence before [him] concerning the place of employment and the conditions obtaining there." Wax's Case, 357 Mass. 599, 601-602 (1970). We do not think that the judge's rejection of Dr. Linblad's opinion on the heavy metal exposure, (Dec. 8), invalidated the doctor's disability opinion as contended by the insurer. (Insurer br. 6.) The employee cannot return to his former workplace solely for reasons of the CO exposure; the impartial physician concluded as much in his assessment, and the judge so found and adopted that opinion. (Dec. 7-8.)

The insurer challenges Dr. Linblad's opinion insofar as it does not specify which symptoms are related to the CO exposure. The lack of specificity does not detract from the medical opinions, based on objective testing, and the judge's finding that the exposure did occur. Cf. Ames v. Town of Plymouth, 19 Mass. Workers' Comp. Rep. 150 (2005). The judge's partial disability finding was properly based on the employee's exposure in a causative work environment, objective evidence of harm, and Dr. Linblad's opinion precluding a return to that environment. See Pierce v. Matuszko Trailer Repair, Inc., 13 Mass. Workers'

Comp. Rep. 117, 120 (1999). The restriction stands regardless of whether all or some of the symptoms are related to the exposure.[1]

The insurer further argues that the judge erred by failing to apply the provisions of § 1(7A) to the employee's claim.[2] The judge found "that the insurer has not shown that the employee had a pre-existing condition that combined with the work-related injury." (Dec. 9.) The insurer's claim of § 1(7A) is based on the existence of non-occupational irritable bowel syndrome and allergies. (Insurer br. 7.)

The judge's dismissal of the insurer's proffered § 1(7A) defense was correct. The insurer adduced no evidence that the employee's irritable bowel syndrome pre-existed the development of the work-related CO poisoning. See Fairfield v. Communities United, 14 Mass. Workers' Comp. Rep. 79, 82 (2000)(as a threshold matter, insurer must produce evidence of pre-existing medical condition to even raise § 1(7A)). The insurer has also pointed to no evidence that the employee's allergies, albeit pre-existing, combined with the CO poisoning in any way, or that they are disabling. See Russell v. Webb Supply Co., 20 Mass. Workers' Comp. Rep. ___ (May 30, 2006), quoting Resendes v. Meredith Home Fashions, 17 Mass. Workers' Comp. Rep. 490, 492 (2003)(§1(7A) addresses "combination of medical factors impacting on each other" and requires medical opinion).

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[1] We note that the judge did not have any particular treatment bills before him to analyze under the provisions of §§ 13 and 30. The insurer's concern with Dr. Linblad's opinion on the symptoms might anticipate a dispute as to what is reasonable and necessary treatment in the future. However, it is not germane to the present proceeding.

[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.

The decision is affirmed. Pursuant to G. L. c. 152, § 13A (6), the insurer is to pay employee's counsel a legal fee of $1,357.64.

So ordered.

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Martine Carroll
Administrative Law Judge

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Patricia A. Costigan
Administrative Law Judge

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Mark D. Horan
Administrative Law Judge

Filed: **August 8, 2006**