

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO.: 022900-00

George Botelho
Ames Safety Envelope Co.
Graphic Arts Compensation Group

Employee
Employer
Insurer

REVIEWING BOARD DECISION

(Judges McCarthy, Horan and Koziol)

The case was heard by Administrative Judge Bean.

APPEARANCES

Alan S. Pierce, Esq., for the employee
Pamela G. Smith, Esq., for the insurer at hearing and on appeal
Peter M. LoVerme, Esq., for the insurer on appeal

McCARTHY, J. The insurer appeals from a decision awarding the employee permanent and total incapacity benefits for impairments to his knee and lower back, causally related to his work injury of June 6, 2000. The insurer argues the judge erred by finding and concluding that the medical evidence satisfied the employee's burden of proving that his work injuries remained "a major but not necessarily predominant cause" of his disability under the provisions of § 1(7A).¹ For the reasons that follow, we affirm the decision.

¹ 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 employee suffered from significant pre-existing degenerative conditions in his left knee (osteoarthritis), and lower back (osteoarthritis, spondylosis, and spinal stenosis). (Dec. I, 363.)² The judge addressed the interplay between the causally related injuries and those pre-existing conditions in his medical findings. (Dec. II, 495.) The judge relied on both the impartial physician, Dr. Ellen Lathi, and the employee's physician, Dr. Joel Saperstein, in reaching his conclusion. (Dec. II, 495, 497.) The judge adopted Dr. Lathi's opinion that, "[a]lthough there is a pre-existing history of . . . lumbar strain related to the degenerative spondylylosis and spinal stenosis noted above, there is no history of disability in the workplace until [the injury of] 06/06/00." *Id.* The judge made the following findings as to Dr. Saperstein's opinion:

He causally related the employee's *traumatic* arthritis of the left knee and *traumatic* arthritis of the lumbosacral spine to the industrial injury of June 6, 2000 writing that his opinion is based on the employee's 'history, physical (examination), opinions from other physicians and using the guidelines as reference point that (the employee's) major but not necessarily predominant causation is as a result of the injury at work causing the traumatic arthritis of his knee and lower back.'

(Dec. II, 496; emphasis added.)

The judge concluded, based on the "persuasive medical opinions of Doctors Lathi and Saperstein," that "[t]he twisting injury to the employee's knee and the resulting altered gait [causing injury to his lower back] are major causes of the employee's continuing total and permanent disability within the meaning of § 1(7A)." (Dec. II, 497.)

The insurer contends the judge's decision is contrary to law, because he found "a major" causation without support in the medical evidence. We disagree. The judge's findings accurately reflect the medical opinions of both Drs. Lathi and Saperstein. Dr. Saperstein's opinion, in particular, satisfies the employee's burden of proving that the work injuries to his knee and back remained "major" causes of his permanent and total disability. The insurer's argument actually ignores Dr. Saperstein's opinion entirely, by focusing laser-like upon the judge's specific adoption of a paragraph from Dr. Lathi's report. (Dec. II, 495.) The insurer's argument

² This case had previously been recommitted for more specific findings regarding the application of § 1(7A). See Botelho v. Ames Safety Envelope Co., 22 Mass. Workers' Comp. Rep. 95 (2008). Citations to the original decision are designated, "Dec. I," and to the decision on recommitment, "Dec. II."

notwithstanding, the judge's statement, "I adopt the above paragraph [of Dr. Lathi's report] as my findings in this case," does not exclude his stated reliance on Dr. Saperstein's opinion as another sound basis for his conclusion. The decision is affirmed and the insurer is ordered to pay employee's counsel a fee of \$1,497.28 pursuant to § 13A(6).

So ordered.

William A. McCarthy
Administrative Law Judge

Mark D. Horan
Administrative Law Judge

Catherine Watson Koziol
Administrative Law Judge

Filed: **December 23, 2009**