**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF INDUSTRIAL ACCIDENTS** **BOARD NO. 022900-00**

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| George Botelho | Employee |
| Ames Safety Envelope Co. | Employer |
| Graphic Arts Compensation Group | Insurer |

**REVIEWING BOARD DECISION**

(Judges Horan, McCarthy and Fabricant)

**APPEARANCES**

Alan S. Pierce, Esq., for the employee
Pamela G. Smith, Esq., for the insurer

**HORAN, J.** The insurer appeals from a decision awarding the employee § 34A permanent and total incapacity benefits. It raises three issues on appeal. Finding one argument persuasive, we recommit the case for further findings of fact.

At the time of hearing, the employee was a sixty-one year old trade school graduate who had worked as a pressman for the employer since 1971. He has a complicated medical history, including surgeries in his youth for the removal of neck tumors, a back injury at work in 1973, two hernia repairs in the 1990s, and injuries resulting from an automobile accident in 1998.[1] (Dec. 360.)

On June 6, 2000, the employee injured his left knee at work. His doctor diagnosed a torn meniscus, which was surgically repaired that July. The employee received § 34 total incapacity benefits until he returned to work in October 2000, at which time he was paid § 35 partial incapacity benefits while employed at a part-time light duty job. The judge found the employee "did not have the same extension in his knee when he returned [to work], which affected his gait." (Dec. 361.) The employee claimed his altered gait caused the development of low back and right leg pain, which caused his departure from work in August 2002. Id. The employee testified he was placed back on § 34 benefits at that time.

[1] The record does not indicate whether the automobile accident was work-related.

(Tr. 20.) In November 2002, he underwent a laminectomy for relief of low back and right leg pain. Post surgery, his pain persisted. (Dec. 361.)

The employee filed a claim for § 34A benefits, which the insurer resisted. At hearing, the insurer raised § 1(7A) "a major" causation as a defense. [2] The judge allowed a joint motion for the submission of additional medical evidence on the grounds of medical complexity. See G. L. c. 152, § 11A(2). He admitted additional medical evidence from both parties. (Dec. 359, 363.)

In composing the § 34A award, the judge adopted the opinions of the § 11A physician, Dr. Ellen S. Lathi, and Dr. Joel Saperstein. Dr. Lathi's diagnoses included a torn meniscus in the employee's left knee, superimposed on degenerative osteoarthritis, and degenerative lumbar spondylosis and spinal stenosis aggravated by the employee's altered gait. (Dec. 363.) Dr. Saperstein opined the employee suffered from traumatic arthritis of the left knee, and severe degenerative arthritis of the lumbar spine, both post surgery. Both doctors opined these conditions were work-related. [3] (Dec. 363-364.) The judge found:

> Today the employee suffers from low back pain and stiffness that radiates down his left leg. He has spasms, foot drop and problems with his balance. He cannot sit or stand for long and has trouble bending and sleeping.

(Dec. 361.) Notably, the judge also found the employee suffered from balance problems following his 1998 automobile accident. (Dec. 361.)

The insurer takes issue with the judge's failure to make detailed findings on the issue of § 1(7A). The judge mentions § 1(7A) only once in the body of his decision. Under the heading of "General Findings," the judge states:

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[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.

[3] Dr. Saperstein also opined the employee suffered from a cervical myelopathy unrelated to work. (Dec. 363.)

> I rely on the employee's testimony and Doctors Lathi and Saperstein's opinions to find that the June 6, 2000 industrial accident caused a new injury to both the employee's knee and low back, bringing the case within the orbit of section 1(7A).

(Dec. 366.) Without more, we cannot understand what the judge meant by finding that the case is "within the orbit" of § 1(7A). Accordingly, we recommit the case for further evaluation of the evidence and for detailed findings addressing the elements and merits of the insurer's § 1(7A) defense. Vieira v. D'Agostino Assocs., 19 Mass. Workers' Comp. Rep. 50 (2005); See Dorsey v. Boston Globe, 20 Mass. Workers' Comp. Rep. 391 (2006)(where multiple diagnoses are present, judge should take special care in analyzing the elements of § 1(7A)). [4]

So ordered.

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Mark D. Horan
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge

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Bernard W. Fabricant
Administrative Law Judge

Filed: **May 20, 2008**

[4] We otherwise summarily affirm the decision.