COMMONWEALTHOF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 006653-98**

Gianna Sfravara	Employee
Star Market Company	Employer
Star Market Company	Self-insurer

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

APPEARANCES
Salvatore J. Perra, Esq., for the employee
William M. LeDoux, Esq., for the self-insurer

CARROLL, J. The self-insurer appeals from the decision of an administrative judge who awarded ongoing weekly § 34 temporary total incapacity benefits for the employee's work-related psychological condition. Because the judge's conclusion that the employee continues to be incapacitated due to her work injury is not grounded in the evidence, we reverse the decision as to causal relationship and the extent of incapacity. We recommit the case for the reasons that follow.

Gianna Sfravara was fifty-five years old at the hearing in this matter. She is a native of Italy where she completed five years of schooling. She immigrated to the United States in 1968 and has worked as a stitcher, cook, pizza maker and deli worker. It was in this last capacity that she was injured on March 5, 1998. She was pulling a tall four-wheeled cart through swinging doors when a co-worker ran through the door from the opposite direction. The door struck Ms. Sfravara on her right side, pinning her between the door and the cart. She immediately felt right-sided pain in her neck and shoulder down to her buttocks and numbness in her right leg. (Dec. 3-4.)

The day of her accident, Ms. Sfravara was sent to a local HealthStop, where medication was prescribed and she was advised to rest for two weeks. Subsequently, she underwent several courses of physical therapy but still complains of neck and right shoulder pain. She also began psychological treatment in the summer of 1999 due to pain

and depression. Aside from one brief unsuccessful attempt, she has not returned to work. (Dec. 4-5.)

The self-insurer paid § 34 total temporary incapacity benefits on a without prejudice basis from March 8, 1998 through June 22, 1998. The employee filed a claim for further benefits, which the self-insurer resisted. Following a § 10A conference, the self-insurer was ordered to pay additional § 34 benefits from June 23, 1998 to March 31, 1999, plus § 35 temporary partial incapacity benefits thereafter. Both parties appealed giving rise to a hearing de novo.

Pursuant to § 11A, the employee was examined by Dr. Peter Anas on March 31, 1999. Dr. Anas, an orthopedic surgeon, diagnosed chronic cervical, thoracic and lumbar pain syndrome and opined that the employee had reached a medical end point and was capable of light duty work with a lifting restriction of fifteen pounds. The doctor also opined that the employee's symptoms were no longer physically attributable to her work injury and that she would benefit from psychological counseling regarding pain management. While Dr. Anas was of the opinion that Ms. Sfravara's psychological condition was not a result of her work injury, he acknowledged that psychology is not his area of expertise and allowed that he would value the opinions of a psychiatrist or psychologist equally or greater than his own on this matter. (Dec. 2, 5; Anas Dep. 17.)

Additional medical evidence was allowed as to the origin of the employee's chronic pain complaints and whether or not her psychological condition was causally related to her work injury. (Dec. 3.) The employee entered into evidence the report and deposition of Dr. Herman Lowe, her treating psychologist. Dr. Lowe diagnosed depression secondary to the employee's perceived pain since her work injury and opined that the depression was independently disabling. (Dec. 3, 6, 8.)

The judge credited the employee's description of the event and her pain, present continuously since her injury. (Dec. 7-8.) The judge adopted the opinion of Dr. Lowe as establishing a "sufficient connection between the employee's perception of symptoms and her depression for these disabling psychological problems and the resultant incapacity to be causally related to the industrial injury." (Dec. 9.) The judge also

adopted Dr. Anas' opinion that the employee had reached a medical end result in her physical recovery from the industrial accident by the time of the March 31, 1999 impartial examination. The judge concluded:

> At some point, one that I am not able to pinpoint precisely, it ceased to be the actual physical condition that disabled the employee. However, that does not mean that the employee had ceased, by then, to experience disabling symptoms and incapacity. Rather, at that point, it was the psychological condition that had been triggered by the incident and the earlier experiencing of actual physical symptoms which continued to disable and incapacitate Ms. Sfravara.

(Dec. 9.) The judge therefore ordered the self-insurer to pay § 34 benefits from June 23, 1998 to date and continuing. Id.

The self-insurer appeals from the decision, arguing that the finding of causal relationship between the employee's work injury and her disabling depression is not grounded in the evidence. We agree.

As a preliminary matter, we note that the administrative judge correctly determined that Cirignano v. Globe Nickel Plating, 11 Mass. Workers' Comp. Rep. 17 (1997), governed the standard of causation to be applied to the employee's emotional claim. See id. (in order for a claimed psychological condition arising in the aftermath of a physical injury to be compensable, only simple causal relationship need be proven).[1] (Dec. 8.) Nor was there evidence in this case of any pre-existing injuries or diseases – mental or physical – which might warrant the imposition of the § 1(7A) standard, that the industrial injury "remain a major but not necessarily predominant cause of disability or need for treatment." See Lagos v. Mary A. Jennings, Inc., 14 Mass. Workers' Comp. Rep. 21 (2000); Fairfield v. Communities United, 14 Mass. Workers' Comp. Rep. 79 (2000). However, the judge's discussion of heightened causation requirements was beside the point, because there is an absence of any competent causal relationship opinion in either doctors' testimony.

[1] Contrast § 1(7A) where, in order to be compensable, a claim of a direct mental or emotional injury requires proof that an event or series of events occurring within the employment is the predominant contributing cause of the incapacity. Padilla v. Mellon Bank Corp., 13 Mass. Workers' Comp. Rep. 10, 11 n.1 (1999).

Dr. Anas stated in no uncertain terms that he would not attribute the employee's symptoms – objectively physical or subjectively perceived – to her reported injury, (Anas Dep. 10-11); that the employee's chronic pain syndrome was not related to the industrial injury, (Anas Dep. 12, 17-18); that psychological treatment would not be reasonable, necessary and causally related to the industrial injury. (Anas Dep. 14-15.) Indeed, the judge did not interpret Dr. Anas' opinion as stating anything to the contrary, (Dec. 5, 8), and he adopted the doctor's opinion regarding the lack of any continuing physical disability causally related to the workplace. (Dec. 9.)

The judge attempted to support the employee's incapacity by way of the testimony of Dr. Lowe, her psychologist. The self-insurer correctly identifies the error in the judge's reliance on Dr. Lowe by pointing to the following deposition testimony:

> Q. And if her pain is not being caused by her work injury, then it's being caused by something else, correct?
> A. Um, I don't know what the pain is being caused from.
>
> . . .
>
> Q. Okay. Let me ask you this. Do you think her depression is caused by her work injury?
> A. Her depression is caused by her pain. I said that several times; related to her pain.
> Q. And just to clarify it, you are not saying her depression is caused by her work injury, is that correct?
> A. I'm saying that I can't draw a causal relationship. I don't know where her pain stems from. All I know is what she reports to me and I have no reason to disbelieve it. And she reports to me that the pain started as a result of the work injury.
> Q. Okay. But you'd leave the causal relationship of her pain and what's causing it to the medical doctors, the orthopedist, the neurologists, those people?
> A. Yes.

(Lowe Dep. 35-37)

This statement of causal relationship is lacking, because it is entirely contingent on the opinion of Dr. Anas, the only medical doctor to testify in the case, to provide the work-relatedness of the employee's pain. This Dr. Anas did not do. The judge, however, attempted to make the necessary connection by looking to the *employee's* testimony

regarding the onset of her symptoms as of the industrial accident. This is not enough. The existence of a mere temporal relation between an incident and an allegedly related medical condition is not the expert medical opinion evidence that is necessary to support a finding of causal relationship. Duggan v. Liberty Transp., 13 Mass. Workers' Comp. Rep. 380, 383 (1999); Koonce v. Bay State Bus Corp., 14 Mass. Workers' Comp. Rep. 238, 240 (2000); Rotman v. National R.R. Passenger Corp., 41 Mass. App. Ct. 317, 318-319 (1996). Were there even a weak causal relationship opinion by a doctor in this case, the lay testimony of temporal relation might be a step toward establishing causal relationship. See Josi's Case, 324 Mass. 415, 418 (1949)(where expert medical opinion explicitly establishes *possibility* of causal relationship, and that such a disability is not unusual following injury, and no evidence showing pre-existing symptomatology, causal relationship can be inferred); Bedugnis v. Paul McGuire Chevrolet, 9 Mass. Workers' Comp. Rep. 801, 803-804 (1995). However, that is not the case. The opinion of Dr. Lowe does not meet the employee's burden of proving her psychological disability was causally connected to her work. The judge's conclusion to the contrary is contrary to law. We reverse the decision in this respect.

Nonetheless, we do not see any basis for an outright reversal of the employee's liability claim. The judge specifically found the employee's description of her industrial accident and the symptoms that she experienced after its occurrence persuasive. (Dec. 7-8.) There is no error in his so finding. Therefore, it follows that *some* measure of incapacity likely flows from the incident. Dr. Anas allowed as much in his deposition testimony. (Anas Dep. 10.) We think it appropriate to recommit the case for introduction of additional medical evidence to address the employee's incapacity status prior to the impartial examination of Dr. Anas, the so-called "gap" period. Lanzille v. August A. Busch & Co. of MA. 13 Mass. Workers' Comp. Rep. 372 (1999).

Accordingly, we recommit the case for further findings consistent with this opinion.

So ordered.

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Martine Carroll
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge

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Sara Holmes Wilson
Administrative Law Judge

Filed: **May 4, 2001**
MC/jdm