COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS	**BOARD NO. 082709-90**
Iola Ferriabough	Employee
Raytheon Corporation	Employer
Liberty Mutual Ins. Co.	Insurer

REVIEWING BOARD DECISION
(Judges McCarthy, Smith and Wilson)

APPEARANCES
James K. Brownell, Esq., for the employee
Dennis M. Maher, Esq., for the insurer

MCCARTHY, J. Iola Ferriabough, who is sixty-five years of age, worked for Raytheon Corporation for about twenty-five years. (Dec. 3.) The parties agree that on March 3, 1987, Ms. Ferriabough suffered an industrial injury which was settled for $30,000.00 by lump sum approval on September 24, 1993. (Dec. 3.) After the settlement, the employee continued to receive medical treatment. She also took aqua therapy at a Y.M.C.A. (Dec. 1-2.)

Ms. Ferriabough brought a claim for payment of medical bills, outstanding as of the time of the 1993 settlement, and for ongoing medical treatment. Following a § 10A conference, the insurer was ordered to pay all outstanding medical bills up to the conference date, March 24, 1997 together with medical prescriptions and the aqua therapy at the Y.M.C.A. for an additional year. The case went to a hearing *de novo* on cross appeals by the parties. (Dec. 1-2.)

On June 5, 1997, the employee was examined by Dr. Arthur J. Bowman, the § 11A physician. (Dr. Bowman's report 1, dated June 10, 1997.) After Dr. Bowman's June 10, 1997 report was filed, Mrs. Ferriabough filed a motion to declare the impartial medical evaluation inadequate and to allow submission of additional medical evidence.

The administrative judge advised the parties that no ruling would be made on the motion until after the § 11A examiner was deposed. (Dec. 2.)

The parties then agreed to request a supplemental report from the § 11A examiner. At a status conference held to discuss Dr. Bowman's supplemental report, dated December 11, 1997, the parties agreed that no further medical testimony was necessary. As the parties did not depose Dr. Bowman, no ruling was made on the employee's motion to allow additional medical evidence. (Dec. 2.)

The § 11A examiner found no neurological deficits or areas of sensory deprivation in the lower extremities on plain touch and feel. He detected no physical limitations and was unable to find any reason for significant impairment or disability. (Dr. Bowman's report 3, dated June 10, 1997); (Dec. 6.) After reviewing the course of medical treatment, Dr. Bowman opined that the number of doctor's visits was excessive and unnecessary.[1] (Dr. Bowman's report 3, 4, dated June 10, 1997; Dec. 6-7.) Dr. Bowman felt that the aqua therapy was a waste of time and resources. (Dr. Bowman's report 4, dated June 10, 1997; Dr. Bowman's report 2, dated December 11, 1997; Dec. 7, 8.) Commenting on the Lodine medication, Dr. Bowman opined that the employee could benefit from such treatment. He also stated that patients who take such medication over an extended period of time should be seen periodically by a physician to check on any adverse reactions. (Dr. Bowman's report 2, dated December 11, 1997; Dec. 8.)

The judge expressly adopted the § 11A physician's medical opinion on the contraverted issue of the reasonableness and necessity of medical treatment. (Dec. 9.) The judge credited the employee's testimony except where it conflicted with the report of

[1] Although not raised by the parties, it is noted that Dr. Bowman, in his report dated June 10, 1997, wrote that the visits to Dr. Goodman were "*reasonable* and unnecessary . . . ." (Dr. Bowman's report 3, dated June 10, 1997.)(emphasis added.) We attribute this to scrivener's error as he clarified the point on the next page by stating, "those visits were unnecessary, they were not reasonable, they were too numerous . . . ." (Dr. Bowman's report 4, dated June 10, 1997.) This view is supported by the text of the administrative judge's decision where she emphasizes that the § 11A examiner opined that the employee's medical treatment was excessive. (Dec. 6.)

the § 11A physician. Where there were conflicts, the judge explicitly credited the evidence of the § 11A physician. (Dec. 8.)

The supporting subsidiary and general findings made, the judge ordered the insurer to pay all unpaid medical bills incurred up to September 24, 1993, the date of the lump sum settlement. (Dec. 9.) Addressing the post settlement medical bills, the judge noted that neither party submitted these medical bills for utilization review. Relying on the § 11A physician's medical opinion, the judge ordered the insurer to pay for three medical visits to her treating doctor retroactive to 1993, three trigger point injections per year, all the unpaid prescription medications for the entire period and the Y.M.C.A. membership expenses through 1997. The employee was also awarded attorney fees and costs. (Dec. 9-10.) The employee appeals.

The sole issue raised by the employee is that the § 11A examiner's evaluation was inadequate on its face. (Employee Br. 2.) In support of her position, the employee states that the § 11A physician never performed a hands on physical examination and thus the medical opinions are speculative.[2] The employee further contends that the administrative judge should have declared the impartial evaluation inadequate and authorized the parties to submit additional medical testimony. (Employee's Br. 2.) However, as the insurer points out, the only evidence that no physical examination was performed is found in the employee's testimony. Her testimony directly conflicts with the evidentiary report of Dr. Bowman and the judge made it clear that in those areas where there was a conflict, she believed Dr. Bowman.

It is beyond dispute that: "[e]videntiary weight and the assessment of witness credibility are exclusively in the Judge's province." Vero v. Paul A. Dever State School, 9 Mass. Workers' Comp. Rep. 36, 39 (1995). Here, the administrative judge adopted the testimony of the § 11A examiner over the employee's assertion to the contrary, that a

[2] Dr. Bowman, in his supplemental report, says that he took a history, performed a physical exam and reviewed in detail the medical records submitted to him.

physical exam did in fact occur. (Dec. 7, 8.) Making this choice was the exclusive burden and prerogative of the hearing judge. We affirm the decision.[3]

So ordered.

_____
William A. McCarthy
Administrative Law Judge

Filed: December 13, 1999

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Sara Holmes Wilson
Administrative Law Judge

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Suzanne E.K. Smith
Administrative Law Judge

[3] Although not raised by the parties in this case, it bears mention that where the sole issue in dispute relates to reasonableness and/or necessity of medical treatment, the appropriate procedure is detailed in G.L. c. 152, § 8 (4) not G.L. c. 152, § 11A. Unlike § 11A, § 8(4) does not limit the medical evidence that may be submitted into evidence. Here the employee did not request the § 8(4) procedure. See Lincoln v. Monson Developmental Center/Dept. of Mental Retardation, 13 Mass. Workers' Comp. Rep. __ (May 11, 1999).