COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 040917-03**

Isabel Guzman	Employee
Kayem Foods, Inc.	Employer
AIM Mutual Insurance Co.	Insurer

REVIEWING BOARD DECISION
(Judges Horan, Carroll & McCarthy)

APPEARANCES
Robert M. Peyser, Esq., for the employee
Lisa S. Molodec, Esq., for the insurer

HORAN, J. The employee appeals from a decision allowing the insurer's request for a reduction in benefits. We recommit the case for further findings.

At work on December 3, 2003, the employee injured her right arm when she slipped and fell on stairs. The insurer accepted the claim, and later filed the present complaint to modify or discontinue the employee's benefits. (Dec. 3.)

Based on his analysis of her vocational profile, the judge assigned the employee a weekly earning capacity of $420.00. (Dec. 6-7.) Essentially, the employee argues the judge's vocational assessment is flawed, insofar as it rests upon his finding that the employee is bilingual. The employee is Spanish-speaking, and testified via an interpreter at hearing. (Dec. 3.) When employee's counsel questioned her regarding the language barrier she faced while working for Kayem Foods, her employer, the judge interjected:

> If necessary I'm satisfied Spanish is her primary language and that's how she communicates. If she incidentally has some understanding of English so be it, but I understand she speaks and understands Spanish fluently and may not English, if that's relevant.

(Tr. 10.) The judge thereby allowed that employee counsel's direct examination of the employee, which focused on the employee's limited ability to communicate in English (relevant to her vocational profile), could move on to another topic. Id.

In spite of this tacit, if not express, acknowledgement that the employee was not bilingual, in his decision the judge found the employee "has a satisfactory understanding of English and an ability to read, write and speak English." (Dec. 3.) He then relied on this finding, in part, to conclude that:

> [T]he Employee has transferable skills that translate to an ability to earn wages in the world of work. The Employee because of her licensures and training has vocational ability and business acumen to manage and oversee a hairdressing salon. She applied for and obtained such a license and since 2004 is the licensed operator/manager/owner of a beauty salon. There was no testimony as to what she earns or potentially can earn for wages from that employment. I use my judgment and assess that such a job pays $14.00 per hour and that 30 hours a week is required to function in that capacity. I find that this job is not "hands on" hairdressing and only oversight is needed and little to no use of the Employee's right hand is required. The Employee, *being bi-lingual*, [sic] can book appointments, use a telephone, assign work, and market her business without any repetitive use of her right arm.

(Dec. 4; emphasis added.)

The employee on appeal points to the inconsistency between the judge's statement above, and his conclusion that the employee is bilingual. We agree that, on this record, there is a measure of discordance regarding the employee's language skills. We need to know how the judge reached his conclusion that the employee was bilingual. Without subsidiary findings of fact on this issue, we are unable to assess the judge's conclusion. See Antoine v. Pyrotector, 7 Mass. Workers' Comp. Rep. 337, 341 (1993)(findings must be sufficiently specific and detailed to enable reviewing board to determine whether correct principles of law have been applied). Accordingly, recommital is appropriate.
G. L. c. 152, § 11C.

The employee also contends the judge's finding that the employee was the actual principal of a hairdressing salon was without support in the evidence. That finding states:

> Although it is claimed that the Employee is just a figurehead of the salon and it really is her sister's venture, I do not accept that. I find the Employee

> is the actual principal, even allowing that until now she may not have taken wages from the business she likely runs on a daily basis.

(Dec. 4.)

We agree that, other than her possession of a license to run a hairdressing salon, the decision lacks subsidiary findings of fact supporting the judge's conclusion that the employee was "likely" operating the salon -- apart from his questionable finding that the employee is bilingual. We need to know more about how the judge concluded the employee is the functional operator of what she claimed is her sister's enterprise.

Accordingly, we recommit the case for further findings of fact consistent with this opinion.[1]

So ordered.

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Mark D. Horan
Administrative Law Judge

_____
Martine Carroll
Administrative Law Judge

_____
William A. McCarthy
Administrative Law Judge

Filed: November 28, 2006

[1] The employee's argument regarding the alleged inadequacy of the § 11A impartial physician's report is moot as the judge, citing medical complexity, allowed the parties to submit additional medical evidence. (Dec. 2.)