

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF  
INDUSTRIAL ACCIDENTS

BOARD NOS. 000137-06  
016521-07

James Belanger  
City of Chelsea Police Department  
City of Chelsea

Employee  
Employer  
Self-Insurer

**REVIEWING BOARD DECISION**

(Judges Fabricant, Horan and Koziol)

The case was heard by Administrative Judge Lewenberg.

**APPEARANCES**

Brian C. Cloherty, Esq., for the employee  
Gerard A. Butler, Esq., for the self-insurer

**FABRICANT, J.** The self-insurer appeals from a decision in which the administrative judge awarded the employee benefits based on a 2007 date of injury. In 2002, the employee suffered a work injury to the same body part, his neck, and the self-insurer argues that the awarded benefits should have been based on this earlier injury date. Because the medical and lay evidence support the judge's findings and conclusion that a new injury occurred in 2007, we affirm the decision.

The employee's 2002 claim for a cervical injury was accepted by the self-insurer on October 3, 2002. (Dec. 4.) However, the employee never left his job as a 911 dispatcher, and continued to work with neck pain, as well as numbness and tingling in his hand. (Dec. 6.) His symptoms worsened in 2006 and 2007 until, on February 3, 2007, he was rendered disabled during a busy shift at his job. (Dec. 6-7; Ex. 4.) On that date, the employee experienced a significant increase in neck pain and hand numbness and pain. (Dec. 6-7.)

The judge adopted, in part, the medical opinions of the impartial physician, and the employee's treating physician, Dr. George Whitelaw. Significantly, Dr. Whitelaw opined that the employee's 2007 disability was causally related to a new work injury on February 3, 2007, occurring after years of worsening cervical symptoms. Dr.

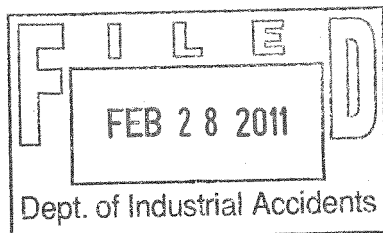
**James Belanger**  
**Board Nos. 000137-06; 001652-07**

Whitelaw related the employee's increase in pain, decrease in range of motion, and numbness to the employee's increased typing and stresses on his neck while working that night. (Ex. 4.)


Although the findings as to the exact injury here are somewhat thin, we nonetheless understand that, based upon the employee's credited testimony and the medical opinion of Dr. Whitelaw establishing causal relationship, the judge drew the reasonable inference that the work performed on February 3, 2007 contributed to the employee's increased symptoms and resulting disability. (Dec. 6-7; Ex. 4.) This case is essentially indistinguishable from Trombetta's Case, 1 Mass. App. Ct. 102 (1973), where a gradual increase in symptoms over the course of two or three months to the point of disability was attributable to the work the employee was performing during that time, and deemed to be a new injury. Id. at 104-105; see also Long's Case, 337 Mass. 517, 521 (1959)(disabling increase in symptoms occurring at work constituted a new injury under the act). In the present case, the adopted medical opinion of Dr. Whitelaw is clearly sufficient to support the finding of a new compensable injury. Accordingly, the self-insurer's argument to the contrary is unavailing.


We affirm the decision,<sup>1</sup> and award the employee's attorney a fee under § 13A(6) in the amount of \$1,488.30.

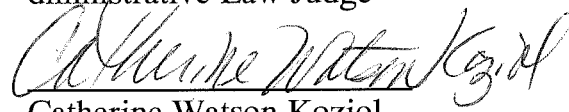
So ordered.



Filed:

  
Bernard W. Fabricant  
Administrative Law Judge

  
Mark D. Horan  
Administrative Law Judge

  
Catherine Watson Koziol  
Administrative Law Judge

<sup>1</sup> We summarily affirm the decision as to the other issues argued by the self-insurer.