

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF  
INDUSTRIAL ACCIDENTS**

**BOARD NO. 034734-96**

James Costello  
Faulkner Hospital  
Mass Health SIG

Employee  
Employer  
Insurer

**REVIEWING BOARD DECISION**

(Judges Wilson, McCarthy and Maze-Rothstein)

**APPEARANCES**

Peter F. Brady, Jr., Esq., for the employee on appeal  
Neal A. Winston, Esq., for the employee at hearing  
James W. Stone, Esq., for the insurer

**WILSON, J.** The insurer appeals from a decision in which an administrative judge awarded the employee permanent and total incapacity benefits for an accepted exposure injury. Because the judge's award of benefits contemplated symptoms related to the presently unreliable diagnosis of multiple chemical sensitivity (MCS), we vacate the decision and recommit the case for further findings on the employee's incapacity status, excluding those symptoms. See Canavan's Case, 432 Mass. 304 (2000).

The employee, a nuclear medicine technologist, worked in a suite of rooms in the basement of the employer's premises. There was little or no air circulation in the area, and mold grew on ceiling tiles that were chronically wet from a leaking roof. In 1996, the work area was covered with white dust every day due to building renovations. (Dec. 120-121.)

The employee began to experience itching in late May or early June 1996, and developed hives on his face and neck. By late June, the employee was experiencing shortness of breath at work, which stayed with him longer and longer as the summer went on. He began to suffer from postnasal drip, watery eyes and chest pains over his trachea. His co-worker also began to suffer from similar symptoms. On September 26, 1996,

**James Costello**  
**Board No. 034734-96**

workers painted over the moisture stains on the ceiling, which caused the employee to experience more severe breathing difficulties. He left work that day and did not return until July 1997. (Dec. 121-122.)

In July 1997, the employee returned to work in a different building, where many of the employees wore perfume, and he spent much time making copies at the copier. After two days, the employee could not work due to an increase in his symptoms. The employee experienced headaches, allergies to mold and dust, sensitivity to smoke, pollen and smells in general. The employee continued to experience postnasal drip and sore eyes, and also began experiencing memory problems and fatigue. The employee left work, not to return. (Dec. 122-123.)

The employee exhausted § 34 benefits, and filed the present claim for § 34A benefits. At conference, the judge ordered that the insurer pay partial incapacity benefits, and the insurer appealed to a full evidentiary hearing. (Dec. 120.)

The employee underwent an impartial medical examination on September 12, 2000. See G. L. c. 152, § 11A. The impartial physician opined that, while the employee did experience symptoms from allergies that could have been caused initially by allergens in the workplace, he could find no evidence of pulmonary disease or work-related disability. Although the doctor stated that there might be a major psychological component to the employee's symptoms, he opined that the employee could not return to work in an enclosed environment. The doctor felt that causation of the symptoms to the workplace could not be established, as there was only a temporal relationship between the two. (Dec. 124.) The judge allowed additional medical evidence due to the complexity of the medical issues. (Dec. 125.)

The insurer introduced the expert medical opinion of Dr. Steven Miller that MCS is not an accepted diagnosis within the medical or scientific communities. The judge adopted that opinion. (Dec. 125-126, 131.) The employee introduced the expert medical opinion of his treating physician, Dr. Howard Hu. Dr. Hu listed the employee's symptoms as headache, fatigue, shortness of breath, rash, nasal congestion, post-nasal drip, short-term memory loss and cognitive problems. Dr. Hu offered three categories of

**James Costello**  
**Board No. 034734-96**

diagnoses: 1) type 1 allergy to mold, which included the nasal symptoms, headaches and probably rash; 2) mild asthma; and 3) a spectrum of complaints that are sometimes called multiple chemical sensitivity. (Dec. 128.) The doctor found the employee totally disabled from normal employment due to the combination of the listed problems. The doctor opined that the employee would still be disabled even if his condition were limited to the diagnoses of type 1 allergy and asthma, and that his disability was permanent. (Dec. 129.) Dr. Hu opined that the workplace contributed significantly to causing the employee's medical diagnoses. The doctor acknowledged that the causal connection between indoor air quality and the symptoms of shortness of breath, fatigue and cognitive complaints, which were associated only with the MCS diagnosis, was not supported by a consensus in the medical community. (Dec. 129-130.)

The judge adopted the opinions of Dr. Hu, credited the employee's testimony, and concluded that the employee was permanently and totally incapacitated as a result of being exposed to allergens and/or chemicals at the workplace in 1996. As support for the award of § 34A benefits, the judge included in the mix of disabling symptoms the employee's shortness of breath, fatigue, rashes, nasal congestion, postnasal drip, headaches, short-term memory loss and cognitive problems. (Dec. 130-132.)

We concur with the insurer that the judge has erred by failing to eliminate the employee's symptoms attributable only to the discredited diagnosis of MCS. Although the judge professed that he was not finding the MCS diagnosis to be the basis for his benefit award, he nonetheless did just that by finding the underlying MCS *symptoms* to be causally related to the workplace, without invoking the designation, MCS. We have rejected this effort to dodge the MCS conundrum, while still awarding benefits based on its symptomatology. See Canavan v. Brigham & Women's Hospital, 14 Mass. Workers' Comp. Rep. 385, 390 (2000). The result here is no different. We vacate the judge's award of benefits based on a panoply of symptoms, several of which underly a diagnosis of MCS. On this record, those symptoms are shortness of breath, fatigue and cognitive problems, including memory loss. On recommitment, the judge should consider only the

**James Costello**  
**Board No. 034734-96**

medical effects of those symptoms related to the remaining two diagnoses of type 1 allergy to mold and asthma.

As a final matter, the insurer argues as well that the employee testified that his shortness of breath and memory problems are the most disabling, symptoms that Dr. Hu ascribed to MCS. (Dep. 46.) The insurer also points out that the employee was getting relief from his allergy symptoms with daily use of a nebulizer, (Tr. II, 20-21), and that Dr. Hu testified that asthma is only “a minor component of his symptoms.” (Dep. 12, 28, 40.) We leave it to the administrative judge to review the evidence as a whole and make further findings as to the degree of physical disability that remains, after excluding symptoms attributable to MCS.

We vacate the decision and recommit the case for further findings in accordance with this decision.

So ordered.

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Sara Holmes Wilson  
Administrative Law Judge

Filed: **February 27, 2003**

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William A. McCarthy  
Administrative Law Judge

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Susan Maze-Rothstein  
Administrative Law Judge