COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 057153-97**

Jessie Cooper	Employee
Children's Hospital Medical Center	Employer
Children's Hospital Medical Center Corp.	Self-insurer

REVIEWING BOARD DECISION
(Judges Wilson, Maze-Rothstein and McCarthy)

APPEARANCES
Michael J. Reno, Esq., for the employee
Michael T. Henry, Esq., for the self-insurer

WILSON, J. The self-insurer appeals a decision in which the administrative judge determined that the employee was entitled to benefits under G. L. c. 152, § 34, from October 21, 1999 through April 20, 2000, followed by § 35 benefits from April 21, 2000 and continuing, based upon a weekly earning capacity of $200.00. The self-insurer asserts error in the finding of a $200.00 earning capacity, where the judge adopted vocational evidence of suitable, available employment with pay in excess of that amount. Because the judge's conclusion on earning capacity is at variance with her subsidiary findings addressing the vocational evidence that she adopted, it is appropriate to recommit the case for further findings. See G. L. c. 152, § 11C.

At the time of hearing, Jessie Cooper was a fifty-seven year old, who had completed the fifth grade. She initially worked as a babysitter and in a laundry. Beginning in 1968, she worked for the employer in the hospital housekeeping department for twelve years, and then was transferred to the intensive care cardiac unit for training as a clinical assistant. (Dec. 4.) Her new responsibilities included cleaning equipment, setting up bedside tables, stocking the unit floor, cleaning eight to nine rooms, setting up

bedside cots, moving beds to the operating room, making beds, transporting blood to the bloodbank, making lab runs and transporting equipment and beds. (Dec. 4-5; Tr. 8-9.)

The employee, while setting up a bedside table on August 24, 1997, tripped and fell on a syringe, landing on her right knee. (Dec. 5.) She initially treated at the hospital's occupational health clinic, and returned to work after two weeks with pain and discomfort in the right knee. Id. By June of 1999, the employee was unable to continue working due to her knee buckling and difficulty walking. Her condition ultimately required surgery as well as physical therapy and a course of injections, which provided some short-term relief. Id.

A denial of the employee's claim at conference resulted in a hearing de novo on the employee's appeal. (Dec. 2.).

A § 11A physician examined the employee on July 24, 2001. After a review of the medical records and a detailed physical examination, the § 11A examiner reported that the employee, who was overweight and had no objective findings on examination, was status post meniscectomy after sustaining a right, torn medial meniscus. (Dec. 7-8.) He opined that she was totally disabled for a four to six month period following the October 21, 1999 surgery to the right knee; she has a permanent partial disability of the right knee; and she could be employed in occupations where she was seated and used her upper extremities. (Dec. 8.) The administrative judge adopted this testimony and rejected the opinion of the self-insurer's medical expert that the employee could resume her full duties without restrictions. Although the judge acknowledged the employee's complaints of severe pain and limitations, she found the pain not so severe or disabling as alleged. (Dec. 5-6.)

We set out the judge's vocational analysis that is the focus of the self-insurer's appeal.

> Stephanie Hart Nowell testified on behalf of the insurer as to the employee's vocational profile. She was retained to evaluate the employee's employment history as well as to review the medical evidence to determine what if any physical restrictions existed which would impact on her

> employability. She noted that the medical evidence limited the employee to sedentary work in that she had restrictions against prolonged walking, bending, and standing. Her prior work was at the light to medium exertional level. Ms. Nowell opined that with her medical limitations, her limited education and employment background, that the employee was qualified for entry level unskilled and/or semi-skilled jobs in the open labor market. She emphasized that her long work history with one employer was a vocational asset and showed that she had positive work traits, had successfully performed her work, had good attendance, and that she had an ability to learn new tasks. Ms. Nowell reviewed the local labor market and determined that there existed numerous entry level positions which she could perform, including, general office clerk, front desk monitor, cashier, customer service representative, entry level receptionist. Ms. Nowell noted that these positions existed on a full and a part time basis and that the employee could earn between $8.00 and $10.00 per hour.
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> The employee testified on her own behalf as to her vocational profile. She testified as to her limited education and work experience.
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> I agree in part with Ms. Nowell and find that the employee is capable of performing unskilled entry level sedentary work that exists in the open labor market. I do not find however that with her limited education that she has the verbal and mathematical aptitude and skills to perform some of the jobs enumerated by Ms. Nowell. I do not find that she has the skills necessary to perform the jobs of general office clerk or cashier.
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> I agree however that the employee can perform other entry-level unskilled and sedentary work as a front desk monitor, customer service representative, or entry level receptionist. I find that she was able to perform these jobs as of April 21, 2000 and to date and continuing.
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> Furthermore, I find that the employee could work full time. I find that the employee has been capable of earning $200.00, beginning April 21, 2000 to date and continuing.

(Dec. 10-11).) Thus, while rejecting the jobs of general office clerk or cashier as requiring skills and aptitudes beyond those of the employee, the administrative judge found she was capable of earning $200.00 weekly working full time in the other jobs described by the vocational expert.

As the vocational expert testified that those jobs could pay between $8.00 and $10.00 an hour, we agree with the self-insurer that the vocational analysis is at odds with the earning capacity order, which requires further explanation. We are unable to determine whether there is a simple math error or the judge had an unstated basis for reducing the hourly wages she seemingly endorsed for those full-time positions. Accordingly, recommittal is appropriate. See Ballard's Case, 13 Mass. App. Ct. 1068, 1069 (1982); Praetz v. Factory Mut. Eng'g & Research, 7 Mass. Workers' Comp. Rep. 45, 47 (1993) (findings should be set forth with such clarity as to enable reviewing body to determine that correct principles of law have been applied to facts that could properly be found).

We recommit the case for further findings that explain and reconcile the disparity between the $8.00 to $10.00 hourly pay and the $200.00, full-time earning capacity.

So ordered.

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Sara Holmes Wilson
Administrative Law Judge

Filed: **February 4, 2003**

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Susan Maze-Rothstein
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge