

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF  
INDUSTRIAL ACCIDENTS**

**BOARD NO. 034574-97**

John J. Keefe  
Mass. Bay Transportation Authority  
Mass. Bay Transportation Authority

Employee  
Employer  
Self-insurer

**REVIEWING BOARD DECISION**

(Judges Maze-Rothstein, Wilson and McCarthy)

**APPEARANCES**

Karen S. Hambleton, Esq., for the employee  
Joanne T. Gray, Esq., for the self-insurer

**MAZE-ROTHSTEIN, J.** The self-insurer appeals from a decision in which an administrative judge on recommitment reaffirmed his prior award of § 34 benefits for a work-related emotional injury. We summarily affirm the decision, but for one issue which we address briefly.

The facts of the case have already been recounted and published in Keefe v. M.B.T.A., 15 Mass. Workers' Comp. Rep. 129 (2001). In any event, they are not pertinent to the issue that we now address. The question that arises from the recommitment decision is whether the employee's counsel, who had already received a § 13A(5) fee for prevailing at the original hearing, is entitled to a new § 13A(5) fee on the recommitment hearing. The judge awarded such a fee, (Dec. 10), and the self-insurer contends that the award was error.

We find merit in the self-insurer's position. G. L. c. 152, § 13A(5), as amended by St. 1991, c. 398, § 35, provides:

Whenever an insurer files a complaint or contests a claim for benefits and then either (i) accepts the employee's claim or withdraws its own complaint within five days of the date set for a hearing pursuant to section eleven; or (ii) the employee prevails at such hearing the insurer shall pay a fee to the employee attorney in an amount equal to three thousand five hundred dollars plus necessary expenses. An administrative judge may increase or decrease such fee based on the complexity of the dispute or the effort expended by the attorney.

The statute refers to “a hearing” on “a complaint” or “a claim,” for which “a fee” is due. A recommittal is not a new hearing; it is simply a further proceeding on the same hearing arising from a single complaint or claim. Therefore, a new hearing fee is not due. However, with a view toward the last sentence of the statute, the judge may certainly take account of the effort expended by the employee’s attorney in the recommittal. Sometimes, that effort can be quite significant. On the other hand, many recommitments are put to rest with little effort.

Accordingly, we reverse the judge’s award of a new § 13A(5) hearing fee in the recommittal hearing. We recommit the case for a determination of whether an enhanced fee is due for the effort expended, and findings addressing that issue.<sup>1</sup> The decision is affirmed in all other respects.

We award the employee’s attorney a fee under the provisions of 13A(6) in the amount of \$1,321.63.

So ordered.

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Susan Maze-Rothstein  
Administrative Law Judge

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William A. McCarthy  
Administrative Law Judge

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Sara Holmes Wilson  
Administrative Law Judge

SMR/lk

Filed: December 4, 2002

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<sup>1</sup> As the administrative judge who rendered the decision no longer serves in the department, we transfer the case to the senior administrative judge for reassignment.