

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 075500-87

John M. Camara
DPW Mass. Highway Department
Commonwealth of Massachusetts

Employee
Employer
Self-insurer

REVIEWING BOARD DECISION ON REMAND

(Judges Fabricant, McCarthy and Costigan)

APPEARANCES

Paul M. Moretti, Esq., for the employee
Arthur Jackson, Esq., for the self-insurer

Pursuant to the decision of the Massachusetts Appeals Court in Camara's Case, 71 Mass. App. Ct. 8 (2007), "the employee's benefits shall be adjusted under § 34B based on the change in the average weekly wage [in the commonwealth] between February 4, 1994, and each applicable review date."

Id. at 14-15.

We hereby recommit this case to the administrative judge "for consideration of any right the Commonwealth may have to recoupment of any excess payments made based on use of the October 23, 1987, date for previous § 34B adjustments." Id. at 15. The judge shall determine whether any of the self-insurer's overpayments were made pursuant to a conference order or decision of an administrative judge. If so, the self-insurer may recover such overpayments pursuant to G. L. c. 152, § 11D(3). If any of the self-insurer's overpayments were made without a conference order or hearing decision, the judge shall apply the equitable recoupment principles addressed in Brown v. Highland House Apts., 12 Mass. Workers' Comp. Rep. 322, 325-326 & n.7 (1998).

So ordered.

John M. Camara
Board No. 075500-87

Bernard W. Fabricant
Administrative Law Judge

William A. McCarthy
Administrative Law Judge

Patricia A. Costigan
Administrative Law Judge

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