COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 010348-91**

John M. Joyce	Employee
New England Tractor Trailer School	Employer
Liberty Mutual Insurance Co.	Insurer

REVIEWING BOARD DECISION
(Judges Levine, Carroll and Maze-Rothstein)

APPEARANCES
Joseph P. McKenna, Jr., Esq., for the employee
Thomas G. Brophy, Esq., for the insurer at hearing
Ralph J. Cafarelli, Esq., for the insurer on appeal

LEVINE, J. The employee appeals the decision of an administrative judge discontinuing his weekly benefits and denying his claim for additional benefits. After review and in accordance with the parties' stipulation, we recommit the decision for a hearing de novo.

This matter has been before the reviewing board prior to the pending appeal. The administrative judge filed her original decision in October 1994. That decision, discontinuing the employee's weekly benefits, was appealed by the employee. In October 1997, we issued a Memorandum of Disposition dismissing the employee's appeal, without prejudice, and recommitting the case pursuant to a stipulation of remand executed by the parties; the judge was also given discretion to conduct such further proceedings as she deemed appropriate.

On January 29, 1999, in apparent response, the administrative judge filed a second decision.[1] However, it appears that the January 1999 decision may not have

[1] In 1995, the employee filed a new claim for benefits. The January 1999 decision acknowledged the new claim.

been the final decision because the administrative judge rendered a third decision on February 25, 1999, which resolved the same issues presented in the January 1999 decision.[2] The employee has appealed both decisions, and the parties stipulate, once again, that the administrative judge's decision should be reversed and the case recommitted.

Specifically, the parties stipulate to reversal of the February 25, 1999 decision and to recommittal for a de novo hearing. The parties further stipulate

> that the medical evidence from the prior hearings, with the exception of the [1992] impartial examination of Dr. Gibbons,[3] will formulate the medical basis for the new hearing. In particular, such medical evidence shall include the employee's medical Exhibits 1 through 9 alluded to in employee's [August 16, 1999] Brief [at pages 3-4], as well as the impartial medical report of Dr. John C. Molloy, Dr. Roy Lubit, and the report and deposition of Dr. Robert Maron. To the extent that further medical information is necessary to update the employee's condition, the parties further stipulate that the employee may be sent once again to Dr. Molloy for further examination, and that the parties may forward updated medical reports to Dr. Molloy for review in conjunction with that examination.

(Stipulation, dated November 4, 1999.)

Upon review of the record, we accept the parties' stipulation, we reverse the decisions of January 29, 1999 and February 25, 1999 and recommit the case for hearing de novo consistent with the parties' stipulation. Since the judge who presided at the hearing is no longer with the department, the case is referred to the Senior Judge for recommittal to another administrative judge.

So ordered.

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[2] The January 1999 decision appeared to be substantially the same as the recommitted October 1994 decision. In addition, the January 1999 decision contained extraneous language and, while acknowledging the reviewing board's October 1997 Memorandum of Disposition, failed to follow its instructions.

[3] It was this examination by Dr. Gibbons which lead to the 1994 recommittal. See Tallent v. M.B.T.A., 9 Mass. Workers' Comp. Rep. 794 (1995).

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Frederick E. Levine
Administrative Law Judge

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Martine Carroll
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge

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Filed: **February 10, 2000**