

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 048542-02

John McCarthy
Brea Management of Illinois
Commerce & Industry Insurance Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION

(Judges Horan, Carroll & Fabricant)

APPEARANCES

James F. White, Esq., for the employee

Joseph M. Spinale, Esq., for the insurer

HORAN, J. The employee appeals from a decision awarding him a closed period of total, and ongoing partial, incapacity benefits for a work-related back injury with psychiatric sequelae.¹ The judge found the employee's psychiatric treatment to be compensable, but did not address his claimed causally related psychiatric incapacity. Accordingly, we recommit the case for further findings on this issue.

The employee injured his back at work on September 29, 2002. (Dec. 7.) The insurer accepted the employee's claim for workers' compensation benefits. The insurer's discontinuance complaint was ultimately the subject of a § 11 hearing. (Dec. 3.)

The judge allowed the parties to introduce medical evidence in addition to the impartial medical examiner's report, in order to address the gap period, § 1(7A)(pre-existing condition), and the employee's psychiatric condition, which manifested itself after the work injury. (Dec. 4.)

In his October 7, 2004 report, the employee's psychiatric expert, Dr. Richard Goldbaum, opined the employee suffered from a major depressive disorder, with impaired sleep and episodic suicidal ideation, directly caused by his work injury. The judge adopted Dr. Goldbaum's opinions on diagnosis and causal relationship. (Dec. 9.) Dr. Goldbaum also

¹ The judge concluded the employee was totally incapacitated until the date of the impartial examination on February 10, 2004. As of that date, the judge adopted the opinion of the impartial orthopedic physician that the employee was partially incapacitated due to his back injury. (Dec. 11-12.)

opined the employee was unable to perform any sustained work as of the date of his report. (Employee Ex. 2.) In his November 22, 2004 report, the insurer's psychiatric expert, Dr. Michael Rater, opined the employee was not disabled due to his psychiatric condition. (Insurer Ex. 2.)

The judge's adoption of Dr. Goldbaum's medical opinion causally relating the employee's depression to his work injury necessitates an incapacity analysis regarding that diagnosis.² Accordingly, we recommit the case for further findings concerning the extent of the employee's alleged psychiatric incapacity as of October 7, 2004.

So ordered.

Mark D. Horan
Administrative Law Judge

Martine Carroll
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

Filed: April 4, 2006

² Of course, this would not be so if the record lacked an opinion supporting the employee's claimed psychiatric incapacity.