COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 048373-01**

John Wirtz	Employee
Barry Wehmiller Group	Employer
St. Paul Fire and Marine Insurance Co.	Insurer

REVIEWING BOARD DECISION
(Judges Fabricant, McCarthy and Horan)

APPEARANCES
John J. King, Esq., for the employee
Ronald N. Sullivan, Esq., for the insurer

FABRICANT, J. The insurer appeals from a decision on recommittal in which an administrative judge awarded benefits for a work-related myocardial infarction. We originally recommitted the case for further findings[1], and now agree with the insurer as to one error that persists, necessitating further recommittal.

The facts of this case need not be reiterated here. We had previously instructed the judge to revisit a ruling on a hypothetical question to the medical experts:

> Specifically, the insurer points out that hypotheticals to both Dr. Aroesty and Dr. Lutch asked them to assume that the employee noticed a burning sensation in his chest and stomach on Friday night during dinner. (Aroesty Dep. 18; Lutch Dep. 12.)
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> . . .
>
> The insurer correctly points out that the employee testified only that he had a knot in his stomach Friday night at dinner. He did not testify that he had a burning sensation, or any other sensation, in his chest until 4:00 a.m. Saturday morning.

Wirtz, supra at 178. Noting the insurer's objection to the hypothetical, we found error in the judge's overruling of that objection, and his adoption of Dr. Aroesty's opinion based on the hypothetical. Id. at 178-179. Based on the erroneous assumption contained in the hypothetical, we directed the judge to reconsider his findings on the medical evidence.

[1] Wirtz v. Barry Wehmiller Group, 19 Mass. Workers' Comp. Rep. 171 (2005).

On recommittal, the judge has made the following findings in answer to our directive:

> [C]onsidering [the employee's] risk factors, *and not relying upon the erroneous report that the employee complained of a burning sensation at 10:00 PM on Friday, December 7th,* [Dr. Lutch] offered his expert opinion that the many stressors listed above were a major cause of his myocardial infarction.

(Dec. 239; emphasis added.) The parties did not take further testimony from Dr. Lutch. (Dec. 237.) The hypothetical question to Dr. Lutch was the same objectionable question posed to Dr. Aroesty. We are therefore at a loss as to how it is that the judge can summarily assert that Dr. Lutch's opinion is not partly based on that erroneous information.

We must renew our call for further medical findings based upon an accurate history, i.e., no chest pain at dinner. It would appear that further inquiry of the doctor with an accurate hypothetical question would be a reasonable approach to sorting out the causation issues.

The insurer also claims error in the judge's gatekeeper analysis under the principles of Lanigan/Canavan.[2] We disagree. The judge found:

> Both Doctors Lutch and Aroesty have persuasively stated, and I so find, that a consensus in the scientific community has been reached that acute stress can cause a myocardial infarction. That no consensus has been reached concerning chronic stress as a cause of myocardial infarctions is irrelevant as this is a case of acute stress.

(Dec. 239-240.) Cf. Mazzarino v. Tocci Bldg. Corp., 11 Mass. Workers' Comp. Rep. 10 (2001)(established theory of acute stress causing heart attack recognized as legitimate foundation under Lanigan for medical opinion on acute stress causing stroke). We do not

[2] "'[A] proponent of scientific opinion evidence may demonstrate the reliability or validity of the underlying scientific theory or process by some other means, that is, without establishing general acceptance.'" Canavan's Case, 432 Mass. 304, 310 (2000), quoting Commonwealth v. Lanigan, 419 Mass. 15, 26 (1994).

consider that differing medical opinions as to what constitutes "acute" stress[3] rises to an issue of reliability of the medical opinion under Lanigan/Canavan. The judge simply adopted Dr. Lutch's opinion that the employee's history was one of acute stress.[4] There was no abuse of discretion in the judge's Lanigan/Canavan gatekeeper analysis of the medical evidence in this case. See Canavan, supra at 311-312(judge's ruling reviewed under abuse of discretion standard).

Finally, the insurer's argument that the judge erred in finding the employee's work was "a major" cause of his myocardial infarction fails because the adopted testimony of Dr. Lutch established that causal connection explicitly.(Lutch Dep. 21.)

The case is hereby recommitted for further findings consistent with this opinion.

So ordered.

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Bernard W. Fabricant
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge

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Mark D. Horan
Administrative Law Judge

Filed: August 1, 2006

[3] Dr. Aroesty did not think that the present case indicated acute stress, (Aroesty Dep. 23-24), while Dr. Lutch did. (Lutch Dep. 15.)

[4] Indeed, while discounting the employee's history as being one of acute stress, Dr. Aroesty nonetheless allowed that the causation time line in this case at least could be seen as within the realm of the "controversial." (Aroesty Dep. 32-35.)