

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

**BOARD NOS. 041795-97
024191-05**

Joseph F. Cole
Roger Kent & Co., Inc.
American Manufacturers Mutual Ins. Co.
Continental Casualty Ins. Co.

Employee
Employer
Insurer
Insurer

REVIEWING BOARD DECISION
(Judges Levine, Fabricant and Harpin)

This case was heard by Administrative Judge Hernandez.

APPEARANCES

Ronald D. Malloy, Esq., for the employee
Michael A. Fager, Esq., for Continental Casualty Ins.
Michael P. Mahany, Esq., for American Manufacturers Mutual Ins. at hearing
Joseph S. Buckley, Jr., Esq., for American Manufacturers Mutual Ins. on brief
Paul Moretti, Esq., for American Manufacturers Mutual Ins. at oral argument

LEVINE, J. Both the employee and American Manufacturers Mutual Insurance Company appeal the decision issued after recommittal. After review, we recommit it once again.

In Cole v. Roger Kent & Co., Inc., 24 Mass. Workers' Comp. Rep. 7 (2010), we recommitted this case to the administrative judge for additional findings addressing the employee's cumulative injury claim. We also instructed the judge that if he found such an injury, in light of the employee's preexisting cervical degenerative disease, a § 1(7A) analysis would be required. Finally, we noted that should the requirements of § 1(7A) be satisfied, the employee's earning capacity needed to be readdressed. Id. at 11-12.

The judge issued his recommittal decision on February 28, 2013. Unfortunately, that decision largely repeats his original decision. Discussion of the employee's cumulative injury claim consists of mere recital of the applicable law; there is no analysis or findings with respect to the lay and expert evidence on the cumulative injury claim, etc. As such, recommittal to the same judge is once

Joseph F. Cole
Board Nos. 041795-97, 024191-05

again necessary. See McCarty v. Wilkinson & Co., 15 Mass. Workers' Comp. Rep. 76 (2009)(case recommitted a second time to the same judge). Cole, supra, at 11-12.¹

So ordered.

Frederick E. Levine
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

William C. Harpin
Administrative Law Judge

Filed: **March 26, 2014**

¹ As in our prior Cole decision, we do not reach other issues which have been raised.