COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO.:** 044974-00

Joseph Leary	Employee
M.B.T.A.	Employer
M.B.T.A.	Self-insurer

REVIEWING BOARD DECISION
(Judges Carroll, Costigan and Fabricant)

APPEARANCES
Mark D. Horan, Esq., for the employee at hearing
Bernard J. Mulholland, Esq., for the employee on appeal
Paul A. Brien, Esq., for the self-insurer

CARROLL, J. Both parties agree that an administrative judge's decision awarding a closed period of total incapacity benefits and ongoing partial incapacity benefits for a November 7, 2000 industrial accident is so carelessly drafted as to render effective appellate review impossible. "Not wanting to stand in the way of such a meeting of the minds, we add our voice to the consensus for recommittal." Beverly v. M.B.T.A., 17 Mass. Workers' Comp. Rep. 621, 622 (2003). Because the administrative judge no longer serves the department, however, the recommittal must be for a hearing de novo.

The employee experienced pain in his lower back while lifting brake drums at work on November 7, 2000. (Dec. 3.) The self-insurer did not accept the employee's claim for workers' compensation benefits, and the judge ordered that § 34 incapacity benefits be paid pursuant to a September 20, 2001 conference order. The self-insurer appealed to a full evidentiary hearing. (Dec. 2.)

The employee underwent an impartial medical examination on January 9, 2002. The administrative judge found the following regarding the impartial doctor's opinion: the impartial physician opined that the employee had left low back pain, left sacroiliac joint dysfunction with local tenderness over the left sacroiliac joint, exacerbation of the pain with resisted abduction of the left hip, hyperextension of the left hip and rocking of the pelvis. The doctor opined that the employee could not return to heavy work, such as that

he performed at the time of his injury, but felt that the employee could perform modified work with a 10-pound lifting restriction. The § 11A physician causally related the employee's diagnosed injury and impairment to the reported work injury. (Dec. 5-6.)

The judge allowed the parties to introduce additional medical evidence on an unspecified basis, noted that the parties had submitted medical documents, but did not list any such exhibits, or make any specific findings as to the submitted documents. (Dec. 2.)

The judge found that the employee had sustained an industrial accident on November 7, 2000, and stated that he adopted the opinion of the § 11A physician and "medical evidence." (Dec. 6, 8.) The judge concluded that the employee was temporarily totally incapacitated for a period, followed by partial incapacity, as a result of his work injury. (Dec. 9.) The judge awarded the employee temporary total incapacity benefits from the date of injury until July 12, 2001, and partial incapacity benefits ongoing from July 13, 2001, based on an unspecified earning capacity. (Dec. 10.)

Various errors necessitate a recommittal of this case. We mention some identified by the parties. The employee points out that the administrative judge: 1) failed to list as exhibits the additional medical records he allowed into evidence upon motion; 2) made no rulings on objections made at the deposition of Dr. Levine; 3) cited to an incorrect date of injury; 4) found the employee unable to perform work of a substantial and not trifling nature, and yet found the employee only partially disabled at a certain point; 5) incorrectly identified the stipulated average weekly wage; 6) did not specify the earning capacity assigned; and 7) ended entitlement to medical treatment when this issue was not raised by the insurer. The insurer points out, inter alia, that the judge made findings on the compensability of medical treatment based on factors other than medical expert opinion, made findings contrary to the only adopted medical opinion, and used confusing and inconsistent language regarding the award of weekly benefits.

As it stands, we agree with the parties that there is nothing in the subsidiary findings of fact to make sense of the judge's conclusions and his award of benefits. Recommittal is necessary. See Marticio v. Fishery Prods., Int'l, 11 Mass. Workers' Comp. Rep. 648, 649-650 (1997); Gatturna v. M. J. Flaherty Co., 10 Mass. Workers' Comp. Rep. 336, 338 (1996).

The decision is vacated and the case transferred to the senior judge for reassignment and a hearing de novo. During the pendency of the recommittal proceedings, we reinstate the conference order.

So ordered.

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Martine Carroll
Administrative Law Judge

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Patricia A. Costigan
Administrative Law Judge

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Bernard W. Fabricant
Administrative Law Judge

Filed: March 28, 2005