

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 014657-04

Joseph Pukt
Sanmina SCI Corp.
Zurich American Insurance Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION

(Judges McCarthy, Costigan and Fabricant)

APPEARANCES

Charles E. Berg, Esq., for the employee at hearing

James N. Ellis, Esq., for the employee on appeal

Michael E. Kiernan, Esq., for the insurer

McCARTHY, J. The insurer on appeal advances several grounds for recommitting or reversing the decision of the administrative judge awarding ongoing temporary total incapacity benefits. At the hearing, the insurer did not dispute liability for the employee's physical work injury, but placed at issue liability for a psychiatric sequelae claim, extent of disability, causal relationship and § 1(7A). (Dec. 618.) We conclude that recommitment is appropriate under § 11C for the following reasons.

The employee, a forty-seven year old mechanic and repairman, suffered a neck and right arm injury when he fell backwards and hit his head on April 22, 2004. He has not worked since that day, and continues to suffer from neck and right arm pain, numbness, daily headaches, and inability to reach or look above eye level. (Dec. 620.) The judge awarded § 34 benefits at the § 10A conference, and again as the result of the evidentiary hearing. (Dec. 619, 624.) We address the evidence and findings as are necessary to discuss the issues requiring recommitment.

The insurer rightly points out that the decision contains no reference to the report of the its psychiatric examiner, Dr. Michael Rater. The employee does not dispute the report was appropriately introduced as additional medical evidence under § 11A(2), based on the inadequacy of the impartial medical evidence. (Dec. 619.) We cannot tell whether the judge reviewed the report, or simply found it unpersuasive. The insurer is entitled to a

decision indicating that the judge has considered its evidence in reaching his conclusions.

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We also agree with the insurer that the judge failed to make findings addressing the nature and extent of the employee's psychiatric incapacity. While the judge adopted the opinion of the employee's psychiatrist, Dr. Bennett Aspel, that the employee suffers from major depression secondary to his work-related pain (Dec. 623), we are left in the dark as to the incapacity attributable to that diagnosis. Dr. Aspel only refers generally to "occupational issues" in reference to the employee's prognosis for recovery. (Dec. 623.) The judge must make more findings on this issue on recommitment. See McCarthy v. Brea Mgmt. of Illinois, 20 Mass. Workers' Comp. Rep. 97 (2006). Altogether, the judge's findings on how the combination of psychiatric, physical and vocational factors affects the employee's ability to work need more specific articulation on recommitment. See Marble v. Milton Hosp., 16 Mass. Workers' Comp. Rep. 164, 167 (2002)(where award of benefits did not emerge clearly from the matrix of subsidiary findings, recommitment appropriate).

Finally, as to the employee's neck injury - a cervical disc protrusion at C6-7 with some spondylitis - the insurer raised the § 1(7A) defense of heightened "a major" causation for "combination" injuries.² The judge must make findings as to the applicability of the section, and if the provision does apply, whether the evidence meets the heightened causation standard. See Viera v. D'Agostino Assocs., 19 Mass. Workers' Comp. Rep. 50 (2005).

¹ On the other hand, the judge's failure to note the insurer's complaint for discontinuance is harmless error, since the award of benefits on the employee's claim for further compensation necessarily connotes the denial of the insurer's complaint.

² General Laws c. 152, § 1(7A), provides, in pertinent part:

If a compensable injury or disease combines with a pre-existing condition, which resulted from an injury or disease not compensable under this chapter, to cause or prolong disability or a need for treatment, the resultant condition shall be compensable only to the extent such compensable injury or disease remains a major but not necessarily predominant cause of disability or need for treatment.

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Accordingly, we recommit the case for further findings consistent with this opinion.

So ordered.

William A. McCarthy
Administrative Law Judge

Patricia A. Costigan
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

Filed: February 28, 2008