COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS	**BOARD NO. 008775-00**
Joseph Warrington	Employee
Inner Tite Corp.	Employer
Fireman's Fund Insurance Co.	Insurer

REVIEWING BOARD DECISION
(Judges Carroll, Wilson and Maze-Rothstein)

APPEARANCES
Michael J. Reno, Esq., for the employee
Kathleen Greeley, Esq., for the insurer

CARROLL, J. The insurer appeals the denial of its request to discontinue or modify the employee's workers' compensation benefits, being paid for a March 2, 2000 injury. Seeing no error, we affirm the decision.

Joseph Warrington, forty-seven years of age at the time of the hearing, is a high school graduate who worked for Olsen Manufacturing, now Inner Tite Corporation, the employer, for twenty-three years. His work for the employer included being an inspector, assembler, battery helper, and machine operator, and doing set-up work and trouble-shooting. He set up and sharpened tools. He became a group leader because of his knowledge about the machines used in his employment. (Dec. 5.)

On March 2, 2000, Mr. Warrington injured his right shoulder and neck while swinging a twelve-foot long steel bar. The insurer accepted liability for this industrial accident. (Dec. 2, 6; Stipulation 1.) A complaint for modification or discontinuance of compensation was denied at conference and the insurer appealed. (Dec. 2-3.) Subsequent to the conference, the employee filed a motion to consolidate a claim for mental/emotional incapacity with the discontinuance proceeding then pending. On May 8, 2001, a status conference was held by the judge, and the unopposed motion was allowed. (Dec. 3.) The parties agreed at the conference level that this case was

medically complex, as this term is used in G. L. c. 152, § 11A, inasmuch as a claim for mental/emotional incapacity had been joined to the proceeding. (Dec. 2-3; Stipulation 3.) Accordingly, at hearing, the parties were authorized to present medical records and reports additional to the report of the impartial medical examiner regarding the employee's claim for mental/emotional incapacity. Then, based on a § 11A motion made by the employee and the judge's finding of complexity of the case in general, the parties were authorized to submit their own medical evidence on all aspects of this litigation. (Dec. 3, 4.) See Dunham v. Western Mass. Hosp., 10 Mass. Workers' Comp. Rep. 818 (1996) (complexity defined as a subjective standard based on administrative judge's own assessment of the medical issues).

The parties agreed that the issues to be decided by the judge were as follows:

1. What level of incapacity, if any, does the Employee have as of and after October 21, 2000 that is causally related to his accepted industrial incident on March 2, 2000?

2. Is the Employee's depression causally related to his injury at work?

(Dec. 5.)

Based in part on opinions of Drs. D'Alton, Colley and Donahue, the judge found that the employee suffered a work-related cervical trapezius strain on March 2, 2000. (Dec. 7-9.) In May of that year, the employee had limited range of motion of the cervical spine. In August 2000, he had significant objective findings of ongoing impairment, continued with obvious impairment and needed further formal treatment. (Dec. 8.) While seeing Dr. Celona between August 17, 2000 and February 2001, the employee became increasingly frustrated as he could not work because nothing that he was given by his doctors helped him with the pain he was experiencing. (Dec. 8, 11; Employee Exhibits 1, 2.)

Also, in early 2001, as the employee continued with decreased range of motion, he underwent an epidural injection for his neck and upper extremity pain. (Dec. 9.) Based on the opinions of Dr. Donahue, the judge found that, by February 27, 2001, there were multiple non-objective markers and psychological overlay. (Dec. 9; Insurer Exhibit 2.) Dr. Long's exam in September 2001 was also

unremarkable from a neuromuscular standpoint, but he noted that the employee was depressed. (Dec. 9, Employee Exhibits 3, 5.)

The employee's mental/emotional reactions to his work related disability situation were documented long before September 2001, however. As of April 17, 2000, Dr. Swotinsky noted that the employee was growing increasingly frustrated with the length of his disability. (Dec. 10-11; Employee Exhibit 2.) As we discussed earlier, while seeing Dr. Celona between August 17, 2000 and February 2001, (see Employee Exhibits 1, 2), the employee was becoming increasingly frustrated because he could not work and, because nothing he was given by his doctors helped him with his pain. (Dec. 8, 11; Employee Exhibits 1, 2.) He was sad and anxious because he could not do what he had liked doing. The judge found the employee credible. In August 2000, Dr. Celona prescribed Amitriptyline for the employee's situational depression. In February 2001, Dr. Celona prescribed Xanax to treat the significant underlying emotional component to his problem. (Dec. 11.)

The judge adopted the June 26, 2001, opinion of Dr. Weiner, a psychiatrist, that the employee was experiencing clinical depression and was disabled. (Dec. 11-12; Insurer Exhibit 3.) As of February 2002, the employee still suffered from extensive depression. (Dec. 12; Employee Exhibit 3.)

The judge also adopted psychiatrist Dr. Anthony's opinion as follows:

> The employee had symptoms of a major depressive disorder and the employee had no depressive episodes prior to his work related injury on March 2, 2000. It was only after suffering his work injury on March 2, 2000 that the employee began to experience debilitating depressive symptoms. The course of the employee's depression leaves no doubt that the employee's original injury at work resulted in his developing depressive illness.

(Dec. 12; Employee Exhibit 9.)

Accordingly, the judge found the employee to be totally incapacitated from October 21, 2000 up to February 27, 2001, first from the physical injury and pain, with some emotional/mental component, and then continuing thereafter from the depression alone. (Dec. 14.)

We affirm the judge's decision in all respects and comment on only one point as it was raised many times in the insurer's brief on appeal. The insurer makes much of the death of the employee's father and claims error by the judge in his handling of this point, going so far as to state that Dr. Anthony's causal relationship opinion is compromised because there is no evidence that Dr. Anthony knew of the death of the employee's father. (Insurer's brief, 3-6.)

First, we point out what the judge said about other things in the employee's life:

> Although the Employee's heart was a concern at one point to Dr. Colley, the results of an EKG were fine, demonstrating no heart problems. I am persuaded that concern about his heart has not been troubling the Employee. The Employee credibly testified that his conscious feelings about the death of his father in July 2000 are that it was a blessing that he lived as long as he did. The Employee credibly testified that he took his father's death well. The Employee admitted that his diagnosis of emphysema upsets him.

(Dec. 10.) Next, we go to what the judge said further and especially with regard to the employee's father and Dr. Anthony's knowledge of the impact that the employee's father's death had on him:

> As of April 5, 2001, the Employee gave written permission to Dr. Anthony and Dr. Litzenberger to communicate with each other regarding the Employee's treatment. Employee Exhibit #9: Progress Note for date of service of April 5, 2001. Based on this circumstance, I am persuaded and I find that Dr. Anthony was aware of the topics and substance of the discussions that the Employee had with Dr. Litzenberger, as are recorded in the Client Notes that are contained in Employee Exhibit #8, including but not limited to the contents of their discussion held on August 28, 2001. I am persuaded that Dr. Anthony knew of the impact that the Employee's father's death had on the Employee when Dr. Anthony reached the opinion on causal relationship that he expressed in his letter dated September 27, 2001, which I have adopted in this Decision.

(Dec. 12, n.15.)

We have reviewed Dr. Litzenberger's notes, (Employee Exhibit 8), and they fully support the judge's finding that Dr. Anthony knew of the impact that the death of the employee's father had on the employee, when reaching his causal relationship opinion.

Accordingly, we affirm the decision. Pursuant to § 13A (6), employee's counsel is awarded a fee of $1,273.54.

So ordered.

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Martine Carroll
Administrative Law Judge

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Sara Holmes Wilson
Administrative Law Judge

Filed: **May 28, 2003**
MC/jdm

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Susan Maze-Rothstein
Administrative Law Judge