

DEPARTMENT OF INDUSTRIAL ACCIDENTS

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BOARD NO.: 017608-05

Josephine McLaughlin
Kohl's Department Store
Liberty Mutual Fire Ins. Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION

(Judges Koziol, McCarthy and Fabricant)

The case was heard by Administrative Judge McDonald.

APPEARANCES

Dawn M. Beauchesne, Esq., for the employee at hearing
Josephine McLaughlin, pro se, on appeal
Jean M. Shea Budrow, Esq., for the insurer at hearing
Stefan Michaud, Esq., for the insurer on appeal

KOZIOL, J. The employee appeals a decision denying and dismissing her claim for § 34 weekly incapacity benefits from June 3, 2005 to date and continuing, and § 30 medical benefits, for an alleged May 16, 2005 work-related injury to her neck. At the hearing, the judge allowed the insurer's motion to submit additional medical evidence, finding the § 11A report inadequate. (Tr. 4.) The parties' respective medical records and reports were admitted in evidence and no depositions were taken. The employee claims the judge erred in finding there was no medical opinion in evidence causally relating her symptoms or complaints to the work-related incident.

The judge made the following findings regarding causal relationship:

In all of the medical evidence, there is no medical opinion that causally related the employee's present symptoms, or myriad complaints, to the incident of May 16, 2005. Several doctors do not even report a work-related incident. The physicians who do report a history of a May 16, 2005, incident, do not render an opinion that the employee's symptoms are causally

related to that incident; there are physicians who report the employee's symptoms and multiple diagnoses, but do not causally relate the conditions to her employment.

I find, therefore, that the employee has failed to meet her burden of proof that the incident of May 16, 2005, is a major cause of her present incapacity.¹

(Dec. 10-11.)

Under the heading "Liability," the judge concluded: "[a]lthough I credit the employee's testimony as to the events of May 16, 2005, there is no medical opinion that establishes that incident was or is a major cause of the employee's medical conditions and incapacity to earn wages." (Dec. 11.) The judge then denied and dismissed the employee's claim. (Dec. 12.)

After reviewing the evidence, we agree the judge erred in finding it contained no medical opinion on the issue of causal relationship. Both parties' submissions contain a June 22, 2005, "Work Note" from the Massachusetts General Hospital Emergency Department, completed by Dr. Timothy M. Millington, who stated the employee was treated at the hospital's emergency department for "neck pain," opined "this is a work-related injury," and released the employee "to return to work/school . . . after an evaluation by: neurosurgery." (Ex. 3[5], 4[4][emphasis original].) Because the erroneous finding served as the basis for the judge's rulings, we recommit the matter for further findings of fact and rulings of law. See, Cibene v. Brentwood Realty Trust, 8 Mass. Workers' Comp. Rep. 172 (1994)(where erroneous finding went to key factual issues in case, recommitment required for further findings).

So ordered.

¹ We found nothing in the record or decision indicating § 1(7A) was raised as an issue at hearing.

Josephine McLaughlin
Board No. 017608-05

Catherine Watson Koziol
Administrative Law Judge

William A. McCarthy
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

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