COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 008652-00**

Karen E. Siano	Employee
Specialty Bolt and Screw, Inc.	Employer
Freemont Casualty Insurance Company	Insurer

REVIEWING BOARD DECISION
(Judges McCarthy, Maze-Rothstein and Levine)

APPEARANCES
Michael E. Kokonowski, Esq., for the employee
Joseph F. Agnelli, Esq., for the insurer

MCCARTHY, J. Karen E. Siano, a thirty-two year old married mother of two children, started working for Specialty Bolt and Screw, Inc. in 1996. She worked first as a packer and then in shipping. (Dec. 2.) Her medical history of neck problems is important to the issue before us. The hearing judge summarized this history as follows.

> In 1988 she fractured her neck in a non-work related motor vehicle accident. She further strained her neck at home in 1994. She hit her head at work in 1996 and was out of work a week. Finally in 1998 she was lifting her dog at home when she had severe pain, resulting in surgery to her neck in September of 1998 in which a cervical disc was removed and a plate and screws inserted.

(Dec. 3)

On March 10, 2000, while in the course of her employment, the employee pulled a heavy carton and felt a snap in her neck and a pull in her back. (Dec. 2.) She completed her workday, sought treatment from her family doctor and has been out of work since. Id. Unsuccessful conservative treatment was followed by further cervical surgery which took place on November 13, 2000. (Id. 3.)

The employee filed a claim seeking weekly temporary total incapacity benefits under § 34 together with the payment of her medical expenses under § 30. The insurer resisted the claim and following a conference, an administrative judge ordered a closed period of weekly § 34 benefits. Both parties appealed and the case come on before the same administrative judge for hearing de novo. The judge accurately identified the primary issue for decision as the question of causal relationship between the March 10, 2000 incident at work and the medical disability and incapacity which followed it. (Dec.2).

On September 18, 2000, nearly two months before the November 13, 2000 cervical surgery, Ms. Siano was examined by Dr. Demosthenes Dasco under § 11A. His report and deposition testimony were admitted into evidence and adopted by the administrative judge. (Dec. 4.) Dr. Dasco's testimony is the only medical evidence before the judge. It is worth setting out the judge's discussion of Dr. Dasco's testimony:

> Dr. Dasco, the impartial physician, opines that Ms. Siano is presently totally disabled as a result of her cervical symptoms and surgeries. (Dep. p. 16, lines 18-22, p. 19, lines 4-7). As to causal relationship, Dr. Dasco does feel that the March 10, 2000, incident was an aggravating factor. (Dep. p. 18, lines 8-23). But he feels that the incident played only a "moderately significant role" in Ms. Siano's disability, with the emphasis on "moderately". (Dep. p. 22, lines 15-24). The more significant role in the disability was the pre-existing cervical injury. (Dep. p. 24, lines 18-23). In fact he says this was the predominant factor. (Dep. p. 27, lines 16-20).
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> Dr. Dasco calls the pre-existing injury both the predominant cause (Dep. p. 27, lines 16-30) and the significant cause (Dep. p. 23, lines 1-5). He also directly equates "major" with "predominant" stating that if it is a major cause, it is a predominant cause. (Dep. p. 20, lines 19-21). As he himself states, the injury at work did "contribute to her disability. The question I have a problem with is the degree." (Dep. p. 21, lines 10-24). The injury played only a "moderately significant" role. (Dep. p. 22, lines 15-24).

(Dec. 4)

The judge then went on to examine Dr. Dasco's testimony in light of § 1(7A).[1]

[1] General Laws c. 152, § 1(7A), St. . . . , reads in part as follows: "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 need for treatment, the resultant

After taking note of the relatively minor exertion involved in causing the industrial injury on March 10, 2000 and of the § 11A physician's opinion that the predominant cause of Ms. Siano's symptoms was her pre-existing non work related neck condition, the judge concluded that the work injury was not a major cause of the need for surgery on November 13, 2000. The judge then awarded § 34 weekly incapacity benefits from March 10, 2000 to November 13, 2000 and the payment of medical expenses through November 12, 2000. He specifically excluded payment of the medical costs associated with the November 13, 2000 surgery and medical care thereafter.

The employee, on appeal, argues that the decision should be reversed because the § 11A examiner's opinion that the March 10, 2000 industrial injury played a "moderately significant" role in the post injury disability and need for treatment is synonymous with the § 1(7A) requirement that the work injury remain a "major, but not necessarily predominant" cause of disability and treatment. (Employee br. 4.) We agree and reverse the decision.

By equating predominant cause with a major cause, the § 11A medical expert has inpermissibly raised the burden of proof standard set by § 1(7A).[2]

The use of the word "a" before major is instructive. By definition there can be but one "predominant" cause and it is the single most important, influential or forceful cause

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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."

[2] Dr. Dasco dealt with the standard when, in his deposition, he answered as follows:

> I have a great problem with that standard statement of being a major, but not predominant cause of pain, disability or whatever. I think there is a tremendous contradiction there, and I know in legal matters you refer to it very often, but from a doctor's point of view, at least this doctor's point of view, I have great difficulty saying both, that it was – saying that it was major but not predominant. If it's major, it my opinion it has to be predominant. Of course, I cannot see any cause as being major and not being predominant.

(Dr. Dasco Dep. 20.)

of medical disability. There may, however, be multiple "major" causes. A major cause is an important, a serious, a moderately significant cause. For the medical expert, the standard for causal relationship prescribed in § 1(7A) is often confounding. As lawyers struggle to frame questions which set out the standard, the irritation and impatience of the medical expert being deposed is often palpable and always understandable.

The challenge for lawyers and doctors is slightly less daunting in that the § 11A doctor, or for that matter the administrative judge, need not use the precise phrase, "a major, but not necessarily predominant cause" when confronting the issue of causal relationship. See Silverman v. Department of Transitional Assistance, 15 Mass. Workers' Comp. Rep. 176 (2001); Hammond v. Merit Rating Bd., 9 Mass. Workers' Comp. Rep. 708, 708-711 (1995) (event or events can be "the proverbial 'straw that breaks the camel's back' " where condition needs but a "small trigger to blossom into incapacity;" said trigger may be "a major cause"). In the case before us, we are satisfied that the use of the phrase "moderately significant" by Dr. Dasco when describing the causal relationship between the industrial injury and the ensuing medical disability is, as a matter of law, substantially equivalent to the statutory language, ". . . a major but not necessarily predominant cause of disability or need for treatment."

Accordingly, we reverse the judge's ruling that "moderately significant" is not equivalent to "a major" cause of disability or need for treatment and return the case to the hearing judge for further findings in light of this opinion. The judge may, in his discretion, take further testimony if he determines it necessary or appropriate.

So ordered.

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William A. McCarthy
Administrative Law Judge

Filed: June 12, 2002

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Frederick E. Levine
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge