COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 001378-00**

Kenneth A. Cross	Employee
Beverly Rehabilitation	Employer
Ins. Co. State of Pennsylvania	Insurer

REVIEWING BOARD DECISION
(Judges Levine, McCarthy and Carroll)

APPEARANCES
John F. Trefethen, Jr., Esq., for the employee at hearing
Eugene M. Mullen, Jr., Esq., for the insurer

LEVINE, J. The insurer appeals from the decision of an administrative judge which awarded the employee § 34 temporary total incapacity benefits. We affirm the decision.

Kenneth A. Cross was, at the time of the decision, single and forty-four years old. (Dec. 332.) In 1977, Mr. Cross dove into the shallow end of a swimming pool and broke his neck; he was left paralyzed from the neck down. He underwent extensive physical therapy and eventually gained some use of his arms and legs. But he needed the assistance of a cane and leg braces. He also developed a left foot drop, paralysis in his left hand and abdominal weakness. In 1982, Mr. Cross graduated from the University of New Hampshire with a Bachelor of Science degree in occupational therapy. He worked as an occupational therapist for eighteen years. (Dec. 332.)

In 1996, Mr. Cross went to work for the present employer as the director of rehabilitation. His responsibilities have included both managerial duties and "hands on" therapy. (Dec. 333).

On January 11, 2000, while assisting a patient, the employee's feet became entangled in a wire cord. The employee fell backwards, struck his head on the back of a chair and landed on the floor. He was shaken and dizzy and felt tingling

in his hands and feet. He reported the incident and was taken to the hospital. (Id.) On January 17, 2000, the employee returned to work on a light duty, part time schedule. However, after he returned to work, he suffered headaches and sensitivity to light and sound. Additionally, the employee had "floaters" (black spots appearing in his field of vision) in his left eye and several episodes of syncope while working at a computer. Because of these problems, after about two weeks, the employee left work. The tingling in the employee's hands and feet went away shortly thereafter. (Dec. 334.)

The employee's claim for workers' compensation benefits was denied at conference; he appealed to a hearing de novo. (Dec. 331.) On July 6, 2001, pursuant to § 11A, Dr. Richard Selbst performed an impartial examination of the employee. He prepared a report and his deposition was taken. (Dec. 331, 334.)

Dr. Selbst diagnosed postconcussion syndrome causally related to the January 11, 2000 work incident. (Dec. 334-335.) He opined that the employee has a pre-existing condition of cervical myelopathy and that the employee is permanently disabled due largely or predominantly to the 1977 cervical spine injury. (Dec. 335). Nevertheless, Dr. Selbst also opined that the 2000 work incident aggravated the pre-existing condition and "is an important cause of his present disability." (Dep. 16; Dec. 335) The judge adopted these opinions. (Dec. 336.)

In addition, the judge found that the employee has difficulty walking; he lists to the right. He suffers hypersensitivity to light and sound. He has incapacitating headaches one to two times a week. (Dec. 334.)

The judge found that the employee suffered a compensable injury on January 11, 2000 and that the employee was totally disabled as a result. He adopted the medical opinions of Dr. Selbst and determined that the employee had met his burden, pursuant to G. L. c. 152, § 1(7A),[1] of proving that the January

[1] General Laws c. 152, § 1(7A), reads in pertinent part as follows:

2000 incident was a major cause of his current disability. Despite some limited physical capacity, the judge determined that any nontrifling employment was beyond the employee's capabilities. (Dec. 336.) Accordingly, the judge's order included that the insurer pay the employee ongoing § 34 temporary total incapacity benefits.

The insurer contends that the employee did not prove that the January 2000 incident remained a major cause of his current disability as required by § 1(7A). It argues that minor or marginal contributions to an employee's disability by the work injury cannot equal a major cause as required by the act. See, e.g., Dodd v. Walter A. Furman Co., Inc., 16 Mass. Workers' Comp. Rep. 59, 61 (2002).

Although the insurer's statement of law is correct, it overlooks that Dr. Selbst expressed the opinion that the 2000 work-related injury was an "important" cause of the employee's present disability. (Dep. 16.) The impartial physician "need not use the precise phrase, 'a major, but not necessarily predominant cause' when [addressing] the issue of causal relationship." Siano v. Specialty Bolt and Screw, Inc., 16 Mass. Workers' Comp. Rep. 237, 240 (2002). Robles v. Riverside Mgt., Inc., 10 Mass. Workers' Comp. Rep. 191, 198 n.6 (1996) (doctor need not incant particular magic words). "A major cause is an important, a serious, a moderately significant cause." Siano, supra. Dr. Selbst's opinion -- that the work-related incident was an "important" cause of the employee's disability -- satisfies the § 1(7A) standard. Dr. Selbst's opinion was the only medical evidence in the record, and it had prima facie status. See G. L. c. 152, § 11A(2). As such, the judge appropriately adopted the opinion. Dodd, supra at 61.

Accordingly, we affirm the decision. Pursuant to § 13A(6), the employee's

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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.

attorney is awarded a fee of $636.77.[2]

So ordered.

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Frederick E. Levine
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge

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Martine Carroll
Administrative Law Judge

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Filed: **May 20, 2003**

[2] The employee's attorney attended the pre-transcript conference, but did not submit a brief. For that reason, we reduce the fee based on the effort expended.