COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NOS. 047668-01 000381-00**

Kenneth Armstrong	Employee
Starlight Express	Employer
Travelers Insurance Co.	Insurer
Eastern Casualty Insurance Co.	Insurer

REVIEWING BOARD DECISION
(Judges Fabricant, Carroll and Costigan)

APPEARANCES
J. Channing Migner, Esq., for the employee
John J. Canniff, Esq., for Travelers Insurance Company
Carl F. Schmitt, Esq., for Eastern Casualty Insurance Co. at hearing

FABRICANT, J. The employee prevailed against Travelers Insurance Company (the insurer) in his original liability claim for workers' compensation benefits for a November 21, 2001 back injury.[1] He has brought the present appeal to challenge the administrative judge's assignment of a $160 weekly earning capacity, and to obtain clarification as to the insurer's responsibility to pay for a medical consultation pursuant to the provisions of §§ 13 and 30. We summarily affirm the judge's assignment of the earning capacity. The decision regarding the disputed medical consultation is also affirmed with clarification for the following reasons.

At hearing the employee renewed his claim under §§ 13 and 30 to have the insurer pay for a surgical consultation by Dr. Howard Martin, a spine specialist. (May 29, 2003 Tr. 11.) The employee's treating physician, Dr. Stephen McNeil, had referred the

[1] The judge found no liability on the part of Eastern Casualty, the insurer for an earlier work incident, for benefits the employee was claiming from and after November 24, 2001.

employee to Dr. Martin, considering the proposed consultation medically reasonable.[2] (McNeil Dep. 40-41, 75.) The judge adopted the medical opinions of Dr. McNeil as to causation, disability and the need for medical treatment. (Dec. 9, 11-12.) Having found the insurer liable for the employee's work injury, the judge ordered it to pay reasonable and related medical expenses for the diagnosed condition. (Dec. 13.) We consider that the proposed consultation, specifically in dispute at the hearing, falls within the judge's award of medical benefits. As the adopted medical evidence supports the award of benefits pursuant to §§ 13 and 30, including the claimed consultation with Dr. Martin, recommittal is unnecessary. See Roney's Case, 316 Mass. 732, 739 (1944). We do not think the language of § 30, raised by the insurer as a defense to the proposed consultation,[3] defeats the employee's claim. The decision is affirmed, with the clarification that the insurer authorize and pay for Dr. Martin's proposed consultation.

So ordered.

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[2] Dr. McNeil's testimony was allowed as additional medical evidence under § 11A(2), due to the inadequacy of the impartial medical opinion and the complexity of the medical issues. (Dec. 4, 8-9.)

[3] The provisions of § 30 cited by the insurer are:

> The employee may select a treating health care professional other than any provided or agreed to by the insurer and may switch to another such professional once. When referred by the treating health care professional to another provider in a particular specialty, the employee may also change once to a different provider in such specialty.

(Ins. br. 5)

However, the insurer's citation is selectively self-serving. The statute also provides:

> In cases of emergency or where the insurer or *administrative judge agrees* the employer may seek treatment from additional providers.

(Emphasis added)

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Bernard W. Fabricant
Administrative Law Judge

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Martine Carroll
Administrative Law Judge

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Patricia A. Costigan
Administrative Law Judge

Filed: **February 15, 2007**