

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 037453-20

Keri Fromm
Boston Medical Center
Boston Medical Center Corp.

Employee
Employer
Self-Insurer

AMENDED REVIEWING BOARD DECISION
(Judges Fabiszewski, Koziol and O’Leary)

The case was heard by Administrative Judge Dooling.

APPEARANCES

James J. Hykel, Esq., for the employee at hearing and on appeal
Lori J. Harling, Esq. for the self-insurer at hearing
Robert S. Martin for the self-insurer on appeal

FABISZEWSKI, J. The self-insurer appeals from the administrative judge’s decision awarding the employee a closed period of § 34 temporary total incapacity benefits, followed by ongoing § 35 temporary partial incapacity benefits, plus § 30 medical benefits. On appeal, the self-insurer raises two arguments. While we reject the self-insurer’s argument with respect to causal relationship and summarily affirm that aspect of the decision, we find merit in the self-insurer’s argument regarding the date of injury. Accordingly, we vacate the decision of the administrative judge and recommit the case for further findings of fact consistent with this opinion.

We briefly summarize the facts relevant to this decision. In December 2020, the employee, a registered nurse, worked for the employer in the Emergency Department, which was experiencing its second peak of Covid-19 infections. (Dec. 6.) She often worked as a charge nurse responsible for overseeing the entire Emergency Department. (Dec. 5.) She also worked frequently as a triage nurse, where she would assess approximately 50 – 60 patients per shift. The employee testified that at least several times per shift, patients with either suspected or known Covid-19 were present in the Emergency Department hallways and that social distancing was very difficult based on

the number of staff and patients in the areas where she worked. (Dec. 6.) Although both patients and staff were required to wear a protective mask, some patients often needed a reminder to wear their masks. (Dec. 7.)

On December 13, 2020, while working triage, the employee came into close contact several times with an employee who felt unwell, was coughing and blowing her nose with her protective mask removed and was subsequently diagnosed with Covid-19. (Dec. 7; Ex. 9.) The employee worked a 12.5-hour shift on both December 22, 2020 and December 23, 2020. (Dec. 7.) On December 26, 2020, the employee was not at work when she began to feel unwell, experiencing fatigue, nasal congestion and a cough. (Dec. 7; Ex. 28.) On December 28, 2020, she subsequently tested positive for Covid-19. (Dec. 7.)

In July 2021, the employee filed a claim alleging a date of injury of December 23, 2020, and seeking § 34 temporary total incapacity benefits from December 26, 2020, to date and continuing, plus benefits pursuant to §§ 13, 13A and 30. Rizzo v. M.B.T.A., 16 Mass. Workers' Comp. Rep. 160, 161 n.3 (2002)(reviewing board may take judicial notice of the board file). Pursuant to a § 10A conference held on February 10, 2022, she was awarded § 34 benefits at the rate of \$1,487.78 per week, based on an average weekly wage of \$3,102.57, from December 26, 2021, to March 17, 2022, followed by § 35 benefits at the maximum rate of \$1,115.83 per week, from March 18, 2022, to date and continuing. (Dec. 3.) Both parties filed timely appeals. Pursuant to § 11A(2), the employee was examined by Mark Friedman, M.D., on May 2, 2022. (Dec. 4.) Prior to hearing, the self-insurer filed a motion to submit additional medical evidence based on the complexity of the medical issues, which was allowed. A hearing *de novo* was held on September 13, 2022. (Dec. 2.) On March 7, 2023, the administrative judge issued a decision finding that the employee has sustained a compensable work injury on December 26, 2020, and ordered the self-insurer to pay § 34 benefits at the rate of \$1,487.78 per week, based on an average weekly wage of \$3,102.57, for a closed period from December 26, 2020, to September 11, 2022, followed by ongoing § 35 benefits from September 12, 2022, to date and continuing, at various rates.

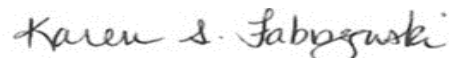
On appeal, the self-insurer argues that the administrative judge erred in finding that the employee sustained a work injury on December 26, 2020, while working as a nurse for the employer. The self-insurer asserts, and the evidence admitted at hearing supports, that the employee did not work on December 26, 2020. (Self Ins. Br. 15; Ex. 28.) Instead, her last day of work prior to testing positive for Covid-19 was December 23, 2020. (Dec. 7; Ex. 28.) The employee argues that the administrative judge's finding that an injury occurred on December 26, 2020, was merely a scrivener's error, noting that the employee did not claim, nor did the evidence suggest, that an injury occurred on that date. (Ee Br. 9.) Here, despite the fact that both the employee and the self-insurer agree that the employee did not work on December 26, 2020, the administrative judge's findings contain conflicting facts: 1) the employee worked on December 23, 2020 before falling ill and being diagnosed with Covid-19 on December 26, 2020; and 2) the employee sustained a work injury on December 26, 2020, while working as a nurse for the employer. (Dec. 7, 10.)

An administrative judge has a duty to "address the issues in a case in a manner enabling this board to determine with reasonable certainty whether correct rules of law have been applied to facts that could be properly found." Praetz v. Factory Mut. Eng'g and Research, 7 Mass. Workers' Comp. Rep. 45, 47 (1993). In circumstances where the record is insufficient to allow for appellate review, the case must be recommitted for further findings of fact and rulings of law necessary for the board to complete its review. Id. "Findings made must be adequately supported by the evidence and inferences drawn therefrom must be reasonable." Moretti v. Moretti Construction Co., 10 Mass. Workers' Comp. Rep. 98, 99 (1996)(citations omitted) *See, Emde v. Chapman Waterproofing Co.*, 12 Mass. Workers' Comp. Rep. 238 (1998)(decision reversed and remanded for further findings of fact where arbitrary finding of facts goes to the central contention of the case). In this case, because the administrative judge found conflicting facts, we cannot say that such findings were merely a scrivener's error and must send the case back to the administrative judge to resolve the conflict.


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Accordingly, because the hearing decision does not contain sufficient findings for us to determine whether the administrative judge applied the correct rules of law, we vacate the decision with respect to the date of injury and recommit the case for further findings on that issue. We summarily affirm with respect to the other issue regarding causation raised by the self-insurer.

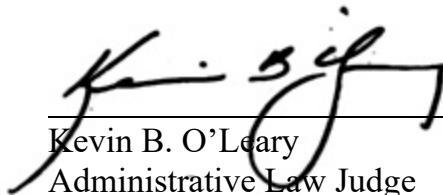
So ordered.



Karen S. Fabiszewski
Administrative Law Judge



Catherine Watson Koziol
Administrative Law Judge



Kevin B. O'Leary
Administrative Law Judge

Filed: **January 14, 2025**