

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 016230-11

Kimberly LaValley
Republic Parking
Liberty Mutual Insurance

Employee
Employer
Insurer

REVIEWING BOARD DECISION
(Judges Fabricant, Levine and Calliotte)

The case was heard by Administrative Judge Poulter.

APPEARANCES

Charles R. Cassartello, Jr., Esq., for the employee
Patricia Vachereau, Esq., for the insurer

FABRICANT, J. Both parties appeal from a decision awarding the employee § 35 maximum partial incapacity benefits. Because the judge's decision lacks an evidentiary basis to support the assessment of earning capacity, we recommit the case for further findings. We summarily affirm the decision as to the employee's appeal.

The employee worked as a money counter for the employer, which involved repeatedly opening and emptying the vaults of money machines at different locations. She was required to unlock the machines, pull out the heavy money vaults, carry them to her car and return them to the machines. This activity involved constant turning, twisting and pulling motions with both thumbs and forefingers. Within six months of starting this job, the employee developed pain in her thumbs, tingling in both hands and radiating pain from her thumbs down into her hands. (Dec. 4.)

When conservative treatment failed to provide relief, the employee began treating with Dr. Richard Martin of the Hand Center of Western Massachusetts. Dr. Martin diagnosed bilateral carpal tunnel syndrome with nerve compression of the left hand and limited the employee to part-time work with no lifting over ten pounds. (Dec. 4.) Ultimately, bilateral carpal tunnel surgery was prescribed, and the employee left work on

June 1, 2011, in order to have the surgery. However, due to payment issues, the surgery was not performed, and the employee never returned to work. (Dec. 5.)

An impartial medical examination was conducted by Dr. Desmothenes Dasco on April 3, 2012, pursuant to G. L. c. 152 § 11A. (Ex. 1.) In addition, the employee's motion to open the medical record due to complexity was allowed, and the report, addendum and deposition testimony of Dr. Steven Silver were admitted into evidence. (Dec. 5; Ex. 7.)

The judge credited the opinion of Dr. Silver that the employee had carpal tunnel syndrome on both the left and right which was causally related to her employment. (Dec. 5; Exhibit 7; Dep. 10.) Dr. Silver also noted that the employee suffered pain in her left thumb due to non-work related arthritic changes, although her work activity was responsible for an exacerbation of those symptoms. Dr. Silver concluded that carpal tunnel release surgery was appropriate, and that the employee was not yet at an end result. (Dec. 6; Dep. 11-13.) He also opined that the employee should not engage in repetitive activity with either hand or lift more than ten pounds. He described her impairment as a moderate partial temporary disability, with no lower extremity restrictions, and no restrictions on sitting, standing or walking. (Dec. 6; Dep. 31-32.)

The judge also credited the testimony of Ms. Precious Alikuleti-Klier, a vocational rehabilitation consultant, who opined that the employee could work as a front desk clerk at a hotel or as a hostess or greeter.¹ (Dec. 6.) The judge ordered the insurer to pay the employee maximum partial incapacity benefits pursuant to § 35, from June 1, 2011, to date and continuing. The judge also awarded benefits pursuant to §§ 13 and 30, specifically requiring that the recommended bilateral carpal tunnel surgery be included, and further ordered total weekly incapacity benefits pursuant to § 34 during the convalescence from this surgery until the employee is released to return to work. (Dec. 7.)

¹ The judge did not credit the employee's opinion that she could not work with the public because she would be unpleasant to deal with. (Dec. 6; Tr. 71.) The judge instead credited the employee's testimony that "I can talk. I'm good at talking." (Dec. 6; Tr. 74.)

The insurer argues that the judge's finding of a limited earning capacity, without further analysis, is arbitrary, capricious and contrary to law. We agree.

A judge's decision must "adequate[ly] reveal the basis for [its] ultimate finding." Eady's Case, 72 Mass. App. Ct. 724, 726 (2008). While the evidence cited and the resultant findings made by the judge support the conclusion that the employee has an earning capacity, the decision is devoid of any analysis or explanation as to what, precisely, that earning capacity might be. The judge provides no findings or analysis to explain the award of the maximum § 35 benefit, or why the employee may not be able to work on a full-time basis.² See Dalbec's Case, 69 Mass.App. Ct. 306, 317 (2007) ("A monetary figure cannot emerge from thin air and survive judicial review as a mystery"). Accordingly, we recommit the case for further findings of fact with regard to the employee's earning capacity. During the pendency of this recommitment, we reinstate the conference order. See Lafleur v. Department of Corrections, 28 Mass. Workers' Comp. Rep. ____ (October 23, 2014).

So ordered.

Bernard W. Fabricant
Administrative Law Judge

Frederick E. Levine
Administrative Law Judge

Carol Calliotte
Administrative Law Judge

² There does not appear to be any medical restriction imposed on the employee that would prevent her from working a forty-hour work week in any of the jobs described in the analysis of the vocational expert. Thus, a forty-hour work week at \$8.00 per hour (the low end of the wage scale) would yield a weekly earning capacity of \$320.00.

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Filed: **March 13, 2015**