

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 24649-99

Lalita Pandey
Montgomery Rose Company, Inc.
Florists Mutual Insurance Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION

(Judges Wilson, McCarthy and Maze-Rothstein)

APPEARANCES

Joseph P. Minardi, Esq., for the employee
James F. Fitzgerald, Jr., Esq., for the insurer

WILSON, J. Once again we are called upon to plumb the stygian depths of § 1(7A) and its standard of “a major” cause.¹ The parties cross appeal from a decision in which an administrative judge awarded the employee a closed period of incapacity benefits for a cumulative work injury. We summarily affirm the judge’s denial of ongoing incapacity benefits, challenged by the employee on appeal. We agree with the insurer that the decision is contrary to law as to any award of benefits, because the medical evidence simply does not meet the appropriately raised standard of “a major cause” under § 1(7A). We reverse the decision and deny the employee’s claim.

The employee worked for a flower company, where she performed the job of rose grader from 1984 until early 1999, when she was given the position of rose wrapper. As a rose grader, she had to take the roses from barrels of water, remove the plastic in which

¹ G.L. c. 152, § 1(7A), provides in relevant part:

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.

they were wrapped, and place them on a grading machine. She worked eight to ten hours a day, five to six days a week. As a rose wrapper, the employee worked the same long hours, and she individually wrapped the roses at a rate of fifteen to twenty per hour. The job involved repetitive motion of her hands, arms and wrists. (Dec. 3.) The employee suffered continual pain in her right arm, wrist and elbow from 1994 until 1999. (Dec. 3-4.)

On Saturday, June 19, 1999, the employee was involved in a motor vehicle accident, in which she sustained some back and neck injuries. On Monday, June 21, 1999, the employee returned to her job wrapping roses, until the pain in her right arm and elbow became so severe that she had to stop. The employee has not worked since that day. (Dec. 4.)

The employee claimed ongoing workers' compensation benefits. The insurer resisted on the basis of liability, disability and extent thereof, and causal relationship under the heightened standard of "a major" cause set forth in § 1(7A). See n.1, supra. The judge awarded a closed period of weekly benefits for total, temporary incapacity in a conference order, and both parties appealed to a full evidentiary hearing. (Dec. 1-2.) The employee underwent an impartial medical examination on April 27, 2000, pursuant to G.L. c. 152, § 11A(2). The impartial physician opined that the employee suffered from a right tennis elbow syndrome. (Dep. 8-9; Impartial Examiner Report.) The doctor opined that the employee's work activities were a minor contributing cause of her arm, wrist and elbow pain, and that pre-existing degenerative problems with her neck (spondylosis) and arm were the predominant cause of her symptoms. (Dec. 5; Dep. 17-18, 24-26, 34; Impartial Examiner Report.) The doctor did elaborate that the employee's right extremity symptoms were probably related to the nature of the employee's work over the course of the many years that she had worked for the employer. (Dec. 5; Dep. 29.) Citing the impartial physician's testimony on page twenty-nine of his deposition, and the employee's credible testimony, the judge awarded the employee a closed period of incapacity benefits, from June 21, 1999 to October 2, 2000, as well as medical benefits for treatment for her right extremity symptoms. (Dec. 6-7.)

The insurer argues on appeal that the decision is contrary to law, because the medical evidence simply does not support the award of any compensation benefits. The insurer stresses that the impartial medical evidence established no more than that the employee's work was a minor cause of her right extremity pain. We agree. There is nothing in the deposition or report of the impartial physician that satisfies the properly raised § 1(7A) burden of the employee to show that her repetitive work was a major contributing cause of her right arm disability, in view of her pre-existing degenerative conditions in her neck and arm. (Dep. 25-26; Impartial Examiner Report.) See Bernardo v. Hallsmith Sysco, 12 Mass. Workers' Comp. Rep. 397, 402 (1998)(applying § 1(7A) major cause analysis to cumulative work injury to low back with pre-existing degenerative lumbar condition).

Accordingly, the decision is reversed.

So ordered.

Sara Holmes Wilson
Administrative Law Judge

Filed: **December 21, 2001**

William A. McCarthy
Administrative Law Judge

Susan Maze-Rothstein
Administrative Law Judge