COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 022425-10**

Leo Walsh (deceased)	Employee
Jacqueline Walsh	Claimant
Courier Corporation	Employer
Travelers Insurance Company	Insurer

REVIEWING BOARD DECISION
(Judges Horan, Fabricant and Koziol)

The case was heard by Administrative Judge Vendetti.

APPEARANCES
Brian R. Sullivan, Esq., for the claimant at hearing and on appeal
Steven C. Zoni, Esq., for the claimant on appeal
David G. Braithwaite, Esq., for the insurer at hearing
Paul R. Ingraham, Esq., for the insurer on appeal

HORAN, J. The claimant appeals from a decision denying and dismissing her claim for benefits under §§ 13, 13A, 30, 31, 32, 33, 36 and 50. (Dec. 3; Tr. 4.) We affirm the decision.

For approximately thirty-seven years, the employee worked as a machine and fork lift operator for the insured. (Dec. 5.) On August 17, 2010, the employee collapsed at work. He was taken to a hospital, and was pronounced dead approximately one hour following the end of his shift. (Dec. 5-6.) The employee's death certificate listed the cause of death as hypertensive cardiovascular disease. (Dec. 7; Ins. Ex. 1.)

The employee's spouse filed a claim seeking dependent's benefits under the act. She invoked § 7A of the act, which provides, in pertinent part:

> In any claim for compensation where the employee has been . . . found dead at his place of employment . . . it shall be prima facie evidence that the employee was performing his regular duties on the day of injury or death and that the claim comes within the provisions of this chapter, that sufficient notice of the injury has been given and that the injury or death

> was not occasioned by the willful intention of the employee to injure or kill himself or another.

See Moss's Case, 451 Mass. 704 (2008)(providing an overview of the statute); see also Costa's Case, 52 Mass.App.Ct. 105 (2001)(statute inapplicable where employee's death does not occur at work). At hearing, the insurer denied liability, the application of § 7A, and raised, inter alia, the "combination injury" defense contained in the third sentence of § 1(7A).[1] (Tr. 4, 7.)

The claimant, the employee's son, grandson, and several of the employee's co-workers testified at the hearing. Based on their testimony, the judge found the following facts:

1. The employee never informed the claimant that his job was stressful. (Dec. 10.)

2. The claimant never told Dr. Leonard M. Zir anything about her husband's health or working conditions. (Dec. 7, 10.)

3. The employee's son did not have sufficient knowledge about his father's working conditions "for his testimony to be persuasive about the possible effects of those conditions on the health of the employee, and that his testimony regarding the employee's stress level [is] vague and unpersuasive on the issue of whether [it] affected the employee's health." (Dec. 10-11.)

4. The employee's grandson's testimony about the employee's "work-related stress or other conditions at the Courier plant" was unpersuasive. (Dec. 11.)

5. The employee's work did not involve heavy lifting, was not physically demanding, and his workplace's air quality was not poor. (Dec. 11.)

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[1] That section provides, in pertinent 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.

6. The employee never complained to his direct supervisor regarding the plant's "lighting, ventilation, air quality or temperature." (Dec. 12.)

The judge acknowledged the "prima facie" effect of § 7A, but found, consistent with her findings of fact, that it was overcome by the persuasive medical opinions of Dr. Milo Pulde, and the medical examiner, respecting the employee's cause of death. (Dec. 14.) Specifically, the judge adopted Dr. Pulde's opinion that the employee's death was caused by his underlying cardiovascular disease. (Dec. 9.) The judge found no "combination" injury as defined by § 1(7A), nor did she credit the opinion of Dr. Zir, who opined that poor ventilation and increased stress at the employee's workplace contributed to his sudden cardiac death. (Dec. 7; Employee Ex. 4.) The judge rejected Dr. Zir's opinion because she rejected its factual foundation. (Dec. 7, 13.) Brommage's Case, 75 Mass.App.Ct. 825, 828 (2009)(proper to reject medical opinion not based on facts found).

The claimant raises three issues on appeal. We discuss them in turn.

First, the claimant maintains the judge erred by failing to list, or discuss, the medical report of Dr. David Maguire, which contained an opinion supportive of her claim. As a general rule, such a failure would cause us to recommit the case to the judge for consideration of that evidence. Ryder v. Nat'l Freight, Inc., 25 Mass. Workers' Comp. Rep. 367, 368 (2011). However, as the claimant concedes in her brief, the first page of Dr. Maguire's report was part of Employee's Exhibit 5, which was admitted into evidence and listed in the judge's decision.[2] (Employee br. 3; Dec. 2.) We assume, therefore, that the judge considered it. Tracy v. City of Pittsfield, 29 Mass. Workers' Comp. Rep. ___ (January 15, 2015)(and cases cited); Keane v. McLean Hosp., 27 Mass. Workers' Comp. Rep. 9 (2013)(and cases cited). Moreover, the facts which form the basis of Dr.

[2] We take judicial notice of the board file as contained in our OnBase case management system. See Uka v. Westwood Lodge Hospital, 28 Mass. Workers' Comp. Rep. 19, 21 n.4 (2014); Rizzo v. M.B.T.A., 16 Mass. Workers' Comp. Rep. 160, 161 n.3 (2002).

Maguire's opinion, found on page one of his December 17, 2003 report, were not found by the judge. Brommage, supra. Therefore, the judge could not have adopted Dr. Maguire's opinion on the causal relationship between the employee's work and his death. There was no error.

Next, the claimant contends the judge erred by relying on the testimony of lay witnesses to address the medical question of causation. We disagree. The judge was not persuaded by the testimony of the witnesses called on the claimant's behalf concerning the employee's working conditions. Finding facts contrary to those which the claimant's medical experts relied upon left the judge no choice but to reject their causation opinions. Brommage, supra. Moreover, the judge adopted the opinions of the medical examiner, and Dr. Pulde, which did not support the premise that the employee's death was work-related.

Lastly, the claimant argues the judge mischaracterized the lay testimony. Again, we disagree. The judge's findings were adequately supported by the record. Her decision not to credit most of the testimony offered on the claimant's behalf does not constitute grounds for reversal or recommittal. See G. L. c. 152, § 11C.

The decision is affirmed.

So ordered.

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Mark D. Horan
Administrative Law Judge

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Bernard W. Fabricant
Administrative Law Judge

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Catherine Watson Koziol
Administrative Law Judge

Filed: **May 14, 2015**