

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS

BOARD NO. 40692-98

Levon Y. Babayan
Secretary of State
Commonwealth of Massachusetts

Employee
Employer
Self-insurer

REVIEWING BOARD DECISION

(Judges Carroll, Maze-Rothstein and Wilson)

APPEARANCES

Levon Y. Babayan, pro se on appeal
Gary W. Orlacchio, Esq., for the employee at hearing
Arthur Jackson, Esq., for the self-insurer

CARROLL, J. The pro se employee and self-insurer appeal from a decision in which an administrative judge awarded ongoing § 34 incapacity benefits for a work-related emotional injury, and denied the employee's claim for benefits arising from coronary artery disease, as being unrelated to his employment. The employee contends that the judge erred in denying the heart-related claim. We summarily affirm the decision as regards this claim. The judge appropriately weighed the employee's proffered cardiac related medical evidence, and did not adopt it. The self-insurer contends that the judge's award of benefits was unsupported by competent expert medical opinion evidence, and that he failed to apply the bona fide personnel action exception to liability for emotional injuries, pursuant to G.L. c. 152, § 1(7A). We agree that the causation findings are insufficient and therefore recommit the case. The judge who heard this case has now recused himself from further proceedings, requiring that the case be recommitted to a new judge for a hearing de novo on only the emotional injury component of the employee's claim.

Levon Babayan started working with the employer as a maintenance mechanic at the State Archives Building in 1991. His duties required some specialized skills in

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mechanical, plumbing, carpentry and painting, with additional duties including landscaping, moving furniture, snow removal and clean up. (Dec. 4.) After a few weeks on the job, the employee's duties were broadened to include more work outside the building, such as weeding and digging trenches for sprinklers. The employee felt a sense of humiliation at having these duties added to his job description. He felt that his immediate supervisor, Mr. McDermott, belittled him and was condescending to him. The employee also felt that Mr. McDermott made fun of him due to his accent and status as a Russian immigrant. (Dec. 5.) As time went on, the employee felt generally that he was blamed for everything that went wrong and discriminated against by not receiving pay raises, when everyone else did. During 1996 through 1998, the employee continued to feel humiliated and offended because of his treatment at the hands of his supervisors. (Dec. 6.) On September 30, 1998, Mr. Sundstrom, the Facility Director, called Mr. Babayan into his office and asked him if he had recently used the HVAC computer, which had apparently been damaged. (Dec. 6, 8.) The employee vehemently denied having used the computer, and felt that he was going to lose his job because of the incident. He felt that his supervisors were looking for reasons to fire him. The employee felt physically ill, became dizzy, nauseous, and described having a "pain in his heart." He left work after his shift ended that day, not to return. (Dec. 7.) The administrative judge credited all of the employee's testimony. (Dec. 13.)

The employee commenced treatment with a number of physicians, who prescribed medications. Babayan eventually underwent cardiac catheterization and angioplasty. (Dec. 7.) He filed a claim for workers' compensation benefits due to emotional injury and his heart condition. The judge denied the claim at conference. (Dec. 3.) The employee appealed to a full evidentiary hearing, and underwent a § 11A psychiatric examination on August 12, 1999. The impartial psychiatrist diagnosed the employee with personality disorder, with narcissistic passive-aggressive and paranoid features. He opined that the employee's work circumstances may have exacerbated the employee's personality disturbance, and that the September 30, 1998 meeting could have triggered a

psychotic episode. The doctor opined that the employee was totally disabled from returning to his work at the State Archives. (Dec. 9-10.)

The judge allowed the parties to introduce additional medical evidence due to the complexity of the medical issues involved. The employee introduced reports and records from a number of treating physicians. (Dec. 3.) As to the employee's emotional disability, the judge relied on one of the employee's treating physicians, Dr. Thomas Huth. Dr. Huth opined that the September 30, 1998 work incident was the predominant contributing cause of the employee's emotional disability. With that opinion, combined with the opinion of the impartial psychiatrist that the September 30, 1998 event could have triggered a psychotic episode, the judge concluded that the employee had met his burden of proving that his emotional injury had as its predominant contributing cause a series of events at his employment, including, but not limited to the September 30, 1998 meeting with Mr. Sundstrom. (Dec. 12-13.) The judge did not make any analysis of bona fide personnel action or intentional effort to inflict emotional distress as required by § 1(7A).¹ See Beaudry v. Stop and Shop, 4 Mass. Workers' Comp. Rep. 239, 241 (1990) (for discussion of proper bona fide personnel action analysis). In addition, the findings of fact by the judge with respect to events at work is at variance with the history used by the attending physician in arriving at his opinion. Moreover, in relying on two medical opinions, the judge did not reconcile the doctors' differing diagnoses. Compare (Dec. 14, Employee Ex. 4 and Dep. 35.) As such, and in view of the hearing judge's recusal, we recommit this case to a new administrative judge for a hearing de novo on only the emotional injury component of the employee's claim. Due to the passage of time, the judge may wish to take additional medical evidence.

So ordered.

¹ General Laws c. 152, § 1(7A), provides, in pertinent part:

No mental or emotional disability arising principally out of a bona fide, personal action including a transfer, promotion, demotion, or termination except such action which is the

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Martine Carroll
Administrative Law Judge

Susan Maze Rothstein
Administrative Law Judge

Sara Holmes Wilson
Administrative Law Judge

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intentional infliction of emotional harm shall be deemed to be a personal injury within the meaning of this chapter.