COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 046563-96**

Lola Koonce	Employee
Bay State Bus Corporation	Employer
Eastern Casualty Ins. Co.	Insurer

REVIEWING BOARD DECISION
(Judges Maze-Rothstein, Carroll and Levine)

APPEARANCES
Lola Koonce, pro se at the hearing
Donald Williams, Esq., for the employee, on the brief
Kerry G. Nero, Esq., for the insurer

MAZE-ROTHSTEIN, J. The insurer appeals from a decision awarding the employee continuing G.L. c. 152, § 34, benefits, commencing on June 6, 1997, for an accepted industrial accident, which occurred on October 1, 1996. The insurer argues that the employee, pro se at hearing, failed to introduce expert medical evidence to support her claim of a causal relationship between her medical disability and the industrial accident. The insurer is correct. We reverse the award of § 34 incapacity benefits.

While driving a bus in the course of her employment on October 1, 1996, Lola Koonce veered to the right of the road to avoid an on coming truck and struck an electric light pole. (Dec. 3; Tr. 13.) The impact threw her from her seat against the cash box injuring her right shoulder and arm. Id. Ms. Koonce reported the incident and went to the emergency room. Over the next several months she was treated conservatively with pain medication, physical therapy and steroid injections. (Dec. 4.) The insurer made payments without prejudice from the injury date until June 5, 1997. Beyond that date it disputed the employee's entitlement to workers' compensation, so Ms. Koonce filed a claim for further benefits. The claim was denied at a §10A

conference, and the employee appealed to a full evidentiary hearing. (Dec. 2; Tr. 4.) See G.L. c. 152, § 8(1)(for payment without prejudice provisions).

Ms. Koonce underwent a § 11A medical examination on April 22, 1998. The physician could identify no definitive diagnosis for the employee's complaints. He opined that "her responses [were] sufficiently unusual so as to make precise determination of actual impairment difficult." (Dec. 4-5; Exhibit 1.) While the doctor detected some arthritis in her shoulder joint, he felt that it would not account for the degree of her symptoms. Id. Further, he noted nothing unusual in a February 1997 MRI. He instead recommended a second MRI in order to determine the viability of surgery stating: "Unless [the follow-up MRI] shows something striking that can be treated surgically with good expectation of positive response, I would advise against operating on her." Id. Finally, the doctor opined that the employee's current complaints were only temporally connected to the subject work-related motor vehicle accident. Id.

The judge allowed additional medical evidence due to the inadequacy of the § 11A report and complexity of the medical issues.[1] (Dec. 2.) The insurer introduced a report of its medical expert, who opined that the employee suffered from longstanding pre-existing shoulder joint degenerative changes, with right shoulder pain of uncertain etiology and possible mild tendinitis. The employee introduced a second MRI report which was performed at the suggestion of the § 11A physician and no other medical evidence. That September 4, 1998 report noted partial tearing and adjacent tendonitis within the right distal supraspinatus tendon. (Dec. 6.)

The judge credited the employee's complaints of pain in her right shoulder and her reported limitation of motion. (Dec. 7.) The judge found that the § 11A

[1] General Laws c. 152, § 11A, gives an impartial medical examiner's report the effect of "prima facie evidence [with regard to the medical issues] contained therein," and expressly prohibits the introduction of other medical testimony to meet it unless the judge finds that additional medical testimony is required due to the complexity of the medical issues involved or the inadequacy of the report. See O'Brien's Case, 424 Mass. 16 (1996); See also Mendez v. Foxboro Co., 9 Mass. Workers' Comp. Rep. 641, 646-648 (1995) (where § 11A(2)'s reference to "testimony" was interpreted as consistent with the requirements of G.L. c. 233, § 79G).

physician's recommendation concerning the September 1998 MRI was "extremely critical and dispositive in this matter." (Dec. 8.) The judge continued: "When I review the radiologist's report of this MRI in respect to the concerns of the impartial physician, I find that [the employee] does have significant shoulder problems and does have a significant impairment." (Dec. 8.) The judge concluded that the employee was temporarily and totally incapacitated, causally related to the accepted industrial accident of October 1, 1996. (Dec. 9.) He, therefore, ordered continuing § 34 benefits and § 30 medical benefits for the diagnosed condition, including shoulder surgery originally indicated as an option by her treating physician in 1997. (Dec. 9; Exhibit 1.)

The insurer appeals the decision, contending that the finding of continued causal relation between the employee's shoulder condition and the October 1996 industrial accident completely lacks support in the record evidence. We agree.

The judge attempted to use the MRI report to support his finding of causal relation between the employee's industrial accident and her medical disability. While the 1998 MRI report noted partial tearing and adjacent tendonitis within the right distal supraspinatus tendon, (Dec. 6), it is silent on causal relationship and the reasonableness and necessity of the treatment sought. The judge also relied heavily on the § 11A physician's recommendation that the employee undergo such MRI examination. (Dec. 8.) We fail to see the import such a recommendation has relative to the unanswered questions of causal relation and necessary and reasonable treatment.

Moreover, the § 11A doctor only went so far as to note a *temporal* relationship between the employee's reported symptoms and her industrial accident. A doctor's statement of temporal relationship is not an expert medical opinion as to causal relationship between an employment or event and a disabling medical condition. See Rotman v. National R.R. Passenger Corp., 41 Mass. App. Ct. 317, 318-319 (1996)(mere temporal coincidence between crash and plaintiff's vision loss was legally insufficient, by itself, as basis for expert causal relationship opinion connecting the two); Carter v. Shirley, 21 Mass. App. Ct. 503, 507 (1986). There was no other medical evidence introduced that provided the requisite opinion of continued causal

relationship. "[E]xpert testimony is needed to establish disability and causal relationship between a claimed incapacity and an industrial injury[,]" where medical issues are beyond the expertise of the lay person. Miller v. M.D.C., 11 Mass. Workers' Comp. Rep. 355, 357 (1997). The bare findings in the 1998 MRI report, absent an interpretive medical opinion of the diagnostic results, simply would not suffice to answer the disputed legal questions. The judge's conclusion that the employee's industrial accident continued to cause her shoulder problems and that therefore surgery was reasonable, necessary and related (Dec. 9), was without requisite evidentiary support. The conclusion, and the judge's order of benefits based thereon, cannot stand. Shand v. Lenox Hotel, 12 Mass. Workers' Comp. Rep. 365, 367-368 (1998).

The decision is reversed. Because this is an accepted case, the employee is not foreclosed from filing further claims. See G. L. c. 152, § 16.

So ordered.

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Susan Maze-Rothstein
Administrative Law Judge

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Martine Carroll
Administrative Law Judge

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Frederick E. Levine
Administrative Law Judge

Filed: August 17, 2000