COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 052609-97**

Luke Beckwith	Employee
Willowood of Pittsfield	Employer
Wausau Insurance Company	Insurer

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

APPEARANCES
John R. Cowie, Jr., Esq., for the employee
William F. Caples, Esq., for the insurer at hearing
Patricia M. Vachereau, Esq., for insurer on brief

CARROLL, J. The employee appeals the denial of his claim that his heart attack arose out of and in the course of his employment. In this physical injury case, where the exposure to stress came during his job and the § 11A doctor was unsure whether the heart episode began during or after his employment, we recommit the case for allowance of the employee's motion for additional medical evidence and for findings of fact regarding the employee's testimony alleging stressful incidents at work.

Luke Beckwith, a sixty year-old, licensed practical nurse for twenty-six years, was working for Willowood of Pittsfield when, on August 4, 1997, he was terminated from his job after a day or two of conflict about scheduling and issues regarding "floating" to a different floor. (Dec. 2.) He reports that he went home in a "state of shock" at his sudden termination. Id. Three or four days after his termination he had his first attack of mild chest pain, followed by more episodes over the next few days until August 29, 1997[1], when he was hospitalized for nine days. (Dec. 3.) Mr.

[1] Though the judge reports the employee's date of hospitalization as August 29, 1997, both the impartial physician, (Imp. Rep. 4), and the employee, (Tr. 30), report the date as August 28, 1997.

Beckwith had had triple bypass surgery in 1991, but was feeling no ill effects from his heart problems at the time of his hire by Willowood in 1995. (Dec. 2.)

The employee's claim for compensation was denied at conference from which the employee appealed to a hearing de novo. The administrative judge stated the primary issue at hearing to be "causal relationship in regards [sic] to initial liability." Id. The employee was examined, pursuant to § 11A, by Dr. Shantilal Kenia on September 17, 1998. In his October 30, 1998 report, Dr. Kenia was uncertain as to whether the heart episode began during or after his employment with Willowood: "Whether the event which happened on August 28, 1997, when [the employee] presented to Berkshire Medical Center Emergency Room was related to his being let go from his job and the stress associated with it, I am not quite certain about." (Imp. Rep., 4.)

The employee filed a motion requesting that additional medical evidence be allowed because the impartial medical report was inadequate as a matter of law and the medical issues were complex. (Motion By the Employee for a Determination that the Impartial Medical Report Is Inadequate, dated December 12, 1998.) Although the administrative judge recognized the doctor's uncertainty regarding causation,[2] he deferred ruling on the motion until after the deposition of Dr. Kenia. (Tr. 110.) Dr. Kenia was unable at deposition to offer an opinion on causal relationship:

> Q. Now, Doctor, with regard to the actual causal relationship between his firing on August 4, 1997, and the heart attack that occurred on August

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2 Judge: I mean, as I say, having read the report, I'm a little concerned that he seems to waver a little –

Mr. Cowie: Right. That's what I am concerned about, judge.

Judge: -- on the causation. ... (Tr. 108.)

Judge: All right. Well, I'll do it the way I always do it. As it sits now, I would find it complex and open it up. If somebody wants to go depose I'll withhold that until after the deposition is taken. (Tr. 110.)

(Emphasis supplied.)

28, 1997 is it fair to state that in order for the two to be connected with a reasonable degree of medical certainty, you would need bridge symptoms during that period of time?

A. No.

Q. No. Okay. Can you –

A. I am surprised. I was reading this after four months, how good this is, purposely kept in limbo, only we cannot say that. We don't know whether a person has to have symptoms preceding to establish the cause and effect of emotional stress that could cause [a] heart attack.

Q. So is it your statement, then, that within a reasonable degree of medical certainty you're uncertain whether --

A. Yes.

Q. -- the events of August 4, 1997 were the cause of his August 28, 1997 --

A. Right.

Q. -- heart attack?

A. Right.

Q. Okay. And what's the basis for that?

A. The basis for that is we know that persons -- Mr. Beckwith has a history of coronary artery disease. We know he has risk factors for heart disease. We know he has undergone multiple vessel bypass surgery. All of this predisposes to have subsequent events with stress or without stress.

Now, in a situation where he was, in two weeks prior to his episode happening, what he went through, his job situation certainly added some stress to that situation, like it or not. He was trying to avoid the stressful situation by not working on that unit.

The next day he was fired which potentially, is a stressful situation in the average person's life. How he handled it subsequently for three weeks, at least that we know of, he did not have any symptoms of angina during that three week time period. But whether that slowly contributed to a person

> having an acute episode -- a patient can be having no angina and come out with a sudden episode with a myocardial infarction.
>
> So I think whether the stress precipitated that event or whether this was to happen without stress, that's where the gray area comes in. And I don't know whether I can point to that, gee, this is direct cause and effect. It could be it. Could not be.

(Dep. 16-18). (Emphasis supplied.)

The employee renewed his § 11A motion for allowance of additional medical evidence due to inadequacy of the impartial examiner's opinions and the complexity of the medical issues. (Letter from employee counsel to the administrative judge dated March 1, 1999.) The judge denied the employee's motion. (Letter from the administrative judge to employee counsel dated June 1, 1999.) A decision was issued on August 26, 1999, denying the employee's claim. In it, the judge noted that Mr. Beckwith said that "until the episode that led to his firing he felt no abnormal stress in his job," (Dec. 3), and that the employee had reported "no undue stress up to the time of his termination." (Dec. 4.) The judge concluded that:

> [I]t was more the uncertainties and second-guessing as to the reasons surrounding the termination rather than the termination itself that led to his heart episodes. This is reinforced by the fact that he did not have any signs of chest pain for three days, and then after only several phone calls his wife refers to as 'upsetting' and his own realization of the financial ramifications of his termination.

Id. The judge relied on Larocque's Case, 31 Mass. App. Ct. 657 (1991), for the proposition that "[g]enerally termination of employment extinguishes an employer's liability for an injury to an employee which occurs after discharge." (Dec. 3-4, citing Larocque's Case, supra at 659.) There, the only medical evidence was that the employee's fatal heart attack was causally related to the stress brought on by a telephone call from his employer over two weeks after the employee's termination. Id. at 657-658.

The employee appeals, alleging that the judge erred as a matter of law by refusing to allow additional medical evidence. We agree. Where the § 11A examiner could not form an opinion on whether there was a causal relationship between the allegedly stressful events at work culminating in the employee's termination and his heart attack, the requirements of § 11A (2)(i-iii)[3] are not satisfied. Safford v. Worcester Hous. Auth., 10 Mass. Workers' Comp. Rep. 339, 342 (1996). Failure to allow additional medical evidence effectively denied the employee any meaningful opportunity to be heard on the determinative issue of causation. Id. The employee's motion for additional medical evidence should have been allowed as a matter of law. Brown v. Star Market, 12 Mass. Workers' Comp. Rep. 282, 284 (1998); Stevens v. Northeastern University, 11 Mass. Workers' Comp. Rep. 167, 173. See also O'Brien's Case, 424 Mass. 16, 22-23 (1997)("Certainly a decision by the administrative judge to foreclose further medical testimony where such testimony is necessary to present fairly the medical issues would represent grounds either for reversal or recommittal").

We note another error in the judge's decision. It is well-settled that the "medical opinion on which causality is to be based must be one that matches the facts as found by the administrative judge." Mendez v. The Foxboro Co., 9 Mass. Workers' Comp. Rep. 641, 648 (1995), citing Scheffler v. Sentry Ins., 7 Mass. Workers' Comp. Rep. 219, 226 (1993), aff'd Scheffler's Case, 419 Mass. 251 (1994). Here, although the judge made findings that the events after termination were stressful, he failed to make findings as to whether he credited the employee's testimony regarding the events surrounding his

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[3] G.L. c. 152, § 11A(2), as amended by St. 1991, c.398, § 30, provides, in pertinent part:

> The report of the impartial medical examiner shall, where feasible, contain a determination of the following: (i) whether or not a disability exists, (ii) whether or not any such disability is total or partial and permanent or temporary in nature, and (iii) whether or not, within a reasonable degree of medical certainty any such disability has as its major or predominant contributing cause a personal injury arising out of and in the course of the employee's employment. Such report shall also indicate the examiner's opinion as to whether or not a medical end result has been reached and what permanent impairments or losses of function have been discovered, if any.

termination and the stress he says he felt at that time.[4] Instead, the judge merely recited the employee's testimony that he "reports he went home in a state of shock," (Dec. 2); "says that until the episode that led to his firing he felt no abnormal stress in his job," (Dec. 3); and "reports no undue stress up to the time of his termination, and in fact relates a relatively benign, if abrupt, meeting that led to the actual termination." (Dec. 4.)[5] Mere recitations of testimony, without findings as to what parts the judge finds credible or persuasive, do not constitute adequate subsidiary findings of fact.[6] Evers v. City of Boston, 11 Mass. Workers' Comp. Rep. 636, 638, citing Messsersmith's Case, 340 Mass. 117, 119 (1959). Without clear findings on all issues in controversy, the decision on each, and a brief statement of the grounds for each such decision, the reviewing board cannot perform its proper appellate function. Praetz v. Factory Mut. Eng'g & Research, 7 Mass. Workers' Comp. Rep. 45, 47 (1993); Tejada v. M.B.T.A., 10 Mass. Workers' Comp. Rep. 482, 484 (1995).

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4 When asked how he felt physically when he was terminated, the employee testified that:

> "I was apprehensive. I was totally in shock. I was in total disbelief that they would fire me for refusing to float to another unit. My stomach was churning. I just felt lousy, in general. It was quite a shock."

(Tr. 28.)

5 Moreover, the judge's statements that the employee "reports no undue stress" and "relates a relatively benign . . . meeting" may be mischaracterizations of the employee's testimony given the specifics of the employee's testimony.

6 The judge did find that it was "more the uncertainties and second guessing as to the reasons surrounding the termination, rather than the termination itself, that led to his heart episodes." (Dec. 4.) (Emphasis added.) Even if properly supported by medical evidence, this finding does not address the crucial question of whether the events at work contributed to the employee's heart attack. We note that Larocque's Case, supra, in which the only medical opinion was that the heart attack was caused by a telephone call over two weeks after the employee's termination, may or may not be applicable depending on the medical causation opinion adopted by the judge after the allowance of additional medical evidence.

Therefore, we reverse the judge's denial of the employee's claim, and recommit the case for the judge to consider additional medical evidence and to make further findings regarding the employee's testimony that the events at work were stressful.[7]

So ordered.

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Martine Carroll
Administrative Law Judge

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Frederick E. Levine
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge

Filed: **December 1, 2000**
MC/jdm

[7] The parties do not argue that the fourth sentence of § 1(7A) applies. ("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.") In any case, the employee could well have had a work-related prior heart condition, (see Tr. 44, Dec. 1, Impartial Dep. 17), in which case any contribution of the present work events to the heart problems makes the employee's condition compensable. L. Locke, Workmen's Compensation §§ 173, 190 (2d ed. 1981); see also Robles v. Riverside Mgmt., Inc., 10 Mass. Workers' Comp. Rep. 191, 195 (1995); Reynolds v. Shaw's Supermarkets, 12 Mass Workers' Comp. Rep. 125, 128 (1998); Resca v. Massachusetts General Hospital, 11 Mass. Workers' Comp. Rep. 505, 507 (1997). On recommittal, the parties may wish to address the matter.

The employee does raise the possibility of the applicability of that part of § 1(7A) which excludes from the definition of personal injuries, mental or emotional disabilities arising principally out of bona fide personnel actions. However, as the insurer points out, we have consistently held that this exclusion does not apply to physical impairments. Brooks v. Rural Hous. Improvement, Inc., 13 Mass. Workers' Comp. Rep. 422, 425 (1999).