COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 026522-17**

Margaret Green	Employee
City of Boston	Employer
City of Boston	Self-Insurer

REVIEWING BOARD DECISION
(Judges O'Leary, Koziol and Fabiszewski)

The case was heard by Administrative Judge Spinale.

APPEARANCES
Seth J. Elin, Esq., for the employee
Kerry G. Nero, Esq., for the self-insurer

O'LEARY, J. The self-insurer appeals from the administrative judge's decision awarding ongoing § 34A permanent and total incapacity benefits as well as §§ 13 and 30 medical benefits. We vacate the hearing decision, reinstate the § 10A conference order, and recommit for further findings.

The employee, Margaret Green, who was forty-four (44) years old at the time of hearing, worked as an operations assistant/counselor for the City of Boston at the Southampton Street Homeless Shelter, for four years prior to her industrial accident. Her job required her to perform various duties at the shelter. She worked in the search area of the shelter, searching clients as they came into the shelter and scanning belongings. She worked at the desk area, cleaning the area, logging in clients, assigning beds and handing out linens. She worked in the dorm area, checking on clients and, at times, assisting clients with making their beds. (Dec. 5.) The employee also worked in the cafeteria, passing out food and cleaning up tables and trays, and in the mailroom, sorting and passing out mail. (Dec. 6). On October 12, 2017, the employee was searching a client when the client grabbed her right hand, squeezed, twisted, and pulled it. The employee immediately felt shooting pain from her shoulder to her wrist. (Dec. 6, Tr. 36). The employee presented to the Boston Medical Center (BMC) Emergency Room for initial

treatment where she underwent x-rays and was released with pain medications. She then came under the care of James T. McGlowan, M.D., in 2018. "During this initial time, the Employee's symptoms were sharp pains in the right shoulder and numbness/tingling and swelling in her right hand." (Dec. 6.) Following an MRI of the shoulder, Dr. McGlowan administered a shot in the shoulder which provided no relief. Dr. McGlowan requested a second MRI and then recommended surgery, which he performed on July 22, 2019. The surgery did not provide any symptom relief. As a result, the employee underwent a third MRI. Dr. McGlowan then recommended and performed a second shoulder surgery on September 14, 2020, which still did not alleviate the employee's symptoms. As a result, Dr. McGlowan recommended a carpal tunnel open release to the employee's right wrist which he performed on June 13, 2022. However, the carpal tunnel surgery failed to alleviate the Employee's symptoms. At the time of Hearing, the employee's symptoms were sharp constant pain in her shoulder with shooting pains going down into her wrist and fingers with numbness and tingling. (Dec. 6-7.)

The employee's claim for compensation was the subject of a § 10A conference on April 22, 2022, which resulted in an award of § 34A permanent and total incapacity benefits at the rate of $553.84 per week, from April 22, 2022, to December 31, 2022, based on an average weekly wage of $830.76, followed by ongoing § 35 benefits at the rate of $373.84, based on an earning capacity of $207.69 per week, and medical benefits pursuant to §§ 13 and 30. Both parties filed timely appeals. (Dec. 2.) Pursuant to §11A, the employee was examined by impartial examiner Hillel V. Skoff, M.D., on June 21, 2022. Although the report of Dr. Skoff was considered adequate, the administrative judge allowed submission of additional medical records due to the complexity of medical conditions involved. (Dec. 7.) Prior to the hearing, the employee filed a motion to join a claim for carpal tunnel syndrome due to repetitive use injuries, including a claim for carpal tunnel surgery, which was allowed. The matter came before the administrative judge for a hearing *de novo* on March 3, 2023. The original date set for the close of the record was May 5, 2023, but this was moved to April 28, 2023, with the agreement of the

parties. The deadlines were revised to include any and all medical records to be received on or before April 14, 2023, and written closing arguments were due on or before April 28, 2023. On April 14, 2023, the self-insurer filed a Motion to Allow Additional Testimony and the deadlines were paused pending the motion. The parties requested a Motion Session to be held on the record, which was done on May 19, 2023. (Dec. 2-3.) The judge's findings on that motion were not included in the hearing decision, but on May 23, 2023, the judge denied the motion. Rizzo v. M.B.T.A., 16 Mass. Workers' Comp. Rep. 160, 161 n.3(2002) (permissible to take judicial notice of board file). The deadline for filing written closing arguments was set for June 16, 2023, and the record closed as of that date. (Dec. 3.)

At the hearing, the employee claimed § 34A benefits from March 15, 2021, to date and continuing, and §§ 13 and 30 medical benefits. The insurer denied liability, disability and extent of incapacity, causal relationship to industrial injury, entitlement to § 36, entitlement to §§ 13 and 30 medical benefits, proper notice, proper claim, statute of limitations, denied disability and extent, and causal relationship for carpal tunnel surgery. (Dec. 3-4.) Witnesses at the hearing included the employee, Dennis Alves for the employer, and Ann Marie Latella, a vocational expert. (Dec. 1.) The parties also submitted additional medical evidence. (Dec. 1-2, Exs. 5-6.)

After considering testimony and examining the exhibits, the judge awarded the employee § 34A benefits from March 15, 2021, to date and continuing, plus reasonable and related medical expenses to the employee's right upper extremity pursuant to §§ 13 and 30, specifically the right shoulder and wrist. (Dec. 15.)

The self-insurer raises several issues on appeal, arguing the judge's decision is arbitrary, capricious and contrary to law based on his failure to address the self-insurer's statute of limitations argument, and for using the terminology "work condition" in establishing causation for the employee's carpal tunnel condition.

The administrative judge listed as an issue, (Dec. 3.), but did not address, the self-insurer's argument on the statute of limitations, which was raised multiple times. (See

self-insurer's Opposition to Join Injury pp. 2-3; Ex. 4; Tr. p. 7, 22-24 and p. 8, 1-2.). Accordingly, the decision fails to comport with the minimum requirements of General Laws, c. 152, § 11B, which require the judge not only to set forth the issues in controversy, but also to render a decision on each issue, and provide a brief statement of the grounds in support of each decision. The administrative judge's failure to address the self-insurer's argument that the statute of limitations bars the claim, does not provide the reviewing board a sufficient basis upon which to consider an appeal.

With respect to the use of the term "work condition" as a mechanism of injury, the self-insurer argues that it is difficult to assess whether the administrative judge finds the carpal tunnel was caused by the specific pulling incident on October 12, 2017, the newly joined repetitive work claim, or some other mechanism of injury. The self-insurer argues that these findings are arbitrary and capricious and require recommittal. We agree.

The judge's decision fails to make sufficient findings of fact on this issue. The judge ambiguously states in a footnote:

> Dr. McGlowan's May 21, 2021 opinion causally relates the carpal tunnel to her work condition and Dr. McGlowan's March 17, 2023 opinion indicates the Employee developed carpal tunnel and a major cause was the employee's repetitive activities at work. I have adopted the May 21, 2021 opinion of Dr. McGlowan.

(Dec. 13 n. 15.)

We note the judge also adopted Dr. McGlowan's September 10, 2021, opinion that the employee "has continued pain and numbness in her right wrist; patient warrants a right carpal tunnel release due to her work injury," (Dec.10). Dr. McGlowan's notes through that date only specifically mention the work injury consisting of the pulling incident sustained October 12, 2017. (Ex. 5.) While the judge did not adopt Dr. McGlowan's March 17, 2023 opinion, he found, under the heading "Liability:"

> I find the Employee sustained a compensable injury to her right major upper extremity when she was searching a client and the client grabbed her right hand an squeezed, twisted, and pulled it. *In addition, I find the Employee sustained compensable injuries to her right wrist in her position as an operations assistant/counselor.*

(Dec. 12.)(Emphasis added.)

Based on the language used by the administrative judge, it is unclear whether he attributed the employee's right wrist injury to the October 12, 2017 incident or to repetitive use of her right extremity. It is the duty of an administrative judge to address the issues in a case in a manner enabling this board to determine with reasonable certainty whether correct rules of law have been applied to facts that could be properly found. See Moore's Case, 330 Mass. 1, 6 (1953) and Anderson's Case, 373 Mass. 813, 817-818 (1977), citing DiClavio's Case, 293 Mass. 259, 261-262 (1936).

For the foregoing reasons, the decision is vacated and the case is recommitted to the administrative judge for further findings and proceedings consistent with this opinion. Pending the resolution of the issues following recommittal, the conference order is reinstated. See Lafleur v. Department of Corrections, 28 Mass. Workers' Comp. Rep. 179, 192 (2014).

So ordered.

Kevin B. O'Leary
Administrative Law Judge

Catherine Watson Koziol
Administrative Law Judge

Karen S. Fabiszewski
Administrative Law Judge

Filed: ***January 22, 2024***