COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS	**BOARD NOS. 071803-91 020079-00**
Maria Mantello	Employee
C & K Components, Inc.	Employer
Liberty Mutual Insurance Company	Insurer
Pacific Indemnity Insurance Company	Insurer

REVIEWING BOARD DECISION
(Judges Wilson, Maze-Rothstein and Costigan)

APPEARANCES
Robert F. Gabriele, Esq., for the employee
Paul M. Moretti, Esq., for Pacific Indemnity on appeal
Thomas P. O'Reilly, Esq., for Pacific Indemnity at hearing
Jean Shea Budrow, Esq., for Liberty Mutual

WILSON, J. The third insurer, Pacific Indemnity, in this successive insurer case appeals from a decision assessing liability against it for the employee's claim that her de Quervain's tenosynovitis was causally related to her work as a small parts sorter. Because the judge mischaracterized the G. L. c. 152, § 11A, impartial physician's causal relationship opinion, and relied upon that mischaracterization in reaching his conclusion, we reverse the decision.

In 1991, Maria Mantello developed carpal tunnel syndrome while working as an assembler for the employer. The insurer at that time, Liberty Mutual, accepted the injury. The employee underwent surgery for that condition in April 1992, and missed work for only two to three months after that procedure. The employee, however, continued to suffer pain in her hands. In 1995, the employer transferred her to a lighter duty job filling trays with switches, and she worked a reduced schedule of twenty-five hours per week. This job could be performed without wrist movement, but still entailed much finger movement. While the job was easier on her hands and wrists, her hands still hurt. (Dec. 71, 73.)

On January 21, 1997, the employee fell at work and suffered a partial tear of the right ulnar collateral ligament. The insurer at that time, AIM Mutual, accepted the injury.

The employee continued working with a splint on her right hand,[1] without an increase in pain. The employee's hands continued to hurt for the next three years. On January 11, 2000, she left work due to severe pain in her right hand, not to return. (Dec. 71, 73-74.)

The employee claimed workers' compensation benefits against Liberty Mutual, AIM Mutual and Pacific Indemnity, the insurer on the risk when the employee left work in 2000. Liability against AIM Mutual, the insurer for the 1997 fall injury, was redeemed by lump sum agreement, and that insurer was dropped from the litigation. (Dec. 69-70, 72.) As a result of the §10A conference, Liberty Mutual was ordered to pay benefits for temporary, total incapacity, ongoing from January 11, 2000. Liberty Mutual appealed to a full evidentiary hearing, and the employee underwent a § 11A medical examination on January 29, 2001. The judge allowed the parties to introduce their own medical evidence for the limited purpose of addressing the employee's medical condition for the period of incapacity claimed prior to the most recent impartial examination. (Dec. 71-72; Tr. 4.)

The impartial physician offered the following diagnoses and causal relationship opinions: 1) status post right carpal tunnel release with minor residual symptomatology consistent with median neuritis, causally related to the 1991 work injury; 2) laxity of the right ulnar collateral ligament status post tear, causally related to the 1997 fall at work; 3) right de Quervain's tenosynovitis, causally related to the employee's use of her right hand while wearing a splint on that hand post-1997 injury;[2] 4) left trigger thumb originating in 1992, without a causal relationship opinion; and 5) left carpal tunnel syndrome, originating in 1991, without a causal relationship opinion. The impartial physician restricted the employee from using her upper extremities for repetitive tasks, and from lifting over five pounds. (Dec. 75-76.) The parties offered medical reports of their own experts, as well as a 1997 report of the same impartial physician, for the limited purpose

[1] According to the impartial physician's deposition testimony, a "thumb spica splint" was worn to address a joint instability that results from a partial tear of the ligament, which "helps stabilize the bony joint between the base of the thumb where it attaches to the hand." (Dep. of Dr. Bryan 11-12.)

[2] This causal relationship opinion is the subject of the third insurer's appeal.

of addressing the employee's medical disability prior to the date of the impartial examination. (Dep. 77-79; Tr. 4.)

The judge concluded that the third insurer, Pacific Indemnity, was liable for the employee's ongoing incapacity, which was due to her de Quervain's syndrome. The judge adopted the impartial physician's opinion, quoting the doctor's testimony in part: "[T]he continued use of her hands with the splint on, . . . contributed significantly to the development of the de Quervain's Syndrome."[3] (Dec. 75, quoting Dep. 26, internal quotes omitted.) As the most recent insurer on the risk at the time of any work contribution to disability bears the responsibility for payment of all compensation, see Fitzpatrick's Case, 331 Mass. 298, 300 (1954), the judge assigned liability to Pacific Indemnity in the present case:

> I find the employee is totally disabled due to her numerous work injuries. The most recent injury which bears a causal relationship to her total disability is her de Quervain's tenosynovitis which she suffered beginning in 1999 while Pacific Indemnity Insurance Company was on the risk. The de Quervain's tenosynovitis was caused by the repetitive nature of her work and by the splint which she wore as a result of her 1997 ligament tear injury. . . . As the de Quervain's tenosynovitis is related to the splint used by the employee in response to her 1997 fall at work while AIM Mutual was on the risk, and is related to the repetitive motion injury first noticed in 1999, when Pacific Indemnity Insurance Company was on the risk, Pacific Indemnity Insurance Company must assume all liability in this case.

(Dec. 83-84.)

Pacific Indemnity argues on appeal that the judge mischaracterized the impartial physician's opinion in reaching his conclusion that the employee's de Quervain's syndrome was causally related to her work in 1999, when the condition arose. We agree. Although the impartial physician did causally relate the de Quervain's syndrome to the work activity at one fleeting point in the deposition, (Dep. 31), the impartial physician's opinion in its entirety cannot be read to support the result reached by the judge.

[3] The ellipsis is the judge's, and it stands in the place of the vital additional information, "particularly if they [the use of her thumb against the splint] were at *cross-purposes*." (Dep. 26, emphasis added; Dep. 16-17.)

A judge may adopt an expert medical opinion in part, but he may not take that part out of context and mischaracterize the opinion as a whole. Hovey v. Shaw Industries, Inc., 12 Mass. Workers' Comp. Rep. 442, 443 (1998). This is exactly what the judge has done in the present case. The judge found that the impartial physician, Dr. Bryan, opined the employee likely developed the disease as the result of a significant work contribution, i.e., the continued use of her hand at work while wearing a splint. (Dec. 75.) The judge specifically cites to the doctor's deposition testimony for that proposition, at pages 15 and 26. These citations, however, lack the context of the doctor's testimony surrounding the excerpts used by the judge, which testimony contemplates the critical causal component that is the *sine qua non* in the doctor's opinion – the employee's use of her hand in a manner that was at cross-purposes with that splint.

Dr. Bryan testified thusly at Dep. 14-15: "If [an individual is] attempting to use the thumb with the splint on, in other words, trying to move the joint where the splint is trying to prevent the motion, then that would be correct, [i.e. de Quervain's syndrome could develop]. *Wearing the splint without forceful action or repetitive motion, which the splint is trying to prevent, would not produce de Quervain's."* (Emphasis added.) Likewise, the doctor's opinion was, "I think the continued use of her hands, with the splint on, *particularly if they were at cross purposes,* contributed significantly to the development of the de Quervain's syndrome." (Dep. 26, emphasis added.) Dr. Bryan further stated that the workplace was only a *possible* source of the necessary causal component – repetitive activity at cross-purposes with the splint – and that the "workplace use of her hands *could* have contributed" to her condition. (Dec. 26, 28, emphasis added.) In that vein, Dr. Bryan also stated: "Without knowing the other variables about rapidity with which she would need to do [her job] or the weight or the stacking of the trays afterwards or *whether or not she was in fact impinging the tendons against the splint in so doing the work,* I cannot give you an opinion to a reasonable degree of certainty whether or not those motions resulted in a worsening."[4] (Dep. 25,

[4] No further motion as to either inadequacy or complexity was filed by the employee subsequent to the deposition testimony.

emphasis added.) Later, the doctor affirmatively opined that the workplace activities as described to him and seen on a videotape, (Exh. 8), were, in fact, *not* at cross-purposes with the splint. (Dep. 38.) Finally, we note that the doctor *never* opined that the workplace activities were actually at cross-purposes with the splint.

Thus, the excerpts of Dr. Bryan's deposition testimony that the judge uses for the proposition that his opinion supports causal relationship are misstatements by omission, as the insurer correctly argues. Moreover, even where Dr. Bryan testified that work, in part, was a probable contributor to the de Quervain's syndrome, he did not refer to working at cross-purposes to the splint.[5] (Dep. 31.) It simply does not stand up when the critical cross-purposes evidence is placed in the analysis. (Dep. 25, 38.) The doctor's opinion as a whole cannot be read to support the employee's contention of causal relationship between the workplace and the development of the de Quervain's syndrome.[6]

Accordingly, as the adopted medical evidence does not support the judge's finding that the claimed January 2000 work injury caused the employee's medical disability, see Look's Case, 345 Mass. 112, 115-116 (1962), we reverse the decision.[7]

So ordered.

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Sara Holmes Wilson
Administrative Law Judge

[5] We note that the judge never referred to this testimony in his decision, even though it was the only piece that even arguably supported his conclusion.

[6] Because of our disposition on the issue of causal relationship, we need not reach the insurer's other argument, that the employee's work activities were common and necessary to all or a great many occupations, and were therefore not compensable under Zerofski's Case, 385 Mass. 590, 594-595 (1982).

[7] Although the focus in the instant case has been on the most recent condition, de Quervain's tenosynovitis, which resulted in the employee's leaving work in January 2000, there is medical evidence that the carpal tunnel condition, for which Liberty Mutual accepted liability, continues to cause some unspecified degree of residual symptoms. (Dec. 75-76; Impartial Report, Ex. 3 at 4.) It is open to the employee to pursue a claim against Liberty Mutual if the employee has medical evidence that the carpal tunnel condition, standing alone, is physically disabling and causally related to work.

Filed: **April 28, 2003**

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Susan Maze-Rothstein
Administrative Law Judge

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Patricia A. Costigan
Administrative Law Judge