

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 54967-99

Mark A. Cuddy
Soundtrack Recording Studios
Eastern Casualty Insurance Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION
(Judges McCarthy, Costigan and Carroll)

APPEARANCES
Melvin Foster, Esq., for the employee
John A. Smillie, Esq., for the insurer

MCCARTHY, J. The insurer appeals from an administrative judge's decision awarding the employee weekly incapacity benefits for an emotional injury under G. L. c. 152, § 1(7A).¹ The employee appeals the judge's modification of weekly incapacity benefits from total to partial as of the date of the impartial psychiatric examination. Because we agree with the insurer that the exclusive medical evidence of the § 11A impartial psychiatrist does not support the award of benefits, for the reasons that follow, we reverse the decision, and summarily dismiss the employee's appeal.

Mr. Cuddy, the employee, worked for the employer as an equipment purchaser and project manager from 1985 until 1999. He is a Vietnam veteran, who received a serious leg wound during his tour of duty. (Dec. 3.) Mr. Cuddy suffers from Post-Traumatic Stress Disorder (PTSD) as a result of his experiences in Vietnam and also has

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

Personal injuries shall include mental or emotional disabilities only where the predominant contributing cause of such disability is an event or series of events occurring within any employment. . . . No mental or emotional disability arising principally out of a bona fide, personnel action including a transfer, promotion, demotion or termination except such action which is the intentional infliction of emotional harm shall be deemed to be a personal injury within the meaning of this chapter.

underlying Attention Deficit Hyperactivity Disorder (ADHD), which began in childhood and continued into his adulthood. (Impartial Report, Employee Ex. 4.)

From 1997 until he left work in 1999, the employee suffered abusive treatment at the hands of his manager, Rob Cavicchio, which the judge found to be the intentional infliction of emotional harm. (Dec. 7.) These incidents at work – recounted in the decision at pages 4-6 – therefore constituted “a series of events,” such that they could be considered as contributing causes within the meaning of § 1(7A), without concern for the bona fide personnel action exception. See supra, n.1. There is no error in these findings, and the insurer’s argument alleging such is without merit.

The trouble with the decision arises with the medical evidence. As noted, the employee suffers from ADHD & PTSD, both of which pre-existed his emotional trauma at the workplace. The impartial psychiatrist, Dr. Michael Braverman, opined that the employee met the criteria for the diagnosis of Major Depression causally related to the harassment, humiliation and mistreatment at work. Dr. Braverman then rendered the following opinion in his report, under the heading of “Disability:”

From a psychiatric point of view, the patient presents today as totally disabled due to the combination of all his symptoms and conditions, as far as I can tell. That is, his PTSD, ADHD and Major Depression all contribute to significant signs and symptoms of depression, anxiety, irritability, emotional lability, being emotionally overwhelmed, sleep and appetite disturbance, social withdrawal, difficulties concentrating, difficulties dealing with stress, and difficulties maintaining consistent functioning.

The doctor continued under the heading of “Causality:”

It is difficult for me, given the complexity of these diagnoses, to definitively assess the causality of these various conditions. The ADHD is something that the patient was probably born with, although it can be exacerbated by stress. The PTSD was precipitated by his experiences in Vietnam, although the VA records indicate that some of his PTSD symptoms were exacerbated by his experiences at work. As far as I can tell, the Major Depression was directly precipitated by the experiences that he reports occurring at work. That is, the harassment and mistreatment. That is to say, a patient who has a background of PTSD and ADHD and injuries to his leg [from Vietnam], attempted to return to work, where he reported being mistreated and harassed. This resulted in the development of

significant symptoms of depression and anxiety, possibly worsening of his PTSD, and this was also complicated by the ADHD.

(Impartial Report, Employee Ex. 4.)

The insurer argues that the impartial psychiatrist's opinion is inadequate to support the judge's award of benefits. We agree. Dr. Braverman's opinion that the employee was totally disabled was explicitly based on the *combination* of all his conditions, the PTSD, ADHD and major depression. To the extent that the major depression was a direct result of the work events alone, Dr. Braverman's opinion would satisfy the § 1(7A) "predominant" causation standard insofar as that diagnosis was involved. However, that does not yield the employee benefits, because the doctor does not isolate the major depression in his opinion. Nor does Dr. Braverman's opinion suffice to causally relate the other conditions under the required § 1(7A) "predominant" standard. The PTSD was merely exacerbated by the work experiences; the ADHD "can be exacerbated by stress," according to Dr. Braverman. These are not "predominant contributing cause" opinions of work-relatedness by a long shot.

This being the case, the law dictates that the judge's award of benefits may not stand:

Sections 34 and 35 provide weekly benefits for incapacity for work *resulting from the injury*. Thus, an administrative judge may only rely on symptoms and limitations caused by the work injury in assessing the nature and extent of incapacity. See Hummers' Case, 317 Mass. 617, 620, 623 (1945); Patient v. Harrington & Richardson, 9 Mass. Workers' Comp. Rep. 679, 682-683 (1995). Here, the judge adopted the impartial examiner's opinion [on disability], which was based at least in part on the non-work-related condition[s of ADHD and PTSD]. . . . To the extent that the impartial physician lumped together all [the employee's] medical disabilities – both causally related and not – in rendering his opinion about work restriction, the judge erred in relying on that opinion in his incapacity analysis. Anderson v. Norwood Hospital, 12 Mass. Workers' Comp. Rep. 388, 389 (1998).

Rodriguez v. Western Staff Services, 13 Mass. Workers' Comp. Rep. 91, 93-94 (1999)(emphasis in original). See Resendes v. Meredith Home Fashions, 17 Mass.

Mark A. Cuddy
Board No. 054967-99

Workers' Comp. Rep. 490 (2003)(incapacity award based on work-related back injury and non-work-related leukemia in remission erroneous).

Dr. Braverman's § 11A medical report is the only expert medical evidence in the record before us for review and neither party sought to depose him. Dr. Braverman's report fails to establish that events at work, found by the judge to be the intentional infliction of emotional harm, were the predominant contributing cause of the employee's incapacity. Because the employee has not met the heightened standard for establishing medical causality, the decision must be reversed and the claim denied. Joyce v. City of Westfield, 15 Mass. Workers' Comp. Rep. 104 (2001).

So ordered.

William A. McCarthy
Administrative Law Judge

Patricia A. Costigan
Administrative Law Judge

CARROLL, J., concurring in part and dissenting in part I agree with the majority that the opinion of Dr. Braverman could not support the judge's incapacity award for the reasons stated above. However, Dr. Braverman did causally relate the employee's Major Depression directly to the incidents at the workplace. The employee had no pre-existing depressive illness. I submit that this was a sufficient foundation for the judge's finding of liability for the Major Depression diagnosis: that the work incidents were the predominant contributing cause of the employee's depression. Contrast Brewer v. Bordon Trimount, Inc., 17 Mass. Workers' Comp. Rep. 97, 100 (2003)(doctor's statement of direct causal relationship insufficient to satisfy "predominant contributing cause" standard, "[w]here the employee comes to the workplace with such a pronounced, pre-existing substrate of emotional issues").

Mark A. Cuddy
Board No. 054967-99

In my view, therefore, the employee should be entitled to medical benefits² for treatment of the depressive disorder, and his counsel should be awarded a fee under § 13A(6).

Filed: **November 10, 2004**

Martine Carroll
Administrative Law Judge

² Although an argument can be made that the “predominant contributing cause” standard applies only to “mental or emotional *disabilities*” G. L. c. 152, § 1(7A), and that medical treatment for mental injuries is assessed under a simple causation standard, this argument has not been raised here and no reviewing board decision has addressed this issue to date. Contrast, within the same section of c. 152, “a major” causation standard for combination injuries applies to disability and *need for treatment*.