

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 023278-08

Michael Gannon
Suffolk County House of Corrections
City of Boston

Employee
Employer
Self-Insurer

REVIEWING BOARD DECISION
(Judges Levine, Horan and Fabricant)

The case was heard by Administrative Judge Novick.

APPEARANCES

Louis C. deBenedictis, Esq., for the employee at hearing
Martin J. Long, Esq., for the employee on appeal
Marion C. Grimes, Esq., for the self-insurer

LEVINE, J. The employee appeals from a decision issued by the administrative judge after the reviewing board recommitted the case for the judge to “make the credibility findings necessary to determine whether the employee is entitled to compensation benefits.” Gannon v. Suffolk County House of Corrections, 26 Mass. Workers’ Comp. Rep. 215 (2012). We affirm the decision.

The employee claimed an emotional injury allegedly caused by work related events. In her initial decision, the judge determined that the employee’s claim principally arose from a series of exempted bona fide personnel actions,¹ and she denied the claim. We vacated the decision because one incident -- the employee’s initial notification by a co-worker that the employee was the subject of a sexual

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.

harassment accusation -- was not a bona fide personnel action; as a result, the employee had made a prima facie showing of an emotional disability predominately caused by a work-related event. Gannon, *supra*, citing Payton v. Saint Gobain Norton Co., 21 Mass. Workers' Comp. Rep. 297, 310 (2007). As the self-insurer produced no medical evidence that the employee's emotional injury arose principally out of any bona fide personnel actions, as was its burden, the judge's conclusion "that the self-insurer had met its burden of producing evidence that the employee's emotional injury arose principally out of bona fide personnel actions was contrary to law." Gannon, *supra*. Accordingly, we vacated the decision and recommitted the case for the judge to make further findings on credibility, as she had not done so in the initial decision.

In her decision on recommitment, the judge made the following findings pertinent to the credibility issue:

While the employee has produced uncontroverted medical evidence that the events at work relating to the sexual harassment complaint are the only cause of his claimed disability, I am not persuaded by his testimony as to his symptoms, and do not credit his testimony that he was disabled as a result of these events, including being informed by co-workers about the harassment complaint and the denial of the use of sick and vacation pay, and so find.⁴

⁴I also note the first time the employee sought medical attention, or had a medical event such as high blood pressure, was when he returned to work and learned that he had been reassigned.

As I do not credit the employee's complaints of his symptoms and inability to work, I do not adopt the opinion of his treating medical experts as they are based on facts I do not find.

The employee raises several issues on appeal; one is dispositive.

The employee contends that the judge's above quoted findings on credibility are inadequate, warranting recommitment or reversal. The employee argues that the judge's credibility findings fail to articulate her reasoning process with sufficient detail to allow for review. We disagree.

Determination of the credibility of witnesses who testified before the administrative judge is reserved exclusively to that judge. Lettich's Case, 403 Mass.

389 (1988); Sweezey v. M.B.T.A., 5 Mass. Workers' Comp. Rep. 146, 147 (1991). Furthermore, "the judge is not required to explain why [s]he disbelieves a lay witness." Brade v. Lorenzo & Pitts, Inc., 10 Mass. Workers' Comp. Rep. 366, 368 (1996). "As the judge is not under any obligation to explain [her] credibility findings, the employee's argument is unavailing." Latino v. Beth Israel Deaconess Med. Ctr., 19 Mass. Workers' Comp. Rep. 88, 89 (2005), *aff'd*, single justice, 2005-J-179, Mass. App. Ct. (July 2, 2007).

Because the judge did not credit the employee's testimony as to his symptoms, she was warranted in not crediting the opinions of various doctors. "Since the conclusions of the [doctors] were based on the same facts the administrative judge discredited, the administrative judge declined, properly in our view, to adopt those conclusions." Brommage's Case, 75 Mass. App. Ct. 825, 828 (2009). Cf. McCominsky v. Lahey Clinic Med. Ctr., 8 Mass. Workers' Comp. Rep. 415, 418 (1994).

Accordingly, the decision is affirmed.

Frederick E. Levine
Administrative Law Judge

Mark D. Horan
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

Filed: **July 31, 2013**