COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 037688-20**

Michael LaFrance	Employee
Department of Correction - M.C.I. Shirley	Employer
Commonwealth of Massachusetts	Self-Insurer

REVIEWING BOARD DECISION
(Judges Fabricant, Koziol and Fabiszewski)

The case was heard by Administrative Judge Daniels.

APPEARANCES
Paul S. Danahy, Esq., for the employee
Patricia G. Noone, Esq., for the self-insurer

FABRICANT, J. The self-insurer appeals from the administrative judge's decision awarding maximum § 35 partial incapacity benefits from June 23, 2023, to the present and continuing,[1] with commensurate §§ 13 and 30 medical benefits. The assigned earning capacity of $300.00 is based upon a calculation made by the judge that limited the employee's work capability to just 20 hours per week. Although the evidence in this case is replete with support for the finding of partial disability, the medical evidence does not support the finding of a time limitation on the employee's activities as referenced in the judge's decision, and the judge provides no other subsidiary findings of fact supporting the reduction in hours. Therefore, for the reasons addressed below, we reverse the judge's finding limiting the employee's earning capacity to just 20 hours per week and recommit for further findings of fact.

The employee, Michael LaFrance, was, at the time of hearing, a 53 year-old graduate of Fitchburg State University with a bachelor's degree in economics. (Dec. 4.) From June 23, 2013, until his injury he was a corrections officer for the Commonwealth

[1] The judge awarded maximum § 35 benefits in the amount of $842.02, based upon a $300.00 weekly earning capacity and an average weekly wage of $1,871.16. (Dec. 28.)

of Massachusetts Department of Correction's prison in Shirley, Massachusetts, a facility with an inmate population of adult males. (Dec. 4; Ex. 3.) His duties as a corrections officer were to maintain security and control of the inmates, which required him to do rounds every half-hour to an hour, search cells, deliver products, and sometimes physically restrain inmates. (Dec. 4-5.)

On December 17, 2020, the employee was injured when he slipped and fell on ice. At that time, he was pulling a food cart with two other corrections officers when he fell and the cart rolled over his lower leg. (Dec. 3.) In his December 28, 2021, medical report, the § 11A impartial physician, R. Scott Cowen, M.D., opined that the resulting injury was a myofascial strain of the lumbar spine, along with an aggravation of an underlying degenerative disc condition identified on an MRI taken May 18, 2021. (Dec. 9; Ex. 1.)

The employee testified that he did not feel that he could physically perform certain physical aspects of his job, such as cell searches and the restraining of inmates. (Dec. 5; Tr. 24-26.) He noted that there are days he does not have the same abilities that he did the previous day, depending on how much he pushed himself on that prior day. (Dec. 5; Tr. 25.) However, he conceded that he felt he could have physically performed his job right after his last nerve ablation in March of 2023, which made him feel "like a different man." (Dec. 5; Tr. 27-29.) Although he didn't experience any numbness for a time after the nerve ablation procedure, he testified that in the months leading up to the hearing, the numbness returned to his back, eventually working its way down to the knee. (Dec. 8; Tr. 43.)

At the time of his testimony, the employee lived in his girlfriend's home where he tried to help with light cleaning and vacuuming, grocery shopping and gardening. (Dec. 7; Tr. 74-76.) He testified that he thought he could do a job where he could sit, stand and lay down as needed. (Dec. 7; Tr. 76-77.) His physical complaints at the time of hearing included pain in the lower back going down through his buttock, left hip, thigh and into his knee. Although the pain fluctuates, he estimated a typical day's pain level at about a 3-4 out of 10. (Dec. 8; Tr. 42-43.) Additionally, he testified his sleep is interrupted

several times a night to reposition his body, which, in turn, causes him to be tired during the day. He also claims to be able to sit or stand for just one half an hour at a time, and walk for only 30 to 40 minutes. Further, he requires breaks when driving for extended periods, and experiences pain when bending, twisting, reaching, crouching, crawling, kneeling or using stairs. (Dec. 8-9; Tr. 44-46.)

The judge's analysis and conclusions regarding the employee's medical condition and continuing disability are based upon the myriad medical reports in evidence,[2] specifically crediting the opinions of § 11A(2) impartial physician R. Scott Cowan, M.D., and Sergey Wortman, M.D.

Dr. Cowan examined the employee on December 28, 2021, and on June 6, 2023, issuing reports commensurate with those exams. Following that first exam, he opined that the employee was injured at work on December 17, 2020, suffering a myofascial strain of the lumbar spine and an aggravation of an underlying pre-existing degenerative disc condition identified on an MRI taken on May 18, 2021. He further opined that treatment to that point had been reasonable, necessary and related, though not completely successful as the employee was unable to return to work. (Dec. 9.) Following the second examination of June 6, 2023, Dr. Cowan opined that the employee's symptoms were much improved, with no radiating leg symptoms, and back pain under control with over-the-counter medication. Further, on examination, the back was non-tender to palpation, range of motion was full and non-tender, gait was within normal limits, reflexes were "two+ and symmetric in both lower extremities" with full strength bilaterally. (Dec. 11.) Dr. Cowan concluded that the back injury of December 17, 2020, had resolved, and he recommended a full-duty return to work with no restrictions. Although the judge credited and adopted Dr. Cowan's opinions, he noted the employee's "credible but somewhat

[2] Although the employee's motion to admit additional medical evidence based on inadequacy grounds was denied, the record was opened for additional medical evidence based upon a finding of medical complexity. (Employee br. p. 2; Rizzo v. M.B.T.A., 16 Mass. Workers' Comp. Rep. 160, 161 n. 3 (2002)(reviewing board may take judicial notice of documents in board file).

exaggerated complaints of pain" warranted a finding of temporary partial disability. (Dec. 11-12.)

Dr. Wortman examined the employee on August 27, 2024, and noted no distal muscle atrophy of the lower extremities, but reported lower back pain, pain in both the left and right buttock areas, pain on compression of L-4, L-5 and S-1 spinous processes on the left more than on the right sacroiliac joint, and pain on palpation of the lumbar paraspinal muscles bilaterally. (Dec. 13-14.) He concluded that the employee had a work-related lower back injury with chronic lower back pain, and further opined that the work accident of December 27, 2020, was, and remains, the major contributing factor to the employee's "permanent total disability as well as the major contributing factor for his ongoing need for medical care." (Dec. 14.) Although the judge credited and adopted Dr. Wortman's opinions, he specifically noted that he did not find the employee to be permanently and totally disabled from "any job in the open labor market," instead interpreting Dr. Wortman's opinion to mean that the employee was only unable to return to his previous employment as a corrections officer or any type of physically demanding labor. Thus, citing the employee's credible complaints of increased pain since Dr. Cowan's June 6, 2023, examination and "other vocational factors," the judge found the employee to have at least a $300.00 weekly earning capacity. (Dec. 14-15.)

As noted by the self-insurer, there is ample medical evidence that the employee is capable of full-time work. (Self-Ins. br. 3.) In addition to Dr. Cowan's opinion noted above, the judge cites a June 12, 2023, note from Omar Qureshi, D.O., of Premier Pain Management stating, "I think it is reasonable for him to return back to work once he feels ready. At this time, I do not think he needs any work restrictions." (Dec. 16; Ex. 5.) Also cited is a July 5, 2023 letter from his primary care physician, Karla Christo, M.D., clearing the employee for a return to work with a 100 pound lifting restriction.[3] (Dec. 18.)

[3] Non-medical vocational and labor market survey reports were not adopted by the judge. A vocational report prepared by Paul Blatchford for the employee was dismissed as "stale" and failing to "address the second 11A opinion or subsequent medical records." (Dec. 19.) Labor

On the other hand, the self-insurer correctly recognizes that it is the judge's prerogative to credit, or reject, the employee's testimony regarding his pain, work restrictions or other issues related to his work injuries. (Self-Ins. br. 3.) Here, the judge noted "the employee's credible but somewhat exaggerated complaints of pain," ultimately finding him to be temporarily partially disabled. (Dec. 12.) However, despite the judge's extensive evaluation of the proffered medical evidence and testimony, he appears to have added a time restriction of 20 hours per week for his finding of the employee's return to work capacity, even though both parties agree that no such restriction appears anywhere in the record. Specifically, the judge found:

> "…I find that the employee should be able to perform at least part-time minimum wage work. I take judicial notice of the minimum wage in the Commonwealth of $15.00 an hour or $600 for a 40-hour week. I find that starting on June 23, 2023 (Dr. Christo's report), and ongoing the employee is capable of performing work for 20 hours a week which would result in a $300.00 earning capacity."

(Dec. 26.)

The parties do not quarrel with the judge's general findings regarding medical disability or the hourly minimum-wage earning capacity. The only issue before us is the time limitation of 20 hours per week, instead of a full-time assessment of 40 hours per week. The employee argues that "…it is reasonable to *infer* from the[] credited complaints that the Employee could not obtain and sustain more than part-time employment." (Employee br. 15, emphasis added.) However, "inference" is not the legal standard of proof. The judge's findings must be grounded in the evidence, and, on the merits of the submitted medical evidence, there is no ambiguity. While there is some expert opinion limiting the tasks that the employee can do, none of the adopted

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market job survey reports prepared on behalf of the self-insurer by Rosalyn Davidoff, MS, CRC, LRC, QRC-RI, and Aline Coelho, MA CRC, were not credited or adopted because "they are based on inaccurate medical opinions." (Dec. 23.) Finally, the employee was found to be unqualified to return to work under a Temporary Modified Work Program Job Offer proffered by the self-insurer. The judge reasoned that although the treating doctors cleared the employee to return to work, "they never opined that he could have inmate contact and specifically indicated that they could not state that the employee would be back to work full duty within 120 days." (Dec. 23.)

physicians' opinions stated or provided any other "factual basis" in the record that limits the hours that the employee may work. See Eady's Case, 72 Mass. App. Ct. 724, 726 (2008). The judge found the employee's complaints of pain to be "credible but somewhat exaggerated." (Dec. 12.) However, he did not indicate which complaints he actually credited and how these findings played into his analysis, thus providing no "explanation as to why the employee was unable to work on a full-time basis." Pasquale v. Benchmark Assisted Living, LLC., 29 Mass. Workers' Comp. Rep. 25, 29 (2015); Brandao v. Judge Rotenberg Education Center, 31 Mass. Workers' Comp. Rep. 87, 90 (2017). Accordingly, we recommit the case for further findings of fact consistent with this opinion, regarding the employee's earning capacity. In the interim, the conference order is reinstated. Lafleur v. M.C.I. Shirley, 28 Mass. Workers' Comp. Rep. 179, 192 (2014).[4]

So ordered.

Bernard W. Fabricant
Administrative Law Judge

Catherine Watson Koziol
Administrative Law Judge

Karen S. Fabiszewski
Administrative Law Judge

Filed: **August 25, 2025**

[4] We decline the self-insurer's request to reinstate its post-conference termination of benefits based on Dr. Cowan's Section 11A report in the event of a recommittal for further findings of fact with reinstatement of the conference order, as the remainder of the judge's undisturbed findings of fact and analysis, prohibit such action.