COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 000099-03**

Michael P. Buckley	Employee
Stahl USA	Employer
Royal Insurance Company of America	Insurer

REVIEWING BOARD DECISION
(Judges Horan, Carroll and Fabricant)

APPEARANCES
Emmanuel N. Papanickolas, Esq., for the employee
David G. Braithwaite, Esq., for the insurer at hearing
Scott A. Smith, Esq., and Christina Schenk-Hargrove, Esq.,
for the insurer on appeal

HORAN, J. The insurer once again appeals from a decision awarding the employee § 34A benefits. See Buckley v. Stahl USA, 20 Mass. Workers' Comp. Rep. 151 (2006). In Buckley, we recommitted this case for further findings on the extent of the employee's disability, excluding from consideration the medical opinion of Dr. Robert C. Eyre. Id. at 153. We once again recommit the case to the administrative judge.

On page five of his second decision, the judge expressly adopts the opinion of the employee's treating urologist, Dr. Anthony M. Filimoso, that the employee is permanently and totally disabled as a result of his work-related chronic and unremitting pain. (Dec. 9; Employee Ex. 5.) However, in his general findings, the judge adopts Dr. Eyre's medical opinion to find that the "employee is incapacitated as a result of chronic ilioinguinal pain syndrome." (Dec. 10.) On appeal, the insurer argues the decision is "arbitrary, capricious, and contrary to law" because the judge failed to follow our order on recommittal. (Ins. br. 1.)

In his second decision, the judge acknowledged our order on recommittal, and noted his obligation to make "further findings of fact on the extent of disability, excluding the opinion of Dr. Eyre." (Dec. 4.) Accordingly, we

recommit the case for the judge to clarify which medical opinion he adopted in support of his § 34A benefit order: Dr. Filimoso's (in evidence), or Dr. Eyre's (not in evidence). We reject the insurer's request that the case be reassigned for a hearing *de novo* before a different administrative judge. Because the employee's explanation of the judge's mistake as being in the nature of a scrivener's error is likely, we think the judge should have the opportunity to clarify his decision. This case does not present a scenario sufficiently similar to Bongiovanni v. New England Tel. Co., 10 Mass. Workers' Comp. Rep. 240 (1996), where we reassigned the case to a new administrative judge following three recommittals to the original judge who failed to comply with our orders.

We recommit the case for clarification.

So ordered.

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Mark D. Horan
Administrative Law Judge

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Martine Carroll
Administrative Law Judge

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Bernard W. Fabricant
Administrative Law Judge

Filed: April 13, 2007