COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO.: 040147-98**

Michelle Bemis	Employee
Raytheon Corporation	Employer
Raytheon Corporation	Self-insurer

REVIEWING BOARD DECISION
(Judges Levine, Wilson and Carroll)

APPEARANCES
John J. King, Esq., for the employee
Mark A. Teehan, Esq., for the self-insurer

LEVINE, J. The employee appeals from a decision in which an administrative judge denied and dismissed her claim for workers' compensation benefits for the condition of carpal tunnel syndrome. The employee argues that the judge failed to make requisite findings on whether the employee's injury arose out of and in the course of her employment in 1994. We agree, and we recommit the case for further findings.

The employee worked as a technical illustrator for the self-insurer, in which capacity she would draw and type on a computer for at least six hours per day. (Dec. 5.) The judge made subsidiary findings of fact regarding the employee's experiences at work beginning in 1994:

> During the late winter and early spring of 1994, Ms. Bemis was working as a technical illustrator at Raytheon. She began noting pain in her hand, wrist and shoulder while typing and using computers. This gradually increased. She noted severe pain when she went home at night after working.
> On May 24, 1994, Ms. Bemis had an appointment with Dr. Ralph P. Wolfe in Nashua, New Hampshire. Dr. Wolfe's specialty is orthopedics. Ms. Bemis was complaining of bilateral wrist pain with radiation to the middle three (3) digits of each hand and finger paresthesia. She also had right shoulder pain.
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> . . .

> Ms. Bemis reported the pain and symptoms in her wrist to her supervisor on numerous occasions. As a result of these complaints, Raytheon had her work site inspected by a physical therapist from Raytheon. Ms. Bemis was provided with a special desk and special chair to make her work station more compatible with her work activities.
> From May of 1994 through April of 1998, Ms. Bemis had pain in her wrist but was able to work. She wore her splints to bed every night.
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> In the spring of 1998, Raytheon began changing its computer systems. This led to Ms. Bemis being required to work at numerous stations that had not been adjusted for her symptoms. She was also required to do a lot of typing of letters and reports . . . as she was the only experienced typist in her department.
> During the spring of 1998, temporal with her altered work stations and the altered use of hands, Ms. Bemis began noting severe increase in her bilateral hand and wrist pain. The pain continued to increase through May 30, 1998 when Ms. Bemis stopped working.

(Dec. 6-7; see also Dec. 13-14). In 1997-1998, the employee was pregnant; during this time she was also using a computer at a co-worker's work station. She experienced severe pain, tingling and numbness in her hands. The employee sought treatment with a hand specialist after her child was born on June 30, 1998. (Dec. 14, 5.) After she underwent an EMG on August 4, 1998, she was diagnosed as having moderately severe bilateral carpal tunnel syndrome. On October 21, 1998, a right carpal tunnel release was performed. (Dec. 7.) On December 16, 1998, a left carpal tunnel release was performed. (Dec. 8.) The operations were successful and the employee returned to work for the self-insurer on February 1, 1999. (Dec. 6.)

The employee filed a claim for temporary total incapacity benefits from June 1, 1998 to February 9, 1999, along with medical benefits for her treatment. (Dec. 2.) The self-insurer opposed the claim on the basis of liability, causal relationship and extent of incapacity. (Dec. 2-3.) At conference, the judge awarded closed periods of § 34 and § 35 benefits, and the self-insurer appealed to a full evidentiary hearing. (Dec. 2.)

On March 18, 1999, the employee underwent an impartial medical examination pursuant to the provisions of § 11A(2). The impartial physician noted that the employee's carpal tunnel condition substantially worsened in 1997 with her pregnancy.

The doctor opined that the employee's carpal tunnel syndrome certainly developed in 1994. The doctor could not opine as to the cause of the employee's carpal tunnel condition in 1994;[1] he attributed her worsened impairment in 1998 to her pregnancy. (Dec. 9-10.) The doctor opined that the cause of the employee's carpal tunnel release surgeries was the pregnancy. (Dec. 11.) The judge allowed the parties to introduce additional medical evidence due to both the inadequacy of the impartial report and the complexity of the medical issues. (Dec. 3.)[2] The judge did not adopt or reject the opinions of the impartial physician.

The employee introduced reports of her treating physician, Dr. Harvey Taylor. Dr. Taylor opined that the employee's initial symptoms occurring in 1994 were caused by excessive use of her hands at work, and that her pregnancy exacerbated her condition. (Dec. 8-9.) The judge did not adopt or reject the opinions of Dr. Taylor.

The self-insurer introduced medical testimony of its expert physician, Dr. William B. Ericson. Dr. Ericson opined that the employee's carpal tunnel syndrome was not caused by her work, and noted that pregnancy was the more likely factor in the development of the impairment. However, Dr. Ericson stated that the employee's work might have aggravated her condition in the spring of 1998. (Dec. 11-12.) Dr. Ericson acknowledged that the employee's work was a minor component of the carpal tunnel

[1] "I am not aware of scientific research which show a higher increase of carpal tunnel syndrome in graphics designers who do or do not use a computer." (Imp. Report 3.) He could not "state within a reasonable degree of medical certainty that her employment at the Raytheon Company as a graphic designer causes her carpal tunnel syndrome." (Imp. Dep. 8.) "[T]here's no conclusive evidence to [the]effect" that repetitive use of the hands operating a computer or typewriter causes carpal tunnel syndrome. (Imp. Dep. 13.) "Some people do feel that repetitive motion does cause carpal tunnel syndrome. Some people feel that it doesn't. I don't think it's been settled medically." (Imp. Dep. 19.)

[2] The judge did not explain why he declared the impartial report to be inadequate. He allowed the employee's motion for additional medical evidence, which asserted that the impartial physician's opinion was inadequate and the medical issue was complex. In support of her motion, the employee stated that the impartial physician testified (1) that pregnancy and trauma are the only known causes of carpal tunnel syndrome; (2) that there is no statistical evidence that carpal tunnel syndrome can be related to repetitive work activities; (3) that many doctors feel

syndrome. (Ericson Dep. 43-44, 48; Dec. 12-13.) The only opinion of Dr. Ericson that the judge adopted was that the employee "did sustain a disability." (Dec. 16.)

After making the above-quoted findings regarding the onset and course of hand and wrist symptoms at work beginning in 1994, and after reciting the testimony of the doctors, the judge concluded that the employee had failed to sustain her burden of proving causal relationship between her work activities and her carpal tunnel syndrome in 1997 and 1998. (Dec. 15.) Instead, the judge concluded that, but for her pregnancy in 1997-1998, Ms. Bemis would have been able to continue her work without interruption, and that her incapacity to work was strictly due to that pregnancy. Id.

The problem with the judge's conclusion is that it does not appear that he considered the issue of whether the employee's work, beginning in 1994, is causally related to her carpal tunnel syndrome. The judge found that the onset of the employee's symptomatolgy was associated with the employee's work as of 1994, and that it was present consistently throughout her employment over the next four years. (See Dec. 6-7, 13, 15.) But the judge did not thereafter make findings on the medical opinions as to whether the work caused or contributed to the employee's carpal tunnel condition. The judge did not make subsidiary findings, one way or the other, on the medical opinions relating to the causation of the carpal tunnel syndrome beginning in 1994. The only medical opinion adopted by the judge here is Dr. Ericson's, that the employee sustained a disability. (Dec. 16.) Expert testimony is necessary in this case because the medical issues are beyond the realm of general knowledge and experience. Sevigny's Case, 337 Mass. 747, 749 (1958). Recitation of the doctors' opinions is not equivalent to a finding thereon. Messersmith's Case, 340 Mass. 117 (1959). "The duty of the administrative judge is to make specific findings based upon the evidence reported as will enable this board to determine with reasonable certainty whether correct rules of law have been applied." Siever v. Commonwealth Elec. Co., 13 Mass. Workers' Comp. Rep. 49, 51 (1999). The case must be recommitted for the judge to decide whether to adopt the

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otherwise and the issue is complex; and (4) that most carpal tunnel cases are of unknown etiology. (Employee's Motion for Additional Medical Evidence.)

medical opinions of the doctors presented by the employee and the self-insurer, both of whom opined that there is at least some causal connection between the employee's work, beginning in 1994, and her carpal tunnel syndrome, or the medical opinion of the impartial physician.

It must be borne in mind that the employee need not show that she was incapacitated in 1994 in order for her to establish a personal injury under the act and to be entitled to weekly benefits beginning in 1998. Steuterman's Case, 323 Mass. 454, 457 (1948)("An injury may be found to have been sustained at a time before incapacity to work resulted"); Jordan v. Hilltop Steak House, 6 Mass. Workers' Comp. Rep. 25, 26 (1992). Furthermore, where the "a major" cause standard in § 1(7A) is not implicated, cf. Fairfield v. Communities United, 14 Mass. Workers' Comp. Rep. 79, 81-82 (2000)(no medical evidence employee's morbid obesity is a "disease"), any contribution of the work to the injury will suffice. Zerofski's Case, 385 Mass. 590, 592-593, 594-595 (1982)(but harm must arise from a "condition that is not common or necessary to all or a great may occupations").

Should the judge find that the employee suffered an industrial injury in 1994 and that its effects continue in any way, the employee's subsequent pregnancy cannot break the causal chain between work and the employee's disability and incapacity that accompanied the pregnancy. This is because the pregnancy is subject to well-established legal principles:

> The circumstances in which a subsequent *non*-work-related incident, causing a recurrence or aggravation of a work-related injury, can break the chain of causal relation between an employee's incapacity and an industrial accident are fairly well defined. These cases should not be lumped into the successive insurer rule. . . . The *non*-work-related aggravating incident causing a further period of incapacity, is governed by a different rule:
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> [I]f the [non-work-related] activity is a normal and reasonable one and not performed negligently, the insurer who paid compensation during the first period of disability may be responsible to pay the second disability if the fact finder is satisfied that the second disability period is the natural and proximate result of the original injury.

> Twomey [v. Greater Lawrence Visiting Nurses Assoc., 5 Mass. Workers' Comp. Rep. 156, 158 (1991).] In Twomey, we affirmed the judge's conclusion that an incident which occurred while the employee was leaning forward playing cards at home caused an aggravation of a work-related injury. The judge further concluded, and we agreed, that the causal relation continued between the card-playing incident, i.e., the intervening event did not break the causal chain. Id. at 158-159. Laurence Locke stated in his treatise that, "If an employee engages in reasonable and normal movements or activities and thereby reactivates or aggravates a compensable injury, the insurer will be obliged to pay compensation for the consequences." L. Locke, *Workmen's Compensation*, § 224 (2nd ed. 1981). See also Davis' Case, 304 Mass. 530 (1939)(insurer still liable when employee's use of water reactivated industrial injury of dermatitis); Gulczynski v. Granada Hospital Group, 7 Mass. Workers' Comp. Rep. 151, 152-153 (1993), *aff'd* after remand, 9 Mass. Workers' Comp. Rep. 449 (1996).

Doten v. Barletta Co., 10 Mass. Workers' Comp. Rep. 423, 425-426 (1996). See also Massarelli v. Acumeter Labs, 10 Mass. Workers' Comp. Rep. 703, 707 (1996).

As a matter of law, pregnancy cannot be characterized as subsequent non-work-related activity that is not reasonable in view of the employee's injury. See Kashian v. Wang Labs., 11 Mass. Workers' Comp. Rep. 72, 74, 75 n.2 (1997)(reasoning that exclusive issue in intervening cause cases is medical issue of causal connection between the work injury and the subsequent medical complications; where there is continuing causal relationship, the reasonableness of a subsequent non-work activity will be scrutinized); Morgan v. Seaboard Prods., 14 Mass. Workers' Comp. Rep. 280, 283 (2000)(applying law on subsequent non-work-related cause in context of medical benefits only).

Accordingly, we vacate the decision and recommit the case for further findings on liability and, if liability is found, on continuing causal relationship and the extent of incapacity during the period claimed by the employee.

So ordered.

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Frederick E. Levine
Administrative Law Judge

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Sara Holmes Wilson
Administrative Law Judge

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Martine Carrol
Administrative Law Judge

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Filed: **December 10, 2001**