

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS

BOARD NO.: 050732-01

Mohammed Islam
Quaker Fabric Corp.
Quaker Fabric Corp.

Employee
Employer
Self-Insurer

REVIEWING BOARD DECISION

(Judges Horan, Carroll and McCarthy)

APPEARANCES

Douglas J. Darnbrough, Esq., for the employee at hearing
Mohammed Islam, pro se, on appeal
Donald E. Wallace, Esq., for the self-insurer

HORAN, J. The self-insurer appeals an administrative judge's decision awarding the employee § 35 benefits from December 28, 2001 to September 9, 2002. The self-insurer argues the employee failed to prove he sustained a personal injury cognizable under G. L. c. 152. (Ins. br. 9.) It also avers he failed to prove his alleged disability was work-related. (Ins. br. 12.) We reverse the decision, vacate the award of benefits and, in view of the employee's testimony, report the case to the Insurance Fraud Bureau.

At hearing, the self-insurer denied the occurrence of an industrial injury, disability and extent of incapacity, causal relationship,¹ and entitlement to benefits under §§ 13, 30 and 36. It also raised § 14.

¹ The insurer also raised § 1(7A) in defense of the claim, referencing medical evidence demonstrating the employee suffered from pre-existing degenerative arthritis of the lumbosacral spine. The judge credited the opinion of the § 11A physician, Dr. Spindell, that the employee's complaints were "consistent with long-standing and pre-existing degenerative arthritis of the lumbosacral spine but there is no evidence that this degenerative arthritis was aggravated in any permanent fashion by the industrial accident" (Dec. 6.) He also credited Dr. Spindell's opinion "that as of September 9, 2002 (the date of the doctor's examination) Mr. Islam is capable of resuming his normal work and that his problem is pre-existing degenerative arthritis." (Dec. 10.) The judge did not

The judge credited the employee's testimony that he experienced back pain while lifting a metal rod at work on December 28, 2001.² (Dec. 5.) The judge also ruled Dr. Spindell's³ report was inadequate, found the medical issues complex, and therefore allowed both parties to submit additional medical evidence in the form of reports and records. (Dec. 4.) Nevertheless, the judge credited Dr. Spindell's opinion that the employee was "capable of resuming his normal work" as of September 9, 2002. Dr. Spindell also opined:

This patient displays some inconsistent findings suggesting a disproportionate and exaggerated degree of impairment. His complaints in general are consistent with longstanding and pre-existing degenerative arthritis of the lumbosacral spine. Historically, this patient *may* have sustained an acute lumbosacral strain, which generally is self-limiting, without permanent sequelae, although 4 to 6 weeks, perhaps two to three weeks longer with associated underlying degenerative changes.

(Ex. 1 at 2.) (emphasis added.)

It is the degenerative, pre-existing arthritis of the lumbosacral spine, which is the predominant cause of the claimant's impairment and need for medical treatment, not the industrial injury of 12/28/01.

(Ex. 1 at 3.)

The judge, relying on other medical evidence, found "the employee's incapacity to be partial up to the date of the impartial exam." (Dec. 11.) The self-insurer argues the award of partial incapacity benefits for the period prior to the impartial examination is unsupported by the evidence. We agree.

The employee introduced the reports of Dr. Parakrama Ananta for dates of treatment from December 20, 2002 to November 13, 2003. (Dec. 1-2.) All of these records post-date the impartial physician's examination, and lack a medical opinion sufficient to carry the employee's burden of proving that his industrial accident caused a disability or

address the heightened causation standard of § 1(7A); in light of our opinion, his failure to do so is inconsequential.

² The insurer does not challenge this finding on appeal.

³ Dr. Spindell was the § 11A physician, see footnote 1, supra.

incapacity from work.⁴ The judge's reliance on these records, therefore, cannot justify the benefit award.

The remaining medical report of record was submitted by the self-insurer. It was authored by Dr. Giles Floyd, who examined the employee on April 22, 2002. (Dec. 6.) The judge, at least arguably, appears to have relied upon Dr. Floyd's opinion to find the employee's work incident caused a lumbar soft tissue strain.⁵ (Dec. 7.) However, Dr. Floyd did not find the employee disabled upon examination, and did not state the employee was disabled as a result of his alleged industrial accident at any time prior to the examination.⁶ Simply stated, the record contains no evidence relating the employee's alleged incapacity to his industrial injury for *any* period of time. Accordingly, the employee failed to carry his burden of proof on the essential elements of his claim. Sponatski's Case, 220 Mass. 526 (1915).

The self-insurer also raised § 14 at the hearing, but the judge did not address it. The self-insurer did not appeal on this issue. Nevertheless, as judicial officers and members of the bar, our review of the transcript compels us to report this matter to the Insurance Fraud

⁴ Dr. Ananta's records contain a history of a work injury, but express no opinion of a causal relationship between the injury, and any disability or need for treatment. (Ex. 13, 14.)

⁵ Dr. Floyd wrote: "Based entirely on his historical representation and the available medical record documents, the incident of December 28, 2001 *appears to be documented* as causing some soft tissue lumbar strain." (Ex. 6 at 5.)(emphasis added). The judge did not rely on Dr. Floyd's opinion to substantiate any period of incapacity.

⁶ The judge found the employee was involved in a car accident in April of 2002. (Dec. 9.) The record sets the date as April 19, 2002, three days prior to the employee's physical examination with Dr. Floyd. (Tr. 101.) The employee acknowledged he failed to mention the accident to the doctor; he also failed to inform Dr. Floyd about another automobile accident, in August of 2001, in which he alleged an injury to his back. (Tr. 60-63, 100-101.) The employee's auto accidents are not mentioned in any of Dr. Ananta's records. The employee did tell Dr. Spindell he hurt his back in the August 2001 accident, but insisted his pain resolved prior to his industrial accident. (Ex. 1 at 1.) The employee did *not* disclose his April 19, 2002 accident to Dr. Spindell. Id.

Bureau. The employee testified, via an interpreter, to the following concerning his August 2001, automobile accident:

Q. Were you in fact having low back pain when you first saw Dr. Leitzes in October of 2001?

A. No I did not have any pain.

Q. None at all?

A. No. I didn't have any such pain.

Q. Were you having any pain whatsoever in any part of your body when you saw Dr. Leitzes in October of 2001?

A. I do not remember precisely. I might have mentioned back. I might have mentioned shoulder.

Q. Did any pain that you had at that time limit the amount of work that you could do?

A. No. I worked very hard that time. I did not get any hurt in the accident whatsoever. This was a false case I made only to get some money.

Q. Lets (sic) me see if I can understand this correctly. You filed a false claim to get money from a motor vehicle accident, is that what your testimony is?

A. Yes, that is right. That is a mistake.

Q. All of the treatment that you got for the motor vehicle accident . . . all of that treatment was not necessary, is that true?

A. Yes, that is right.

(Tr. 62-63.)

The employee later testified he did not inform any of his doctors that he was pursuing a false automobile accident claim, that he allowed his attorney to actively pursue a monetary settlement knowing the claim was false, and that he netted \$3,000.00 as a result. (Tr. 64-65.)

We reverse the decision and vacate the award of benefits under §§ 13, 30 and 35. Consequently, we also vacate the award of attorney's fees under § 13A. Gonzalez's Case, 41 Mass. App. Ct. 39 (1996). By copy of this decision, and the transcript of record, we report this matter to the Insurance Fraud Bureau.

So ordered.

Mark D. Horan
Administrative Law Judge

William A. McCarthy
Administrative Law Judge

Martine Carroll
Administrative Law Judge

Filed: September 8, 2005