

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 054163-97

Raymond Burroughs (Deceased)
Margaret Burroughs
Mass. Water Resources Authority
Mass. Water Resources Authority

Employee
Claimant
Employer
Self-Insurer

REVIEWING BOARD DECISION
(Judges Smith, McCarthy and Wilson)

APPEARANCES

John J. Morrissey, Esq., for the employee
John J. Canniff, Esq., for the self-insurer

SMITH, J. The widow, Margaret Burroughs, appeals from a decision denying her claim that her husband sustained a personal injury arising out of and in the course of his employment. Raymond Burroughs suffered a myocardial infarction and died at his workplace on April 29, 1997. Mrs. Burroughs contends that the judge erred by failing to properly apply G.L. c. 152, § 7A. We agree. We therefore reverse the denial of benefits and recommit the case for further proceedings.

On April 27, 1997, Raymond Burroughs was discussing his warehouse duties with his supervisor when he indicated that he did not feel well and planned to sign out and go home. (Dec. 5.) Just after leaving his supervisor's office, he collapsed near the sign-out board and subsequently died. (Dec. 5-6.) His widow filed the pending claim for § 31 survivor's benefits and § 33 burial expenses. (Dec. 3.) The judge denied the claim at the § 10A conference and the widow appealed for a § 11 de novo hearing. (Dec. 2.) At the hearing, the widow requested the judge to apply § 7A. (Dec. 3.) The judge concluded that, under the facts of the case, § 7A was inapplicable. (Dec. 8-9.)

The claimant did not submit expert medical evidence on her behalf. (Dec. 7.) The sole medical evidence was from Dr. Lawrence Baker, who performed a records review. Dr. Baker opined that Mr. Burroughs' death was caused by malignant arrhythmia incompatible with life and associated with myocardial ischemia, and that there was no causal relationship between Mr. Burroughs' work activities on April 29, 1997 and his fatal collapse. The judge concluded that, "In absence of any contradictory medical opinion, and after determining that Dr. Baker relied on facts found to be in evidence in these proceedings, I adopt his expert medical opinion without reservation." (Dec. 7-8.) As a result, the judge denied and dismissed Mrs. Burroughs' claim for death benefits. (Dec. 10.)

On appeal to the reviewing board, Mrs. Burroughs contends that the judge erred in ruling that § 7A did not apply to the claim. She is correct.

Section 7A provides, in pertinent part:

In any claim for compensation where the employee has been killed or **found dead at his place of employment** . . . it shall be prima facie evidence that the employee was performing his regular duties on the day of injury or death and that the claim comes within the provisions of this chapter

G.L. c. 152, § 7A , as amended by St. 1991, c. 398, § 21 (emphasis supplied). The words "found dead at the place of employment" were added to § 7A, by St. 1971, c. 702, to expand the coverage of the section. These words make the fact that an employee died on the business premises sufficient to trigger the application of the section. Locke, *Workmen's Compensation*, § 504 at 603-604 (2d ed. 1981).

On the morning of his death, Tuesday April 29, 1997, Burroughs collapsed at work. (Dec. 5-6; January 8, 1999 Tr. 40.) His collapse was unwitnessed. (Dec. 8.) After he collapsed, his eyes were closed. He did not speak. *Id.* at 42. He opened his eyes and they rolled back into the sockets. His mouth opened and his false teeth fell out. His color changed to a bluish tone. He moaned but was not talking. *Id.* at 42-43. Shock paddles did not revive him. *Id.* at 45. He was not breathing. *Id.* at 46, 86. He did not have a pulse. *Id.* at 86. He was nonresponsive. *Id.* He did not respond to being shaken. *Id.* at 87. Burroughs

was taken from the workplace to the hospital by ambulance. There he was pronounced dead. Id. at 89. As a matter of law, Burroughs was "found dead at the place of his employment," making § 7A applicable. Anderson's Case, 373 Mass. 813, 816-817 (1977); DiCenso v. Winchester Concrete & Carpentry, 7 Mass. Workers' Comp. Rep. 237, 239 (1993).

Section 7A establishes prima facie evidence of a causal relationship between employment and the injury or death. Such is the meaning of the statutory words "and that the claim comes within the provisions of this chapter." Anderson's Case, supra, at 817. Where an employee is found dead at the workplace, the claimant does not need to produce expert medical evidence that work activity caused the death. Nason & Wall, Massachusetts Workers' Compensation Act, § 10.7 (1995 ed.). The judge's contrary ruling, (Dec. 8-9), is erroneous.

The judge concluded that the self-insurer presented sufficient evidence to "burst" the § 7A presumption. (Dec. 8.) In so doing, he misunderstood the effect of the statute. "Prima facie evidence, in the absence of contradictory evidence, requires a finding that the evidence is true; the prima facie evidence may be met and overcome by evidence sufficient to warrant a contrary conclusion; even in the presence of contradictory evidence, however, the prima facie evidence is sufficient to sustain the proposition to which it is applicable." Anderson's Case, supra, at 817. Thus, without any medical evidence to support her claim, the facts are sufficient to support an award in the claimant's favor. However, § 7A does not compel an award. An insurer may overcome the prima facie evidence created by § 7A by introducing other evidence.

Here, the self-insurer offered Dr. Baker's opinion that the work did not cause the employee's myocardial infarction. The judge found this opinion persuasive in part because of the absence of any contradictory medical opinion. (Dec. 7.) Yet the employee had sought to supplement the prima facie effect of § 7A. He attempted to reserve the right to produce medical evidence to counter Dr. Baker's yet-unseen opinion, and was not permitted to do so. (January 8, 1999 Tr. 128-134.)

The conduct of the hearing is within the discretion of the judge. See 452 Code Mass.Reg. 1.11(7); Solimene v. B. Grauel & Co., 399 Mass. 790, 799 (1987) (“The conduct and scope of discovery is within the sound discretion of the judge.”). Here the self-insurer had not received Dr. Baker’s report at the time of the lay hearing, and the claimant therefore could not know whether she would need to rebut it with her own medical evidence.¹ The judge denied Mrs. Burroughs’ requests that she be allowed time, after the self-insurer provided her with Dr. Baker’s report, to decide whether to provide her own medical expert evidence. (January 8, 1999 Tr. 128-134.) His ruling may have been tainted by his misunderstanding of the effect of § 7A. As discussed above, the claimant was fully within her rights to rely only on the application of § 7A to support the requisite causal relationship between Mr. Burroughs’ workplace and his myocardial infarction. Until the insurer produced evidence of no causal relationship, the claimant could legitimately expect to succeed on her claim without medical evidence in her favor. The late introduction of Dr. Baker’s report constituted cause to extend the standard medical evidence schedule. See 452 C.M.R. 1.12(5)(b)(“[A] party may motion the administrative judge for an extension for cause for no more than 30 calendar days.”). On recommittal, the judge should permit the claimant to introduce her rebuttal medical evidence.

The self-insurer's cross-appeal has preserved the issue of dependency under §§ 31 and 32. The judge should address the issue on recommittal if he finds liability.

In conclusion, because the judge's decision is contrary to law, we reverse it and recommit the case for further proceedings consistent with this opinion.

So ordered.

Suzanne E.K. Smith
Administrative Law Judge

¹ Being a death case, § 11A was not applicable. Benson's Case, 47 Mass.App.Ct. 756, 758-759 (1999); 452 Code Mass. Regs. § 1.10(5) ("No impartial physician shall be required in disputed matters concerning death ...").

William A. McCarthy
Administrative Law Judge

Sara Holmes Wilson
Administrative Law Judge

Filed: May 23, 2000