

Board No.: 06528-81

Employee: Raymond Praetz Teresa Praetz (widow), Claimant

Employer: Factory Mutual Engineering & Research

Insurer: Liberty Mutual Insurance Co.

Judges: Kaplan, Pearson and Wilson

Appearing: Reginald L. Marden, Esq., for the employee  
Robert J. Ladd, Esq., for the insurer

Date: March 16, 1993

REVIEWING BOARD DECISION

KAPLAN J. Claimant appeals to the reviewing board from the decision of an administrative judge denying her claims filed pursuant to c. 152, s.s. 31, 33, 36 and 36A. Following a pre-hearing conference before a single administrative law judge, the reviewing board considered briefs from both parties but elected not to hear oral arguments.

The judge found that the employee, a project engineer, was fatally injured in an automobile accident "presumably while en route to his home" after lecturing at a company sponsored seminar and dinner. The employee, who was traveling westbound, crossed the roadway and collided with construction equipment parked on the eastbound side of the road. The employee was taken to a hospital where he was pronounced dead on arrival. According to a medical examiner's report, the cause of death was a complete compression fracture of the skull and a fracture of the neck. The

report

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states that the employee had a blood alcohol level of 0.25 at the time of death.

In his decision, the administrative judge found that the dinner meeting was preceded by a cocktail party, wine was served with dinner and cordials were served thereafter. The meeting, held at Anthony's Pier 4 Restaurant, was over between 9:00 and 9:30 p.m. Noting claimant's contention that the employee left the restaurant at 10:30 p.m. after discussing business, the judge in his decision questioned the employee's whereabouts between that time and the time of the fatal collision at approximately 12:30 a.m. in Methuen, Massachusetts. The employee resided in Andover, Massachusetts.[1] The judge denied the claim for benefits under c. 152, concluding in a single general finding that claimant failed to sustain her burden of proof that the employee's death arose out of and in the course of his employment.

Claimant argues that the administrative judge erred in applying an improper standard of proof, making inadequate findings of fact and failing to apply c. 152, s.7A, which

provides that it shall be prima facie evidence that an employee killed or found dead at his place of employment was performing his regular duties and that the claim comes within the provisions of this chapter. See generally *Zavalia v. City of Salem*, 6 Mass. Workers' Comp. Rep. \_\_\_\_\_ (December 30, 1992).[2] Claimant also contends the case

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[1] There was evidence the employee was paid travel expenses and mileage to and from company events. Tr. at 7-8.

[2] Preliminary issues in this case pertaining to s. 7A are whether s. 7A as most recently amended is applicable and the relationship,

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is governed by Caron's Case, 351 Mass. 406 (1966) in which an employee, who was killed in a motor vehicle accident about one and one half hours after attending a business meeting at which alcohol was consumed, was found to be in the course of employment while driving home. The insurer regards Caron's Case, supra, to be distinguishable, arguing that the employee in this case had deviated from the course of employment for personal reasons when the accident occurred. In addition, the insurer asserts the testimony of the employee's medical expert is speculative and

cannot support a finding of loss of function under s. 36.[3]

The administrative judge failed to address any of these legal arguments, which were raised by the parties and are necessary to a resolution of the claim. The decision fails to comport with the minimum requirement of c. 152, s. 11B to set forth the issues in controversy, the decision on each and a brief statement of the grounds in support of each decision. The administrative judge's single finding, which is actually a conclusion of law, affords the reviewing board an insufficient basis on which to consider claimant's appeal. It is the duty of an administrative judge to address the issues in a case in a manner enabling this board to determine with reasonable certainty whether correct rules of law have been applied to facts that could be properly found. See *Moore's Case*, 330 Mass. 1, 6 (1953) and *Anderson's Case*, 373 Mass.

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(Footnote continued from previous page.) if any, between s. 7A and c. 152, s.26, which addresses an employee's use of a motor vehicle.

[3] For the relationship between s. 7A and s.s. 36 and 36A, see *Zavalia v. City of Salem*, *supra*.

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813, 817-818 (1977), citing DiClavio's Case, [293 Mass. 259](#), 261-262 (1936). The Supreme Judicial Court has stated that "[A] mere general finding in the terms of the statute that the employee's injury 'arose out of and in the course of his employment' is not . . . compliance with the intention of the Legislature as expressed in the workmen's compensation act." Demetrius's Case, [304 Mass. 285](#), 287 (1939), quoting Cahill's Case, [295 Mass. 538](#), 539 (1936). When a record is presented to the reviewing board that does not conform to the standard allowing for full appellate review, it is the duty of the board to recommit the case for further findings of fact and rulings on matters of law until a proper record is obtained. See Moore's Case, 330 Mass. at 6. A decision cannot stand in the absence of a foundation for the judge's ultimate conclusion denying benefits. *Crowell v. New Penn Motor Express*, 7 Mass. Workers' Comp. Rep. \_\_\_\_\_ (January 21, 1993). Claimant is entitled to review by the board pursuant to s. 11(c), see Demetrius's Case, 304 Mass. at 288, and that is not possible on the record before us.

The decision of the administrative judge is vacated. Inasmuch as this case was heard by a judge no longer serving with the Department of Industrial Accidents, the case is recommitted to the Senior Judge for reassignment to an administrative judge for a hearing de novo.

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James M. Kaplan  
Administrative Law Judge

Barbara Savitt Pearson  
Administrative Law Judge

Sara Holmes Wilson

Administrative Law Judge