COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 023113-93**

Rebecca Skalski Employee
Phoenix Home Life Employer
Aetna Life and Casualty Insurer

REVIEWING BOARD DECISION
(Judges Levine, Maze-Rothstein and Carroll)

APPEARANCES
Thomas H. O'Neill, Esq., for the employee
Peter J. Moran, for the insurer

LEVINE, J. The employee and the insurer both appeal the decision of an administrative judge affirming a prior hearing decision, which awarded G. L. c. 152, § 34, weekly temporary total incapacity benefits, but which denied the employee's new claim for § 34A permanent and total incapacity benefits. The employee's contentions include that the judge's finding of no ongoing causal relationship between her industrial injury and present incapacity is arbitrary and capricious and contrary to law. The insurer argues that the judge erred in failing to allow the insurer's complaint to discontinue benefits as of the date of the § 11A impartial examination. We summarily affirm the judge's decision as it pertains to the employee's appeal, but we reverse the decision with respect to the date of termination of § 34 benefits.

The employee was a claims reviewer for Phoenix Home Life when, in 1993, she began to experience pain in her back, arms, hands and shoulders. (Dec. II,[1] 2.) She filed a claim for workers' compensation benefits, and a hearing was held on July 14, 1994. (Dec. I, 1.) Based on the opinion of the § 11A impartial examiner, the administrative

[1] Decision II refers to the hearing decision issued July 11, 1997, and Decision I refers to the hearing decision issued December 20, 1994.

judge found that the repetitive work the employee performed at her job aggravated her pre-existing condition of fibromyalgia to the point of disability and he awarded ongoing § 34 benefits for temporary total incapacity. (Dec. I, 5-7.) The insurer appealed the hearing decision, and the reviewing board recommitted the case to the administrative judge for a determination of whether the industrial injury "remains" a major cause of the employee's disability under § 1(7A).[2] Skalski v. Phoenix Home Life, 10 Mass. Workers' Comp. Rep. 376, 377-378 (1996).

Prior to the issuance of the aforesaid recommittal decision, the insurer filed a complaint to discontinue benefits, which was denied at conference. The insurer appealed to a hearing de novo. The employee's § 34 benefits were due to expire on June 23, 1996; the judge allowed the employee's motion to join a claim for § 34A permanent and total incapacity benefits. At the second hearing on December 19, 1996, the parties addressed both the pending claim and complaint as well as the recommittal from the reviewing board. (Dec. II, 2.)

Pursuant to § 11A, the employee was examined by a second impartial physician, Dr. Yurfest, who opined that the employee had initially suffered from an upper extremity repetitive strain syndrome causally related to her work. However, by the time of his examination of her on April 19, 1996, it was Dr. Yurfest's opinion that her symptoms were caused primarily by fibromyalgia, and the repetitive strain injury was no longer a major part of her symptoms. (Dec. II, 3; Stat. Ex. 1.) The administrative judge affirmed his prior hearing decision, finding that the repetitive strain syndrome, which aggravated her fibromyalgia, had been a major cause of her disability at the time of the first hearing. However, adopting Dr. Yurfest's opinion, the judge found that the work injury was no

[2] General Laws c. 152, § 1(7A), as amended by St. 1991, c. 398, § 14, and made effective December 23, 1991, provides:

> If a compensable injury or disease combines with a pre-existing condition, which resulted from an injury or disease not compensable under this chapter, to cause or prolong disability or a need for treatment, the resultant condition shall be compensable only to the extent such compensable injury remains a major but not necessarily predominant cause of disability or need for treatment.

longer a major factor in her continuing disability. (Dec. II, 4.) Consequently, the judge denied the employee's claim for § 34A benefits. (Dec. II, 5.)

We summarily affirm the judge's decision as it pertains to the employee's appeal. However, we find that the judge failed to address the insurer's complaint for discontinuance; furthermore, his adoption of the impartial examiner's opinion mandates termination of the employee's benefits as of the date of the examination of the employee by Dr. Yurfest.

Section 11B requires a judge to decide all issues in controversy and to give a brief statement of the grounds for each such decision. G.L. c. 152, § 11B. See Theragene v. Ritz Carlton Hotel, 11 Mass. Workers' Comp. Rep. 613, 615-616 (1997). In addition, any factual findings as to when incapacity begins or ends must be grounded in the evidence found credible by the judge. Montero v. Raytheon Corp., 11 Mass. Workers' Comp. Rep. 596, 597 (1997).

The judge never ruled on the insurer's discontinuance complaint; instead, he merely denied the employee's claim for § 34A benefits and thereby allowed the employee to collect § 34 benefits until they exhausted on June 23, 1996. However, the judge's subsidiary findings do not support allowing benefits to continue to this date. The judge adopted the opinion of the impartial examiner, Dr. Yurfest, who stated that the employee's repetitive strain injury was not a major cause of her ongoing symptoms as of April 19, 1996, the date of the § 11A examination. The impartial examiner's report and deposition testimony were the only medical evidence. Thus, the uncontradicted, prima facie evidence adopted by the judge supported termination of the employee's benefits as of April 19, 1996. Where the evidence, including all rational inferences which could be drawn therefrom, can support only one result, reversal rather than recommittal is appropriate. Newton v. Merrimac Paper Co., 10 Mass. Workers' Comp. Rep. 499, 502 (1996).[3] Therefore, we reverse the decision insofar as it allows the employee's § 34

[3] Where there is an uncontradicted § 11A impartial physician opinion, the prima facie status of the opinion requires the judge to find the opinion to be true. Streit v. Friendly Ice Cream Corp., 11 Mass. Workers' Comp. Rep. 500, 503 (1997). On appeal, the insurer seeks termination of benefits as of the date of the § 11A examination.

benefits to continue until expiration, and order those benefits terminated as of April 19, 1996. In all other respects, the decision is affirmed.

So ordered.

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Frederick E. Levine
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge

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Martine Carroll
Administrative Law Judge

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Filed: **May 6, 1999**