COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 040394-98**

Rhonda Feugill	Employee
Raytheon Corporation	Employer
Raytheon Corporation	Self-insurer

REVIEWING BOARD DECISION
(Judges Wilson, Maze-Rothstein and McCarthy)

APPEARANCES
Terrence J. Daley, Esq., for the employee
Joseph S. Buckley, Jr., Esq., for the self-insurer

WILSON, J. The employee appeals the decision of an administrative judge in which she was awarded a closed period of temporary, total incapacity benefits and continuing partial incapacity benefits pursuant to § 35. The employee asserts that the assigned earning capacity of $350.00 is arbitrary and capricious, and not supported by the evidence or the judge's findings. After a review of the record, we affirm the decision.

At the time of the hearing, Rhonda Feugill was a forty-two year old resident of New Hampshire, who was six credits short of an Associates Degree and claimed special training/skills as an assembler. Prior to her employment with the self-insurer, she worked as a research assistant, waitress and retail clerk. (Dec. 3.) On December 7, 1981, she began employment with Raytheon in its shipping/receiving department, describing her primary position there as an assembler. (Dec. 4.)

Sometime in 1997, the employee began to experience intermittent pain symptoms in her right wrist and hand. Eventually, the pain became a daily experience and, ultimately, she had similar symptoms in her left hand as well. The

employee initially treated with her primary care physician, but later was treated by orthopedic physicians and a neurologist. Carpal tunnel surgery was performed on the employee's left hand in September 1998, and on the right hand in November 1998. (Dec. 4-5.) The employee also has undergone diagnostic studies and several courses of physical therapy. (Dec. 5.)

The employee has not returned to work since she left on August 28, 1998. (Dec. 4.) She filed a claim for benefits that was resisted by the self-insurer. A conference order required the self-insurer to pay a closed period of § 34 benefits. Both parties appealed to a de novo hearing. (Dec. 3.)

On May 11, 1999, the employee was examined by Dr. Howard Taylor, the § 11A impartial physician, who opined that the employee's condition was status-post surgery for bilateral carpal tunnel syndrome and neuroma of the right thenar eminence, and that she was not at a medical end result. He further opined that the carpal tunnel syndromes were causally related to the employee's repetitive motions with her hands in her work as an assembler. (Dec. 5.) The doctor determined that at the time of his examination the employee was partially medically disabled, and imposed restrictions against repetitive use of both hands and gripping with her right hand. (Dec. 6.) The administrative judge adopted the § 11A physician's medical opinion that the employee was temporarily and totally physically disabled for a period of time and continues to be partially medically disabled. (Dec. 10.)

The judge also determined, based on the medical evidence, a videotape and hearing testimony, that the employee would not be able to regularly perform the functions required by either inspection or plug wiring jobs offered in good faith by the employer. (Dec. 7-10.) The employee, however, testified that there were a few inspectors' jobs she would be able to do. (Tr. 86.)

On appeal, the employee seeks a recommittal, contending that the administrative judge's assignment of an earning capacity of $350.00 is not supported by either sufficient evidence or sufficient subsidiary findings of fact and

analysis. A determination of earning capacity is the product of an analysis of the degree of physical impairment and its effect, considered together with current vocational factors such as age, education and work experience. Scheffler's Case, 419 Mass. 251, 256 (1994). It is the preferred practice to set out this analysis in the decision in the form of a short statement that explains the judge's reasoning and summarizes the factual foundation for the conclusion on earning capacity. See G. L. c. 152, § 11B. Indeed, it is the absence of this statement that often, as here, forms the gravamen of the appeals we see on this issue. Although the employee correctly asserts that this reasoned summary and analysis is lacking from the decision at hand, we are satisfied that there is sufficient record evidence that, together with the judge's findings, supports the judge's ultimate conclusion. See Buck's Case, 342 Mass. 766, 769-770 (1961).

The judge relied on medical opinions as well as the employee's vocational profile to assess her earning capacity. He made findings regarding the employee's age, education, training and experience. (Dec. 3-4.) Our review of the record, see Buck's Case, supra, reveals as well that the employee testified about her previous work from November 1994 to April 1995 as a part-time sales associate at Filenes Basement. (Tr. 50.) Although she claimed that she could not presently perform that job full-time, she did acknowledge that she could physically perform the functions of the job, including helping customers and picking things up if they were on the floor. Id. Her testimony also revealed that she worked for nearly a year as a research assistant at the Internal Revenue Service. In that capacity, she would retrieve files, go through research and highlight it, and then send the files back to storage. She believed she would be able to perform this job. These jobs averaged between $4.75 and $5.00 per hour. (Tr. 52-53.) As for her non-work activities, the employee testified that she, inter alia, does laundry, dishes, grocery and errand shopping, prepares meals, vacuums, cleans house, makes beds and drives a Chevrolet Cavalier with a standard transmission. (Tr. 53-55.)

These factors, together with the medical opinions adopted by the judge, provide a sufficient basis for the judge's ultimate conclusions and enable us to "determine with reasonable certainty whether correct rules of law have been applied to facts that could be properly found." See Praetz v. Factory Mut. Eng'g & Research, 7 Mass. Workers' Comp. Rep. 45, 47 (1993). Contrast Crowley v. Salem Hosp., 8 Mass. Workers' Comp. Rep. 374, 375 (1994) (appellate review not possible where "we can only speculate about the judge's reasoning and basis for his general conclusions"); Crowell v. New Penn Motor Express, 7 Mass. Workers' Comp. Rep. 3, 5 (1993)(recommittal for subsidiary findings necessary where general conclusions so lacking in support that the logic behind the judge's decision was undiscernable). Accordingly, the decision of the administrative judge is affirmed.

So ordered.

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Sara Holmes Wilson
Administrative Law Judge

Filed: **March 13, 2002**

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Susan Maze-Rothstein
Administrative Law Judge

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William McCarthy
Administrative Law Judge