COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO.:** 030256-99

Richard T. King	Employee
APA Transport	Employer
Utica Mutual Insurance Co.	Insurer

REVIEWING BOARD DECISION

(Judges McCarthy, Costigan and Horan)

APPEARANCES

Thomas J. Donoghue, Esq., for the employee

Martin J. Long, Esq., for the insurer

MCCARTHY, J. We have the insurer's appeal from a decision in which the administrative judge awarded the employee § 34A permanent and total incapacity benefits for a back injury. The first of three issues raised by the insurer merits discussion. The insurer contends that this case requires recommittal since the judge did not perform any analysis of its §1(7A) defense. We conclude that the opinion of the § 11A physician satisfied the applicable causation standard under § 1(7A) as a matter of law. Therefore, we affirm the decision.

On May 26, 1999, Richard King injured his back while working as a truck driver for the employer. (Dec. 2.) The claim was initially disputed and following a § 10A conference, the insurer was ordered to pay § 35 partial incapacity benefits, which it paid through the 260-week statutory maximum period. Thereafter, the employee filed a claim for § 34A benefits, which was denied at conference and then by hearing decision. The employee appealed the hearing decision to the reviewing board but subsequently withdrew, electing to file a second claim for § 34A benefits commencing from a later date. The judge denied this claim at a § 10A conference and the insurer appealed to an evidentiary hearing.[1]

[1] We take judicial notice of documents in the board file. See Rizzo v. M.B.T.A., 16 Mass. Workers' Comp. Rep. 160, 161 N.3 (2002).

Pertinent to this appeal are the following administrative judge's findings on the employee's extent of disability and causal relationship:

> Dr. Steven Silver, the impartial physician, opines that Mr. King is not yet at an end result and that surgery is being considered. He further opines Mr. King is capable of only sedentary work. He can lift no more than 10 pounds and cannot sit or stand for more than two hours at a time and for no more than four hours per day. (Statutory Exhibit No. 1, page 3). Dr. Silver notes that since the last hearing, an MRI has shown the existence of a herniated disc, which he relates to the work injury. (Deposition, page 15, line 21 to page, line 9). He identifies the *main* problem disabling Mr. King now as this herniated disc. (Deposition page 18, lines 3 to 7).

(Dec. 3; emphasis added.)

The impartial physician confirmed the existence of the employee's chronic lumbar strain and degenerative disc disease along with his work-related disabling herniated disc. He opined that the employee's degenerative disc disease has a minor impact on his current disability, (Dep.17), and that the chronic lumbar strain was not the main disabling condition. (Dep. 22.) He concluded that the *"main problem that's disabling him right now is a herniated disc,"* and the *"majority of his problems stem from his injury."* (Dep. 22-23; emphasis added.)

The judge credited the employee's testimony as to his pain and impairment and adopted the medical opinions of the § 11A physician. The judge then concluded that the employee was permanently and totally incapacitated and awarded § 34A weekly benefits. (Dec. 3-4.) He did not, however, address § 1(7A). (Dec. 2-4.)

The insurer argues, among other things, that the judge erred by failing to apply its raised defense of § 1(7A). We agree that the judge's failure to address § 1(7A) would ordinarily require recommital. See G. L. c. 152, § 11B(decisions "shall set forth the issues in controversy, the decision on each and a brief statement of the grounds for each such decision"); Vieira v. D'Agostino Assoc., 19 Mass. Workers' Comp. Rep. 50 (2005). However, since the exclusive prima facie medical testimony of the impartial physician satisfies the applicable causation standard under § 1(7A), "a major but not necessarily predominant cause," recommittal is unnecessary. See Roney's Case, 316 Mass. 732, 739-740 (1944)(there may be instances in which the evidence is of such character that findings of fact are not required); see also Stewart v. Beth Israel Deaconess Med. Ctr., 22 Mass. Workers' Comp. Rep. ____ (April 8, 2008); Manzanero v. Beth Israel Deaconess Med. Ctr., 21 Mass. Workers' Comp. Rep. 187 (2007); Reynolds v. The

Rhim Cos., 18 Mass. Workers' Comp. Rep. 178, 180-181 (2004); Pratt v. Transcend Carriers, 18 Mass. Workers' Comp. Rep. 206 (2004).

The impartial physician causally related the employee's herniated disc to the industrial accident. Since he concluded that the disc injury was the "majority of his problems," and the degenerative disc condition was "minor," the § 1(7A) standard of showing the work injury to be a "major cause" of disability was satisfied as a matter of law. Reynolds, *supra*. See Nee v. Boston Medical Ctr., 16 Mass. Workers' Comp. Rep. 265, 268 (2002)(medical testimony that work injury was "a good cause" can satisfy § 1(7A) standard of "a major cause").

We summarily affirm the decision with regard to the other issues argued by the insurer on appeal. Pursuant to § 13A(6), the insurer is ordered to pay employee's counsel a fee of $1,458.01.

So ordered.

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William A. McCarthy
Administrative Law Judge

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Patricia A. Costigan
Administrative Law Judge

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Mark D. Horan
Administrative Law Judge

Filed: ***July 15, 2008***