COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 01564-05**

Ronald Gleason	Employee
Toxikon Corp.	Employer
Chubb National Insurance Co.	Insurer

REVIEWING BOARD DECISION
(Judges Fabricant, Costigan and Horan)

APPEARANCES
Charles E. Berg, Esq., for the employee at hearing
James N. Ellis, Esq., for the employee on appeal
William C. Harpin, Esq., for the insurer

FABRICANT, J. The insurer appeals from a decision in which the administrative judge awarded the employee ongoing § 34 benefits for a lower back injury with a resultant mental disability. Because the judge failed to make findings on the insurer's defense of § 1(7A) "a major" causation, [1] and because he also decided an issue not before him, we reverse the decision and recommit the case for further findings.

The employee, who suffers from post-traumatic stress disorder related to his military service in Vietnam, sustained a lower back injury due to a slip and fall in the course of his employment on January 18, 2005, and he has not worked since. (Dec. 627.) The insurer did not accept the employee claim for workers' compensation benefits, which was also denied at the § 10A conference. The employee appealed to an evidentiary hearing where his motion to join a psychiatric claim was allowed. (Dec. 626, 632.)

The employee underwent an impartial medical examination by Dr. Victor A. Conforti on January 25, 2006. Dr. Conforti diagnosed a sprain of the lumbosacral spine

[1] General Laws c. 152, § 1(7A), provides, in pertinent part:

> 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 or disease remains a major but not necessarily predominant cause of disability or need for treatment.

superimposed on previously asymptomatic degenerative arthritis, degenerative disc disease, spondylitic spondylolisthesis, and cubital tunnel syndrome. He causally related the lumbosacral sprain and cubital tunnel syndrome to the work injury. Dr. Conforti considered the employee partially disabled and restricted him from lifting, bending, stooping, climbing or kneeling, sitting or standing for more than 15-20 minutes, and repetitive work with his right arm. The judge allowed additional medical evidence due to medical complexity. See § 11A(2). (Dec. 627-628.)

The employee's additional medical evidence included a psychiatric report by Dr. Bennett D. Aspel, who opined the employee suffered from a mood disorder secondary to chronic pain, secondary, in turn, to his back injury. (Dec. 630-631.) Based on the opinions of the impartial physician and all of the employee's medical experts, as well as the employee's credible testimony, the judge found the employee totally incapacitated due to his January 18, 2005 work injury. (Dec. 632.)

The insurer correctly argues that the judge erred by failing to address its duly raised defense of § 1(7A) "a major" causation, applicable to "combination" injuries. See footnote 1, supra. The medical evidence regarding the employee's back injury clearly establishes that he suffered from pre-existing degenerative disc disease, arthritis and spondylolisthesis at L4-5, upon which the work-related sprain of his lumbosacral spine was superimposed. (Dec. 628.) This description, gleaned from the impartial medical evidence, was certainly sufficient for the insurer to have raised § 1(7A). See Saulnier v. New England Window and Door, 17 Mass. Workers' Comp. Rep. 453, 459-460 (2003). Although the judge appropriately listed § 1(7A) as an issue in controversy, his findings are silent on the matter. (Dec. 625.) Because the judge is obligated to issue a decision that addresses all issues raised by the parties,[2] this omission requires that we recommit the case for further findings addressing the application of § 1(7A) "a major" causation. See Vieira v. D'Agostino Assocs., 19 Mass. Workers' Comp. Rep. 50 (2005).

Additionally, the insurer correctly contends the judge committed error in addressing the employee's mood disorder and basing, in part, the award of § 34 benefits on the

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[2] General Laws c. 152 § 11, provides, in pertinent part:

> At the hearing the member shall make such inquiries and investigations as he deems necessary, and may require and receive any documentary or oral matter not previously obtained as shall enable him to issue a decision with respect to the issues before him.

employee's emotional disability. (Dec. 632.) However, the employee withdrew this claim on August 11, 2006, prior to the close of the record on September 25, 2006. (Dec. 626.)

Where a claim is not before the judge, it is error for him to address it. See Medley v. E.F. Hausermann Co., 14 Mass. Workers' Comp. Rep. 327 (2000) (error for judge to decide § 34A claim not placed before him). Therefore, on recommittal, the judge must address the employee's physical "combination" injury without reference to the emotional component of the employee's disability. The employee's emotional claim may be put forward in the future, as it has not been adjudicated. At such time as the employee might decide to claim incapacity for his mood disorder, we do note that such claim must also undergo § 1(7A)'s "a major" cause analysis. The employee's pre-existing post-traumatic stress disorder triggers that analysis for what otherwise would be a simple causation emotional claim. See Lagos v. Mary A. Jennings Co., 11 Mass. Workers' Comp. Rep. 109, 111 (1997) (emotional sequelae to physical injury assessed "as is," except when emotional component combines with pre-existing non-compensable emotional condition; § 1(7A) "a major" cause standard then applies).

We defer comment on the insurer's final argument, that the employee has not proved entitlement to temporary total incapacity benefits. On recommittal, the judge will necessarily reassess incapacity entitlement in light of the heightened causation standard under § 1(7A), and without the emotional component.

Accordingly, we reverse the decision and recommit the case for further findings consistent with this opinion.

So ordered.

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Bernard W. Fabricant
Administrative Law Judge

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Patricia A. Costigan
Administrative Law Judge

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Mark D. Horan
Administrative Law Judge

Filed: March 20, 2008