**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF INDUSTRIAL ACCIDENTS** **BOARD NO. 010361-12**

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| Ronan Staff | Employee |
| Lexington Builders, Inc. | Employer |
| Associated Employers Ins. | Insurer |

**REVIEWING BOARD DECISION**
(Judges Koziol, Harpin and Long)

The case was heard by Administrative Judge Lewenberg.

**APPEARANCES**
Beth R. Levenson, Esq., for the employee
Holly B. Anderson, Esq., for the insurer

**KOZIOL, J.** The primary issue in controversy in this accepted case is the proper amount of the employee's average weekly wage. The insurer appeals from the judge's hearing decision requiring it to pay the employee benefits based on an average weekly wage of $1,726.37. The insurer argues that because the employee did not appeal from the conference order and never sought leave to file a late appeal, he could not obtain a better result than the $1,490.33 average weekly wage ordered at conference. It also argues the judge erred by making findings that the employee injured his right knee as a result of the industrial accident, because the sole issue in controversy was the employee's average weekly wage. We agree on both counts.

On May 2, 2012, the employee, a carpenter, was injured at work while moving a large piece of machinery. The injury occurred when the machinery began to tip and he grabbed it, catching his ring on the machine. (Dec. 7.) "There is no dispute that the employee is covered under the employer's workers' compensation policy, that there is liability for the injury or as to the level of disability." Id. The insurer began paying the employee weekly benefits based on an estimated average weekly wage of $800.00 per week. Id. Subsequently, the employee sought adjustment of the average weekly wage.

We set forth the procedural history of this claim in some detail as it bears upon our analysis.

In July, 2012, employee's prior counsel filed a claim on his behalf, seeking adjustment of the average weekly wage, claiming an "estimated" average weekly wage of $1,505.09, and payment of medical benefits. Rizzo v. M.B.T.A., 16 Mass. Workers' Comp. Rep. 160, 161 n.3 (2002) (judicial notice taken of board file). In support of that claim, the employee submitted the following: 1) a 2011, IRS Form 1099 issued by Lexington Builders, Inc., to Ronan K Staff d/b/a/ Alcazar Home Improvement, in the amount of $78,264.86; 2) checks from Lexington Builders Inc., made payable to Alcazar Home Improvement, for thirty-five of the fifty-two weeks prior to his injury. Rizzo, supra. The claim was later withdrawn and in October, 2012, the employee retained his present counsel. Id.; (Ex. 30, "Employee's Motion for an Enhanced Attorney's Fee, Ex. A.") In November, 2012, the employee refiled a claim for adjustment of the average weekly wage, claiming an "estimated" average weekly wage of $1,490.22. Rizzo, supra. In support of that claim, the employee submitted the same thirty-five weeks of pay checks from Lexington Builders, Inc. Id. Ultimately, after being rescheduled several times, the claim was withdrawn at conciliation. Id. In November, 2013, the employee filed the present claim, again seeking adjustment of the average weekly wage, and claiming an "estimated" average weekly wage of $1,490.22. Id. This time, the employee submitted medical reports and a 2011, Form 1040 U.S. Individual Income Tax Return, signed by the employee in September of 2013, listing wages in the amount of $78,264.00. Id. The claim was sent forward to a conference which was conducted on November 25, 2014.

The only issue raised by the employee at conference was his claim for adjustment of his average weekly wage. As a result, the parties executed an opt-out agreement expressly stating no impartial medical examination was necessary because there was no medical issue in dispute. On November 26, 2014, the judge issued a conference order requiring the insurer to pay the employee weekly benefits based on an average weekly

wage of $1,490.33, which was the wage adjustment claimed by the employee on his Form 140 Conference Memorandum. Id. The insurer timely appealed, but the employee did not appeal.

The hearing was conducted on October 14, 2015, and February 18, 2016.[1] The employee was the sole witness on the first day of hearing. (Tr. I.) On the second day of hearing, the employee called the only other witness, the president of Lexington Builders, Inc., David Ricard. (Tr. II, 8.) Despite the employee's protestations that average weekly wage was the only issue in dispute, (Ex. 30, "Employee's Closing Argument"), the insurer alleged that from the date of injury, it had been paying the employee under § 18 as an employee of an uninsured subcontractor, Alcazar Home Improvement. Consequently, it argued the employee should be paid weekly benefits based on a $656.65 average weekly wage.[2] (Ex. 31.) As a result, a great deal of time was spent submitting evidence pertinent to the issue of employment status in order to determine whether the employee was employed by Alcazar Home Improvement, as a G.L. c. 152, § 18 uninsured subcontractor of Lexington Builders, Inc., or whether he was, in fact, an employee of Lexington Builders, Inc.

The judge explicitly rejected the insurer's § 18 argument. He found the employee "did not conduct any independent business and the entire scheme was directed by the employer to avoid insurance and tax expenses. I find it was a sham and do not accept insurer's contention that they are paying pursuant to Section 18." (Dec. 8.) Thus, he

[1] Hereinafter, we refer to the transcript of the first day of hearing, October 14, 2015, as Tr. I, and the transcript from the second day of hearing, February 18, 2016, as Tr. II.

[2] The insurer argued the employee's average weekly wage should be based on the "real economic gain" that the employee derived from his work, as reflected on his 2010 Federal Income Tax return, filed in April of 2011, under the d/b/a Alcazar Home Improvement. (Ex. 31, 3-19.) Referring to that document, the insurer argued the employee claimed "tens of thousands of dollars in business expenses" resulting in a net profit claimed of "a fraction less than 39.74% of gross revenue." (Ex. 31, 7-8.) Using that theory, and advocating for applying the same rationale to the gross receipts for the fifty-two weeks prior to the accident, the insurer sought an average weekly wage of "$656.65"at hearing. (Ex. 31.)

rejected the insurer's argument that the employee's average weekly wage should be adjusted to $656.65. The insurer does not contest this ruling on appeal.

The decision also acknowledged the parties stipulated, "[t]o an average weekly wage of about $1,490.33 being claimed by the employee and being disputed by the insurer." (Dec. 6.) However the judge made the following finding regarding that stipulation: "I find that the actual checks were not available prior to the taking of evidence and that the amount stipulated by the employee was an approximation." (Dec. 6.) Regarding the payments made by Lexington Builders, Inc., and the employee's average weekly wage, the judge found:

> The employer paid the employee as a carpenter $47.00 per hour. At the direction of the employer, the employee paid for his own liability and workers' compensation insurance for a number of years. However due to an audit of the employer's workers' compensation policy the employee was required to be covered under the employer's workers' compensation policy. The employer responded to this change by charging the employee the cost of the additional premium under the policy and deducting it from his pay.
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> * * *
>
> For the fifty-two weeks prior to the date of injury the employee worked 1,914.5 hours at a hourly rate of $47.00 per hour. He received checks during this period for a gross amount of $89,925.62. There were deductions for $154.53 in materials and for workers' compensation coverage. There were no deductions for employment taxes such as Social Security or Medicare. The employee received a 1099 form from the employer and was required to pay his own employment tax.
>
> I find that the employer was attempting to save costs of insurance and taxes by concocting an elaborate pretext to get around the fact that he was hiring an employee to work for his business. I do not think that this should be rewarded by reducing the employee's true wages. An employer is required to pay both workers' compensation insurance and payroll taxes. I find that the applicable average weekly wage is $1,726.37 and that the Section 34 rate is $1,035.82 and the maximum Section 35 rate is $776.87.

(Dec. 6-8.)

The insurer appeals, arguing, as it did in its closing argument to the judge, ( Ex. 31, 15-17), that the best the employee could do at hearing was to be awarded benefits

based on an average weekly wage of $1,490.33, because he failed to appeal from the conference order and never sought leave to file a late appeal. We agree.

Pursuant to G. L. c. 152, § 10A(3), a party's failure to timely appeal a conference order,

> shall be deemed to be acceptance of the administrative judge's order and findings, except that a party who has by mistake, accident or other reasonable cause failed to appeal an order within the time limited herein may within one year of such filing petition the commissioner of the department who may permit such hearing if justice and equity require it. . . .

Here, the conference order provided the relief sought by the employee. The employee never appealed from that order. Moreover, the employee never sought leave to file a late appeal. Consequently, the best the employee could do at hearing was to receive an award of benefits based on the average weekly wage established by that order. Vallieres v. Charles Smith Steel, Inc., 23 Mass. Workers' Comp. Rep. 415, 418 (2009)(amendment to §10A(3) in 1987, is both "consistent with the conventional appellate practice, in keeping with the general rule that an appellee cannot achieve a more favorable result by failing to appeal" and with "clear legislative intent to establish a system which narrows the issues as the litigants proceed through the dispute resolution process"); Blanco v. Alonso Constr., 26 Mass. Workers' Comp. Rep. 157, 160 n. 6 (2009)(where insurer failed to appeal § 10A conference order awarding benefits based on $700 average weekly wage, "insurer could not properly seek a lower average weekly wage at hearing").[3]

The employee argues those cases are distinguishable because the insurer is equitably estopped from raising his failure to appeal as a bar to his receipt of benefits based on a higher average weekly wage. The employee asserts the 2011, Form 1099 generated by Lexington Builders, Inc., (Ex. 25), which the employee used to prepare his Federal Income Tax Return, (Ex. 10), was a misrepresentation upon which he reasonably relied, in order to calculate his average weekly wage. (Employee br. 14.) He also claims his reliance on that document was reasonable because the employer withheld relevant

[3] Consistent with § 10A(3), had the insurer withdrawn its appeal before or during the hearing, the employee would have no claim before the judge.

information, in the form of his weekly pay checks for the fifty-two weeks prior to his injury, despite his request for that information. (Employee br. 14-17.) He argues that had the insurer provided the pay checks, those documents would have given him a basis on which to claim an appeal. Because the information was not provided, and the employer reported a lower amount on the Form 1099, the insurer should be estopped from arguing that the employee should not be paid benefits based on the higher average weekly wage. (Employee br. 14-17.)

We begin by noting the employee did not argue below that the doctrine of equitable estoppel should be invoked to relieve him of the effect of his failure to appeal from the conference order. Instead, he merely asserted the pay checks were not produced by the insurer and that his average weekly wage should be determined based on the gross amount he billed to the employer, not the net paid by Lexington Builders, Inc., after deducting for workers' compensation premiums. (Ex. 30, "Employee Closing Argument" at 7.) Nevertheless, the judge's decision shows that in two instances, he invoked an equitable doctrine when he made his findings and rulings, yet he made no detailed findings specifying the nature of the doctrine used in either instance. (Dec. 4-5, 8.)

The first instance occurred when the judge apparently vacated the employee's stipulation of a claimed average weekly wage of $1,490.33, by finding, "the actual checks were not available prior to the taking of evidence and that the amount stipulated as claimed by the employee was an approximation." (Dec. 4-5.) The second instance occurred when the judge determined the insurer's misclassification of the employee as an independent contractor should not "be rewarded by reducing the employee's true wages." (Dec. 8.)

A judge may vacate a stipulation not providently made. Crittenton Hastings House of the Florence Crittenton League v. Board of Appeal of Boston, 25 Mass. App. Ct. 704, 712 (1988). However, to the extent the judge's findings regarding the stipulation and the insurer's misclassification of the employee's employment status were meant to

excuse the employee's failure to appeal from the conference order, the judge appears to have relied on the production of alleged newly discovered evidence or, as the employee argues, principles of equitable estoppel. The foundation for invoking either principle is lacking in this case.[4]

"Evidence is not newly discovered, even though it was unavailable and unknown during trial, if it was anticipatable and discoverable through due diligence." Wojcick v. Caragher, 447 Mass. 200, 213-215 (2006). The employee's closing argument and his brief on appeal allege he requested from the employer, and the insurer failed to produce, vital pay check evidence he could not obtain any other way. As a threshold matter, the employee's own filings with the department show he knew Lexington Builders, Inc., paid him by check issued to Alcazar Home Improvement, and that those checks were issued in amounts representing the difference between what he had billed as "labor" and the workers' compensation premium that Lexington Builders, Inc., made him pay. Rizzo, supra. He filed two prior claims with copies of thirty-five pay checks received during the relevant fifty-two weeks prior to his injury. See G. L. c. 152, § 1(1)(defining "average weekly wages" as "the earnings of the injured employee during the period of twelve calendar months immediately preceding the date of injury, divided by fifty-two"). As a result, the employee knew such records existed well in advance of the conference, let alone the hearing.

[4] To the extent the judge may have attempted to apply the unclean hands doctrine when he stated the employer's actions should not be "rewarded," (Dec. 8), the judge erred as a matter of law in fashioning the remedy that flowed from the successful application of that doctrine. "The 'unclean hands' doctrine gives the court discretion to deny equitable relief to a party that has acted in bad faith or with unclean hands." Hudson v. Spencer, 180 F.Supp.3d 70 (2015)(D. Mass.); Scatteretico v. Puglisi, 60 Mass. App. Ct. 138, 143 (2003). Pursuant to § 10A(3), the issue at hearing was the insurer's appeal from the conference order: specifically, its quest to obtain a decision ordering benefits based on an average weekly wage that was less than the $1,490.33 ordered at conference. In this case, the proper remedy for successful application of the unclean hands doctrine would be a denial of the insurer's appeal, not an award of additional benefits to the employee.

The employee also provides no details about his efforts to obtain the remaining sixteen weeks of pay check records prior to trial.[5] However, his motion for an enhanced attorney's fee, also part of Exhibit 30, contains that information. Therein, the employee states, "[t]he employee's counsel requested that the employer provide wage information in a letter dated October 10, 2012 (See Attached Exhibit A)," and "[t]he employer did not produce said documentation until the eve of trial, after the undersigned issued a subpoena to be served upon the employer." (Ex. 30, "Employee's Motion for Enhanced Attorney's Fee".) Exhibit A, attached to the "Employee's Motion for Enhanced Attorney's Fee," is a letter of representation dated October 10, 2012, that was sent to the employer after the employee discharged his prior counsel, and retained his present counsel. The letter reads:

> Please be advised that this law firm represents Ronan Staff concerning personal injuries sustained on May 2, 2012 in a work-related incident.
>
> Kindly furnish a copy of Mr. Staff's entire personnel file, including, but not limited to any information regarding wages, earnings, benefits, medical records, employee performance evaluations and/or any other employment matters.
>
> This request is being sent in accordance with M.G.L. Chapter 149, Section 52 C that states in pertinent part that an employee or former employee 'may obtain a copy of his/her personnel record upon submission of a written request to his employer.' A photocopy of this document shall be as valid as the original.

(Ex. 30, "Employee's Motion for an Enhanced Attorney's Fee," Ex. A.) This letter was the only attempt to secure the wage information.

Notably, the letter was sent before employee's present counsel filed any claim on his behalf, and over one year before the employee filed the present claim. Our

[5] The employee attached a spread sheet to his closing argument that was "compiled from information contained in Exhibits 21 and 22," produced by the employer at trial. (Employee br. 12, n.3.) Exhibit 21 contained the invoices generated by the employee and submitted to Lexington Builders, Inc., and Ex. 22 contained the actual pay checks issued by Lexington Builders, Inc. The employee's spread sheet indicates that only fifty-one pay checks existed, and the employee acknowledges there was no payment for one of the weeks during the relevant fifty-two week period. (Ex. 30, "Employee's Closing Argument," 7 & spread sheet.) As a result, for the time period from January 1, 2012, through the date of injury, the employee was missing sixteen, rather than seventeen, relevant pay checks.

regulations provide the parties with discovery rights that are activated by serving requests, "**on or after** the filing of any claim," 452 Code of Mass. Regs. §§ 1.12(1) and (2)(emphasis supplied). In addition, where the opposing party fails to comply with such a request, an order of compliance may be sought from the judge, "on written motion." 452 Code of Mass. Regs. § 1.12(4). Lastly, the regulations state,

> [a]ny motion relating to discovery **must be served upon counsel for the opposing party and the administrative judge**. The party receiving the motion shall, within ten days of receipt of the motion, comply with the discovery sought by motion or provide a written response opposing the motion with specificity to the other party and the administrative judge. A hearing on the motion may be required at the discretion of the administrative judge. The administrative judge may rule upon the motion without hearing. All other motions not relating to discovery are exempt from 452 CMR 1.12(4)(b).

452 Code of Mass. Regs. 1.12(4)(b) (Emphasis supplied). Here, none of those steps were taken. The employee never moved for production of the missing paychecks and hence never filed a motion to compel, despite being served with, and defending against, similar discovery motions filed by the insurer in its attempt to obtain the employee's past income tax filings. (Tr. I, 4; "Insurer's Second/Renewed Motion to Compel Production of Financial Documents," Rizzo, supra.) Instead, three years, and two earlier stages of the dispute resolution process passed before the employee took steps to obtain the information, and then, he did so only on the eve of trial, by issuing a keeper of the records subpoena. (Tr. II, 16-17.) As a matter of law, the pay checks produced at trial do not fit the definition of "newly discovered evidence."

Equitable estoppel requires, "(1) a representation intended to induce reliance on the part of a person to whom the representation is made; (2) an act or omission by that person in reasonable reliance on the representation; and (3) detriment as a consequence of the act or omission." Bongaards v. Millen, 440 Mass. 10, 15 (2003). Even if the employee were genuinely misled, which he was not, his option would have been to seek the Director's permission to file a late appeal. Certainly, at the close of the evidence on the first day of hearing, the employee's own testimony provided the foundation for

ordering a higher average weekly wage. (Tr. I, 29-32, 71-72, 73-74.) The employee's testimony was given well within the one-year deadline for filing such a request with the Director. G. L. c. 152, § 10A(3).

The employee cannot be said to have reasonably relied on the 2011, Form 1099, for proof of his average weekly wage. (Ex. 25.) First, even if the employee figured his average weekly wage based on this document, which shows $78,264 reported by the employer as payments to the employee, that figure, divided by fifty-two, yields an average weekly wage of $1,505.08 not $1,490.33.[6] Second, the relevant fifty-two week period to be used for calculating the employee's average weekly wage was May 2, 2011, through his date of injury, May 2, 2012. G. L. c. 152, § 1. However, the 2011, Form 1099, represented payments made during calendar year 2011, i.e., January 1, 2011, through December 31, 2011. Thus the 2011, Form 1099 included information that should not be used to figure his average weekly wage, i.e., payments for January 1, 2011 through May 1, 2011, and was missing information for the seventeen weeks between January 1, 2012 and the date of injury, May 2, 2012. While there may be circumstances where a dearth of records requires reliance on this less accurate method of calculating average weekly wage, here, that is not the case.

Third, and foremost, the Form 1099 reflects the total payments made to the employee by Lexington Builders, Inc., not the total amount Lexington Builders, Inc., received in bills from the employee. The employee's own submissions attached to his July, 2012, and November, 2012, claim forms show he possessed twelve weeks of relevant pay checks for the period of January 1, 2012, through May 2, 2012, in addition to twenty-three pay checks for the period from May 2, 2011 through December 31, 2011. Rizzo, supra. These checks supported his testimony that he was consistently paid less than the amount he billed because the employer deducted workers' compensation

[6] We observe the employee, who carried the burden of proving his average weekly wage, Sponatski's Case, 220 Mass. 526 (1915), did not provide a formula showing how he arrived at the $1,490.33 claimed at conference.

premiums prior to payment. (Tr. I, 31-32, 71-72, 73-74.) The employee even testified to the percentage of his gross earnings that were withheld by the employer on a weekly basis to pay workers' compensation premiums. (Tr. I, 29-30.) By the date of injury, May 2, 2012, it was established law that the practice of deducting workers' compensation insurance premiums from an employee's pay was impermissible. Awauh v. Coverall North America, Inc., 460 Mass. 484, 494-495(2011)(employer's act of transferring cost of workers' compensation premium to employee is contrary to "general intent and specific language" of Chapter 152). Thus, the employee was well aware of facts that provided the foundation for an award of a higher average weekly wage.

Even the employee's closing argument to the judge advocated for adjustment of his wage based on an alleged "gross" pay check. The employee's spread sheet attached to his closing argument shows that the alleged "gross payment" of $89,771.90, was actually the total amount billed by the employee to Lexington Builders, Inc., on invoices generated by the employee during the relevant timeframe, minus a $154.54 deduction for materials. (Exs. 13, 21 and 30, "Employee's Closing Argument," 7.) The judge found the "gross amount," (Dec. 7), was calculated based on the parties' stipulation "[t]o the amount of money that the employee billed to the employer for the time period during the fifty[-]two weeks prior to the date of injury being 1,914.5 hours at $47.00 per hour but that he was paid a different amount." (Dec. 5.) Yet neither the employee, nor the judge, acknowledged that the figures for the "gross amount" came from the employee himself, as he was the party who generated that data, memorializing it on his own invoices. As the creator of the data, the employee possessed sufficient knowledge of the existence of the invoices, as well as copies of these records, making his claimed reliance on the lower, actual payments made to him after deduction for workers' compensation premiums, unreasonable.[7] Under the circumstances, by adjusting the average weekly wage upward

[7] Indeed, the employee admitted he possessed "invoice books" for the relevant time frame. (Tr. I, 120.) When asked whether he would have missing invoices from time period of May, 2011, through the end of 2011, the employee replied, "I looked for them before I came. I should have them somewhere." (Tr. I. 137.)

in the absence of an appeal by the employee, the judge impermissibly expanded the scope of the dispute before him. We vacate the judge's finding that the employee is entitled to benefits based on an average weekly wage of $1,726.37, and order the insurer to pay the employee benefits based on the $1,490.33 average weekly wage determined at conference.

The insurer also takes issue with the judge's findings regarding an alleged knee injury. Although not an issue in dispute in this case, at the judge's request employee's counsel questioned the employee about the accident and his injury. (Tr. I, 60.) The employee testified he injured his right arm and right knee, (Tr. I 62), and he discussed some of his treatment. The following exchange then took place:

> Ms. Levenson: Your Honor, do you want more information?
>
> The Judge: No, that's all. I just wanted to be able to summarize the event and the injury. Is there any treatment to the knee going on or is it just the arm?

(Tr. I, 64.) Counsel elicited additional testimony regarding the employee's treatment and the following exchange took place:

> Q: And what are you experiencing? What do you feel with your knee?
>
> A: Severe pain.
>
> Ms. Anderson: Your Honor, relevance. We are going beyond, I think.
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> The Judge: No, I am interested.
>
> Ms. Anderson: Okay.
>
> A: The pain doesn't both bother me if I'm just standing doing normal, you know, not working activities. If I'm going up and down the stairs a lot or crouching down, I get severe pain in my right knee.
>
> Q: Do you have any problems with buckling?
>
> A: Sometimes if it's irritated.
>
> Ms. Levenson: Anything else, Your Honor?

> Ms. Anderson: Your Honor, I need to say it is unclear to me whether the insurer accepted the right knee as a body part. We have accepted liability for an industrial accident, but it's not clear that causal relationship of the knee is connected, and I don't know the file on that part—point as well, so I need to raise that.
>
> The Judge: That's fine. I mean, we're not - -
>
> Ms. Anderson: It's not an issue.
>
> The Judge: It's not an issue at the moment. It's more background than anything else.
>
> Ms. Anderson: Okay. That's fine.

(Tr. I, 65-66.) However in his decision, the judge found the employee,

> severely injured his right major arm and right knee. He has had multiple surgeries on his right arm and may need additional surgery. His right knee has treated conservatively. He has not worked since the injury and has been paid workers' compensation on an accepted basis.

(Dec. 7.)

The insurer argues the judge erred by finding the employee injured his right knee as a result of the May 2, 2012, industrial accident. We agree. The only issue before the judge was average weekly wage. As the transcript illustrates, the insurer was faced with the unenviable position of objecting to a line of inquiry that was addressed because the judge requested information on that topic. While a judge has authority under § 11C to make inquiry as he or she sees fit in workers' compensation hearings, such inquiries, and/or the fruit of such inquires, should not and cannot be the basis for expanding the issues in controversy.

The employee agrees that the alleged injury to the employee's right knee was not an issue in controversy, but argues "no action need be taken, as the finding has no impact on the hearing decision." (Employee br. 19.) The employee is correct that the error does not impact the outcome of the average weekly wage dispute. However, the insurer was correct to appeal, as the error clearly had the potential to impact the insurer in an adverse

manner if the matter came before a new judge on an additional claim. See Lopes v. Lifestream, Inc., 25 Mass. Workers' Comp. Rep. 121, 122-124 (2011)(prior decision's finding that employee injured neck as well as low back in work-related accident established causally-related injury to neck despite fact in earlier decision, employee sought and was awarded benefits solely on basis of low back injury). Accordingly, we vacate the finding that the employee injured his right knee in the industrial accident of May 2, 2012, as that issue was not properly before the judge for hearing. We also order the insurer to pay the employee's weekly benefits based on the average weekly wage of $1,490.33. The parties are free to revisit the issues of causal relationship, medical expenses and the extent of the employee's injuries in a future proceeding.

So ordered.

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Catherine Watson Koziol
Administrative Law Judge

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William C. Harpin
Administrative Law Judge

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Martin J. Long
Administrative Law Judge

Filed: ***June 27, 2017***