

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO.: 56405-00

Sandra Latino
Beth Israel Deaconess Medical Center
Care Group Incorporated

Employee
Employer
Self-insurer

REVIEWING BOARD DECISION

(Judges McCarthy, Horan and Fabricant)

APPEARANCES

Alan S. Pierce, Esq., for the employee

Daniel M. Cunningham, Esq. and Holly B. Anderson, Esq., for the self-insurer on appeal

Richard Curtin, Esq., for the self-insurer at hearing

MCCARTHY, J. The employee appeals from a decision in which an administrative judge denied her claim for workers' compensation benefits due to a repetitive injury to her right upper extremity. Because the judge did not address the employee's claim in its entirety, we recommit the case. We affirm the decision as to the judge's denial of the employee's right wrist claim.

The employee alleged that she had suffered an injury to her right upper extremity (hand, wrist, elbow and arm) by performing repetitive work as a billing representative for the employer in late 2000. She stopped work on February 7, 2001, and treated with various doctors. (Dec. 4.) The self-insurer paid without prejudice from February 25 until July 10, 2001. The employee filed the present claim for benefits on August 1, 2001, which the judge denied at the § 10A conference. (Dec. 2, 5.)

Having appealed the judge's conference denial, the employee underwent a § 11A medical examination. The impartial physician diagnosed an unspecified pain and weakness of the right upper extremity, which he could only characterize generally as chronic pain syndrome, causally related to her work in late 2000. The doctor found the employee partially disabled, not at a medical end result, and restricted her from repetitive work. (Dec. 5-6.) Additional medical evidence introduced by the employee, on the basis of the judge's ruling of medical complexity (Dec. 2), indicated a plethora of diagnoses: flexor

tenosynovitis, cervical myofascial pain syndrome, supraspinatus impingement syndrome of the shoulder, right cervical radiculopathy, carpal tunnel syndrome and ulnar stretch neuropathy. (Dec. 6.)

The judge did not find the employee credible as to the nature and volume of her repetitive work, and found her testimony at hearing to be inconsistent with the history she reported to her numerous physicians. The judge, however, only addressed the employee's right wrist complaint, for reasons that are difficult to decipher, but ultimately irrelevant to our disposition of this appeal. (Dec. 7-8.) The judge denied that part of the employee's claim based on his conclusion that she was not credible. (Dec. 11.)

We discern no error in the denial of the employee's claim of a right wrist injury. The decision is grounded in credibility findings that are not arbitrary or capricious. (Dec. 7-10.) The employee complains that the judge "does not comment on why he finds her testimony not credible." (Employee Brief, 7.) As the judge is not under any obligation to explain his credibility findings, the employee's argument is unavailing.

The judge stated in his findings of fact that his "decision is limited to addressing only that very specific claim [for the right wrist] that was filed by the claimant." (Dec. 8.) We are at a loss to know why the judge approached the employee's claim with such a limitation. The only claim form in the board file, dated August 1, 2001, indicates that the employee was alleging injury to her entire right upper extremity, including her hand, wrist, elbow and arm.¹ The judge erred by scaling back the employee's claim, and failing to address all of the issues presented for determination at hearing.² See § 11.

¹ Although the body part codes refer only to the upper extremity, the description also includes "shoulder" and "neck."

² To the extent the judge made findings of fact that might be construed as denying a claim for parts of the employee's right upper extremity other than her wrist, see Dec. 9-10, we reverse the decision.

We affirm the decision as to the denial of a right wrist injury. We transfer the case to the senior judge for reassignment and recommitment to a new administrative judge for a de novo hearing on the remainder of the employee's claim.³

So ordered.

William A. McCarthy
Administrative Law Judge

Mark D. Horan
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

Filed: April 5, 2005

³ The judge who heard and decided the case no longer serves in the department. The newly assigned administrative judge shall draw his own credibility conclusions, uninfluenced and unbound by the credibility findings set out in the decision before us on appeal.