

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO.: 043883- 01

Sandra Ricard
Seven Hills Foundation
Arrow Mutual Liability

Employee
Employer
Insurer

REVIEWING BOARD DECISION

(Judges Fabricant, McCarthy and Horan)

APPEARANCES

Walter J. Avis, Esq., for the employee
John A. Morrissey, Esq., for the insurer

FABRICANT, J. The insurer appeals from a decision in which an administrative judge awarded the employee workers' compensation benefits for an injury that, arguably, was subject to the heightened causation provisions of § 1(7A) for industrial injuries that combine with pre-existing, non-compensable medical conditions.¹ Because the judge failed to adequately address the many elements of the fourth sentence of § 1(7A), we recommit the case.

The employee suffered an industrial accident on July 23, 2001, when she injured her back moving a bed. At the time of this injury, the employee had pre-existing conditions of fibromyalgia and chronic fatigue syndrome, as well as back problems due to a slip and

¹ General Laws c. 152, § 1(7A), provides, in relevant 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.

fall at work on February 17, 2000. (Dec. 5, 7.) The insurer raised § 1(7A) at hearing. (Tr. I at 7.) See Saulnier v. New England Window and Door, 17 Mass. Workers' Comp. Rep. 453, 459-460 (2003). Although benefits were awarded for the July 23, 2001 injury, the administrative judge did not make any findings as to whether the § 1(7A) standard of "a major" cause applied and, if so, whether it was met. (Dec. 7-8.)

The absence of findings addressing the various elements of § 1(7A) requires us to recommit the case for the judge to perform that task. In Viera v. D'Agostino Assocs., 19 Mass. Workers' Comp. Rep. 50 (2005), we set out a detailed map of the analysis needed to address the heightened § 1(7A) standard of "a major cause." In a nutshell, that analysis requires findings as to:

[W]hether the employee's [fibromyalgia, chronic fatigue syndrome and back problems] are 1) "pre-existing condition[s], which resulted from an injury or disease not compensable under the chapter," which 2) "combine with" the [July 23, 2001] work injury ("a compensable injury or disease") "to cause or prolong disability or a need for treatment;" and, if so, 3) whether that "compensable injury or disease remains a major but not necessarily predominant cause of disability or need for treatment." § 1(7A).

Viera, supra at 52-53. Each stage of the analysis includes its own set of pitfalls which we previously alluded to in Viera, and the cases cited therein. See id. at 53.

Because the administrative judge failed to adequately address § 1(7A), we recommit the case for further findings consistent with Viera. We summarily affirm the decision with regard to the other issues argued by the insurer on appeal.

So ordered.

Bernard W. Fabricant
Administrative Law Judge

William A. McCarthy
Administrative Law Judge

Sandra Ricard
Board No. 043883-01

Mark D. Horan
Administrative Law Judge

Filed: November 16, 2005