COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS	**BOARD NO. 58207-99**
Sandra Yackolow	Employee
City of Lynn School Dept.	Employer
City of Lynn	Self-insurer

REVIEWING BOARD DECISION
(Judges McCarthy, Levine and Maze-Rothstein)

APPEARANCES
Sandra Yackolow, pro se on appeal
Alan S. Pierce, Esq., for the employee at hearing
Thomas F. Finn, Esq., for the self-insurer

MCCARTHY, J. The employee appeals from an administrative judge's denial of her claim for workers' compensation benefits for an alleged repetitive stress injury of costochrondritis of the anterior chest. Because the judge's decision is based on credibility findings that are supported by record evidence, and we do not perceive any errors of law, we affirm the decision. See G. L. c. 152, § 11C.

Sandra Yackolow is a school teacher, who has worked for over thirty years with the City of Lynn School Department. She claimed that she sustained her injury, which consisted of aches and pains in her left chest area, as a result of moving all of her books, supplies, computers, furniture and other equipment from one school room to another in August 1999. (Dec. 4-5.) She taught her regular assignment after school opened, but was unable to work any longer as of September 24, 1999 due to her chest pain. She used sick time until December 30, 1999 and informed her principal, Vincent Spirito, of her treating doctor's order for her to refrain from work until her condition had improved. (Dec. 5.)

The employee filed the present claim for benefits in 2001, which the self-insurer resisted. The judge denied the employee's claim following the § 10A conference and the employee appealed to a full evidentiary hearing. (Dec. 2-3.)

The employee underwent an impartial medical examination on June 5, 2002. See G.L. c. 152, § 11A. The impartial physician offered a diagnoses of myalgia affecting the chest wall and upper back and left shoulder adhesive capsulitis. The doctor did not causally relate the employee complaints to her work, noting her treating doctors' recounting of depression and anxiety closely interrelated with her pain complaints. The doctor considered that the employee could return to her teaching duties. (Dec. 5-6.) The judge allowed additional medical evidence on the employee's motions due to medical complexity and the inadequacy of the § 11A report as to the "gap" period from the date of injury until the date of the impartial examination. (Dec. 6.) See G.L. c. 152, § 11A(2).

The judge found the employee's testimony to be less than credible and relied instead on the testimony of her principal, Mr. Spirito, who did not corroborate her account of having to move her classroom by herself. (Dec. 6-7.) The judge also found that there was a lack of any reference to the work activities in the office notes of the employee's treating physicians prior to July 24, 2000, almost a year after the work activities alleged to have caused her pain. (Dec. 7-8.) The judge also noted that the employee had been diagnosed with costochrondritis as early as February 6, 1985, according to her treating doctors' records. (Dec. 8.) The judge adopted the opinion of the impartial physician and found no causal relationship between the alleged work activities and the employee's complaints. The judge also adopted the opinion of the self-insurer's medical examiner, who stated that the employee's pain was probably related to her excisional biopsy in May 1999. (Dec. 8-9.) The judge therefore denied the employee's claim for workers' compensation benefits. (Dec. 10.)

The employee challenges various aspects of the decision. First, she argues that the judge mischaracterized the nature of her cumulative injury as a single incident trauma. (Employee Brief, 5,6.) The judge's findings do stray a bit when he draws attention to the claimed September 24, 1999 date of injury (the last day of work, in keeping with

common practice for cumulative injuries), while noting that the employee's testimony described only the moving activities in the last week of August, 1999 as triggering her claim for benefits. (Dec. 6-7.) However, the actual turning point is credibility: why was the claimed date of injury the last day of employment, when the only contributory work activity (the "specific incident") was in the last week of August? The judge certainly did *not* find that there were work activities in the following month that caused the employee's pain. Those activities included passing out books, standing, and reaching up to put pictures on the wall. (Tr. 27.) To the extent the employee was relying on such activities in her claim for benefits (which would be the only reason for claiming a September 24, 1999 date of injury), the judge clearly did not find the testimony credible. Such credibility calls were the judge's to make. See Lettich's Case, 403 Mass. 389, 394-395 (1993). There was no mischaracterization of the employee's claim.

The employee's other arguments are simply more and varied attacks on the judge's other credibility assessments and his rejection of the treating physician's opinions on causal relationship and disability. There was nothing erroneous in any of the judge's findings in these areas. Again, determination of credibility is for the judge as fact-finder, and we will not disturb those findings, so long as they are – as here – supported by the evidence and not otherwise tainted by error of law. See, e.g., Collins v. Leaseway Deliveries, Inc., 9 Mass. Workers' Comp. Rep. 211, 212 (1995); Murphy v. Team Star Contractors, Inc., 17 Mass. Workers' Comp. Rep. ___ (December___, 2003). Furthermore, the judge was free to adopt the medical evidence that he considered persuasive, the quantity and quality of countervailing medical opinions notwithstanding. See Wright v. Energy Options, 13 Mass. Workers' Comp. Rep. 263, 266 (1999).

As the decision is not arbitrary and capricious, "in the sense of having adequate evidentiary and factual support and disclosing reasoned decision-making within the particular requirements governing a workers' compensation dispute," Scheffler's Case, 419 Mass. 251, 256 (1994), we affirm.

So ordered.

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William A. McCarthy
Administrative Law Judges

Filed: **December 23, 2003**

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Frederick E. Levine
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge