COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO.:** 027092-04

Scott Murphy	**Employee**
American Steel & Aluminum Corp.	**Employer**
AIM Mutual Insurance Co.	**Insurer**

REVIEWING BOARD DECISION

(Judges Horan, Costigan and Fabricant)

The case was heard by Administrative Judge Constantino.

APPEARANCES

Charles E. Berg, Esq., for the employee at hearing
James N. Ellis, Esq., for the employee on appeal
Gregory M. Iudice, Esq., for the insurer

HORAN, J. Both parties appeal from a decision awarding the employee § 30 medical benefits for a work-related right carpal tunnel syndrome, but denying his claim for weekly incapacity benefits. We affirm the decision.

The employee, a machine operator for twenty years for the employer, alleged that he suffered from a work-related right carpal tunnel syndrome. He claimed a date of injury of August 31, 2004, the last day he worked as a machine operator. However, the employee had experienced symptoms in both upper extremities beginning in 2002. In 2004, based on those symptoms, he was diagnosed as suffering from amyotrophic lateral sclerosis (ALS).[1] He returned to perform light clerical work for the employer from February 2005 to May 2005. He left that job "because he thought the job was not worth doing." (Dec. 9.) He has not worked since then. (Dec. 8.)

The employee's claim was denied at conference, and he appealed. At hearing, the insurer raised § 1(7A)[2] "major" causation as a defense, and the judge denied the employee's motion to introduce additional medical evidence. See G. L. c. 152, § 11A(2). (Dec. 2-3.)

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[1] ALS is more commonly more known as Lou Gehrig's disease.

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

The employee underwent a § 11A impartial medical examination by Dr. David J. Bryan. Dr. Bryan diagnosed the employee as suffering from both ALS and a mild right carpal tunnel syndrome. (Dep. 4, 23-24.) Dr. Bryan causally related the employee's carpal tunnel syndrome directly to the employee's work. (Dep. 17-18.) However, the doctor opined the contribution of the employee's carpal tunnel syndrome to his disability was minor, as compared to the effects of his ALS, which he opined was not work-related. (Dep. 7, 18, 23-24.) The doctor also opined that the pain and tingling in the employee's right hand was more likely related to the employee's ALS. (Dep. 17.) Although one of the judge's findings alluded to § 1(7A)'s "a major" causation standard,[3] Dr. Bryan did *not* opine that the employee's work-related injury, a mild right carpal tunnel syndrome, combined with his prior ALS condition "to cause or prolong [the employee's]

> 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.

[3] The judge found there was "no medical evidence that the mild carpal tunnel syndrome which combined with the amylotropic [sic] lateral sclerosis was ever a major cause of Mr. Murphy's disability." (Dec. 10.) In his report Dr. Bryan, in response to a question posed to him on the "combination" issue, opined that "[t]he medical record does not support that a stated work related injury on 8/27/2004 of right carpal tunnel syndrome combined with a non-work related pre-existing injury to cause or prolong or establish a need for treatment for Mr. Murphy." (Stat. Ex. 1.) At his deposition, Dr. Byran testified the employee was suffering from two independent diagnoses, which concurrently produced the employee's hand symptomatology. (Dep. 5, 17, 23.) Accordingly, based on the only medical evidence of record, this was not a § 1(7A) case. We do not address this point further, as the insurer's cursory allusion to the issue in its brief is inadequate for our consideration. (Insurer br. 11.) Its two sentence argument does not assist us with meaningful reasoning, analysis or citation of authority, and cannot be said to rise to the level of appellate argument, particularly given its placement within a section advocating *affirmance* in defense of the employee's appeal. See Mancuso v. MIIA, 453 Mass. 116, 128 n.28 (2009); Adoption of Kimberly, 414 Mass. 526, 537-538 (1993); Larson v. Larson, 30 Mass. App. Ct. 418, 428 (1991). Accordingly, any challenge the insurer may have intended to make regarding the applicability of § 1(7A) is deemed waived.

disability or need for treatment." G. L. c. 152, § 1(7A). Adopting Dr. Bryan's opinion, the judge concluded the employee suffered from a work-related mild right carpal tunnel syndrome. (Dep. 18; Dec. 11.) Consistent with Dr. Bryan's deposition testimony, the judge did not find that the employee's mild carpal tunnel condition prevented him from working as a machine operator.[4] (Dep. 23-24; Dec. 11.) The judge awarded § 30 medical benefits only for treatment of the employee's carpal tunnel condition; the judge also awarded costs, and a reduced attorney's fee pursuant to G. L. c. 152, § 13A(5). (Dec. 12.)

On appeal, the insurer argues the judge erred by finding the insurer liable for treatment of the employee's carpal tunnel syndrome. It maintains the impartial physician did not causally relate the employee's carpal tunnel syndrome to the employee's work. We disagree. Dr. Bryan clearly opined that there was a causal relationship between the employee's repetitive work and his mild right carpal tunnel syndrome. (Dep. 17-18.) The doctor never disavowed that opinion. The insurer's cross-examination merely focused on the fact that the employee's treating physician had not made that diagnosis. (Dep. 22-23.)

The employee's argument that the judge erred as a matter of law by failing to allow additional medical evidence is also without merit. The contention is essentially that, because the case presented a combination injury, susceptible to the application of § 1(7A) "major" causation, the medical issues were necessarily complex, and/or that the § 11A physician's opinion was inadequate as a matter of law. We disagree. See footnote 3, supra. The judge's denial of the employee's motion for additional medical evidence, based on his finding that Dr. Bryan's report was adequate, (Dec. 3), and his implied finding of no medical complexity, was within his authority and not an abuse of discretion. G. L. c. 152, § 11A(2); Viveiros's Case, 53 Mass. App. Ct. 296, 300 (2001).

Finally, the employee argues the judge erred by awarding a reduced attorney's fee.[5] In fact, based on legal precedents, the employee was fortunate to receive an attorney's fee at all. The judge's

[4] Dr. Bryan opined that only the employee's ALS disabled him from his regular work. (Dep. 23-24.)

[5] See General Laws c. 152, § 13A(5), which provides, in pertinent part:

> Whenever an insurer . . . contests a claim for benefits and then . . . the employee prevails at such hearing the insurer shall pay a fee to the employee's attorney in an amount equal to three thousand five hundred dollars plus necessary expenses. An administrative judge

finding of liability for medical treatment of the employee's carpal tunnel syndrome, unaccompanied by an order of weekly compensation benefits, and without an order to pay specific medical bills in dispute, does not support an attorney's fee award. Gonzalez's Case, 41 Mass. App. Ct. 39, 41-42 (1996); Paygai v. Wrentham State School, 10 Mass. Workers' Comp. Rep. 685, 686 (1996). However, because the insurer does not challenge the fee award, we do not disturb it. Prendergast v. Bay State Volkswagen, 18 Mass. Workers' Comp. Rep. 166, 171-172 (2004).

The decision is affirmed.

So ordered.

Mark D. Horan
Administrative Law Judge

Patricia A. Costigan
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

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may increase or decrease such fee based on the complexity of the dispute or the effort expended by the attorney.