COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 012160-01**

Stephen Lamonica	Employee
Boston Water & Sewer Commission	Employer
Boston Water & Sewer Commission	Self-insurer

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

APPEARANCES
Alan S. Pierce, Esq., for the employee
Mary Ann Calnan, Esq., for the self-insurer

CARROLL, J. In its appeal of a hearing decision, the self-insurer asserts, among other things, that the administrative judge erred by allowing the employee's motion for additional medical evidence due to the complexity of the medical issues. G. L. c. 152, § 11A(2). We affirm the decision.

The relevant facts are as follows. On April 4, 2001, the employee was injured at work when he tripped on a rug and fell in a twisting motion onto his left side. He experienced an immediate onset of severe pain in his low back. (Dec. 6.) The self-insurer accepted liability for the injury. (Dec. 4.) The employee treated conservatively, but the pain and muscle spasms did not go away and worsened. At the time of the hearing, he remained unable to perform his job as a laborer delivering and repairing water meters due to unremitting pain in his low back. (Dec. 6.) In 1996, the employee had been diagnosed with multiple sclerosis. Due to that illness, the employee had to use a cane or a brace for his right foot. Nonetheless, the employee was still able to perform all of his job functions, albeit often at a slower pace. (Dec. 5.)

The employee's claim at hearing was for ongoing temporary total incapacity benefits. (Dec. 3.) Due to the medical combination of the pre-existing multiple sclerosis

and the back injury, the claim was subject to the appropriately raised causal standard of § 1(7A) that provides:

> 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.

(Dec. 3, 10.) The employee moved for additional medical evidence on the grounds that the report of the § 11A examiner was inadequate and/or the medical issues were complex. The judge ruled that the report was adequate under § 11A(2), but agreed with the employee that the medical issues were complex, due to the presence of the pre-existing multiple sclerosis in the employee's medical picture. The self-insurer objected to the judge's ruling. (Dec. 3.) The judge ultimately adopted the opinions of the employee's treating physician, Dr. Mark Weiner, that the employee was totally disabled due to the effects of his industrial injury, which remained a major cause of the resultant disability:

> Dr. Weiner states that the pre-existing condition has not worsened since the accident and it has remained stable. Dr. Weiner further states that the employee is limited in his ability to rehabilitate his low back industrial injury by reason of pre-existing "gait abnormality" and that each condition worsens the other. Dr. Weiner concludes that the lumbar sacral strain with spasm and the underlying pre-existing multiple sclerosis are each a major cause of his ongoing disability and that multiple sclerosis alone was not significant enough to result in any disability.

(Dec. 8.) The judge concluded that the employee was totally incapacitated on an ongoing basis, and awarded benefits under §§ 34, 13 and 30 accordingly. (Dec. 9-11.)

The self-insurer on appeal continues its objection to the judge's ruling, pursuant to § 11A(2), that the medical issues in the case were complex, by which the employee was allowed to submit the medical evidence of Dr. Weiner that carried the day. We have concluded that an administrative judge's ruling on medical complexity is a highly discretionary determination:

> Complexity . . . is defined in neither the statute nor in the regulations. Thus, we look to the ordinary and approved usage of the term to ascertain the meaning of complexity in the context of the statute and the legislature's intent in its

> enactment. See Jinwala v. Bizarro, 24 Mass. App. Ct. 1, 4-6 (1987). Complexity means "the condition or quality of being complex," and complex means "not simple; involved or complicated." Webster's New World Dictionary, (3d ed. 1991). As with any qualitative concept, complexity involves a subjective component. Like beauty, it is in the eye of the beholder, because one person's complexity is another's simplicity. What one views as complex is largely dependent on individual knowledge, experience and education. Compare Mendez v. The Foxboro Co., 9 Mass. Workers' Comp. Rep. 641 (1995)(treatment of inadequate reports where the statute prescribes particulars which must be assessed by § 11A doctors where feasible[.])(citation omitted.)

Dunham v. Western Massachusetts Hosp., 10 Mass. Workers' Comp. Rep. 818, 821-822 (1996). This being said, we can hardly imagine a more fitting application of § 11A(2) complexity than in the present employee's combination of the pre-existing disease of multiple sclerosis with his industrial back injury, subjecting the claim to the § 1(7A) standard of "a major" causation. Certainly, such claims involving non-work-related pre-existing conditions are, by their very nature, somewhat more complex than the garden-variety back strains at work. However, we do not mean to imply that any § 1(7A) claim is complex as a matter of law, such that a judge's denial of a motion to that effect would be an abuse of discretion. We merely conclude that the judge's ruling of medical complexity in the present case was a far cry from an abuse of discretion.

The self-insurer argues that Lorden's Case, 48 Mass. App. Ct. 274 (1999), invokes a different approach, implying that a complexity ruling must be based on a showing by the moving party that additional medical evidence would serve some legitimate purpose. (Self-insurer's brief, 3.) While we acknowledge that the employee's motion did not explain reasons for seeking a ruling of complexity, the judge's explanation surely did: "the complexity of the medical issues involved regarding the pre-existing condition of multiple sclerosis."[1] (Dec. 3.) In any event, Lorden's Case is inapposite. That case was recommitted based on the judge's error in *failing* to rule that a particular exposure

[1] Of course, although preferable to do so, the judge is not required to set out his reasoning in ruling on a motion for additional medical evidence under § 11A(2). Coggin v. Massachusetts Parole Bd., 42 Mass. App. Ct. 584, 588, n.7 (1997).

diagnosis, toxic encephalopathy, was medically complex. Id. at 280. Here the opposite is the case.

The allowance of additional medical evidence on the grounds of medical complexity was not an abuse of discretion. We summarily affirm the decision as to all other arguments on appeal.

Accordingly, the decision is affirmed. We award the employee's attorney a fee, pursuant to § 13A (6), in the amount of $1,276.27.

So ordered.

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Martine Carroll
Administrative Law Judge

Filed: **December 5, 2003**

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William A. McCarthy
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge