

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF
INDUSTRIAL ACCIDENTS

BOARD NO. 045895-05

Stephen Quinlan
Norwell Networks, Inc.
Travelers Property Casualty Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION
(Judges Fabricant, Koziol and Levine)

The case was heard by Administrative Judge Hernández.

APPEARANCES

Robert L. Noa, Esq., for the employee at hearing
James N. Ellis, Esq., for the employee on brief
Donna Gully-Brown, Esq., for the insurer

FABRICANT, J. The employee appeals from the administrative judge's decision dismissing his claim, with prejudice, for failure to prosecute. We affirm the decision.

A § 10A conference on the employee's claim for §§ 13 and 30 out of pocket expenses was held on July 21, 2008.¹ The conference order required the "Insurer to pay medical bill [sic] owed Employee upon receipt of proper documentation of medical bills by Employee under the provisions of M. G. L. Chapter 152, §§ 13 and 30." (Dec. 2).

On the employee's appeal, the matter was originally scheduled for a hearing on June 24, 2009, but was continued twice at the employee's request due to his claimed inability to obtain and produce the required medical documentation to the insurer for payment.² On the last scheduled hearing date, October 8, 2009, the employee failed

¹ A different administrative judge presided over this conference.

² In response to the employee's request, the June 24, 2009 hearing date was continued to August 31, 2009, which was later rescheduled to a status conference on September 2, 2009. At the status conference, the hearing was rescheduled to October 8, 2009, due to the

to appear, ostensibly due to health reasons which were neither specified nor documented by counsel. As medical documentation in support of the employee's request for §§ 13 and 30 benefits was still not forthcoming, the insurer presented a motion to dismiss, arguing that the employee had failed to prosecute his claim. (Tr. 2).

The sole issue before us is the claim for §§ 13 and 30 benefits.³ The allowance of the insurer's motion to dismiss, with prejudice, was appropriate. No § 11A impartial examination was scheduled, and from the date of the § 10A conference order until the October 8, 2009 hearing date, more than fourteen months had elapsed in which the employee could neither obtain nor proffer the requisite documents in support of his claim.⁴ Coupled with the employee's absence on the date of hearing, which had been continued at his request, there were ample grounds for dismissal of his claim.

We have long recognized that it is within the scope of the judge's discretion to dismiss a claim for lack of prosecution under appropriate circumstances. Arruda v. Cut Price Tools of Somerset, Inc., 14 Mass Workers' Comp. Rep. 169 (2000); McCormick v. Avco Sys. Div., 1 Mass Workers' Comp. Rep. 188 (1987). Further, there is ample evidence of prejudice which would result from a dismissal without prejudice. In addition to the significant costs borne by the insurer associated with the numerous rescheduled appearances, the expenditure of limited judicial resources must also be taken into account.

We see no abuse of discretion here, and, accordingly, affirm the decision.

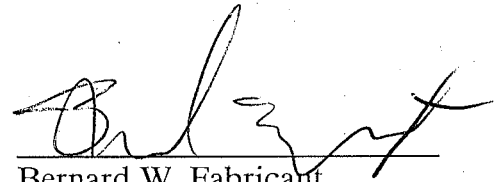
employee's assertion that even more time was needed to obtain the required documentation. (Dec. 2)

³ The issue of an attorney's fee has not been raised before us and is, thus, waived.

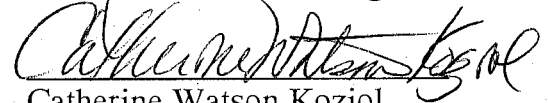
⁴ Indeed, throughout the pendency of this appeal, no further attempt has been made by the employee to provide that documentation.

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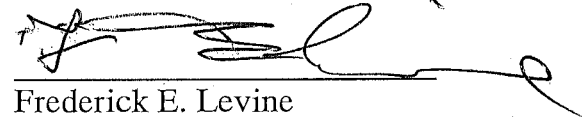
So ordered.



Bernard W. Fabricant
Administrative Law Judge



Catherine Watson Koziol
Administrative Law Judge



Frederick E. Levine
Administrative Law Judge

Filed:

