COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 035665-98**

Susan Scibilia	Employee
J & R Schugel	Employer
Fireman's Fund Insurance	Insurer

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

APPEARANCES
David B. Paradis, Esq., for the employee
Edward M. Moriarty, Jr., Esq., for the insurer

McCARTHY, J. The employee appeals an administrative judge's denial and dismissal of her claim for compensation. The judge found that § 7A applied to establish prima facie evidence that the employee's fall at work, which left her with no memory of events immediately before or several weeks after the fall, was causally related to her employment. However, he further found that the prima facie effect of § 7A was overcome by evidence that the employee's fall was idiopathic (i.e., stemmed solely from a personal illness or infirmity of the employee), and that the workplace did not expose her to increased danger or contribute to her fall. Accordingly, the judge found that the employee did not sustain an injury arising out of her employment, and denied and dismissed her claim. The employee appeals, challenging, among other things, the foundation for the judge's finding that the fall was idiopathic. We agree with the employee on her foundational argument and recommit the case for further findings. In so doing, a reexamination of our interpretation of § 7A as it relates to testimonial incapacity is appropriate, as it is a recurring issue for administrative judges and the reviewing board.

Susan Scibilia was a fifty-one-year-old long-distance truck driver who had worked for the employer for just over one month when, on July 2, 1998, she was dispatched to drive from Minnesota to Springfield, Massachusetts. (Dec. 4.) After making several

stops along the way, she arrived at the warehouse of N. Winer and Sons, Inc. in Springfield sometime before her scheduled delivery of 4:00 a.m. on July 6, 1998. Tom Alamed, a Winer employee, arrived at the warehouse around 4:00 a.m., and found the employee asleep in her truck, which was parked at the loading dock. When he awakened her, she realized that she did not have the keys to unlock the rear doors of the truck, and had to drive to a truck stop to have the lock cut open. Upon her return to the warehouse, Mr. Alamed unloaded the truck for her because he was now behind schedule. (Dec. 5.) He did not do the unloading because Ms. Scibilia complained of illness or fatigue. During the unloading, Ms. Scibilia sat on some pallets nearby. At some point, she stood up and walked toward Mr. Alamed. He turned away from her, heard a sound, and looked around to see her lying on the concrete floor, unresponsive. He called an ambulance, which transported Ms. Scibilia to Bay State Medical Center, where she remained in the intensive care unit for two and one-half weeks. (Dec. 5.) She was then transferred to Lancaster General Hospital, where she was hospitalized for another three weeks. As a result of the fall, she sustained a large right epidural hematoma and head laceration. The day following the accident, she underwent a craniotomy to relieve pressure and remove the hematoma. Since her injury, the employee has complained of difficulty with memory, concentration, and organizing her life, as well as getting lost while driving. (Dec. 6.)

At conference, the judge awarded weekly § 34 temporary total incapacity benefits beginning on the date of conference. Both parties appealed, and the case returned to the judge for a de novo hearing. (Dec. 2.) Pursuant to § 11A, Dr. Armand Aliotta, an impartial physician, examined the employee, and his report and deposition testimony were admitted into evidence. Due to the complexity of the medical issues, the administrative judge allowed additional medical evidence. (Dec. 1, 3.) Each party submitted a voluminous medical packet. The insurer engaged three physicians, two of whom, Dr. Winkler and Dr. Wepsic, performed record reviews. The third, Dr. Dasco, examined the employee. All three physicians were deposed. (Dec. 3; Winkler Dep. 7; Wepsic Dep. 6.)

At the hearing, Ms. Scibilia claimed that, as a consequence of her head injury, she had no memory of events for the period beginning with the day before the accident until approximately three weeks later, while she was recuperating at Lancaster General Hospital. (Dec. 9.) Therefore, she claimed entitlement to the prima facie effect of § 7A.[1] (Dec. 9.) The judge recognized that "[t]he application of § 7A is not automatically triggered by an employee who has lapses of memory or even amnesia." (Dec. 10.) He adopted the medical opinions of Dr. Winkler and Dr. Wepsic that "antegrade and retrograde amnesia is a condition which is a consequence of traumatic head injury." (Dec. 9; Winkler Dep. 34; Wepsic Dep. 23, 24.) He therefore found that "insofar as the amnesia resulted from the head trauma. . . the employee's inability to recall and offer testimony on the events of the date of injury is causally related to the fall which she sustained, and she is entitled to the *prima facie* effect of § 7A." (Dec. 10.) The judge, then looked to determine whether the insurer had adduced evidence sufficient to overcome the prima facie weight of the employee's evidence. (Dec. 10.)

> Looking first at the lay testimony of Mr. Alamed, the judge found:
>
> Alamed unloaded the employee's truck, while the employee sat on some pallets nearby. I specifically credit Alamed's testimony that he did the unloading because he was in a hurry and behind schedule, and not because the employee had made complaints of illness or fatigue. As Alamed was completing the unloading, the employee stood up from where she was sitting, and *began to walk towards him, thanking him for his efforts, and handing him the invoice of items delivered*. Alamed *at that moment had turned away* from the employee. He heard a sound, and he turned around to see the employee on the concrete floor, unresponsive.

[1] General Laws c. 152, § 7A, as amended by St. 1991, c. 398, s. 21, provides:

> In any claim for compensation where the employee has been killed or found dead at his place of employment or, in the absence of death, is physically or mentally unable to testify, and such testimonial incapacity is causally related to the injury, it shall be prima facie evidence that the employee was performing his regular duties on the day of injury or death and that the claim comes within the provisions of this chapter, that sufficient notice of the injury has been given and that the injury or death was not occasioned by the willful intention of the employee to injure or kill himself or another.

(Dec. 5, emphasis added.) Later in the decision, the judge noted that Mr. Alamed testified that the employee "had stood up and was *beginning to walk toward him*." (Dec. 13, emphasis added.) He further found that the workplace floor was "level, clean and clear of objects or defects which might have caused the employee to trip and fall," and she did not strike any "object or part of the workplace as she fell." (Dec. 10.) The judge concluded that the employment and workplace did not contribute to her fall or expose her to increased danger.

The judge then reviewed the medical opinions with an eye on the pivotal issue in the claim – the cause of Ms. Scibilia's fall. Dr. Aliotta, the impartial examiner, opined that the fall probably "had little to do with [her] blood pressure." (Dec. 11, Ex. 2 at 3; Aliotta Dep. at 39, 44.) Dr. Dasco opined that there was no definitive proof that falling blood pressure upon assuming an erect position, i.e. orthostatic hypotension, caused the fall and he could not render an opinion as to whether she fainted. (Dec. 11; Dasco Dep. 17, 19.) He further opined that it was unlikely that a drop in blood pressure caused her to fall and hit her head, but he could not completely rule out that possibility. When orthostatatic hypotension does occur, Dr. Dasco stated that it results in a slow collapse of approximately ten seconds. (Dec. 11; Dasco Dep. 20-21; 62.) Dr. Wepsic opined that the employee fell as a result of temporary loss of consciousness due to underlying medical problems, including hypotension, anemia, and vascular problems. (Dec. 12; Wepsic Dep. at 13, 20.)

Finally, Dr. Winkler, whose opinion the judge adopted, opined that the employee fell because of a drop in blood pressure resulting from her shift from a sitting to a standing position. The judge summarized Dr. Winkler's opinion as follows:

> Dr. Winkler further opined that blood pressure does not drop instantaneously, but gradually [citations omitted], but it would normally occur within thirty seconds, depending on the speed of the drop in pressure [citation omitted]. Dr. Winkler opined that the *timing of the employee's fall* was consistent with the time it would take for the employee's blood pressure to decrease to the point where there was insufficient pressure to provide enough blood to the brain to maintain consciousness. [citation omitted]. I find that the opinion of Dr. Winkler is consistent with the opinion of Dr. Dasco in that both opine that the loss of blood

> pressure is not instantaneous but gradual, which I find would account for the employee's ability to *walk a short distance before collapsing*.
>
> . . . .
>
> I adopt the well-reasoned opinion of Dr. Winkler that the collapse was due to orthostatic hypotension. I further adopt the opinion of Dr. Winkler and Dr. Dasco that the *drop in blood pressure would take from ten to twenty-five seconds before lose [sic] of consciousness, which is consistent with Alamed's testimony that the employee had stood up and was beginning to walk toward him*.

(Dec. 12-13, emphases added.)

> Ultimately, the judge found that:
>
> [t]he *prima facie* weight of the § 7A presumption has been overcome by credible testimony that the workplace did not contribute to the employee's fall. Furthermore, I have adopted the medical opinion of Dr. Winkler that the employee sustained an episode of orthostatic hypotension which caused her to collapse, striking her head on the floor of the warehouse.

(Dec. 14.) Accordingly, the judge denied the employee's claim.

The employee appeals, making three main arguments. First, she claims that the medical and lay evidence does not support the judge's finding that orthostatic hypotension caused her to fall. (Employee's brief, 16.) Second, she claims that, even if her fall was idiopathic, the evidence does not support the judge's findings that the workplace did not provide additional risk and that the employee did not strike any part of the workplace except the floor. (Employee's brief, 24.) Third, she argues that the reviewing board should abandon the law regarding idiopathic falls, and find idiopathic injuries caused by a direct fall to the floor compensable. (Employee's brief, 26.) We find merit in the first argument.

Before addressing the employee's arguments, however, we look first at the manner in which the judge has applied § 7A. That section provides, in pertinent part:

> In any claim for compensation where the employee has been killed or found dead at his place of employment or, in the absence of death, is physically or mentally unable to testify, and such testimonial incapacity is causally related to the injury, it shall be prima facie evidence that the employee was performing his regular duties on the day of injury or death and that the claim comes within the provisions of this chapter . . . .

The judge's application of the statute prompts us to re-examine our prior treatment of the prima facie effect of § 7A in cases of testimonial incapacity not caused by death at the workplace. Neither party has challenged the judge's findings that § 7A is applicable or that it should be applied to provide prima facie evidence that Ms. Scibilia's injury comes within the provisions of the Act.

> Prima facie evidence, in the absence of contradictory evidence, requires a finding that the evidence is true; the prima facie evidence may be met and overcome by evidence sufficient to warrant a contrary conclusion; even in the presence of contradictory evidence, however, the prima facie evidence is sufficient to sustain the proposition to which it is applicable. Cook v. Farm Serv. Stores, Inc., 301 Mass. 564, 566-567, 569 (1938). Thomes v. Meyer Store, Inc., 268 Mass. 587, 588 (1929).

Anderson's Case, 373 Mass. 813, 817 (1977). Consistent with this principle, the employee bases her arguments on the assumption that the insurer must overcome § 7A's prima facie evidence of causal relationship between her duties at the workplace and her injury. The insurer, in turn, argues that its evidence did establish that the employee's fall was caused by orthostatic hypotension, thereby overcoming § 7A's prima facie effect. (Insurer's brief, 10, 12.)[2]

[2] We note that, prior to determining that § 7A was applicable, the judge considered medical evidence as to the employee's ability to testify and conducted a "voir dire" of the employee as recommended in Lussier v. ATF Davidson, 8 Mass. Workers' Comp. Rep. 344, 351 (1994). At hearing, the judge stated that Ms. Scibilia's memory of and ability to testify as to the events of July 6, 1998 and immediately thereafter were impaired. (Tr. II, 38.) In his decision, the judge found, based on medical testimony, that her amnesia was the result of the head trauma she suffered at work, and that her inability to recall and offer testimony on the events of the date of injury were causally related to her fall at work. (Dec. 9-10.) We cannot say that the judge's findings on this issue were arbitrary or capricious or contrary to law. See Commonwealth v. Whitehead, 379 Mass. 640, 656 (1980) (the competency of a person to testify is a question "peculiarly for the trial judge, and his determination will be rarely faulted on appellate review.") See also Toro v. Town of West Springfield, 3 Mass. Workers' Comp. Rep. 228, 231 (1989) (the applicability of § 7A is left to the trier of fact to decide, based on medical evidence). Cf. Isokungos v. Seppela Aho Constr., 2 Mass. Workers' Comp. Rep. 154 (1988); and Murphy v. City of Boston (School Dept.), 4 Mass. Workers' Comp. Rep. 169, 171-172 (1990)(amnesia or memory loss do not automatically trigger application of § 7A).

We agree with the judge's conclusion that § 7A operates here. In so doing, we must now scale back our language in Costa v. Colonial Gas Co., 12 Mass. Workers Comp. Rep. 483 (1998), and Mazzarino v. Tocci Bldg. Corp., 15 Mass. Workers' Comp. Rep. 10 (2001). In Costa, we held the "§ 7A's coverage [extends to] deceased employees, whose deaths do not occur at the workplace, but which deaths are causally related to their employment." Id. at 486. (Emphasis omitted.) In Mazzarino, we held that the "critical nexus between live testimonial incapacity and the *workplace* must be established by a medical causation opinion for the prima facie effect of § 7A to attach." Id. at 21. (Emphasis added.) With the guidance of the hearing judge's interpretation in this case, we now see that we have labored under a fundamental misread of the statute's second clause, regarding after-occurring death and live testimonial incapacity "causally related to the *injury*." G.L. c. 152, § 7A. (Emphasis added.) Where the evidence establishes that the employee's testimonial incapacity is causally related to the "injury" at work – that it occurs *in the course of the employment* – § 7A applies to establish prima facie evidence that the injury *arose out of the employment*, i.e. "comes within the provisions of this chapter." By our earlier reading of "injury" as "industrial injury," we have imposed a restriction on the beneficent effect of § 7A that the Legislature simply did not put into the statute.

Most recently, the Appeals Court affirmed our Costa decision, framing the issue as whether § 7A's prima facie effect is "available when . . . the employee is neither killed nor found dead at his place of employment." Costa's Case, 52 Mass. App. Ct. 105, 108 (2001). The court held that, "[b]ecause [the employee's] death did not occur at his workplace, § 7A was not available to the claimant." Id. at 109. In so holding, the court had no occasion to consider the scope of the second clause of § 7A – that dealing with after-occurring death and live testimonial incapacity causally related to the "injury." The court apparently did not address this matter because 1) it was not argued (the claimant contended that her husband's after-occurring death was within the coverage of the first clause of § 7A, "where the employee has been killed or found dead at his place of employment"), and 2) the facts of Costa were that nothing had occurred at the workplace

to constitute an "injury" (work-related or not) in the first place. Costa, supra at 107-108. The court's affirmance of our Costa decision, therefore, does not have an impact on our present reconsideration of our own language regarding the second clause of § 7A in that decision.[3]

Thus, an employee, such as Ms. Scibilia, who falls at work and has medical evidence adopted as a finding of fact by the judge that the injury at work has caused her inability to testify, benefits from § 7A's prima facie effect establishing causal relationship between her injury and her employment. The insurer then has the burden of introducing evidence sufficient to overcome the prima facie evidence of causation. If it does, the judge has before him a question of fact: he may choose either the evidence presented by the insurer, or he may rely on the prima facie evidence of causation provided by § 7A. Anderson's Case, supra at 817.

Having determined the correct application of § 7A, we turn now to the employee's first issue on appeal. Ms. Scibilia argues that the evidence does not support the judge's finding that the employee fell and was injured as a result of orthostatic hypotension, a non-work-related medical problem. (Employee's brief, 16.) We agree with the employee that the judge's findings as well as those of the adopted medical expert, Dr. Winkler, regarding the sequence and timing of the events surrounding the employee's fall, seem not to be based on the actual testimony presented at hearing, or on reasonable inferences drawn therefrom. In addition, we agree that some of the other bases for Dr. Winkler's opinion are not grounded in the evidence.

"Where specific facts are in controversy, '[e]xpert opinion . . . must be based on either the expert's direct personal knowledge, on evidence already in the record or which

[3] To the extent the Appeals Court in Costa, supra at 109, quotes Koziol, Massachusetts Workers' Compensation Reform Act, § 10.7, 298 (2000), for the broad proposition that "§ 7A was amended to address the problem of over-extending the benefit of statutory protection for testimonial incapacities to situations that did not result from the industrial accident," we note that this statement in the treatise is found in a discussion of the reviewing board's inconsistent interpretations of the statute, concluding with the proposition from our Costa decision that we now consider inaccurate. The Koziol quote is not necessary to the Appeals Court's holding, and we do not consider it as binding precedent, particularly given the context.

the parties represent will be presented during the course of the trial, or on a combination of these sources.'" Collins's Case, 21 Mass. App. Ct. 557, 563 (1986), quoting LaClair v. Silberline Mfg. Co., 379 Mass. 21, 32 (1979). See also Patterson v. Liberty Mut. Ins. Co., 48 Mass. App. Ct. 586, 597 (2000) (judge erred in basing causation decision on medical report that was not only expressed in terms of mere possibility but was also unsupported by admissible evidence in the record or on any other proper basis). Because the facts surrounding the sequence and timing of the employee's fall are crucial to a determination of the cause of that fall, the judge's error is not harmless, and the case must be recommitted. Studzinski v. FM Kuzmeskus, Inc., 14 Mass. Workers' Comp. Rep. 421, 424 (2000), citing Coelho v. National Cleaning Contr., 12 Mass. Workers' Comp. Rep. 518, 528 (1998).

The judge adopted the opinion of Dr. Winkler and Dr. Dasco "that the drop in blood pressure would take from *ten to twenty-five seconds before lose [sic] of consciousness, which is consistent with Alamed's testimony that the employee had stood up and was beginning to walk toward him*." (Dec. 12-13, emphasis added.) Dr. Winkler's opinion that the employee's fall was caused by orthostatic hypotension was based on virtually the same assumptions as those made by the judge, i.e., that the employee had stood up and was walking toward him with the invoice in her hand when she fell.[4]

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[4] The hypothetical on which Dr. Winkler's opinion was premised reads, in relevant part:

> Q Assume further that prior to the injury, Mr. Alamed observed the employee change positions from a seated to a standing position, thanked Mr. Alamed for unloading the truck, and walked toward Mr. Alamed with an invoice in her hand. . . . [A]nd that he did then turn around as employee presumably continued to walk in the manner and on the surface described.
>
> Assume further that Mr. Alamed made no further observations of the employee until after he heard a sound which he infers was employee's head striking the floor as described, and notices the employee on the floor.

(Winkler Dep. 11-12.) The history given by Dr. Winkler in his report of January 2, 1999 is slightly different: "Mr. Alamed was checking in on her order when she came walking over to get her paperwork. He turned around and she was on the floor." (Winkler Dep., Ex. 4.)

Mr. Alamed's actual testimony does not support this version of events. He testified variously throughout the hearing:

> Q: Now, *after you were done unloading the truck, you were checking the invoice* --
> A: *Yes.*
> Q: --is that correct?
> A: Yes.
> Q: And at that time what do you recall taking place?
> A: *I was on the last pallet and she was standing* in the walkway and I heard a noise and I looked up and she was on the floor.
> . . . .

(Tr. 10-11, emphasis added.) Later, Mr. Alamed was asked:

> Q: Could you describe with some detail and distances not only where but – the distance from where Employee sat to the point where you noticed Employee down on the ground?
> A: Probably forty feet maybe.
> . . . .
> Q: Could you estimate how long it took you to unload the truck of that number of pallets of cheese?
> A: I would say between fifteen and twenty minutes.
> Q: All right. And would it be fair to say that during that period of time, your best recollection is that the Employee was seated on pallets in the area of the warehouse loading dock that you have just described?
> A: Yes.

(Tr. I, 22.) Later in his testimony, Mr. Alamed again referred to Ms. Scibilia as "*standing* talking to me." (Tr. I, 25, emphasis added.)

Though Mr. Alamed's testimony does not pin down the timing or even the exact sequence of events, one cannot reasonably infer from it that the employee was just *beginning* to walk toward him with the invoice in her hand when she fell, as the judge found. Rather, it is clear from his testimony that Ms. Scibilia had stood up, walked approximately forty feet toward Mr. Alamed, and was standing talking to him as he checked the invoice. Though the distinction between Mr. Alamed's testimony and the judge's findings is a fine one, we believe it is significant. The judge's findings presuppose a fall relatively quickly after standing (ten to twenty-five seconds). Mr. Alamed's testimony suggests that more time elapsed. The timing of the fall was crucial

to the judge's finding that the employee fell due to a drop in blood pressure when she went from a sitting to a standing position.[5] Crucial and material findings which are not based on the evidence and reasonable inferences drawn therefrom may not stand. Studzinski, supra at 424. It is therefore appropriate to recommit the case for the judge to make further findings.

The employee also argues that the four factors on which Dr. Winkler based his opinion that the employee fell due to orthostatic hypotension are not grounded in the evidence. The judge found that those factors are:

> (1) the employee had chronic illnesses before July 6, 1998, including chronic obstructive pulmonary disorder; (2) the employee wasn't feeling well for several days before, as indicated in the medical records at time of initial treatment [citations omitted]; (3) post-July 6 medical treatment lead to diagnosis of postural hypotension; leading to prescription of Florinef; (4) post-injury testing showed decreased blood pressure when changing positions, but less so due to the effect of the medication.

(Dec. 11-12.)

The first factor on which Dr. Winkler based his opinion is the employee's pre-existing chronic illnesses, including chronic obstructive pulmonary disease. However, the employee correctly points out that when asked about the connection between these chronic illnesses and orthostatic hypotension, Dr. Winkler did not make any.[6]

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[5] The judge found, "Dr. Winkler opined that the timing of the employee's fall was consistent with the time it would take for the employee's blood pressure to decrease to the point where there was insufficient pressure to provide enough blood to the brain to maintain consciousness." (Dec. 12.)

[6] Q. Now, Doctor, backing up just a bit to employee's prior medical records documenting the existence of lung disease, is there anything in the medical records regarding her prior history of lung disease which is consistent with your diagnostic impression of hypostatic –
A: Orthostatic hypotension?
Q: I'm sorry. Orthostatic hypotension, yes.
A: The lung disease, in and of itself, would not, in my opinion, cause orthostatic hypotension. It's possible there may be an underlying disease process affecting both the lungs and the sympathetic nervous system that might do that, *but I don't see a direct connection*.
Now people who have emphysema and cough a lot, and increase their pressure inside their chest from significant coughing, can, by virtue of that, alter momentarily the flow of blood to the brain, and they can have a fainting spell which goes by the term "cough syncope,"

Second, Dr. Winkler based his opinion that the employee fell due to a drop in blood pressure on the fact that she had not been feeling well for several days before the fall. This does not comport with the judge's finding that the employee's boyfriend and son did not notice that she was having any health problems when they saw her a day or two before the accident, (Dec. 4), and that the employee did not complain to Mr. Alamed on the morning of the accident. (Dec. 5.) However, Dr. Winkler also testified that, even if the employee had felt well in the days before the fall, that factor would not change his opinion. (Winkler Dep. 48). Thus, even if Dr. Winkler's assumption is not consistent with the judge's findings, it is irrelevant.

Third, Dr. Winkler assumed that "post-July 6 medical treatment lead to diagnosis of postural hypotension; leading to prescription of Florinef." (Dec. 12.) The judge also found that, "it was not until after July 6, that she was given a diagnosis of orthostatic hypotension, which was treated with Florinef." (Dec. 7) The employee argues that there was no evidence that the employee was diagnosed with orthostatic hypotension post injury. She correctly points out that none of her discharge medicals from her initial hospitalization following her July 6, 1998 injury report a diagnosis of orthostatic hypotension. Rather, her discharge records from Lancaster General Hospital, which were

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fainting as a result of heavy coughing. That's not orthostatic hypotension. *That's a separate abnormality.*

Q: Among other possible pulmonary diagnoses for employee's lung problems, was granulomatous disease a possible diagnoses?

A: Yes.

Q: And what, if any relationship is there, if you know, Doctor, between granulomatous disease, the adrenal gland, and orthostatic hypotension?

A: Granulomatous disease is a class of disease, and it's based upon the appearance of a lesion under the microscope, and includes tuberculosis, sarcoidosis, and other diseases. Granulomatous disease can affect both the lung and adrenal gland.

For example, tuberculosis could, and tuberculosis can destroy the adrenal gland and cause manifestations of insufficient hormone production by the adrenal gland.

Now she had a negative skin test for tuberculosis, and as far as I know, *there was no positive evidence of her having tuberculosis*. But speaking generally out of the medical literature, what I said is correct.

(Dr. Winkler Dep. 27-28, emphases added.)

accompanied with a prescription for Florinef, indicate only that she had traumatic brain injury and chronic obstructive pulmonary disease. (Employee Ex. 3, tab 5.) The insurer in its brief refers to the employee's "extensive post-injury treatment relative to a condition of orthostatic hypotension, including Florinef medication. . . ." (Insurer's brief, 13). However, the insurer does not point to any medical records that make that diagnosis, nor does it appear to dispute the employee's arguments that there was no actual diagnosis of orthostatic hypotension prior to that of Dr. Winkler's. Rather, it states that Dr Winkler's opinion is an extrapolation from the medical records as well as the findings of fact regarding the events of the injury. (Insurer's brief, 16.)

We recognize that, "[t]rained experts commonly extrapolate from existing data." General Elec. Co. v. Joiner, 118 S. Ct. 512, 519 (1997). However, by the doctor's own testimony, he did not have the relevant information from which to extrapolate. Dr. Winkler testified that, "[I]f you're going to diagnose orthostatic hypotension, you need the requisite drop in blood pressure. Now that may or may not be accompanied by a feeling of faintness. . . . There are other reasons for feeling dizzy when you change positions. So if you rely solely upon the symptoms, you can't be sure that the cause is orthostatic hypotension. You need a combination of both." (Winkler Dep. 21-22.) He further testified that: "Generally accepted criteria for the diagnosis of orthostatic hypotension are a postural decrease from the supine, which is lying down, to the standing position of at least 20 millimeters of mercury in diastolic blood pressure sustained for at least 3 minutes." (Winkler Dep. 38.) However, he admitted that he had seen no records of the employee's which showed the requisite drop in blood pressure:

> Q: Did you see any reports on there [sic] where there was a measure between the supine and the standing position with a change of 20 degrees in the systolic or 10 degrees in the diastolic?
> A No. That's why I wanted the reports from Arkansas.

(Winkler Dep. 63.)

Thus, Dr. Winkler admitted that he did not have the necessary medical evidence from which he could diagnose orthostatic hypotension. His reliance for his diagnosis on

the fact that the employee was prescribed Florinef after July 6, 1998, is also questionable given his testimony above and his statement that "One of the major uses of Florinef is for the treatment of orthostatic hypotension." (Winkler Dep., Ex. 4, 10.) This statement presupposes that Florinef is used for treating other conditions. Thus, we agree with the employee that this third rationale for Dr. Winkler's opinion, i.e., that Ms. Scibilia was diagnosed with orthostatic hypotension post-injury, or that Dr. Winkler extrapolated from the evidence to make that diagnosis, is flawed.

Fourth, Dr. Winkler relied on "post-injury testing [which] showed decreased blood pressure when changing positions, but less so due to the effect of the medication." (Dec. 12.) The employee appears to rely on medical records, which were not submitted as hearing exhibits. (Employee's brief, 20-21.) Therefore, we do not address this argument.

However, as the first and third bases for Dr. Winkler's opinion are not grounded in the evidence, his entire opinion is called into question, as is the judge's reliance on it. See Patterson, supra at 596-598 (burden of proof not met due to lack of competent foundation for impartial physician's opinion on causal relationship). On recommittal, the judge must re-examine the other medical evidence to determine if the insurer has met its burden of producing evidence sufficient to overcome the prima facie effect of § 7A. Even if he finds that the insurer has adduced such evidence, he need not necessarily credit it, but may rely on § 7A's artificial prima facie force.

The employee's second major argument is that, even if the employee did suffer an idiopathic fall, there was no evidence to support the judge's finding that the workplace did not provide an additional risk to the employee, i.e., that she did not strike something other than the level floor when she fell. "Whatever the physiological origin of the fall, 'if the injury is caused by falling into a machine or some other physical feature of the premises, the injury arises out of the employment.'" Bellomo v. Osco Drug, 9 Mass. Workers' Comp. Rep. 364, 369 (1995), quoting L. Locke, 29 Workmen's Compensation § 220 at 255 (2d ed. 1981). We think the evidence produced by the insurer supports the judge's findings that Ms. Scibilia did not strike anything but the level floor. However, the employee calls to our attention one piece of evidence which the judge did not address

in coming to his conclusion. The ambulance personnel found Ms. Scibilia lying on her left side, while her head laceration and hematoma were on the right. (Employee Ex. 3, Tab 1). Since the case is being recommitted, the judge should explain why he does not consider this piece of evidence persuasive that the employee struck some part of the workplace as she fell.

Finally, the employee argues that, even if Ms. Scibilia's fall was idiopathic and she struck only the concrete floor when she fell, the employee should nevertheless prevail. In Bellomo, supra, we stated: "If, in a solely ideopathic [sic] fall, the judge finds she fell directly to a level floor, he should determine whether the circumstances of her work significantly increased her risk of injury." Id. at 370. The judge here made the findings required in Bellomo when he found that nothing in the workplace "posed a source of danger to the employee so as to act as the proximate cause of the injury . . . ." (Dec.13.) Thus, unless he finds that the fact that the employee was lying on her left side but had right-sided injuries is persuasive evidence that she struck something other than the floor, that "posed a source of danger," id., she cannot prevail under existing law.

This case is recommitted to the hearing judge for further findings consistent with this opinion.

So ordered.

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William A. McCarthy
Administrative Law Judge

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Frederick E. Levine
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge

Filed: **June 25, 2002**