

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS

BOARD NOS. 056842-96
057053-96

Teresa Andrade
Joseph Pollack Corp.
Mass. Manufacturing Self-Insurance Group
Travelers Insurance Company

Employee
Employer
Insurer
Insurer

REVIEWING BOARD DECISION

(Judges Wilson, McCarthy and Maze-Rothstein)

APPEARANCES

A. DeMiranda, Esq., for the employee at hearing
Jill Schermerhorn, Esq., for Mass. Manufacturing Self-Insurance Group at hearing
James W. Stone, Esq., for Mass. Manufacturing Self-Insurance Group on appeal
Frances O'Toole, Esq., for Travelers at hearing

WILSON, J. The first insurer in this successive insurer case (Mass. Manufacturing Self-Insurance Group, "SIG") appeals from a decision in which an administrative judge ordered it to pay medical benefits under G.L. c. 152, § 30, for the employee's repetitive, cumulative work injury. SIG contends that the judge erred in ordering it to pay for the employee's treatment while she was still working, but after the second insurer (Travelers) took over coverage of the employer's workers' compensation risk. We agree, and reverse the decision in part for the reasons that follow.

The employee did piecework for the employer for ten years, working on a machine that required her to use both hands, manipulating pieces and pushing buttons with some force. In 1993, she noticed pain in her left hand and, eventually, going up to her shoulder. She reported the pain to her supervisor, who gave her an elastic wrap to wear on her left hand. She began to treat for the pain, and came under the care of Dr. Byrd at the Bowdoin Street Clinic and Beth Israel Hospital in 1995. The employee continued to work full time, changing her duties in an unsuccessful attempt to accommodate her pain. Dr. Byrd advised that she stop using her left arm for work activities. After trying this for about six months, the employee began to feel pain in her right arm. Eventually, the

fingers of her right hand went numb, while her whole left arm was painful and numb. Even though the employer attempted to shift her job duties to something less aggravating, she continued to perform repetitive activities with both of her hands. As of March 5, 1999, the employee could no longer work. (Dec. 5-6.)

The employer changed workers' compensation insurance carriers from SIG to Travelers effective January 1, 1997. The employee claimed incapacity and medical benefits against both insurers. Both insurers resisted, and the claims made their way to a § 11 hearing. The employee used April 8, 1996 as the date of injury, without alleging that a specific event occurred on that date. (Dec. 2-3.)

The employee was examined by Dr. Robert Leffert pursuant to G.L. c. 152, § 11A, on August 5, 1999. Dr. Leffert opined that the employee suffered from rotator cuff impingement on the left and bilateral acromioclavicular joint derangements, greater on the left than the right, along with left thoracic outlet syndrome and vascular compression. (Dec. 6-7.) Dr. Leffert opined that the employee's repetitive work activities over a prolonged period of time caused these medical conditions and that she was disabled from any gainful employment. (Dec. 7-8.) The judge adopted the doctor's opinions. (Dec. 7-8.)

The judge concluded that,

[i]n view of the cumulative injury requiring medical treatment while it was on the risk, [SIG] is liable for medical treatment in 1995 at the Bowdoin clinic and for her treatment with Dr. Byrd, until her last day of work, which under our law, due to her condition progressing and worsening to the point of total incapacity, puts the successive insurer on the risk. See Rock's Case, 323 Mass. 428, 429 (1948). Thereafter, subsequent to March 5, 1999, Travelers Insurance Company is liable for incapacity payments and medical benefits.

(Dec. 10.) The judge ordered corresponding benefits. (Dec. 12-13.)

The sole issue here is how to apply the successive insurer rule when only medical benefits are at stake. There is no dispute that the successive insurer, Travelers, was liable for incapacity and medical benefits from March 5, 1999, the day that the employee was forced to leave work due to her repetitive work injury. The judge concluded that the first

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insurer, SIG, was responsible for the payment of all medical bills attributable to the employee's repetitive work, prior to the commencement of her incapacity, without regard for the fact that SIG ceased to insure the employer over two years before she stopped working. This was error.

"The judge is required to assess liability against the second insurer if a second injury 'was even to the slightest extent a contributing cause of the subsequent disability.' " Dembitzski v. Metro Flooring, Inc., 13 Mass. Workers' Comp. Rep. 348, 356 (1999), quoting Rock's Case, 323 Mass. 428, 429 (1948). In the context of a repetitive work injury – as here – that "second injury," for purposes of liability for medical benefits, occurred the first time that the employee performed the job after the second insurer came on the risk. The important point is that the obligation to pay the medical benefits follows the coverage in a case such as this one, where each day of continuous, repetitive trauma on the job caused further deterioration and accumulation of injurious effects of the work over a prolonged period of time. (Dec. 5-7, 9.) Thus, the employee's repetitive work on her first day back after New Year's Day of 1997 triggered Travelers' liability for whatever benefits were to be paid for her causally related, cumulative injury. As we have seen, those benefits were limited to § 30 medical treatment for the next two plus years, until the employee finally left work when the accumulation of the repetitive work effects became incapacitating in March 1999.

We therefore reverse the order of § 30 medical benefits against SIG, from the period January 1, 1997 until March 5, 1999, and conclude that Travelers is liable for § 30 benefits for that period. We otherwise affirm the decision.

So ordered.

Filed: June 8, 2001

Sara Holmes Wilson
Administrative Law Judge

William A. McCarthy
Administrative Law Judge

Teresa Andrade
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Susan Maze Rothstein
Administrative Law Judge