COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 006111-12**

Thomas Gleason, Jr.	Employee
Trial Courts-Court Officers	Employer
Commonwealth of Massachusetts	Self-Insurer

REVIEWING BOARD DECISION
(Judges Fabricant, Koziol and Harpin)

The case was heard by Administrative Judge Herlihy.

APPEARANCES
Michael J. Powell, Esq., for the employee at hearing
Michael F. Walsh, Esq., for the employee on appeal
Brian T. Mulcahy, Esq., for the insurer

FABRICANT, J. The employee appeals from a decision finding that his physical injuries had resolved as of May 2, 2013, that he did not have a psychiatric condition limiting his ability to work, that the claimed treatment for post-traumatic stress disorder (PTSD) was not reasonable, necessary or related, and that as of June 7, 2013, he was able to return to his regular job. (Dec. 6-7.) The employee raises two arguments on appeal which require us to vacate the judge's decision and recommit the case for further findings of fact.

From 1997 until 2012, the employee worked as a court officer. His duties included providing security in the courtroom and transporting prisoners. On March 22, 2012, the employee was involved in an altercation with a prisoner, and, as a result, was taken to the hospital and treated for injuries to his ribs, right arm and wrist. Months later, he experienced headaches and vertigo. (Dec. 4.)

The self-insurer accepted liability for the employee's physical injuries, and the parties stipulated these injuries had resolved as of May 2, 2013. (Dec. 3.) However,

the employee also joined a claim for psychiatric counseling at conference,[1] as well as joining, at hearing, a claim for PTSD and further indemnity benefits. The insurer contested liability for the PTSD/neurological injury, disability and causal relationship. (Dec. 2.) Because the judge found the § 11A report of Dr. Sheree L. Estes inadequate as to the PTSD claim, the parties were allowed to submit additional medical evidence. (Dec. 3.)

The judge adopted the opinion of Dr. Michele L. Masi that the employee does not have any objective neurological impairment related to the March, 2012, work incident, and is able to perform the job of a court officer. The judge also adopted the opinion of Dr. Michael Rater that, as of June 27, 2013, the employee did not have a psychiatric condition limiting or restricting his ability to work, (Dec. 7), and is able to conduct a full range of activities consistent with employment. (Dec. 5-6.) The judge concluded that the employee's physical injuries had resolved as of May 2, 2013, and, from a neurological perspective, the employee was able to return to work full-time as of June 7, 2013. (Dec. 6.) Finally, the judge determined that the employee's §§13 and 30 claims for treatment of PTSD and depressive symptoms were not reasonable, related or necessary.[2] (Dec. 7.)

The employee proffers two arguments on appeal. He first asserts that the judge's failure to list or discuss the medical reports of Irving Epstein, a licensed social worker, requires recommittal. The employee specifically references two narrative

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[1] At conference, the self-insurer was ordered to pay for psychiatric counseling pursuant to §§ 13 and 30, and to continue to pay § 34 benefits. (Dec. 2.)

[2] As we noted in Donovan v. Keyspan Energy Delivery, 22 Mass. Workers' Comp. Rep. 337, 337 n.1 (2008),

> Although commonly used, the statutory support for the 'reasonable and necessary' standard is nonexistent.; Lewin v. Danvers Butchery, Inc., 13 Mass. Workers' Comp. Rep. 18, 19-20 n.1 (1999)(" '[a]dequate and reasonable' relates to the nature of the hospital or medical services" whereas " '[n]ecessary' relates to the length of time an employee may be entitled to such health care services. It was added to the statute in 1948 when the duration of medical benefits was expanded to an indefinite period from what had earlier been limited to a few weeks").

reports of Mr. Epstein, dated May 16, 2014, and June 22, 2014. (Employee br. 3.) These records were submitted as Exhibit 9 and listed in the decision as "Harvard Vanguard Medical Records January 1, 2013 – February 1, 2014."[3] On this record, it is impossible to ascertain whether the judge reviewed these additional submissions by the employee, given that the dates of those reports were subsequent to the end date of the listed Exhibit (February 1, 2014). (Dec. 2.) Failure to list or consider medical evidence submitted at hearing requires a recommittal for consideration of that evidence. Tunis v. Hillcrest Educ. Ctrs., 26 Mass. Workers' Comp. Rep. 299 (2012). Though an administrative judge is not required to comment on all the evidence presented, the judge must consider all the evidence properly admitted. Adams v. Coca-Cola Enterprises, 23 Mass. Workers' Comp. Rep. 13, 17 (2009). Accordingly, we recommit this matter to the judge for consideration of this medical evidence.

The employee further argues the judge based disability findings on dates that were not consistent with the adopted evidence. The parties stipulated that the employee's physical injuries had resolved as of *May 2, 2013*. (Dec. 3.) The judge adopted the opinion of Dr. Masi that from a neurological perspective, the employee could return to full duty as a court officer as of *June 7, 2013*. (Dec. 6.) Furthermore, the judge adopted the opinion of Dr. Rater that, as of *June 27, 2013*, the employee did not have a psychiatric condition limiting or restricting his ability to work, and therefore his claims for PTSD and depressive symptoms were not reasonable, related or necessary pursuant to §§ 13 and 30. (Dec. 6.) However, Dr. Masi's report was actually dated *April 11, 2014*, and Dr. Rater's report was dated *June 7, 2013*. (Exs. 9, 10.)

The self-insurer suggests it can be inferred that the judge ordered the self-insurer to pay incapacity benefits from March 22, 2012 to June 7, 2013, based on physical injuries. (Insurer br. 15.) However, the parties had stipulated that the

[3] The employee and self-insurer agree that the records in question were submitted within the Harvard Vanguard Medical Records and were not included with Mr. Epstein's earlier reports, previously submitted as Exhibit 6. (Employee br. 3; Self-Insurer br. 9.)

physical injuries resolved as of May 2, 2013. The insurer also suggests the confusion with the dates could be attributed to scrivener's errors. (Insurer br. 16-17.) Regardless, any date chosen by the judge to terminate or modify benefits must be based on some change in the employee's medical or vocational condition. Foreman v. Hwy. Safety Sys., 19 Mass. Workers' Comp. Rep. 193, 196 (2005). There is no evidence on this record to suggest such a foundation for the dates chosen.

Accordingly, we vacate the judge's decision and recommit the matter for further review and findings of fact consistent with this decision. Since the employee prevailed on his appeal, an attorney's fee may be appropriate under § 13A(7). Employee's counsel must submit to this board, for review, a duly executed fee agreement between the employee and counsel. No fee shall be due and collected from the employee unless and until the fee agreement is reviewed and approved by this board.

So ordered.

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Administrative Law Judge
Bernard W. Fabricant

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Catherine Watson Koziol
Administrative Law Judge

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William C. Harpin
Administrative Law Judge

Filed: **June 28, 2017**