COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 046153-99**

Thomas Rider (deceased)	Employee
Steven Rider	Claimant
City of Boston	Employer
City of Boston	Self-insurer

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

APPEARANCES
Edward T. McNally, Esq., for the employee
John T. Walsh, Esq., for the self-insurer

MAZE-ROTHSTEIN, J. The self-insurer challenges an award of § 31 benefits to the dependent son of the deceased employee, as well as the grant of § 33 funeral expenses. The self-insurer maintains error in the finding that G. L. c. 152, § 7A, applied to establish prima facie evidence that the employee's death, which occurred two days after he left work, was causally related to his employment. Alternatively, the self-insurer argues that, even if § 7A applied, it introduced evidence sufficient to overcome § 7A's prima facie effect, requiring the claimant to prove causal relationship. For the reasons discussed in Scibilia v. J.& R Schugel, 16 Mass. Workers' Comp. Rep. ____ (June 25, 2002), we disagree with the self-insurer's arguments, and affirm the decision.

The employee, Thomas Rider, was a thirty-eight year-old divorced father at the time of his death on November 11, 1999. Mr. Rider paid child support of $105 per week pursuant to a court order to his fifteen year-old son, Steven, who lived with his mother and her second husband. (Dec. 770, Ex. 7.) For several years before his death, the employee had worked in the stockroom of the employer's Central Fleet Maintenance Department. His duties included retrieving parts for employees who requested them. (Dec. 770.)

On November 9, 1999, the employee began his regular shift at approximately 3:00 PM, working alone in the stockroom, the doors of which were locked. (Dec. 770-771.) When his foreman, William Keane, saw him around 7:30 PM, Mr. Rider appeared healthy. However, a few minutes before 8:00 PM. a co-worker reported that the employee was in distress. Mr. Keane went to the stockroom with several employees and observed the employee with a swollen eye and bloody nose, speaking incoherently and unable to tell them what had happened to him. Keane called for medical help and, when the EMTs arrived, the employee was able to get up from his chair and walk about thirty feet to the stockroom door and unlock it. On the way to the hospital, however, the employee had a seizure and lapsed into a coma. He died two days later without regaining consciousness. (Dec. 771.) For those two days, he was " 'basically brain dead.' " (Dec. 772, quoting Ex. 8.) The death certificate listed the cause of death as "blunt head trauma and left cerebral infarction, both occurring two days prior to his November 11, 1999 death." (Dec. 772-773, citing Ex. 3, 8 and 9.)

Steven Rider's claim for death benefits pursuant to § 31, funeral benefits pursuant to § 33, and medical benefits from November 9, 1999, to November 11, 1999, pursuant to § 30,[1] was denied at conference. He appealed to a hearing de novo, (Dec. 770), at which testimony was received from the employee's ex-wife; a foreman, William Keane; and the employee's supervisor, David Higgins. (Dec. 769, 771.) Both parties presented medical evidence by physicians who had performed record reviews. (Dec. 773-774.)

The self-insurer's physician opined that the employee "had a massive hemorrhagic stroke causing him to momentarily lose consciousness and fall, sustaining the head injuries, which, in addition to the stroke, proved fatal." He further noted that it was not unusual for there to be "a lucid interval between the brief concussion from the head trauma causing the hemorrhage and the subsequent loss of consciousness when the size of the accumulating blood becomes large enough to cause a second loss of

[1] The judge did not state in his decision that § 30 benefits were claimed, but the forms filled out by the employee and self-insurer prior to hearing so indicate, as do the briefs of the parties. See 452 Code Mass. Regs. § 1.15(4)(a)3.

consciousness," and that it was likely that the ambulance was summoned during this lucid period. The doctor found no "causal connection between his stroke, fall, head trauma or subdural hematoma and his job." (Ex. 8; Dec. 773.)

> Dr. James Wepsic performed a record review for the claimant. He wrote:
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> The major issue here is the question as to whether the intracranial hemorrhage occurred causing him to fall and strike his head or on the other hand this hemorrhage occurred due to progressive distortion of the brain and vascular damage due to the head injury. There is ample literature describing the development of secondary intracerebral hemorrhages in people with severe head injuries. In this case, the hemorrhage in the basal ganglia likely came as a result of increased intracranial pressure and stretching of blood vessels. This conclusion is based upon the report of the CAT scans, which initially do not describe the large deep intracerebral hemorrhage. *Therefore, Mr. Rider appears to have suffered a serious head injury at work that led to a progressive increase in intracranial pressure, the development of secondary intracerebral clot and infarct, and finally death.*

(Ex. 9.) (Emphasis added.)

In his decision, the judge acknowledged that "No one can say with certainty what happened to the employee in the storeroom that night." (Dec. 772.) He then framed the issue as follows:

> The City suggests that the employee had a stroke or a seizure, fell to the ground striking his head, and several minutes later lapsed into a coma and died. As the causative agent was a nonwork related stroke or seizure, the City would not be liable for workers' compensation death benefits. The claimant suggests that the employee fell to the ground striking his head, the resulting trauma causing a stroke or seizure, which led several minutes later to a coma and then death. In this scenario the causative agent would be the fall which would make the City liable for workers' compensation death benefits.

Id. Relying on the "persuasive opinion" of Dr. Wepsic, particularly his discussion of the employee's two CAT scans, the judge found that Mr. Rider fell at work, striking his head, which caused an intracerebral hemorrhage resulting in his death. He concluded, "As the employee's death was caused by a series of events that were set in motion by a fall at work, and not by a seizure or stroke, I find that he suffered a work related injury . . . ." (Dec. 774.) In addition, the judge found that the employee's "inability to testify on his

own behalf at any time after the injury brings this case within the orbit of the § 7A *prima facie* evidence rule." Id. Accordingly, the judge awarded the claimant ongoing § 31 benefits and ordered the self-insurer to pay § 30 medical expenses incurred as a result of the November 9, 1999 work injury.[2] (Dec. 775.)

The self-insurer appeals, arguing first that the judge erred in applying § 7A.[3] The self-insurer contends that, in cases of death occurring outside the workplace, § 7A's prima facie effect applies only where the judge adopts a medical opinion causally relating the after-occurring death to the workplace. Here, there was no such medical opinion adopted by the judge, according to the self-insurer.

In our recent decision, Scibilia v. J & R Schugel, supra, we reversed our previously stated position regarding § 7A's application in cases of live testimonial incapacity and after-occurring death. Our earlier position was as stated by the self-insurer here: the dependent of an employee whose death did not occur at work, as well as an employee who is alive but unable to testify, must prove that the employee's death or testimonial incapacity was causally related to his employment in order to be entitled to the prima facie effect of § 7A. Costa v. Colonial Gas Co., 12 Mass. Workers' Comp. Rep. 483, 486 (1998). Since the benefit provided to the employee by § 7A was to provide prima facie evidence of causal relationship between the injury or fatality and the employment, Anderson's Case, 373 Mass. 813, 816-817 (1977), that interpretation

[2] The judge did not address the employee's claim for funeral expenses pursuant to § 33; however, no issue is raised as to this and, in any event, there is no cross-appeal. Therefore, we do not address it. See 452 Code Mass. Regs. § 1.15(4)(a)3 (the reviewing board need not decide questions or issues not argued in the brief).

[3] General Laws c. 152, § 7A, as amended by St. 1991, c. 398, § 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.

negated any truly beneficial effect § 7A had for the employee whose death occurred outside work or who was unable to testify. In Scibilia, supra, we held that, for § 7A's prima facie benefit to accrue, the claimant must prove only that the after-occurring death or live testimonial incapacity are causally related to the injury occurring *in the course of the employment*. "Section 7A [then still] applies to establish prima facie evidence that the injury *arose out of the employment*, i.e. 'comes within the provisions of this chapter.' " Id. We were guided in our new interpretation by the plain words of the statute itself, which require only that testimonial incapacity be causally related to "the injury, not to an "industrial" or "compensable" injury. G. L. c. 152, § 7A.

We now apply this analysis to the instant case. The judge adopted the opinion of Dr. Wepsic that the employee appeared to have suffered a serious head injury at work that led eventually to his death.[4] (Ex. 9; Dec. 774.) This evidence was sufficient to trigger the application of § 7A, and provide prima facie evidence of causal relationship of the employee's death to his employment. The Supreme Judicial Court has succinctly described the operation of prima facie evidence:

> 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, supra at 817. Thus, with the aid of § 7A, the employee may prevail, even without the introduction of any medical evidence causally relating the employee's

[4] We note that the judge found that it was the employee's "inability to testify on his own behalf at any time after the injury [that] brings this case within the orbit of the § 7A *prima facie* evidence rule." (Dec. 774.) However, since cases of testimonial incapacity and cases of after-occurring death require the same level of proof, i.e., that either is related to an incident or injury at work, the distinction is irrelevant, as long as the judge has adopted medical evidence (as he did here) causally relating either the testimonial incapacity or the death ("the ultimate physical and mental incapacity," Murphy v. City of Boston [School Dept.], 4 Mass. Workers' Comp. Rep. 169, 172 [1990]), to the injury at work.

death to his employment. Collins' Case, 21 Mass. App. Ct. 557, 559 (1986), quoting Anderson's Case, supra at 818. See also Burroughs (Deceased) v. Mass. Water Resources Auth., 14 Mass. Workers' Comp. Rep. 126, 128 (2000).

Once § 7A's prima facie effect obtains, the self-insurer has then the burden of producing evidence sufficient to overcome the prima facie evidence of causal relationship. If the self-insurer produces such evidence, then the judge has before him a question of fact: he may adopt the self-insurer's evidence refuting causation, or he may rely on § 7A's prima facie effect. Anderson's Case, supra at 817 and n. 2; Scibilia, supra.

The self-insurer's second argument misconstrues the operation of prima facie evidence discussed above. The self-insurer maintains that, even if § 7A were applicable, the introduction of Dr. Cares' report required the claimant to produce evidence establishing causal relationship between the employee's death and his employment. However, though Dr. Cares' report would have been sufficient to overcome § 7A's prima facie effect, the judge did not adopt it. He adopted Dr. Wepsic's report causally relating the injury at work to the employee's death and, in addition, found § 7A applicable.[5] As discussed above, Dr. Wepsic's opinion established the necessary causal connection between the injury at work and the employee's death, and § 7A bridged the gap to provide artificial legal force that the employee's death arose out of his employment.

For the above reasons, the decision of the administrative judge is affirmed. The self-insurer shall pay a § 13A(6) fee to the employee's counsel in the amount of $1285.63.

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[5] The fact that the judge seemed to apply § 7A almost as an afterthought, first finding that the employee suffered a "work-related injury" because his "death was caused by a series of events . . . set in motion by a fall at work, and not by a seizure or stroke," (Dec. 774), is harmless error, if error at all. The self-insurer argues that in cases involving idiopathic falls (those caused by purely personal illness or infirmity), the employee must show more than that she fell directly to a level floor to invoke the benefits of § 7A. See Bellomo v. Osco Drug, 9 Mass. Workers' Comp. Rep. 364 (1995). Thus, it maintains that the mere occurrence on the employer's premises of a fall, as found by the judge here, is insufficient to establish causal relationship to employment. However, cases involving idiopathic falls are irrelevant because the administrative judge did not find that Mr. Rider's fall was idiopathic. (See Dec.774.) Rather, his fall was unexplained. ("No one can say with certainty what happened to the employee in the storeroom that night." [Dec. 772.]) However, given § 7A's operation, we need not reach that issue.

So ordered.

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Susan Maze-Rothstein
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge

Filed: June 25, 2002

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Frederick E. Levine
Administrative Law Judge