

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 043103-04

Velma Figueroa
Advocates, Inc.
Granite State Insurance Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION
(Judges Koziol, Costigan and Horan)

The case was heard by Administrative Judge Hernández.

APPEARANCES

Robert Noa, Esq., for the employee at hearing
Charles E. Berg, Esq., for the employee on appeal
Shenan L. Pellegrini, Esq., for the insurer

KOZIOL, J. The employee appeals from a decision awarding her ongoing partial incapacity benefits at the maximum rate for a left shoulder injury, but denying her claim for a lower back injury and a psychiatric sequela to the shoulder injury. The employee argues that the judge erred by applying the wrong standard of causation in his analysis of her psychiatric claim and failing to account for the psychiatric effects of her narcotic pain medication.¹ We reverse the denial of the psychiatric claim and recommit the case for further findings of fact.

The employee sustained an accepted work-related injury to her left major shoulder in 2004. The employee reported experiencing depression after being out of work with that injury. (Dec. 7-8.) Thereafter, she filed a claim alleging her psychological impairment was causally related to that injury, and that she was permanently and totally incapacitated as a result of her psychological and physical injuries. The insurer contested the existence of a causal relationship between the physical injury and the alleged psychiatric disability and raised the affirmative

¹ The employee does not challenge the denial of the lower back injury claim.

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defense of § 1(7A), claiming the employee had a pre-existing psychiatric injury or disease that combined with the work injury to cause the alleged disability.² (Dec. 3.)

Following a §10A conference, the judge ordered the insurer to pay the employee § 34 benefits until their exhaustion on December 20, 2007, and thereafter, maximum § 35 benefits of \$221.94 per week. (Dec. 2.) The parties cross-appealed and the employee was examined by two § 11A impartial medical examiners, an orthopedist, Dr. Lawrence F. Geuss, and a psychiatrist, Dr. Alan Pollack. Although the judge denied the employee's subsequent motion for a finding of inadequacy, (Dec. 4), he stated on the record at hearing that he would "open up the record to allow additional medical with respect to this matter." (Tr. 49.) The judge admitted additional medical evidence pertaining to both the physical and psychiatric conditions. (Exs. 5a-1, 6.)

In cases involving claims for psychological sequela to an employee's work-related physical injury, the standard of causation that must be applied depends upon whether the psychological injury presents a "combination injury" set of facts requiring the analysis set forth in the fourth sentence of § 1(7A). Cornetta's Case, 68 Mass. App. Ct. 107, 112, 118-119 (2007). If the psychological injury combines with a pre-existing non-work-related injury or disease, it is subject to the §1(7A) major cause analysis; if not, the "but for" causation standard applies. Id. Here, the insurer raised § 1(7A) in relation to the psychological sequela claim. (Dec. 3.)

Despite finding the insurer had failed to meet its burden of production under § 1(7A), see MacDonald's Case, 73 Mass. App. Ct. 657, 661 (2009), the judge then wrote, "the essential fact in dispute is whether the industrial injury remains a major

² General Laws c. 152, § 1(7A), provides, in pertinent part:

If a compensable injury or disease combines with a pre-existing condition, which resulted from an injury or disease not compensable under this chapter, to cause or prolong disability or a need for treatment, the resultant condition shall be compensable only to the extent such compensable injury or disease remains a major but not necessarily predominant cause of disability or need for treatment.

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cause of disability and need for physical and psychiatric treatment.” (Dec. 12.)
Based on his adoption of Dr. Pollack’s opinion “that there is no causal relationship”
between the employee’s November 2, 2004 work injury and her psychiatric condition,
the judge denied and dismissed the employee’s claim for psychiatric disability and
treatment. (Dec. 12, 13, 16.)

The employee is correct that the judge applied the wrong causation standard.
Once the judge found the insurer had failed to meet its burden of production under
§ 1(7A), the employee only had to satisfy her burden of proving the existence of a
simple causal relationship between the injury and her psychiatric condition. Contrary
to the judge’s findings, Dr. Pollack opined that there *was* a causal relationship
between the work injury and the employee’s psychiatric condition. Dr. Pollack’s
opinion, set forth in his impartial medical report,³ was:

4. Workplace injury: Chronic pain and depression following physical injury at
work.

. . .

8. Assessment

i.) Diagnoses: Chronic pain syndrome

Depressive Disorder Not Otherwise Specified

ii.) Causal Connection: While the available history supports some
degree of causal connection between the incident at work and Ms. Figueroa’s
subsequent suffering and disability, I find it impossible to determine with
reasonable medical certainty the relative contributions of the incident versus
other psychological factors.

iii.) Reasoning: Nothing psychological conforms to the model of simple
linear causality, wherein a single antecedent is “the cause” of a subsequent
state. This general observation is a particular problem in this instance because
of the discrepancy between the objective factors, on the one hand, and Ms.
Figueroa’s extreme subjective distress on the other. In the interview Ms.
Figueroa manifested a histrionic style and conveyed her history in an extreme,
black-and-white manner likely to be shaped by the impact she wished to have
on the examiner. The question confronting the examiner, then, is whether
apparent qualities of her personality merely color the way she presents herself,
in the face of great pain and despair, or whether her chronic pain and
depression are significantly – even predominantly – an expression of her

³ Neither party deposed Dr. Pollack.

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personality. In the latter scenario, one would assign the incident at work a less significant causal role.

(Ex. 1.) The doctor never opined that there was no causal relationship between the work injury and the employee's psychiatric condition. Instead, the doctor struggled with assigning the work injury a relative weight as a causal factor to a reasonable degree of medical certainty, a task he did not need to perform in the absence of a § 1(7A) combination injury. In addition, while the judge specifically did not find credible, "the extent of the employee's complaints of pain," he did not find that she had no pain whatsoever. As a result, the factual predicate for Dr. Pollack's opinion remained intact.

The employee also argues that the judge erred by failing to account for the psychological effects of her significant intake of narcotic pain medication. The argument fails because the adopted medical opinion of Dr. Geuss established that the employee's use of pain medication was not reasonable or causally related treatment for her left shoulder injury, and should be discontinued.⁴ (Dec. 13.)

We reverse so much of the decision as denied and dismissed the employee's claim for psychiatric disability and treatment, as it is based on a misinterpretation of the impartial medical examiner's opinion. We recommit the matter for reconsideration of the medical evidence pertaining to the psychiatric portion of the employee's incapacity claim and for further findings of fact on the issue of the employee's psychiatric disability and treatment.

So ordered.

Catherine Watson Koziol
Administrative Law Judge

⁴ On appeal, the employee does not challenge the judge's findings and conclusions pertaining to her physical injury and its resulting disability or treatment. Therefore, any psychological effects that follow the use of such medication could not be causally related to the work injury.

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Patricia A. Costigan
Administrative Law Judge

Mark D. Horan
Administrative Law Judge

Filed: *July 21, 2011*