

# COMMONWEALTH OF MASSACHUSETTS

## DEPARTMENT OF INDUSTRIAL ACCIDENTS

BOARD NO. 018612-96

Viola Billingslea  
M.B.T.A.  
M.B.T.A.

Employee  
Employer  
Self-insurer

### REVIEWING BOARD DECISION

(Judges Wilson, Maze-Rothstein and McCarthy)

### APPEARANCES

Michael J. Powell, Jr., Esq., for the employee at hearing  
Padraic P. Lydon, Esq., for the employee on brief  
Christopher J. Connolly, Esq., for the self-insurer

**WILSON, J.** The self-insurer appeals the decision of an administrative judge in which the employee was awarded a closed period of § 34 benefits; a closed period of § 35 benefits; a qualified, open-ended award of § 35 benefits; payment of all reasonable and necessary medical treatment related to the work injury pursuant to §§ 13 and 30; and attorney's fees and costs. After a review of the record, we recommit the decision to the administrative judge for further findings.

At the time of the hearing, Viola Billingslea was a sixty-one year old woman who had earned a GED in 1982. She began employment as a bus driver with the M.B.T.A. in 1986. (Dec. 237.)

On May 8, 1996, while the employee was operating a bus, the steering wheel was ripped from her hands when the tire of the bus struck a large pothole. Although the employee struck her right wrist on a spoke of the steering wheel, she completed the remainder of her workday. Her wrist pain progressively worsened over the next few days and she sought treatment. Eventually, the pain caused her to leave work altogether. (Dec. 237.)

The employee received steroid injections and ultimately underwent surgery. She experiences swelling in her hands on a daily basis and wears a brace to offset

the pain. She takes medication for the pain: Tylenol and two Percocet pills four times a day, which make her groggy, as well as Zanaflex to sleep. The employee walks and exercises as recommended, cooks her own meals and, with the assistance of relatives, cleans her home. The employee also does her own shopping and spends much of the day reading and watching television. (Dec. 237-238.)

A conference was held before an administrative judge on the employee's request for further compensation. The administrative judge left the employee's previously ordered § 35 benefits for partial incapacity undisturbed. Following the conference order, the employee appealed to a hearing de novo. (Dec. 236-237.)

Pursuant to G. L. c. 152, § 11A, the employee was examined on April 19, 2001 by Dr. Robert D. Leffert, who had examined the employee on two prior occasions. (Dec. 238.) Neither party opted to depose the impartial medical examiner and his report was admitted into evidence. (Dec. 236-238; Exh. 3.) The doctor observed swelling on the ulnar side of the employee's right wrist, as reported in his prior two examinations. He found no evidence of carpal tunnel syndrome in either of the employee's wrists or any abnormality in the left wrist. Additionally, he could not relate any trigger finger or flexor tenosynovitis problems to the work injury. Dr. Leffert did, however, causally relate the employee's chronic swelling to the work injury and found the employee partially disabled as a result.<sup>1</sup> He recommended an MRI and, if the results warranted it, operative exploration of the affected area to relieve the chronic swelling. (Dec. 238-239.) These medical opinions were adopted by the administrative judge. (Dec. 239.)

The judge determined that the employee was partially incapacitated and unable to return to her work as a bus driver. He did, however, find that the employee was capable of performing the duties of an MBTA collector within the

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<sup>1</sup> We note that the impartial examiner also stated that the employee "continues to pose a significant diagnostic problem with reference to the ongoing complaints in her right wrist." (Exh. 3 at 2.)

restrictions set out in the employer's job offer dated March 19, 1998. (Dec. 239; Exh. 4.) If such a position were not still available, the judge determined that the employee would be capable of earning at a minimum wage level. The judge assigned an earning capacity of \$270.00 per week, but also ordered the self-insurer to pay a closed period of § 34 benefits for temporary, total incapacity, followed by a closed period of § 35 benefits for partial incapacity and a qualified open-ended award of ongoing benefits pursuant to § 35 pending a suitable job offer to the employee.

The self-insurer asserts that the administrative judge erred in ordering a closed period of § 34 benefits for total incapacity from June 16, 2000 to April 18, 2001, in the absence of findings that explain the judge's rejection of the impartial examiner's opinion of unchanged, continuing right ulnar swelling and continuing partial disability. The self-insurer points to Dr. Leffert's statement that the swelling and damage to her wrist "persists to the present time, and I believe that she would not be able to function as a bus driver. . . . This component of her problem and reason for partial disability is, in my opinion, occupationally related to her original injury." (Self-insurer brief 3; Exh. 3 at 2.) We agree.

It is the duty of the administrative judge to make such specific and definite findings as will enable the reviewing board to determine with reasonable certainty whether correct rules of law were applied to facts that were properly found. Praetz v. Factory Mut. Eng'g & Research, 7 Mass. Workers' Comp. Rep. 45, 47 (1993); G. L. c. 152, §§ 11B, 11C. Where, as in this case, the § 11A medical testimony is the exclusive medical evidence and has prima facie status, the hearing judge should explain the basis in the record for his award of § 34 benefits in order to resolve the apparent conflict with the impartial examiner's medical findings and opinion of partial medical disability.

The decision is recommitted to the administrative judge for further findings consistent with this opinion.

**Viola Billingslea**  
**Board No. 018612-96**

So ordered.

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Sara Holmes Wilson  
Administrative Law Judge

Filed: **February 26, 2003**

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Susan Maze-Rothstein  
Administrative Law Judge

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William A. McCarthy  
Administrative Law Judge