COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS	**BOARD NO. 018968-96**
Violet Lotter	Employee
City of Chelsea School Dept.	Employer
City of Chelsea	Self-Insurer

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

APPEARANCES
Steven M. Ballin, Esq. and Morgan J. Gray, Esq. for the employee at hearing
Morgan J. Gray, Esq. for the employee on appeal
Gerard A. Butler, Esq. and Thomas Leonard, Esq. for the self-insurer at hearing
Gerard A. Butler, Esq. for the self-insurer on appeal

MAZE-ROTHSTEIN, J. The self-insurer appeals from a decision awarding the employee workers' compensation benefits for mental and chronic pain conditions causally related to a fall at work. The self-insurer is correct that there is inadequate support for the conclusion that the fall at work remained a major cause of the employee's depression, a non-work-related condition which pre-existed the industrial incident. See G. L. c. 152, § 1(7A). We therefore recommit the case for further findings on the extent of incapacity.

Seventy-eight year old Violet Lotter worked in a high school cafeteria, doing essentially everything associated with cold food preparation, clean up and stocking. (Dec. 3; Tr 93.) It is undisputed that on May 24, 1996, Ms. Lotter injured herself when she placed cartons of milk and juice on a steam table, causing the table to tip over and strike her left leg and foot. The employee fell onto her buttocks as a result of the impact. (Dec. 4-5, 13.) The employee's husband arrived at the scene and took her to a local hospital emergency room. (Dec. 5.)

On May 31, 1996, the employee went to see her primary care physician[1] of over fifteen years, who specialized in internal and geriatric medicine. Throughout that fifteen years Ms. Lotter suffered from chronic depression and anxiety and took prescription medications for those conditions, but had never been disabled from work. Prior to the work injury, she had last seen her doctor on April 1, 1996. (Dec. 6.)

The employee felt shaky following her work accident, with consequent confusion and deterioration of her mental state. She also had pain in the back of her head, neck, low back and right leg. Her doctor opined that Ms. Lotter's behavior at that first post-injury examination differed dramatically from at any prior examination. He observed that she was particularly unresponsive to his questions and instead rocked back and forth in her chair. The doctor's opinion was that the force of the fall caused an organic brain injury, regardless of any direct blow to the head. Her doctor advised the employee to continue her medications, and had her return a week later. At a June 7, 1996 examination, she appeared less agitated, although she still rocked in her chair and was tremulous. Her physician noted that she had difficulty finding words, remembering things, was confused about daily life activities, and lost track of what she was doing. The doctor referred the employee to a psychiatrist, and to a neuropsychologist for testing. (Dec. 7.)

Based on his clinical examinations, and on the neurological diagnostic test results, the employee's doctor opined that she had sustained a traumatic head injury on May 24, 1996, that manifested in mood, memory and brain function changes. The employee's condition deteriorated further, and in October 1996 she was admitted to Massachusetts General Hospital for Electroconvulsive therapy.

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[1] The parties opted out of the § 11A medical examination process. See 452 Code Mass. Regs. § 1.10(5)-(7). Curiously, both the employee and the self-insurer refer to Dr. Greer's testimony, a witness not noted in the decision except in passing on the last page of the findings. (Dec. 15, Self-insurer's Br. 13; Employee's Br. 6.)

Her physician opined that the employee's mental impairment up to and including her hospitalization had as its direct major cause the May 24, 1996 fall at work. And, in his opinion, she was totally medically disabled. (Dec. 8; Dep. 27-29.)

The employee was last seen by her doctor in May 1998, at which time her depression had improved, and she was functioning better than before. Ms. Lotter had also sustained a hip fracture in February 1998. Her total medical disability continued, but the doctor's causation opinion became ambiguous. He gave two reasons for her medical disability: the employee's improved, but still significant, depression, and her hip fracture. Determination of the cause of the employee's continuing depression at that point was elusive. He could not ascribe it to either the industrial accident or the hip injury with any certainty. (Dec. 8.) The doctor finally opined that, although improved, the depression "was more severe than what she had been suffering from the industrial accident." (Dec. 8; Dep. 32.)

The employee also received treatment from a chiropractor, who diagnosed a lumbosacral iliac sprain/strain, with pre-existing asymptomatic spondylolisthesis, spondylosis and degenerative disc disease. (Dec. 9.) At her last chiropractic visit in 1998, the doctor opined that she was still unable to return to her former employment, due to chronic pain in her neck, with radicular symptoms, as well as her general frailty. (Dec. 10.)

The self-insurer accepted the injury, but disputed the extent of incapacity and continuing causal relationship, particularly with regard to the appropriate standard of causation under § 1(7A).[2] (Dec. 1-2.) Based on the employee's

[2] General Laws c. 152, § 1(7A), amended by St. 1991, c. 398, § 21, 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.

(Continued on next page).

credited testimony regarding her fall at work, and the adopted opinions of her treating physicians, the judge found continuing total incapacity due to the industrial accident. The work injury, she found, was a major cause of Ms. Lotter's medical disability. (Dec.13.) The judge grounded this conclusion in the doctor's opinions from 1998 and concluded that the non-work-related hip fracture of February 1998, although itself impairing, did not relieve the self-insurer of its obligation to pay compensation benefits. As support, the judge reasoned that the employee's psychiatric and physical impairments remained the same both before and after the hip injury. (Dec. 14.) The judge therefore awarded the employee ongoing benefits pursuant to § 34, followed by permanent and total incapacity benefits under § 34A. (Dec. 15.)

We agree with the judge that the employee's 1998 hip fracture did not relieve the self-insurer of its liability for any incapacity still causally connected to the 1996 industrial accident. See Morgan v. Seaboard Products, 14 Mass. Workers' Comp. Rep. ___ (2000). However, the self-insurer is correct that the judge failed to take into account the employee's burden of proving that the industrial injury, apart from any other unrelated conditions, remained a major cause of her incapacity. See § 1(7A), n. 1 supra; Lagos v. Mary A. Jennings, 14 Mass. Workers' Comp. Rep. 21, 23 (2000)(where mental sequella emerges from physical work injury, which mental condition has a pre-existing non-work-related component, employee must prove that work injury remains a major cause of the resulting mental disability). See Patient v. Harrington & Richardson, 9 Mass. Workers' Comp. Rep. 679 (1995), for discussion of medical causality determinations amidst multiple work related and non-work related conditions. This omission necessitates recommittal of the case.

While § 1(7A) also imposes a "predominant" cause standard of proof for purely work-related mental work injuries, such standard does not apply to mental disabilities that stem from a physical injury, such as in the present case. See Cirignano v. Globe Nickel Plating, 11 Mass. Workers' Comp. Rep. 17 (1997).

The judge appears to have taken the opinion of the treating internist that the industrial accident was a major cause of the employee's incapacity in 1996, as a statement of the employee's medical disability status in 1998 and continuing. The medical evidence does not support the conclusion, particularly because as of his last examination in May 1998 that doctor could not say what was then causing the employee's depression. (Dec. 8; Dep. 31-32.) The "a major" cause standard of § 1(7A) by its plain language contemplates the temporal: whether the injury "remains a major cause" of incapacity. G. L. c. 152, § 1(7A); see Robles v. Riverside Mgt., Inc., 10 Mass. Workers' Comp. Rep. 191 (1996). Nor does the treating chiropractic opinion on the employee's chronic pain, also inclusive of a pre-existing non-work-related component, amount to a statement that it had as a major cause the industrial accident. The employee's present incapacity status can not be extrapolated from evidence and subsidiary findings that do not support the judge's conclusions. Praetz v. Factory Mut. Eng'g & Research, 7 Mass. Workers' Comp. Rep. 45, 47 (1993). Recommittal for further findings of fact is appropriate. See G. L. c. 152, § 11C.

Since the judge no longer serves as a member of the department, we transfer the case to the senior judge for reassignment and a hearing de novo. During the pendency of the new hearing and decision, the self-insurer shall continue to pay benefits in conformity with the conference order.

So ordered.

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Susan Maze-Rothstein
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge

Sara Holmes Wilson
Administrative Law Judge

Filed: April 25, 2001