

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 030279-89

William Bernoskevich
General Motors Corp.
General Motors Corp.

Employee
Employer
Self-insurer

REVIEWING BOARD DECISION

(Judges Levine, Maze-Rothstein and Carroll)

APPEARANCES

James S. Aven, Esq., for the employee
Edward J. Mahan, Esq., for the self-insurer at hearing
Robert P. Jachowicz, Esq., for the self-insurer on appeal

LEVINE, J. The employee appeals from a decision in which an administrative judge, whose term had expired as of the filing of the decision, denied his claim for further compensation benefits stemming from a May 23, 1989 industrial injury. We summarily affirm the decision in all respects but one.¹ We address the remaining issue of the judge's authority to issue the decision after her term as an administrative judge had expired. We determine that, pursuant to G.L. c. 30, §8, the judge did maintain authority to issue the decision on appeal, and therefore affirm the decision on that basis as well.

There is no dispute both that the six year term of the administrative judge expired on September 18, 1998, see Massachusetts Workers' Compensation Advisory Council, Fiscal Year 1998 Annual Report, February 3, 1999, Appendix F, and that the subject decision was filed on October 29, 1998. (Dec. 8). The employee challenges the judge's authority to file the decision after the expiration of her term. The employee cites no

¹ The decision found that the employee's migraine headaches are casually related to the industrial injury. (Dec. 5-6, 7.) Therefore, the employee is entitled to ongoing medical benefits under G.L. c. 152, § 30, so long as they are reasonable, necessary and related. Monteiro v. Nelson Cleaning Servs., 12 Mass. Workers' Comp. Rep. 147, 151 (1998).

authority in support of his argument.² To the contrary, G.L. c. 30, §8, specifically authorizes officers appointed by the governor, which would include administrative judges, to continue to serve until replaced. Section 8 reads as follows:

A public officer appointed for any term by the governor, with or without the advice and consent of the council, shall hold his office during the term for which he is appointed and until his successor in office has qualified, unless he is sooner removed in accordance with law. Unless otherwise provided, the beginning of the term of office of a public officer appointed by the governor shall be the date of his appointment, or, if he is appointed by the governor with the advice and consent of the council, it shall be the date of his confirmation; but no officer shall enter upon the duties of his office until he is duly qualified as provided by law.

(Emphasis added.)

The common law is the same. See Opinion of the Justices, 275 Mass. 575, 579 (1931)(“in the absence of any binding regulation . . . an officer may continue after the expiration of his term to exercise the duties of his position until his successor is selected and qualified”). We take judicial notice that the judge remained in office and that the office was unfilled by a successor at the time that she filed the subject decision. See Gahn v. Leary, 318 Mass. 425, 426 (1945)(court took judicial notice of defendant’s position as medical examiner for Suffolk county); Weitzel v. Brown, 224 Mass. 190, 192 (1916)(“If necessary the court also will take judicial notice that a certain person was deputy comptroller . . .”).

Accordingly, because the administrative judge who wrote the decision on appeal maintained authority to function at the time of the decision’s filing, we reject the employee’s argument and affirm the decision.

So ordered.

² General Laws c. 23E, §4, establishes the position of administrative judge within the department of industrial accidents; it provides for a six year term, but it is silent as to the administrative judge’s authority upon expiration of the term.

William Bernoskevich
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Frederick E. Levine
Administrative Law Judge

Susan Maze-Rothstein
Administrative Law Judge

Martine Carroll
Administrative Law Judge

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