COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 047206-02**

William Seymour	Employee
U.S. Tsubaki, Inc.	Employer
Tokio Marine & Fire Insurance Co.	Insurer

REVIEWING BOARD DECISION
(Judges McCarthy, Carroll and Costigan)

APPEARANCES
Thomas D. Downey, Esq., for the employee
Douglas F. Boyd, Esq., for the insurer at hearing
James M. Rabbitt, Esq., for the insurer on appeal

McCARTHY, J. The insurer appeals the decision of an administrative judge, which awarded G. L. c. 152, § 34, weekly total incapacity benefits and medical benefits under § 30. Because we agree with the insurer's assertion that findings with regard to the issue of causal relationship are necessary, we recommit the case.

Mr. Seymour worked as a millwright for the employer since 1994. (Dec. 2.) On June 28, 2002, while making some equipment repairs, he pushed down with a pipe and felt a pop in his back. (Dec. 3.) He told two co-workers about the injury and continued to work for the next few days. Anticipating a two-week temporary work shutdown, he hoped that he could fully recover during that period. Id.

Although he rested during the shutdown, the employee returned to work in pain. He worked through the fall until one morning in November when he awoke to find that he had great difficulty with bodily movements. At that point Mr. Seymour began medical treatment.

The employee's claim for benefits was resisted by the insurer. Following a § 10A conference, an order was issued for § 34 benefits from June 26, 2003 forward.[1] Both

[1] We take judicial notice of the board file. See Rizzo v. M.B.T.A., 16 Mass. Workers' Comp. Rep. 160, 161 n.3 (2002).

parties appealed. At the outset of the § 11 evidentiary hearing, the insurer stipulated that the employee "was totally disabled from January 3, 2003, forward." (Dec. 2.) The insurer called upon the employee to prove that he suffered an injury arising out of and in the course of his employment, and that the stipulated medical disability was causally related to the claimed industrial injury.

The parties agreed that a § 11A medical examination and report would not be required and in lieu thereof at hearing, the judge entered into evidence a number of medical exhibits. (Tr. 4.) The insurer submitted the office notes of Dr. David Fanti, (Ins. Ex. 2), and the employee submitted reports of Dr. Mark A. Linson (Employee Ex. 2), and Dr. Paul L. Filippini, (Employee Ex. 3), as well as an MRI of the employee's lumbar spine. (Dec. 1; Tr. 5.)

Finding the testimony of the employee and two co-workers credible, the judge found ". . . that the incident did in fact happen in June of 2002. . . ." (Dec. 5.) The judge awarded § 34 total incapacity benefits from January 3, 2003, the date the employee stopped working, and continuing. (Dec. 6.) Aggrieved, the insurer appeals.

The insurer raises two issues on appeal. First, it contends that the judge ignored testimony regarding company policy with respect to reporting industrial injuries. We see no merit in this argument and reject it summarily.

Second, the insurer argues that although causal relationship was put in issue and listed as such by the judge, (Dec. 1), the judge neither discussed nor made a finding on causal relationship in either that portion of the decision entitled, "Subsidiary Findings of Fact," (Dec. 2), or in the second section of the decision entitled, "Discussion and General Findings." (Dec. 5.)

At the outset of a hearing under § 11, the first job of the judge is to "make such inquiries as . . . shall enable him to issue a decision with respect to the issues before him." G. L. c. 152, § 11. "Once the issues are clearly defined, that is where all adjudicatory energies must flow." Goodsell v. Nashoba Painters, Inc., 16 Mass. Workers' Comp. Rep. 104, 106 (2002), quoting G. L. c. 152, § 11B("Decisions … shall set forth the issues in

controversy, the decision on each and a brief statement of the grounds for each such decision"). The judge must address the issues in controversy in a manner that enables this board to determine with reasonable certainty whether correct rules of law have been applied to facts that could be properly found. See Praetz v. Factory Mut. Eng'g Research, 7 Mass. Workers' Comp. Rep. 45, 47 (1993).

Although the judge could properly credit the testimony of the employee and his co-workers to find the employee injured his back at work in June 2002, he was required to identify the expert medical opinion(s) he adopted to find causal relationship between the stipulated incapacity and the industrial injury he found to have occurred. He did not do so. The medical aspects of the claim appear in a single paragraph of the decision:

> Despite the break over shutdown, the pain did not go away, and Mr. Seymour says he worked through the fall while still experiencing pain. Finally, one morning in November, he woke up to find he had extreme difficulty moving, and he sought medical treatment with Dr. Fanti. Dr. Fanti's records reflect that at his first medical treatment Mr. Seymour stated his back had first been hurt at work in June. (Ins. Ex. # 2, p. 5). He underwent an MRI, and after consulting with doctors, and on their advice, went out of work on January 3, 2003. He has been unable to work since.

(Dec. 3.)

Although the parties stipulated that the employee was disabled as of January 3, 2003 there was no such agreement as to medical causal relationship. Accordingly, we recommit the case to the administrative judge to make findings on that issue.

So ordered.

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William A. McCarthy
Administrative Law Judge

Filed: ***May 3, 2006***

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Martine Carroll
Administrative Law Judge

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Patricia A. Costigan
Administrative Law Judge