COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 035669-10**

Yvonne Green	Employee
Life Care Centers of America	Employer
Old Republic Insurance Company	Insurer

REVIEWING BOARD DECISION
(Judges Calliotte, Koziol and Long)

The case was heard by Administrative Judge Bergheimer.

APPEARANCES
Sean C. Flaherty, Esq., for the employee
David G. Shay, Esq., for the insurer

CALLIOTTE, J. The insurer appeals from a decision finding the employee partially incapacitated from August 25, 2015, until November 25, 2015, and permanently and totally incapacitated thereafter. The insurer argues that the employee failed to prove her condition worsened after the prior hearing decision awarding her § 35 benefits, and that the administrative judge factored unaccepted medical conditions into her incapacity analysis. For the following reasons, we vacate the decision insofar as it awards the employee § 34A benefits beginning on November 25, 2015, and recommit the case for further findings.

This is the second hearing decision in this case.[1] In the first decision, a different administrative judge found the employee, a nurse for over forty years, who had an associate's degree and RN and LPN licenses, injured her left minor hand in a fall at work on October 1, 2010. She returned to modified light duty work from October 4, 2010, to March 3, 2011, when her employment was terminated. (Dec. I, 6.) At the first hearing, the insurer raised § 1(7A) with respect to the employee's underlying degenerative

[1] The first hearing decision, filed on January 23, 2014, will be referred to as "Dec. I," while the second hearing decision, filed on October 26, 2017, will be referred to as "Dec. II." Similarly, the transcript of the first hearing, dated February 20, 2013, will be referred to as "Tr. I," and the transcript of the second hearing, dated April 12, 2017, will be referred to as "Tr. II."

arthritis of her left hand. However, the judge found "no compelling evidence" as to whether that pre-existing condition was "noncompensable" within the meaning of § 1(7A).[2] (Dec. I, 12.) Nonetheless, assuming it was noncompensable, the judge found it did combine with her work injury; however, based on the opinion of her treating physician, Dr. Hillel Skoff, the judge further found the work injury was the predominant cause of her metacarpophalangeal joint problem and a major cause of her base of thumb issues. (Dec. I, 12-13.)

Because the judge's findings in the first decision regarding the employee's prior work experience are relevant to the issues on appeal, we recount them in some detail. The judge found that "following an injury to her rotator cuff in 2004, the employee left her then-employer, St. Luke's Hospital," but noted that the shoulder injury "was not put through Workers' Compensation." (Dec. I, 4 and n.2.) She made no finding that the shoulder injury arose out of and in the course of her employment at St. Luke's, nor could she properly have done so where there was no claim before her for the right shoulder injury. See Keslof v. Anna Jacques Hospital, 24 Mass. Workers' Comp. Rep. 173, 174 (2010) (without a claim judge strays from parameters of case and errs if she rules on an issue not in dispute); see also Holden v. Town of Wilmington, 25 Mass. Workers' Comp. Rep. 165, 168 (2011)(where self-insurer was not present, adjudication of claim against it violated self-insurer's "fundamental right to notice of the claim against it, and the opportunity to prepare and defend on that claim . . . "). The employee underwent two shoulder surgeries and remained out of work from 2004 through 2007, when she began work in a lighter duty position as a supervisor at New Bedford Health Care. The judge found her responsibilities there "included completing paperwork, finding replacements

[2] General Laws c. 152, § 1(7A), states, in relevant 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.

for unavailable employees and passing out medication. She was not able to push the medication cart due to complaints with the shoulder, and other employees would assist her with this. She left this position and began work with the Oaks, or Life Care Center as it is known, the Employer in this case." (Dec. I, 4.) Regarding the employee's right shoulder, the judge found, "[s]he was advised not to lift heavy patients after this incident, but this shoulder did not reportedly cause any permanent restrictions or interfere with her subsequent work at Life Care Centers . . . ." (Dec. I, 7.)

We observe that, other than noting the employee did not need to lift patients, (Dec. 1, 7 n.6), the first judge made no findings regarding the employee's duties at Life Care Centers, prior to her left hand injury. Following that injury, the judge found the employee could not return to a nursing position given her pain and physical limitations in her left hand, (Dec. I, 15 n.18), and was only capable of employment that did not require the use of that hand. (Dec. I, 16.) However, finding the employee's pain and physical limitations were not as severe as the employee alleged, (Dec. I, 7), the judge concluded that she could perform full-time minimum wage work, such as a receptionist, customer service person, or greeter. (Dec. 14-15.) Accordingly, she ordered the insurer to pay the employee § 35 partial incapacity benefits of $457.70 per week, from March 4, 2011, and continuing, based on her ability to work 8 hours per day, five days per week, earning $8.00 per hour, or $320.00 per week.[3] (Dec. I, 16-17.) The judge also ordered the insurer to pay for surgery to the employee's left hand. Id. The insurer appealed the decision, which was summarily affirmed by this Board. Rizzo v. M.B.T.A., 16 Mass. Workers' Comp. Rep. 160, 161 n.3 (2012)(reviewing board may take judicial notice of documents in Board file).

Subsequently, the employee had multiple surgeries to her left thumb and hand. Following the last surgery to remove hardware in June 2015, (Dec. II, 6; see Ex. 12, 11/25/15 report of Dr. Whitelaw), the parties entered into a Form 113 agreement for the

[3] The $8.00 per hour figure was the minimum wage in the Commonwealth on January 23, 2014, the date of the judge's decision. G.L. c. 151, § 1, as amended by St. 2006, c. 271, §2.

insurer to pay the employee § 34 temporary total incapacity benefits from June 29, 2015, to August 24, 2015, and ongoing maximum § 35 partial incapacity benefits in the amount of $487.28, from August 25, 2015, to date and continuing. (See Dec. II, 2; Ex. 10.) Rizzo, supra.

On October 19, 2015, the employee filed the present claim seeking § 34A permanent and total incapacity benefits beginning on August 25, 2015. Following a § 10A conference, the original administrative judge ordered the insurer to pay § 34 benefits from the date of conference, April 11, 2016, through exhaustion, and maximum § 35 benefits of $487.28 per week thereafter. Both parties appealed. Prior to hearing, the insurer's complaint for modification or discontinuance, filed November 30, 2015, was joined to the employee's § 34A claim. (Dec. II, 4 and n.5.) Rizzo, supra.

At the time of the second hearing on April 12, 2017,[4] the employee was sixty-seven years old. (Dec. II, 3, 5.) She had not worked or sought employment since she was terminated by the employer on March 3, 2011. Id. at 7. The issues before the judge at hearing were the employee's claim for § 34A benefits from August 25, 2015, and continuing, and the insurer's request to modify or discontinue the employee's weekly benefits as of November 30, 2015. The judge found the medical issues complex, and allowed the parties to submit additional medical evidence. (Dec. II, 2, 4.)

The employee testified that she continues to experience pain and numbness in her left thumb, index and middle fingers, and that her pain is worse since her last surgery in June of 2015. She cannot use her left thumb at all and cannot lift a gallon of milk. She also stated she can only lift one to two pounds with her *right* hand. (Dec. II, 6.) She no longer takes narcotics for pain, because she is allergic to them; however, she does take Naproxen and Aleve for her pain and wears a brace on her left arm. Id. She testified she cannot return to the type of work she did for the employer, or for her two previous

[4] Judge Maureen McManus conducted both hearings, and issued the first hearing decision. After Judge McManus left the Department, the case was transferred to Judge Lauren Bergheimer, who had been present in the courtroom for the second hearing and had observed the testimony. For that reason, the parties agreed not to conduct a new hearing. (Dec. II, 3, n. 3.)

employers, and that, although she is ambidextrous to some extent, "*her shoulder causes difficulty with writing,* as does her left hand injury." (Dec. II, 7; emphasis added.) Finding the employee credible, the judge adopted her testimony, specifically regarding her ongoing complaints of worsening pain and her physical limitations. Id.

Ultimately, the judge adopted the expert medical opinions of Dr. George Whitelaw, who examined the employee on November 25, 2015, and January 30, 2017, and who was deposed on August 16, 2017. (Dec. II, 9-10, 11.) Dr. Whitelaw opined that "the Employee suffered from a left thumb pan-trapezial arthritis with degenerative problems of the metacarpocarpal joint, as well as left ulnar collateral ligament sprain." (Dec. II, 9; see also id. at 11; Tr. II, 14.) Addressing § 1(7A), which the judge found the insurer had raised with respect to two non-compensable pre-existing conditions, presumably the right shoulder and back, the judge found no evidence of "combination." However, if there was combination, she found the industrial injury to be a major cause of the employee's ongoing disability and need for treatment. (Dec. II, 12.)

Noting that the insurer did not file its complaint for modification or discontinuance until November 30, 2015, and did not challenge the employee's disability from August 25, 2015 through November 25, 2015, the judge found the employee partially disabled during those three months. (Dec. II, 11.) Considering "the evidence," id. at 14, the employee's complaints of pain and limitations and Dr. Whitelaw's opinion that the employee is "physically restricted and limited" as prescribed by him on November 25, 2015, id. at 11, n. 9, the judge concluded the employee was totally disabled from any gainful employment for the foreseeable future, and awarded § 34A permanent and total incapacity benefits beginning on November 25, 2015.[5] (Dec. II, 14, 16.)

Only the insurer appeals. In so doing, it makes two arguments. First, it contends the judge did not adopt evidence to support the necessary finding of a worsening of the

[5] The judge also found that the employee, who was over 65, had established that but for the work injury, she would have remained active in the labor market, thus overcoming § 35E's presumption of non-entitlement to benefits. (Dec. II, 14.) The insurer correctly does not challenge this finding, as §35E does not apply to § 34A benefits.

employee's medical or vocational condition after the determination of partial incapacity in the first hearing decision. The basis of the insurer's argument is the following principle:

> [A]n employee seeking § 34A benefits carries the burden of proof, following a hearing decision finding him partially disabled, to demonstrate that his work-related condition worsened 'not due to advancing age,' but owing to his industrial accident. Foley's Case, 358 Mass. 230, 232 (1970). Without medical evidence of an increase in causally related impairment, the employee fails to carry that burden. Glowinkowski v. KLP Genlyte, 118 Mass. Workers' Comp. Rep. 203, 205 (2004).

Hibbard v. Henley Enterprises, Inc., 28 Mass. Workers' Comp. Rep. 1, 5 (2014).

The employee counters that she does not need to show a worsening or change in incapacity between the first and second hearing decisions because the intervening agreement for a two-month closed period of § 34 benefits post-surgery, immediately followed by payment of § 35 benefits, beginning on August 25, 2015, and continuing abrogates her need to do so. The employee cites to Bolles v. Suffolk County Sheriff's Department, 27 Mass. Workers' Comp. Rep. 57 (2013) for the proposition that, where a hearing decision has placed the employee on partial incapacity benefits, and the parties subsequently execute an agreement for total incapacity benefits, the subsequent agreement relieves the employee of the burden of proving a worsening of his condition in a later claim for § 34A benefits. (Employee br. 17-18.)

Notwithstanding the first decision or the parties' subsequent agreement, we agree with the insurer, that the judge was required to adopt evidence of worsening because the second decision itself established that the employee was partially incapacitated from the date of the employee's claim for § 34A benefits, August 25, 2015, until November 25, 2015, when the judge awarded § 34A benefits. Indeed, the employee did not appeal and cannot now dispute this fact. See Grant v. Fashion Bug, 27 Mass. Workers' Comp. Rep. 39, 49 (2013)(party may not relitigate issue it lost and failed to appeal). Accordingly, in order to support a subsequent award of § 34A benefits from November 25, 2015, and

continuing, the second judge's own decision required findings of a change in incapacity, anchored in the evidence, following the finding of partial incapacity.[6]

Here, the judge did not adopt medical evidence supporting a finding that the employee's condition changed for the worse on November 25, 2015, so as to entitle her to permanent and total incapacity benefits. Her error was twofold. First, she found only that the *employee* reported her pain was worse following her last surgery. (Dec. II, 6.) Although an employee's credited testimony regarding an increase of subjective pain may form the basis of an expert medical opinion of worsening of the employee's condition, Hibbard, supra at 7, citing Caramiello v. BSI Bureau of Spec. Invest., 21 Mass. Workers' Comp. Rep. 321, 326 (2007), the judge must adopt a corroborating expert medical opinion that the employee's condition has worsened to support a change in incapacity from partial to permanent and total. Hibbard, supra; Docos v. T.J. McCartney, 25 Mass. Workers' Comp. Rep. 39, (2011). Here, she has not.

Second, " 'the date chosen by the judge to . . . modify benefits must be based on some change in the employee's medical or vocational condition.' " Barone v. Life Care Center of West Bridgewater, 29 Mass. Workers' Comp. Rep. 151, 154 (2014), quoting Bowie v. Matrix Power Services, Inc., 23 Mass. Workers' Comp. Rep. 351, 353 (2009). The judge here did not adopt medical evidence to support a change from partial incapacity to permanent and total incapacity *on November 25, 2015*. The judge simply used Dr. Whitelaw's November 25, 2015, report to support both a finding of partial incapacity for the three months prior to November 25, 2015, and a finding of permanent and total incapacity after that, without any explanation as to how the report supports that change. See Doonan v. Pointe Group Health Care and Senior Center, 23 Mass. Workers' Comp. Rep. 53, 54-55 (2009)(judge erred in basing change in earning capacity on date of impartial report, which cannot support both the earlier earning capacity assignment prior

[6] The judge's finding of partial incapacity is in the body of the decision (Dec. II, 11), and does not appear in her conclusions or order of payment. (See Dec. II, 15-16.) Thus, it does not contain any determination of the amount of § 35 benefits to be paid the employee.

to the impartial examination, and a change in earning capacity as of the same date.) Dr. Whitelaw did not indicate that the employee's condition worsened on the date of his first examination, but opined that she *remains* totally disabled, stating in his report of November 25, 2015, that "since June 29, 2015, [the employee] has been totally disabled from any and all gainful employment and will be for the foreseeable future." (Ex. 12, Dr. Whitelaw report of November 25, 2015, p. 4.)

Vocational worsening may also support a finding of a change in the employee's condition. DeBurgo v. Walker Electric, Inc., 32 Mass. Workers' Comp. Rep. ___ (November 27, 2018). Although the judge properly rejected Dr. Whitelaw's testimony insofar as it addressed vocational issues, (Dec. II, 11 n.9), she then recited the opinions of two vocational experts submitted by the parties, without indicating whether she adopted either. (Dec. II, 12-14.) The judge's extensive recitations of both experts' testimony results in our inability to determine whether or to what extent she relied on either expert in finding the employee became permanently and totally incapacitated on November 25, 2015.[7] Although a judge is not required to adopt or discuss vocational expert testimony, Frenier v. Hyde Mfg., Inc., 27 Mass. Workers' Comp. Rep. 185 (2013), where she does recite such opinions, she should indicate whether and to what extent she adopts them, so her analysis and the basis for her conclusions are clear. See Praetz v. Factory Mut. Eng'g & Res., 7 Mass. Workers' Comp. Rep. 45, 47 (1993)(judge must address issues in a manner enabling reviewing board to determine whether correct rules of law have been applied to facts that could be properly found).

Accordingly, the case must be recommitted for the judge to re-examine the medical and vocational evidence and anchor any finding of a change in incapacity in such

[7] With respect to the testimony of the employee's expert, Paul Blatchford, the judge noted that he opined that the employee has "additional issues which further limit and restrict her ability to perform and sustain employment." (Dec. II, 13.) The judge does not define what those issues are; but, as discussed below, it would have been inappropriate to consider the employee's right shoulder and low back conditions in determining her claimed incapacity after November 25, 2015.

evidence. See Parker v. Shaw's Supermarkets, 12 Mass. Workers' Comp. Rep. 6, 7 (1998)(where nothing of medical or vocational significance occurred on date judge changed employee's incapacity from total to partial, board reversed modification of benefits and recommitted for further findings).

The insurer next argues that it is not clear whether the judge included non-work-related pre-existing conditions, i.e., the employee's right shoulder and lumbar conditions,[8] in determining the employee's level of disability and incapacity. If so, the insurer maintains, this was error, because only work-related diagnoses may be the basis of the judge's disability assessment and order of benefits. We agree.

The employee's response to this argument is that the judge properly analyzed the case pursuant to § 1(7A) and found her left hand is a major cause of her disability and need for treatment. (Employee br. 10, 19.) The judge found the insurer raised § 1(7A), (Dec. II, 3), with respect to alleged pre-existing conditions *in addition to* the employee's degenerative left hand problems,[9] presumably, her unrelated right shoulder injury and back condition. Regarding the right shoulder injury and back conditions, the judge properly performed the following analysis:

> In the present case, the employee clearly does have a compensable injury under the Statute. While there is certainly evidence the Employee suffered from *pre-*

[8] The insurer also lists carpal tunnel syndrome (CTS) among those injuries Dr. Whitelaw and the judge improperly considered. However, the judge does not appear to have considered carpal tunnel syndrome in determining incapacity, as she adopts Dr. Whitelaw's opinion that the employee suffers from "right shoulder rotator cuff and status post failed surgery of a fusion of the lumbosacral spine" (Dec. II, 10), without any mention of CTS.

[9] At hearing, the insurer's counsel stated the employee was alleging that her pre-existing right shoulder injury, which the insurer asserted the employee was now claiming was work related, and her back conditions combined with her work injury and pre-existing wrist arthritis to cause her to be permanently and totally disabled. (Dec. II, 14.) The insurer asserted it would provide an offer of proof at the close of evidence, (Tr. II, 13), but its appellate brief neither references any offer of proof, nor do we see any in the evidence. It appears the insurer abandoned that argument as neither its closing argument to the judge nor its appellate brief argue that § 1(7A) applies. The employee does not argue on appeal that § 1(7A) was improperly raised, but rather that the medical evidence supports the judge's finding the 2010 hand injury remains a major cause of her disability and need for treatment. (Employee br. 19-20.)

> *existing conditions that are not compensable* under this statute, in looking at the adopted medical opinions, *there is no credible evidence that there was a combination of these two*. However, even if there was such a combination, the adopted expert medical opinions of Dr. Whitelaw provide that the industrial injury was a major cause of the Employee's ongoing disability and need for treatment . . . .

(Dec. II, 12; see also id. at 10; emphases added.) .

As we stated in Resendes v. Meredith Home Fashions, 17 Mass. Workers' Comp. Rep. 490, 492 (2003), "the combination that the statute addresses [in § 1(7A)] is a medical combination," most frequently involving "aggravation injuries such as back strains superimposed on degenerative disc conditions," although there may be other more complicated combinations. See, e.g., Robles v. Riverside Mgt., Inc., 10 Mass. Workers' Comp. Rep. 191, 193-195 (1996)(work-related toe injury superimposed on diabetes mellitus and arteriosclerosis, thus triggering cellulitis, vascular occlusive disease, multiple organ failure, and ultimately death). Where " 'there are two [or more] co-existent but entirely independent medical conditions that separately cause different disabilities in the same person,' " Gray v. Sunshine Haven, Inc., 22 Mass. Workers' Comp. Rep. 175, 177 (2008), quoting Resendes, supra at 492, "§ 1(7A) . . . does not apply to raise the employee's burden above the traditional 'as is' standard of simple causation." Gray, supra. Here, consistent with this principle, the judge found "no credible evidence that there was a combination of these two [right shoulder and back]," with the left hand injury. (Dec. II, 12.) Her additional finding that, even if there was a combination, Dr. Whitelaw's opinion that the work injury was a major cause of the employee's ongoing disability, thus satisfying § 1(7A), is irrelevant and unnecessary and does nothing to address the insurer's argument on appeal.

Regarding the insurer's appellate argument, we agree that it is not clear whether the judge awarded the employee permanent and total incapacity benefits based solely on her left hand injury, or whether she may have based that determination in part on the employee's incapacity relating to the shoulder and back conditions as well. Although the judge properly found no § 1(7A) combination between the right shoulder and left hand or

the employee's back and left hand, the judge proceeded to discuss, in detail, the unrelated shoulder and back conditions. In so doing, she made findings that conflict with those made in the first hearing decision, and which may have infected her ultimate incapacity analysis. Discussing the employee's prior medical history, the present judge found, "the Employee sustained a right shoulder injury *in the course of her employment*, while working for St. Luke's Hospital," (Dec. II, 7; see also id. at 12; emphasis added), and, as a result, was out of work from approximately 2004-2007. The judge also found that when she began working for Life Care Centers, "she did so with restrictions related to her previously injured shoulder" which the employer knew about, specifically "no repetitive reaching or grabbing with her arms on a regular basis." (Dec. II, 5, 6; see also id. at 7, 12.) She adopted the employee's testimony that she cannot lift over two pounds with her right hand, and her shoulder causes her to have difficulty writing. (Dec. II, 6-7.) These findings directly and impermissibly conflict with findings made in the first judge's 2014 decision, summarily affirmed by this Board, which established that the employee never filed a workers' compensation claim for her 2004 right shoulder injury and that "this shoulder did not reportedly cause any permanent restrictions or interfere with her subsequent work at Life Care Centers." (Dec. I, 4, 7.) See Grant, supra at 46-47 (findings made in unappealed hearing decision are "law of the case").

The judge also found the employee had suffered from lumbar spine issues since childhood and had undergone back surgery subsequent to her work-related hand injury. (Dec. II, 7, 10.) Although her back complaints restricted her activity somewhat, she was able to work with her pain. Id. at 7. The judge found the employee credible and adopted her testimony, specifically with regard to her "ongoing complaints of worsening pain and her physical limitations, as well as her intention to continue work as a nurse but for this injury." Id. at 7. The judge then adopted Dr. Whitelaw's opinion that the " 'left thumb and hand injury *in combination with her prior injuries to her back and* shoulder, magnifies her disabilities.' " (Dec. II, 10, quoting Ex. 12, Dr. Whitelaw's report of January 30, 2017, emphasis added.)

We agree with the insurer that in light of these findings regarding the employee's right shoulder and back, we are unable to tell whether or to what extent the judge may have considered these unrelated conditions in assessing the extent of the employee's incapacity for work. To the extent she considered them, she erred as a matter of law. As we have succinctly stated:

> Sections 34 and 35 provide weekly benefits for incapacity for work *resulting from the injury*. Thus, an administrative judge may only rely on symptoms and limitations caused by the work injury in assessing the nature and extent of incapacity. See Hummer's Case, 37 Mass. 617, 620, 623 (1945); Patient v. Harrington & Richardson, 9 Mass. Workers' Comp. Rep. 679, 683-683 (1995). . . . To the extent that the impartial physician lumped together all [the employee's] medical disabilities – both causally related and not – in rendering his opinion about work restrictions, the judge erred in relying on that opinion in his incapacity analysis. Anderson v. Norwood Hospital, 12 Mass. Workers' Comp. Rep. 388, 389 (1998).

Rodriguez v. Western Staff Services, 13 Mass. Workers' Comp. Rep. 91, 93-94 (1999)(internal references omitted; emphasis added). See also Akinmurele v. Target Corp., 25 Mass. Workers' Comp. Rep. 387, 391 (2011); Gray, supra; Resendes, supra. [10]

[10] The disabling effects of an injury to other body parts may be included in determining an employee's incapacity, when the successive insurer rule is invoked. As the court stated in Evans's Case, 299 Mass. 435 (1938),

> Where incapacity results from the combined effects of several distinct personal injuries received during the successive periods of coverage of different insurers the result is not an apportionment of responsibility on the part of either or any insurer at the election of the employee. The implication of the act is that only one of the successive insurers is to make compensation for one and the same incapacity.

Id. at 436-437. Here, the successive insurer rule was not invoked nor, as we noted supra, could it have been. See Holden, supra. The only claim before the judge was the claim for the left hand injury. The employee never adjudicated or claimed a work-related injury to her right shoulder, despite the judge's finding that it occurred "in the course of her employment." (Dec. II, 7.). Thus, there is no prior "insurer" against which a successive insurer claim could lie. See also Remillard v. TJX Cos., Inc., 27 Mass. Workers' Comp. Rep. 97, 102-102 (where no successive insurer and no question of another date of injury, successive insurer rule does not come into play; allowing judge to rule on issues not clearly raised would create potential due process violations).

Accordingly, we vacate so much of the decision as finds the employee is entitled to §34A permanent and total incapacity benefits from November 25, 2015 and continuing, and recommit the case for the judge to reconsider the extent of the employee's incapacity from November 25, 2015, and continuing based solely on the accepted industrial injury to her left thumb and hand. If she finds the employee is entitled to permanent and total incapacity benefits, she must adopt medical evidence that the employee's condition has worsened, as of a date anchored in the evidence. In addition, she must clarify whether she has relied on any vocational evidence in coming to her incapacity determination. Because the employee has not appealed the decision, she may not achieve a more favorable result on recommittal. Evans v. Geneva Constr. Co., 25 Mass. Workers' Comp. Rep. 371, 377 n.14(2011). Thus, the finding of partial incapacity from August 25, 2015, until November 25, 2015, may not be disturbed.

So ordered.

Carol Calliotte
Administrative Law Judge

Catherine Watson Koziol
Administrative Law Judge

Filed: ***April 11, 2019***

Martin J. Long
Administrative Law Judge