COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NOS. 037554-10 037068-11**

Ives Camargo	Claimant
Publishers Circulation Fulfillment, Inc.	Employer
Ace Fire Underwriters Ins. Co.	Insurer

REVIEWING BOARD DECISION

(Judges Harpin and Horan)[1]

The case was heard by Administrative Judge Bean.

APPEARANCES

Michael A. Fager, Esq., for the claimant
Paul S. Kelly, Esq., for the insurer

HARPIN, J. Both parties appeal from a decision finding the claimant was an independent contractor, denying her claim for benefits, allowing the recoupment of benefits paid pursuant to a conference order, and denying the insurer's claim for penalties pursuant to G.L. c. 152, § 14(2).[2] The claimant argues the judge's employee/independent contractor analysis was flawed. The insurer argues the claimant presented untruthful

[1] Judge Levine, who was originally a member of the panel, retired.

[2] General Laws c. 152, § 14(2), provides, in relevant part:

> (2) If it is determined that in any proceeding within the division of dispute resolution, a party, including an attorney or expert medical witness acting on behalf of an employee or insurer, concealed or knowingly failed to disclose that which is required by law to be revealed, knowingly used perjured testimony or false evidence, knowingly made a false statement of fact or law, participated in the creation or presentation of evidence which he knows to be false, or otherwise engaged in conduct that such party knew to be illegal or fraudulent . . . the party shall be assessed, in addition to the whole costs of such proceedings and attorneys' fees, a penalty payable to the aggrieved insurer or employee, in an amount not less than the average weekly wage in the commonwealth multiplied by six.

testimony and thereby should have been liable for costs and penalties under § 14(2). We affirm.

The claimant, fifty-four years old at time of the hearing, came to the United States from Brazil in 2001. Within a year she started working for Publishers Circulation Fulfillment, Inc. (PCF), delivering daily newspapers in the Lowell area. (Dec. 589, 592.) She obtained the newspapers from PCF, with whom she signed a number of contracts over the years, in which her position was defined as an independent contractor. (Dec. 589; Ex. 15.) The claimant testified she never read the contracts she signed, although they were written in English and in her native language of Portuguese. (Dec. 589.). She claimed she signed the contracts because it was the only way to get the job; she considered herself an employee, not an independent contractor. Id. She did not have an absolute right to continue delivering the papers until the contract expired, exemplified by the fact she was fired by PCF in 2012, well before the end of her contract, and fifteen days after returning from surgery. (Dec. 596.)

The claimant elected coverage under PCF's occupational accident insurance, the printed enrollment form of which noted, in English, that she was "an independent contractor and not an employee, and that this coverage is not workers' compensation or sickness coverage . . . ." (Dec. 589; Ex. 19.) In addition, the printed form stated: "I also understand and acknowledge that this insurance coverage is not, and is not intended to be, a substitute for workers' compensation coverage." Id. After her injuries the claimant collected on this policy. (Dec. 590.)[3]

The claimant identified herself as a sole proprietor in her income tax filings, claiming $20,236.00 in deductible expenses in 2009, as against $19,612.00 in income, giving her a loss of $624.00 for the year. (Ex. 23.) She had almost the same expense/income ratio the following year, although that year she claimed a profit of $494.00 on an income of $21,988.00. (Dec. 590; Ex. 24.)

[3] Any seeming waiver of workers' compensation coverage in this form would be ineffective, had the judge found the claimant to be an employee, as no agreement by an employee to waive her rights under Chapter 152 is enforceable. G. L. c. 152, § 46; Mendes v. Franklin Logistics, Inc., 28 Mass. Workers' Comp. Rep. 209 (2014).

The claimant delivered papers daily on two routes, each consisting of between 90 and 110 newspapers, with a total of about 200 papers delivered each day, on Monday through Saturday, and 300 papers on Sunday. (Dec. 590.) PCF provided the daily list of addresses of each route, which the claimant could not change, although she could keep her assigned routes during her relationship with PCF. (Dec. 591; Ex. 15.) The contract provided that the papers would be made available to the claimant between 3:00 and 3:30 A.M., with delivery of all papers to be completed no later than 6:00 A.M. on Monday through Friday, and no later than 8:00 A.M. on Saturday and Sunday. (Dec. 590; Ex. 16.)

The customers paid the publishers of the individual newspapers, who then paid PCF for the deliveries. (Dec. 591.) PCF then determined how much the claimant would be paid for delivering each newspaper, with a different payment set for each different publication. Id. PCF, the owner of the papers until they were delivered by the claimant, bore the cost of lost, stolen or destroyed newspapers. Id. As part of the contract the claimant was obligated to deliver "a dry and undamaged product. . . ." Id; (Ex. 15.). In order to ensure that occurred, PCF sold plastic bags to the claimant, and rented tables to any delivery person who wanted them to allow them to put papers in bags before they were delivered. (Dec. 591.) The claimant did not have to rent a table, however, as she was free to assemble the papers anywhere she wanted, after picking them up. Id. According to the contract, the claimant could determine when to pick up the papers and when to begin their delivery, as long as she had all the papers delivered by the guaranteed delivery time. (Ex. 15.)

The claimant used her own commercially registered car for twelve years to make her deliveries. (Dec. 591.) She paid all her own expenses without any contribution from PCF, and deducted those expenses from her taxable income. Id. (Ex. 23.) She was able to deliver publications obtained from companies other than PCF, or even items, such as pizzas or flowers, if she so wished. (Dec. 592; Ex. 15.) She was not contractually required to make the deliveries herself, but could hire an assistant or substitutes, as long as the deliveries were made on time, in accordance with the contract. (Dec. 592; Ex.

15.)[4] Once her regular deliveries were completed, the claimant often performed "redelivery" work for PCF, which consisted of delivering papers to customers who had not received their papers earlier. (Dec. 592.) Beginning in 2010, she did this work on both Saturdays and Sundays, redelivering an average of 6 papers per day, although on some days she would have no redeliveries. Id. She was paid a flat rate of $50.00 per day, even if no redeliveries were made. Id.

On September 26, 2010, the claimant, while pushing a carriage loaded with Sunday newspapers down a ramp, fell off the ramp and injured her right knee and right hand. (Dec. 593.) She nevertheless continued working, in pain, without seeking medical treatment. Id. On January 7, 2011, the claimant sustained a second injury to her right leg, when she slipped on ice while delivering a newspaper. Id. She could not continue working and went to a hospital for treatment. Id. She was out of work for ten days, returning to work because she needed the money, not because she had recovered. Id. On March 17, 2011, the claimant had a right knee arthroscopy to treat a meniscal tear, and trigger finger releases on the fourth and fifth fingers of her right hand. (Dec. 594; Ex. 3.) She returned on to work on April 2, 2011, but went out again on July 31, 2012, due to a scheduled right carpal tunnel release, which was done on August 1, 2012. (Ex. 3.) She attempted to return to work two weeks later, but was fired. (Dec. 594.) At the time of the hearing the claimant continued to complain of knee pain, although her fingers had recovered. Id.

The claimant filed a claim for workers' compensation benefits in 2012 after being fired. The insurer raised, among other issues, the lack of an employment relationship between the claimant and PCF. After a conference on December 21, 2012, the administrative judge issued an order directing the insurer to pay the claimant § 34, temporary total incapacity benefits. The insurer appealed to a hearing. (Dec. 588.)

[4] The contract provided that "[t]he Deliverer shall have the right and discretion to engage sub-contractors, employees or agents to satisfy its obligation under the contract. Such sub-contractors, employees or agents of the Deliverer shall be engaged at the Deliverer's own discretion, risk, expense, and supervision, and shall not have any claim against PCF for fees or reimbursement of any kind." (Ex. 15.)

In the hearing decision the judge denied and dismissed the claimant's claim for benefits, as he found the claimant was an independent contractor and not an employee, citing MacTavish v. O'Connor Lumber Co., 6 Mass. Workers' Comp. Rep. 174 (1992) and Athol Daily News v. Bd. Of Rev. of the Div. of Emply. and Training, 439 Mass. 171 (2003). The judge based his finding regarding employment status on several facts: the claimant signed a contract indicating that she was an independent contractor; she bought and collected independent contractor work insurance; she filed her taxes as an independent contractor; and she took business deductions which resulted in $494 of taxable income based on the $21,988 paid by PCF. He also allowed recoupment by the insurer for benefits paid pursuant to the conference order, and denied and dismissed the insurer's claim for penalties pursuant to § 14(2). (Dec. 605.)

The claimant appeals, arguing that she was an employee of PCF, and that the judge used the wrong legal standard in his analysis. (Claimant's br. 6.) The claimant argues the judge failed to consider the so-called independent contractor statute, G.L. c. 149, § 148B, in his analysis alongside MacTavish, supra, even though the claimant later stated that the three factors of § 148B are contained in that case. "MacTavish and § 148B(a)(1-3) must be looked at together to determine if the insurer met its burden of proving that the claimant was an independent contractor." (Claimant's br. 10.) She asserts that a careful analysis of MacTavish and § 148B must result in a finding that the claimant was an employee of PCF, and that the decision must be reversed and a finding made to that effect. (Claimant's br. 28-29.) We disagree.

The MacTavish factors[5] have been referred to as controlling when making a determination whether a claimant is an independent contractor or an employee for

[5] The relevant MacTavish factors are:

(a) the extent of control which, by the agreement, the master may exercise over the details of the work;
(b) whether or not the one employed is engaged in a distinct occupation or business;
(c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
(d) the skill required in the particular occupation;

purposes of the award of benefits under Chapter 152. Whitman's Case, 80 Mass.App.Ct. 348, 353 (2011);[6] Stone v. All Seasons Painting and Decorating, 25 Mass. Workers' Comp. Rep. 227, 231-232 (2011)(foremost among factors is right to direct and control individual in performance of work); Barrett v. D & P Contracting, 15 Mass. Workers' Comp. Rep. 94, 97-98 (2001)(in considering various indicia, it is well established that supervision and control over the actual work performed are fundamental elements); Dolbeare v. Merchants Home Delivery Service, 9 Mass. Workers' Comp. Rep. 812, 815-816 (1995)(essence of distinction between employees and independent contractors is the direction and control exercised over an individual in the performance of his work - all factors must be assessed, with no one factor being decisive); Cibene v. Brentwood Realty Trust, 8 Mass. Workers' Comp. Rep. 172 (1994); Donahue v. Petrillo, 8 Mass. Workers' Comp. Rep. 36, 37-42 (1994)(judge must weigh all circumstances of the contract for hire, with the right of control of particular importance); Pratte v. Liberty Movers, Inc., 7 Mass. Workers' Comp. Rep. 323, 325 (1993); Roumeliotis v. George Popa, D/B/A/ Huntington Ave. Auto Service, 7 Mass. Workers' Comp. Rep. 265, 273 (1993)(right of control and economic realities), reversed on § 18 grounds, 38 Mass.App.Ct.245 (1995), further rev. den. 420 Mass. 1102. We are now presented, however, with the question whether c. 149,

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(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
(f) the length of time for which the person is employed;
(g) the method of payment, whether by the time or by the job;
(h) whether or not the work is a part of the regular business of the employer;
(i) whether or not the parties believe they are creating the relation of master and servant; and
(j) whether the principal is or is not in business.

MacTavish v. O'Connor Lumber Co., 6 Mass. Workers' Comp. Rep. 174, 177 (1992); Dolbeare v. Merchants Home Delivery Service, 9 Mass. Workers' Comp. Rep. 812, 815-817 (1995)

[6] The court in Whitman added two more factors to MacTavish: the tax treatment applied to the payment for the work (form 1099 favored independent contractor status), and the presence of the right to terminate the relationship without liability (versus the worker's right to continue in the project for which he was hired).

§ 148B,[7] is applicable to the employee/independent contractor determination in workers' compensation cases, and if so, whether that statute is compatible with the MacTavish/Whitman factors.

Determination of independent contractor status is always a matter of fact. Madariaga's Case, 19 Mass.App.Ct. 477, 481 (1985), but the standard to be used in analyzing the facts found is a matter of law. Section 148B contains, as its first line, language limiting its application to specific chapters of the General Laws. Chapter 152 is

[7] General Laws c. 149, § 148B, provides:

> (a) For the purpose of this chapter and chapter 151, an individual performing any service, except as authorized under this chapter, shall be considered to be an employee under those chapters unless:-
> (1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and
> (2) the service is performed outside the usual course of the business of the employer; and,
> (3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.
>
> (b) The failure to withhold federal or state income taxes or to pay unemployment compensation contributions or workers compensation premiums with respect to an individual's wages shall not be considered in making a determination under this section.
>
> (c) An individual's exercise of the option to secure workers' compensation insurance with a carrier as a sole proprietor or partnership pursuant to subsection (4) of section 1 of chapter 152 shall not be considered in making a determination under this section.
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> (d) Whoever fails to properly classify an individual as an employee according to this section and in so doing fails to comply, in any respect, with chapter 149, or section 1, 1A, 113, 2B, 15 or 19 of chapter 151, or chapter 62B, shall be punished and shall be subject to all of the criminal and civil remedies, including debarment, as provided in' section 27C of this chapter. *Whoever fails to properly classify an individual as an employee according to this section and in so doing violates chapter 152 shall be punished as provided in section 14 of said chapter 152 and shall be subject to all of the civil remedies, including debarment, provided in section 27C of this chapter.* Any entity and the president and treasurer of a corporation and any officer or agent having the management of the corporation or entity shall be liable for violations of this section.
>
> (e) Nothing in this section shall limit the availability of other remedies at law or in equity.
>
> (Italics added)

not one of them: "For the purpose of this chapter and chapter 151 . . . ." G. L. c. 149, § 148B(a). When a statute contains language limiting it to certain sections, we are not free to enlarge its reach unless its object or plain meaning requires it. Rambert v. Commonwealth, 389 Mass. 771, 773 (1983); see also, Brelin-Penney v. Encore Images, Superior Court Civ. Act. 082244-B(June 1, 2010)(Kaplan, J.)(agency cannot exceed its authority by enlarging the statute under which it operates). Nevertheless, the claimant urges us to consider subsection (d) of § 148B as including Chapter 152 within the reach of the whole section, even though not cited in subsection (a). Under § 148B(d), "[w]hoever fails to properly classify an individual as an employee according to this section and in so doing violates chapter 152 shall be punished as provided in section 14 of said chapter 152. . . ."[8] The claimant asserts this language must be interpreted so as to make all of § 148B applicable to Chapter 152. (Claimant's br. 6.)[9]

[8] General Law c. 152, § 14(3) provides, in part:

> "any person or employer who knowingly misclassifies or engages in deceptive employee leasing practices for the purpose of avoiding full payment of insurance premiums . . . shall be punished by imprisonment in the state prison for not more than five years or by imprisonment in jail for not less than six months nor more than two and one-half years, or by a fine of not less than one thousand nor more than ten thousand dollars, or by both such fine and imprisonment."

[9] Several reported superior court cases have taken this route. See, for example, College News Service v. Dept. of Indus. Acc., Superior Court Civ. Act. 04-4559-A(Sept. 14, 2006)(Sikora, J.). There the judge found § 148B was the appropriate statute to determine if workers were employees and not independent contractors, when the issue was workers' compensation insurance coverage for drivers delivering newspapers for a company whose business it was to make such deliveries. The judge found that the so-called "ABC" test[9] of § 148B(a) was satisfied, and therefore that the workers were independent contractors under Chapter 152. [This test received that nickname because it consists of three elements, all of which must be present in order for a worker to be considered an independent contractor. See Athol Daily News v. Bd. of Rev. of the Div. of Employment & Training, 439 Mass. 171, 176 (2003).] See also Granite State v. Truck Courier, Inc., Superior Court MICV201102126F(January 17, 2014)(Curran, J.)(truck drivers' employment status for determining workers' compensation insurance premiums analyzed under § 148B[a]); and Am. Zurich Ins. Co. v. Dept. of Indus. Acc., Superior Court 053469A(June 1, 2006(Troy, J.)(insurer's demand for payment of increased workers' compensation insurance premiums for coverage of workers it deemed to be employees rejected, on grounds that workers were independent contractors under the ABC test of §148B[a]).

The only appellate level direct statement of the applicability of § 148B to Chapter 152 occurs in Mass. Delivery Assoc. v. Coakley, 671 F.3d 33, 36 (1st Cir. 2012), where the federal court stated: "Section 148B governs whether an individual is deemed an employee for purposes of various wage and employment laws, chapters 62B, 149, 151 and 152 of the Massachusetts General Laws. See Mass Gen, Laws ch. 149, § 148B(a), (d). " It is noteworthy that the court included subsection (d), for it is only there that Chapter 152 is referenced, as already noted. However, this statement is dicta, as the decision concerned whether § 148B was preempted by a federal motor carrier act in a federal civil rights action for specific plaintiffs.

The Appeals Court addressed the issue indirectly in Travelers Prop. Cas. Co. of America v. Universal Drywall, Inc., 85 Mass.App.Ct. 1125 (2014)(Memorandum and Order Pursuant to Rule 1:28.) After noting that "[t]he key to determine if a worker is an employee under the Act is the control which may be exercised over the individual in the performance of his work[,]" the court found the superior court judge properly ruled that the defendant had misclassified its workers as independent contractors, and thus underpaid its premiums for compensation insurance. The court held that the judge's analysis of the question correctly hinged on the "right to control" as set out in the ten factors of the Restatement (Second) of Agency § 220 (1958), as cited in MacTavish, supra, and those in Whitman, supra.[10] Because of that analysis, the court held the judge's additional reference to § 148B "does not provide cause for reversal." Travelers, supra, at n. 4. The only reasonable interpretation of this somewhat enigmatic phrase is that if the

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One superior court judge took a different approach when considering a summary judgment motion. In McEnroe v. Hayden Building Movers, Inc., Superior Court BACV200800252 (October 20, 2010)(Muse, J.), the plaintiff alleged he was an independent contractor in a negligence claim filed against the defendant. The defendant asserted the plaintiff was an employee, and therefore the tort action was barred under the exclusivity provision of G. L. c. 152, § 24. The judge found the facts were in dispute and thus denied the motion, but in so doing called into question whether § 148B was even applicable to the determination. "[Section]148B may not be applicable because G. L. c. 152 is not listed as one of the statutory provisions for which the presumption [of employment] applies." (n. 1.)

[10] The court in Whitman made no mention of § 148B as applicable to the independent contractor analysis.

judge used § 148B, instead of the twelve factor "right to control" analysis, the court may have reversed, on the basis that § 148B did not apply to determining employment status under Chapter 152.

We do not agree that subsection (d) of § 148B can be interpreted to include Chapter 152 in toto. The subsection addresses expanded penalties for misclassifying workers, not whether an individual is an employee or an independent contractor for the purpose of workers' compensation benefits: "(d) . . . Whoever fails to properly classify an individual as an employee according to this section and in so doing violates chapter 152 shall be punished as provided in section 14 of said chapter 152 and shall be subject to all of the civil remedies, including debarment, provided in section 27C of this chapter . . . ." The subsection's requirement that a party that misclassifies a worker in violation of § 148B(d) "*and in so doing"* violates Chapter 152 creates two criteria. The first is the violation of § 148B(d), the second is when that violation also violates Chapter 152. This language does not supplant the MacTavish/Whitman analysis, but merely notes that when the facts of a given case demonstrate a misclassification of a worker as an independent contractor under§148B, the penalties of § 14(3) are applicable. It does not apply to a determination whether an individual is eligible for workers' compensation benefits.

In addition, the burden of proof in § 148B lies with the employer to show that all three of the listed elements are present, in order to find a worker is an independent contractor. Somers v. Converged Access, Inc., 454 Mass. 582, 589 (2009). A similar burden of proof applies in the unemployment insurance statute, G. L. c. 151A, § 2. Athol Daily News, supra, at 370. In both statutes there is a presumption that a worker is an employee, and this presumption can only be overcome with proof of the three elements. Id. However, under Chapter 152 a worker has the burden of proof to prove her employment status, as they do for all workers' compensation claims. Connolly's Case, 41 Mass.App.Ct. 35, 37 (1996), citing Ginley's Case, 244 Mass. 346, 348 (1923)(claimant has burden of proof at all stages of litigation to produce evidence on all elements of claim). For this reason § 148B can not be applicable to Chapter 152.

Our ruling today is that G. L. c. 149, § 148B(a)(1-3) is not applicable to the determination whether a claimant is an employee or an independent contractor under Chapter 152. We are mindful that by so ruling, three somewhat different tests for independent contractor status are discerned in Massachusetts jurisprudence, that being § 148B, G. L. c. 151A, § 2, and the MacTavish/Whitman factors.[11]

The differences between the two statutes and the MacTavish/Whitman factors could change the result of the independent contractor analysis, and in this case likely would have done so. The judge found that, after considering all the MacTavish/Whitman factors, the claimant was not an employee. However, had § 148B applied, the presumption of employment would not have been overcome, because the work that the claimant did, delivering newspapers for a company whose sole purpose was the delivery of such papers, would have not met the criterion of subsection (2): "the service is performed outside the usual course of the business of the employer[.]" As the three factors are conjunctive, with failure to meet any one resulting in a finding of employee status, the claimant would have succeeded in her claim. However, she would not have succeeded had the unemployment statute, G. L. c. 151A, § 2, applied, for in subsection (2) of that section, which in almost all respects is identical to § 148B, an additional phrase is present after that already quoted: "or is performed outside of all the places of business of the enterprise for which the service is performed." In Athol Daily News, supra, at 179, the court, after noting that the newspaper's business included the distribution of its product, found that the second phrase controlled, for "[i]t is clear that all of the carriers make deliveries outside of premises owned by the News, or which

[11] The twelve MacTavish/Whitman factors are examined in turn, with no one factor considered as superseding all the others, other than the overriding consideration that "supervision and control over the actual work performed are fundamental elements" in the determination. Barret, supra. at 98.)

could fairly be deemed its 'places of business.'"[12] The court thus found the delivery persons to be independent contractors.

We now turn to the judge's analysis of the facts found, using the MacTavish/Whitman factors.[13] After taking into account all the factors (see footnote 5) to decide whether the claimant was an employee or independent contractor, and concluding that no one factor was outcome determinative, the judge found the claimant could have expanded her business to deliver other newspapers or items such as flowers or pizza. He also found that the claimant supplied all of the tools for the job, except the newspaper itself, including the vehicle used for delivery. Moreover, the claimant could and did hire substitute delivery workers. Finally, the claimant acknowledged signing an independent contractor agreement, and benefitted from that status in her filing of taxes and collecting on a disability insurance policy for independent contractors. Taken together these findings support the judge's conclusion that Ms. Camargo was an independent contractor.

The insurer cross-appeals, asserting error in the judge's dismissal of its claim for penalties for fraud. The insurer argues the claimant's "false statements" offered at hearing should trigger costs and penalties pursuant to § 14(2). The judge found the claimant was not a credible witness regarding her claim for total disability benefits, as the evidence showed she was at least capable of working at a floral shop for considerably

[12] It is interesting to note that § 148B had the same second phrase in subsection (2) of (a) until 2004, one year after the Athol Daily News decision, when it was removed. St. 2004. C. 2193, § 26.

[13] The judge also relied to a great extent on Athol Daily News, supra, which as we have seen was an unemployment case decided on the statutory definition in G. L. c. 151A, § 2. He unfortunately found that Athol Daily News, supra was "easily transferable" to the workers' compensation context. We find otherwise. We also do not agree with the judge's statement that "Massachusetts law cannot find a person to be an independent contractor in any unemployment contest, but on the same facts, be determined to be an employee for the purposes of workers' compensation law." (Dec. 601). It so happens that in the present case that is correct, but it will not always be so. If we were to substitute "wage and hour" contest, under § 148B(2), for "unemployment," the result, as we have noted, would most certainly be different. While this is not the height of logic or consistency, it is the result required by the statutes and case law.

longer than her testimony would support. (Dec. 596.) However, he made no finding whether she received any compensation for that work, id., and found there was insufficient evidence upon which to base a § 14(2) finding. (Dec. 604-605.) "Findings of fact, assessments of credibility, and determinations of the weight to be given the evidence are the exclusive function of the administrative judge." Pilon's Case, 69 Mass.App.Ct. 167, 169 (2007). The judge correctly considered the weight to be given the facts he found, and we will not disturb that finding.

Because the employee has prevailed on the insurer's cross-appeal, the insurer shall pay claimant's counsel a fee of $1,618.19, pursuant to § 13A(6)

So ordered.

William C. Harpin
Administrative Law Judge

Mark D. Horan
Administrative Law Judge

Filed: ***December 9, 2016***