COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 014615-01**

George Dussault	Employee
Ryder Systems, Inc.	Employer
Ryder Systems, Inc.	Self-Insurer

REVIEWING BOARD DECISION
(Judges Carroll, Costigan and Fabricant)

APPEARANCES
Seth J. Elin, Esq., for the employee at hearing and on brief
Matthew F. King, Esq., for the employee at oral argument
William C. Harpin, Esq., for the self-insurer

CARROLL, J. The self-insurer appeals from a decision in which an administrative judge awarded the employee ongoing temporary total incapacity benefits for an accepted work-related back injury. Because we agree with the self-insurer that the judge failed to make any findings on the application of the self-insurer's defense of § 1(7A) "major" causation,[1] we recommit the case for further findings.

The employee's work injury occurred while he was lifting cabinets off of a truck; he experienced the immediate onset of lower back pain. (Dec. 5-6.) Suffice it to say that the medical evidence, both of the impartial physician and the parties' own medical experts, confirmed significant degenerative disease at multiple levels

[1] General Laws c. 152, § 1(7A), provides, in pertinent part:

> If a compensable in jury 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.

of the employee's lumbar spine, and disc herniations at L2-3 and L4-5.[2] (Dec. 6-11.) We consider that the issues of whether § 1(7A) "major" causation applied to this case, and, if so, whether the employee met that burden of proving his medical case, are presented by the medical evidence in the record.

Recommittal is appropriate for the judge to make findings on the elements coming within the § 1(7A) defense raised by the self-insurer at hearing. The decision is completely devoid of both subsidiary and general findings on § 1(7A). We set out these elements in detail in Viera v. D'Agostino Assocs. 19 Mass. Workers' Comp. Rep. 50 (2005),[3] and have concluded in several cases since Viera that subsidiary findings of fact on § 1(7A) are necessary in the first order, before appellate review of the decision for errors of law is possible. See Russell v. Webb Supply Co., 20 Mass. Workers' Comp. Rep. 167 (2006); Ricard v. Seven Hills Foundation, 19 Mass. Workers' Comp. Rep. 328 (2005); Beuth v. Buxton School, Inc., 19 Mass. Workers' Comp. Rep. 300 (2005); Green v. Safe Passage, Inc., 19 Mass. Workers' Comp. Rep. 262 (2005). The present case falls well within this Viera-type recommittal line of authority. Cf. Reynolds v. The Rhim Company, 18 Mass. Workers' Comp. Rep. 178, 180-181 (2004)(where evidence clearly points to only one legal conclusion in § 1(7A) "major" causation analysis, failure of decision to address that causal standard does not necessitate recommittal); Pandey v. Montgomery Rose Co., Inc., 15 Mass. Workers' Comp. Rep. 442 (2001)(same).

[2] The impartial physician described the employee's medical picture as a work-related aggravation of his pre-existing degenerative lumbar condition. (Dec. 7.) See Castillo v. Cavicchio Grenhouses, Inc., 66 Mass. App. Ct. 218, 219-220 (2006).

[3] "Absent such findings on all the fine points that apply in any given § 1(7A) case, we will recommit the case. . . ." Viera, supra at 53.

Accordingly, we recommit the case for further findings on the applicability of the § 1(7A) "major" causation standard for combination injuries.

So ordered.

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Martine Carroll
Administrative Law Judge

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Patricia A. Costigan
Administrative Law Judge

Filed: **January 31, 2007**

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Bernard W. Fabricant
Administrative Law Judge