

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 022796-02

Robert P. Rose
Home Goods
TJX Companies, Inc.

Employee
Employer
Self-insurer

REVIEWING BOARD DECISION

(Judges Horan, Costigan & McCarthy)

APPEARANCES

James F. Fitzgerald, Esq., for the employee at hearing
Paul M. Moretti, Esq., for the employee on appeal
Michael A. Fager, Esq., for the self-insurer

HORAN, J. The parties cross-appeal from a decision awarding the employee weekly incapacity benefits under §§ 34 and 34A. Each party raises an issue that requires us to recommit the case for further findings of fact. G. L. c. 152, § 11C.

The employee injured his low back at work in 1999. He filed a claim for workers' compensation benefits in 2002, requesting weekly benefits from February 10, 2000, the date he underwent back surgery. The self-insurer denied the claim and raised the issues of liability, disability and extent thereof, and causal relationship, among others. At the hearing, the judge allowed the employee's motion to admit additional medical evidence for the period prior to the April 14, 2003 §11A impartial medical examination. The judge's decision awarded the employee § 34 benefits from February 10, 2003 to their exhaustion, and § 34A benefits thereafter. (Dec. 1-3, 8, 16.)

The employee claims the judge's use of the February 10, 2003 date to anchor his benefit award fails to comport with the evidence. D'Angeli v. McDonalds Restaurant, 1 Mass. Workers' Comp. Rep. 193, 195-196 (1987). The decision offers no clear explanation why this date was chosen. The employee suspects, as we do, the judge meant to align the commencement of benefits with

the date of the employee's surgery on February 10, 2000. Because the parties do not stipulate on this point, the judge must address the issue on recommittal.

The self-insurer raises several issues on appeal. Only one requires comment. We agree the decision fails to list or otherwise reference the certified medical records¹ of Dr. Alan Murphy,² Dr. Thomas Browning, and the Jordan Hospital. The judge's failure to list, reference or discuss this evidence in his decision requires us to recommit the case to ensure the judge did, in fact, review all the evidence. See Morrissey v. Benchmark Assisted Living, 20 Mass. Workers' Comp. Rep. 303 (2006).

Accordingly, we recommit the case for the judge to address these two issues. We otherwise summarily affirm the decision.

So ordered.

Mark D. Horan
Administrative Law Judge

Patricia A. Costigan
Administrative Law Judge

William A. McCarthy
Administrative Law

Judge
Filed: January 22, 2007

¹ The board file demonstrates these records were hand-delivered to the judge on December 8, 2004; he filed his decision on August 19, 2005.

² Not to be confused with Dr. Michael Murphy, the impartial medical examiner, whose report and testimony the judge considered.