

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF  
INDUSTRIAL ACCIDENTS**

**BOARD NO. 000774-03**

Wayne T. Langevin  
Air Liquide America  
Travelers Casualty & Surety Co.

Employee  
Employer  
Insurer

**REVIEWING BOARD DECISION**  
(Judges McCarthy, Costigan and Horan)

**APPEARANCES**  
James H. Tourtelotte, Esq., and  
James R. Nolen, Esq., for the employee  
Edward V. Leja, Esq., for the insurer at hearing  
John B. Stewart, Esq., for the insurer on appeal

**McCARTHY, J.** The employee appeals from a decision denying his claim for benefits stemming from bacterial meningitis, which he claims to have contracted in the course of his employment as a short-haul truck driver. Because we see no error in the administrative judge's finding that the risk of contracting the disease is not "inherent in the employment" of truck driving, we affirm the decision.

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

"Personal injury" [within the scope of the act] includes infectious or contagious diseases if the nature of the employment is such that the hazard of contracting such diseases by an employee is inherent in the employment.

The employee has the burden of proving that the disease falls within this definition, namely, that it is a hazard inherent in Mr. Langevin's work as a truck driver.

In Lussier v. Sadler Bros., 12 Mass. Workers' Comp. Rep. 451(1998), we considered whether tuberculosis contracted in the course of the employee's work as a machine operator was inherent in that employment. The administrative judge found it was. We reversed the award of benefits:

We consider that the danger of exposure to germs from co-employees while working in close contact is a condition common and necessary to a great many occupations. [Zerofski's Case, 385 Mass. 590, 595(1982).] Although it is

undisputed that Lussier contracted tuberculosis in the work environment, that fact is not enough.

Lussier, supra at 453. In so concluding, we relied on Perron's Case, 325 Mass. 6 (1949), a case decided soon after the addition of the pertinent definitional language to § 1(7A):

When, because of the nature of the employment, a possibility exists that an employee may contract an infectious or contagious disease, it becomes a question of fact whether the likelihood of infection or contagion is so essentially characteristic of the employment as to warrant a finding that the danger is inherent therein.

Id. at 452.

In the present case, there is no indication that the hazard of contracting meningitis while working as a truck driver is “essentially characteristic” of that employment. The employee’s argument that Lussier is distinguishable, because a co-employee was not involved here, is not persuasive. The statutory language requires the administrative judge to examine whether the disease is “inherent in the employment.” We agree with the administrative judge that it is not: “Quite simply there is no nexus to the risk of contamination and the specific functions of [the employee’s] employment.”<sup>1</sup> (Dec. 5.) The judge’s conclusion is not arbitrary, capricious or contrary to law. G.L. c. 152, § 11C.

The decision is affirmed.

So ordered.

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<sup>1</sup> The judge further explained his rejection of the employee’s argument:

To accept the argument that merely by coming in contact with numerous people in numerous and differing locals [sic], none of which are particularly associated with disease or contaminants is to stretch the provisions of § 1(7A) to such a degree that it would lose nearly any meaning. Whole categories of employees who bear no meaningful relation to risks associated with infectious diseases would become eligible to receive benefits from the chance contracting of a disease. While the enactment of § 1(7A) was undoubtedly intended to expand the coverage of The Act to include infectious disease in certain circumstances it was not enacted in order to create a general “health insurance scheme.” [Begin's Case, 354 Mass. 594, 597 (1968).]

(Dec. 5.)

**Wayne Langevin**  
**Board No: 000774-03**

Filed: ***December 19, 2007***

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William A. McCarthy  
Administrative Law Judge

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Patricia A. Costigan  
Administrative Law Judge

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Mark H. Horan  
Administrative Law Judge