COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 047206-02**

William Seymour	Employee
U.S. Tsubaki, Inc.	Employer
Tokio Marine & Nichido Fire Insurance Co.	Insurer

REVEWING BOARD DECISION
(Judges McCarthy, Costigan and Horan)

APPEARANCES
Thomas D. Downey, Esq., for the employee
Douglas F. Boyd, Esq., for the insurer at hearing
James M. Rabbitt, Esq., for the insurer on appeal

McCARTHY, J. The insurer appeals from a decision rendered on recommittal, in which the administrative judge again awarded the employee temporary total incapacity benefits. The reason for the recommittal was the judge's failure to make any findings with respect to medical evidence establishing causal relationship between the work injury and the employee's medical impairment. See Seymour v. U.S. Tsubaki, Inc., 20 Mass. Workers' Comp. Rep. 113 (2006). The insurer now argues that the judge erred by referencing and adopting a medical report that was not in evidence. We agree. Once again, therefore, recommittal is appropriate.

The judge's original decision handled the question of whether an incident occurred at the workplace, but was silent as to the medical evidence he adopted to support the employee's claim for compensation benefits. On recommittal, the judge found causal relationship based on a December 14, 2005 report of Dr. Marc Linson, the employee's treating physician.[1] The only problem, as noted by the insurer on appeal, is that the

[1] Because the insurer contested original liability, the parties were allowed to opt out of the § 11A medical examination procedure. See 452 C.M.R. § 1.10(7).

original decision was filed on October 6, 2004. No further proceedings are noted in the recommittal decision. On the record before us, we are at a loss as to how the 2005 report even came into the judge's possession, and if the insurer was aware of its existence prior to the recommittal decision being filed.

The outline of the recommittal stated above raises genuine concerns of fundamental fairness. We cannot consider the judge's action to be harmless, as advocated by the employee. At the same time, we are confident that the judge can revisit the causal relationship issue in this case, and correct this rather glaring mistake. We therefore deny the insurer's request that the case be recommitted for a hearing de novo before a different administrative judge.

Accordingly, we recommit the case again for further findings consistent with this opinion.

So ordered.

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William A. McCarthy
Administrative Law Judge

Filed: ***October 3, 2007***

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Patricia A. Costigan
Administrative Law Judge

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Mark D. Horan
Administrative Law Judge