

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1498

LISA MURPHY'S CASE.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Lisa Murphy appeals from a final decision of the reviewing board of the Department of Industrial Accidents (board). The board affirmed a decision of an administrative judge terminating Murphy's temporary total disability benefits, see G. L. c. 152, § 34, and temporary partial disability benefits. See G. L. c. 152, § 35. The issue is whether the board's decision is arbitrary or capricious or an abuse of discretion. We affirm.

There is no dispute that on March 14, 2014, Murphy injured her back while on the job as a law librarian and librarian manager at a Boston law firm (employer). She first sought medical treatment for her injury in June 2014 when she went to the emergency room complaining of severe back pains. She was referred to an orthopedist and started physical therapy, causing her to miss two days of work a week. She left work permanently on December 22, 2014, still suffering from severe swelling, pain, and muscle spasms.

On September 15, 2015, the employer's workers' compensation insurer filed a complaint to discontinue Murphy's disability benefits. After a hearing, held on October 24, 2016, the administrative judge found that Murphy was totally disabled from December 22, 2014, to December 15, 2015, and partially disabled from December 16, 2015, to September 5, 2016. He further found that any disability Murphy had on or after September 6, 2016, was not work-related and thus ordered that her benefits be discontinued as of that date. The board summarily affirmed.

"We review the board's decision in accordance with the standards set forth in G. L. c. 30A, § 14 (7) (a)-(d), (f) and (g)." Sikorski's Case, 455 Mass. 477, 479 (2009).¹ Under clause (g), which is the only relevant one here, we may set aside the board's decision if it is arbitrary or capricious or an abuse of discretion. A decision is not arbitrary or capricious so long as it has "adequate evidentiary and factual support and disclos[es] reasoned decision making within the particular requirements governing a workers' compensation dispute." Scheffler's Case, 419 Mass. 251, 258 (1994). Similarly, the board does not abuse its discretion unless it has made "a clear

¹ Although Murphy argues that the decision is unsupported by substantial evidence, clause (e) of c. 30A, which generally provides for substantial-evidence review of agency decisions, does not apply in appeals from final decisions of the board. See G. L. c. 152, § 12 (2).

error of judgment in weighing the factors relevant to the decision, . . . such that the decision falls outside the range of reasonable alternatives" (quotation omitted). L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014).

Murphy has failed to show an entitlement to relief under these standards. Contrary to her contention, the administrative judge was justified in finding that she was only partially disabled from December 16, 2015, to September 5, 2016. The administrative judge credited the December 16, 2015, report of the impartial examiner, Dr. Howard Martin, who concluded that, while Murphy "present[ed] as a very confusing picture," "it appear[ed] clear that there [was] no significant injury underlying or deeper that occurred as result [sic] of a work injury" and her symptoms were "likely unrelated to" the work injury. The administrative judge further credited the January 26, 2016, report of Murphy's treating physician, Dr. James Sarni. As Sarni stated in that report, MRI results revealed no structural damage to Murphy's pelvis or lumbar spine, and Sarni believed that Murphy could "improve significantly," within three to six months, by engaging in an exercise program.

The administrative judge was also justified in finding that Murphy was not disabled from a work-related injury as of September 6, 2016. The September 6, 2016, report of Dr. Marvin Rosen -- who was retained by Murphy to author a report --

supports this finding. After conducting a physical examination and reviewing the medical records, Rosen opined that, while the work injury "was a major contributing factor in the initial development of [Murphy's] lumbosacral symptoms, . . . at this point in time [he did] not think the objective findings noted on the MRI scan really can account for her symptoms." This led Rosen to conclude that "there is some associated neurological problem accounting for" Murphy's symptoms or "some element of symptoms magnification."

Murphy devotes much of her brief to arguing that Martin's and Rosen's medical opinions are wrong and should not have been relied on by the administrative judge.² But Murphy did not depose either physician, nor did she call either to testify at the hearing. Nothing in the record -- which, other than Murphy's testimony, consists entirely of documentary evidence -- shows that Martin's and Rosen's opinions are so inescapably wrong that it was arbitrary and capricious or an abuse of discretion for the administrative judge to rely on them. Furthermore, the burden was on Murphy to prove all the elements of her claim, including that there was a causal relationship

² Specifically, Murphy claims that Martin and Rosen failed to accurately document the accident and the full extent of her injuries, failed to view all the medical information, and improperly focused on her uterine fibroid as a potential cause of her symptoms.

between the accident and her disability. See MacDonald's Case, 73 Mass. App. Ct. 657, 661-662 (2009). She submitted no affirmative evidence, however, to refute Martin's and Rosen's opinions that the accident was not the cause of her ongoing symptoms.³

Murphy also argues that the administrative judge mischaracterized the medical opinions and the testimony. Principally, Murphy quarrels with the administrative judge's finding that Martin and Rosen opined that Murphy had recovered and was able to return to work. The crux of both opinions, however, and the basis for the administrative judge's decision, was that the accident was not the cause of Murphy's symptoms. Thus, even assuming it was error to find that Murphy could return to work, the error did not prejudice her substantial rights. See G. L. c. 30A, § 14 (7). Likewise, Murphy's other claims fail because any mischaracterizations were minor and not prejudicial.

Murphy next argues that the administrative judge erred by finding that she has a paralegal degree but then assigning her an earning capacity based on the minimum wage. Noting the absence of vocational testimony, the administrative judge took

³ Murphy testified that she had not seen a physician since January 2016, and she declined to undergo a diagnostic test that may have helped ascertain the cause of her pain.

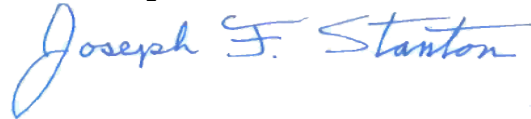
judicial notice of the minimum wage in 2015 and 2016. He then assigned Murphy an earning capacity equal to the minimum wage to calculate her temporary partial disability benefits under G. L. c. 152, § 35, which provides that the insurer must "pay the injured employee a weekly compensation equal to sixty percent of the difference between his or her average weekly wage before the injury and the weekly wage he or she is capable of earning after the injury." Had the administrative judge assigned Murphy a higher earning capacity, it would have resulted in a reduction in benefits under this formula. Any error therefore redounded to Murphy's benefit and was not prejudicial.

Finally, Murphy argues that the insurer made several misrepresentations at the hearing. But because the administrative judge did not rely on any of these alleged

misrepresentations in his decision, Murphy's substantial rights were not prejudiced.⁴

Decision of reviewing board affirmed.

By the Court (Wolohojian, Milkey & Shin, JJ.⁵),



Clerk

Entered: March 12, 2020.

⁴ To the extent we have not specifically addressed any of Murphy's arguments, we have reviewed them and found them to be without merit.

⁵ The panelists are listed in order of seniority.