

THE COMMONWEALTH OF MASSACHUSETTS

Department of Industrial Accidents

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1 Congress Street
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RE: EMPLOYEE: Gregory B. Jones
 EMPLOYER: National Grid c/o Sedgwich
 EMPLOYER: NStar
 INSURER: Northeast Utilities and Its Subsidiaries
 INSURER: NStar
 INSURER: WCTF
 D.I.A.#: 4272-12, 21754-13 and 17407-12

Enclosed is a copy of my decision in the above-entitled case. The filing date of this **Decision is August 7, 2014.**

Any party aggrieved by the decision may file an appeal to the reviewing board. If you exercise this right, your appeal should be filed within **thirty (30) days** of the filing date of this decision. Please send your appeal to:

Reviewing Board Appeals
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

For information regarding the filing fee and other requirements necessary to perfect your appeal, please refer to M.G.L. c. 152 §11C and 452 C.M.R. § 1.15.

Very truly yours,

John G. Preston
Administrative Judge
Department of Industrial Accidents

cc: Gregory B. Jones, the employee

Tel. # (617) 727-4900 - www.mass.gov/dia

DEPARTMENT OF INDUSTRIAL ACCIDENTS

Division of Dispute Resolution

Lawrence, Massachusetts

EMPLOYEE: Gregory B. Jones DIA# 4272-12, 21754-13 and 17407-12

EMPLOYER: National Grid c/o Sedgwich

EMPLOYER: NStar

INSURER: Northeast Utilities and Its Subsidiaries

INSURER: NStar

INSURER: WCTF

**DECISION OF THE ADMINISTRATIVE JUDGE OF THE DEPARTMENT OF
INDUSTRIAL ACCIDENTS
THE HONORABLE JOHN G. PRESTON**

HEARING STENOGRAPHER: Carol Ann Marquis

This Administrative Judge of the Department of Industrial Accidents, having presided in the above-entitled matter under the provisions of General Laws, Chapter 152, reports as follows:

APPEARANCES:

Attorney Alan S. Pierce, for Employee

Attorney Paul S. Kelly, for Nation Grid

Attorney Joseph S. Buckley, Jr., for NSTAR

Attorney Pedro Benitez-Perales, for WCTF

WITNESSES:

Gregory B. Jones

EXHIBITS: Evidentiary

- #1: 11A Examiner's Report
- #2: Employee Hearing Memorandum and Biographical Data Sheet
- #2A: Employee Hearing Memorandum and Biographical Data Sheet
- #3: Insurer Hearing Memorandum National Grid
- #3A: Insurer Hearing Memorandum NSTAR
- #3B: Insurer Hearing Memorandum WCTF
- #4: Affidavit Amy Kacperski, September 9, 2013
- #5: Employee Additional Medical Evidence
- #6: Insurer, National Grid, Additional Medical Evidence
- #7: Insurer, NStar, Additional Medical Evidence
- #8: Deposition, with deposition exhibits, Dr. Jerome Siegel.

Identified Documents – Not Evidence

- "A" Employee Motion Join WCTF S.35C, 65(2)(B)
- "B" National Grid Motion To Join NStar

PROCEDURAL MATTERS

A. Conference and Appeal

The Employees' claims for Section 34, 13 & 30 benefits were conferenced under Section 10A November 5, 2012 and an Order filed awarding benefits from NStar, and denying the claim against National Grid.

The NStar appeal was timely filed and before me for hearing *de novo* at Lawrence, Massachusetts, December 10, 2013. The record closed July 29, 2014.

B. Employee Claims

1. Section 34, temporary total incapacity benefits from September 23, 2011 to July 12, 2012;
2. Sections 13 & 30 benefits;
3. Section 36, permanent injury benefits; (Reserved)

C. Insurer: National Grid Defenses/Issues

1. Liability, denies occurrence of an industrial injury;
2. Disability, and extent of incapacity;
3. Causal Relationship;
4. Deny entitlement to Section 13 & §30 benefits;
5. Deny entitlement to Section 36; reserved
6. Application of Section 1(7A), pre-existing condition;

Insurer: NStar Defenses/Issues

1. Liability, denies occurrence of an industrial injury;
2. Disability, and extent of incapacity;
3. Causal Relationship;
4. Deny entitlement to Section 13 & §30 benefits;
5. Deny entitlement to Section 36; reserved
6. Section 1(7A), pre-existing condition;
7. Proper Claim
8. Proper Notice

D. Impartial Medical Report

The report of the impartial medical examiner is adequate. Additional medical evidence was authorized due to the complexity of the medical issues involved for any period, prior, during and subsequent to the closed period claimed.

E. Depositions

The parties were granted permission to submit the deposition of Dr. Siegel. The deposition was taken and the 171 page transcript is in evidence.

F. Stipulations

The parties stipulated and I find as follows:

1. That the Employee was an Employee of NStar in 2006 and later National Grid after 2009.
2. That the Employee's average weekly wage is \$2,175.63.

G. Issues in Controversy

1. Did the Employee sustain a personal injury while working for NStar or National Grid.
2. What is his capacity for work during the period claimed.
3. Did his claimed personal injury cause his claimed incapacity for work.
4. Is Section 1(7A) in play as a valid affirmative defense by National Grid or NStar.
5. Did the Employee give proper notice to NStar and is his claim proper.
6. Is any party responsible to repay National Grid for STD and LTD benefits paid the Employee.
7. What is the effect of 452 CMR S.302 and S. 35C on any benefits awarded the Employee.

JUDGE'S DECISION

After hearing the testimony and examining the exhibits, I find as follows:

The Employee, Gregory Jones seeks a closed period of Section 34 benefits, and medical payments for treatment for a work related condition occasioned from exposure to tick born Lyme disease.

The Employee as a lineman for NStar and later National Grid was exposed to tick bites working out-of-doors on power transmission equipment from 2005 to 2009. I find the Employee gave an accurate history to Dr. Siegel and Dr. Rombali of experiencing arthritic joint pain, diarrhea abdominal pain, head pain, and facial pressure beginning in 2005. This is so, notwithstanding the Employee's frequent inability at hearing to remember prior histories he gave to medical providers.

Importantly, the Employee on September 12, 2011 gave a lynchpin history to Dr. Rombali of joint pain and stiffness, muscle pain, tingling and numbness of the upper extremities and stated "...It feels like this has been progressive for the past five years."

The Employee's physical problems accelerated by June 2009, but there is no symptomology by the Employee after May/June 2009 or credible dispositive history then of, tick exposure or Lyme disease.

I find that the Employee was paid disability long or short term by National Grid during his absence from work from the physical effects of Lyme disease contracted during his employment with NStar.

Dr. Jerome Siegel, opines in part as follows:

- That Dr. Siegel is board certified in occupational, internal and rehab medicine and has an active patient practice.
- That on June 26, 2012 Dr. Siegel examined the Employee and took a history from him.
- That Dr. Siegel has actively treated over 200 or more patients with Lyme disease in the last 30 years after taking a history, clinical evaluation, ordering tests, reviewing medical records, job descriptions and job history, and that is what he did regarding this Employee's claims.
- That the medical records establish the Employee sustained tick bites in June 2006.
- That Dr. Siegel's review of Employee history and the records after January 2005 confirm the Employee contracted Lyme disease.
- That the Employee gave Dr. Siegel a history of multiple tick bites and tick exposure over the years as a lineman prior to 2006.
- That the Employee contracted Lyme disease while working during the period for NStar and that his later employment at National Grid is irrelevant to the diagnosis.
- That the latent Lyme disease condition contracted during employment with NStar was subsequently treated with antibiotics.
- That Lyme disease is an infectious disease and there are periods when the disease process becomes quiescent and latent and all of a sudden presents.

- That the Employee gave a history to Dr. Siegel of removing ticks in 2006 from his pelvis, axilla and scalp, and experiencing multiple tick bites at that time.
- That Dr. Bruschi in October 2012 documents the Employee had tick bites in June 2006 during his employment with NStar and that there is no documentation for tick bites during the Employee's employment with National Grid and that many of the symptoms evidenced by the Employee pre-dated his National Grid employment.
- That the Employee was prescribed treatment and laboratory testing in 2006 for Lyme disease and antibiotic medication in 2007 for Lyme disease.
- That the Employee in 2006 had symptoms of headaches, nausea, diarrhea, pain and facial pressure and these are constitutional symptoms of Lyme disease.
- That lab testing quality for Lyme disease is not reliable.
- That Lyme disease is found in urban, and rural areas.
- That Lyme disease is not easy to diagnose in the lab and in the blood, and may be latent/quiescent within the nervous system.
- That testing is often negative for Lyme disease yet the patient is infected with the disease and long term antibiotic medical treatment is then warranted.
- That Lyme disease is often not diagnosed correctly because of unreliable faulty laboratory tests.
- That a patient may have Lyme disease and require antibiotics but it can be misdiagnosed as another disease and the patient should have actually been receiving antibiotics right along.

- That there is no documentation of tick exposure or tick bites or any information in 2009 that supports a new or acute Lyme disease diagnosis or reinfection or relapse at that time.
- That there was not even the possibility of that in 2009.
- That tick bites and the start of Lyme disease is not documented prior to June 9, 2006.
- That in 4 documents in 2011 there is reference to joint pain, joint stiffness, muscle pain, that has been progressive for the previous 5 years.
- That the Employee's exposure to Lyme disease occurred in 2006, during his employment at NStar.
- That the tick exposure in June 2006 is the cause of the Employee's Lyme disease.

I adopt the above portions of the opinion of Dr. Siegel.

Dr. Thomas Hicks, the 11A examiner opines in part on January 20, 2013:

- That the Employee was removed from work in the fall of 2011 because of the physical symptoms stated by the Employee.
- That on January 20, 2013 there were normal findings and no active, acute or chronic disease process and the Employee was no longer disabled or physically impaired and no further treatment indicated.

I adopt the above portions of the opinion of Dr. Hicks.

Dr. Sam T. Donta opines in part:

- That as of February 16, 2012 the Employee remained disabled from his symptoms since September 22, 2011 with chronic Lyme disease and the disability would likely continue for a few more months.
- That the Employee had ongoing symptoms based on the clinical picture and the real test is to continue to treat the Employee with appropriate antibiotics, a combo of clarithromycin hydrochlorquime through the summer of 2012.
- That if residual symptoms continue beyond that time frame then tetracycline will be substituted.
- That as of February 16, 2012 the Employee had low energy, difficulty sleeping, night sweats, cold sensation fingers and toes, and head pressure, neck/back pain, random muscle and joint pain in knees, hips, shoulders, right elbow, fingers, balance/dizziness issues, occasional tremors and jerks in arms and thighs, eye twitching, itchiness and crawling sensation of the arms, stomach, chest, scalp.

I adopt these referenced portions of the opinions of Dr. Donta with the proviso that I do not accept any opinion contained therein that is based on a clinical history from the Employee that attempts to move the goalposts of the onset of Employee's chronic Lyme disease to 2009 or later. I find Dr. Siegel has the definitive dispositive opinion on the timing of the infection of Lyme disease in the Employee. And it is, that the infection occurred during employment with NStar.

Based on the foregoing Subsidiary Findings of Fact, and in consideration of the testimony and evidence presented, including my observation of the witness, his demeanor and judging his veracity, as well taking into account the Employee's education, training and work history, I further find as follows:

RULINGS OF LAW

I. LIABILITY

I find that the Employee sustained a personal injury, i.e. Lyme disease arising out of and in the course of his Employment with NStar in June 2006 that resulted eventually in his incapacity for any work during the closed period claimed. The personal injury was tick borne Lyme disease that remained latent from June 2006 until September 23, 2011 when he was then unable to work until July 12, 2012 and able to return to work.

I rely on the dispositive medical opinion of Dr. Siegel in affixing liability to the Employee's employer NStar, not National Grid. The Employee was infected with Lyme disease during his employment with NStar and it remained latent until his employment with National Grid when it progressed – becoming causative of this incapacity for work and need for medical treatment.

II. DISABILITY/INCAPACITY

I find that the Employee was incapacitated from all work from September 23, 2011 to July 22, 2012 by virtue of the deleterious disabling incapacitating effects of Lyme disease that was latent since it was contracted during employment with NStar.

I accept Dr. Donta's opinion referenced herein regarding disability and the severe nature of the symptoms, in concluding that the Employee was completely incapacitated from performing his work as a lineman or any other employment and earn a wage from full or part-time work. I do not rely on Dr. Donta's opinions beyond the Employee's capacity for work.

III. CAUSAL RELATIONSHIP

I rely on the dispositive opinion of Dr. Siegel in putting the historical pieces together, clinically identifying that the Lyme disease was contracted when the Employee was infected working for NStar. I find once the Employee was infected it remained latent/quiescent and disguised until it surfaced in 2011 and put the Employee on the sidelines out of work for the closed period.

The Employee's incapacity from September 23, 2011 to July 12, 2012 is causally related to the Lyme disease exposure during his work with NStar.

NStar and National Grid raise the affirmative defense under Section 1(7A).

I do not find a pre-existing condition combined with the Lyme disease to prolong

the Employee's disability and/or need for medical treatment. Without the necessary elements present, "as is" causal relationship is all that the Employee needs to prove, and he has done so.

IV. SECTION 36 PERMANENT INJURY BENEFITS

This claim is not determined and is reserved.

V. SECTION 13 AND 30 MEDICAL BENEFITS

I rely on the dispositive medical opinion of Dr. Siegel in concluding that all of the medical expenses for treatment, diagnoses, rehab and study of the Employee's Lyme disease condition are the responsibility of NStar from 2006 through the present.

VI. REIMBURSEMENTS OF DISABILITY PAYMENTS

I rely on my finding of liability and causal relationship and the Employee's period of temporary total disability, in concluding that NStar was responsible for, but did not pay the STD or LTD owed the Employee as spelled out in the affidavit by Ms. Amy Kacperski.

Rather, it was paid by National Grid in the amount of \$38,917.03 and shall be repaid to National Grid by NStar from monies owed the Employee. Refer to the "assented to" statement affidavit of Ms. Kacperski, September 9, 2013 marked in evidence for the particulars concerning payments to the Employee.

VII. SECTION 35C AND 65 (2)(B)

I find the Employee sustained a personal injury on June 9, 2006 that was not diagnosed nor did it result in any incapacity for work for over 5 years, and the Employee is entitled to be paid Section 34 benefits at the SAWW in effect on September 23, 2011. I find that that WCTF shall reimburse NStar for the difference between the 2006 S. 34 rate and the 2011 S. 34 rate (in accordance with) S. 65(2)(b).

VIII. PROPER CLAIM/PROPER NOTICE

I find that the Employee filed a proper and timely claim and gave adequate notice to substantiate/prove that his industrial workplace injury was latent and quiescent for many years before being identified and surfacing as Lyme disease rendering him incapacitated from work and in need of medical treatment. NStar was able to investigate and produce evidence regarding the diagnosis of the Lyme disease infection. NStar presented a “full court press” regarding its defenses, as evidenced in part by the 171 page, four hour deposition of the National Grid medical opinion witness.

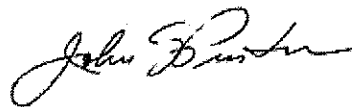
**WHEREFORE IT IS ORDERED PURSUANT TO M.G.L. CHAPTER 152, AS
AMENDED**

1. That NStar shall pay the Employee Section 34 benefits in the weekly amount of \$1,088.06 from September 23, 2011 to July 12, 2012, based on the average weekly wage of \$2,175.63.
2. That NStar shall pay the Employee Section 13 and 30 Medical Benefits for treatment of his Lyme disease.
3. That NStar shall take credit for benefits paid.
4. That NStar shall reimburse National Grid for the STD and LTD payments made by National Grid to the Employee as evidenced in the affidavit of Ms. Amy Kacperski.
5. That the Employee's rights under Section 36 are hereby reserved.
6. That the WCTF shall pay the difference between what is owed the Employee by applying Section 65(2)(b).
7. That Nstar shall pay a legal fee to Employee Counsel in the amount of \$9,000.00, plus his necessary expenses pursuant to Section 13A(5).

Sua Sponte, I have enhanced the legal fee because Employee Counsel had to expend significant necessary additional hours to professionally and properly represent his client. The claims were complex and readily involved over 40 hours of preparation, research, attendance at the deposition and hearing. Anything less would have marginalized the Employee's rights to benefits under Chapter 152.

Gregory B. Jones
DIA# 4272-12, 21754-13 and 17407-12

JGP/my
Filed Date: August 7, 2014

A handwritten signature in black ink, appearing to read "John G. Preston". The signature is written in a cursive style with a large initial "J".

JOHN G. PRESTON
Administrative Judge

At the discretion of the Judge, pursuant to 452 C.M.R. 1.1296 any objection made need not to be ruled upon unless the reason for such were stated with particularity on the record.

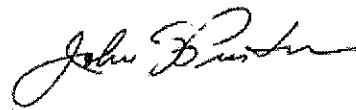
RULINGS ON OBJECTIONS TAKEN IN THE DEPOSITION OF
DR. SIEGEL

<u>PAGE/LINE</u>	<u>OBJECTION BY</u>	<u>RULING</u>
12 9	Kelly	overruled
13 10	Kelly	overruled
27 9	Kelly	sustained
41 18	Kelly	overruled
42 14	Kelly	sustained
49 9	Kelly	overruled
54 1	Kelly	overruled
59 8	Kelly	overruled
72 14	Kelly	overruled
82 8	Buckley	denied
88 22	Kelly	overruled
90 14	Kelly	overruled
96 14	Buckley	allowed

109	7	Kelly	overruled
111	17	Kelly	overruled
116	17	Buckley	overruled
126	22	Pierce	overruled
127	20	Buckley	overruled
129	23	Buckley	overruled
136	2	Buckley	overruled
136	16	Buckley	overruled
137	15	Buckley	denied
138	17	Buckley	denied
140	17	Buckley	overruled
141	4	Pierce	overruled
141	23	Buckley	overruled
143	7	Buckley	overruled
143	14	Buckley	overruled
144	5	Buckley	overruled
145	6	Buckley	sustained
145	9	Buckley	overruled
147	8	Buckley	overruled
149	6	Buckley	overruled
149	23	Buckley	overruled
151	1	Buckley	overruled

Gregory B. Jones
DIA# 4272-12, 21754-13 and 17407-12

151	18	Buckley	overruled
152	3	Buckley	denied
153	8	Kelly	sustained
155	22	Buckley	denied
157	15	Kelly	overruled
170	14	Buckley	Motion To Strike Deposition Denied



JOHN G. PRESTON
Administrative Judge