

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Beverly Andrews :
v. : A.A. No. 14 - 438
Department of Labor and Training, :
Board of Review :

ORDER

This matter is before the Court pursuant to § 8 –8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings and Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED,

that the Findings & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the Board of Review is REVERSED and REMANDED.

Entered as an Order of this Court at Providence on this 19th day of March, 2015.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

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FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Ms. Beverly Andrews urges that the Board of Review of the Department of Labor and Training erred when it held that she was ineligible to receive further Temporary Disability Insurance (TDI) benefits as of June 25, 2013 because her qualified medical provider concluded she was able to return to work as of that date. Jurisdiction to hear and decide appeals from decisions made by the Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. For the reasons stated below, I conclude that the instant matter should be reversed and remanded to the Board of Review for further proceedings.

I
FACTS & TRAVEL OF THE CASE

Ms. Beverly Andrews filed a claim for Temporary Disability Insurance (TDI) benefits. When her qualified medical provider transmitted to the Department her opinion — that Ms. Andrews was able to return to work — a designee of the Director decided that her benefits should be curtailed. Claimant filed an appeal and a hearing was held on October 14, 2014 before Referee Carl Capozza.

In a decision dated October 15, 2014, Referee Capozza affirmed the Director. But he did not make findings of fact and conclusions of law in the customary manner. Instead, after noting that medical records and other documents had been received into the record, he declared as follows:

Upon consideration of all the evidence submitted, the Referee finds that the Director's decision constitutes a proper adjudication of the facts. The conclusions of the Director as to the applicable laws and regulations thereto are correct and proper, and such findings and conclusions are hereby affirmed.

DECISION: Director's decision is affirmed and benefits are denied in accordance with Temporary Disability Insurance Act Rule 16c.

Referee's Decision, October 15, 2014 at 1. Accordingly, the Decision of the Director was sustained.

Claimant appealed and the matter was considered by the Board of

Review. On November 21, 2014, the Board of Review issued a unanimous decision which held that the decision of the Referee was a proper adjudication of the facts and the law applicable thereto and adopted the decision of the Referee as its own. Thereafter, claimant filed a timely complaint for judicial review in the Sixth Division District Court.

II APPLICABLE LAW

Substantively, this case would seem to turn on the application of Rule 16(C) of the Temporary Disability Insurance Act Rules of Procedure, which provides:

- C. There shall be no determination made of the validity of a claim to waiting period or benefit credits unless the claimant's attending licensed Qualified Healthcare Provider shall have certified, on a form having his/her signature, to the inability of the claimant, due to sickness, to perform his/her regular or customary work; provided, however, that the Director or his/her authorized representative may for good cause, as determined by the Director, permit such determination without such signature.¹

¹ It would appear that the authority for this rule is found in Gen. Laws 1956 § 28-39-12:

28-39-12. Examination of claimants. — The director may require any benefit claimant to submit to a reasonable examination or examinations for the purpose of determining his or her physical or mental condition, the examination or examinations to be conducted by a qualified healthcare provider appointed by the director, and to be made at those times and places that such qualified healthcare provider, with the approval of the director, require.

III STANDARD OF REVIEW

The pertinent standard of review is provided by Gen. Laws 1956 § 42-35-15(g), a section of the state Administrative Procedures Act, which provides:

42-35-15. Judicial review of contested cases.

* * *

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Thus, on questions of fact, the District Court “* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’”² The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of

² Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

fact.³ Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.⁴

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of the Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964) that a liberal interpretation shall be utilized in construing and applying the Employment Security Act:

* * * eligibility for benefits is to be determined in the light of the expressed legislative policy that “Chapters 42 to 44, inclusive, of this title shall be construed liberally in aid of their declared purpose which declared purpose is to lighten the burden which now falls upon the unemployed worker and his family.” G.L. 1956, § 28-42-73. The legislature having thus declared a policy of liberal construction, this court, in construing the act, must seek to give as broad an effect to its humanitarian purpose as it reasonably may in the circumstances. Of course, compliance with the legislative policy does not warrant an extension of eligibility by this court to any person or class of persons not intended by the legislature to share in the benefits of the act; but neither does it permit this court to enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

³ Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

⁴ Cahoone v. Bd. of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

IV ANALYSIS

In this case Claimant Andrews asserts that the Department (and the Referee and the Board of Review) erred by terminating her Temporary Disability Insurance (TDI) benefits because of the physician's opinion.⁵

However, when reviewing the record transmitted to this Court by the Board of Review, I immediately questioned one part of the procedure employed in this case. And, having given the matter much thought, I have concluded that the procedure utilized below was, in fact, improper. Specifically, I believe the decision rendered in this case by the Referee (which was adopted by the Board's decision) was legally inadequate.

The form and substance of a Referee's decision is governed by the following portion of Gen. Laws 1956 § 28-41-21 —

28-41-21. Decision of appeal tribunal or referee. — (a) After a hearing, an appeal tribunal shall make findings and conclusions promptly and on the basis of the findings and conclusions affirm, modify or reverse the director's determination. Each party shall be promptly furnished a copy of the decision and the supporting findings and conclusions. ...

⁵ Although, for the reasons explained post, I do not believe this Court is able to reach the merits of the Department's termination of TDI benefits to Claimant, it may be noted, for whatever its worth, that another physician, a Doctor Guptil, was willing to certify that Ms. Andrews was unable to work as of August 5, 2014. Referee's Hearing Transcript, at 8-9. However, this left a gap in her TDI coverage from late June to early August.

It is clear that the statutory mandate that referees make findings and conclusions was not followed in this case. The Referee merely endorsed the findings and conclusions of the Director,⁶ despite the fact that he conducted a hearing and took sworn testimony in this case.⁷ And so, when the Board adopted the Referee's decision as its own, it put its imprimatur on an inadequate decision.⁸

The lack of proper findings and conclusions is particularly egregious in this case, because it deprived this Court of the Referee's opinion on several significant questions, such as: (1) What is the effect of the fact that the qualified medical provider who indicated Claimant could return to work restricted her to

⁶ Of course, the Board of Review is permitted to adopt a Referee's decision as its own. See Gen. Laws 1956 § 28-41-22 (“... The board may affirm, modify, or reverse the findings and conclusions of the appeal tribunal solely on the basis of previously submitted evidence or upon the basis of such additional evidence as it may direct to be taken.”). But this statute presupposes that the Referee — an employee of the Board — has made proper findings, as required by § 28-41-21.

⁷ And this Court has long held that although the Board is empowered to decide cases based on the record forwarded to it by the Referee, in those instances where the Board has taken testimony, it must make findings of fact. See Achorn v. Department of Employment Security Board of Review, A.A. No. 81-368, slip op. at 4-5 (Dist. Ct. 12/6/86)(Laliberte, C.J.)(Interpreting Gen. Laws 1956 § 28-44-47, the analog to § 28-41-22 in the Employment Security Act).

⁸ Conversely, if the Board had crafted its decision based on its own findings any inadequacy in the Referee's decision would have been made harmless.

no lifting?⁹ (2) May the Department adopt the position that such a restriction is a matter for the employer to address?¹⁰ (3) What effect should be given to the opinion of another physician that Claimant was still incapacitated in August?¹¹

V

CONCLUSION

For the reasons stated above, I recommend that this Court find that the decision of the Board of Review was made upon unlawful procedure. Gen. Laws 1956 § 42-35-15(g)(3). Accordingly, I recommend that the decision of the Board be REVERSED and REMANDED for further proceedings in conformity with this opinion.

_____/s/_____
Joseph P. Ippolito
Magistrate

March 19, 2015

⁹ This question is particularly important in light of the fact that Claimant provided uncontradicted testimony that her job as a sales representative for Verizon did involve lifting. Referee Hearing Transcript, at 10, 13. It may be noted that, for emphasis, the doctor's letter had "no lifting" emboldened and the "no" was all capitals. See Letter of Dr. Joyce Alves to Beverly Andrews, dated June 24, 2014.

¹⁰ Ms. Mooney, the TDI representative at the hearing stated that when they see such restrictions they try to "work that out." But, that did not happen here. Referee Hearing Transcript, at 7.

¹¹ Referee Hearing Transcript, at 8-9.

