

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

CELESTE MARTINEZ )

)

VS. )

W.C.C. 00-00638

)

COWAN PLASTIC PRODUCTS )  
CORP.

DECISION OF THE APPELLATE DIVISION

BERTNESS, J. This matter is before the court on the petitioner/employee's appeal from a decision and decree rendered by the trial court on April 2, 2002. This is an Original Petition alleging bilateral carpal tunnel syndrome as an occupational disease, as well as injury to the left arm and wrist, which occurred on or about January 7 or 8, 2000. The petition prays for total or partial disability benefits from January 19, 2000 and continuing.

In its decree, the trial court found that the employee sustained a bilateral carpal tunnel syndrome, as an occupational disease, causing her to become partially disabled from April 20, 2000 through October 26, 2000.

The petitioner/employee has filed four (4) reasons of appeal, the first three (3) of which fail to meet the specificity requirements of Bissonnette v.

Federal Dairy Co., 472 A.2d 1223 (R.I. 1984). For these reasons, the first three (3) reasons of appeal are hereby denied and dismissed. The remaining reason of appeal alleges that the trial court erroneously found the employee's period of incapacity had ended on October 26, 2000. The employee argues that the trial court erred in accepting Dr. Weiss's opinions because he did not have a specific job description. The employee also argues that the trial court mischaracterized Dr. Hubbard's opinion because he found the employee could return to work no more than four (4) hours per day.

Pursuant to R.I.G.L. Section 28-35-28(b), a trial judge's findings on factual matters are final unless an appellate panel finds them to be clearly erroneous. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). The Appellate Division is entitled to conduct a *de novo* review of the evidence only after a determination is made that the trial judge was clearly wrong. Id. (R.I.G.L. Section 28-35-28(b); Grimes Box Co. v. Miguel, 509 A.2d 1002 (R.I. 1986)).

Celeste Martinez performed an assembly job at Cowan Plastic Products Corporation in January of 2000. Her job duties involved packing bottles of bubbles used by children into boxes along with small pieces of cardboard and scoops. She worked on an assembly line. The job was repetitive in nature and she was required to work quickly. Ms. Martinez worked at Cowan Plastics for five (5) years before she was terminated. Ms. Martinez experienced pain in her left hand for approximately one (1) year before she was terminated.

Dr. Leonard F. Hubbard performed carpal tunnel surgery on the employee's left hand on April 20, 2000. He then performed the same surgery on the employee's right hand on May 18, 2000. The employee's left hand continued to hurt following surgery.

Three (3) medical opinions were offered concerning the employee's diagnosis, causal relationship, and disability status. Dr. Hubbard opined that the employee suffered a left carpal tunnel syndrome causally related to her job duties, based on the history he obtained from Ms. Martinez. He last examined the employee on July 17, 2000. At that time, he released her to return to work for four (4) hours per day as an assembler. Dr. Hubbard admitted that as of the date of his last examination, he could find no obvious anatomical reasons for the employee's symptoms and there were no findings on examination. (Pet. Exh. 3, p. 18) He sent the employee back to work for four (4) hours per day, in an attempt to get her to return to full-time employment. Id. at 18-19. He stated that there was no objective physiologic reason for her not returning to work. Id. at 19.

Dr. Gregory Austin examined Ms. Martinez on one (1) occasion on February 16, 2001. Dr. Austin examined both of the employee's hands and wrists. With respect to the employee's right hand, she had an objectively normal examination. She did complain of some pain and numbness in her little finger, however, the doctor noted that this did not correlate with a diagnosis of carpal tunnel syndrome. With respect to the employee's left

hand, objective findings were also normal. The employee had several complaints which were non-physiologic. Dr. Austin opined that the employee was suffering with a pain syndrome, but was unable to say what was causing the pain syndrome. He attributed the employee's complaints to the history of a left carpal tunnel injury and surgery. He considered the employee partially disabled.

Dr. Arnold-Peter Weiss examined the employee on October 26, 2000. Following examination, he diagnosed the employee with bilateral carpal tunnel syndrome which he apportioned twenty (20%) percent to the employee's work activities as an assembler at Cowan Plastics. The other eighty (80%) percent he opined was idiopathic. Dr. Weiss was not presented with a specific job description by the employee, however, he was aware that she repetitively assembled parts which were low in weight. He was asked a hypothetical question based upon her testimony of the employee's job duties. Based on this question, he opined that the employee was capable of returning to her normal work activities, and he rendered that opinion to a reasonable degree of medical certainty. He found no evidence of ongoing impairment relating to a diagnosis of bilateral carpal tunnel syndrome.

In addition to these three (3) medical opinions, a witness for the employer testified regarding the employee's job duties. Also, the employer presented an investigator regarding the employee's activities. Medical records from Rhode Island Hospital were also admitted.

On appeal, the petitioner argues that the trial judge mischaracterized the evidence of Dr.'s Weiss and Hubbard. The petitioner argues that because Dr. Weiss admitted that he did not receive a specific job description, this lack of knowledge "totally destroys the probative value of his opinion." To the contrary, Dr. Weiss was asked a hypothetical question which documented nearly word for word the employee's testimony concerning her job duties. Based on this question, he opined that the employee was capable of returning to work. Nevertheless, regardless of the employee's job duties, Dr. Weiss further opined that he found no impairment. (Res. Exh. B, p. 13) It is a well-established rule that the admission of a hypothetical question ordinarily rests within the sound discretion of the trial justice and his or her ruling will not be disturbed on appeal except for an abusive discretion. State v. Thornley, 113 R.I. 189, 319, A.2d 94 (1974). A hypothetical question not based on facts in evidence would be inadmissible and to allow it would be a clear abuse of discretion. Araujo v. Technical Casting Co., 100 R.I. 90, 211 A.2d 645, 648 (1965).

In the instant petition, the employer laid an appropriate foundation based on the employee's testimony concerning her job duties. The trial court properly admitted this testimony. There was no abuse of discretion. For this reason, this reason of appeal must be denied and dismissed.

The petitioner also argues that Dr. Hubbard's opinion was not as clear cut as portrayed by the trial judge, because he released her to return to no

more than four (4) hours of work per day. To the contrary, Dr. Hubbard testified that “there really were no findings on examination.” (Pet. Exh. 3, p. 18) He sent her back to work for four (4) hours per day as part of a work hardening approach to get the employee back to work full time. Id. at 18-19. He stated that there was no objective physiologic reason for the employee not returning to work. Id. at 19. The trial judge specifically notes in her opinion that Dr. Hubbard released the employee to perform her regular job restricting her to four (4) hours per day to start. (Tr. Dec. p. 9) We find that the trial court in no way mischaracterized Dr. Hubbard’s opinion. It was the prerogative of the trial court to accept the opinions of Dr.’s Hubbard and Weiss over the opinion of Dr. Austin, as all physicians were fully qualified to render medical opinions which were competent and probative. Parenteau v. Zimmerman Eng’g., 111R.I. 68, 299 A.2d 168 (1973). For this reason, the employee’s argument regarding Dr. Hubbard’s opinion must fail.

Based on the foregoing, the employee’s appeal is denied and dismissed and the decision and decree of the trial judge is hereby affirmed.

In accordance with Sec. 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Rotondi and Healy, JJ. concur.

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Rotondi, J.

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Healy, J.

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Bertness, J.





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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the appeal of the petitioner/employee and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on March 26, 2002 be, and they hereby are affirmed.

Entered as the final decree of this Court this            day of

BY ORDER:

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ENTER:

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Rotondi, J.

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Healy, J.

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Bertness, J.

I hereby certify that copies were mailed to Stephen J. Dennis, Esquire  
and Berndt W. Anderson, Esquire on

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