

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MEREDITH F. SCETTA)

)

VS.)

W.C.C. 00-06129

)

ST. JOSEPH HOSPITAL)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division upon the appeal of the petitioner/employee from the denial of her Original Petition in which she alleged that she sustained injuries to her left arm, hand, shoulder and elbow at work on July 5, 2000, resulting in incapacity from July 10, 2000 to October 5, 2000 and again from March 22, 2001 to May 20, 2001. At the pretrial conference, the petition was denied. The employee claimed a trial and at the conclusion of that proceeding, the trial judge found that the employee failed to prove that she sustained a work-related injury on July 5, 2000. The employee then filed a claim of appeal. After careful review of the record, we affirm the decision of the trial judge.

In July 2000, Ms. Scetta had been working as a laundry aide at St. Joseph Hospital for a little over sixteen (16) years. She testified that her job involved loading and unloading laundry from the dryers and moving the laundry around in trucks. Often, the dryers would be overloaded and one (1) load might weigh up to 150 pounds. On July 5, 2000, she was unloading blankets from the dryer and as she pulled one (1) blanket out with her left arm, the entire contents of the dryer came out at once and she felt pain in her left elbow, her back and her left shoulder. She

testified that this incident was witnessed by a co-worker, Ann Hyder, who was not called to testify at the trial. The employee completed her shift, and then worked full shifts on Thursday and Friday.

The employee testified that she had constant pain following this incident. On Sunday, July 9th, the pain worsened. On Monday, she called in sick and sought medical treatment at Garden City Treatment Center. She complained of pain in the left arm at the elbow radiating down through her fingers and into her back. She also stated that she had numbness in her back and the left fourth (4th) and fifth (5th) fingers. She was seen by Dr. Edward Cullen who diagnosed left elbow tendonitis. He prescribed Tylenol with codeine and ordered her to remain out of work for one (1) week. The reports from Garden City Treatment Center were introduced into evidence. They note that the complaints started on July 9, 2000 and that the employee works in the laundry at Fatima, but there is no mention of a specific incident or injury at work on July 5, 2000. In addition, the bill was submitted to Healthmate, the employee's private health insurer, for payment, rather than to the employer.

On July 11, 2000, the employee reported to Addie Bossone, secretary to her supervisor, that she had hurt her elbow at work and that she would be out of work for one (1) week. The following week, two (2) weeks after the incident, she went to Fatima Hospital, per hospital procedure, and filled out the appropriate paperwork for reporting an injury in the office of her supervisor, Paul Czachur. On cross-examination, the employee admitted that she was familiar with hospital procedures for reporting injuries due to previous experience with the system, and that in the past she had always reported injuries immediately.

On July 19, 2000, the employee saw an orthopedic surgeon, Dr. Sidney P. Migliori. Her complaints at that time were pain in the left lateral elbow and tingling into her fourth (4th) and

fifth (5th) fingers of her left hand. The doctor referred her for EMG and nerve conduction studies. The nerve conduction studies were normal, but the EMG study demonstrated a very mild chronic left-sided C7 radiculopathy. Dr. Migliori's diagnosis was left lateral epicondylitis and cubital tunnel syndrome. According to Dr. Migliori's initial report, these were causally related to the incident which occurred at work on July 5, 2000.

The employee returned to work on October 6, 2000, despite continued pain in her left arm. She continued to work until March 21, 2001 when a left lateral epicondylar release was performed on her left elbow by Dr. Migliori. She returned to her regular job duties on May 20, 2001 and has continued to work since that date.

Three (3) witnesses testified for the employer. They were Paul Czachur, the manager of Environmental and Textile Services at the hospital, Addie Bossone, Mr. Czachur's secretary, and Marcia Trenn, the claims and safety director for the hospital. Ms. Bossone testified that in July 2000, when the employee spoke to her regarding her absence from work she did not specify that the injury was work-related. Had she done so, Ms. Bossone would have asked her if she had complied with hospital policy regarding a work-related injury, specifically, filling out an incident report and being seen by the health clinic or emergency room at the hospital. On cross-examination, Ms. Bossone acknowledged she had no reason to dispute the employee's statement that the injury was work-related and that an incident report, though not immediately filed, was eventually filled out by the employee.

Mr. Czachur corroborated Ms. Bossone's testimony regarding hospital injury procedures and that the employee did not follow the procedure immediately after the injury occurred. He stated that he became aware that Ms. Scetta was claiming that she was injured at work when he saw the incident report which was filed on July 19, 2000. He testified that he had numerous

dealings with injured employees over the years and that on occasion an injury would not be reported until several days after it happened. He stated that there was no policy that would automatically deny a claim simply because the injured employee delayed in filling out an incident report.

Marcia Trenn, the claims and safety director, testified that the incident was first reported to her on July 19, 2000 and that it was approximately five (5) days later when she spoke to the employee. On cross-examination, she testified that although the incident was first reported two (2) weeks after it happened, the description was consistent with the employee's sworn testimony nearly a year later and with what was verbally expressed to her when speaking with the employee in July of 2000.

The medical evidence consists of the deposition, affidavit and records of Dr. Sidney Migliori, and affidavits and records of Dr. Peter Pizzarello, Dr. Edward Cullen, and Our Lady of Fatima Hospital. Dr. Cullen saw the employee at Garden City Treatment Center. Those records do not indicate that the employee's complaints were due to an incident at work. Dr. Pizzarello, an orthopedic surgeon who was in the same office with Dr. Migliori at the time, saw the employee on one (1) occasion and did not have any independent history of a work injury.

Dr. Migliori, an orthopedic surgeon, had been treating the employee prior to July 2000 for injuries related to a motor vehicle accident. On July 19, 2000, the employee complained of left upper extremity pain, primarily around the elbow and fingers, which she attributed to an incident unloading a bundle of blankets from a dryer. The doctor's diagnosis was left lateral epicondylitis and cubital tunnel syndrome. She stated that based upon the history and the employee's statement that she had no previous symptoms, the condition was caused by the

incident at work. She further concluded that the employee was not able to perform her duties in the laundry at the hospital.

The employee underwent an MRI of the left shoulder which was relatively benign. An MRI of the left elbow revealed some swelling and inflammation around the lateral aspect of the left elbow. The employee treated conservatively and returned to work on October 6, 2000. She continued to see Dr. Migliori and continued to have complaints of pain in the elbow. The doctor performed surgery on the left elbow on March 14, 2001. The employee had a good result from the surgery and returned to work on May 20, 2001.

On cross-examination, Dr. Migliori stated that lateral epicondylitis is an overuse injury which usually occurs as a result of repetitive activities, although it can be traumatically induced. She related the employee's condition to the incident based upon Ms. Scetta's description of how and when she first experienced pain. She also acknowledged that the employee's repetitive job activities could aggravate a pre-existing problem with her elbow.

The trial judge determined that the fundamental issue in this case, despite a great deal of discussion regarding credibility issues, was the causal relationship between the July 5, 2000 incident and the employee's injury. He found that although Dr. Migliori initially stated that the employee's condition was causally related to the July 5, 2000 incident, she also testified that this opinion was based solely on the information received from the employee. The doctor later testified that the condition she diagnosed is generally the result of repetitive trauma or overuse. In the trial judge's opinion, taking Dr. Migliori's deposition in its entirety, her testimony was not sufficient to establish that the injury was causally related to the particular incident on July 5, 2000.

Consequently, he denied the employee's petition.

Our review of a trial judge's factual determinations is very limited. Pursuant to R.I.G.L. § 28-35-28(b), the findings of fact made by a trial judge are final unless the appellate panel concludes that they are clearly erroneous. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). The Appellate Division is permitted to conduct a *de novo* review only after specifically finding that the trial judge was clearly wrong. Id. (citing R.I.G.L. § 28-35-28(b); Grimes Box Co., Inc. v. Miguel, 509 A.2d 1002 (R.I. 1986)).

The employee has filed three (3) reasons of appeal, basically asserting that the trial judge overlooked or misconceived the testimony of Dr. Migliori and was clearly erroneous in finding that the employee failed to prove that she sustained a work injury on July 5, 2000. We disagree.

In her petition, the employee alleged that she sustained a work-related injury on July 5, 2000. In her testimony, she asserted that she injured her left elbow while pulling laundry from a dryer on that date. She denied any prior symptoms or complaints related to her left elbow. Dr. Migliori cited this history and the temporal relationship of the onset of symptoms with the incident as the basis for her testimony that the lateral epicondylitis was caused by the incident on July 5, 2000. The trial judge acknowledged this testimony in his decision. (Tr. p. 80)

However, Dr. Migliori also testified that lateral epicondylitis is generally an overuse injury that occurs with repetitive activity, although it can be caused by a traumatic incident. She also stated that she has seen patients who experienced tendonitis in the joints without being able to attribute it to a specific incident or activity. It was also pointed out that the employee is sixty-two (62) years old. Dr. Migliori noted that the type of repetitive work the employee does with her arms could cause lateral epicondylitis or aggravate a pre-existing problem with her elbow.

Obviously, the trial judge did not overlook the testimony of Dr. Migliori, but he was not persuaded by it. The employee was alleging that a specific incident at work caused the problem

with her elbow. Dr. Migliori attributed the condition to that incident simply because the employee related the onset of symptoms to that incident. However, the underlying inference in the rest of her testimony is that it was very unusual for this type of incident to cause lateral epicondylitis. Her testimony was at best, equivocal and at worst, inherently contradictory. After carefully reviewing Dr. Migliori's testimony, we find that the trial judge was not clearly wrong in his assessment of her opinions regarding causal relationship.

In her second reason of appeal, the employee appears to argue that the trial judge should have found that the employee sustained an aggravation of a pre-existing condition or that the employee's condition was due to work-related repetitive trauma. However, there is nothing in the record to indicate that the employee had any pre-existing problems with her elbow and she never made this assertion. Although Dr. Migliori seemed to indicate that the left elbow problem was more likely due to repetitive activity, the employee testified that a specific incident at work initiated her complaints. Consequently, there is insufficient evidence in the record to support either of these theories. We would also note that it was certainly not made clear during the trial that the employee was pursuing these alternate theories of relief.

For the reasons set forth above, we deny and dismiss the employee's reasons of appeal and affirm the decision and decree of the trial judge. In accordance with Rule 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

Sowa and Salem, JJ. concur.

ENTER:

Olsson, J.

Sowa, J.

Salem, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by 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 June 14, 2002 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

ENTER:

Olsson, J.

Sowa, J.

Salem, J.

I hereby certify that copies were mailed to Thomas M. Bruzzese, Esq., and James T. Hornstein, Esq., on
