

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

DARLENE CARON )

)

VS. )

W.C.C. 00-06858

)

CVS )

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the appeal of the employee from a decree entered on September 6, 2001.

Upon consideration thereof, the appeal of the employee is sustained and, in accordance with the decision of the Appellate Division, the following findings of fact are made:

1. That the petitioner has proved by a fair preponderance of the credible evidence that the Diclofenac/Voltaren prescribed by Dr. Aumentado is necessary to cure, rehabilitate or relieve the petitioner of the effects of her February 27, 1995 low back strain.

2. That as of November 30, 2000, the respondent has failed to reimburse the petitioner Fifty-six (\$56.00) Dollars which represents out-of-pocket costs to obtain that medication.

3. That the petitioner has proved by a fair preponderance of the credible evidence that the Xanax prescribed by Dr. Aumentado is necessary to cure,

rehabilitate or relieve the petitioner of the effects of her February 27, 1995 low back strain.

4. That as of November 30, 2000, the respondent has failed to reimburse the petitioner the sum of Forty-two (\$42.00) Dollars which represents out-of-pocket costs to obtain that medication.

It is, therefore, ordered:

1. That the respondent reimburse Darlene Caron Fifty-six (\$56.00) Dollars which represents out-of-pocket expenses incurred for Voltaren/Diclofenac through November 30, 2000.

2. That the respondent reimburse Darlene Caron Forty-two (\$42.00) Dollars which represents out-of-pocket expenses incurred for Xanax through November 30, 2000.

3. That upon presentation of appropriate receipts, the respondent reimburse attorney Gary J. Levine for any costs incurred to obtain a copy of the deposition of Dr. Stanley J. Stutz.

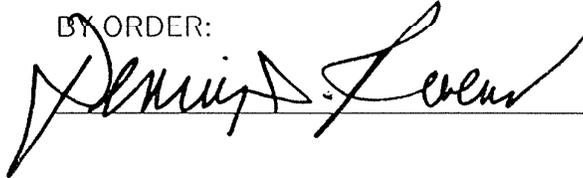
4. That the respondent shall reimburse petitioner or her counsel the sum of One Hundred Twenty-five and 00/100 (\$125.00) Dollars for the filing fee for the claim of appeal and the transcript.

5. That the respondent shall pay a counsel fee in the sum of Seven Hundred Fifty and 00/100 (\$750.00) Dollars to Gary J. Levine, Esq., for the successful prosecution of the employee's appeal; this sum is in addition to any

awards made for services rendered at the pretrial conference and during the trial of this matter.

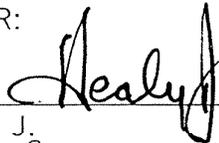
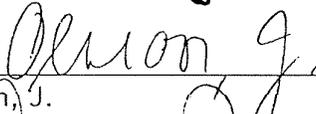
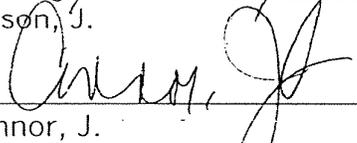
Entered as the final decree of this Court this 3rd day of September 2002.

BY ORDER:



**Dennis I. Revens Administrator**

ENTER:

  
\_\_\_\_\_  
Healy, J.  
\_\_\_\_\_  
Olsson, J.  
\_\_\_\_\_  
Connor, J.

I hereby certify that copies were mailed to Gary J. Levine, Esq., and Earl Metcalf, Esq., on August 26, 2002

  
\_\_\_\_\_

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
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DARLENE CARON

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W.C.C. 00-06858

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CVS

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DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter came on to be heard before the Appellate Division upon the petitioner/employee's appeal from an adverse decision and decree of the trial judge entered on September 6, 2001. After review of the record, we sustain the employee's appeal and will enter a new decree granting the petition in its entirety.

The trial court heard this matter in the nature of an Employee's Petition to Review alleging that the employer refused to reimburse the employee for medical services, in this instance the prescription drugs Xanax and Diclofenac, which were necessary to cure, relieve or rehabilitate the employee from the effects of her work-related injury. At the pretrial conference on December 7, 2000, the trial judge granted the employee's petition, ordering the employer to reimburse the employee Ninety-eight and 00/100 (\$98.00) Dollars for the cost of said prescription drugs. The employer duly claimed a trial. Following the trial on the

merits, the trial judge granted the petition with regard to reimbursement of the cost of Diclofenac (also known as Voltaren), but denied reimbursement for the Xanax. The employee filed a timely claim of appeal.

The basic facts of this case are not in dispute. On February 27, 1995, as she was leaving her place of work, Ms. Caron fell down some stairs and sustained an injury to her low back. A Memorandum of Agreement was filed accepting liability for a low back strain and providing for the payment of weekly benefits for total incapacity from February 28, 1995 and continuing. After a failed earlier attempt, Ms. Caron returned to her employment sometime at the end of September 1995.

She has treated with Dr. Dennis Aumentado for her back injury. Her primary care physician, Dr. Chan Park, had prescribed Xanax several years earlier for symptoms of anxiety disorder, however, the employee had not been under any treatment for this problem for some time prior to the work injury. Dr. Aumentado prescribed Xanax for the employee in December 1995, after she explained that she would have difficult stressful days at work and her back would tighten up with muscle spasms. She advised the doctor that she had tried Xanax before with some success and it did not cause side effects in the way other medications she had tried did.

Ms. Caron has continued to experience intermittent exacerbations of back pain and has continued to treat with Dr. Aumentado. Ms. Caron continued to take Voltaren and Xanax, the cost of which was reimbursed to her by CVS.

Sometime in 2000, the employer refused to reimburse Ms. Caron for these medications and the present petition was filed.

At the outset of the trial, the parties narrowed the dispute to a single issue after stipulating to the following facts:

1. That the Diclofenac, or Voltaren, was necessary to cure, rehabilitate or relieve the employee from the effects of the February 27, 1995 injury.
2. That the employer failed to reimburse the employee for the cost of that medication, which was Fifty-six and 00/100 (\$56.00) Dollars as of November 30, 2000.
3. That the cost of that medication was fair and reasonable.
4. That the employer failed to reimburse the employee for the cost of Xanax, which was Forty-two and 00/100 (\$42.00) Dollars as of November 30, 2000.
5. That said cost for Xanax was fair and reasonable. (Tr. p. 8-9)

The parties agreed that the single issue for the trial judge to decide was whether Xanax was necessary to cure, rehabilitate or relieve the employee from the effects of her February 27, 1995 work injury. (Tr. p. 9-10) With regard to this issue, the parties presented the affidavit and records of Dr. Dennis Aumentado and the deposition and report of Dr. Stanley Stutz.

Dr. Stutz, an orthopedic specialist, testified that Xanax was an anti-anxiety medication. He stated that he had no opinion as to whether Xanax was appropriate to treat the employee's low back condition because he never

prescribed it or used it in his practice. He did acknowledge that the degree of pain experienced by a person can be influenced by the level of anxiety the person is experiencing.

Dr. Aumentado's affidavit (Pet. Exh. 1) was in the usual and customary form and stated in pertinent part, "In my opinion, to the reasonable degree of medical certainty, the incident of 2/27/95 was the proximate cause of the condition diagnosed." In the second paragraph of the affidavit, the doctor states, "Xanax is a medication that is necessary to cure, rehabilitate, and/or relieve Darlene Caron from the effects of her injury of February 27, 1995."

The reports of Dr. Aumentado cover the period from March 9, 1995 to June 6, 2000. The doctor stated early on in his treatment that the employee has chronic back pain and a chronic pain syndrome which is characterized by exacerbations and remissions and he attributed this problem to the work-related injury of February 27, 1995. He indicated that he expected that this would be a life-long problem for her. In a letter dated October 2, 1996 to Dr. Greigstone Yearwood, Dr. Aumentado explained that he had been treating Ms. Caron for chronic back pain and chronic pain syndrome, but that she was currently asymptomatic on the day of his examination. Consequently, he stated that her conditions had "resolved." However, he also noted that in the event of another flare-up, she should call the office.

In his office note dated October 31, 1996, Dr. Aumentado recorded that the employee "bent down to pick up some shoes at home and felt a snap and

sharp pain in her back.” (Pet. Exh. 1) He concluded that she had an exacerbation of her back pain. When the employee returned on March 17, 1997, she reported that she had been doing well until the week before when she slipped and fell on ice as she was leaving work. Dr. Aumentado again classified this as an exacerbation of her back pain and attributed it to the fall on ice at work.

The remaining seven (7) office notes covering the period July 24, 1997 through June 6, 2000 reflect that the employee’s condition improves and then at times deteriorates, often depending upon the amount of activity. Since December 1995, Dr. Aumentado has continued to prescribe Xanax, which the employee uses on an “as needed” basis when her back tightens up.

Pursuant to Rhode Island General Laws §28-35-28 (b), a trial judge’s findings on factual matters are final unless an appellate panel find 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. (citing R.I.G.L. §28-35-28 (b)); Grimes Box Co. v. Miguel, 509 A.2d 1002 (R.I. 1986).

In support of her appeal, the employee asserts two (2) reasons of appeal. In the first reason of appeal, she argues that the decree is against the law and the evidence in that the trial judge overlooked or misconceived the stipulated facts regarding the cause of the employee’s current medical condition for which the medication was prescribed.

The trial judge concluded that the Xanax was not necessary to treat the effects of the February 27, 1995 injury because he found inconsistencies between the statements made by Dr. Aumentado in his affidavit and the statements in his reports. Specifically, he pointed out that the doctor wrote in October 1996 that the employee's condition had resolved and that it was not until March 1997, when she slipped and fell on ice, that she had a new onset of low back complaints. Although not specifically stated, it is clear that the trial judge determined that the employee had recovered from the February 27, 1995 injury at least by October 1996, and that any treatment after that date, particularly after the incident in March 1997, was not related to the effects of the work incident. However, based upon the stipulation of facts presented by the parties, we find that the issue of what condition the employee is currently being treated for has been removed from consideration by the trial judge.

The parties stipulated that the medication, Voltaren, as prescribed up to November 20, 2000, was necessary to treat the effects of the work-related injury the employee sustained on February 27, 1995. The parties, therefore, agreed that up until at least November 20, 2000, the employee was still being treated for the effects of the February 27, 1995 injury, regardless of the intermittent remissions and exacerbations and any intervening incidents described in Dr. Aumentado's reports. Dr. Aumentado was only treating her for her low back complaints.

In Randall v. Norberg, 121 R.I. 714, 403 A.2d 240 (1979), the Rhode Island Supreme Court noted that when the parties present a stipulation of facts, there is no longer any factual conflict for the court to resolve and its role is then limited to the application of the law to the agreed upon facts. Id. at 718, 403 A.2d at 243. As a result of the stipulation in the instant case, we find that the employee was being treated for the effects of the injury she suffered on February 27, 1995 at least until November 20, 2000 (the time period involved in this petition) and not for any subsequent new or intervening injury.

Accordingly, the sole issue before the trial court was whether Xanax is the type of medication which would be appropriate to cure, relieve or rehabilitate the employee from the effects of the low back strain she sustained on February 27, 1995. In cases involving disputed medical services or treatment, the burden of proving that the services rendered were necessary to cure, relieve, or rehabilitate the employee, rests with the employee. Merlino v. Beecroft Chevrolet Co., 488 A.2d 695 (R.I. 1985).

In the instant matter, the employee presented the affidavit of Dr. Aumentado which included a statement that Xanax was necessary to cure, rehabilitate, and/or relieve the employee from the effects of the February 27, 1995 injury. In a letter to the employee's attorney dated October 18, 2000, the doctor explained that the employee's back pain would flare up due to stress and the use of Xanax would relieve some of the stress and the resulting muscle

tension which caused her back pain. (Pet. Exh. 1) The employee also explained her use of Xanax and its effect in a similar fashion. (Tr. 16-17)

The only other evidence in the case regarding this issue was the testimony of Dr. Stutz. However, Dr. Stutz stated that he had no opinion about the use of Xanax to treat back injuries. (Resp. Exh. 1, p. 12). The trial judge was, therefore, presented with the uncontradicted medical opinion of Dr. Aumentado, that Xanax is a medication that is necessary to cure, rehabilitate, and/or relieve Darlene Caron from the effects of her injury of February 27, 1995. In the absence of inherent improbabilities or contradictions, such evidence must be accepted. Hughes v. Saco Casting Co., Inc., 443 A.2d 1264, 1266 (R.I. 1982).

In light of our ruling regarding the employee's first reason of appeal, we find it unnecessary to address her second argument.

For the aforesaid reasons, the appeal of the employee is sustained, the decree of the trial court is affirmed in part and reversed in part, and a new decree shall enter with the following findings:

1. That the petitioner has proved by a fair preponderance of the credible evidence that the Diclofenac/Voltaren prescribed by Dr. Aumentado is necessary to cure, rehabilitate, or relieve the petitioner of the effects of her February 27, 1995 low back strain.

2. That as of November 30, 2000, the respondent has failed to reimburse the petitioner Fifty-six and 00/100 (\$56.00) Dollars which represents out-of-pocket costs to obtain that medication.

3. That the petitioner has proved by a fair preponderance of the credible evidence that the Xanax prescribed by Dr. Aumentado is necessary to cure, rehabilitate, or relieve the petitioner of the effects of her February 27, 1995 low back strain.

4. That as of November 30, 2000, the respondent has failed to reimburse the petitioner the sum of Forty-two and 00/100 (\$42.00) Dollars which represents out-of-pocket costs to obtain that medication.

It is, therefore, ordered:

1. That the respondent reimburse Darlene Caron Fifty-six and 00/100 (\$56.00) Dollars which represents out-of-pocket expenses incurred for Voltaren/Diclofenac through November 30, 2000.

2. That the respondent reimburse Darlene Caron Forty-two and 00/100 (\$42.00) Dollars which represents out-of-pocket expenses incurred for Xanax through November 30, 2000.

3. That upon presentment of appropriate receipts, the respondent reimburse attorney Gary J. Levine for any costs incurred to obtain a copy of the deposition of Dr. Stanley J. Stutz.

4. That the respondent shall reimburse petitioner or her counsel the sum of One Hundred Twenty-five and 00/100 (\$125.00) Dollars for the filing fee for the claim of appeal and the transcript.

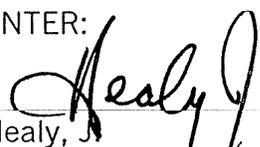
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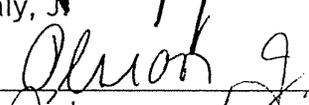
successful prosecution of the employee's appeal; this sum is in addition to any awards made for services rendered at the pretrial conference and during the trial of this matter.

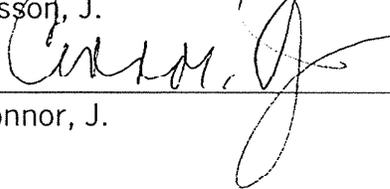
We have prepared and submit herewith a new decree in accordance with our decision in this matter. The parties may appear on September 3, 2002 at 10:00 a.m. to show cause, if any they have, why said decree shall not be entered.

Healy and Connor, JJ. concur.

ENTER:

  
Healy, J.

  
Olsson, J.

  
Connor, J.