STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.		WORKERS' COMPENSATION COURT APPELLATE DIVISION
JESSICA BUTT	)	
	)	
VS.	)	W.C.C. 01-06667
	)	
SUMMIT MEDICAL CENTER, INC.	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the appellate division pursuant to the petitioner/employee's appeal of the trial court's denial of her petition to enforce and/or petition to determine a controversy. After reviewing the record and considering the arguments of the parties, we deny the appeal and affirm the decision and decree of the trial judge.

The employee, a medical technician employed by Summit Medical Center, Inc. (hereinafter, "Summit"), suffered an on-the-job injury to her left ankle on April 10, 2000. She underwent at least two (2) surgeries to repair the damage to her ankle and, consequently, was not able to immediately return to work at Summit. Pursuant to a Memorandum of Agreement dated June 7, 2000, the employee was paid weekly benefits for partial incapacity beginning April 28, 2000. In late February 2001, her treating physician released her to return to work on March 12 with a maximum lifting restriction of twenty (20) pounds. The employee called Summit to inquire about returning to work, but was told that

they did not have a position for her. Ms. Butt then contacted her attorney. She obtained another authorization from her physician to return to work dated March 15, 2001, but this second note indicated she had no restrictions.

The employee related that on the day she obtained the note, or on the following day, she delivered it personally to Summit and gave it to a secretary in the office. Over the next two (2) weeks or so, she made several telephone calls to Summit in an effort to speak to someone about returning to work, but was met with no response. On March 30, 2001, the employee delivered a letter to Summit formally requesting reinstatement to her former position and enclosing her physician's release to work.

Sometime in mid-April, the employee was contacted by Summit and ultimately was offered a position at Highland Court (hereinafter, "Highland"), a facility owned by the same group as Summit. This job was similar to her previous position with Summit. She began working in this position on May 2, 2001, but she left after one (1) month due to an allegedly hostile working environment.

In the meantime, on March 20, 2001, the employee had also obtained a position with New England Ambulance Services, Inc. (hereinafter, "New England Ambulance") as an advanced cardiac life support assistant. Her average weekly wage and benefits in this new position equaled or exceeded her pre-injury wages and benefits at Summit. At the time of her testimony, the employee was also working full time for Women and Infants Hospital (hereinafter, "Women and Infants") as a pharmacy technician.

On April 3, 2001, the employee, through her attorney, notified the insurer that she had obtained other employment and would be reporting her wages. On April 11, 2001, Summit's worker's compensation insurance carrier terminated the employee's indemnity benefits. On July 11, 2001, in W.C.C. No. 01-04291, a pretrial order was entered discontinuing the payment of weekly benefits based upon the finding that the employee's incapacity had ended.

The employee, in the present petition, alleges that the insurer improperly stopped paying weekly benefits on April 11, 2001 and that Summit improperly delayed her reinstatement. She is seeking weekly benefits from March 16, 2001 to July 11, 2001, as well as back wages from March 16, 2001 to May 2, 2001.

The trial judge found that the insurer was in contempt, because there was no order or decree to discontinue the payment of weekly benefits under the Memorandum of Agreement until July 11, 2001. He ordered the insurer to pay weekly benefits from April 11, 2001 to July 11, 2001 with credit for any wages earned by the employee during that time period. The trial judge also found that Summit had unlawfully refused to reinstate the employee when she formally requested reinstatement on March 15, 2001. However, he concluded that the employee's right to reinstatement terminated on March 20, 2001 when she accepted suitable employment with New England Ambulance. Consequently, the trial judge ordered Summit to pay the employee back wages for the period between March 15, 2001 and March 20, 2001.

The employee then filed the instant appeal, alleging that the trial judge erred in concluding that her position with New England Ambulance constituted suitable alternative employment terminating her right to reinstatement in accordance with the Worker's Compensation Act. The employer also filed a claim of appeal which was subsequently withdrawn.

The employee filed three (3) Reasons of Appeal which all present the same issue; that is, did the trial judge err in finding that the employee's acceptance of employment with New England Ambulance on March 20, 2001 terminated her right to reinstatement?

Rhode Island General Laws § 28-35-28(b) governs this panel's review of a decision of a trial justice of the Workers' Compensation Court. That section states in relevant part:

> "(b) The findings of the trial judge on factual matters are final unless an appellate panel finds them to be clearly erroneous."

Therefore, the appellate panel may conduct a *de novo* review of the evidence only after a finding is made that the trial judge was clearly wrong. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996) (citing Grimes Box Co. v. Miguel, 509 A.2d 1002 (R.I. 1986)). It is well recognized that when reviewing a decree of the Workers' Compensation Court, the appellate panel's review is limited to the record made before the trial judge and the panel must not enlarge or amend the record certified to it. Whittaker v. Health-Tex, Inc., 440 A.2d 122 (R.I. 1982).

Rhode Island General Laws § 28-33-47 sets forth the rights and responsibilities of the parties, the procedures and penalties regarding reinstatement of injured workers to their former employment. The right to reinstatement is not absolute and can be terminated under certain conditions as set forth in the statute. The subsection in question in this matter states that termination occurs upon:

> "The worker's acceptance of suitable employment with another employer after reaching maximum medical improvement." R.I.G.L. § 28-33-47(c)(1)(iii).

Rhode Island General Laws § 28-29-2 defines "maximum medical improvement," in relevant portion, as

> ". . . a point in time when any medically determinable physical or mental impairment as a result of injury has become stable and when no further treatment is reasonably expected to materially improve the condition . . . ." R.I.G.L. § 28-29-2(9).

The letter from the treating physician dated March 15, 2001 released the employee to return to work without restrictions. There were no indications that she required any further treatment of any kind. Clearly, her condition had reached maximum medical improvement. The position she accepted with New England Ambulance as an advanced cardiac life support and emergency medical technician was commensurate with her background and experience. Her wages and benefits in the new position equaled or exceeded those of her former employment with Summit.

In general terms, "suitable" is accepted to mean fit for a particular purpose or occasion, or appropriate from the viewpoint of propriety, convenience or

fitness. In looking at the background and experience of the employee and the conditions and characteristics of the employment at New England Ambulance, we must conclude that the trial judge's determination that the job with New England Ambulance constituted "suitable employment" is well supported by the evidence.

The employee argues on appeal that this new position with New England Ambulance does not qualify as suitable alternative employment, which is defined in R.I.G.L. §§ 28-29-2(11) and 28-33-18.2. However, that term is not used in R.I.G.L. § 28-33-47(c)(1)(iii). The legislature specifically stated that the right to reinstatement ends with the acceptance of suitable employment. If it intended to incorporate the statutory definitions and procedures associated with suitable alternative employment, the legislature would have specifically utilized that term. In fact, in § 28-33-47(c)(1)(iv), the subsection directly following the one in question, the legislature used the term "suitable alternative employment" in describing another situation which would terminate the right to reinstatement.

In addition, the trial judge throughout his decision used the phrase "suitable employment" in discussing the position at New England Ambulance. He referred specifically to the terms of the statute, which are clear and unambiguous. "It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." Providence & Worcester R. Co. v. Pine, 729 A.2d 202, 208 (R.I. 1999) (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996)).

The employee attempts to argue that the trial judge's application of this statute unfairly punishes her for being diligent in securing employment and causes injustice because she had planned to continue to work for New England Ambulance while working for Summit. If the employee had worked two (2) jobs prior to her injury and had only obtained employment replacing one (1) of them while requesting reinstatement to the other, a different result is possible. However, there is no evidence that the employee had previously worked two (2) jobs at the time of her injury. The position at New England Ambulance was a suitable replacement for the position at Summit. The employee's subsequent intention to work at both jobs is irrelevant.

In the instant case, the record reflects that the trial judge had before him legally competent evidence that the employee had accepted suitable employment after maximum medical improvement with New England Ambulance, thus terminating her right to reinstatement pursuant to R.I.G.L. § 28-33-47(c)(1)(iii). Based upon this record, we cannot find that the trial judge was clearly wrong in his determination. The appeal of the employee is, therefore, denied and dismissed and the decision and decree of the trial judge is 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

Sowa and Connor, JJ. concur.

ENTER:

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Olsson, J.

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Sowa, J.

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Connor, 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 August 7, 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.

_____
Connor, J.

I hereby certify that copies were mailed to Bernard P. Healy, Esq., and Bruce Balon, Esq., on

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