

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

JACK AL-KABOUT)

)

VS.)

W.C.C. 02-08081

)

RHODE ISLAND HOSPITAL)

JACK AL-KABOUT)

)

VS.)

W.C.C. 02-07985

)

RHODE ISLAND HOSPITAL)

RHODE ISLAND HOSPITAL)

)

VS.)

W.C.C. 02-06475

)

JACK AL-KABOUT)

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)

VS.)

W.C.C. 02-06291

)

RHODE ISLAND HOSPITAL)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. These four (4) matters were consolidated by the court for hearing and decision. They are currently before the Appellate Division on the employee's appeals from adverse decisions at the trial level in all four (4) cases. After careful consideration of the employee's reasons of appeal and review of the record below, we deny the employee's appeals and affirm the decision and decrees of the trial judge.

The employee received weekly benefits for partial incapacity pursuant to a Memorandum of Agreement dated March 14, 2002. The memorandum indicates that the employee sustained a low back strain on December 22, 2001 resulting in the payment of weekly benefits from February 25, 2002.

W.C.C. No. 02-06291 is an Employee's Petition to Review requesting approval to treat with Dr. Christopher Huntington. The petition was denied at the pretrial conference and the employee claimed a trial in a timely manner.

W.C.C. No. 02-06475 is an Employer's Petition to Review alleging that the employee's incapacity for work has ended. The trial judge granted this petition at the pretrial conference and the employee claimed a trial.

W.C.C. No. 02-07985 is an Employee's Petition to Review requesting approval to undergo an EMG, which was recommended by Dr. Melvyn Gelch. This request was denied at the pretrial conference and the employee claimed a trial.

W.C.C. No. 02-08081 is an Employee's Petition to Review requesting approval to undergo an MRI of the lumbar spine, which was also recommended

by Dr. Melvyn Gelch. This petition was denied at the pretrial conference and the employee claimed a trial in a timely manner.

The medical evidence in this matter consists of the records of the John E. Donley Rehabilitation Center, Dr. Kerry Gill DeLuca, and Dr. Mark Palumbo, the deposition and report of Dr. Stephen Saris, a note from Dr. Christopher Huntington dated May 29, 2003, a report from Dr. Ahmed Ebeid dated May 29, 2003, and copy of a request dated October 10, 2002 by Dr. Melvyn Gelch for permission to schedule an MRI and an EMG. After thoroughly reviewing the testimony of the employee as well as the medical evidence, the trial judge concluded that the employee had not produced any credible medical evidence to establish that he remained disabled and was in need of further treatment and testing. Consequently, the trial judge denied all of the employee's petitions and granted the employer's request to discontinue his weekly benefits. The employee then claimed an appeal in all four (4) matters.

The role of this panel in reviewing the findings of a trial judge is strictly circumscribed by statute. Rhode Island General Laws § 28-35-28(b) states that the findings of fact made by a trial judge are final unless the appellate panel finds them to be clearly erroneous. With this strict standard of review as our guide, we have reviewed the record in these cases and conclude that the findings of the trial judge are not clearly erroneous. We therefore deny the employee's appeals.

It should first be noted that the employee was represented by counsel during the trial of these matters, but filed his appeals *pro se*. He filed his reasons

of appeal in a timely manner and was then notified of the date for hearing before the Appellate Division by mail sent October 23, 2003 to his last known address. Despite this notice, the employee failed to appear on the hearing date, November 19, 2003. In addition, on that date, counsel for the employer advised the panel that she had never received a copy of the reasons of appeal filed by the employee, although a certification on the document indicated they had been sent. Although the employee's appeals could technically be dismissed for these reasons alone, we will briefly address the appeals.

The employee filed two (2) reasons of appeal. In the first, he contends that the trial judge erred when she failed to give any weight to the report of Dr. Huntington, and in the second reason, he argues that the trial judge erred in not giving any weight to the report of Dr. Marina F. Rodriguez. The record reveals that the employee has seen a multitude of doctors, including orthopedic surgeons, physiatrists, neurosurgeons, and general practitioners. The bulk of the medical evidence presented in these matters indicates that the doctors are unable to explain the employee's complaints of severe pain and that his symptoms are out of proportion to the findings on the diagnostic tests and physical examinations.

The note from Dr. Huntington was a form dated May 29, 2003 stating that the employee's diagnosis was "back pain" and he was prohibited from working until June 26, 2003 or when he is seen again. There is nothing to indicate that the "back pain" is the result of the work injury in December 2001 and no further

explanation of the problem or reason for the disability. In the face of the volume of other evidence stating that the employee is no longer disabled, it was well within the trial judge's discretion to give little or no weight to the note from Dr. Huntington. See Parenteau v. Zimmerman Eng., Inc., 111 R.I. 68, 299 A.2d 168 (1973).

As to the employee's second reason of appeal, the record reflects that the report of Dr. Rodriguez was never introduced into evidence during the trial. At the appellate level, we are not permitted to expand the record produced at trial. Whittaker v. Health-Tex, Inc., 440 A.2d 122 (R.I. 1982). The trial judge could not even consider the report of Dr. Rodriguez as it was never presented to her.

Based upon the foregoing, we find that the trial judge's findings in these matters are not clearly erroneous. Consequently, the employee's appeals are denied and dismissed in their entirety and the decision and decrees of the trial judge are affirmed.

In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, final decrees, copies of which are enclosed, shall be entered on

Healy, and Sowa, JJ. concur.

ENTER:

Healy, J.

Olsson, J.

Sowa, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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WORKERS' COMPENSATION COURT
APPELLATE DIVISION

JACK AL-KABOUT

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VS.

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W.C.C. 02-06291

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RHODE ISLAND HOSPITAL

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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 17, 2003 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

ENTER:

Healy, J.

Olsson, J.

Sowa, J.

I hereby certify that copies were mailed to Jack Al-Kabout and James T. Hornstein, Esq., on

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

RHODE ISLAND HOSPITAL)

)

VS.)

W.C.C. 02-06475

)

JACK AL-KABOUT)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the respondent/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 17, 2003 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

ENTER:

Healy, J.

Olsson, J.

Sowa, J.

I hereby certify that copies were mailed to Jack Al-Kabout and James T. Hornstein, Esq., on

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

JACK AL-KABOUT

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VS.

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W.C.C. 02-07985

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RHODE ISLAND HOSPITAL

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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 17, 2003 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

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Healy, J.

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

JACK AL-KABOUT

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VS.

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W.C.C. 02-08081

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RHODE ISLAND HOSPITAL

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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 17, 2003 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

ENTER:

Healy, J.

Olsson, J.

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