STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

PHILLIP HOLMES	)	
	)	
VS.	)	W.C.C. 04-01364
	)	
AMGEN	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the petitioner/employee's appeal from the denial of his original petition in which he alleged that he became disabled as of January 2, 2004 due to severe stress caused by his employment with the respondent, Amgen. After careful consideration of the arguments of the parties, both oral and written, we deny the employee's appeal and affirm the decision and decree of the trial judge.

The employee testified that at the time of his alleged mental injury, he was employed by Amgen as a heating, ventilation, and air conditioning (hereinafter, "HVAC") technician. His job responsibilities included maintaining the facilities, hot water systems, water cooling power systems, air handlers, refrigerators and freezers.

Mr. Holmes related that in early 2003 he was assigned to train Alan Boisvert, a new co-worker in the HVAC department, regarding the job duties of an HVAC technician. He stated that the estimated six (6) week training period ended amicably in either April or May of 2003. In September or early October of 2003, Mr. Boisvert, in a department meeting, first alerted management to his concerns that documentation regarding preventive maintenance performed on

air handlers was incorrect. The standard operating procedure (hereinafter, "SOP") only addressed one (1) type of air handler, when there were actually six (6) different types. Mr. Holmes acknowledged that Mr. Boisvert's concerns had merit because he had actually raised the same issue with a previous administration without success.

Subsequent to this meeting, Michael Healey, the lead technician in the department, showed the employee an e-mail from Mr. Boisvert which implicated Mr. Holmes in the falsification of documents and intimidating co-workers into doing the same. Mr. Boisvert also stated that he was being harassed, slandered, and threatened, and that he had discovered two (2) flat tires on his vehicle. Mr. Boisvert took his complaints to the Human Resources department which initiated an investigation. Every HVAC technician in the department was interviewed by Patricia Lovering and Allison Plimpton from Human Resources. The questioning focused on how the technicians performed preventive and corrective maintenance and how they filled out documentation related to those tasks. Subsequently, Mr. Holmes was informed by David Miner, his supervisor, that the conclusion reached by Human Resources was that Mr. Boisvert's allegations of falsification of documents were unfounded.

Mr. Boisvert was apparently not satisfied with the results of the investigation. A copy of an e-mail he sent to Thomas Spooner, the associate director for the manufacturing facilities services department, was discovered in a copy machine on or about November 26, 2003, and passed around to a number of the HVAC technicians, including the employee. On December 5, 2003, Mr. Holmes was told by Mr. Spooner to report to Human Resources. Mr. Boisvert's allegations and complaints had been communicated to the corporate headquarters in California, which was now conducting an investigation. Again, all of the employees in the HVAC department were interviewed.

The employee was questioned by Paul Bouffard, the head of security at Amgen's Rhode Island facility, and Jeff Dyer, a manager from the Human Resources department at the corporate headquarters in California. He was informed that they were merely conducting a "fact-finding mission." (Tr. p. 159) The majority of the questions mirrored those he had been previously asked by Ms. Lovering and Ms. Plimpton. However, near the end of the interview, the temperament of the questioning shifted when Mr. Dyer suddenly asked whether he had ever stolen company property, threatened to kill Mr. Boisvert with a spear gun, or made harassing telephone calls to Mr. Boisvert's home. Mr. Holmes testified that he was floored and very upset that his integrity would be questioned in such a way. He felt that he was being accused of committing these acts and he was going to lose his job. He even stated that he would resign because he was uncertain that he wanted to continue to work for a company that treated him in such a manner.

The employee continued to work through December 30, 2003. Although he performed his regular job duties, he stated that he had difficulty focusing and felt anxious due to his sense that he was going to lose his job. Mr. Holmes recounted further that on December 31, 2003, someone from Amgen's California corporate office called him and stated that they were having difficulty locating one (1) of his previous employers which he had listed on his employment application. The person informed the employee that they were conducting a background check and wanted the employee to locate the previous employer for them, which request he declined. The employee stated that this caused further unnecessary stress for him.

After the telephone call, he felt as though he was suffering from a nervous breakdown and sought help at the Rhode Island Hospital emergency room. Thereafter, he saw his primary care physician, Dr. Job L. Sandoval, on January 2, 2004. Mr. Holmes was released to return to

work on August 3, 2004 at his own request.

On cross-examination, the employee admitted that Dr. Sandoval had treated him for anxiety and depression as early as 1997 and again in 2001, both before he began working for the respondent in this case. The employee testified that his symptoms at those times also could be attributed to work-related stressors. He also related that he received Temporary Disability Insurance benefits from January to July of 2003, and then began receiving unemployment benefits in September.

The medical evidence consists of the records of Rhode Island Hospital and the deposition and records of Dr. Job L. Sandoval, the employee's primary care physician. The hospital records document the employee's visit to the emergency room on December 31, 2003. The employee informed hospital personnel that he was at the breaking point because he was being abused by upper management at work, had been interrogated by the human resources department and had been falsely accused by a co-worker of threatening to kill him. Mr. Holmes was diagnosed as suffering from anxiety and depression. Medication was prescribed and he was advised to stay out of work until January 8, 2004.

Dr. Sandoval, who specializes in internal medicine, stated that the employee had been a patient of his since 1989. He testified that he treated the employee for emotional and/or psychological problems in both 1997 and 2001. On both of those occasions, Mr. Holmes complained of feeling anxious and overwhelmed due to stress at work. Medication was prescribed for a period of time for each episode.

The doctor stated that the employee appeared at his office January 2, 2004, without a regularly scheduled appointment. He informed the doctor that he was stressed out at work. Dr. Sandoval testified that he did not know the origins of the employee's condition.

> "You know, I don't recall the particulars. I just know this is a guy who – he's a pretty straightforward guy, usually doesn't complain, but I remember he was really feeling very stressed, and that's why he just walked in the office. And I don't remember exactly what was going on at work, but he said there was just a lot of things going on that was just causing him a lot of distress." (Ee's Exh. 9, p. 8)

The doctor's diagnosis was depression and anxiety. When questioned as to his opinion regarding the employee's ability to work, Dr. Sandoval responded:

> "He basically told me that he had a hard time working and he just couldn't work, because I usually will ask patients how they feel and I go by what they tell me. I tell them if you fell like you can work, work. If you feel like you can't, don't." (Ee's Exh. 9, p. 10)

The employee returned on January 30, 2004, shortly after being notified by Amgen that he was terminated. Again, regarding Mr. Holmes' ability to work, Dr. Sandoval answered, "I felt at that point, from what he was telling me, that he could not work." (Ee's Exh. 9, p. 11) The doctor saw the employee on March 12, 2004 and then on June 16, 2004 for his annual physical examination. He indicated that Mr. Holmes continued to tell the doctor that he was stressed out and had a hard time functioning.

On cross-examination, the doctor admitted that he had no other details recorded in his notes or independent recollection as to what exactly was bothering the employee at work. In addition, when asked about the employee's job duties, Dr. Sandoval knew only that he was working at Amgen "doing some type of construction job." (Ee's Exh. 9, p. 16) He also acknowledged that he based his statements regarding disability on the employee's own comments that he felt he could not work. The doctor testified that there were no physical manifestations of the employee's stress. He declared, "…but when a patient tells you, you know, I really can't work, I can't function right, I'm not one to argue with them and say hey, you can." (Ee's Exh. 9, p. 20)

The trial judge concluded that the employee failed to prove that his emotional stress resulted from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees encounter daily without serious mental injury. *See* R.I.G.L. § 28-34-2(36). The trial judge remarked that the events which occurred during the last six (6) months while Mr. Holmes worked at Amgen could cause anxiety and depression; however, the trial judge noted that the employee did not surmount the high legal threshold required to warrant compensation for his alleged mental injury. Furthermore, the trial judge noted that Dr. Sandoval's statements regarding the employee's ability to work failed to support a conclusion that Mr. Holmes was disabled due to work-related stress because the doctor simply adopted the employee's own opinion that he could not work. Accordingly, the trial judge denied and dismissed the employee's petition for benefits.

Pursuant to R.I.G.L. § 28-35-28(b), the Appellate Division must strictly adhere to the trial judge's findings on factual matters absent clear error. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). The Appellate Division is entitled to conduct a *de novo* review only when a finding 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)). If the record before the Appellate Division reveals evidence sufficient to support the trial judge's findings, the decision must stand.

In support of his appeal, the employee has propounded seven (7) reasons of appeal. We need only address one (1) of the reasons, which involves the sufficiency of the medical evidence. In light of our conclusion that the medical evidence is not competent to establish causal relationship or disability, we need not address the remaining reasons of appeal.

In his fifth reason of appeal, the employee contends that the trial judge ignored the medical records from Rhode Island Hospital which would establish at least a one (1) week period

of disability. The trial judge did take note of the hospital records in his bench decision, but accorded them no weight in determining causal relationship. We must agree with his evaluation of this evidence.

The hospital records were introduced with an affidavit signed by the correspondence secretary for Health Information Services. In the affidavit, she certifies that the attached documents are a reproduction of the original records of the hospital for services rendered to Mr. Holmes and the records were maintained in the regular course of business. The mere fact that the records were admitted without objection does not absolve the proponent of the records from satisfying the evidentiary requirements for expert medical testimony. As the Rhode Island Supreme Court stated in Parrillo v. F. W. Woolworth Co., 518 A.2d 354 (R.I. 1986):

> "Each affidavit must satisfy the requirements for expert medical testimony on its own and may not rely on separate evidence to supply missing links." Id. at 356.

In order for any information in the hospital records to be considered as opinion evidence, the affidavit accompanying the records must be signed by the doctor who authored the report. *See* Ouellette v. Carde, 612 A.2d 687 (R.I. 1992). As noted above, the affidavit presented by the employee in this matter was signed by a secretary and contains statements that would be sufficient to satisfy the standard for the business records exception to the hearsay rule. However, the affidavit does not satisfy the standard for expert medical testimony.

We would also note that the records consist of forms completed by various hospital personnel, including the attending physician. The forms do contain a diagnosis, and the history provided by the employee is recorded with regard to some of the events which occurred at his workplace. However, we are unable to glean any statement that the employee's condition was caused by those events at work and that he was disabled as a result thereof. In summary, the

affidavit and accompanying hospital records do not satisfy the standard for expert medical opinion and therefore, cannot support a finding that the employee's condition and subsequent disability were caused by his employment.

The employee further faults the trial judge for rejecting the uncontradicted testimony of Dr. Sandoval, which he argues was competent and probative. We must disagree. After thoroughly reviewing the doctor's deposition, we are unable to find a statement by the doctor which causally relates the employee's condition to his employment. Dr. Sandoval testified that he was unaware of exactly what had happened at work that caused the employee to seek treatment. In addition, the doctor performed a basic physical examination and simply asked Mr. Holmes why he was feeling depressed. There was no type of psychological evaluation conducted. Consequently, the doctor had no foundation whatsoever for an opinion as to the causal relationship between the employee's psychological disorder and his employment.

Furthermore, Dr. Sandoval had no foundation for an opinion regarding disability. He acknowledged that he really did not know what the employee did at Amgen. Without some knowledge of the employee's job duties, the doctor was in no position to render an opinion as to whether the employee was capable of performing his job. Dr. Sandoval did express an opinion, but the only basis for that opinion was the employee's own statements that he felt that he could not work. The doctor stated that he basically allowed the employee to make the decision as to whether he felt capable of working. (Ee's Exh. 9, p. 10) Such a statement does not constitute expert medical opinion regarding disability.

The trial judge found that the medical evidence was insufficient to establish a disabling psychological disorder caused by the conditions to which the employee was subjected at work. Based upon our review of the medical evidence, we conclude that this finding is not clearly

erroneous. In light of the fact that the medical evidence presented by the employee does not establish a causal relationship between the alleged psychological disorder and his employment, we need not address the remaining reasons of appeal in which the employee argues that the events he experienced at work satisfy the standard set forth in R.I.G.L. § 28-34-2(36) to prove a compensable mental injury. Consequently, the employee's appeal is denied and dismissed and the decision and decree of the trial judge is affirmed.

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 Connor, JJ. concur.

ENTER:

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Olsson, J.

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Sowa, J.

_____
Connor, 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 April 18, 2005 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____
John A. Sabatini, Administrator

ENTER:

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Olsson, J.

_____
Sowa, J.

_____
Connor, J.

I hereby certify that copies were mailed to Bernard P. Healy, Esq., and Diana E. Pearson, Esq., on

_____