STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

JOHN PANCIOTTI	)	
	)	
VS.	)	W.C.C. 04-02437
	)	
R. MARTIN & SONS	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employee's appeal from a decision of the trial judge denying his request for reimbursement of expenses incurred for his attendance at the Community College of Rhode Island (hereinafter "CCRI") in the amount of Four Thousand Eight Hundred Eighty-six and 29/100 ($4,886.29) Dollars. After thorough review of the record and consideration of the arguments of the parties, we deny the employee's appeal.

The employee, a sheet metal worker, sustained a trimalleolar fracture of the right ankle on April 16, 2002. He began receiving weekly benefits for partial incapacity immediately following the injury. He underwent surgery on the ankle on April 23, 2002 by Dr. Christopher W. DiGiovanni, an orthopedic surgeon. He continued to treat with Dr. DiGiovanni and underwent a course of physical therapy. As of December 4, 2002, the doctor concluded that Mr. Panciotti's condition had reached maximum medical improvement and he remained partially disabled with restrictions that would preclude him from returning to his former employment as a sheet metal worker. Those restrictions

included no lifting in excess of twenty (20) pounds, no climbing, and no continuous walking or standing for more than two (2) hours at a time.

The employee filed this petition to review on April 5, 2004 requesting approval of a rehabilitation plan pursuant to R.I.G.L. § 28-33-41 and requesting reimbursement for expenses incurred in taking classes at CCRI. On the first day of trial, counsel for the employee withdrew the request for approval of a rehabilitation plan because the employee had begun working with another vocational counselor provided by the insurer, Mr. Michael Laraia. Mr. Laraia was assisting the employee in conducting a job search.

The employee testified that he initially attended CCRI in 1985 but dropped out before completing any degree program. He returned to CCRI in 1998 on a part-time basis, only taking one (1) or two (2) classes each semester. After his injury in April 2002, he went to school full-time beginning in September of that year. At the time of his testimony in June 2004, he was completing the last class necessary to earn an Associate's Degree in science and microcomputing and networking. He is seeking reimbursement for money he spent for tuition and books from April 2002 to April 2004.

The employee acknowledged that he had not sought approval of these expenses from the insurance company prior to enrolling for classes. The pursuit of his Associate's Degree had not been approved as part of a rehabilitation plan proposed by a rehabilitation counselor, nor had the insurer agreed to any proposal involving attendance at CCRI. On the contrary, Mr. Laraia, the rehabilitation counselor, apparently advocated an aggressive job search for a period of about three (3) months. If this process did not result in employment in an appropriate job, only then would further education be considered as an alternative.

The trial judge denied the request for reimbursement on the grounds that the expenses were not incurred as the result of a rehabilitation program mutually agreed to by the parties or approved by the court as required by R.I.G.L. § 28-33-41(d). The employee filed a claim of appeal from that decision.

There is no question that the version of the relevant statute which was in effect on April 16, 2002 (the date of injury) is applicable to this dispute. This is important to note because the statute underwent some changes in 2000 which renders some prior case law inapplicable to the present petition. The appropriate version of the two (2) relevant statutory sections read as follows:

> "28-33-41(b)(1). Any employer or any injured employee with total disability or permanent partial disability to whom the insurance carrier or certificated employer has paid compensation for a period of three (3) months or more, and to whom compensation is still being paid, or his or her employer or insurer may file a petition with the workers' compensation court requesting approval of a rehabilitation program or may mutually agree to a rehabilitation program. . . ."
>
> "28-33-41(d). The employer shall bear the expense of rehabilitative services agreed to or ordered pursuant to this section. . . ."

In his two (2) reasons of appeal, the employee relies upon the holding of the Rhode Island Supreme Court in Simpson v. Dytex Chemical Co., 667 A.2d 1229 (R.I. 1995), to support his contention that he has the right to petition the court for reimbursement of expenses he has incurred to take college courses despite the fact that the insurer never agreed to such a rehabilitation plan and the court never approved such a plan. We find his reliance misplaced because the version of the statute applicable in the Simpson matter does not apply to Mr. Panciotti's case.

In Simpson, a rehabilitation plan for the employee was developed and approved by the division of vocational rehabilitation which was in the Department of Human Services. Pursuant to this plan, the employee attended classes at CCRI. After the workers' compensation insurer refused to reimburse the tuition expenses he had incurred, he filed a petition with the Workers' Compensation Court requesting reimbursement. The Rhode Island Supreme Court found that an amendment to the statute requiring notice of a proposed rehabilitation plan be provided to the insurer was to be applied prospectively and did not apply to Mr. Simpson's rehabilitation plan. Consequently, the decision of the Workers' Compensation Court to deny the employee's petition on the grounds that no notice had been given to the insurer was found to be incorrect and the matter was remanded. In addition, under the statute applicable to Mr. Simpson's case, approval from the division of vocational rehabilitation was sufficient to potentially qualify for reimbursement without any prior notification to or input from the insurer or employer.

Since the Simpson decision, through various amendments to R.I.G.L. § 28-33-41, the statute which addresses rehabilitation of injured workers, the Legislature has attempted to streamline and unify the review of rehabilitation plans in one (1) entity – the Workers' Compensation Court. The division of vocational rehabilitation and the director of the Department of Labor and Training are no longer involved in this process. Section 28-33-41(b)(1) allows both parties to submit rehabilitation proposals to the court for approval, or to mutually agree to a rehabilitation plan. If a party petitions the court for approval of a plan, a judge will determine, after appropriate hearings, whether the plan is appropriate and the estimated cost is reasonable. The expense of any plan agreed to by

the parties or approved by the court is borne by the insurer. See § 28-33-41(d). In light of the legislative changes since the Simpson decision was rendered, the trial judge did not err in failing to mention that decision. Because of some of those changes, the case is distinguishable from the present matter.

The procedure summarized above protects both parties. In the event that the parties cannot reach agreement on a plan, they both have the opportunity to present their arguments as to why it should be approved or not to the court. This system of "prior approval" protects the employee from spending money on a program which may not be eligible to be reimbursed. The insurer has the opportunity to argue the appropriateness of a particular program as well as the reasonableness of the cost before an employee embarks on a certain course.

In the present case, the parties agreed that there was no prior approval of Mr. Panciotti's plan to re-train himself for re-employment by taking computer courses at CCRI. The insurer did not agree to such a plan and the employee did not petition the court for approval of his plan, as required by the statute. See § 28-33-41(b)(1). The court did not previously determine that this plan was appropriate and reasonable and order that it be undertaken. We agree with the trial judge that lacking an agreement of the parties or order of the court that Mr. Panciotti should attend these classes at CCRI, the insurer cannot be held responsible for reimbursing Mr. Panciotti for the expenses he incurred. See § 28-33-41(d).

Even assuming, *arguendo*, that prior approval of the plan is not a prerequisite to obtaining reimbursement of any costs incurred in participating in the plan, the employee did not produce any evidence to support a determination that his plan to continue his

education at CCRI from April 2002 to April 2004 was appropriate and reasonable. In fact, the employee withdrew his allegation requesting approval of a rehabilitation plan. (Tr. p. 3) Although there were indications that the employee originally intended to present a vocational expert, the witness was never produced. The focus of the trial became the issue of whether notice of a proposed rehabilitation plan to the insurer was a prerequisite to obtaining reimbursement of any expenses.

Based upon the foregoing discussion, the employee's appeal is denied and dismissed and the decision and decree of the trial judge are 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:

_____
Olsson, J.

_____
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 22, 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:

_____
Olsson, J.

_____
Sowa, J.

_____
Connor, J.

I hereby certify that copies were mailed to Albert J. Lepore, Esq., and Bruce J. Balon, Esq., on

_____