

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

STEPHEN MARONEY, JR.)

)

VS.)

W.C.C. 04-04376

)

FLEMINGTON CORP.)

DECISION OF THE APPELLATE DIVISION

CONNOR, J. This matter comes before the Appellate Division upon the appeal of the petitioner/employee from the decision and decree of the trial judge entered on November 26, 2004.

This is an employee's petition to adjudge the employer in contempt for failure to pay workers' compensation benefits in accordance with a pretrial order entered in W.C.C. No. 04-02378 on June 9, 2004. This pretrial order awarded the employee workers' compensation benefits from January 6, 2004 through April 9, 2004 for a January 5, 2004 injury. At the pretrial conference, the trial judge denied the employee's petition to adjudge the employer in contempt for failure to make timely payments and the employee claimed a trial. At the conclusion of the proceedings, the trial judge entered a decision and decree which found that the employee failed to produce credible evidence to show that the employer was in contempt for non-payment of weekly compensation benefits and the employee's petition was denied and dismissed. The employee then claimed this appeal.

The parties entered into an agreed statement of facts that was marked as a joint exhibit. The agreed statement of facts essentially recites the findings of the pretrial order entered on June 9, 2004, awarding the employee partial disability benefits for the period January 6, 2004 through April 9, 2004. The agreed statement of facts goes on to state that on or about June 25, 2004, a petition to adjudge the employer in contempt for failure to pay benefits pursuant to the June 9, 2004 pretrial order was filed. The employee and employer agreed that two (2) checks were issued to the employee on June 23, 2004 representing the full amount due to the employee pursuant to the aforementioned pretrial order. The parties agreed that the checks were issued on June 23, 2004 and were also dated June 23, 2004. The employee alleges that there has been a late payment of workers' compensation benefits to the employee pursuant to R.I.G.L. § 28-35-43 and seeks a late penalty. The employer's position is that the checks were timely issued in accordance with R.I.G.L. § 28-35-43 and the employee's petition should be denied and dismissed with prejudice.

The trial judge issued a bench decision in this matter and after going through a review of R.I.G.L. § 28-35-43, § 28-35-12 and § 28-35-20, she determined that the checks were issued by the employer to the employee within fourteen (14) days of the entry of the pretrial order on June 9, 2004. She, therefore, found that the employer's payment to the employee was timely and she denied and dismissed the employee's petition to adjudge the employer in contempt.

Pursuant to R.I.G.L. § 28-35-28(b), a trial judge's findings on factual matters are final unless found 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 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)). Such review, however, is limited to the record made

before the trial judge. Vaz, supra (citing Whittaker v. Health-Tex, Inc., 440 A.2d 122 (R.I. 1982)).

Cognizant of this legal duty imposed upon us, we have carefully reviewed the entire record of this proceeding and we find no merit in the employee's reasons of appeal. We, therefore, affirm the decision and decree of the trial judge.

The employee has offered four (4) reasons of appeal, all of which fault the trial judge's finding that the payment to the employee was timely when it was mailed out on the fourteenth (14th) day after the entry of the order of the court. In essence, the employee argues that he cannot "be paid" within fourteen (14) days if the check to pay him is mailed out on the fourteenth (14th) day. The employee contends that under R.I.G.L. § 28-35-43, the employee or its' insurance carrier is subject to a penalty if payment is not made within fourteen (14) days.

The employer argues that R.I.G.L. § 28-35-43 is a penal statute and a statute that is penal in nature must be strictly construed in favor of the party on whom the penalty is sought to be imposed. The employer argues that under a strict construction, the court must conclude that mailing a check within fourteen (14) days satisfies the statutory requirement that benefits must be "paid within 14 days." The employer further argues that this interpretation is consistent with the general rules applied to service of pleadings because both Rule 5 of the Superior Court Rules of Civil Procedure and Rule 18 of the Rules of Appellate Procedure require pleadings to be served on other parties in an action and that service is complete upon mailing. The employer, therefore, asserts that the trial judge correctly interpreted R.I.G.L. § 28-35-43 and her denial of the employee's petition was appropriate. We agree.

Rhode Island General Laws § 28-35-43 provides in pertinent part:

"Payment of compensation under a decision of the court becomes due upon the effective date of the order and weekly thereafter on

the same day. If any payment payable under the terms of an order or decree is not paid within fourteen (14) days after it becomes due there shall be added to that unpaid payment an amount equal to twenty percent (20%) thereof,”

It is the position of this panel that the phrase “paid within fourteen (14) days” means that the employer must mail payment to the employee within fourteen (14) days of the effective date of the order to avoid a penalty. We believe that this determination is consistent with Rule 5 of the Superior Court Rules of Civil Procedure and Rule 18 of the Rules of Appellate Procedure which require that service by mail is complete upon mailing. Furthermore, our Supreme Court in Eaton v. Sealol, Inc., 447 A.2d 1147 (R.I. 1982), found that R.I.G.L. § 28-35-43 is a penal statute enacted to ensure the prompt regular payment of weekly workers’ compensation benefits. It has been held that a statute that is penal in nature must be strictly construed in favor of the party on whom the penalty is sought to be imposed. State v. Dussault, 403 A.2d 244 (R.I. 1979); Little v. Conflict of Interest Comm’n, 397 A.2d 884 (R.I. 1979). Strictly construing this statute requires us to find that a check mailed within fourteen (14) days of the entry of an order constitutes payment by the employer even when it is not received by the employee until after the fourteen (14) day period expires.

The facts in this case are not in dispute. We find that a check was issued to the employee within the timeframe set forth in the statute. We hold that the issuance of the check by the employer to the employee within fourteen (14) days of the entry of the pretrial order is timely “payment” under R.I.G.L. § 28-35-43 and the employee is not entitled to a penalty.

The employee’s reasons of appeal are therefore denied and dismissed and the opinion 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

Olsson and Sowa, 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 November 26, 2004 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 Gregory L. Boyer, Esq., and Michael T. Wallor, Esq., on
