

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

MARIA ALMEIDA )

)

VS. )

W.C.C. 05-01557

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ROGER WILLIAMS MEDICAL CENTER )

ROGER WILLIAMS MEDICAL CENTER )

)

VS. )

W.C.C. 04-04578

)

MARIA ALMEIDA )

DECISION OF THE APPELLATE DIVISION

OLSSON, J. These two (2) matters were consolidated by the court for trial and remain consolidated on appeal to the Appellate Division. The employee has appealed from the decision of the trial judge denying the employee's petition alleging that the employer refuses to agree to pay for necessary medical services, specifically a neurosurgical evaluation. In addition, the employee has appealed the trial judge's determination that the employee's incapacity for work has ended. After a plenary review of the record and consideration of the arguments of the parties, we deny the employee's appeals and affirm the decision and decrees of the trial judge.

The present case arises from the following two petitions. W.C.C. No. 04-04578 is an

Employer's Petition to Review alleging that the employee's incapacity for work has ended. The trial judge granted the petition at the pretrial conference on July 29, 2004 and the employee duly claimed a trial. After a full trial on the merits, the trial judge concluded that the employee was no longer disabled as of June 21, 2004, in whole or in part, as a result of her April 3, 2004 work-related injury.

W.C.C. No. 05-01557 is an Employee's Petition to Review alleging that the employer refuses to provide or pay for necessary medical services, to wit, a neurosurgical evaluation as requested by Dr. Syed Sayeed. At the pretrial conference, the trial judge denied the petition and the employee claimed a trial. After a full trial, the trial judge concluded that the employee failed to establish that the employer refused to provide or pay for necessary medical services. The employee filed a timely claim of appeal challenging the trial judge's findings in each of the cases.

Ms. Almeida was paid weekly benefits for partial incapacity from April 4, 2004 to July 29, 2004 pursuant to a Memorandum of Agreement dated May 14, 2004. That document states that she sustained a head contusion and neck strain on April 3, 2004 during the course of her employment.

The employee, a fifty-five (55) year old non-English speaking female, testified that on April 3, 2004, her position as a service associate at Roger Williams Medical Center required her to do some cleaning and to transport patients weighing up to six hundred (600) pounds, as well as assist them into bed. She stated that she treated with both Dr. Vito Longobardi and Dr. Syed Sayeed for her injuries. She explained that she could not return to her former employment because she continues to experience neck pain and headaches and cannot lift any heavy weight.

On cross-examination, the employee explained that Dr. Longobardi was her primary care

physician. She denied that he referred her to Dr. Steven Blazar. Ms. Almeida saw Dr. Blazar once, but she believed that he did not perform an adequate examination and he allegedly told her that he was very friendly with the president of Roger Williams Medical Center. The employee acknowledged that her attorney referred her to Dr. Sayeed. She also saw Dr. Medhat Kader at the request of the employer.

The pertinent evidence in this matter consists of the depositions and records of Dr. Steven L. Blazar, Dr. Medhat Kader, and Dr. Syed M. Sayeed, as well as records regarding Temporary Disability Insurance benefits from the Rhode Island Department of Labor and Training.

Dr. Blazar, an orthopedic surgeon, examined the employee on one (1) occasion on May 20, 2004. In contradiction to the employee's testimony, his report states that she was referred by her primary care physician, Dr. Longobardi. The employee reported that her symptoms were constant and the neck pain "had evolved to a less frequent dull ache and pain and more frequent numbness, stiffness, and tingling." Er's Exh. A, p. 7. Ms. Almeida advised the doctor that she was improving with medication and physical therapy.

The physical examination did not reveal any objective findings relative to the neck or left shoulder, but did reflect significant pain behavior. Dr. Blazar stated that the employee was physically capable of returning to her former employment without restrictions, and return to that work would not be unduly injurious to her health. The doctor noted that he prescribed a functional rehabilitation program which would simulate her work activities in order to assist her in overcoming her behavioral problems.

Dr. Kader, an orthopedic surgeon, examined the employee on May 11, 2004 and June 21, 2004 at the request of the employer. During the course of the physical examination on May 11, 2004, the doctor noted a number of inconsistent behaviors which suggested to him that the

employee may be exaggerating her condition. However, he chose to err on the conservative side and stated that Ms. Almeida could not return to her regular work at that time.

Dr. Kader examined the employee again on June 21, 2004. Despite her continued complaints of pain in her neck radiating down her left arm, the physical examination failed to reveal any objective findings, although it again produced multiple inconsistencies. The doctor stated that, in his opinion, the employee had no ongoing traumatic pathology in her neck. He testified that the employee could return to work without restrictions and that no further tests or treatment are necessary for her neck and head injuries. After reviewing the reports of a June 12, 2004 MRI of the cervical spine and an April 23, 2004 MRI of the brain, Dr. Kader testified that he would not change any of his opinions.

Dr. Sayeed, a neurologist, first examined the employee on September 16, 2004 on referral from her attorney. Her primary complaints at that time were headache, dizziness, and neck pain which radiated to both shoulders. The only positive examination findings were limited range of motion of the cervical spine and tenderness in the cervical area. Dr. Sayeed diagnosed the employee as suffering from a closed head injury, post-traumatic headache and traumatic cervical pain, which he causally related to the injury sustained by the employee on April 3, 2004. The doctor concluded that Ms. Almeida was unable to return to her regular job at that time.

Dr. Sayeed saw the employee three (3) more times; the last examination was on November 29, 2004. Although the headaches and dizziness improved somewhat, the employee's complaints of neck pain persisted despite treatment with physical therapy and medication. At the last visit, Dr. Sayeed recommended that Ms. Almeida consult with a neurosurgeon as to possible surgical treatment.

The employee filed for Temporary Disability Insurance (TDI) benefits after her workers'

compensation benefits were discontinued on July 29, 2004. The TDI records include several forms completed by Dr. Longobardi stating that he would release her to return to unrestricted work as of September 1, 2004.

At the conclusion of the evidence, the trial judge chose to accept the medical opinions of Dr. Blazar and Dr. Kader over the opinions offered by Dr. Sayeed regarding the employee's disability and the necessity for further treatment. The trial judge emphasized that both Dr. Blazar and Dr. Kader noted a lack of objective findings on examination and accordingly concluded that the employee was not suffering from any declined disability. The trial judge remarked that Dr. Sayeed, on the other hand, rendered an opinion regarding disability based essentially on the employee's subjective complaints. Noting the similarity between the examinations of Drs. Blazar and Kader, as well as the release to work by Dr. Longobardi in the TDI forms, the trial judge concluded that the opinions of Drs. Blazar and Kader were more probative on the issue of disability and the need for further medical treatment or evaluation, than the opinions offered by Dr. Sayeed. Consequently, he affirmed the result of the pretrial conferences discontinuing the employee's weekly benefits and denying her request for a neurosurgical evaluation.

Pursuant to R.I.G.L. § 28-35-28(b), the Appellate Division must adhere to the trial judge's findings on factual matters in the absence of 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 of the evidence only after a finding is made that the trial judge clearly erred. 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 contains evidence sufficient to support the trial judge's findings, the decision must stand. Bearing in mind this deferential standard of review, we have carefully examined the

entire record of this proceeding. For the following reasons, we find no merit in the employee's appeals, and we, accordingly, affirm the trial judge's decision and decrees.

We would note that although Ms. Almeida was represented by counsel throughout the trial of these matters, she appeared as a *pro se* litigant during the appellate proceedings.

The employee has filed documents in each case which in essence present two (2) reasons of appeal. First, the employee contends that the trial judge committed error by relying on the opinions of Drs. Blazar and Kader over the opinion of Dr. Sayeed. The employee asserts that the two (2) doctors performed inadequate examinations with regard to both scope and duration. We disagree.

The Rhode Island Supreme Court held in Parenteau v. Zimmerman Eng., Inc., 111 R.I. 68, 299 A.2d 168 (1973), that when conflicting medical opinions of competent and probative value are presented, it is the prerogative of the trial judge to accept the medical opinions of one (1) provider over another. In the present case, the trial judge discussed all of the medical evidence in considerable detail. After carefully reviewing all of this evidence, the trial judge concluded that the opinions of Dr. Blazar and Dr. Kader were more probative and persuasive as to whether the employee remained incapacitated and as to whether any further evaluation or medical care was necessary to treat the work injury.

Neither Dr. Blazar nor Dr. Kader noted any objective findings following a complete physical examination of the employee. Both doctors also noted some inconsistent or exaggerated subjective findings during their examinations. Dr. Blazar characterized the employee's problem as behavioral due to apprehension or fear of pain, rather than a true physical disability. None of the physicians, including Dr. Sayeed, rendered an opinion relating any of the findings from the diagnostic tests to the incident at work. There is nothing in the reports or depositions of the

doctors to suggest that they performed less than adequate physical examinations.

Dr. Sayeed, on the other hand, relied markedly on the employee's own subjective complaints despite normal objective findings. He does not reference any objective finding from any examination or diagnostic test to substantiate ongoing disability. Under the circumstances, we find that the trial judge was not clearly erroneous in choosing to rely upon the opinions expressed by Drs. Blazar and Kader and concluding that the employee was no longer disabled due to the effects of the work-related injury she sustained on April 3, 2004.

The employee also argues that Dr. Longobardi only released her to light duty and has continued to state that she remains at least partially disabled. However, Dr. Longobardi's records were not introduced into evidence and he never testified in these matters. The only documents from Dr. Longobardi were the forms contained in the TDI records. Consequently, we cannot consider any other statements allegedly made by Dr. Longobardi because they were not made part of this record.

Based on the foregoing, we find no error on the part of the trial judge in finding that the employee no longer suffers from a disability as a result of a work-related injury she sustained on April 3, 2004 and that no further medical treatment is necessary to cure, rehabilitate or relieve the employee from the effects of that injury. Consequently, the employee's appeals are denied and dismissed and the decision and decrees of the trial judge is 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, C.J. and Bertness, J. concur.

ENTER:

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Healy, C.J.

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Olsson, J.

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Bertness, 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 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 August 25, 2005 be, and they hereby are, affirmed.

Entered as the final decree of this Court this            day of

BY ORDER:

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John A. Sabatini, Administrator

ENTER:

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Healy, C. J.

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Olsson, J.

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Bertness, J.

I hereby certify that copies were mailed to Maria Almeida, 85 Dunnell Avenue,  
Pawtucket, RI 02860, and Francis T. Connor, Esq., on

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FINAL DECREE OF THE APPELLATE DIVISION

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ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on August 25, 2005 be, and they hereby are, affirmed.

Entered as the final decree of this Court this        day of

BY ORDER:

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John A. Sabatini, Administrator

ENTER:

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Healy, C. J.

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