

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

THE OCEAN GROUP, INC.)
(Beacon Mutual Insurance Company))

VS.)

W.C.C. 06-02653

RHODE ISLAND DEPARTMENT OF LABOR)
AND TRAINING (WORKERS')
COMPENSATION ADMINISTRATIVE FUND))

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division pursuant to the appeal of the Department of Labor and Training/Workers' Compensation Administrative Fund (hereinafter "the Fund") from the decision and decree of the trial judge reversing in part the decision rendered by a hearing officer of the Department of Labor and Training pursuant to R.I.G.L. § 28-35-20(f). The hearing officer had ordered reimbursement of excess benefits paid to the employee as a result of a change in the initial date of disability after trial on the employee's original petition. He denied petitioner's request for additional reimbursement resulting from the trial judge's determination that the petitioner was only responsible for twenty-five percent (25%) of the weekly benefits due to the employee. The trial judge in the present matter ordered the Fund to reimburse this additional amount as well. After reviewing the documentation submitted to the trial judge and considering the arguments of the parties in light of the applicable statute, we deny the appeal of the Fund and affirm the decision and decree of the trial judge.

On or about March 12, 2004, Marie E. Montalbano filed an original petition alleging that she developed left carpal tunnel syndrome and an injury to her left ulnar nerve on July 31, 2003 due to repetitive use of her left hand, wrist and fingers while working for The Ocean Group. At the pretrial conference on May 12, 2004, Associate Judge Dianne M. Connor granted her petition and issued a pretrial order finding that the employee suffered from left medial epicondylitis and left cubital tunnel syndrome, and ordering the employer to pay weekly benefits for partial incapacity from January 9, 2004 and continuing. The employer filed a claim for trial.

At the conclusion of the trial, a decree was entered on February 2, 2005 in which Judge Connor found that the employee developed an occupational disease, specifically left medial epicondylitis and left cubital tunnel syndrome, and was partially disabled from January 20, 2004 and continuing. Most significantly, the trial judge concluded that Ms. Montalbano's work activities were only twenty-five percent (25%) responsible for her disability and, therefore, pursuant to R.I.G.L. § 28-34-7, the employer was ordered to pay twenty-five percent (25%) of the employee's weekly compensation benefits and medical expenses.

The employer's insurer, Beacon Mutual Insurance Company (hereinafter "Beacon"), filed a request with the Fund for reimbursement of excess benefits paid to Ms. Montalbano pursuant to R.I.G.L. § 28-35-20(f). On September 28, 2005, the Fund denied the request and Beacon filed an objection. The matter proceeded to a formal hearing before a hearing officer of the Department of Labor and Training (hereinafter "the Department"). The hearing officer issued a decision dated March 24, 2006 in which he allowed reimbursement for benefits paid from January 9, 2004 to January 20, 2004 and denied reimbursement of the amount paid to Ms. Montalbano in excess of twenty-five percent (25%) of her full weekly benefit from January 20, 2004 to February 2, 2005. On April 24, 2006, Beacon filed a petition to review the decision of

the hearing officer with the Workers' Compensation Court pursuant to Rule 2.31 of the Workers' Compensation Court Rules of Practice.

The petition was heard by Associate Judge George T. Salem, Jr., who issued a decision overturning the hearing officer of the Department in part and ordering that the Fund reimburse Beacon an amount equal to seventy-five percent (75%) of the weekly benefits and medical expenses paid from January 20, 2004 to February 2, 2005. The Fund then filed the claim of appeal which is presently before the Appellate Division.

Rule 2.31(E) of the Workers' Compensation Court Rules of Practice provides that a party may file a petition with the court to review a decision of the Department and sets forth the standard of review the court must adhere to in reviewing Department decisions.

The court shall not substitute its judgment for that of the Department of Labor [and Training] or the Medical Advisory Board regarding the weight of the evidence on questions of fact. The court may affirm or remand the case for further proceedings. The court may reverse or modify the decision or determination if substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, decisions, or determinations are:

- (1) In violation of constitutional authority of the agency;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In the present matter, Judge Salem concluded that the hearing officer's denial of reimbursement of the difference between the amount awarded in the pretrial order and the amount awarded in the trial decree was clearly erroneous. We must agree.

Rhode Island General Laws § 28-35-20 provides that, prior to proceeding to a trial, the court shall conduct an informal pretrial conference regarding any petition filed with the court.

The judge may review documentary evidence, but no oral testimony shall be taken. The judge shall issue a pretrial order addressing the allegations of the petition which shall be effective upon entry. An aggrieved party may claim a trial from this pretrial order, but the parties must comply with the terms of the pretrial order during the pendency of the trial. In consideration of the reduction in due process resulting from such an abbreviated process and the binding effect of the pretrial order, the Legislature provided a remedy to employers in the event the terms of the pretrial order are modified after a full trial is conducted.

If after trial and the entry of a final decree, it is determined that the employee or medical services provider was not entitled to the relief sought in the petition, the employer or insurer shall be reimbursed from the workers' compensation administrative fund, described in chapter 37 of this title, to the extent of any payments made pursuant to the pretrial order to which there is no entitlement.

R.I.G.L. § 28-35-20(f).

In its first, third and fifth reasons of appeal, the Fund argues that even after the full trial, the employee was found to be entitled to some amount of workers' compensation benefits and, therefore, no reimbursement is warranted. The Fund contends that the reimbursement provision is applicable only in a situation where the trial results in a specific finding that the employee is not entitled to any benefits under the Workers' Compensation Act and a complete reversal of the pretrial order awarding benefits. Based upon the plain language of the statute, we find no merit in this argument.

The relief sought in Ms. Montalbano's original petition was one hundred percent (100%) of the statutory weekly workers' compensation benefits and payment of one hundred percent (100%) of her medical expenses resulting from her work-related injury. Initially, at the pretrial conference, she was awarded these benefits. During the trial, evidence was introduced to establish that activities outside of work contributed to the development of her condition and her

disability. Pursuant to R.I.G.L. § 28-34-7, Judge Connor determined that the employee was only entitled to twenty-five percent (25%) of the weekly benefits and medical expenses, representing the percentage attributable to her work activities.

The specific language of R.I.G.L. § 28-35-20(f) provides for reimbursement “to the extent of any payments made pursuant to the pretrial order to which there is no entitlement.” This language clearly contemplates reimbursement of whatever portion of benefits or other payments are in excess of what is awarded after the trial. We cannot infer or imply from this language an intent to allow reimbursement only if an employee is found entitled to no benefits at all after trial. It would have been a simple task for the Legislature to convey that meaning if, in fact, that was the desired interpretation. On the contrary, we believe that the language employed in the statute manifests an intention to make the employer whole for whatever errors may be committed as a result of the abbreviated pretrial process.

In the remaining reasons of appeal, the Fund contends that Judge Connor, in her decree regarding the employee’s original petition, granted the employer a set-off against the payment of future compensation benefits as a method to recoup the overpayment. We have examined the language upon which the Fund relies and conclude that this clause has been misconstrued by the Fund.

In her decree, Judge Connor included the following language, which is actually quite common in the trial decrees of the Workers’ Compensation Court, “[t]hat the employer shall receive credit for all payments made under the pretrial order entered in this matter.” Section 28-35-20(e) of the Rhode Island General Laws provides that all trials following a pretrial conference are *de novo*, although the pretrial order is binding and takes effect immediately upon entry. When a trial decree is entered, it supercedes the pretrial order. Consequently, the trial decree

must contain all of the pertinent findings of fact and orders addressing the allegations of the petition. It cannot simply state that the pretrial order is reversed or affirmed.

In the present matter, Judge Connor had entered a pretrial order mandating the payment of weekly benefits beginning January 9, 2004 and continuing. The trial decree ordered the payment of twenty-five percent (25%) of the weekly benefits beginning January 20, 2004 and continuing. In granting credit for the payments made pursuant to the pretrial order, Judge Connor was simply making clear that the employer was not required to make payments again for the period beginning in January 2004 and continuing. She did not include any language to the effect that the employer could take credit in the amount of any overpayment against the payment of future benefits. Consequently, we find the Fund's contention that the trial judge intended to provide some alternative method of recouping the overpayment to be without merit.

Based upon the foregoing reasoning, we deny and dismiss the appeal of the Fund and affirm the decision and decree of the trial judge ordering reimbursement. 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

Bertness and Hardman, JJ. concur.

ENTER:

Olsson, J.

Bertness, J.

Hardman, 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, Rhode Island Department of Labor and Training (Workers' Compensation Administrative Fund), 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 March 2, 2007 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

John A. Sabatini, Administrator

ENTER:

Olsson, J.

Bertness, J.

Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Bernard P. Healy, Esq., and Nicholas R. Mancini, Esq., on
