STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

EASTERN SCREW COMPANY	)	
	)	
VS.	)	W.C.C. 06-03026
	)	
RICHARD RAVO	)	
RICHARD RAVO	)	
	)	
VS.	)	W.C.C. 04-05718
	)	
EASTERN SCREW COMPANY	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. These two (2) matters were consolidated for trial and remain consolidated before the Appellate Division. The employee has claimed an appeal from the trial judge's decision denying his petition to enforce and granting the employer's request to set an earnings capacity which effectively discontinued the payment of any weekly workers' compensation benefits to the employee. The trial judge found that the employee failed to prove that his inability to continue to work in a suitable alternative employment position as of June 1, 2003 was due to the effects of the work-related injury he sustained on November 29, 1995. After thorough

review of the record and thoughtful consideration of the arguments of the parties, we deny the employee's appeals and affirm the decision and decrees of the trial judge.

W.C.C. No. 04-05718 is a petition to enforce filed by the employee alleging that the employer should be paying him weekly benefits because he was terminated from his suitable alternative employment position. The petition was denied at the pretrial conference, and the employee claimed a trial. W.C.C. No. 06-03026 is an employer's petition to review requesting that the court set an earnings capacity of Eight Hundred Twenty and 00/100 ($820.00) Dollars because the employee stopped working in his suitable alternative employment position. The petition was denied at the pretrial conference and the employer claimed a trial. The two (2) matters were consolidated for decision by the trial judge.

Mr. Ravo worked for the employer since about 1972. On November 29, 1995, he sustained an acid burn to his lower right leg and had skin graft surgery. He then developed a pulmonary embolism. A consent decree was entered into between the parties on June 14, 1996 in W.C.C. 96-01914 which established that the pulmonary embolism was due to the effects of the work injury. The employee was found to be totally disabled from December 1, 1995 to March 20, 1996 and partially disabled thereafter. The parties also agreed that Mr. Ravo had returned to work for the employer in a suitable alternative employment position as of March 20, 1996 at wages of Eight Hundred Twenty and 00/100 ($820.00) Dollars per week, which was equal to his pre-injury average weekly wage.

The employee testified that the suitable alternative employment position was basically the same job he had performed prior to his injury but with less lifting required. He continued to work for the employer in this position until late summer of 2003, receiving increases in his wages over the years. At that time, he had surgery on his left knee and was out of work for

several weeks. In mid-September 2003, the employee went to the Veterans Administration Hospital because his right leg was very swollen. He was admitted to the hospital for treatment of a deep venous thrombosis in his right leg, released after a few days and then re-admitted about a month later for several days.

Mr. Ravo stated that he kept the employer informed about his status and actually returned to work for about three (3) days in January 2004. Unfortunately, he experienced swelling in his right leg again and had to stop working because he could not stand on it. The employee testified that sometime in January 2004, he spoke to someone at work regarding his health insurance, and he was told that the company could only offer him insurance under the COBRA program. He was referred to another manager who then informed him that the employer could no longer wait for him to get well, that the company could not hold his job for him any more, and that he no longer had a job. Subsequently, the employee requested a letter from the employer stating that he had been terminated, which would enable him to qualify for coverage under his wife's health insurance plan.

The employee never returned to work with Eastern Screw Company or any other employer. He acknowledged that his physicians had told him that he should not be working due to his condition.

No medical evidence was introduced by the employee. In her decision, the trial judge actually makes reference to records from the Department of Veterans Affairs Medical Center. *See* Dec. 4. However, the transcript of the trial clearly indicates that these records were admitted for identification only and were never made a full exhibit. Tr. 65. This error is harmless since the trial judge denied the employee's petition to enforce on the ground that no medical evidence was presented which established that the employee's incapacity for work was due to the effects

of the 1995 work-related injury to his right leg. In conjunction with that finding, the trial judge also granted the employer's request to set an earnings capacity in the amount of Eight Hundred Twenty and 00/100 ($820.00) Dollars per week.

When reviewing a decision of the trial court, the appellate panel is mandated to employ a very deferential standard. Pursuant to R.I.G.L. § 28-35-28(b), "[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." A *de novo* review of the evidence cannot be undertaken before an initial determination is made that the trial judge was clearly wrong in her conclusions. In the present matter, we find that the trial judge was correct in her analysis and ultimate findings, and, therefore, we deny the employee's appeals.

The employee submitted eight (8) reasons of appeal; however, six (6) of the eight (8) are merely general allegations that the trial judge was wrong and lack the specificity required for adequate review. *See* Bissonnette v. Federal Dairy Co., 472 A.2d 1223, 1225 (R.I. 1984). Therefore, those six (6) reasons are denied and dismissed. In the sixth and seventh reasons, the employee argues that the trial judge erred in denying his petition to enforce on the ground that he failed to present any medical evidence to establish that he stopped working due to the effects of the 1995 work-related injury to his right leg. He contends that the trial judge erroneously relied upon the Appellate Division decision in Tru-Kay Manufacturing Co. v. Barrette, W.C.C. No. 94-10408 (App. Div. 7/18/96). After reviewing the relevant statute and case law, we find no error on the part of the trial judge.

Section 28-33-18.2(d) of the Rhode Island General Laws sets forth how the amount of weekly benefits is calculated in the event that suitable alternative employment is terminated by either the employer or the employee:

> "If the suitable alternative employment is terminated by the employer for reasons other than misconduct by the employee, the injured employee shall be entitled to be compensated from the employer in whose employ he or she was injured at the rate to which the employee was entitled prior to acceptance of the employment . . . . If suitable alternative employment is terminated by the employer for misconduct of the employee, or by the employee, the compensation payable to the employee shall not exceed that payable during the continuance of suitable alternative employment." (Emphasis added.)

The employee argues that he is entitled to the payment of weekly benefits because the employer terminated his suitable alternative employment for reasons other than misconduct. However, the facts as testified to by Mr. Ravo do not support this contention.

Mr. Ravo had been employed in a position, which the parties agreed was suitable alternative employment, from March 20, 1996 until approximately September 18, 2003, a period of over seven (7) years. He testified that he worked continuously without incident from 1996 to 2003. During all of this time, he earned weekly wages in excess of his pre-injury average weekly wage and never received any further weekly workers' compensation benefits. In September 2003, the employee was hospitalized and stopped working. Although the testimony on this point is rather vague, he may have returned to work for a few days in January 2004, but had to stop working when he was hospitalized again. Thereafter, the employer informed Mr. Ravo that he no longer had a job to return to in the event that he was physically able to do so sometime in the future.

The first key fact in this scenario is that the employee left his suitable alternative employment position; the employer did not compel him to stop working in September 2003, or in January 2004, by terminating his employment. Mr. Ravo was simply unable to perform the duties required of the position. The second key fact is that there is no evidence to indicate that the deep venous thrombosis in the right leg which prevented the employee from working in 2003

and thereafter was related to the acid burn to his right leg he sustained in 1995. As previously noted, there is no medical evidence in the record to establish this causal relationship, which clearly requires expert medical opinion. Absent such evidence, we can only conclude that the employee left his suitable alternative employment position due to personal health reasons unrelated to his prior work injury.

The Appellate Division has addressed this same fact pattern in two (2) previous cases in which employees stopped working in their suitable alternative employment positions due to medical conditions unrelated to their work injuries. *See* Tru-Kay Manufacturing Co. v. Barrette, W.C.C. No. 94-10408 (App. Div. 7/18/96); Shippee v. Scott Brass, Inc., W.C.C. No. 92-14252 (App. Div. 11/3/94). In both cases, the employees were denied benefits when they stopped working and they failed to produce any medical evidence to establish that their inability to continue in their suitable alternative employment positions was due to their work-related injuries. In those cases we noted that it would be inequitable to order benefits paid to an employee who leaves suitable alternative employment for personal health reasons, when another employee working in a regular position would not be entitled to any such consideration if they were unable to work due to a motor vehicle accident or some illness. As the court has stated on numerous occasions, workers' compensation is not a substitute for general health insurance. Wright v. Rhode Island Superior Court, 535 A.2d 318, 320 (R.I. 1988); Geigy Chemical Corp. v. Zuckerman, 106 R.I. 534, 541, 261 A.2d 844, 849 (1970).

The employee cites our decision in Bienkowski v. Robert E. Derecktor of R.I., W.C.C. No. 90-01826 (App. Div. 11/22/93), as directly on point with his case. However, we find the facts in that matter to be quite different from Mr. Ravo's situation. In Bienkowski, the employee was working in his suitable alternative employment position when the employer decided to

terminate the arrangement, apparently due to some problems with Mr. Bienkowski's production. The employee at all times remained physically capable of performing the duties of the position. It was strictly the employer's decision to let the employee go. The situation was clearly distinguishable from the facts of Mr. Ravo's case.

We see no reason to deviate from our previous holdings in Barrette and Shippee, and conclude that in the present matter, the employee terminated the suitable alternative employment relationship due to his inability to perform the job any longer as a result of an unrelated health condition. In this situation, pursuant to the terms of R.I.G.L. § 28-33-18.2(d), the amount of weekly benefits payable to the employee shall not exceed the amount payable while he was working in his suitable alternative employment position. Mr. Ravo has not received any weekly benefits since he returned to work in 1996, because he continuously earned in excess of his pre-injury average weekly wage. Consequently, he is not entitled to the payment of any weekly workers' compensation benefits under the statute.

We also find that the trial judge did not err in setting an earnings capacity of Eight Hundred Twenty and 00/100 ($820.00) Dollars per week based upon the employee's acknowledgement that he earned at least that amount from March 1996 until he stopped working in the late summer or fall of 2003. His inability to work thereafter has not been proven to be caused by the effects of his 1995 work injury. Although the trial judge's order setting an earnings capacity may be cumulative in light of the reasoning leading to the denial of the employee's petition to enforce, we do not find that the trial judge's decision to grant the employer's petition was clearly erroneous.

Based upon the foregoing discussion, the employee's appeals are both denied and dismissed, and the decision and decrees of the trial judge are 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

Sowa and Hardman, JJ. concur.

ENTER:

_____
Olsson, J.

_____
Sowa, J.

_____
Hardman, J.

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VS.) W.C.C. 04-05718
)
EASTERN SCREW COMPANY)

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 July 6, 2006 be, and they hereby are, affirmed.

Entered as the final decree of the Court this day of

PER ORDER:

_____
John A. Sabatini, Administrator

ENTER:

_____
Olsson, J.

_____
Sowa, J.

_____
Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Peter A. Schavone, Esq., and Peter S. Haydon, Esq., on

_____

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)
VS.) W.C.C. 06-03026
)
RICHARD RAVO)

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 July 6, 2006 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

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John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Sowa, J.

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Hardman, J.

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