STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MARIA ESCOBAR	)	
	)	
VS.	)	W.C.C. 06-06522
	)	
SUPERIOR DISPATCH SERVICES	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division pursuant to the appeal of the employee after the denial of her request for reimbursement of the sum of One Hundred Fifty and 00/100 ($150.00) Dollars which she paid to Dr. Steven L. Blazar, her treating physician, in order to obtain a note documenting the period of total disability following surgery. After considering the facts established in the record and thoroughly reviewing the pertinent provisions of the Workers' Compensation Act, we find no statutory authority to grant such a request. Consequently, we affirm the denial of the petition.

Ms. Escobar sustained a work-related injury to her low back on September 23, 2002. Pursuant to a consent decree entered into by the parties in W.C.C. No. 02-08187, she was paid weekly benefits for partial incapacity from September 24, 2002 and continuing. In the present matter, the parties submitted an agreed stipulation of facts as follows:

> "1. This matter is before the Court on an employee's petition to review requesting a period of total incapacity and reimbursement in the amount of $150 for Dr. Blazar's opinion regarding that period of total (Exhibit "A").

2. On April 12, 2006 counsel for the employee wrote to Dr. Blazar requesting an opinion concerning whether the employee was totally incapacitated as a result of her surgery (Exhibit "B").

3. On April 13, 2006 Dr. Blazar wrote back that the charge for said service was $150 (Exhibit "C").

4. The employee paid Dr. Blazar the $150 for him to provide his opinion.

5. A pre-trial order was entered on October 31, 2006 ordering a period of total from April 12, 2006 through August 3, 2006, but denying reimbursement to the employee of the $150 for the Blazar opinion (Exhibit "D").

6. Dr. Blazar's opinions as expressed in his letters were the basis for the period of total incapacity which was found.

7. The employee filed a claim for trial but the only issue is reimbursement of the $150 charge by Dr. Blazar for his opinion regarding the period of total incapacity.

8. Prior to filing the petition, the employee, by letter dated October 2, 2006, requested reimbursement of the $150 Blazar charge (Exhibit "E").

9. By letter dated October 4, 2006, Beacon Mutual, the insurance carrier for Respondent, denied reimbursement of said amount (Exhibit "E").

10. In a letter dated January 11, 2007, Dr. Blazar indicated that $150.00 was a fair and reasonable fee for providing the requested opinion (Exhibit "G").

11. The only issue before the Court is the employee's right to be reimbursed $150 for Dr. Blazar's fee."

The trial judge initially reviewed the petition as a request for payment for a medical service or treatment. She noted that the letter or report containing Dr. Blazar's opinion regarding the period of total incapacity was not introduced into evidence, and therefore, it was impossible to determine whether the service rendered was necessary to cure, rehabilitate or relieve the employee from the effects of her work-related injury. The trial judge pointed out that pursuant to

R.I.G.L. § 28-33-8(c)(1), the doctor was obliged to submit an affidavit, which included her work restrictions, every six (6) weeks during treatment. The doctor was entitled to a fee of Twenty and 00/100 ($20.00) Dollars for timely submission of the affidavit. She found no other statutory authority for payment to a doctor for a note as to disability status. Consequently, the trial judge denied the petition.

The employee has filed five (5) reasons of appeal. In the first two (2) reasons, she argues that the trial judge mistakenly viewed her request as one for payment for a medical service, rather than reimbursement of a cost of litigation equivalent to a fee for an expert medical witness. We would point out that the employee never clearly stated in the stipulation of facts or elsewhere that she was asserting that the fee paid to Dr. Blazar was a cost for which she was seeking reimbursement under R.I.G.L. § 28-35-32. Consequently, the trial judge addressed the question whether the fee paid to Dr. Blazar was for a medical service and correctly concluded that issuing an opinion letter under this set of circumstances did not qualify as a medical service under the Act.

In addition, the trial decision does comment on a request for reimbursement of the payment to Dr. Blazar as an expense. Although not explicitly citing R.I.G.L. § 28-35-32, the trial judge did refer to the fact that the Workers' Compensation Court has in the past denied reimbursement of costs for which there is no explicit statutory authority and she found no such authority allowing reimbursement of the fee paid to a doctor simply for his opinion on the degree and period of disability. Dec. 5.

In her remaining reasons of appeal, the employee argues that her petition is seeking reimbursement of the fee paid to Dr. Blazar as a cost to be reimbursed upon successful prosecution of her claim. After reviewing the sequence of events set forth in the stipulation of

facts, we find that the matter could have been disposed of on the grounds that the court lacked jurisdiction to even consider the award of any costs because there was no dispute regarding compensation before the court.

The workers' compensation system provides one of the few forums in which a successful petitioner may recoup the costs of litigation, including counsel and witness fees, from the opposing party. Rhode Island General Laws § 28-35-32 provides, in relevant part:

> "In proceedings under this chapter, and in proceeding under chapter 37 of this title, costs shall be awarded, including counsel fees and fees for medical and other expert witnesses including interpreters, to employees who successfully prosecute petitions for compensation, ... These costs shall be assessed against the employer by a single judge, by an appellate panel and by the supreme court on appeal consistent with the services rendered before each tribunal and shall be made a part of the decree." (Emphasis added.)

The statute clearly contemplates that costs will be awarded in the context of a disputed case brought before the court. A careful examination of the circumstances surrounding the filing of the employee's petition to review in this matter reveals that this was not a contested petition for compensation.

After obtaining the very brief note from Dr. Blazar stating that the employee was totally disabled from April 12, 2006 to August 3, 2006 due to the surgery, counsel for the employee apparently forwarded the note to the insurer. As stated in the attorney's letter dated October 2, 2006 which was attached to the Agreed Stipulation of Facts as Exhibit E, the insurer forwarded a Mutual Agreement for the period of total disability to the attorney for signature.

> "I am in receipt of your letter dated September 27, 2006 in regard to the above matter enclosing the mutual agreement for the closed period of total. Enclosed please find copies of documents confirming that Ms. Escobar actually had to pay Dr. Blazar $150.00 for proving [sic] that report. Kindly advise if you will voluntarily agree to reimburse her for that cost."

The insurer clearly had agreed to pay the benefits for total incapacity as requested, but declined to reimburse the employee for the fee paid to Dr. Blazar. The employee then filed this petition which requests benefits for total incapacity for the same closed period offered by the insurer in the mutual agreement.

It is obvious to this panel that the petition was filed for the sole purpose of recouping the fee paid to Dr. Blazar, not to obtain compensation benefits. This conclusion is further supported by the fact that, despite "succeeding" in obtaining a pretrial order granting the weekly benefits for the closed period, no attorney's fee was awarded. Therefore, this is certainly not a disputed petition for compensation as contemplated by R.I.G.L. § 28-35-32. Under the circumstances, we have no authority to even consider ordering reimbursement of the fee paid to Dr. Blazar.

The appellate division has previously applied the same reasoning in Thibeault v. Comprehensive Community Action, Inc., W.C.C. No. 00-03707 (App. Div. 9/19/06). In Thibeault, prior to the filing of any petition, the insurer agreed to pay the amount of specific compensation requested by the employee's attorney, but refused to pay the attorney a fee. A petition was filed requesting the specific compensation and a counsel fee. We affirmed the trial judge's denial of the request for a counsel fee, stating that there is no statutory authority for awarding a counsel fee "when the dispute between the employer and the employee has been resolved outside of the boundaries of the courtroom." Id. at 5.

We are also guided by the decision of the Rhode Island Supreme Court in Peloquin v. ITT General Controls, Inc., 104 R.I. 257, 243 A.2d 754 (1968), which was also cited by the trial judge. In that case, the Court affirmed the denial of the employee's request for counsel and witness fees when he was awarded only those benefits which the employer had previously offered to pay without the filing of a petition. The Court agreed that the employee "had not

successfully prosecuted his petition so as to entitle him to counsel and witness fees within the intendment of § 28-35-32, as amended." Id. at 265, 243 A.2d at 758.

As noted by the employee, R.I.G.L. § 28-35-32 provides for reimbursement of costs including "fees for medical and other expert witnesses including interpreters," to employees who successfully prosecute their petitions for benefits. The Workers' Compensation Court is a creature of statute and its authority is limited to those powers specifically granted by the provisions of the Workers' Compensation Act. Peloquin v. ITT Hammel-Dahl, 110 R.I. 330, 333, 292 A.2d 237, 240 (1972). The employee is attempting to equate a physician's opinion written in a note regarding the period of incapacity following surgery to the expert testimony of a physician before the court or by deposition. We are unwilling to expand the language of the statute in such a manner.

The panel is sympathetic to the employee's dilemma in this situation. However, as noted previously, the information requested of Dr. Blazar in this particular case should have been available to the employee without any charge. The trial judge correctly pointed out that pursuant to R.I.G.L. § 28-33-8(c)(1), a physician is required to file an affidavit every six (6) weeks during treatment of a work-related injury. The affidavit is to be provided to the insurer, the employee and her attorney, and shall include, among other information, a statement as to the employee's ability to work, degree of disability and work restrictions. In return, the physician may charge the insurer Twenty and 00/100 ($20.00) Dollars for a timely filed affidavit. Failure to file the affidavit in a timely manner can result in a ten percent (10%) reduction in the physician's bill.

In accordance with this statute, Dr. Blazar was required to provide the information requested by the employee's attorney in this affidavit, free of any charge to the employee. In addition to a reduction in his bill, a physician is also subject to disciplinary measures by the

Medical Advisory Board for the "filing of affidavits which are untimely, inadequate, incomplete, or untruthful." R.I.G.L. § 28-30-22(e)(1)(ii). We would expect that medical professionals should be making every effort to comply with the requirements of the statute so that the employer and employee are fully informed as to the employee's condition.

For the foregoing reasons, the employee's appeal is denied and dismissed. 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 Hardman, JJ. concur.

ENTER:

_____
Olsson, J.

_____
Sowa, J.

_____
Hardman, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MARIA ESCOBAR)
)
VS.) W.C.C. 06-06522
)
SUPERIOR DISPATCH SERVICES)

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 March 16, 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.

_____
Sowa, J.

_____
Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to John M. Harnett, Esq., and Nicholas R. Mancini, Esq., on

_____