STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

YAMIRE LANTIGUA	)	
	)	
VS.	)	W.C.C. 2007-06607
	)	
ALPINE COUNTRY CLUB	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employee's appeal from the decision and decree of the trial judge, which found that the employee was not entitled to payment for the cost of medical services rendered on October 30, 2007 and April 8, 2008 because the services were not reasonably necessary for the treatment of the employee's work-related injury. After conducting a careful review of the record in this matter and considering the arguments of both parties, we affirm the trial judge's ultimate determination and deny and dismiss the employee's appeal.

This matter came before the court on the employee's petition to review for payment of medical services provided by Dr. David J. DiSanto at a cost of Three Hundred Seventy-five and 00/100 ($375.00) Dollars. The employee suffered a work-related injury on August 25, 1995, which is described in a decree entered in W.C.C. No. 1996-07881 on October 22, 1997, as a fractured coccyx, contusions to the right leg and calf, and cervical and lumbar strains. The employee was determined to be totally disabled from August 26, 1995 to February 26, 1996. In

a final decree entered on July 30, 1998, the Appellate Division upheld the decision of the trial judge.

Thereafter, the employee petitioned the court alleging he sustained a return of incapacity as of June 23, 1998, which petition, and subsequent appeal, was denied in W.C.C. No. 1998-05856 with the final decree entered on May 22, 2000. The employee again unsuccessfully petitioned the court alleging a return of incapacity in W.C.C. No. 2001-00096. An appeal was not filed after the denial of the petition on January 25, 2002.

The employee worked as a groundskeeper for Alpine Country Club at the time of his injury. On August 25, 1995, while operating a tractor-mower, he was thrown from the machine and pinned beneath it, injuring his low back, neck, and right leg; as well as suffering a fractured coccyx. The employee received continuous treatment for these injuries and moved to Florida around the year 2000 or 2002, hoping that the warmer weather would alleviate his pain. However, he testified that his back continues to be painful. He has not returned to any type of employment since the accident.

Immediately after the accident, the employee began treating with Dr. David J. DiSanto, a neurosurgeon, and has seen him intermittently since moving to Florida. The doctor's deposition testimony was offered on behalf of the employee. Initially, Dr. DiSanto diagnosed the employee's injury as "suspect trauma to the coccyx, probable L5-S1 disc with sciatica." (Ee's Ex. 7, p. 11.) Most recently, the employee treated with Dr. DiSanto on October 30, 2007 and April 8, 2008. This petition seeks reimbursement for those visits. In the reports from both visits, the doctor diagnosed the employee as suffering from chronic back spasms with sciatica, which he causally related to the employee's work injury in 1995.

During the visit in October, Dr. DiSanto administered a cortisone block at the L5 paravertebral facet region. He testified this treatment was necessary to relieve and rehabilitate the employee from the effects of his work-related injury. The doctor noted in his report of the visit that the employee "received immediate relief secondary to degenerative spondylosis with right L5 radiculopathy." (Ee's Ex. 7, 10/30/07 report.) The employee also testified that the injections helped relieve his pain. The April visit was a routine follow-up. On direct examination, Dr. DiSanto testified that both visits were necessary to cure, relieve or rehabilitate the employee from the effects of his work-related injury.

On cross-examination, Dr. DiSanto acknowledged that his office note regarding a visit on June 18, 1996 indicates that he had evaluated an MRI of the employee which showed signs of degenerative changes. The note further indicates that Dr. DiSanto suspected the employee had psoriatic arthritis at that time. Dr. DiSanto had also reviewed an MRI from 2001, which was the last diagnostic test he reviewed in regards to the employee's condition. This MRI revealed a degenerative disc condition, namely L5-S1 disc desiccation. Dr. DiSanto testified:

> Q: So basically at this time you're treating him for a degenerative arthritic condition?
>
> A: For his back, and sciatica for his leg, yes, ma'am.
>
> . . . .
>
> Q: So the pain is coming from the degenerative condition, correct?
>
> A: Yes, ma'am.

(Ee's Ex. 7, p. 14.)

After considering the evidence, the trial judge found that the employee had failed to prove that the medical services rendered on October 30, 2007 and April 8, 2008 were necessary to cure, relieve or rehabilitate the employee from his work-related injury. The trial judge noted

that a return of incapacity had previously twice been denied and stated that "Dr. DiSanto testified that the pain for which the employee received the cortisone shot was caused by a degenerative condition and nothing else." (Decision at 3.) Accordingly, the trial judge denied the employee's petition.

The employee now appeals this decision. He argues that the trial judge misinterpreted the testimony of Dr. DiSanto and erred as a matter of law when he found the medical services rendered by the doctor were not necessary to cure, relieve or rehabilitate the employee from his work-related injury.

Our review of this decision is limited by the provisions of R.I.G.L. § 28-35-28(b), which dictates that "[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." Thus, we will not undertake a *de novo* review of the evidence and substitute our judgment for that of the trial judge without first determining that the trial judge was clearly wrong. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). With this in mind, we find that the trial judge's interpretation of Dr. DiSanto's testimony was clearly wrong, but after a *de novo* review of the record, we agree with the ultimate finding that the employee did not prove that these treatments were reasonably necessary to cure, relieve, or rehabilitate him from the effects of this work-related injury.

Under R.I.G.L. § 28-33-5, an employer shall "promptly provide for an injured employee any reasonable medical, surgical … or other attendance or treatment … for such period as is necessary, in order to cure, rehabilitate or relieve the employee from the effects of his injury." In the present matter, the employee is asking the court to find that medical services rendered more than fifteen (15) years after a finding that his work-related disability had ended were reasonably necessary to treat the underlying work-related injury. In making this request, the employee

carries the burden of proving the necessity of these treatments. *See* Rossi v. Blue Ribbon Beef Co., 107 R.I. 641, 645, 270 A.2d 84, 86 (1970) (citing Gray v. Kagan, 90 R.I. 398, 158 A.2d 572 (1960)).

The trial judge concluded that the employee failed to meet this burden, in large part due to the testimony of Dr. DiSanto. While we have found a number of faults warranting its rejection, which we will address in turn, the trial judge's interpretation of the testimony was in error. The trial judge mistakenly posited that Dr. DiSanto "testified that the pain for which the employee received the cortisone shot was caused by a degenerative condition and nothing else." (Decision at 3.) Conversely, on direct examination, the doctor twice testified that the October 2007 and April 2008 treatments were causally related to the employee's work-related injury.

When the trial judge is clearly wrong, as he was in this case, we undertake a *de novo* review of the evidence and substitute our judgment for that of the trial judge. *See* Vaz, 679 A.2d at 881. After a *de novo* review of the record, we find that Dr. DiSanto contradicted himself and failed to clearly establish for which injury or condition the treatments at issue were necessary. On direct examination, Dr. DiSanto testified that the treatment was needed to relieve the effects of a work-related injury, namely chronic back spasms and sciatica. However, on cross-examination he acknowledged that the employee's last MRI indicated only a degenerative condition in his back, and was otherwise normal. He further testified that he was treating the employee for a degenerative arthritic condition in his back and sciatica and that the employee's pain arose out of this degenerative condition. However, Dr. DiSanto does not causally relate the degenerative condition to the employee's original work-related injury.

In addition to the limited value of Dr. DiSanto's testimony, it is also noteworthy that this court determined the employee's incapacity from the work-related injury had ended more than

fifteen (15) years ago, on February 26, 1996. The employee unsuccessfully appealed this decision. On August 17, 1999, the trial court found that the employee had not sustained a return of incapacity, holding that any disability he experienced after June 23, 1998 was not caused or connected to his work-related injury. Again, the employee appealed the trial decision and lost. Finally, on January 25, 2002, the trial court found that the employee had failed to demonstrate a return of incapacity and the employee did not take an appeal.

Under the seamless robe doctrine "all proceedings before the commission [sic] which are based on [an] injury are of a single record, a seamless robe, which reaches completion only after all the employee's rights connected with such injury have been finally exhausted." Proulx v. French Worsted Co., 98 R.I. 114, 123, 199 A.2d 901, 906 (1964). In this case, the earlier proceedings "constitute a part of the record before us and are dispositive of the instant appeal." *See* id. Any issue as to the employee's disability has long been resolved, making his burden in proving the necessity of the present medical treatments particularly onerous. The evidence presented by the employee, Dr. DiSanto's testimony, was contradictory and shed little light on whether it was the effects of the work-related injury or some other ailment that necessitated these treatments. Accordingly, the employee failed to prove that the treatments were reasonably necessary to cure, rehabilitate or relieve the effects of his work-related injury. *See* R.I.G.L. § 28-33-5; Rossi, 107 R.I. at 745, 270 A.2d at 86.

After our thorough review of the record and careful consideration of the parties' arguments, the employee's appeal is denied and the decree 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

Ricci and Ferrieri, JJ., concur.

ENTER:

_____
Olsson, J.

_____
Ricci, J.

_____
Ferrieri, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the claim of 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 February 3, 2009 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.

_____
Ricci, J.

_____
Ferrieri, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Jack R. DeGiovanni, Jr., Esq., and Ronald A. Izzo, Jr., Esq., on

_____