STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MILTON MANN	)	
	)	
VS.	)	W.C.C. 07-06912
	)	
BAY TREE SERVICE	)	

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 denying his petition to enforce and allowing the employer to recalculate the employee's spendable earnings due to a reduction in the number of his personal exemptions. After thorough review of the relevant statutory and case law, as well as our recent decision in Peace v. Stop & Shop, W.C.C. No. 06-03918 (App. Div. 4/22/09), we deny the employee's appeal and affirm the decision and decree of the trial judge.

The parties submitted a stipulation of facts with exhibits attached to the trial judge. Rather than quote the entire document, we will simply recount the most pertinent facts.

The employee has been receiving weekly benefits for partial incapacity pursuant to a Memorandum of Agreement dated November 1, 2004. That document indicates that he sustained a radial ulnar fracture of the right forearm on October 6, 2004 resulting in partial incapacity beginning October 7, 2004. At the insurer's request, Mr. Mann completed a Certificate of Dependency Status form in which he indicated that he was entitled to three (3)

exemptions – one for himself and one each for his two (2) dependent children. He signed and dated the form on October 18, 2004.

On June 4, 2007, the employee completed a new Certificate of Dependency Status form in which he indicated that he had only one exemption for himself because his two (2) children had previously reached the age of eighteen (18). After receiving this form, the claims representative at Beacon Mutual Insurance Company, the employer's insurer, forwarded a Mutual Agreement reducing the employee's exemptions from three (3) to one (1) to the employee's attorney for execution. The employee never signed the Mutual Agreement. On or about July 17, 2007, the employer began to pay weekly benefits for partial incapacity based upon one (1) exemption, rather than three (3), which resulted in a reduced weekly compensation rate.

The parties framed the questions presented to the trial judge as follows:

> That the issues before the Court are whether the petitioner's spendable base wage may be changed when there is a change in the actual number of dependents after the initial date of incapacity and if so, whether a carrier can unilaterally adjust a compensation rate, if the facts are undisputed, without first obtaining a Court Order.

Ct. Exh. 1 at 2. In addition to the stipulation of facts, the parties submitted memoranda setting forth their respective arguments.

The trial judge, citing the decision of the Appellate Division in Becker v. Salvation Army, W.C.C. No. 01-05489 (App. Div. 4/24/06), concluded that the spendable base wage may be modified when there is a change in the number of personal exemptions. In addition, he reasoned that because the employee acknowledged the change in exemptions by signing the new Certificate of Dependency Status, the insurer could unilaterally modify the spendable base wage and recalculate the compensation rate without obtaining a court order. The trial judge noted that his ruling was consistent with the decision of the Rhode Island Supreme Court in Marshall v.

Kaiser Aluminum & Chem. Corp., 121 R.I. 624, 402 A.2d 575 (1979). The employee filed a claim of appeal from the denial of his petition to enforce.

In reviewing the decision of a trial judge on appeal, the appellate panel is bound by the findings of fact made by the trial judge absent a determination that he was clearly wrong. *See* R.I.G.L. § 28-35-28(b). In the present matter, the parties stipulated to the relevant facts. Consequently, our review is focused on whether the trial judge properly applied the law to those facts. We find that, under the circumstances of this case, the trial judge's denial of the employee's petition to enforce was correct.

The first issue raised by the appeal, whether the spendable base wage may be recalculated due to a change in the number of an employee's exemptions, has now been settled by the decision recently issued by the Appellate Division in Peace v. Stop & Shop, W.C.C. No. 06-03918 (App. Div. 4/22/09). In Peace, we concluded that the language of R.I.G.L. § 28-33-17(a)(3)(i) dictated that the spendable base wage must be recalculated if the number of allowable personal exemptions changes in any given tax year that the employee is receiving workers' compensation benefits. We see no need to further expound upon the reasoning set forth in that decision. Our holding in Peace clearly applies to the factual situation presented in this matter.

The second issue presented in this appeal is whether the insurer's unilateral modification of the spendable base wage was appropriate under the circumstances. The Rhode Island Supreme Court has clearly stated that an employer/insurer cannot unilaterally terminate its obligation to pay weekly benefits under an existing agreement or decree. *See* Rathbun v. Leesona Corp., 460 A.2d 931, 934 (R.I. 1983). In order to obtain relief from the terms of an agreement or decree, the insurer must avail itself of the procedures provided in the Workers' Compensation Act which include filing a petition requesting relief and obtaining the consent of

the employee to modify or terminate the agreement or decree. *See* R.I.G.L. §§ 28-35-6(b), 28-35-7.1, and 28-35-45.

Certain exceptions have been made to this general principle in cases where the facts necessary to implement a modification or termination of benefits can be objectively determined by the insurer. *See* Marshall, 121 R.I. at 631, 402 A.2d at 579; Plouffe v. Taft-Peirce Manufacturing Co., 91 R.I. 221, 224, 162 A.2d 557, 558 (1960). In Marshall, the Court concluded that an insurer can unilaterally terminate dependency benefits paid to a totally disabled employee when his or her child reaches the age of eighteen (18) although there is no specific statutory provision permitting such unilateral action by the insurer. *See* Marshall, 121 R.I. at 632, 402 A.2d at 579. The Court noted the inequity of adhering strictly to the general principle against unilateral action.

> The purpose behind the payment of dependency benefits . . . is to assist the employee in his legal duty to support those of his children who are minors or who are unable to maintain themselves and likely to become public charges. Once the children are no longer dependent, this purpose is accomplished and payments should accordingly be terminated. On the other hand, a construction of the Act as authorizing dependency payments to continue indefinitely, rather than terminating at age 18, would produce the incongruous result that such payments would go to individuals who no longer qualify as dependents solely on the formalistic basis that only the commission may end any and all payments under the Act.

Id., 121 R.I. at 633, 402 A.2d at 580 (citations omitted). We believe the analysis in Marshall is applicable to the present matter.

Pursuant to R.I.G.L. § 28-33-17(a)(3)(ii), the Director of the Department of Labor and Training shall publish tables to be utilized to calculate the spendable earnings from the average weekly wage. The Certificate of Dependency form completed by the employee contains a section indicating the number of exemptions and also a section for listing dependent children and

their dates of birth. This form serves a dual purpose. The information regarding children and marital status is utilized to calculate dependency benefits provided for in R.I.G.L. § 28-33-17(c). The information as to personal exemptions is used to calculate the spendable earnings from the tables published by the Department of Labor and Training. These calculations are made by the insurer to determine the amount of an employee's weekly benefit. Unless the employee believes an error has been made by the insurer, the court has no involvement in these calculations.

In the present matter, the employee completed and signed a second Certificate of Dependency form on June 4, 2007 which indicated that he had no dependent children and was entitled to only one (1) exemption for him, representing a change from the earlier form he had completed on October 18, 2004, a few weeks after he was injured. Armed with this information, the insurer recalculated his spendable earnings, allowing for only one (1) exemption, rather than three (3). This recalculation resulted in a lesser weekly compensation rate.

The employee is not claiming that he erred in completing the form or that the insurer's mathematical calculation, using the tables referred to above, is incorrect. The fact that he is entitled to claim less personal exemptions is undisputed. This is not a situation in which the modification or termination of benefits requires a judgment to be made by an impartial party after weighing conflicting information. On the contrary, it is clear from the information provided by the employee that he is no longer entitled to claim his children as exemptions and is therefore receiving benefits to which he is not entitled. The recalculation is simply a ministerial act by the insurer to implement the change in circumstances. In this situation, we believe that it would be improper to require the insurer to bring a petition to have the court formally put its stamp of approval on the recalculation.

For the foregoing reasons, the employee's appeal is denied and dismissed and the decision and decree of the trial judge are 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

Hardman and Ferrieri, JJ. concur.

ENTER:

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Olsson, J.

_____
Hardman, 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 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 May 1, 2008 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.

_____
Hardman, J.

_____
Ferrieri, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Robert P. Audette, Esq., and Bruce J. Balon, Esq., on

_____