

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

SHARON JONES

)

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VS.

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W.C.C. 2008-06118

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O.E.S. HOME OF RHODE ISLAND )  
D/B/A ETHAN PLACE

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 in which he found the employee, Sharon Jones, failed to prove by a fair preponderance of the credible evidence that she sustained a vascular heart coronary on August 8, 2008 arising out of her employment. The trial judge granted her original petition in part when he found that she did sustain chondritis on August 8, 2008 and as a result thereof was partially disabled from August 9, 2008 through August 18, 2008. After thoroughly reviewing the record in this matter and considering the arguments of both parties, we find no error on the part of the trial judge and affirm the decision and decree.

At the time of her alleged injury, Ms. Jones was employed as a certified medical technician at Ethan Place, an assisted living facility. On Friday, August 8, 2008, at about 9:45 in the evening, the fire alarm went off in the facility which necessitated the evacuation of all of the residents. While attempting to transfer a resident from a chair into a wheelchair, the employee

experienced pain in her chest. Despite her complaints, she continued to work the next hour or so until the end of her shift. She was not scheduled to work that weekend.

On the following Monday, the employee went to work early and reported her injury. The employer referred her to Concentra Medical Center for evaluation. At some point within the next eleven (11) days, the employee suffered a heart attack which she contends the initial incident on August 8, 2008 contributed to and/or precipitated.

On that Monday, August 11, 2008, the employee drove herself to Concentra and was seen by Dr. Dana Sparhawk, who is board certified in occupational and environmental medicine and has training in the treatment and diagnosis of cardiac problems. Although Ms. Jones testified that she told Dr. Sparhawk that she felt as if someone was sitting on her chest and complained of left arm and back pain, the doctor testified she described chest pain in the area of the sternum which was worse with taking deep breaths and bending forward. During his physical examination, the doctor noted “exquisite tenderness” on palpation over the sternum (which is inconsistent with cardiac injury) and concluded that the employee suffered from costochondritis, or inflammation of the cartilage surrounding the sternum or breastbone. (Resp. Ex. E, p. 14-15.)

Dr. Sparhawk testified that he did not feel that the employee suffered from a cardiac condition because she did not present with a “crushing type of pain,” pain radiating down her arm, or trouble breathing. (Resp. Ex. E, p. 15.) The doctor further noted that the employee denied symptoms consistent with a cardiac problem, such as shortness of breath, radiating pain, nausea, vomiting, fever or chills.

Ms. Jones did not work that day and was not scheduled to work the next two (2) days (August 12<sup>th</sup> and 13<sup>th</sup>). On August 14, 2008, she returned to Concentra and treated with a nurse practitioner. The report prepared by the nurse practitioner indicates the employee described a

seventy-five (75%) percent improvement in her condition, and had the same complaints as far as location of the pain and tenderness to palpation over the sternum. The employee testified that she told the nurse practitioner she was only sixty-five (65%) percent better during this visit.

The employee returned to work on August 14, 2008 and August 15, 2008, but complained of shortness of breath and the next day (Saturday) attempted to return to Concentra for further treatment. The office was closed, so on Sunday, August 17, 2008, she sought treatment at the Warwick Medical Walk-In Room with Dr. James M. Denier, who, among other designations, is certified in advanced cardiac life support.

Dr. Denier testified that the employee described chest pain which felt as though someone was sitting on her chest and radiated to her left shoulder. The doctor ran a number of tests, including a phosphokinase test, which can indicate muscle damage, and the employee was sent home. The next day the employee returned to Dr. Sparhawk and reported that she had been feeling better but then developed burning pain radiating from her chest to her mid-back. The doctor indicated that the work-related chondritis had resolved and did not prevent her from returning to her regular job. Ms. Jones informed Dr. Sparhawk that she had been to Warwick Medical Walk-In and was undergoing a cardiac work-up, including a stress test. The doctor advised her to follow up with the physician addressing her cardiac complaints.

On this same day, Dr. Denier received the lab results from the tests he ran and determined the employee was suffering from a myocardial infarction, or heart attack. She was taken to Kent Hospital, where she underwent cardiac catheterization and was ultimately transferred to Rhode Island Hospital where a stent was inserted. Dr. Denier opined the cause of the heart attack was myocardial ischemia first experienced with exertion on August 8, 2008.

The employer presented the testimony of Dr. Joseph R. Gaeta, a board certified cardiologist. While Dr. Gaeta did not examine or treat the employee, he reviewed the records of her primary care physician, Concentra, Kent Hospital, Rhode Island Hospital, Warwick Medical Walk-In, and Drs. Edward Thomas and Richard San Antonio. The doctor testified that in his opinion, the employee had chondritis which developed on August 8, 2008 and then suffered a heart attack on August 17, 2008 which was unrelated to the incident on August 8, 2008. Dr. Gaeta based his opinion on the patient's medical history, as well as the medical records and medical tests completed by the multiple treating physicians. He also explained that a heart attack caused by some type of unusual exertion or physical activity would occur within two (2) to three (3) hours of the exertion, not days later.

The trial judge thoroughly reviewed all the evidence presented by both the employee and employer. He rejected the opinion of Dr. Denier due to the doctor's reliance on a faulty history regarding when the employee complained of symptoms indicative of a cardiac problem. The trial judge found the testimony of Dr. Gaeta to be the most persuasive and probative in ultimately determining the employee's heart attack was not causally related to her employment.

The employee has filed two (2) reasons of appeal. First, she argues the trial judge applied the incorrect legal standard in finding the employee's heart attack was not causally related to her employment. Second, she argues the trial judge improperly relied on the expert testimony presented by the employer.

In reviewing the trial judge's decision, the appellate panel is bound by the provisions of R.I.G.L. § 28-35-28(b) which explains that "[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." We may not undertake a *de novo* review of the evidence and substitute our judgment for that of the trial judge

without initially making a determination that the trial judge was clearly wrong. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). With this standard in mind and after careful consideration of the issues raised by the employee, we find no error on the part of the trial judge in reaching his ultimate determination.

First, the employee argues that the trial judge erred in finding that her eventual heart attack was not causally related to the incident at work on August 8, 2008. In this regard, the employee contends that the trial judge misapplied the law regarding work-related heart attacks. We find no merit in this argument.

In Gartner v. Jackson's, Inc., 95 R.I. 489, 495, 188 A.2d 85, 88, (1963), our Supreme Court established a legal standard for work-related heart attack cases:

[T]he important factor in heart attack cases is not whether the nature of the work performed by the employee involves usual or unusual physical exertion, but rather whether such work, whatever its nature, caused or precipitated the heart attack. The true test is whether there is a causal connection between the employee's work and the heart attack.

In his decision, the trial judge noted Dr. Gaeta's testimony that the employee's act of lifting a resident was not such an extreme exertion that it would tend to cause a heart attack. From this, the employee surmises that the trial judge impermissibly based his ultimate determination on whether her employment involved physical exertion rather than on the existence of a causal relationship between the injury and the employment. This argument mischaracterizes the trial judge's reasoning.

The employee presented evidence that a singular event, lifting the resident into her wheelchair during a fire alarm, precipitated and ultimately caused the heart attack. There was no evidence that any other aspect of the employment may have caused or precipitated this injury.

She attempted to establish the incident on August 8, 2008 as the “causal connection” between the heart attack and the employment, and the trial judge evaluated it as such.

At trial, the employee and employer presented conflicting medical evidence regarding the causal relationship between the lifting incident and the heart attack. The trial judge accordingly was tasked with determining “[w]hether the medical testimony advanced by the employee was stronger or weaker, more credible or less credible, than that presented by the employer.” *See Gaines v. Senior Citizens Trans., Inc.*, 471 A.2d 1357, 1359 (R.I. 1984). We find that the trial judge did not err in accepting the medical evidence presented by the employer over that of the employee.

The employer relied on Dr. Gaeta, the only cardiologist presented, who dated the employee’s heart attack to August 17, 2008. The doctor’s opinion was based on his evaluation of the tests performed by Dr. Denier on August 17, 2008 and by Kent Hospital on August 18, 2008, specifically an electrocardiogram and cardiac enzyme determinations, which indicated the heart attack likely began within the previous three (3) days. Dr. Gaeta also testified that if a heart attack was caused by exertion it would likely occur within a few hours. Dr. Sparhawk expressed a similar sentiment, testifying that the heart attack would likely occur on the same day as the exertion. In this case, the employer’s evidence demonstrated the heart attack occurred at least a week after the alleged precipitating physical exertion.

Conversely, the employee’s medical witness, Dr. Denier, relied on the history provided by the employee in which she stated that immediately after attempting to lift the resident she felt chest pain and pressure like “someone sitting on her chest” with the pain radiating to her left arm. This was not the history recorded by Dr. Sparhawk on August 11<sup>th</sup>, the nurse practitioner at Concentra on August 14<sup>th</sup>, or the medical personnel at Kent Hospital and Rhode Island Hospital

on August 18<sup>th</sup> and 22<sup>nd</sup>. The Concentra records reflect that the employee complained of pain in the sternum area and upper back associated with deep breathing and bending over. There was no complaint of pressure in the chest, radiating pain, or shortness of breath. The records of the two (2) hospitals indicate the employee provided a history of chest pain radiating to her left arm of three (3) to five (5) days duration which would correlate to at least August 14<sup>th</sup>. The trial judge also noted that the employee's testimony itself was confusing and inconsistent with regard to the history she provided to the various medical personnel.

Finally, it is long established that a trial judge confronted with conflicting medical opinions of competent and probative value has the right to accept the opinions of one health care provider over another. Parenteau v. Zimmerman Eng'g, Inc., 111 R.I. 68, 78, 299 A.2d 168, 174 (1973). In the present matter, the trial judge permissibly relied on the opinions of Dr. Gaeta and Dr. Sparhawk in finding no causal relationship between the employee's heart attack and her employment. He provided a detailed explanation of his reasoning for rejecting the opinion of Dr. Denier and accepting the opinions of Drs. Gaeta and Sparhawk and we find no error in his analysis and ultimate determination.

In her second reason of appeal, the employee takes issue with the trial judge's acceptance of Dr. Gaeta's opinion, arguing the doctor impermissibly based his opinion on Dr. Sparhawk's treatment history. In making this argument, the employee claims that Dr. Sparhawk failed to abide by the proper standard of care throughout his treatment of the employee, apparently inferring that Dr. Sparhawk's records were thus unreliable and poisoned the opinion of Dr. Gaeta. This contention is without merit.

Dr. Sparhawk testified that due to the employee's complaint of chest pain, he made specific inquiries regarding symptoms which would be indicative of a cardiac problem. The

responses of the employee to those questions, as well as her description of the location and nature of the pain, combined with his physical examination, led to his diagnosis of costochondritis, rather than a cardiac problem. As a result, Dr. Sparhawk did not find it necessary to administer an EKG or blood tests. Dr. Gaeta agreed with this assessment. Dr. Denier's opinion that cardiac testing should have been done is based upon his understanding that the employee complained of chest pressure, like someone sitting on her chest, and pain radiating to the area of her left upper extremity, immediately after the incident on August 8, 2008. However, that history was not provided to any other medical personnel. Consequently, the trial judge rejected the opinions of Dr. Denier.

The employee also mischaracterizes Dr. Sparhawk's follow-up treatment. When the doctor saw the employee on August 18<sup>th</sup>, Ms. Jones had already been seen by Dr. Denier and was in the midst of a full cardiac work-up, including the scheduling of a stress test. Ms. Jones informed Dr. Sparhawk that she had been doing well, but then developed a burning sensation radiating from her chest to her back, a different complaint from her previous visits. Dr. Sparhawk assessed her condition with regard to her work-related condition, chondritis, and concluded that she had made a sufficient recovery from that condition to be able to return to work. He noted, however, that she should continue with her cardiac work-up with her primary care physician and deferred to that physician as to her ability to return to work with regard to that medical issue.

In reaching his decision, the trial judge evaluated the evidence as a whole, including the medical records and depositions of the physicians and the employee's testimony. After doing so, he determined the employer's evidence was more probative and reliable than the evidence put forth by the employee. Our review of the record gives us no reason to disagree. We would note



that conflicting testimony as to the standard of care followed was presented by both the employer and the employee, and in such situations it is the prerogative of the trial judge to accept one opinion over the other. *See id.*

After our thorough review of the record we find no error in the trial judge's evaluation of the evidence and ultimate determination. Accordingly, we deny the appeal and affirm the decision and decree of the trial judge.

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

Connor and Hardman, JJ., concur.

ENTER:

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Olsson, J.

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Connor, J.

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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 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 June 29, 2009 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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Connor, J.

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Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to John J. Flanagan, Esq., and Berndt W. Anderson, Esq., on

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