STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

VICTOR ZORRILLA	)	
	)	
VS.	)	W.C.C. 2009-07609
	)	
PAWTUCKET COUNTRY CLUB	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employee's claim of appeal from the decision and decree of the trial judge in which he found that the employee had failed to prove by a fair preponderance of the credible evidence that he sustained compensable injuries arising out of and during the course of his employment on November 12, 2009. The outcome of the trial hinged on the credibility determination made by the trial judge who found the employer's witnesses and the documentary evidence more credible than the employee's testimony. After a thorough review of the record and consideration of the arguments of the respective parties, we deny the employee's appeal and affirm the decision and decree of the trial judge.

Victor Zorrilla began working at Pawtucket Country Club in 2007 as a greenskeeper. His job duties included cutting the grass on the greens and fairways, grooming bunkers, and blowing leaves off of the greens and fairways. The employee used a backpack blower weighing about twelve (12) to fifteen (15) pounds to blow the leaves off of the greens and fairways. Mr. Zorrilla testified through an interpreter and stated that on November 12, 2009 he reported to the

Pawtucket Country Club at 6:30 a.m. Dan McDermott, the assistant superintendent, assigned the employee and Wilbur Adamis, a co-worker, to blow the leaves off of the greens. Mr. Adamis and Mr. Zorrilla were both from the Dominican Republic and were close friends, often referring to themselves as brothers. In fact, Mr. Zorrilla had assisted Mr. Adamis in obtaining his job with the employer in 2009.

Mr. Zorrilla testified that he and Mr. Adamis were blowing leaves off of the third green and Mr. Zorrilla was walking downhill with a backpack blower at the back of the green. He explained that there were a lot of wet leaves on the ground and he slipped on the wet leaves and the weight of the backpack blower sent him to the ground on his right side. He asserted that he felt a shock in his right knee after he fell. Mr. Zorrilla stated that Mr. Adamis needed to help him up and then he went in a golf cart to see Dan McDermott, the assistant superintendent, at the fourteenth fairway.

The employee stated that he informed Mr. McDermott that he had pain in his leg and that he could not continue blowing leaves with the backpack blower. Mr. McDermott told the employee to go to the workshop and get the buffalo blower which was attached to a tractor. The employee would be able to ride rather than be on his feet blowing leaves. After unsuccessfully attempting to hook up the buffalo blower, Mr. Zorrilla advised Myles Kemp, the mechanic, that it was not working properly and he was going to the cafeteria to lie down because of the pain in his knee. The employee stated that Mr. Kemp then called Mr. McDermott and Mr. McDermott and Mr. Adamis went to the cafeteria to check on the employee. The employee testified that he informed Mr. McDermott that he was in severe pain and he wanted an ambulance called as opposed to having Mr. Adamis take him to the hospital. Mr. Zorrilla stated that the police and then the ambulance arrived and the paramedics put a plastic cast on his leg and took him to

Sturdy Memorial Hospital where he was examined and X-rays were taken. He denied that he already had any kind of wrap, brace, or bandage on his knee. Mr. Zorrilla subsequently came under the care of Dr. Louis Manzolillo, a chiropractic physician.

The records of Sturdy Memorial Hospital were introduced into evidence. A narrative report dated November 12, 2009 states that the employee related that

> . . . on Monday he was at work carrying a blower on his back when he felt his knee give way. He continued to have pain since then. It was mild but then today [November 12, 2009] when he was at work it gave way again he went down.

Ee's Ex. 1. The report notes that an interpreter was present for the history and examination. In contrast, the employee testified that the first time he hurt his leg was at work on November 12, 2009 and he asserted that he never told any of the health care providers, police officers, or other co-workers that he hurt himself at home or on any date prior thereto. He also stated that he and Mr. Adamis were working alone on the third green when he slipped and fell.

Wilbur Adamis testified he was working with Mr. Zorrilla on November 12, 2009 when he witnessed the employee slip and fall with the backpack blower on his back while working on the third green. He asserted that no one else was working with them. Mr. Adamis stated that he went over to assist the employee and the employee told him he had pain in his knee. He related that the employee then took the golf cart they were using and went to find Mr. McDermott. Shortly thereafter, Mr. McDermott came by to pick up Mr. Adamis and bring him back to the cafeteria. Mr. Adamis acted as a translator for Mr. Zorrilla in speaking with Mr. McDermott, the police officers, and the paramedics. He denied telling anyone that the employee had injured his knee at home when a door hit his leg and he denied ever seeing a brace or bandage on the employee's knee.

The employer presented six (6) witnesses, including both co-workers and supervisors. Daniel McDermott was the assistant superintendent in November 2009 and was responsible for handing out the daily work assignments to the greenskeepers. Mr. McDermott testified that he had a conversation with Mr. Zorrilla sometime in the week before November 12, 2009 in which he informed the employee that he would likely be laid off because it was seasonal work, but he would probably be able to come back in the spring. On the morning of November 12, 2009, Mr. McDermott sent the entire crew out onto the golf course as a group to blow leaves from the tee boxes, greens and bunkers on each hole. It was his understanding that they would all be working together, but Mr. Adamis testified that the men decided to split into two (2) groups and start at opposite ends of the golf course.

Mr. McDermott explained that he was blowing leaves off of the sixteenth fairway when Mr. Zorrilla approached him in a golf cart and informed him that his leg hurt. The two (2) men spoke partly in English and partly in Spanish. When Mr. Zorrilla told him that he thought he could still work, Mr. McDermott sent him in to get the buffalo blower so that he could work sitting down. Shortly thereafter, Mr. McDermott got a call on his cell phone from Myles Kemp who advised him that Mr. Zorrilla was in the shop and was having trouble with his leg.

Mr. McDermott proceeded to the shop and in the presence of Mr. Kemp he asked Mr. Zorrilla how he hurt his leg. Mr. Zorrilla responded that he hurt it at home and denied that he was injured at work. Mr. Adamis then showed up and they assisted Mr. Zorrilla into a chair in the break room. Utilizing Mr. Adamis as a translator, Mr. McDermott again asked Mr. Zorrilla where he injured his leg and he responded that he hurt it at home, not at work. Subsequently, outside of the presence of Mr. Zorrilla, Mr. Adamis informed Mr. McDermott that the employee injured his leg at home when a big door swung and hit him.

Mr. McDermott was present when the paramedics arrived and he stated that when the paramedics lifted the employee's pants up, he saw an ace bandage type of wrap on his right knee. He indicated that he had earlier noticed that his arm was also wrapped. Mr. McDermott was also present when the police officers were questioning Mr. Zorrilla. Mr. McDermott testified that the police officers and paramedics asked the employee several times if he injured himself at work and the employee responded in the negative each time.

Edward Soares, a greenskeeper at Pawtucket Country Club, testified that he worked with the employee and Mr. Adamis on November 12, 2009 blowing leaves off of the greens and tees. He explained that he and Mr. Adamis were using the backpack blowers and Mr. Zorrilla had a hand blower, not a backpack. He asserted that he never saw Mr. Zorrilla fall down. When Mr. Zorrilla left in the golf cart, Mr. Soares just assumed they were done on the third green; the employee never mentioned that he was injured when he left. Shortly thereafter, Mr. Soares and Mr. Adamis drove into the shop in a second golf cart.

Mr. Soares stated that the employee informed him about two (2) or three (3) days prior to November 12, 2009 that he hurt his leg at his house during a party. Mr. Soares related that during this conversation the employee lifted up his pant leg and revealed a black elastic bandage that slipped over the employee's kneecap. Mr. Soares stated that he could see a big lump on the employee's leg and it was purple and noticeably bigger than it should have been. Mr. Soares also saw Mr. Zorrilla limping slightly for a few days prior to November 12, 2009. In addition, Mr. Soares testified that he was present when the paramedics took the employee's pants off on November 12, 2009 and he saw the employee's knee wrapped with a different bandage than the one he saw two (2) or three (3) days prior to November 12, 2009. Mr. Soares further stated that he heard the paramedics ask Mr. Zorrilla who wrapped his knee.

Michael Whitehead, the greens superintendent of Pawtucket Country Club, testified that he had a conversation with the employee in November of 2009 in which it was decided that Friday, November 13, 2009, would be the employee's last day of work because he was to be laid off until the spring. Mr. Whitehead testified that he spoke with the employee on November 12, 2009 near the entrance to the workshop. Mr. Zorrilla was standing with his foot on the floorboard of a cart and he pulled his pant leg up to show Mr. Whitehead his knee, and Mr. Whitehead saw an ace bandage wrapped around the employee's knee. Mr. Whitehead then asked the employee if he hurt himself at work and the employee said he hurt himself at home.

John Foley, a fellow member of the grounds crew, testified that a couple of days prior to November 12, 2009 he saw the employee sitting in a cart adjusting an ace bandage on his leg. He also stated that prior to November 12, 2009, he noticed the employee walking with a limp.

Myles Kemp, a mechanic and equipment manager, testified that on November 12, 2009, prior to the employee leaving in the rescue vehicle, he saw a wrap on his leg and overheard Mr. Zorrilla tell Mr. Whitehead his leg was hit by a door at home. Mr. Kemp also stated that he was present when the paramedics and police officers were questioning the employee about where he was injured and the employee responded that he was injured at home.

George Bertenshaw, another greenskeeper at Pawtucket Country Club, testified that a day or two prior to November 12, 2009, he saw the employee limping and asked him both in the morning and again in the afternoon if he had hurt himself at work the prior day. Mr. Zorrilla responded no and stated that he hurt himself at home. Mr. Bertenshaw told the employee if he hurt himself at work he has to report it, but the employee repeated that he hurt himself at home.

The deposition and reports of Dr. Louis Manzolillo, a chiropractic physician, were admitted into evidence. Dr. Manzolillo first saw Mr. Zorrilla on December 1, 2009 and recorded

a history as follows:

> [P]atient presented with complaints of right posterior and lateral knee pain and edema. Indicated pain began 11/12/09, he was working as a landscaper blowing leaves when he slipped, twisting his leg during the process.

Ee's Ex. 3, attached report 12/01/09. The doctor's initial diagnosis was a knee sprain with secondary lumbar joint dysfunction which developed as a result of his walking with a crutch. Dr. Manzolillo stated that the condition was caused by the slip and fall at work and the employee was totally disabled as a result.

Dr. Manzolillo treated the employee several times a week. He indicated that when the pain and swelling in the knee persisted, he recommended that the employee undergo an MRI and see an orthopedic specialist; however, due to a lack of insurance coverage, these appointments were never scheduled. Dr. Manzolillo continued to treat the employee, though on a less frequent basis. He was asked about the alleged incident involving a door hitting the employee's knee and responded:

> I do not feel that being hit by a door, I mean, would cause symptomatology we're experiencing. This was more in line with a twisting or a tearing type of injury, whereas a door being a straight contusion-type injury, I don't think we would see the magnitude of edema and swelling or lack of range of motion and ligamentous laxity that we've been seeing with this type of an incident.

Ee's Ex. 3 at 11:25-12:7.

Dr. Michael D. Feldman, an orthopedic surgeon, examined Mr. Zorrilla on May 5, 2010 at the request of the employer's insurance carrier. In his report, Dr. Feldman noted the following history obtained from the employee with the assistance of a professional interpreter:

> The patient states he was well until November 11, 2009, when he reported hitting his knee on a door at home. He states this was a minor injury. He was able to come into work. He was working on November 12, 2009, when he was mowing leaves on the green and

> he slipped on wet grass on the side of the hill. He twisted his knee and noted a moderate amount of swelling.

Er's Ex. 1, attached report May 5, 2010. After examining the employee's knee, Dr. Feldman diagnosed a probable medial meniscus tear in the right knee.

The doctor testified in his deposition that it was his opinion that this condition was caused by the injury which occurred at work on November 12, 2009. Dr. Feldman stated his reasoning as follows:

> Patient reported on November 11th he sustained a direct blow to his knee hitting his knee on a door at home. One, he reported it was a minor injury. Two, he did not note any swelling. Three, he was able to ambulate and come into work and on November 12th he reported slipping on wet grass which was a twisting injury of the knee and he reported that that's when he noted a moderate amount of swelling. The amount of swelling or effusion was corroborated by the emergency room visit which noted that he did have an effusion on that date as well which corroborate his history.

Er's Ex. 1 at 10:8-21.

After listening to the live testimony and examining the documentary evidence, the trial judge, in his bench decision, found that the employee had failed to prove by a fair preponderance of the credible evidence that he sustained a compensable injury arising out of and during the course of his employment on November 12, 2009. The trial judge stated that:

> [P]etitioners who come before this court have the burden of proving by a fair preponderance of the credible evidence that they sustained a compensable injury during the course of his employment, and given Mr. Zorrilla the best of everything I think at best it's a tie, that the evidence is equally weighted, and based on that I do not feel that he has proven that which has been alleged in the petition.

Tr. at 270:17-24.

The trial judge noted that the employee in his testimony before the court denied any injury to his knee prior to November 12th, and he asserted that he never reported to anyone that

he had hurt his knee at home; however, the employee's "testimony is contradicted time and time again in the record." Tr. at 267. It was contradicted in the Sturdy Memorial Hospital intake report on November 12, 2009 in which Mr. Zorrilla described an incident involving his right knee Monday at work, and then a second incident when he slipped and fell on the leaves on November 12, 2009. His testimony was also contradicted by many of the employer's witnesses who stated that Mr. Zorrilla told them that he hurt his knee at home prior to November 12, 2009. In particular, the trial judge found the testimony of Mr. Soares that he was working with the employee and never saw him fall to be truthful. He also found credible the testimony of the various co-workers who stated they had seen some type of bandage on the employee's knee prior to the arrival of the police and paramedics and heard the employee state at different times that he injured his knee at home. Considering the inconsistencies and contradictions in the testimony and documentary evidence, the trial judge concluded that the evidence did not preponderate in favor of the employee. Consequently, he denied the employee's petition and the employee filed a timely claim of appeal.

The appellate standard of review is very limited and is clearly delineated in 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." The appellate panel is precluded from engaging in a *de novo* review of the evidence and substituting 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). The standard of review is particularly deferential when the trial judge's findings are based upon his assessment of the credibility of the witnesses who testify before him.

> [T]he [court], before disturbing findings based on credibility determinations, must first find that the trial [judge] was clearly

> wrong either because the [judge] was obviously mistaken in his or her judgment of the credibility of the witnesses or overlooked or misconceived material evidence in arriving at the conclusion reached.

Mulcahey v. New England Newspapers, Inc., 488 A.2d 681, 683 (R.I. 1985). With this standard as our guide and after a thorough review of the record, we find no error on the part of the trial judge and deny the employee's appeal.

The employee has filed four (4) reasons of appeal. In his first reason of appeal, the employee argues that the decree is contrary to the law in that the trial judge denied the employee a reasonable inference of a work-related injury from the undisputed facts in this matter in accordance with Rule 301 of the Rhode Island Rules of Evidence. That rule defines an inference as "a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action." R.I. R. Evid. 301(b). The employee points to certain undisputed facts from which the trial judge should have drawn the inference that he sustained a work-related injury: (1) the employee worked eight (8) hours a day on the three (3) days preceding the alleged injury; (2) the employee arrived at work at 6:30 a.m. on November 12, 2009 and continued to work until approximately 11:00 a.m.; and (3) the employee then became unable to continue working due to pain in his right knee. These facts alone, however, do not naturally lead to the conclusion that the employee sustained an injury while he was at work on November 12, 2009.

In the present matter, the trial judge was presented with evidence, both testimonial and documentary, that the employee denied sustaining an injury at work, that he had sustained an injury to his knee at home at some point prior to November 12, 2009, that this injury was sufficiently significant that he wore a bandage or brace on his knee and was limping prior to November 12, 2009, and that he did not slip and fall down on the third green. The petitioner in a

workers' compensation matter cannot "be denied the benefit of a reasonable inference that logically and naturally arises from the evidence," particularly if the testimony is undisputed and unimpeached. Valente v. Bourne Mills, 77 R.I. 274, 278, 75 A.2d 191, 193 (1950). The testimony of Mr. Zorrilla and Mr. Adamis was clearly disputed and impeached by a number of other witnesses and by some of the medical records. In light of the many contradictions and inconsistencies in the testimony, an inference that the employee sustained an injury at work on November 12, 2009 does not "logically and naturally" arise from the evidence as the most plausible that might be drawn. The record reveals far too many disputed facts regarding how and when the employee injured his knee to draw a reasonable inference that it happened while he was working.

In his second reason of appeal, the employee contends that the decree is contrary to the evidence and the weight thereof in that the trial judge overlooked undisputed medical testimony and evidence establishing both causation and disability. It is true that both Dr. Manzolillo and Dr. Feldman attributed the injury to the employee's knee to the incident the employee described to them as having occurred on November 12, 2009 at work. The trial judge acknowledged this testimony in his decision. Tr. at 268. The doctors' opinions, however, were based upon the truthfulness of the description of events provided to them by the employee. The veracity of that history, that the employee injured his knee when he slipped and fell on the third green while blowing leaves, was called into question by the testimony of the employee's co-workers, in particular that of Mr. Soares.

In assessing the credibility of Mr. Soares and also Mr. Foley, the trial judge stated:

> I don't have any reason to disbelieve Eddy Soares. I don't have any reason to disbelieve that he would come in here, raise his right hand and take an oath about him working with Mr. Zorrilla and Mr. Adamis on the third green on November 12, 2009. I don't

> have any doubt about his having testified truthfully that nothing occurred that he saw on that occasion and that Mr. Zorrilla didn't leave that third green until after the work was done. . . .
>
> I thought that Mr. Foley's testimony that he saw an ace bandage a couple days before Victor went to the hospital to be truthful. I have no reason to disbelieve Mr. Foley. He doesn't have a dog in this fight.

Tr. at 269:4-20. The trial judge was also persuaded by the testimony of several witnesses that they had observed a bandage of some sort on the employee's knee in the days prior to November 12, 2009, and had heard the employee state that he injured his knee at home and deny that he was injured at work.

These credibility assessments made by the trial judge are entitled to great weight on review. Quintana v. Worcester Textile Co., 511 A.2d 294, 295 (R.I. 1986); Laganiere v. Bonte Spinning Co., 103 R.I. 191, 195, 236 A.2d 256, 258 (1967) (citing Lonardo v. Palmisciano, 97 R.I. 234, 197 A.2d 274(1964)).

> In the past, we have noted that the [trial judge] is uniquely qualified to both assess the credibility of a witness and determine what evidence to accept and what evidence to reject because he is in the best position to observe the appearance of a witness, his or her demeanor, and the manner in which he or she answers questions.

Quintana, *supra*, at 295. It is clear from the trial judge's decision that he found the testimony of the co-workers to be more credible than that of the employee and his close friend, Mr. Adamis. "It is well-settled that where the testimony of two witnesses is conflicting and the trier of facts expressly accepts the testimony of one of the witnesses, he implicitly rejects that of the other." Blecha v. Wells Fargo Guard Co. Serv., 610 A.2d 98, 102 (R.I. 1992) (quoting Turgeon v. Davis, 120 R.I. 586, 592, 388 A.2d 1172, 1175 (1978)).

The trial judge's rejection of the employee's testimony as untruthful taints the opinions of Drs. Manzolillo and Feldman regarding causation.

> Where medical testimony is based to a large extent on statements of medical history by the employee whose credibility carries little if any weight with the [court], it is open to evaluation, and the [court] is justified in not accepting it.

Mazzarella v. ITT Royal Electric Div., 120 R.I. 333, 339, 388 A.2d 4, 7-8 (1978). The opinions of Drs. Manzolillo and Feldman that the condition they diagnosed was caused by the alleged incident at work on November 12, 2009 is entirely contingent on the veracity of the employee's assertion that he slipped and fell while blowing leaves on the third green. That assertion was rejected by the trial judge, thereby eliminating the factual foundation of the doctors' opinions. Consequently, although the doctors' opinions may establish that the employee has an injury that was likely caused by a twisting motion of his knee; they cannot establish that it occurred at work.

In his third reason of appeal, the employee argues that the trial judge misconceived and overlooked material evidence when he accepted the testimony of Mr. Soares as conclusive on the issue of whether the employee was injured at work because there were inconsistencies in his testimony indicating a lack of credibility. The employee points to portions of testimony from Mr. Kemp and Mr. Soares regarding who showed up when at the equipment shed in an attempt to demonstrate that Mr. Soares was untruthful. We have reviewed the testimony in question and find that it is not clearly in conflict. The testimony does establish that Mr. Soares was at the equipment shed with the employee and Mr. Adamis and none of the other groundskeepers were present. This fact would actually seem to support the testimony of Mr. Soares that he was working with the employee and Mr. Adamis that morning, otherwise one would expect that he would have been out on the golf course with his co-workers.

Furthermore, in arriving at his decision, the trial judge cited Mr. Soares' testimony, but also the testimony of several other witnesses as to the presence of some type of bandage on the employee's knee prior to his being transported in the ambulance and the employee's response to numerous inquiries regarding where he was injured. Therefore, it is clear that it was the cumulative effect of the testimony of all of the witnesses contradicting different aspects of the employee's version of events in addition to the employee's own contradictory statements to some of the medical personnel which led to the trial judge's determination that the evidence did not preponderate in favor of the employee.

Finally, the employee argues that the decree is contrary to the law in that the trial judge failed to consider whether the employee's work activities on November 12, 2009 aggravated a pre-existing knee condition, resulting in a compensable injury and disability. This argument flies in the face of the employee's own testimony in which he repeatedly denied that he sustained any injury to his knee or had any complaints regarding his knee prior to November 12, 2009. On the contrary, Mr. Zorrilla described a specific slip and fall occurring at work as the cause of his knee pain. Neither of the doctors described his condition as an aggravation of a preexisting condition. Consequently, there was no reason for the trial judge to consider this argument because the employee did not present any evidence to support such a theory.

In conclusion, we find no error in the trial judge's determination that the employee failed to establish by a fair preponderance of the credible evidence that he sustained a work-related injury on November 12, 2009. Accordingly, we deny the employee's claim of 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

Ricci and Hardman, JJ., concur.

ENTER:

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Olsson, J.

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Ricci, J.

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Hardman, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

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PAWTUCKET COUNTRY CLUB	)	

FINAL DECREE OF THE APPELLATE DIVISION

This matter came before the Appellate Division on the claim of appeal of the petitioner/employee and upon consideration thereof, the employee's appeal is denied and dismissed and it is hereby

ORDERED, ADJUDGED, AND DECREED:

That the findings of fact and orders contained in a decree of this Court entered on October 28, 2010 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

_____
John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Ricci, J.

_____
Hardman, J.

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

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