

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

ANNETTE SARRAZIN

)

)

VS.

)

W.C.C. 99-05431

)

SANFORD WHITE CO., INC.

)

DECISION OF THE APPELLATE DIVISION

HEALY, J. This matter came on to be heard before the Appellate Division upon the petitioner/employee's appeal from the decision and decree of the trial judge. This matter was heard as an Employee's Original Petition for benefits alleging a permanent hearing loss as a result of her employment. Following a hearing on the merits, the trial judge rendered a decision and decree dismissing the petition.

The trial judge denied and dismissed the employee's petition finding that the employee left her place of employment with Sanford White Co. on or about April 21, 1995 and had not filed her petition for benefits until September 24, 1999. Based upon this finding, the court held that the statute of limitations found in R.I.G.L. § 28-35-57 had run. The trial judge also held that the employee had failed to support her allegation with appropriate medical proof and that the employee had not proven her petition according to the calculations set forth in R.I.G.L. § 28-33-19 (a)(4). From that decision and decree the instant appeal followed.

The employee, Annette Sarrazin, filed the following as her reasons of appeal from the decision and decree entered by the trial judge on April 26, 2001:

- “ 1. The Decree is against the law.
- “ 2. The Decree is against the evidence.
- “ 3. The Decree is against the law and the evidence and the weight and sufficiency thereof.
- “ 4. The Decree is against the law and the evidence because the trial judge failed to appoint an impartial medical examiner as required by R. I. Gen. Laws § 28-34-5.
- “ 5. The Decree is against the law and the evidence because petitioner filed her petition for benefits within the statute of limitations set forth in R.I. Gen. Laws § 28-35-57.
- “ 6. The Decree is against the law because R.I. Gen. Laws § 28-33-19 (4)(iv) is unconstitutional in that it violates Petitioner’s right to equal protection under the United States Constitution and Rhode Island Constitutions and it violates Petitioner’s right to equal access to the courts under the Rhode Island Constitution.
- “ 7. The Decree is against the law and the evidence because the facts and history of Petitioner’s hearing loss established that her hearing loss was caused by the industrial noise while performing work activities during her employment with Respondent Sanford White Co.
- “ 8. The Decree is against the law and the evidence because the competent medical evidence established that Petitioner sustained compensable hearing loss as a result of her exposure to industrial noise while working for Respondent Sanford White Co.”

Pursuant to R.I.G.L. § 28-35-28 (b), a trial judge’s findings on factual matters are final unless found to be clearly erroneous. See Diocese of Providence v. Vaz, 679 A.2d 879 (R.I. 1996). The Appellate Division is entitled to conduct a *de novo* review only when a finding is made that the trial judge was clearly wrong. Id.; Grimes Box Co. v. Miguel, 509 A.2d 1002 (R.I. 1986). Such review however, is limited to the record made before the trial judge. Vaz, supra,

citing Whittaker v. Health-Tex, Inc., 440 A.2d 122 (R.I. 1982). Cognizant of this legal duty imposed upon us, we have carefully reviewed the entire record of this proceeding. For the reasons set forth, we find no merit in the employee's appeal and, therefore, affirm the trial judge's decision and decree.

The Rhode Island Supreme Court has long held that the Worker's Compensation Appellate Division may decide only those questions of law properly raised on appeal. Bissonnette v. Federal Dairy Co., Inc., 472 A.2d 1223, 1226 (R.I. 1984). The court has frequently stated that the Workers' Compensation Appellate Division, "generally may not consider an issue unless the issue is properly raised on appeal by the party seeking review." Falvey v. Women and Infants Hosp., 584 A.2d 417, 419 (R.I. 1991). This abiding principle is particularly apposite to the present appeal.

In order for issues to be properly before the Appellate Division, the statutory requirements of R.I.G.L. § 28-35-28 must be satisfied. The pertinent language of R.I.G.L. § 28-35-28 mandates, "...the appellant shall file with the administrator of the court reasons of appeal stating specifically all matters determined adversely to him or her which he or she desires to appeal..." We have no authority to consider reasons of appeal that fail to meet the required level of specificity. Bissonnette, supra. General recitations that a trial judge's decree was against the law and the evidence fail to meet the statutory requirements and require dismissal. Falvey, 584 A.2d 417 (R.I. 1991).

The employee's "boiler plate" reasons of appeal (i.e. (1) "The Decree is against the law"; (2) "The Decree is against the evidence"; and (3) "The Decree is against the law and the evidence and the weight and sufficiency thereof") fail to meet the required standard of

specificity. Accordingly, we deny and dismiss employee's reasons of appeal numbers 1, 2, and 3.

The petitioner next argues that the trial judge was clearly erroneous for failing to appoint an impartial medical examiner as required by R.I.G.L. § 28-34-5. However, the employee has failed to demonstrate how R.I.G.L. § 28-34-5 is applicable to loss of hearing cases. Claims for benefits for loss of hearing are specifically governed by R.I.G.L. § 28-33-19. In that section, such claims are recognized as compensable under R.I.G.L. § 28-33-19 (4)(i). Since loss of hearing due to industrial noise is a specific injury recognized under R.I.G.L. § 28-33-19, it is not an occupational disease under the provisions of chapter 34 of Title 28. Thus, petitions seeking benefits caused by loss of hearing are not subject to R.I.G.L. § 28-34-5. Prior to its most recent amendment, this section read in part:

“The court shall appoint one or more impartial physicians whose duty it is to examine any claimant under this chapter and to make a report in a form that the court requires.”

The language of Section 28-34-5 clearly limits its application to “any claimant under this chapter.” Since the employee's claim for benefits did not arise under the occupational disease section of the Act, there was no statutory requirement mandating the trial judge to appoint an impartial medical examiner in the instant petition. In most cases, the Workers' Compensation Act does not require the appointment of an impartial medical examiner. Such a determination is usually addressed to the sound discretion of the trial judge. Dart Ind., Inc. Etc. v. Andrade, 108 R.I. 474, 276 A.2d 460 (1971). In the present case, the appellant does not present any facts on which to base a conclusion that the trial judge abused his discretion. Therefore, the trial judge's decision not to appoint an impartial medical examiner will not be disturbed.

The employee next appeals the trial judge's finding that the statute of limitations found in R.I.G.L. § 28-35-57 had long run prior to the filing of the instant petition. The trial judge, in finding that the statute of limitations was applicable, considered the fact that the employee filed the instant petition on September 24, 1999 after having ceased employment with Sanford White Co. on or about April 21, 1995. The trial judge found that there was a two (2) year statute of limitations set forth in Section 28-35-57.

The trial judge found:

“the statute in question reflects that the time frames would begin to run from six months subsequent to the removal of the employee from the alleged noisy environment. In the instance, the evidence and the facts do not support that and as such, the employee has failed to overcome the statute of limitations provisions which clearly leads to a failure of proof in this petition.” (Tr. Dec. p.7)

The Rhode Island Supreme Court has held that unlike other statutes of limitations, those periods of limitation specified in the Workers' Compensation Act, particularly Section 28-35-57, are considered statutes of repose. Ponte v. Malina Co., 745 A.2d 127, 133 (R.I. 2000); Salazar v. Machine Works, Inc., 665 A.2d 567, 568 (R.I. 1995). The distinction is profound. A “statute of limitations” bars a right of an action unless the action is filed within a specified period after an injury occurs whereas a “statute of repose” terminates any right of action after the applicable time period elapses irrespective of whether there has been a discoverable injury as yet. The employee in the matter before this tribunal has failed to demonstrate that her petition was filed within the limitations of R.I.G.L. § 28-35-57. As such, the trial court's decision and decree will not be disturbed.

Ms. Sarrazin also claims on appeal that the facts and history of her hearing loss established the causal nexus between her employment with Sanford White Co. and her hearing

loss. Further, the petitioner refers to “competent medical evidence” as establishing the existence and cause of her hearing loss. However, our review of the record reveals a complete failure of medical proof in this matter.

The trial judge relied upon the medical evidence presented by the employee. Both the reports of Dr. Warren Woodworth, the employer’s medical expert, and the deposition of Mary Kay Uchmanowicz, M.S., an audiologist presented by employee, demonstrate that the petitioner had failed to prove a causal connection between her alleged disability and her injury. (Tr.Dec. p.7)

Neither party has challenged the competency of any of the medical experts’ opinions as to the causal relationship of Ms. Sarrazin’s hearing loss. Because the uncontradicted evidence from the employee’s own experts unequivocally demonstrates failure of medical proof establishing a causal nexus between the petitioner’s hearing loss and her employment at Sanford White Co., the trial judge’s finding can not be disturbed.

The employee is also challenging the constitutionality of R.I.G.L. § 28-33-19 (4)(iv) under the equal protection clauses of the Rhode Island and United States Constitutions. Article 1, Section 2, of the Rhode Island Constitution provides in pertinent part: “No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws.” The Fourteenth Amendment of the United States Constitution provides in pertinent part: “{N}or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, Sec. 1. Although she has failed to fairly enunciate the basis for mistake, the employee essentially suggests that she is being denied equal protection because she cannot qualify for benefits under the Act as it is written.

The Rhode Island Supreme Court will not invalidate a legislative enactment unless the party challenging the enactment can prove beyond a reasonable doubt that the statute in question is repugnant to a provision in the Constitution. City of Pawtucket v. Sundlun, 662 A.2d 40, 45 (R.I. 1995); Gorham v. Robinson, 57 R.I. 1, 7, 186 A. 832, 837 (1936). “ In addition, the party challenging the constitutional validity of an act carries the burden of persuading the court that the act violates an identifiable aspect of the Rhode Island or United States Constitution.” Rhode Island Depositors Corp. v. Brown, 659 A.2d 95, 100 (R.I. 1995) (citing, Brennan v. Kirby, 529 A.2d 633, 639 (R.I. 1987)).

Thus, all laws are presumed to be constitutional and valid. The Rhode Island Supreme Court begins “with the principle that legislative enactments of the General Assembly are presumed to be valid and constitutional.” Rhode Island Depositors Corp., 659 A.2d at 100. Moreover, the Rhode Island Supreme Court “will make every reasonable intendment in favor of the constitutionality of a legislative act, and so far as any presumption exists it is in favor of so holding.” State v. Garnetto, 75 R.I. 86, 94, 63 A.2d 777, 781 (1949).

In assessing whether an enactment violates the equal protection guarantees of the Rhode Island and United States Constitutions, the Court “... must examine both the nature of the classification established by the act and the individual rights that may be violated by the act.” Rhode Island Depositors Corp., 659 A.2d at 100. “If a statute either infringes upon fundamental rights or results in the creation of a suspect classification, the statute must be examined with strict scrutiny.” Id. Conversely, legislation that neither implicates a suspect class nor infringes upon a fundamental right is subject to rational-basis review. Id. (citing City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 440, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313, 320

(1985)); Newport Court Club Asso., 800 A.2d at 415; In Re Advisory Opinion to House of Rep. Bill, 519 A.2d. 578, 583 (R.I. 1987).

In the instant petition, the appellant is challenging the constitutionality of R.I.G.L. § 28-33-19 (4) under principles of equal protection. The petitioner has failed to demonstrate that she is a member of a recognized suspect class. A suspect class is one “saddled with such disabilities, subject to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” San Antonio School District v. Rodriguez, 411 U.S. 1, 28, 93 S.Ct. 1278, 1294, 36 L.Ed. 2d 16, 40 (1973).

Injured employees are not recognized as a suspect class. Since petitioner fails to establish that she is a member of a suspect class, R.I.G.L. § 28-33-19 (4)(iv) will be analyzed under a rational basis review.

It is well settled that legislatures may enact reasonable limits on parties’ rights to have their claims adjudicated by the courts. See United States v. Kubrick, 444 U.S. 111, 125, 100 S. Ct. 352, 361, 62 L.Ed. 2d 259, 271 (1979); Young v. Park, 116 R.I. 568, 573, 359 A.2d 697, 700 (1976). The Rhode Island Supreme Court has held Article 1, Section 5 of the Rhode Island Constitution “should not be interpreted to bar the General Assembly from enacting laws that limit or place a burden upon a party’s right to bring a claim in our courts.” Walsh v. Gowing, 494 A.2d 543, 547 (R.I. 1985); Kennedy v. Cumberland Engineering Co., 471 A.2d 195,198 (R.I. 1984). “Such limits or burdens violate the constitutional protection mandated by article 1, section 5, only when statutes ‘prohibit court access *absolutely* for a generally recognized claim to a class of plaintiffs.’ ” Dowd v. Rayner, 655 A.2d 679, 683 (R.I. 1995) (quoting Kennedy, 471 A.2d at 198). “Except for an absolute prohibition, however, the Legislature may place

‘permissibly *** reasonable limits or burdens on the parties’ right to have their claims adjudicated by the courts.’ ” Id.

In the instant petition, R.I.G.L. § 28-33-19 (4)(iv) provides standards by which occupational hearing loss is evaluated and determined. The statute was amended by the General Assembly in July of 2001 in an attempt to reflect modern, generally accepted medical standards. In passing the revisions to the statute, the General Assembly chose to make the revised provisions and amendments operative for any occupational hearing loss that occurs on or after September 1, 2003. The revised statute would cover acuity hearing loss related to a single event immediately upon passage. See R.I.G.L. § 28-33-19 (4)(vi). Until September 1, 2003, injuries such as the type Ms. Sarrazin alleged (occupational hearing loss), are to be evaluated and determined by the previous version of the statute. The General Assembly chose to make the new provisions of the statute effective upon a future date. The legislative intent is fundamentally clear. “The policy questions raised by the state, and the question whether this statute is wise or unwise, are not for this court to determine. Those questions would be better addressed to the General Assembly which, under our system of government, is charged with the duty and responsibility of passing on the wisdom of such legislation.” Hazard v. Howard, 110 R.I. 107, 111-112, 290 A.2d 603, 606 (1972).

Ms. Sarrazin was afforded the opportunity to meaningfully pursue a remedy through the Workers’ Compensation Court. Unfortunately, the petitioner’s expert medical witnesses were unable to establish hearing loss in conformity with the previous version of R.I.G.L. § 28-33-19 (4)(iv). The petitioner was not denied access to the courts nor she was denied the opportunity to meaningfully pursue a remedy. The General Assembly found it necessary to revise the

provisions of Section 28-33-19 (4)(iv) and chose to make those provisions effective prospectively.

Consequently, we disagree with the petitioner's contention that R.I.G.L. § 28-33-19 (4)(iv) denies her either equal protection of the laws or access to the courts. The petitioner has not satisfied her burden of proof and has failed to demonstrate to this tribunal that the passage of R.I.G.L. § 28-33-19 (4)(iv) could palpably and unmistakably be characterized as an excess of legislative power.

Therefore, we believe the trial judge was correct in his assessment. For the aforesaid reasons, the employee's reasons of appeal are hereby denied and dismissed and, we, therefore, affirm the trial judge's decision and decree.

In accordance with Sec. 2.20 of the Rules of Practice of the Workers' Compensation Court, a decree, a copy of which is enclosed, shall be entered on

Olsson and Connor, JJ. concur.

Type Judge

ENTER:

Healy, J.

Olsson, J.

Connor, 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 April 26, 2001 be, and they hereby are affirmed.

Entered as the final decree of this Court this day of ,

BY ORDER:

ENTER:

Healy, J.

Olsson, J.

Connor, J.

I hereby certify that copies were mailed to Stephen J. Dennis, Esq. and
Conrad Cutcliffe, Esq. on [Click here to type Date](#)

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