STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

ROSA CRUZ	)	
	)	
VS.	)	W.C.C. 99-06060
	)	
SUPERIOR INDUSTRIES, INC.	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter came on to be heard before the Appellate Division on the petitioner/employee's appeal from a decision of the trial court denying her Employee's Petition to Review alleging a return of incapacity beginning August 10, 1999 due to the effects of a work-related injury she sustained on December 13, 1991. After reviewing the record and considering the arguments of the parties, we deny the employee's appeal and affirm the decision and decree of the trial judge.

The employee, a thirty-eight (38) year old Spanish-speaking female, sustained injuries to her low back and both knees on December 13, 1991 while employed as a racker by the respondent. She received workers' compensation benefits until December 9, 1992 when her weekly benefits were discontinued by decree of the court. An Employee's Petition to Review was previously filed alleging a return of incapacity as of July 30, 1993. That petition was denied in

October 1994. In 1996, the employee worked for about two (2) months. She left work and gave birth to her third child that year. She has not returned to work anywhere since 1996.

The medical evidence in the present matter consists of the depositions and reports of Dr. Christopher F. Huntington and Dr. A. Louis Mariorenzi. Dr. Huntington, an orthopedic surgeon, began treating the employee in May 1999. After MRI and EMG studies were done, he diagnosed a chronic lumbar strain and bilateral internal derangement of the knees. He concluded that she was permanently partially disabled and unable to return to her former employment as a racker.

Dr. Mariorenzi, an orthopedic surgeon, treated the employee in 1997 for a torn right medial meniscus, which he surgically repaired. Based upon his review of medical records from 1992, including a report of an arthroscopy on the right knee, he opined that the torn medial meniscus was not caused by the 1991 work injury. He last saw the employee in early 1998 and discharged her to return to work.

Dr. Mariorenzi evaluated the employee on March 9, 2000 at the request of the insurer. The physical examination was normal and the doctor concluded that the employee had made a complete recovery from her back and knee injuries. He indicated that she was capable of returning to work with no restrictions.

The trial judge carefully reviewed the medical evidence and found the opinions of Dr. Mariorenzi to be more probative. As a result, he denied the

employee's petition. The employee filed a claim of appeal and submitted five (5) reasons of appeal.

The first three (3) reasons of appeal lack the specificity required by R.I.G.L. § 28-35-28 and are simply general allegations of error on the part of the trial judge. Consequently, they are denied and dismissed. Bissonnette v. Federal Dairy Co., 472 A.2d 1223 (R.I. 1984); Falvey v. Women & Infants Hospital, 584 A.2d 417 (R.I. 1991).

In her fourth reason of appeal, the employee argues that the trial judge erred in relying upon the opinions of Dr. Mariorenzi because they were incompetent and unreliable. As the basis for this contention, the employee points to several facts: (1) that the doctor did not make any notes during the physical examination; (2) that the doctor could not state with certainty on what date he actually dictated his report; and (3) that the doctor's report did not state that an interpreter was present.

During the course of the deposition of Dr. Mariorenzi, two (2) pages of handwritten notes were introduced into evidence which the doctor identified as containing his handwriting. The notes primarily detailed the employee's history. In reading the portion of the report regarding the physical examination, it is quite detailed as to the examination of the low back, knees and ankles. The physical findings were all within normal limits. The doctor's assistant noted the only abnormalities – arthroscopic scars on both knees. The entire report is about four and a half pages long, single spaced. The doctor testified that he also had

available to him extensive records of the employee's prior treatment and diagnostic studies.

Dr. Mariorenzi stated that his usual and customary practice is to dictate his report on the same day he performs the examination. He acknowledged that on rare occasions, he did it the next morning. However, the doctor pointed out that considering the extensive physical examination he performed of the employee and the lengthy history, he most likely dictated his report the same day.

The employee questions whether the doctor even performed the examination in light of the lack of contemporaneous notes and the fact that he made no notation as to whether an interpreter was present. This is a rather serious accusation, suggesting that Dr. Mariorenzi has committed perjury. It is apparent from the doctor's notes and his report that he obtained a detailed history from the employee. The employee has not pointed out any errors in that portion of the report. The mere omission of a statement in the report as to whether an interpreter was present is entirely insufficient to support even an inference that the doctor did not personally examine the employee.

The lack of contemporaneous notes, the inability to specifically state when the report was dictated, and the omission of a statement as to whether an interpreter was present, are all considerations for the trial judge as he assesses and weighs the relative probative value of the medical opinions of the two (2) doctors. The trial judge obviously concluded that the issues raised by the employee regarding the report and examination of Dr. Mariorenzi were not

sufficiently damaging so as to affect the probative value of his opinions. We cannot say that he was clearly erroneous in arriving at that determination.

In her fifth reason of appeal, the employee argues that the trial judge failed to properly consider objective medical evidence of disability regarding her knees. She cites testimony of Dr. Huntington in support of this contention. However, the doctor's reports and other portions of his testimony reflect that there was no objective evidence and the doctor's opinion as to disability was based upon the employee's subjective complaints.

Dr. Huntington testified that he initially treated the employee only for her low back complaints and referred her for evaluation of her knees to another physician in his office who specialized in that area. At those initial examinations in May and July of 1999, there was no sign of crepitus in the knees or any other positive findings. In his report of August 23, 1999, Dr. Huntington stated that there were no objective findings and the employee was disabled solely due to her subjective complaints. On November 29, 1999, the doctor noted that he could not find any organic cause for the employee's complaints of pain. In addition, the diagnostic testing indicated only some degenerative changes.

The trial judge concluded that the employee's subjective complaints were not sufficient to support a finding of disability related to the 1991 work injury. He therefore chose to rely upon the opinions of Dr. Mariorenzi and provided a rational basis for the decision. Such an evaluation and determination are within

the trial judge's province and will not be disturbed by this tribunal absent a finding of clear error. We find no such error in this case.

Based upon the foregoing, the employee's appeal is denied and dismissed and the decision and decree of the trial judge are affirmed.

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

Arrigan, C.J. and Healy, J. concur.

ENTER:

_____
Arrigan, C.J.

_____
Healy, J.

_____
Olsson, J.

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APPELLATE DIVISION

ROSA CRUZ)
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VS.) W.C.C. 99-06060
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SUPERIOR INDUSTRIES, INC.)

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 November 21, 2001 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____

ENTER:

_____
Arrigan, C.J.

_____
Healy, J.

_____
Olsson, J.

I hereby certify that copies were mailed to Stephen J. Dennis, Esq., and Michael T. Wallor, Esq., on _____