

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

AIDA M. ORTIZ

)

)

VS.

)

W.C.C. 00-00065

)

TYTEX, INC.

)

FINAL DECREE OF THE APPELLATE DIVISION

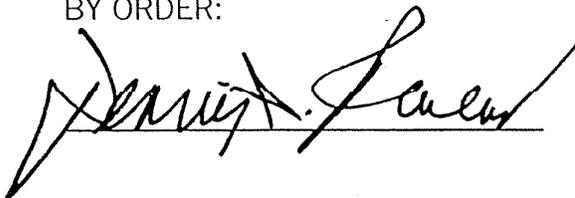
This cause came on to be heard by the Appellate Division upon the appeal of the Petitioner/Employee and upon consideration thereof, the appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on June 21, 2001 be, and they hereby are affirmed.

Entered as the final decree of this Court this 3rd day of September, 2002.

BY ORDER:



Dennis I. Revens Administrator

ENTER:

Arrigan

Arrigan, C.J.

Olsson

Olsson, J.

Connor

Connor, J.

I hereby certify that copies were mailed to Stephen J. Dennis, Esq., and
Michael T. Wallor, Esq., on *August 26, 2022*

Stephen J. Dennis

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

AIDA M. ORTIZ

)

)

VS.

)

W.C.C. 99-06483

)

TYTEX, INC.

)

FINAL DECREE OF THE APPELLATE DIVISION

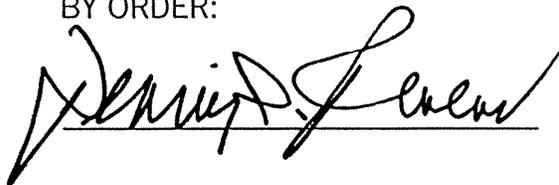
This cause came on to be heard by the Appellate Division upon the appeal of the Petitioner/Employee and upon consideration thereof, the appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

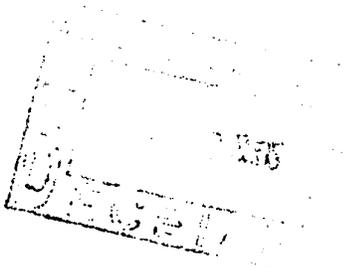
The findings of fact and the orders contained in a decree of this Court entered on June 21, 2001 be, and they hereby are affirmed.

Entered as the final decree of this Court this 3rd day of September, 2002.

BY ORDER:



Dennis I. Revens Administrator



ENTER:



Arrigan, C.S.

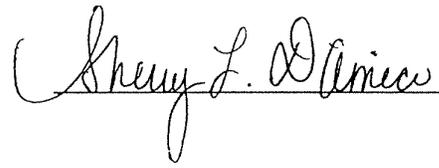


Olsson, J.



Connor, J.

I hereby certify that copies were mailed to Stephen J. Dennis, Esq., and
Michael T. Wallor, Esq., on August 26, 2002



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

AIDA M. ORTIZ

)

)

VS.

)

W.C.C. 00-00065

)

TYTEX, INC.

)

AIDA M. ORTIZ

)

)

VS.

)

W.C.C. 99-06483

)

TYTEX, INC.

)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. These two (2) matters came before the Appellate Division upon appeals of the petitioner/employee from the decision and decrees of the trial judge entered on June 21, 2001.

W.C.C. No. 99-06483 is an Employee's Petition to Review alleging a return of partial incapacity beginning October 1, 1999, due to the effects of a work-related injury sustained on February 24, 1999 to her neck, left shoulder and low back. The petition also alleged that the employee developed a psychiatric

disorder (depression), as a result of the effects of the work injury. At the pretrial conference, the trial judge denied the petition and the employee claimed a trial.

W.C.C. No. 00-00065 is an Employee's Petition to Review alleging a return of partial incapacity beginning October 1, 1999, due to the effects of a work-related injury sustained on March 30, 1995 to her neck and low back. At the pretrial conference, the trial judge denied the petition and the employee claimed a trial. The two (2) petitions were consolidated for trial. At the conclusion of the trial, the judge rendered a decision and entered two (2) decrees denying both of the petitions. The employee has made a timely claim of appeal with regard to both matters.

The employee was a machine operator who worked on a cording machine. Her job required her to sit most of the day and to lift items weighing up to twenty (20) pounds about ten (10) times a day. On March 30, 1995, she suffered a cervical and lumbar sprain/strain for which she received weekly benefits for partial incapacity pursuant to a Memorandum of Agreement dated June 30, 1995. Weekly benefits were discontinued by decree of the court on July 23, 1996. The employee testified that she had returned to work on July 9, 1996 performing the same job.

The employee sustained a second injury on or about February 24, 1999, to her neck, left shoulder and low back. She continued to work until May 1999. She received total incapacity benefits for this second injury, pursuant to a

Memorandum of Agreement dated July 21, 1999, for the period May 3, 1999 through July 2, 1999. She then returned to work at her regular job.

The employee initially testified that she left work again in September 1999 ". . . because I was kind of depressed . . ." (Tr. 17) She explained that she was depressed because her employer was pushing her to do a lot of work and she could not keep up with it. Upon further questioning, she added that part of the reason she left was because of a physical condition involving her neck and the left side of her body. Ms. Ortiz treated with Dr. Alvaro Olivares, a psychiatrist. In January 2000, she began seeing Dr. J. Frederick Harrington, Jr., a neurosurgeon, for complaints of constant neck and shoulder pain. In August 2000, she began treating with Dr. Lawrence Goodstein, a chiropractor.

On cross-examination, the employee acknowledged that she complained of low back pain and neck pain radiating down the left arm as a result of her March 1995 injury, and she treated until November 1996 for those complaints. She stated that her condition never resolved despite the treatment and that she continued to have pain in the neck, low back, left shoulder and left arm up until she injured the same areas again at home in April 1997 when she slipped on a wet floor. (Tr. 24)

She saw Dr. Mary G. Basler, a chiropractor, for neck, left shoulder and low back pain, admitting they were the same body parts she injured in February 1999 at her Tytex job. (Tr. 25, 42) Ms. Ortiz filed a civil suit against her landlord in which she is alleging that she has ongoing problems with her left shoulder and

neck as a result of the fall at home. (Tr. 27) The employee admitted that she has continued to have the same problems with her neck, low back and shoulder since 1995. (Tr. 23-24)

In support of her petition, the employee presented the deposition and records of Dr. Lawrence Goodstein. (Pet. Exh. 3) He first saw her on August 5, 2000 for complaints of pain in the neck, left shoulder joint and low back. The employee advised the doctor that she sustained these injuries on February 20, 1999, while lifting an object weighing between ten (10) and twenty (20) pounds at work. She reported that she experienced immediate pain. She also informed the doctor that she had not had any similar symptoms for one (1) year prior to this injury.

Dr. Goodstein's diagnosis was "Subluxation of the cervical spine, radiculopathy, neck pain, hyperextension and flexion injury, subluxation of the lumbar, and physical stress." (Tr. 6) He attributed her condition to the injury of February 20, 1999. The doctor based this opinion upon the spinal analysis the employee's x-rays which he obtained from an out-of-state company and the employee's recent history that she had recovered from her prior injuries, but had ongoing problems since the February 1999 incident. (Tr. 30)

On cross-examination, Dr. Goodstein acknowledged that he had never obtained any reports or test results, concerning the employee's prior injuries, to determine whether the injury he treated her for occurred in 1999 or some other time. He admitted that he did not know whether the condition found in the x-rays

was present prior to February 1999. He could not tell if her condition she after February 1999 was different from her condition before that date. He did not know what her condition was in February 1999, or what it was anytime before he saw her in August 2000. Dr. Goodstein was unaware that the employee had continued working after the February 1999 incident and then had returned to work after a brief absence. He also admitted that he did not know much about the employee's job. (Tr. 8, 43)

The employer presented two (2) depositions of Dr. A. Louis Mariorenzi, an orthopedic surgeon, who evaluated the employee on June 10, 1999 and on January 6, 2000 at the request of the employer. At the time of the initial evaluation, the doctor noted that the physical findings were entirely within normal limits, and the results of an MRI of the cervical spine on May 16, 1995 were of no clinical significance, particularly since the abnormalities were on the right side and the employee's complaints were focused on her left side. He concluded that the employee was capable of performing her regular job duties with no restrictions.

Dr. Mariorenzi was deposed a second time after conducting another examination of the employee and reviewing voluminous records of the employee's medical treatment since 1995. He testified that the MRI study in May 1995, and a subsequent study done in September 1999, showed degenerative disc disease associated with degenerative arthritis in the cervical area, which is not uncommon in people at or past middle age. (The employee was 40 years old in

1995.) The doctor noted that Dr. Harrington's examination on January 26, 2000 was normal and that a subsequent EMG and nerve conduction study showed no signs of nerve root compression. Dr. Mariorenzi stated that these normal results would rule out any cervical pathology and thoracic outlet syndrome, which was Dr. Harrington's diagnosis at one point. (Resp. Exh. 2, p. 16, 19-20) He concluded that the treatment the employee received from Dr. Goodstein and Dr. Harrington was not related to the injury the employee sustained in February 1999. (Tr. 23) Dr. Mariorenzi pointed out that based upon his review of all of the records and his own evaluations, there was no evidence of any significant ongoing pathology to substantiate the employee's subjective complaints.

After thoroughly reviewing the evidence, the trial judge found that the record supported Dr. Mariorenzi's conclusions and opinions. (Tr. dec. p.12) He pointed out that the history recorded by Dr. Goodstein was inconsistent with the employee's testimony, and that the doctor lacked sufficient foundation to render a probative opinion as to the cause of the employee's alleged incapacity in October 1999. Consequently, the trial judge concluded that the employee failed to sustain her burden of proof.

Pursuant to Rhode Island General Laws § 28-35-28(b), the role of the appellate division in reviewing factual matters is sharply circumscribed. A trial judge's findings of fact are final unless clearly erroneous. The appellate division is entitled to conduct a *de novo* review only after determining that the trial judge was clearly wrong. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996);

Grimes Box Co. v. Miguel, 509 A.2d 1002 (R.I. 1986). Thus, if the record before the appellate division reveals competent evidence to support the findings of the trial judge, the decision must be allowed to stand.

After careful review of the entire record, we find no merit in the employee's appeal, and we, therefore, affirm the trial judge's decision and decrees.

Although the employee filed a claim of appeal in both matters, she has conceded in her memorandum, and in a footnote in her reasons of appeal, that she is only proceeding on the appeal in W.C.C. No. 99-06483. In addition, it is clear from the reasons of appeal, submitted by the employee, that they do not address the decision in W.C.C. No. 00-00065. Consequently, the appeal of the employee in W.C.C. No. 00-00065 is denied and the decree appealed from is affirmed.

It is also noted that the employee's counsel indicated during the deposition of Dr. Goodstein, that he was not pursuing the allegation that the employee developed a psychiatric disorder as a result of the effects of her work-related injury. (Pet. Exh. 3, p. 22) In addition, neither the employee's reasons of appeal nor memorandum of law, addressed this allegation, and it is, therefore, not before this Court.

In support of her appeal, the employee filed six (6) reasons of appeal. The first three (3) reasons of appeal lack the specificity required by Rhode Island General Laws § 28-35-28 and are mere general recitations of error. As such, said three (3) reasons of appeal are denied and dismissed. Bissonnette v. Federal

Dairy Co., 472 A.2d 1223 (R.I. 1984); Falvey v. Women & Infants Hosp., 584 A.2d 417 (R.I. 1991).

In her fourth and fifth reasons of appeal, the employee argues that the trial judge overlooked or misconceived the evidence in finding that the employee failed to establish a causal connection between her present incapacity and the injuries sustained in February 1999. The employee alleges that the facts and history, as related by the employee, established that she left work in September 1999 due to the effects of the work injury she sustained on February 24, 1999 and, that the competent medical testimony of Dr. Goodstein causally relates the employee's current incapacity to said work injury of February 24, 1999.

Our review of the testimony supports the findings of the trial judge. In the instant case, the question of whether the subsequent incapacity was compensable or not is ultimately a medical determination. Here, the court was simply confronted with conflicting medical opinions. When a trial judge is faced with conflicting medical opinions, he has a right to rely on the opinion of one physician over that rendered by another physician. Parenteau v. Zimmerman Eng'g, Inc., 111 R.I. 68, 299 A.2d 168 (1973). As long as the opinion is competent, that determination will not be disturbed on appeal.

Dr. Mariorenzi's opinions were based upon his examination of the employee on two (2) separate occasions, as well as a review of numerous medical records from 1995 forward. There is no evidence nor legal authority presented to suggest

that Dr. Mariorenzi's opinions were not competent and probative. Consequently, the trial judge's decision to rely upon them cannot be viewed as error.

The trial judge succinctly explained the reasons for his rejection of the opinions of Dr. Goodstein. The testimony and record is replete with Dr. Goodstein's lack of knowledge of prior medical treatments and/or records for prior injuries the employee sustained to the same body parts that he was treating. He was unaware of whether she had worked after the February 1999 injury and had minimal knowledge of the type of job she had performed.

Furthermore, Dr. Goodstein, in formulating his opinion, relied upon the employee's statement that she had recovered from all of her prior injuries and had not had any symptoms for at least one (1) year prior to February 1999. However, the employee testified that she continued to have pain in her neck, low back, left shoulder and left arm since the injury in March 1995. The records reviewed by Dr. Mariorenzi documented those ongoing complaints. We must agree with the trial judge that Dr. Goodstein lacked the necessary foundation to render a competent opinion, regarding the cause of the employee's present incapacity.

The employee's final reason of appeal contends that the trial judge improperly considered irrelevant evidence of her pending civil suit against her landlord for injuries she sustained in her home in April 1997, (citing Rocha v. State of Rhode Island, 705 A.2d 965 (R.I. 1998); Villa v. Eastern Wire Prods. Co., 554 A.2d 644 (R.I. 1989)); and Spampinato v. Miller Elec. Co., 622 A.2d 1003

(R.I. 1993). These cases offer no assistance to the employee. In the cases cited, the employee established compensable injuries by probative evidence only to have benefits denied them based on irrelevant factors having nothing to do with the injuries and proof thereof.

In the matter before us, the determinative issue is causation. Any evidence that may relate to causation is relevant and material. The only evidence elicited by inquiry into her negligence suit was that the employee sustained injuries to the identical body parts that she injured on her job in February 1999, and that she continues to have problems as a result of those earlier injuries. (Tr. 24-27) As a result, it was not error to allow the testimony into evidence, as it was relevant to the issue of causation. Accordingly, this reason of appeal is denied and dismissed.

For the aforesaid reasons, the employee's appeal is hereby denied and dismissed and the decrees appealed from are affirmed.

In accordance with Sec. 2.20 of the Rules of Practice of the Workers' Compensation Court, final decrees, copies of which are enclosed, shall be entered

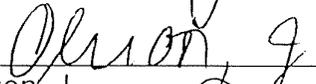
ON September 3, 2002 at 10:00 a.m.

Arrigan, C.J. and Connor, J. concur.

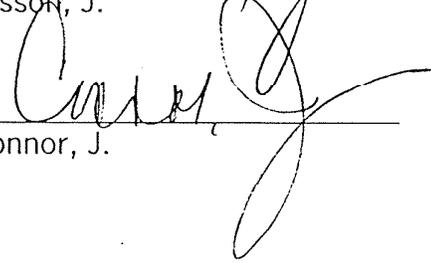
ENTER:



Arrigan, C.J.



Olsson, J.



Connor, J.