STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

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| GEORGE K. MENSAH | ) | |
| | ) | |
| VS. | ) | W.C.C. No. 2016-00451 |
| | ) | |
| BROWN UNIVERSITY | ) | |

FINAL DECREE OF THE APPELLATE DIVISION

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

ORDERED, ADJUDGED, AND DECREED:

That the findings of fact and the orders contained in a decree of this Court entered on December 27, 2018 be, and they hereby are, affirmed.

Entered as the final decree of this Court this 27th day of April 2020

PER ORDER:

Nicholas DiFilippo, Administrator

ENTER:

Olsson, J.

Olsson, J.

Salem, J.

Salem, J.

Cardoza, J.

Cardoza, J.

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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 denying the employee's petition to review alleging a return of total incapacity beginning May 3, 2013 due to a work-related injury he sustained on March 3, 2000. The trial judge determined that pursuant to Rhode Island General Laws § 28-35-45(a), the court lacked jurisdiction to consider the employee's petition to review to recommence compensation payments because the petition was not filed within ten (10) years after his compensation ceased. After a thorough review of the record and considering the respective arguments of both parties, we deny the employee's appeal and affirm the trial judge's decision and decree.

The statute in question, Rhode Island General Laws § 28-35-45(a), creates a ten (10) year period within which agreements or decrees are subject to review, stating, in pertinent part, as follows:

> At any time after the date of the approval of any agreement or at any time after the date of the entry of any decree concerning compensation, and if compensation has ceased under the agreement

> or decree, within ten (10) years after that, any agreement, award, order, finding, or decree may be from time to time reviewed by the workers' compensation court[.]

George K. Mensah, the employee, worked as a carpenter for Brown University, the employer, in 2000. On March 3, 2000, the employee was injured at work when he was using a 40-foot-high scissor lift to remove three (3) javelins that were stuck between the roof and the rafters of the employer's gymnasium, and the lift collapsed on him. Thereafter, pursuant to a memorandum of agreement dated March 14, 2000, the employee received weekly compensation benefits beginning March 4, 2000 for bilateral ankle fractures and multiple contusions until a pretrial order entered in W.C.C. No. 2003-02028 discontinued his benefits as of July 1, 2003. That order was affirmed by a decree entered on September 14, 2005.

On January 25, 2016, the employee filed a petition to review, W.C.C. No. 2016-00451, alleging that his total incapacity for work has increased or returned as of May 3, 2013 and continuing due to the effects of his March 3, 2000 work-related injury. On October 4, 2016, the employee filed a second petition to review, W.C.C. No. 2016-05828, alleging that the employer refuses to provide or pay for medical treatment with Dr. Richard Anderson as recommended by Dr. David LaCharite to treat the employee for the effects of his March 3, 2000 injury. The trial judge denied both petitions at the pretrial conference and the employee filed a timely claim for trial in each. The two (2) petitions were consolidated at trial.

The employee testified that after his March 3, 2000 injury, he received workers' compensation benefits, but he was unsure of who was paying his medical bills. The employee stated that since his benefits were terminated by Associate Judge Bruce Morin of the Workers' Compensation Court in July 2003, he has not worked or received a weekly benefit check, but he has since become a SSDI and Medicare beneficiary. In his testimony, the employee further

indicated that since February 2016, he has received a retirement pension from the employer, Brown University.

Mary-Beth McGrath testified by deposition that she is a claims manager employed by Beacon Mutual Insurance Company (Beacon). Beacon was the employer's former third-party administrator of its workers' compensation claims, including the employee's case. Ms. McGrath testified that Blue Cross/Blue Shield of Rhode Island (BC/BS) had a contract with Beacon relative to payment of medical bills for compensable claims. She explained that the medical providers would bill BC/BS, and BC/BS would then issue payment to the medical provider. Thereafter, BC/BS would seek reimbursement for the payment from Beacon. Ms. McGrath testified that Beacon's payment history records revealed two (2) reimbursement requests from BC/BS on November 28, 2006 for transactions regarding the employee.

Ms. McGrath testified that the *first* reimbursement request was for an x-ray performed by Rhode Island Medical Imaging on September 18, 2002. Ms. McGrath confirmed that on January 9, 2003, BC/BS paid Rhode Island Medical Imaging Twenty-Two and 22/100 ($22.22) Dollars for the x-ray. Ee's Ex. 7, Depo. of Mary-Beth McGrath, at 9:8, 19:23-24. She stated that thereafter, on November 28, 2006, BC/BS billed Beacon for reimbursement of the transaction in the amount of $0.22.[1] Ms. McGrath acknowledged that she did not have an exact date for when Beacon reimbursed BC/BS but stated that it would have been within the week of being billed by BC/BS.

Ms. McGrath testified that the *second* reimbursement request was for a payment made by BC/BS to University Orthopedics for services rendered to the employee on August 7, 2002. Ms.

[1] During her deposition, Ms. McGrath testified that she was unsure why the reimbursement request from BC/BS was only for $0.22.

McGrath was unable to confirm when BC/BS paid University Orthopedics because University Orthopedics purged its records prior to 2007. *Id.* at 14:19-25-15:1-2. However, she related that on November 28, 2006, BC/BS billed Beacon $0.45 for the University Orthopedics transaction, which Beacon would have reimbursed to BC/BS within the following week.

Ms. McGrath testified that the last check for indemnity benefits that Beacon issued to the employee was on July 2, 2003, and that Beacon has not made any payments of compensation of any kind to the employee since that date. *Id.* at 21:8-11. Ms. McGrath further indicated in her testimony that since January 1, 2006, Beacon has not issued any payments directly to the employee or directly to any medical providers on the employee's behalf. *Id.* at 23:1-5.

The employee also introduced into evidence the deposition of Donna Alexander, a claims consultant for Claims Strategies, Inc. (Claims Strategies), which became the employer's workers' compensation third-party administrator on July 1, 2008. Ms. Alexander testified that Claims Strategies has not made any payments of compensation of any kind to the employee or paid any medical bills on behalf of the employee since it became the employer's administrator on July 1, 2008. Ms. Alexander admitted that she had no knowledge of an internal payment that may have been made by Beacon prior to July 1, 2008, until she heard of it in open court.

The medical records for the employee along with the deposition testimony of the employee's chiropractor, Dr. LaCharite, were marked as exhibits; however, a review of that evidence is not necessary for this decision.

Based on the documents and testimony presented at trial, the trial judge found that the two (2) claims representatives, Ms. Alexander and Ms. McGrath, did not identify any compensation payments made directly to or on behalf of the employee within a ten (10) year period prior to the date of the filing of the employee's petition on January 25, 2016.

Additionally, the employee himself was unaware of any payments made during the ten (10) years prior to January 25, 2016. Thus, the trial judge held that the employee did not satisfy the criteria set forth in Rhode Island General Laws § 28-35-45(a) which would give the court jurisdiction to hear the petition. Accordingly, the trial judge denied the employee's petition to review and the employee filed a timely claim of appeal.

The scope of the appellate panel's review of a trial judge's decision is strictly limited by the clear language of the statute. When we review a trial judge's findings of fact, we adhere to the standard succinctly set forth in Rhode Island General Laws § 28-35-28(b), which states 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 reviewing and rejecting the factual findings of the trial judge without initially finding that the trial judge misconceived or overlooked material evidence. *Grimes Box Co. v. Miguel*, 509 A.2d 1002, 1004 (R.I. 1986).

The employee has filed three (3) reasons of appeal. In his first reason of appeal, the employee argues that the trial judge erred as a matter of law in finding that the employee's petition had not been filed within ten (10) years after compensation ceased. In his second reason of appeal, the employee argues that the trial judge misconceived the evidence by concluding that Beacon had not issued any payments on the employee's behalf since January 1, 2006. Specifically, the employee argues that the court should consider Beacon's November 26, 2006 payment to BC/BS to be a payment of medical expenses on the employee's behalf and thus qualify as compensation under the statute. In his third reason of appeal, the employee argues that the trial judge erred in concluding that only payments issued by Beacon directly to medical providers qualified as "compensation" under the statute to satisfy the ten (10) year limitation

when it is Beacon's practice to use BC/BS as an intermediary for such payments. The employee failed to cite any case law to support his arguments.

While the employee asserts three (3) reasons of appeal, his arguments present one (1) primary issue—whether Beacon's reimbursement payments to BC/BS are considered "compensation" within § 28-35-45(a) such that the employee's claims would not be barred by the statute. We find that the trial judge properly determined that the employee's claims were barred by the ten (10) year limitation set forth in § 28-35-45(a).

Rhode Island General Laws § 28-35-45(a), provides that the Workers' Compensation Court may review a decree concerning compensation within ten (10) years after the payment of compensation ceases. The employee filed his petition to review on January 25, 2016. During her deposition, Ms. McGrath testified that the last payment of weekly compensation benefits issued by Beacon to the employee was on July 2, 2003. Thus, the payment of weekly compensation undoubtedly ceased more than ten (10) years before the employee's petition to review was filed.

The only other way for the employee to satisfy § 28-35-45(a) is to prove that payment of a medical bill was made within ten (10) years of the filing of his petition. In *Thompson v. Coats & Clark, Inc.*, the Rhode Island Supreme Court stated that a payment for medical treatment constitutes "compensation" under § 28-35-45(a). 105 R.I. 214, 251 A.2d 403 (1969). Here, to satisfy the statute, the last payment for medical treatment must have been made after January 25, 2006.

Ms. McGrath testified that the last payment of any kind made by Beacon was to BC/BS on or about November 28, 2006. This payment was made in response to a request for reimbursement from BC/BS for a payment that BC/BS made to Rhode Island Medical Imaging

on January 9, 2003. Beacon's payment to BC/BS was a *reimbursement* or *reconciliation* for the medical bill that had previously been paid by BC/BS on January 9, 2003 pursuant to a contract to provide that service. Although the payment was made by Beacon to BC/BS within ten (10) years of the filing of the employee's petition, there is no case law in Rhode Island that establishes that payments by an insurer to a company pursuant to a contract for the service of paying medical bills are equivalent to payments of compensation under the statute, and we decline to adopt such a rule at this time.[2] Thus, we find that Beacon's payments to BC/BS were not payments for medical treatment, and therefore, they cannot be considered "compensation" under § 28-35-45(a).

The last payment of "compensation" in this matter was on January 9, 2003, more than ten (10) years prior to the filing of the employee's petition on January 25, 2016. Consequently, the employee's petition is barred by the terms of § 28-35-45(a) and the trial judge was not clearly erroneous in denying the petition.

Based upon the foregoing discussion, the employee's appeal is denied and dismissed, and the decision and decree of the trial judge is affirmed. In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a proposed version of which is enclosed, shall be entered on April 27, 2020.

Salem, J. and Cardoza, J., concur.

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[2] In *Brothers v. James S. Cassedy, Inc.*, the Rhode Island Supreme Court held that because the "payment for reimbursement of medical expenses" in question "was made more than ten years after the payment of compensation under the agreement had ceased," "no useful purpose would have been served by considering the question of whether reimbursement of medical expenses constitutes the payment of compensation within the purview of § 28-35-45." 101 R.I. 307, 310, 222 A.2d 363, 364-365 (1966).

ENTER:

Olsson, J.

Salem, J.

Cardoza, J.