STATE OF RHODE ISLAND

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MICHAEL J. MAROTTO	)	
	)	
VS.	)	W.C.C. 2019-08248
	)	
UNITED PARCEL SERVICE, INC.	)	

FINAL DECREE OF THE APPELLATE DIVISION

This matter came 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 and orders contained in a decree of this Court entered on February 24, 2023 be, and they hereby are, affirmed.

Entered as the final decree of this Court this ***5th day of August 2025***.

PER ORDER:

/s/ Nicholas DiFilippo
Administrator

ENTER:

/s/ Olsson, J.

/s/ Minicucci, J.

/s/ Pepin Fay, 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 trial judge's decision and decree denying his original petition for workers' compensation benefits. The employee alleged that he sustained an occupational injury to his right hip due to repetitive work activities, resulting in partial or total disability from November 20, 2019 and continuing. After a thorough review of the record, and following consideration of the parties' respective arguments, we deny and dismiss the employee's appeal and affirm the trial judge's decision and decree.

Michael Marotto (hereinafter the "employee") was employed by United Parcel Service, Inc. (hereinafter "UPS" or "employer") for about eighteen (18) years at the main distribution facility in Warwick, Rhode Island. Prior to November 2019, he worked a split shift. The employee began the day working at a clerical position for about four (4) hours, during which he would stand at a desk and process international packages. During the second four (4) hour shift, the employee would unload tractor trailers. This aspect of the job required him to lift boxes, letters, and bags of packages weighing up to seventy (70) pounds unassisted, as well as packages

weighing up to 150 pounds with assistance. The employee testified that he would lift packages from the floor of the trailer to about waist-level to put them on a conveyor belt that was placed inside the trailer. At certain times, he had to lift packages from above shoulder level when they were stacked in the trailer. The conveyor belt would then move the packages from the truck into the building, where they would be sorted.

The employee explained that the pain in his right hip began about a year or more prior to November 2019. The employee referred to text messages he had sent to his wife in October 2018 indicating that he was having trouble walking due to the pain in his hip. Previously, the employee had been out of work from December 29, 2016 to June 25, 2018 due to a left shoulder injury. In the fall of 2018, the employee was evaluated for a possible right inguinal hernia, but test results were negative. The employee was again out of work from August 5, 2019 to September 16, 2019 to engage in physical therapy for his hip pain. At that time, he did not file a claim with the Workers' Compensation Court, but instead obtained Temporary Disability Insurance benefits.

The employee testified that he had seen multiple doctors and undergone x-rays, injections, physical therapy, and an MRI. Eventually, he was referred to Dr. Valentin Antoci, an orthopedic surgeon who specializes in adult hip and knee surgical reconstruction. The employee requested that Dr. Antoci take him out of work on November 20, 2019 due to the severity of the pain. He underwent hip replacement surgery on December 9, 2019 and then returned to work full-time on March 2, 2020.

At trial, the employee introduced the deposition of Dr. Antoci together with his treatment records. The employee was initially seen on August 6, 2019 by the physician's assistant in Dr. Antoci's office for complaints of right hip pain he was experiencing for the past several months.

He had just started physical therapy and previously had an injection which did not help his condition. X-rays at that time showed degenerative changes in the right hip with large osteophytes and also some degenerative changes and arthritis in the spine. The diagnosis was osteoarthritis of the right hip and sciatica. An MRI completed on November 11, 2019 revealed moderate to severe osteoarthritis with chondromalacia (loss or damage to the cartilage) and marginal osteophytes (bone spurs). The employee first saw Dr. Antoci on November 18, 2019 and surgery was discussed at that time. Dr. Antoci performed a total right hip arthroplasty on December 9, 2019. The employee saw a physician's assistant for several post-operative visits and participated in physical therapy. On February 24, 2020, the employee was released to return to his normal work activities.

On the intake form the employee completed at his first visit with the physician's assistant, he wrote that his occupation was a "UPS package handler." Ee's Ex. 4, Deposition of Dr. Valentin Antoci, attached exhibit #3. In the report from that visit and subsequent visits with Dr. Antoci, the employee's job is stated as a UPS driver.

During his deposition, Dr. Antoci initially stated that his impression was that the employee's job involved moving boxes and that he was constantly up and down stressing his body, but he did not recall the specific details. The employee's counsel described the employee's job in a hypothetical question as "some clerking work where he was standing, but he also did work unloading trucks and he'd be lifting significant weights up to 70 pounds by himself loading and unloading trucks and he did this full-time." Ee's Ex. 4, 9:9-13. In a subsequent question, the employee's counsel stated the employee's job involved "years of driving for UPS and many years working inside on the dock loading and unloading trucks with packages." Ee's Ex. 4, 18:19-22. When asked his opinion as to the cause of the employee's condition, Dr. Antoci

responded that "his work could contribute to a certain extent to his hip symptoms and progression to surgery." Ee's Ex. 4, 19:25-20:1. After prompting, the doctor stated that, to a reasonable degree of medical certainty, the employee's surgery "likely relates" to the repetitive lifting activities and that to a probability "heavy lifting at work can contribute" to this type of incapacity. Ee's Ex. 4, 20:15; 21:10-11.

On cross-examination, Dr. Antoci explained that it was his understanding that the employee's job required constant stepping up and down out of a high truck while carrying boxes for forty (40) hours a week for many years. (This description would be consistent with the notation in the doctor's reports that the employee was a UPS driver of a package delivery truck; however, that was not the employee's actual job.) He acknowledged that arthritis comes on naturally and agreed that he often performs total hip replacements on patients who have no identifiable precipitating cause. Counsel for the employer presented the doctor with a more detailed description of the employee's job including working a split shift with half of the day spent standing at a desk processing packages and the other half at various duties including loading and unloading tractor trailers with the use of a conveyor belt inside the trailer. Dr. Antoci maintained that the job still would involve lifting and moving boxes and stated that "any activity that would involve progressive lifting, bending, twisting over a long period of time could theoretically exacerbate degenerative changes in the hip." Ee's Ex. 4, 33:6-9.

After being informed that the employee was out of work from January 13, 2017 through June 24, 2018, that the employee began to notice pain in his hip sometime in 2018, and that there were text messages to his wife in October 2018 in which he complained of right hip pain, Dr. Antoci was asked his opinion as to the causal connection between the employee's work activities and the onset of his right hip pain. The doctor responded that that history suggested that "the

immediate onset of pain was not at the time of employment." Ee's Ex. 4, 35:2-3. In addition, Dr. Antoci stated that complaints of difficulty walking due to pain in the hip would indicate advanced arthritis. However, even though he did not know how long the employee lifted boxes, how much the boxes weighed, or how many hours a day the employee performed this lifting, the doctor still maintained that the activities at work contributed to the employee's need for his total hip replacement.

In response to questions by the employee's attorney on redirect examination, Dr. Antoci stated to a reasonable degree of medical certainty that "any activity, especially physical activity, twisting, lifting, can potentially exacerbate degenerative changes around the hip." Ee's Ex. 4, 47:2-4. Most importantly, when then asked by the employer's attorney if these activities exacerbated the degenerative changes in the hip of this particular employee, Dr. Antoci responded; "*I cannot say more probable than not. I can say that it can contribute to this to a reasonable degree of medical certainty.*" Ee's Ex. 4, 48:1-3 (emphasis added). The doctor then testified that he did not know if the employee's continued work activities actually did exacerbate the employee's hip symptoms.

At the close of the trial, the parties entered a stipulation agreeing that there was an employee/employer relationship and that the employee was seeking benefits for a closed period from November 20, 2019 to March 2, 2020. The parties also agreed on an average weekly wage. Therefore, the only remaining issue was whether the employee had proven that his condition and the resulting period of incapacity were causally related to his work activities for the employer.

The trial judge issued a written decision denying the employee's petition. After reviewing the employee's testimony, the trial judge focused on a detailed analysis of the opinions expressed by Dr. Antoci in his deposition. After acknowledging that the doctor testified

that the employee's work duties contributed to his right hip condition, the judge found that the doctor's understanding of those physical activities was lacking as he possessed only "a passing knowledge of the employee's job duties." Trial Dec. at 5. Furthermore, the trial judge reasoned that the "mere fact that [the employee] engaged in some repetitive activities at times in his job does not warrant the characterization of this injury as an occupational disease as defined by the [Workers' Compensation] Act." Trial Dec. at 5. For these reasons, the trial judge concluded that the opinions of Dr. Antoci regarding causation were incompetent as the foundation for those opinions was deficient. He therefore rejected the opinions of Dr. Antoci and denied the employee's petition. From that denial, the employee took a timely appeal to the Appellate Division.

Our Appellate Division standard of review is highly deferential. When reviewing the decision of a trial judge, we are guided by the standard 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." R.I. Gen. Laws § 28-35-28(b). Accordingly, our panel is prohibited from engaging in a *de novo* review of the evidence without first determining that the trial judge was clearly wrong or overlooked or misconceived material evidence. *Diocese of Providence v. Vaz*, 679 A.2d 879, 881 (R.I. 1996).

The employee has submitted four (4) reasons of appeal, three (3) of which involve the trial judge's assessment of the testimony and opinions of Dr. Antoci. For expediency, we will initially address these three (3) reasons of appeal together.

The employee contends that the trial judge erred in concluding that the opinions expressed by Dr. Antoci were incompetent because the doctor had a limited understanding of the employee's specific job duties. He further argues that Dr. Antoci had an adequate understanding

of the employee's job duties and that the doctor was consistent in his opinion that those job duties were the cause of the employee's right hip condition. In addition, the employee asserts that the trial judge applied an inappropriately high standard of proof, particularly in light of the fact that the doctor's opinions were not rebutted by any other medical evidence.

It is well-established that an employee seeking workers' compensation benefits bears the burden of proving by competent evidence the essential elements of his claim. *C.D. Burnes Co. v. Guilbault*, 559 A.2d 637, 639 (R.I. 1989) (citations omitted). In defending an employee's petition for benefits, the employer is under no obligation to offer evidence to disprove or rebut the allegations made in the petition and may leave the employee to his proof. The mere fact that the employer chooses not to present any evidence does not automatically require that the trial judge accept the evidence presented by the employee as satisfying the burden of proof. As the Rhode Island Supreme Court has stated, "Positive, uncontradicted evidence. . .may be rejected if it contains inherent improbabilities or contradictions that alone or in connection with other circumstances tend to contradict it." *Hughes v. Saco Casting Co., Inc.*, 443 A.2d 1264, 1266 (R.I. 1982). In the case presently before the appellate panel, the trial judge had sufficient grounds to find that the employee had not proven the essential elements of his claim by a fair preponderance of the credible evidence.

After a detailed review of the testimony of Dr. Antoci, the trial judge rejected the doctor's opinions regarding the cause of the employee's right hip condition because Dr. Antoci did not have an accurate and complete understanding of the specific activities involved in the employee's job. During his direct examination by the employee's attorney, it became clear that Dr. Antoci initially was under the impression that the employee worked for many years as a UPS driver delivering packages, which would require repetitive lifting, bending, and twisting and

stepping in and out of the delivery truck. Even the hypothetical questions asked by the employee's attorney contained inaccurate descriptions of the job duties the employee described during his testimony in court. Dr. Antoci rendered his initial opinion that the employee's job duties were the likely cause of his disabling condition based upon those inaccurate descriptions of his work activities. When confronted with a more detailed description of the employee's job which was consistent with the employee's testimony in court as to his job duties, Dr. Antoci's statements were less definitive, responding that "theoretically" and "potentially" any physical activity can exacerbate degenerative changes around the hip joint.

The trial judge rejected the opinions of Dr. Antoci because those opinions were based upon an incomplete and inaccurate description of the employee's job duties. This is certainly true of the opinions the doctor gave on direct examination in his deposition. However, in the hypothetical question posed by the employer's attorney, the doctor received a more detailed and accurate description of the job, along with the fact that the employee had not worked from January 13, 2017, through June 24, 2018. Dr. Antoci's subsequent responses to questions whether those job activities described in the hypothetical question caused the employee's disabling condition became more equivocal and less definitive.

When originally asked for his opinion, Dr. Antoci stated that the work "could" contribute to the progression of symptoms and the need for surgery. Ee's Ex. 4, at 19:25. His initial opinion on the cause of the incapacity was that "lifting at work can contribute to an incapacity." Ee's Ex. 4, at 21:10-11. Later, when specifically asked if the work between October 2018 and December 2019, after the employee had been out of work for almost eighteen (18) months, had an effect on the employee's underlying hip condition, the doctor again responded with the words "can" and "could." Ee's Ex. 4, at 46:16-19; 47:2-5. Most importantly, as quoted earlier in this

opinion, at the end of his testimony, Dr. Antoci finally admitted that he was unable to state to a probability that the work performed by this employee caused the need for his hip replacement surgery. Ee's Ex. 4, at 48:1-22. Given this testimony, it was perfectly appropriate for the trial judge to reject the opinions of Dr. Antoci.

This matter is similar to *McAllister, Jr. v. Women & Infants Hospital of RI (Care NE)*, W.C.C. No. 2009-00302 (App. Div. May 31, 2011), in which the Appellate Division affirmed the decision and decree of the trial judge denying an employee's petition for compensation for an occupational disease allegedly caused by repetitive work activities. In *McAllister*, the appellate panel agreed with the trial judge that the opinions of the employee's doctor lacked a proper foundation as the doctor was unaware of the specific job duties of the employee and based his opinion on a very generalized impression of those duties. "[A]n expert medical opinion may be rejected if the foundation for that opinion is lacking or inaccurate." *Pacheco v. Johnston Public Schools*, W.C.C. No. 2006-04574 (App. Div. 2013). After reviewing the entirety of Dr. Antoci's deposition, we find that the trial judge was not clearly erroneous in rejecting the opinions of the doctor regarding causation as the doctor's initial opinions were based upon an inaccurate and incomplete description of the employee's job duties and upon receiving a complete and accurate job description, he could not state that more probably than not those activities caused *this* employee's disabling condition.

The employee's second reason of appeal asserts that the trial judge erred when he stated that "[t]he mere fact that [the employee] engaged in some repetitive activities at times in his job" was not sufficient to warrant the characterization of the injury as an occupational disease. Rhode Island General Laws § 28-34-1 of the Workers' Compensation Act defines an occupational disease as "a disease which is due to causes and conditions which are *characteristic of and*

peculiar to a particular trade, occupation, process, or employment." R.I. Gen. Laws § 28-34-1(emphasis added). The Legislature identified more than thirty (30) specific conditions as occupational diseases and then included a catch-all category for any "[d]isability arising from any cause connected with or arising from the *peculiar* characteristics of the employment." R.I. Gen. Laws § 28-34-2(33) (emphasis added). The work activities of lifting, bending, and twisting while moving boxes can hardly be characterized as "peculiar" to employment at UPS. The alleged cause of the employee's disability, repetitive lifting, bending, and twisting at work, does not satisfy the definition of an occupational disease under this section of the statute.

As we explained in *McAllister, supra*, an injury or disability due to repetitive activity may be established as a "personal injury arising out of and in the course of his or her employment" pursuant to Rhode Island General Laws § 28-33-1. There is no requirement in the statute that the injury or disability be caused by a single specific incident, accident, or trauma. *See Shoren v. United States Rubber Co.*, 87 R.I. 319, 323-324, 140 A.2d 768, 770 (1958); *see also Gartner v. Jackson's, Inc.*, 95 R.I. 489, 494-495, 188 A.2d 85, 88 (1963). However, whether attempting to establish an occupational disease or personal injury arising out of the employment, the standard of proof is the same. The employee must establish by a fair preponderance of the credible evidence that a causal relationship exists between his injury or condition and his employment. In this particular case, the trial judge concluded that the evidence in the record did not satisfy that burden. The trial judge did not overlook or misconstrue any material evidence in arriving at that conclusion and his finding that the employee failed to prove he sustained a work-related injury or disability is not clearly erroneous.

Accordingly, the employee's appeal is denied and dismissed, and the decision and decree of the trial judge are 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 **August 5, 2025.**

Minicucci, J. and Pepin Fay, J., concur.

ENTER:

/s/ Olsson, J.

/s/ Minicucci, J.

/s/ Pepin Fay, J.