

STATE OF RHODE ISLAND

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

TERRI S. AVILA

)

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VS.

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W.C.C. No. 2021-01378

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STATE OF RHODE ISLAND

)

FINAL DECREE OF THE APPELLATE DIVISION

This matter came before the Appellate Division upon the claim of appeal of the Petitioner/Employee, and upon consideration thereof, the employee's appeal is denied and dismissed, and is

ORDERED, ADJUDGED AND DECREED:

That the findings of fact and the orders contained in a Decree of this Court entered on May 1, 2023 be, and hereby are, affirmed

Entered as the Final Decree of this Court this 13th day of April 2026.

PER ORDER:

/s/ Nicholas DiFilippo  
Administrator

ENTER:

/s/ Conte, J.

/s/ Fay, J.

/s/ Lazieh, J.

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DECISION OF THE APPELLATE DIVISION

CONTE, J. This matter is before the Appellate Division on the Employee's appeal from the trial judge's decision and decree denying the Employee's Petition for Compensation Benefits. In her petition, the Employee alleged that on January 7, 2021, she sustained a work injury to both hands and peripheral neuralgia while doing repetitive tasks, which then led to depression and anxiety,<sup>1</sup> while employed in the Department of Labor and Training ("DLT") for the State of Rhode Island. She seeks partial or total disability compensation from January 8, 2021 and continuing.<sup>2</sup> After a thorough review of this matter, and in consideration of the parties'

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<sup>1</sup> Of significance, Employee's counsel argued in the appeal of this matter that the Employee is alleging a physical/mental injury, rather than a mental/mental injury, or a mental/physical injury.

<sup>2</sup> Although the Employee seeks partial or total disability compensation from January 8, 2021 and continuing, the parties stipulated, and the trial judge stated in his decision, that the Employee retired on September 16, 2022. Pursuant to R.I.G.L. § 28-33-45(c) and *William Hemond v. Brown Univ.*, W.C.C. Nos. 94-06179, 94-05142 (1997), the Employee is precluded from seeking weekly indemnity benefits beyond her retirement date of September 16, 2022. In *Hemond*, the Court stated: "Section 28-33-45(c) clearly provides that the employee is not entitled to collect any indemnity benefits after his retirement for any injury sustained less than two (2) years prior to his retirement. The only information needed, which is available to both parties, is the date of injury and date of retirement." Here, the Employee retired on September 16, 2022, which is within two (2) years of her January 7, 2021 injury date. Thus, the Employee, by operation of law, is ineligible to receive any weekly indemnity benefits subsequent to her September 16, 2022 retirement date.

respective arguments, we affirm the decision of the trial court and deny and dismiss the Employee's appeal.

Terri S. Avila (hereinafter the "Employee") began working for the Workforce Development Services in the DLT for the State of Rhode Island in 2009. In December of 2020, she began working in the position of a Business Service Specialist. She worked approximately thirty-five (35) hours per week, and her job duties included processing tax credit applications, setting up job fairs, and finding prospective employee candidates needed by employers to be hired. She alleged that her job duties involved data entry work which required and necessitated the repetitive movement and use of her hands. The Employee asserted that the processing of tax credit applications was paper based and could therefore only be completed in-person at her work location, and not from her home. The Employee alleged that she was singled out by her Employer with being overly assigned the task of processing voluminous numbers of tax credit applications.

The Employee initially sought medical treatment with her treating psychiatrist, Dr. Lucy Brown, who has been treating the Employee since the year 2015. The trial judge noted that the Employee, prior to treating with Dr. Brown, treated with retired physician, Dr. Laura Fixman, and that the Employee had a long history of taking anti-depressants and attending psychotherapy, dating back to 1970. The Employer in this matter objected to Dr. Brown's qualifications to testify as an expert in the field of psychiatry; however, the trial judge overruled this objection finding Dr. Brown to be a qualified expert witness. Dr. Brown evaluated the Employee in early January 2021, and she initially advised the Employee to refrain from work, but the Employee ultimately did return to work sometime in February 2021. The parties also stipulated that the

Employee retired from her employment with the respondent, State of Rhode Island, effective September 16, 2022.

The Employee's past medical history was also significant for and included pre-existing rheumatoid and osteoarthritis in both of her hands. The Employee contends that her position as a Business Service Specialist—processing paper tax credit applications and her repetitive data entry duties—exacerbated the pain and symptoms in both of her hands and wrists. She alleged that her hands and wrists became numb and achy by the end of her typical workday. She conceded to suffering from pre-existing rheumatoid arthritis throughout her entire body, and osteoarthritis in both of her hands for which she had treated with a Dr. Iulia Circiumaru Grillo, a rheumatologist. The Employee reported her exacerbated pain and hand symptoms to her supervisor; however, the Employee claimed that no work adjustments or accommodations were made for her. The Employee asserted that her continued pain and hand symptomology combined with the Employer's lack of empathy and lack of response to her complaints, resulted in the Employee going into an emotional "tailspin" and having "an emotional breakdown." The Employee alleged that her supervisors were neither sympathetic to, nor receptive to, working with her to amend her job duties and address her medical concerns and difficulties. Moreover, the Employee also admitted to having suffered from pre-existing chronic depression for a major part of her life, and that the lack of concern and action taken by the Employer was the impetus that resulted in her physical and emotional disability. As a result, the Employee felt compelled to leave her workplace as of January 8, 2021 and seek workers' compensation benefits.

In his bench decision, the trial judge reviewed the medical opinions expressed by Drs. Leonard Hubbard and Lucy Brown, and he rejected their opinions because they were not based on appropriate legal and factual foundations. The trial judge reasoned that the Employee "has

continually treated for emotional and medical health issues for decades relative to her hands and wrists.” Tr. 114: 19-21. As a result, the trial judge concluded that the Employee failed to prove by a fair preponderance of credible evidence that she sustained a compensable injury, and he denied the Employee’s petition.

The Appellate Division's standard of review is highly deferential to the findings and the determinations made by the trial judge. When reviewing the decision of a trial judge, we are constrained by the mandates set forth in Rhode Island General Laws § 28-35-28(b), which states: “[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous.” Accordingly, this panel is prohibited from engaging in a de novo review of the record 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); *see also Mulcahey v. New England Newspapers, Inc.*, 488 A.2d 681, 683 (R.I. 1985). Absent a clear error, this Appellate Division must review the trial judge's decision with the understanding that the findings of fact made at the trial level are deemed final. (*See* R.I. Gen. Laws § 28-35-28(b)).

In the Employee’s reasons of appeal, she seeks a reversal of the trial judge’s decision and decree arguing that the Employee has “proved her injury with competent and uncontradicted credible medical evidence. The trial judge erred in rejecting it, and the Appellate Division must reverse.” (EE’s R.O.A. at 8). In support of her appeal before this Appellate Panel, the Employee relies upon the Appellate Division case, *Price v. Eaton*, W.C.C. No. 99-05327 (App. Div. 2006). In that case, this Appellate Division stated that “[s]o long as expert testimony is produced which establishes that the incident or injury at work triggered or precipitated the psychological disorder and disability, the claim should be compensable.” *Id.*

In *Price*, we also discussed in depth the Rhode Island Supreme Court case of *Seitz v. L & R Indus. (Palco Products Div.)*, 437 A.2d 1345 (R.I. 1981) and the three (3) categories of psychological injuries. The first type of psychological injury consists of a mental stimulus causing a physical injury; the second type consists of a physical injury or trauma causing a mental injury or disability, and the third category consists of a mental stimulus causing a mental injury. At the appellate hearing, Employee's counsel argued that the Employee in this matter suffered a physical injury that also caused a resulting or "flow from" emotional injury and disability. Accordingly, Employee's counsel argues that the Employee suffered from, and seeks to establish, injuries consistent with a physical-mental claim. The following exchange took place at appellate oral argument:

"MR. DICKINSON: I think the case that was being applied was the Bess Eaton case which says that if -- as I recall, it says that if it's a physical injury that causes the mental suffering, that the Seitz standard doesn't apply, that's my understanding. I think the judge recognized that.

JUDGE CONTE: So are you alleging this is a physical-mental injury or mental-physical injury or mental-mental injury?

MR. DICKINSON: Physical-mental.

JUDGE CONTE: Okay."

Oral Argument Tr. 13: 15-25.

It is well settled that the party asserting the affirmative in a workers' compensation case has the burden of establishing, by competent legal evidence, all of the elements that entitle him or her to relief under the Workers' Compensation Act. *Delage v. Imperial Knife Co.*, 396 A.2d 938 (1979). In this matter, by alleging a physical-mental injury, the Employee is saddled with the

necessary burden of first proving a compensable *physical injury*, and then proving that the Employee suffered also from a resulting, or flow from, *psychological injury and/or disability*. Consequently, if the Employee fails to first establish a work-related physical injury, the resulting or flow from psychological injury and disability claim will also necessarily fail as well.

The Employee's reasons of appeal in this matter narrowly focuses on two pieces of medical evidence consisting of the medical opinions offered by Dr. Leonard Hubbard, an orthopedic physician, and the medical opinions offered by Dr. Lucy Brown, a psychiatrist. In the trial decision of this matter, the trial judge rejected the medical opinions of both Drs. Hubbard and Brown. The trial judge specifically rejected the medical opinions expressed by Dr. Hubbard, finding his medical opinions were lacking in an adequate legal foundation. The Employee argues that the trial judge erred and submits that the deposition of Dr. Hubbard contains a properly posed hypothetical question supporting Employee's claim of a work-related carpal tunnel injury. The Employee points to the *Rhode Island Rule of Evidence 703*, which states:

“[a]n expert's opinion may be based on a hypothetical question, facts or data perceived by the expert at or before the hearing, or facts or data in evidence. If of a type reasonably and customarily relied upon by experts in the particular field in forming opinions upon the subject, the underlying facts or data shall be admissible without testimony from the primary source.”

The Employee argues that Rule 703 allows for the use of hypothetical questions in offering medical opinions by medical experts. While this is undoubtedly true, the content of the hypothetical question, however, is also of significant importance. In order “[t]o be considered admissible, a hypothetical question to an expert must embrace all essential elements of the situation as they appear in evidence. And unless the question, as posed, contains all the pertinent, undisputed facts, its exclusion by the trial justice is not an abuse of discretion.” R.I. R. Evid. 703 Advisory Committee's Note (2026). Prior to rendering an opinion, an expert witness must be

provided with the facts necessary to form an adequate foundation for his opinion.

“Unquestionably, an[] expert’s opinion must be predicated upon facts legally sufficient to form a basis for his conclusion.” *Alterio v. Biltmore Constr. Corp.*, 377 A.2d 237, 240 (R.I. 1977) (citing *Nasco, Inc. v. Director of Pub. Works*, 360 A.2d 871 (1976); *Dickinson-Tidewater, Inc. v. Supervisor of Assessments*, 273 Md. 245, 329 A.2d 18 (1974)). Moreover, in *Alterio*, the Court stated: “[i]t follows that the facts upon which the opinion of the expert is based must be stated; otherwise, it becomes impossible to ascertain whether the conclusion drawn from them possesses sufficient probative force; or is not mere conjecture or speculation \* \* \*. *Dickinson-Tidewater, Inc. v. Supervisor of Assessments*, *supra* at 253, 329 A.2d at 23-24.” *Alterio v. Biltmore Construction Corp.*, 377 A.2d 237, 240 (1977) (internal quotation marks omitted).

The following hypothetical question was posed to Dr. Hubbard by Employee’s counsel:

“Q. And I want you to assume, Doctor, that she did work for the State of Rhode Island, and that she had responsibilities of processing what were known as work opportunity tax credit applications, and keying in information from other sources, and that the balance of her other work, 85 to 90 percent of it, would be some sort of keyboard activities, such as typing, pressing function keys, operating a mouse, and clicking while looking at a computer screen. Assuming that to be the case, Doctor, do you have an opinion based on a reasonable degree of medical certainty and probability as to the cause of the carpal tunnel syndrome that you presently diagnosed in October and November of 2021?

A. Her carpal tunnel syndrome is causally related to her employment to a reasonable degree of medical certainty.

Q Did you have an opinion, or do you have an opinion as to the two times you saw her, 10/6/21 and 11/1/21 with respect to her capacity or incapacity to do that kind of work?

A She was incapacitated for that kind of work.

Q Is that based upon a reasonable degree of medical certainty?

A. It is.”

(EE’s R.O.A. at 6-7)

The Employee argues that the trial judge erred in not accepting the testimony of Dr. Hubbard because Dr. Hubbard provided the trial court with an uncontradicted medical opinion that the Employee's carpal tunnel syndrome diagnosis was causally related to her employment and, furthermore, that said opinion was offered to a reasonable degree of medical certainty. However, what Employee's counsel fails to consider is the significant, pre-existing, physical and mental medical treatment and medical history of the Employee in this matter. The Employee had openly admitted to suffering from pre-existing rheumatoid arthritis throughout her entire body, and osteoarthritis in both of her hands for which she had treated with a rheumatologist, Dr. Grillo, for many years. She also admitted to having a significant past medical history in the nature of a previous bilateral carpal tunnel surgery. She further acknowledged having been treated by, and diagnosed with, a trigger finger, and also having undergone a left thumb arthroplasty surgery. It is undisputed that Dr. Hubbard had little to no knowledge of this Employee's past and complicated medical history relative to her past treatment of her hands. Dr. Hubbard also never reviewed any of the Employee's past medical records in forming his medical opinions. Further, and more importantly, none of the Employee's past and significant medical history was ever included in the hypothetical question posed to Dr. Hubbard and offered into evidence in this matter. Therefore, the hypothetical posed to Dr. Hubbard was not sufficiently framed in light of all of the Employee's past and present relevant medical treatment, and the trial judge was correct in rejecting his opinion based on the hypothetical.

It is well settled that an expert medical opinion cannot be considered to be legally competent if it is based upon an inadequate or inaccurate factual foundation. Our Appellate Division in the case of *Perdomo v. Benjamin Box Co.*, W.C.C. No. 2007-01241 (App. Div. 2009) stated as follows:

Rule 705 of the Rhode Island Rules of Evidence states that “before testifying in terms of opinion, an expert witness shall be first examined concerning the facts or data upon which the opinion is based.” Our Supreme Court has mandated that ‘an expert opinion must be predicated upon facts legally sufficient to form a basis for his [or her] conclusion.’ *Alterio v. Biltmore Construction Corp.*, 119 R.I. 307, 312, 377 A.2d 237, 240 (R.I. 1977). In the workers’ compensation context, if a medical expert’s opinion is based upon facts which are not established by the evidence or on a misconception of the pertinent facts, the probative force of the opinion is destroyed. See *Leviton Mfg. Co. v. Lillibridge*, 120 R.I. 283, 288–289, 387 A.2d 1034, 1037 (1978) (citing *Woods v. Safeway System Inc.*, 101 R.I. 343, 223 A.2d 347, 348 (1966)).

Furthermore, in *Delgado v. Tech Transportation*, W.C.C. No. 00-06811 (App. Div. 2002), our Appellate Division correctly stated as follows: “if the history given to a physician is rejected as lacking in credibility or *accuracy*, the court is free to reject the medical opinions of the physician as incompetent due to the inadequate or tainted foundation.” (citing *Mazzarella v. ITT Royal Elec.*, 120 R.I. 333, 388 A.2d 4 (R.I. 1978) (emphasis added). The court went on to state that “[it] may reject uncontradicted medical evidence where it is based upon an improper foundation or is inherently improbable.” *Id.* (citing *Hughes v. Saco Casting Co.*, 443 A.2d 1264 (R.I. 1982)) (internal quotation marks omitted). Lastly, our Appellate Division in the case of *Carter v. The Housing Auth. of Cranston*, W.C.C. No. 01-00621 (App. Div. 2005) stated:

[t]he intended purpose of expert medical testimony is to assist the court in the search for the truth. It is well-settled that a trial judge is free to accept or reject the testimony of a medical expert in whole or in part and to determine the probative value of that testimony.

Here, the doctor’s expert testimony and his medical opinions were offered to the trial judge with significant shortcomings. The trial evidence in this matter reveals that the Employee was only out of work for a closed period of time from January 8, 2021, until she returned to work sometime in February of 2021, and she continued to work until she ultimately retired on September 16, 2022. Dr. Hubbard first examined the Employee on October 6, 2021, some nine (9) months after her injury date, and he opined that the Employee was disabled. Dr. Hubbard’s

medical opinion finding the Employee to be disabled is totally inconsistent with the factual history of this case. The Employee was clearly capable of performing her job, yet Dr. Hubbard opined that the Employee was disabled. Dr. Hubbard's lack of knowledge of the Employee's past medical treatment, along with his lack of understanding of the very basic historical facts of this matter, are so deficient and flawed that the medical opinions he offered in this matter were completely destroyed of any probative value.

Here, due to Dr. Hubbard's inaccurate and incomplete understanding of the Employee's past significant medical history, the medical opinions offered by Dr. Hubbard were consequently rendered by the trial judge to be unpersuasive and lacking in any meaningful probative value. There is an abundance of evidence to support the trial judge's decision finding Dr. Hubbard's medical opinions to be lacking in reliability due to an inaccurate and inadequate foundational history and medical history. Thus, the trial judge properly exercised his discretionary powers in rejecting the medical opinions offered by Dr. Hubbard in this matter.

As previously stated, Employee's counsel argued that the reasons of appeal in this case consist of an allegation of a physical-mental claim only. With this Appellate Panel having found that the Employee has failed in her burden of proving her physical injury, the Employee's derivative psychological claim, as a matter of law, must also, therefore, fail. Accordingly, because the Employee has failed in her burden of proving a physical injury in this matter, this Appellate Panel need not engage in a review of the psychological opinions offered by Dr. Lucy Brown in her deposition testimony and medical reports. Lastly, the Employee has not made, nor argued, a claim relative to a mental-mental theory in the reasons of appeal in this matter, and, therefore, this Appellate Panel need not address nor engage in a discussion relative to the standards as set forth in the *Seitz* decision.

In summary, we find no error on the part of the trial judge in finding the Employee's injury is not compensable under our Workers' Compensation Act; therefore, the Employee's reasons of appeal are 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 enter on April 13, 2026.

Fay, J. and Lazieh, J. concur.

ENTER:

/s/ Conte, J.

/s/ Fay, J.

/s/ Lazieh, J.