

STATE OF RHODE ISLAND

PROVIDENCE, SC.

WORKER'S COMPENSATION COURT  
APPELLATE DIVISION

GUERLINE SALOMON

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VS.

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W.C.C. No. 2021-02878

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CARE NEW ENGLAND HEALTH SYSTEM

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GUERLINE SALOMON

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VS.

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W.C.C. No. 2021-02871

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CARE NEW ENGLAND HEALTH SYSTEM

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GUERLINE SALOMON

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VS.

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W.C.C. No. 2021-02869

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CARE NEW ENGLAND HEALTH SYSTEM

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GUERLINE SALOMON

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VS.

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W.C.C. No. 2021-02867

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CARE NEW ENGLAND HEALTH SYSTEM

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### DECISION OF THE APPELLATE DIVISION

OLSSON, J. These matters are before the Appellate Division on the employee's appeals from the trial judge's decision and decrees denying all four (4) of the employee's petitions to review requesting certain medical treatment and evaluations for a work-related injury which occurred on August 6, 2018. After a thorough review of the record and consideration of the arguments presented by both parties, we deny the employee's appeals and affirm the trial judge's decision and decrees.

The employee received weekly benefits pursuant to a Memorandum of Agreement dated August 22, 2018, which states that the employee sustained a work-related injury, specifically a low back strain, on August 6, 2018 and began receiving weekly benefits for partial incapacity on August 12, 2018. The employee's weekly benefits were discontinued as of September 30, 2018 pursuant to a Suspension Agreement signed by the employee on November 24, 2018.

On May 18, 2021, the employee, through her attorney, filed four (4) petitions. W.C.C. No. 2021-02867 is an employee's petition to review alleging that the employer has refused to pay for or provide medical treatment, specifically chiropractic treatment recommended by Mark E. Clarke, a family medicine nurse practitioner. W.C.C. No. 2021-02869 is an employee's petition to review requesting permission to undergo an MRI of the lumbar spine as recommended by Mr. Clarke. W.C.C. No. 2021-02871 is an employee's petition to review requesting permission for an evaluation by a pain specialist as recommended by Mr. Clarke. W.C.C. No. 2021-02878 is an employee's petition to review requesting permission for an evaluation by an orthopedic surgeon as recommended by Mr. Clarke. At the pretrial conference on June 10, 2021, the trial judge entered pretrial orders denying each of the petitions. The employee filed timely claims for trial in each case. The matters were consolidated for trial.

The employee presented the affidavits and reports of Concentra and DeCrescenzo Chiropractic regarding her medical treatment at the time of her work-related injury. The records reflect that on August 3, 2018, the employee injured her lower back while working as a certified nursing assistant (“CNA”) at New Horizon Adult Daycare (“New Horizon”), which is part of Care New England.<sup>1</sup> The employee first sought treatment on August 8, 2018 at Concentra Medical Center and was diagnosed with a lumbosacral strain. Ee’s Ex. 4, Affidavit and reports of Concentra Medical Center. The employee was prescribed physical therapy and certain medications. On August 21, 2018, the employee underwent x-rays of her thoracic and lumbar spines at the Memorial Hospital Family Care Clinic, which revealed thoracolumbar scoliosis with mild degenerative changes. Ee’s Ex. 2, Affidavit and reports of DeCrescenzo Chiropractic.

On August 23, 2018, the employee sought treatment at DeCrescenzo Chiropractic and was treated by Dr. Justin Belanger, who diagnosed the employee with acute thoracic and lumbar sprains/strains with subluxation and myospasms. Ee’s Ex. 2. A note contained in the records states that the employee was disabled until September 30, 2018, and would return to work on October 1, 2018, although she continued chiropractic treatment until November 1, 2018. In a discharge summary dated December 4, 2018, Dr. Belanger stated that the employee had made good improvement, but that “[c]linical experience dictates there will be greater possibility of re-injury and degenerative joint conditions as a result of this accident.” Ee’s Ex. 2.

The employee testified that her job duties as a CNA consisted of bringing clients to the bathroom, feeding them, and assisting them in performing daily activities. The employee stated that after her work injury, she returned to work for the employer on October 1, 2018, performing her regular job duties. In 2019, the employee took on the additional duty of food safety manager

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<sup>1</sup> Several of the medical records state that the injury date is August 3, 2018; however, the Memorandum of Agreement indicates the injury date is August 6, 2018.

at New Horizon. As a food safety manager, the employee monitored the kitchen area and food preparation and delivery.

On October 9, 2020, the employee submitted a handwritten letter to her employer stating that she was resigning from her employment effective that day. Er's Ex. B, copy of handwritten note dated October 9, 2020. In the letter, the employee listed her reason for resignation as "the group in which I work, and the new target and the methods of accomplishing them had made it increasingly difficult to feel I'm contributing enough." Er's Ex. B. The letter made no mention of any injury or physical impairments that led to her inability to fulfill her duties as either a CNA or a food safety manager. The employee has not worked anywhere since she left her job in October 2020.

The employee asserted that the condition of her back had gotten worse after she returned to work and was continuing to worsen. She acknowledged, however, that she has not sought any additional medical treatment for her back, although she has health insurance and has received treatment for other medical issues. On cross-examination, the employee admitted that she left work for multiple reasons in October 2020, including an issue with the employer over the number of hours she was assigned when the facility re-opened in September 2020 after its closure due to the COVID outbreak. She asserted that her food safety license, which she claimed was being used by the employer, required that she work in the facility eight (8) hours a day and she was only given four (4) hours a day on the schedule. Consequently, the employee believed that her food safety license was in peril. She also acknowledged that she applied for and received unemployment benefits from October 2020 through March 20, 2021.

The employee submitted the deposition and records of Mark E. Clarke, a board-certified nurse practitioner. Ee's Ex. 5, Depo. of Mark E. Clarke, N.P., January 26, 2022. The employee

was evaluated by Mr. Clarke on April 8, 2021, on referral by her attorney. The history recorded in the examination report states that the employee experienced the sudden onset of low back pain during a patient transfer, had a medical evaluation and chiropractic treatment, returned to work after a month, though still experiencing pain, and later left her job because she could no longer perform her duties due to low back pain. During the physical examination, Mr. Clarke noted pain with full range of motion of the lower lumbar spine, but no objective physical findings. His diagnosis was a lumbar strain and he opined that the employee was unable to work as a CNA. He recommended an MRI, evaluation by an orthopedic surgeon, chiropractic treatment, and evaluation and treatment by a pain specialist.

On cross-examination, Mr. Clarke acknowledged that he was unaware of how long the employee worked after she returned to her job on October 1, 2018. He had no knowledge of any medical treatment for the injury since 2018 and was not provided with any medical records regarding prior treatment of the employee's injury. The employee's attorney then provided Mr. Clarke with records from Concentra Medical Center, DeCrescenzo Chiropractic, and Kent Hospital, to review during the deposition. The records of Concentra Medical Center and DeCrescenzo Chiropractic were previously introduced as exhibits during the trial; however, the records of Kent Hospital were omitted. Mr. Clarke asserted that these records reinforced his opinion as to the employee's injury and disability.

On March 7, 2022, the trial judge entered an order referring the employee to the Chief Judge Robert F. Arrigan Rehabilitation Center ("Arrigan Center") for a rehabilitation evaluation and recommendations for treatment or other services. On March 28, 2022, the employee was evaluated by multiple providers at the Arrigan Center including Catherine Krepkikh, DPT, who performed a physical therapy assessment. On April 6, 2022, Robbin E. Boelter, RN, BSN, of the

Arrigan Center, sent a letter to the trial judge stating that it was not possible for the Arrigan Center to treat the employee because she did not have a treating physician. The records of Ms. Krepkikh and the letter from the Arrigan Center were not entered into evidence by either party.

The employer submitted several exhibits consisting of records and decisions of the Unemployment Division of the Rhode Island Department of Labor and Training. The initial decision on the employee's application dated April 20, 2021, states that the employee claimed that she left her job voluntarily due to dissatisfaction with her wages. Er's Ex. C, Claimant Decision with mailing date 04/20/21. It was determined that the employee left her employment without good cause and her application for benefits was denied. This decision was affirmed by a referee of the division on June 25, 2021. After a subsequent telephonic hearing before the Board of Review, a decision was issued on September 3, 2021 reversing the prior decisions and granting benefits to the employee. The Board concluded that the employee held a reasonable belief that her food and beverage license was in jeopardy if she remained in her job and therefore, she left her employment for good cause. Er's Ex. E, Decision of Board of Review, with a mailing date of September 3, 2021.

In his bench decision, the trial judge reviewed the evidence in detail and denied all four (4) of the employee's petitions. The trial judge determined that the employee failed to prove that authorization for chiropractic treatment, an MRI of her lumber spine, an evaluation by a pain specialist, and an assessment by an orthopedic surgeon, were necessary to cure, relieve, and rehabilitate her from the effects of the August 6, 2018 injury. In weighing the report and testimony of Mr. Clarke, which was the only current medical evidence, the trial judge noted that Mr. Clarke's evaluation took place over two-and-a-half (2½) years after the injury and the physical examination revealed no positive objective findings, and only subjective complaints of

pain. In addition, Mr. Clarke's opinions as to causation and disability were based upon an inaccurate history and incomplete facts as he was unaware of how long the employee had worked after returning to the job on October 1, 2018 and believed that she left work due to worsening back pain, which was contrary to the statements in her resignation letter.

The trial judge also cited the fact that the employee did not treat for any back complaints for over two-and-a-half (2½) years despite having health insurance and treating for other medical issues during that time. Furthermore, the trial judge found that the employee's assertion that she stopped working due to worsening back pain was not credible because her hand-written resignation note failed to mention that fact and she did not seek any medical treatment for the condition. Consequently, the trial judge concluded that the employee's August 6, 2018 work injury requires no further medical evaluations or treatment. The employee has appealed the denial of the four (4) petitions.

The standard of review of the appellate panel in a workers' compensation matter is clearly 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." Our review of a trial judge's decision is particularly deferential when those findings are based upon credibility determinations. Before conducting a *de novo* review of the record, the appellate panel must explicitly find that the trial judge "was clearly wrong either because the [judge] was obviously mistaken in his or her judgment of the credibility of the witnesses or overlooked or misconceived material evidence in arriving at the conclusion reached." *Mulcahey v. New England Newspapers*, 488 A.2d 681, 683 (R.I. 1985). After a thorough review of the record and the trial judge's decision, we find no error in the determinations made by the trial judge.

The employee was represented by counsel during the trial on the four (4) petitions; however, she is now self-represented at the appellate level. The employee filed a two-page typed narrative explaining her reasons for appealing the trial judge's decision. First, the employee argues that the trial judge overlooked other evidence supporting the opinions of Mr. Clarke that she required additional medical evaluations and treatment due to the effects of the work injury she sustained on August 6, 2018. She specifically points to the report of Ms. Krepkikh from the Arrigan Center and the statement that her "symptoms are consistent with a *resolved* lumbar strain in a setting of scoliosis and mild lumbar degenerative changes" (emphasis added). Ee's Reasons of Appeal at 1. However, the reports of the employee's evaluation at the Arrigan Center, including the report of Ms. Krepkikh, were never submitted to the court as an exhibit and marked into evidence. Therefore, they are not part of the record that can be reviewed by the trial judge or by the appellate panel. *Diocese of Providence v. Vaz*, 679 A.2d 879, 881 (R.I. 1996) (citing *Whittaker v. Health-Tex, Inc.*, 440 A.2d 122 (R.I. 1982)).

The employee also contends that the trial judge failed to consider a certain statement contained in the discharge summary written by Dr. Belanger, the chiropractor, that the employee believes supports the opinions of Mr. Clarke. Dr. Belanger wrote on December 4, 2018, that the employee had made improvement with treatment but that "[c]linical experience dictates there will be greater possibility of re-injury and degenerative joint conditions as a result of this accident." Ee's Ex. 2, Affidavit and records of DeCrescenzo Chiropractic. The statement merely reflects the possibility of some future medical issues and clearly does not establish that the employee's alleged problems with her back in 2020 or 2021 are due to the effects of the work injury in 2018. Furthermore, the x-ray done in 2018 at the time of the injury revealed the employee already had thoracolumbar scoliosis, or curvature of the spine, and mild degenerative

changes, which were pre-existing and not due to the work injury. The statement that the employee may experience back problems in the future is mere conjecture and does not establish a connection between the injury in 2018 and the employee's current complaints.

The employee also contends that the trial judge erroneously concluded that Mr. Clarke's opinions were based upon an inaccurate and incomplete history. She argues that although Mr. Clarke did not have any records of her prior medical treatment at the time of his examination, he was provided with those records at his deposition and did not alter his opinions. However, the employee fails to recognize that Mr. Clarke was not aware of certain relevant facts. Specifically, he did not know that the employee performed her regular job for about two (2) years after she returned to work in 2018. In addition, Mr. Clarke was under the impression that the employee left work because she could no longer tolerate her back pain. He was unaware that she voluntarily resigned with no mention of back pain to her employer. He was also unaware that after she resigned in October 2020, she applied for and received unemployment benefits based on her contention that she believed her food and beverage license was in jeopardy. The employee did not apply for TDI benefits alleging an inability to work due to her alleged back pain.

These facts are certainly relevant to a determination as to whether the employee's current back complaints are related to an injury she sustained in 2018. Mr. Clarke was not provided with these facts and, therefore, did not consider them in rendering his opinions. Furthermore, Mr. Clarke stated that there were no objective findings in the employee's physical examination and that it was benign. Considering all of these circumstances, the trial judge had more than sufficient basis to reject Mr. Clarke's opinion that the employee's current condition was related to the 2018 work injury and that she required the medical services requested in the petitions.

Finally, the employee argues that the trial judge relied upon a misunderstanding of her testimony concerning private health insurance. The employee asserts that she did not seek treatment for her back since she returned to work because she did not believe it would be covered. She did have health insurance through her employer while she was working but believed that it would not cover any back treatment because it was originally a work injury. In denying the employee's petitions, the trial judge did consider the fact that there was no evidence that the employee had sought treatment for back complaints from the time she returned to work in October 2018 until she saw Mr. Clarke in April 2021. Coincidentally, the employee saw Mr. Clarke after her unemployment benefits ran out in March 2021. It was not an error for the trial judge to draw a negative inference from the fact that the employee never sought treatment for her alleged severe back pain over the course of almost three (3) years when she attempted to relate her condition in 2021 to a 2018 work injury.

The significant gap in treatment from 2018 to 2021 was one of the factors in the trial judge's determination that the employee's assertion that she left work in October 2021 due to her back pain was not credible. During that time, the employee continually performed her regular job but for a brief period at the onset of the COVID pandemic. The trial judge also noted that the employee voluntarily resigned and never mentioned her back pain to the employer in the handwritten note she submitted or at any other time. The employee also acknowledged in her testimony that she had other reasons for resigning aside from her alleged back complaints and this was substantiated by the assertions she made in her unemployment benefits claim. The trial judge's determination that the employee's testimony was not credible is well-supported by competent evidence in the record.

Based upon the foregoing discussion, we deny and dismiss the employee's claims of appeal in each of the four (4) petitions and affirm the trial judge's decision and decrees. In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, final decrees, proposed copies of which are enclosed, shall be entered on December 23, 2024.

Feeney, J. and Reall, J. concur.

ENTER:

/s/ Olsson, J.

/s/ Feeney, J.

/s/ Reall, J.

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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 of fact and the orders contained in a decree of this Court entered on April 21, 2022 be, and they hereby are, affirmed.

Entered as the final decree of this Court this **23<sup>rd</sup> day of December 2024.**

PER ORDER:

/s/ Nicholas DiFilippo  
Administrator

ENTER:

/s/ Olsson, J.

/s/ Feeney, J.

/s/ Reall, J.