STATE OF RHODE ISLAND

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

LISA ARONE	)	
	)	
VS.	)	W.C.C. 2022-06114
	)	
SARGENT REHABILITATION CENTER	)	

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 January 26, 2024 be, and hereby are, affirmed

Entered as the Final Decree of this Court this 29th day of April 2026.

PER ORDER:

/s/ Nicholas DiFilippo
Administrator

ENTER:

/s/ Hardman, J.

/s/Reall, J.

/s/Lazieh, J.

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DECISION OF THE APPELLATE DIVISION

HARDMAN, 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 to Review claiming her incapacity had returned. The Employee had been found to have suffered an injury on October 21, 2020, arising while working at Sargent Rehabilitation Center (hereinafter the "Employer"). In the pretrial order entered on August 30, 2021, her injury was memorialized as resolved aggravation of pre-existing neck pain, headaches, and vertigo. It was documented that she was partially disabled from October 22, 2020 to July 10, 2021, as documented in the court order entered on August 30, 2021 in W.C.C. 2021-00789. In the current petition before this Court, she claims that the trial judge erred in denying her petition alleging a return of incapacity from September 30, 2021 and continuing. After a thorough review of this matter, and in consideration of the parties' respective arguments, we affirm the decision of the trial court and deny and dismiss the Employee's appeal.

Lisa Arone (hereinafter the "Employee") first worked for the Employer, which is a rehabilitation school, as a substitute teacher and then was hired as an emergency certified

classroom teacher. The Employee testified that as of October 21, 2020, she worked for the Employer for around one (1) year. She testified that most students have behavioral issues and would sometimes get physical with her—sometimes, even daily, she would need to restrain a student. The Employee had a litany of job duties while working with the students. On October 21, 2020, the Employee had just sent her students off to physical education, when she returned to her classroom and heard a "ruckus going on outside." She presented to the scene of the incident and attempted to assist other faculty members in restraining a male student. As the Employee was trying to restrain the student, he kicked her in the upper back area on her left side.

As a result of this incident, the Employee alleged that she sustained back pain, neck pain, headaches, numbness in her arm, dizziness from time to time, and she alleged experiencing migraines every day. She testified that the next day she was very sore, and she continued to work the next few days. She testified that on October 23, two (2) days later, the symptoms were getting worse, so she called HR and asked to see a doctor. After talking to HR, the Employee sought treatment with a chiropractor, Dr. Douglas DeCubellis. The Employee then sought treatment with Dr. Salko at University Orthopedics in East Greenwich, and he referred her to physical therapy, and she completed nine (9) visits. While attending physical therapy, she underwent an examination by Dr. Singer. Subsequently, she attended an examination with Dr. Golini on June 30, 2021.

The Employee testified that she continued to experience worsening headaches during the summer of 2021, that her neck and back pain continued, and that she developed additional symptoms after August 30, 2021, which included pain below the base of her skull and trouble sleeping. Dr. Van Poznak, her family physician, was treating the Employee during this time. She testified to trying "several different types of medication" and receiving Cortisone and Botox

injections, but nothing helped. The Employee admitted to treating for vertigo before her October 21, 2020 injury, dating back to as far as 2014, in which she treated with Drs. Gordon and L'Europa. Specifically, she complained of "ongoing migraine headaches" and vertigo in 2017. She also reported dizziness, vertigo, and headaches in the years 2018 and 2019. She treated with Dr. L'Europa with maintenance Botox injections of such issues. In addition, she treated with Dr. Ramocki, a vestibular balance specialist—the Employee underwent physical therapy for this condition. Notwithstanding the extensive medical history, the trial judge focused on three doctors and their testimony: Dr. Gordon, Dr. Golini, and Dr. Morgan. The trial judge chose to rely on Drs. Golini's and Morgan's testimony over Dr. Gordon's testimony. Dr. Gordon was the Employee's medical expert and because the trial judge chose to rely on the other two experts, he rejected the testimony of Dr. Gordon.

Around the summer of 2021, the Employee was referred to Dr. Norman Gordon. She first presented to Dr. Gordon on September 30, 2021. She reported experiencing headaches daily and had dizziness and neck pain, so he prescribed her Doxepin for those concerns. He admitted treating her prior to her injury on October 21, 2020. He testified that the Employee's symptoms had changed a great deal since her examination with Dr. Golini, as she then reported numbness of her hands. She informed him at that visit that she smoked marijuana "all day, every day." Ee's Ex. 6. at 31:19–22. Dr. Gordon then examined the Employee on January 11, 2022, and his diagnoses were again headaches, dizziness, and neck pain, and he found she was dealing with depressive disorder and memory impairment. He prescribed her Emgality for migraines and Rizatriptan for when the headaches got worse. Ee's Ex. 6. at 17:16–20. She was also referred for Botox injections. Dr. Gordon examined her again in May, June, and August of 2022. Dr. Gordon was asked in his deposition whether the Employee's disability had returned as of September 30,

2021 and that his "opinion [is] to a reasonable degree of certainty that her symptoms that she described when [he] first saw her were related to the injury." Ee's Ex. 6. at 22:3–6.

Dr. Gordon admitted to treating her for migraines and vertigo in 2014 but believed that the preexisting symptoms had resolved, as he agreed that she was "asymptomatic before the injury with respect to headaches, neck problems and vertigo[. . . .]" Ee's Ex. 6. at 28:21–24. He testified that his opinions were based on the history provided to him by the Employee. The trial judge noted that Dr. Gordon was unaware of the treatment she received by DeCubellis for a neck condition, that he was unaware of the medical findings of Drs. Furey and Van Poznak, that he did not review the reports of Dr. Ramocki, and that there was no history of trauma to the Employee's neck besides the incident on October 21, 2020. Dr. Gordon did not agree with Dr. Golini's opinion that the Employee's work-related injury came to an end in July of 2021.

Dr. Golini examined the Employee on June 30, 2021, at the behest of the earlier trial judge in W.C.C. 2021-00789. Dr. Golini documented that she had experienced headaches, vertigo, neck, and left shoulder pain since her October 21, 2020 injury. During his physical examination, he found that she "never demonstrated any objective findings consistent with radiculopathy[,]" (Ct's Ex. I. at 5) but her October 21, 2020 injury exacerbated her pre-existing conditions. Thus, Dr. Golini opined that she recovered from the effects of her work injury and, at the time of her exam, could return to work. The Employee treated with Dr. Morgan and presented to him on January 24, 2023. Dr. Morgan opined that the Employee's head and neck injury had resolved, even after considering Dr. Golini's findings and opinions. Additionally, Dr. Morgan opined that her chronic daily headaches were unrelated to the October 21, 2020 injury. He opined that she was suffering from "chronic somatization with symptom magnification[,]" (Er's Ex. A. at 22:17–18) which "[came] from the emotion behavioral aspects of the brain[. . . .]"

Id. at 23:5–6. He diagnosed her with suffering from cannabis use disorder. *Id.* at 23:17–20. In conclusion, Dr. Morgan opined that the Employee could do her job. *Id.* at 26:15.

The trial judge's decision denied Employee's petition on January 19, 2024. The trial judge reviewed the opinions expressed by Dr. Golini, Dr. Gordon, and Dr. Morgan. The trial judge rejected the findings of Dr. Gordon for three reasons: (1) because he found his testimony unreliable since he did not review the Employee's medical history; (2) because his testimony was inconsistent with the decree entered on August 30, 2021 (that the Employee's incapacity for work ended on July 10, 2021); and (3) his opinion was based on an incomplete and inaccurate medical history. The trial judge found that Dr. Gordon's opinion failed to meet the standards of being based on an accurate factual foundation because he did not have knowledge of the Employee's condition at the time she was no longer disabled, as the August 30, 2021 decree documented. Lastly, the trial judge found that the Employee failed to provide medical testimony or evidence that her incapacity to work returned, increased, or was casually related to the October 21, 2020 injury.

The Appellate Division's standard of review is highly deferential to the findings and the determinations made by the trial judge. When this Appellate panel reviews the decision of a trial judge, we must follow the guidelines set forth in Rhode Island General Laws § 28-35-28(b). R.I.G.L. § 28-35-28(b) 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." Thus, we are 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). Absent a clear error, we must review the trial judge's decision

with the assumption that the findings of fact made by him or her are final. *See* R.I. Gen. Laws § 28-35-28(b).

In the Employee's first three (3) reasons of appeal, she argues that the trial judge erred in finding that Dr. Gordon was unaware of the Employee's prior treatment and the other doctor's medical findings. *See* Ee's R.O.A. at 1. As the trial judge noted, and Dr. Gordon testified to, Dr. Gordon was unaware of the Employee's prior treatment and the other doctor's findings, and he based his opinions on the history that the Employee gave him at the time he *examined* the Employee. *See* Ee's Ex 6. at 28:2–6, 29:6–25, 30:1–23, 34:8–15. At the time of Dr. Gordon's testimony, he reviewed Dr. Golini's report which referenced the Employee's treatment with Dr. Salko, Dr. DeCubellis, and the medical findings of Drs. Furey and Van Poznak. *See* Ee's Ex. 6. at 8:7–21. In *Burnham v. Hasbro,* this Court stated "[a]lthough we cannot substitute our evaluation of the evidence for that of the trial judge, we can examine whether the expert opinions upon which he relied were competent." *Burnham v. Hasbro*, W.C.C. 2004-01070 (App. Div. 2009).

Dr. Gordon's opinion was incompetent because, although Dr. Golini's report referenced the other treatment histories and findings, Dr. Gordon's review of that report alone does not qualify as a competent review of the Employee's medical records and the other doctors' findings. Specifically, Dr. Golini's report documented tidbits of information from these various doctors—only two pages of condensed information in paragraph format—compared to the hundreds of pages of medical records accumulated by the Employee in her treatment with these various doctors. As a result, although Dr. Gordon briefly reviewed Dr. Golini's report during his testimony which referenced the Employee's other treatment history, Dr. Gordon's review of that

report was not enough to be considered a competent review of Employee's medical records. Therefore, the Employee's first three (3) reasons of appeal are rejected.

Second, in the Employee's fifth (5th) and sixth (6th) reasons of appeal, she alleges that the trial judge erred in sustaining the Employer's objections during Drs. Gordon's and Morgan's depositions. Under Rule 2.13(A)(3) of the Workers' Compensation Court Rules of Practice, "[o]bjections made during a deposition which is introduced into evidence at trial shall be deemed waived unless the objecting party requests a ruling by the trial judge on a specific objection prior to the admission of the deposition into evidence." However, as stated in *Kelvey v. Coughlin*, "a trial justice's handling of discovery is accorded broad discretion. To allow or to deny discovery is reviewable only for an abuse of discretion." *Kelvey v. Coughlin*, 625 A.2d 775, 776 (R.I. 1993) (citations omitted).

Here, Employer's counsel inquired as to the trial judge's handling of objections in deposition testimony. Tr. at 40:9–13. The trial judge explained that he would rule on the objections at the time he evaluated the evidence submitted by the parties. Tr. at 40:14–25, 41:1–17. This conversation occurred on February 16, 2023. The depositions were marked into evidence on June 12, 2023. On June 12, 2023, the trial judge asked *Employee's* counsel "I assume if there is any relevant objections, you want me to rule at the time I review the transcript for purposes of decision, correct?" to which *Employee's* counsel answered in the affirmative. Tr. at 45:14–18. In other words, both parties and the trial judge agreed that the objections would be ruled on by the trial judge during his evaluation of the transcript and pertinent evidence. We believe this was not an abuse of discretion by the trial judge and, therefore, reject the Employee's fifth (5th) and sixth (6th) reasons of appeal.

Next, the Employee alleges that the trial judge erred in holding that an employee petitioning for a return of incapacity must establish a change in her condition since the date that she was found to be no longer disabled. The Employee cites to two cases in arguing these reasons of appeal: *Grant v. Leviton Mfg. Co.*, 692 A.2d 685 (R.I. 1997) and *LaFazia v. D. Moretti Sheet Metal Co.*, 692 A.2d 1206 (R.I. 1997). In *LaFazia*, the Rhode Island Supreme Court stated that "[§ 28-33-20.1(b)] requires the employee to document that his incapacity for work has "increased or returned," but the employee is not required "to document a comparative change of condition." *LaFazia*, 692 A.2d at 1210. In addition, the Court clearly lays out the elements an employee must show to prove a recurrence of incapacity based on a return of a prior incapacity. *See id.* (enumerating the two elements: "1. [t]he employee must establish a relationship or a "nexus" between his or her previous incapacity and the alleged recurrence[,]" and "2. [t]he employee need not document a comparative change of condition.").

In this case, the trial judge erred in relying on *Burnham v. Hasbro*, W.C.C. 2004-01070 (App. Div. 2009). *Burnham* stands for the proposition that an employer must provide comparative medical evidence that establishes an improvement in the employee's condition to change the employee's incapacity from total to partial incapacity. *See generally id.* The Employee here alleges a *recurrence* of incapacity, which was originally partial incapacity, and the Employee sought to return to such incapacity. The trial judge stated that "the employee must present legally sufficient medical evidence establishing a change in the employee's condition since the date she was found no longer disabled." Dec. at 9. This is a correct recitation of the law regarding a change from total to partial incapacity under *Burnham*. However, this was a misstatement of the law regarding the elements an Employee must prove to make out a case of a recurrence of incapacity. The R.I. Supreme Court in *LaFazia* stated that "an employee can prove

a recurrence of incapacity without any reference whatsoever to his or her physical condition on the date the previous incapacity was adjudged to have ended." *LaFazia*, 692 A.2d at 1210. Moreover, as previously discussed, *LaFazia* clearly laid out the elements to make a case of recurrence, and the trial judge misstated these elements, committing plain error on this point. Notwithstanding this, it was harmless error.

Specifically, in accordance with *Parenteau v. Zimmerman Engineering, Inc.*, here the trial judge weighed the medical experts' testimony and, as explained, chose to rely on the medical opinions of Drs. Golini and Morgan over the opinion of Dr. Gordon. *See Parenteau v. Zimmerman Engineering, Inc.*, 299 A.2d 168, 174 (R.I. 1973) (finding "[t]he important factor here is that the trial commissioner, faced with conflicting medical opinions, chose to rely on the opinion of Dr. Berk and Dr. Stoll on the issue of causation. This he had the right to do."). Despite the faulty reliance on *Burnham* by the trial judge, the ultimate result of relying on one (or multiple) medical expert(s)—Drs. Morgan and Golini over Dr. Gordon—was within the discretion of the trial judge. Therefore, the Employee's reasons of appeal on this point is rejected.

Similarly, the Employee alleges that the trial justice erred in holding that Dr. Gordon's testimony failed to meet her burden of proof in establishing a *prima facie* case of recurrence of incapacity. In *LaFazia*, the Court set out the standard an Employee must meet to make out a *prima facie* case of a return of prior incapacity:

> all that must be shown *prima facie* is that the present incapacity represents a return of an incapacity that is the same as or substantially similar to that which the worker formerly experienced. [. . .] However, to prove that there has been no recurrence of a previously terminated incapacity, or that the incapacities are different, the employer may introduce comparative evidence.

LaFazia, 692 A.2d at 1210. Here, Dr. Gordon's testimony and opinion found that the Employee suffered a recurrence of her October 21, 2020 injury. The trial judge elected to rely on the opinion of Dr. Morgan, which was introduced by the Employer, and he opined that there was no recurrence of a previously terminated incapacity. The trial judge then properly "evaluate[d] all the evidence offered, [and] ma[d]e credibility determinations," (*LaFazia*, 692 A.2d at 1210) based on these medical experts, and he decided that the Employee did not carry her burden of proof to prove a recurrence of the October 21, 2020 injury by a fair preponderance of the credible evidence. Therefore, the trial judge correctly chose the Employer's medical expert over that of the Employee's medical expert. As a result, we reject the Employee's reasons of appeal on this point.

Lastly, the Employee contends that the trial judge erred in holding that "the medical opinion relating the employee's recurrence to a work-related injury is based on an incomplete and inaccurate medical history." Ee's R.O.A. at 2 (quoting Dec. at 10). Dr. Gordon's opinion was based at first on the Employee's history provided to him during his examination of her and then on a review of Dr. Golini's report, which briefly referenced other treatment history, during his testimony. The trial judge properly found that Dr. Gordon's opinion failed to meet the legally sufficient nature to form a basis for his conclusion under *Alterio v. Biltmore Construction Corp.*, 377 A.2d 237, 240 (R.I. 1977). Dr. Gordon did not receive a complete history from the Employee during his examination of her, which resulted in an incomplete and inaccurate medical history. Additionally, as previously noted, Dr. Gordon's review of Dr. Golini's report was not a competent review and, thus, his opinion was not based on a sufficient medical history due to that review either. Therefore, the Employee's eleventh (11th) reason of appeal is rejected.

In conclusion, we find no error on the part of the trial judge in finding that the Employee did not meet her burden of proof when alleging a recurrence of her October 21, 2020 injury. Thus, 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 29, 2026.

Reall, J. and Lazieh, J. concur.

ENTER:

/s/ Hardman, J.

/s/ Reall, J.

/s/ Lazieh, J.