

STATE OF RHODE ISLAND

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

JOHN MOSHER

)

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VS.

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W.C.C. 2022-07031

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STATE OF RHODE ISLAND

)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division on the claim of appeal of the petitioner/employee. Upon consideration thereof, the employee's appeal is granted and in accordance with the Decision of the Appellate Division, the following findings of fact are made:

1. That the trial judge erred in failing to review and consider the deposition of Dr. William Brennan in making his determination as to the credibility of the employee.
2. That the trial judge failed to provide a clear explanation of the basis for finding the employee's testimony lacked credibility.

It is, therefore, ORDERED:

1. That the decision and decree of the trial judge are hereby vacated.
2. That the trial judge shall review and consider the deposition of Dr. William Brennan that was submitted into evidence in assessing the credibility of the employee's testimony and if the trial judge finds that the employee is not credible, the trial judge shall clearly set forth the basis for such a finding.

3. That after reviewing the evidence and testimony of the employee, the trial judge shall render a new decision and enter a new decree. The aggrieved party will then have the opportunity to file a claim of appeal from that decision and decree.

4. That the employer shall reimburse Jack R. DeGiovanni, Jr., Esq., the amount of Sixty-seven (\$67.00) Dollars for the cost of filing the claim of appeal and providing the transcript on appeal.

5. That since the matter was successfully prosecuted on appeal, the employer shall pay a counsel fee in the amount of Three Thousand Five Hundred (\$3,500.00) Dollars to Jack R. DeGiovanni, Jr., Esq., attorney for the employee, for services rendered at the appellate level.

Entered as the final decree of this Court this 9th day of June 2026.

PER ORDER:

/s/ Nicholas DiFilippo
Administrator

ENTER:

/s/ Olsson, J.

/s/ Fay, J.

/s/ Reall, 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 the employee's petition to review seeking authorization for an MRI of his right wrist that he contends he injured due to the effects of a work-related back injury he sustained on August 6, 2018. The employee alleged that on March 27, 2021, he fell at home while doing yard work due to a back spasm and, to brace his fall, he reached out with his right arm and injured his right wrist. After a thorough review of the record, and following consideration of the parties' respective arguments, we grant the employee's appeal and remand the case to the trial judge to address the issues raised in this decision.

In August of 2018, John Mosher (hereinafter the "employee") worked as a Juvenile Program Worker for the State of Rhode Island (hereinafter the "employer"). The employee's job duties included the "care, custody and control of any of the kids that [were] residing in the Rhode Island Training School." Tr. 4:8–10. The employee explained that while tending to the showers, he would prop the door open with a milk crate to allow the residents to enter. On August 6, 2018, he held the door open to the showers and attempted to pull the milk crate out with his leg

when he “felt [a] sharp pain throughout [his] back and [his] knee almost gave way.” Tr. 4:18–19. The employee began receiving weekly benefits for partial incapacity as of August 7, 2018 pursuant to a Memorandum of Agreement which described his injuries as a low back strain and right knee strain. The employee returned to his regular job duties on August 4, 2020 and his weekly benefits were discontinued as of December 21, 2020 pursuant to a pretrial order entered in W.C.C. 2020-06846.

On March 27, 2021, the employee was doing yard work at home on a steep hill where there was a “lot of debris and dead leaves and stuff.” Tr. 5:11–12. The employee explained that while he was raking the leaves and debris off the hill he “leaned back, holding the rake back and got a sharp spasm of back pain where the injury was and then it just caused [him] to - - it just dropped [him] right on [his] knees and when [he] fell [he] put [his] hand out to break [his] fall and immediately felt wrist pain.” Tr. 5:13–18. He stated that it was his right hand and wrist where he felt the pain.

In a Consent Decree entered on December 8, 2021 in W.C.C. 2021-03538, the parties agreed that the employee sustained a recurrence and return to partial incapacity as of March 30, 2021 and continuing due to the effects of the work-related low back strain he sustained on August 6, 2018.¹ Since that injury in 2018, the employee has continuously treated with Dr. William F. Brennan for his low back, even after he returned to work in 2020.

Shortly after the incident on March 27, 2021, the employee treated with Dr. Brennan on March 31, 2021. He informed Dr. Brennan of what occurred while he was raking leaves at home on the steep hill. Dr. Brennan referred him to Dr. Scott Allen, an orthopedic surgeon employed

¹The trial judge makes note of the Consent Decree that states the employee sustained a recurrence of his work-related back injury on March 30, 2021, as a result of the fall on March 27, 2021. However, there is no mention in the decision of how this affects the employee’s claim that he injured his wrist during the same incident.

at OrthoRI, for treatment of his right wrist complaints. At the second visit, Dr. Allen referred the employee for an MRI of his right wrist and hand.

The employee underwent back surgery by Dr. Guglielmo on May 24, 2022 and returned to work on April 1, 2023, at which time his weekly benefits were discontinued by agreement. He testified that he still experiences difficulties with his right wrist and hand, which include not being able to rotate it without getting a sharp pain. Tr. 8:10–16.

The employee submitted two (2) photographs of the hill he was standing on at the time of the incident and stated that he was raking about halfway up the hill when he experienced the back spasm and fell. The medical evidence consists of the deposition and records of Dr. Brennan (Ee's Ex. 7) and the reports of Dr. Allen (Ee's Ex. 9). The parties stipulated that the reports of Dr. Allen "are to a reasonable degree of medical certainty, as it relates to the referral of the MRI of the right wrist as being necessary to cure him, relieve him or rehabilitate him, as it relates to the treatment for the right wrist." Tr. 20:4–9.

In his three (3) page written decision, the trial judge reviewed the testimony of the employee. The trial judge found the employee's testimony, in which he explained how he fell while doing yard work, to be not credible. The trial judge concluded: "He was working in a very slopy area and while he had a history of a back injury, the Court rejects Mr. Mosher's testimony that he claims he suffered sharp spam [sic] of back pain when he leaned back holding a rake." Dec. at 3. The trial judge stated that he did not need to reach the testimony of Dr. Brennan because he did not find the employee's testimony to be credible. Consequently, the trial judge denied the employee's petition requesting approval for an MRI of his right wrist and the employee filed a claim of appeal.

The Appellate Division's standard of review is highly deferential to factual determinations made by the trial judge. When the Appellate Division reviews the decision of a trial judge, we are guided by the standard set forth in Rhode Island General Laws § 28-35-28(b), which provides "[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." In reviewing a trial judge's decision that is based upon a credibility determination, the standard is particularly deferential, as the appellate panel must find that the trial judge was clearly wrong or overlooked or misconceived material evidence in making that determination. *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). In addition, if an appellate panel

decides that [the trial judge] was clearly wrong either because he was obviously mistaken in his judgment or because he overlooked or misconceived important evidence in arriving at it, then in determining whether his ultimate decision is supported by a fair preponderance of the evidence, [the appellate panel] must weigh all of the testimony in the record including what was disregarded as lacking credibility.

Laganieri v. Bonte Spinning Co., 103 R.I. 191, 197, 236 A.2d 256, 259 (R.I. 1967).

On appeal, the employee argues that the trial judge erred in failing to read and consider the testimony and records of Dr. Brennan in making his assessment of the employee's credibility.

In Rhode Island, "a trial judge may reject medical evidence that is reliant on an untrue or inaccurate history of the injury provided by the employee." *Garcia v. C.I. Hayes, Inc.*, 606 A.2d 1322, 1325 (R.I. 1992) (citing *Moreno v. NULCO Mfg.*, 591 A.2d 788, 790 (R.I. 1991)).

However, when the opining doctor does not base their decision solely on an employee's recollection of events, it is improper for a judge to reject the physician's testimony solely due to the employee's lack of credibility. *Id.* In *Garcia*, the Rhode Island Supreme Court held that the trial judge was clearly wrong in disregarding the doctor's testimony, even though the judge

found the employee's testimony not credible, because the doctor's opinion was not *completely* reliant on the employee's testimony—it was also reliant upon reviewing a CAT scan, X rays, and a myelogram as well as the physical examinations performed by him. *Id.*

In the present matter, Dr. Brennan did not rely solely on the history provided by the employee. Dr. Brennan also relied upon his own physical examinations of the employee, one of which took place only three (3) days before the incident and another four (4) days after the fall. Ee's Ex. 7, at 8:1–3. Additionally, he relied on multiple MRIs taken of the employee's lower back. Ee's Ex. 7, at 21:2–12. Thus, Dr. Brennan did not base his opinion solely on the employee's recollection of events while doing yard work. Further, portions of Dr. Brennan's deposition testimony support the employee's claim that he fell due to a back spasm while doing yard work on March 27, 2021, as the doctor explained the mechanism of injury based upon the condition of the employee's back and his ongoing complaints. As such, the testimony of Dr. Brennan was material evidence that was disregarded by the trial judge.

The employee also argues that the trial judge did not sufficiently explain his reasons for finding that the employee's description of how he fell lacked credibility.

“[P]ositive uncontroverted testimony may be rejected if it contains inherent improbabilities or contradictions, which alone, or in connection with other circumstances, tend to contradict it.” *Laganiere v. Bonte Spinning Co.*, 103 R.I. 191, 194, 236 A.2d 256, 258 (1967) (citing *Walsh-Kaiser Co. v. Della Morte*, 76 R.I. 325, 69 A.2d 689 (1949); *Somerset Realty Co. v. Shapiro*, 51 R.I. 417, 155 A. 360 (1931)). Additionally, a trier of fact may reject such testimony when “it lacks credence or is unworthy of belief, [. . .] especially if the testimony is that of a party to the litigation or of an interested witness. Rejection on credibility grounds may not, however, be arbitrary or capricious, nor may it be left to the whim of a trier of fact.”

Laganiere, 103 R.I. 191 at 194–95, 236 A.2d at 258 (citing *Michaud v. Michaud*, 98 R.I. 95, 99, 200 A.2d 6, 8 (1964)) (citations and quotations omitted). The Rhode Island Supreme Court further clarified that when such situations arise, “a trier of fact who disregards a witness’s positive testimony because in his judgment it lacks credibility should clearly state, even though briefly, the reasons which underlie his rejection.” *Id.* (citing *Jackowitz v. Deslauriers*, 91 R.I. 269, 276, 162 A.2d 528, 531 (1960)); *see also Sepulveda v. Buffum*, 334 A.3d 98, 105 (R.I. 2025) (stating that “the trial justice’s findings were sufficient to reject the credibility of Sepulveda and Rufino. The trial justice clearly stated that Rufino lacked credibility due to bias[.]”).

Here, the trial judge found the employee to be not credible, but he failed to give a reason—or any explanation at all—as to why he found the employee not credible. The employee provided the sole, uncontroverted testimony relative to how he fell while doing yard work and injured his wrist. While the trial judge may reject even uncontroverted testimony, as noted in *Laganiere*, the trial justice was required to “state, even though briefly, the reasons which underlie his rejection” of the employee’s credibility. *Laganiere*, 103 R.I. at 195, 236 A.2d at 258. The trial judge’s statement that: “Mr. Mosher’s testimony was incredulous with regard to his explanation of how he fell while doing yard work” does not meet this standard. Dec. at 3. The trial justice stated that the yard was a very slopy area and that the employee had a history of back injuries, then simply concludes that he rejects the employee’s claim that he suffered a sharp back spasm while leaning back on a rake. The appellate panel is left to guess whether the trial judge did not believe that the employee fell, that the employee suffered a back spasm, or that a back spasm could cause the employee to fall. Clearly, the trial justice did not state, even briefly, the reasoning for rejecting the employee’s testimony as not credible. This was clearly erroneous.

Therefore, the matter is remanded to the trial judge with instructions to state the reasons he rejected the employee's testimony consistent with *Laganiere v. Bonte Spinning Co.*

In conclusion, the employee's reason of appeal that the trial justice erred in not considering the testimony and records of Dr. Brennan in arriving at his determination that the employee's testimony was not credible is granted. The trial judge's decision and decree are vacated, and the matter is remanded to the trial judge with instructions to review the deposition of Dr. Brennan and issue a new decision and decree. If after such review, the trial judge finds that the employee's testimony is not credible, he shall clearly state the basis for that determination. 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 June 9, 2026.

ENTER:

/s/ Olsson, J.

/s/ Fay, J.

/s/ Reall, J.