

STATE OF RHODE ISLAND

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

HANNA BILL

)

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VS.

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W.C.C. 2023-03078

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ROYAL WESTERLY, LLC

)

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
April 14, 2025 be, and hereby are, affirmed.

Entered as the Final Decree of this Court this 11th day of June 2026.

PER ORDER:

/s/ Nicholas DiFilippo

Administrator

ENTER:

/s/ Lazieh, J.

/s/ Hardman, J.

/s/ Fay, J.

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DECISION OF THE APPELLATE DIVISION

LAZIEH, 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 original Petition for Compensation Benefits. Hanna Bill (hereinafter the "Employee") alleged that on January 6, 2022, she sustained a neck/cervical spine injury arising out of and in the course of her employment while working at Royal Westerly, LLC (hereinafter the "employer"). She seeks partial disability compensation from January 7, 2022, and continuing.¹ After a thorough review of the record, and following consideration of the parties' respective arguments, we affirm the decision of the trial court and deny and dismiss the employee's appeal.

On January 6, 2022, the employee worked as a certified nursing assistant ("CNA") for the employer. She began working at this position at age seventeen (17) in September of 2019. Her duties required her to provide care to approximately ten (10) to twenty (20) patients per day. Her

¹ Of note, including this current petition, a total of seven (7) petitions were consolidated at the trial level. The other six (6) petitions resulted in the Employee obtaining benefits—including partial and total disability periods—for other bodily injuries, approval of a L5-S1 transforaminal lumbar interbody fusion, an award of scarring, and an award of disfigurement. This petition, which was Employee's petition for her neck/cervical injury, was denied, and the Employee appealed to this Court.

duties included bathing the patients, helping them get dressed, rolling the patients onto beds, and transferring the patients utilizing a Hoyer lift.

The employee stated that she injured her neck/cervical spine on January 6, 2022, while pulling a bed railing on an old bed that was stuck. While lifting with her right arm, she felt pain in her right shoulder and her neck. She reported the injury the following day to her supervisor, and she also completed a Workplace Injury Triage & Reporting document at that time.

Additionally, she filled out a handwritten incident report on January 20, 2022.

The employee testified she did not receive treatment for her neck complaints until October of 2022. She had been treating with a neurosurgeon, Dr. Patrick Doherty for serious lumbar disc problems. She alleged that the delay in treatment for her neck was due to her focusing solely on her back injury. The employee continued to work as a CNA for the Employer until June 13, 2022, when she stopped due to her low back pain. At the time of her court testimony, she was working in a less physically demanding job.

On cross-examination the employee explained that she did complete her work shift following the incident of January 6, 2022. She agreed that she did not discuss any neck problems with Dr. Doherty or his staff while she was there for treatment prior to October 2022.²

In support of her petition, the Employee introduced the deposition of Dr. Patrick Doherty. She had been referred to this doctor by Dr. David Bica, an orthopedic surgeon. At her initial appointment on August 29, 2022, the employee was seen by Dr. Doherty's physician assistant, Arthur Welch. At that visit, and at the office visit of September 5, 2022, the employee complained of and received care only for problems relating to her low back. She did not seek treatment for her neck until October 18, 2022. On that date she informed PA Welch of the

² The summary of the employee's testimony has been taken from the decision of the trial judge as this appellate panel was not provided with a transcript of her testimony.

incident while lifting the bed rail at work on January 6, 2022, some nine (9) months earlier. She described feeling a pop in her shoulder and a strain in her neck at the time of the work event. The employee was eventually diagnosed with a cervical disc herniation and underwent a cervical spine fusion on August 9, 2023. Dr. Doherty causally related her neck injury and subsequent surgery to the incident on January 6, 2022. He explained the employee's delay in seeking treatment for the neck as a result of her need to initially concentrate on her serious back problems.

On cross-examination, Dr. Doherty agreed that it might be useful to know how long the employee continued to work after January 6, 2022, but he did not have that information. In any event, he did not believe that such knowledge would significantly affect his opinion. The doctor also admitted that it would be useful to know if the employee reported any neck pain when she saw her primary care physician only six (6) days after January 6, 2022, but he had not seen that record.

Additional medical records admitted as full exhibits included a December 15, 2021, report from NEMG Gastroenterology which indicates the employee complaints included neck pain some three (3) weeks prior to her work incident. Reports from the employee's primary care physician reveal that she was seen on January 12, 2022, February 10, 2022, March 2, 2022, and March 9, 2022. On each occasion, despite a variety of medical concerns, she did not mention neck problems among her reasons for seeing the medical provider. She had appointments with Dr. Stephen Gross, an orthopedic surgeon, on March 23, 2022, May 23, 2022, June 17, 2022, and July 20, 2022. At no time did the employee advise that her neck was bothering her.

The employee had her annual physical with her primary care doctor on June 16, 2022. Again, while she did have several physical complaints, none of those were cervical.

Furthermore, the section for Review of Symptoms indicates the employee had no neck pain or stiffness. The section entitled Musculoskeletal reveals that her cervical spine had full range of motion without pain. The neck was supple. Similarly, when first seen at Dr. Doherty's office on August 29, 2022, the examination of the neck demonstrated a normal range of motion and no tenderness.

The first significant mention of neck complaints to a physician occurred when the employee saw her primary care physician on September 14, 2022. The report from that date indicates that the employee stated that she has been suffering from a neck problem for about four (4) months. She advised that she denied trauma and stated that she never had similar symptoms. She was sent for X-rays and a cervical MRI.

The employer presented the report and deposition of Dr. Steven Blazar, an orthopedic surgeon. After reviewing a set of her medical records and examining the employee on October 15, 2024, he opined that he was unable to relate the neck complaints and her cervical disc herniation to the work incident of January 6, 2022. This opinion was based upon the medical records cited above, which demonstrate that between January 6, 2022, and September 14, 2022, the employee had no significant neck complaints and that she had cervical examinations which were normal. In addition, the employee continued to work as a CNA for months after January 6, 2022. Specifically, when explaining how he came to that conclusion, he testified that:

... if you were to have suffered a cervical disc herniation certainly sometime with somebody in the next seven months you should have been complaining of neck pain, weakness, numbness, paresthesias [sic], arm difficulties, something that gave you any sense of a cervical disc herniation. *It's inconceivable that a patient with a herniated disc in January 2022 would have no documentation of any signs or symptoms of a cervical disc problem until seven or eight months later.* Even if the focus was on the low back any of her multiple providers would have noted at least a complaint of neck pain or a complaint of weakness in the arms or numbness in the fingers, something to indicate that there was another problem going on. Even if you didn't deal with that problem right away it's still usual customary and standard

medical practice to note that there was at least some other complaint somewhere consistent with an abnormality severe enough to eventually require surgery.

Er's Ex. B. at 12:17–24, 13:1–12 (emphasis added).

In his comprehensive bench decision, the trial judge reviewed the testimony of the employee, the depositions of the two doctors and the extensive package of medical records that were in evidence. He concluded that the employee did not sustain an injury to her neck/cervical spine on January 6, 2022, and thus denied and dismissed her petition. While the trial judge found that the Employee's recollection of the incident on January 6, 2022 credible, he cited the court's prerogative afforded pursuant to *Parenteau v. Zimmerman Engineering*, 111 R. I. 68, 299 A.2d 168 (1973), to find that the opinion of Dr. Blazar was more persuasive than the causation opinion expressed by Dr. Doherty. As basis for his determination, the trial judge mentioned the extensive set of medical reports from visits that occurred between January 6, 2022, and September 14, 2022, which fail to reveal any significant neck complaints yet which document cervical examinations that were normal. He also referred to the September 14 examination where the employee did not give a history of the January 6, 2022 incident, but instead denied trauma and advised that the pain had been persisting since around May 2022, not January. For these reasons, he found the employee's explanation of why she delayed treatment for her neck injury to not be credible.

Our Appellate Division's standard of review is highly deferential to the findings and the determinations made by the trial judge. When we review the decision of a trial judge, we are required to follow the guidelines set forth in Rhode Island General Laws § 28-35-28(b), which provides that “[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous.” Accordingly, 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). Therefore, absent a clear error committed by the trial judge, we must review his or her 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).

The employee posits six (6) reasons of appeal before this Appellate Panel. In her third reason of appeal, the employee argues that the trial judge committed error by failing to give the January 7, 2022 workplace injury triage incident report any probative value. As cited by the trial judge in his decision, the incident report filed the day following the work event report does mention “a ‘pop’ in her right upper back and right neck.” (Ee. Ex. 8) This document does help to show that the incident alleged by the employee did occur. The trial judge gave that evidence the appropriate weight in his determination that the employee was credible in her description of the injury and her initial complaints of pain.

The employee’s first reason of appeal alleges that the trial judge committed error by misconceiving and ignoring material complaints of neck/cervical pain she expressed prior to September 14, 2022. The bench decision thoroughly discussed the medical records of the Employee, which included various treatments with Dr. Blazar, Dr. Doherty, and medical reports made from her treatments ranging from before January 6, 2022 until December 1, 2024. The trial judge noted that three (3) weeks prior to the incident, on December 15, 2021, the employee noted neck pain. He also noted that the report of her PCP from January 12, 2022, did not mention a work incident (that occurred only six (6) days prior), and it showed that the employee focused solely on her back pain with muscle pain into both legs. While additional medical records from that date until September 2022 may have also contained an occasional mention of neck pain, the neck was never a primary complaint or concern expressed by the employee. Several cervical

examinations during that key time period found the neck to be perfectly normal. Furthermore, as explained by Dr. Blazar, there is a difference between a vague complaint of neck pain and the specific reference to symptoms that would be indicative of a cervical disc problem, such as numbness or weakness in the arms. Based on our review of the records and the trial judge's recitation of the employee's medical treatment, we find that he did not overlook material evidence—in contrast, he methodically went through all of the material evidence and weighed them accordingly when making his decision. Therefore, we reject the employee's first and third reasons of appeal.

In the employee's sixth reason of appeal, she argues that the trial judge's decision was contrary to the substantial evidence within the record supporting her petition. The employee claims that: "when the entire record is considered, including contemporaneous medical documentation, treating provider testimony, and employer-reported injury records, the evidence overwhelmingly supports the existence of a causal nexus" between the January 6, 2022 incident and her neck/cervical spine injury. Ee's R.O.A. at 6. We disagree. As previously discussed, the trial judge, after thoroughly considering all of the aforementioned medical documentation, found that there was not a nexus between the January 6, 2022 incident and her neck/cervical spine injury. We find that the trial judge did not overlook or misconceive material evidence and, thus, we reject the employee's sixth reason of appeal.

The employee's second reason of appeal argues that the trial judge erred in allotting disproportionate weight to Dr. Stephen Blazar's testimony. Under *Parenteau v. Zimmerman Engineering, Inc., Supra*, a trial judge is permitted to choose and rely on one expert medical opinion over that of another. Here the trial judge found the opinions of Dr. Blazar to be more persuasive than those expressed by Dr. Doherty on the issue of whether the January 6, 2022

incident was the cause of the cervical disc herniation and the need for surgery. As part of his reasoning, the trial judge stated that Dr. Doherty was not aware of the examination by the employee's primary care team six (6) days after the incident. This conclusion and reasoning is well within the discretion of the trial judge. Therefore, we reject the Employee's second reason of appeal.

The employee's fourth and fifth reasons of appeal make similar allegations. She argues that the trial judge erred in disregarding credible and unrefuted expert testimony explaining a delay in neck/cervical spine treatment, and that he failed to assign credibility to her explanation for the delay in the treatment for her neck. "[W]e have held that the issue of credibility should be determined by the trial commissioner and his findings should be given great weight on review." *Davol, Inc. v. Aguiar*, 263 A.2d 170, 173 (R.I. 1983) (citing *Laganieri v. Bonte Spinning Co.*, 236 A.2d 256, 258 (R.I. 1967)). As a result, "[t]he trial judge's determination of the credibility of a witness and rejection of testimony on that basis is not reversible on appeal if it is supported by competent evidence." *Demeneses v. American Insulated Wire*, W.C.C. 2004-06754 (App. Div. 2007) (citing *Delage v. Imperial Knife Co.*, 396 A.2d 938, 039 (R.I. 1979)).

While the trial judge did find that the Employee's recollection of the incident on January 6, 2022 credible, he is not required to accept all of her testimony or that of her surgeon. The rationale provided by Dr. Doherty was fully refuted by the report and testimony of Dr. Blazar. As stated previously, the trial judge properly weighed and reviewed all the evidence within this case and determined that the evidence did not support a finding that she sustained a neck injury on January 6, 2022. We find that this decision by the trial judge was supported by competent evidence and, therefore, that the trial judge was not clearly wrong, nor did he overlook or

misconceive material evidence when making his credibility determinations. Therefore, we reject the Employee's fourth and fifth reasons of appeal.

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 an injury to her neck/cervical spine that was a result of the January 6, 2022, incident. Thus, the Employee's reasons of appeal are denied and dismissed, and the decision and decree of the trial judge relative to W.C.C. 2023-03078 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 be entered on June 11, 2026.

Hardman, J. and Fay, J., concur.

ENTER:

/s/ Lazieh, J.

/s/ Hardman, J.

/s/ Fay, J.