STATE OF RHODE ISLAND

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

CHRISTOPHER LEWIS	)	
	)	
VS.	)	W.C.C. 2024-05484
	)	
ORIGINAL BRADFORD SOAP WORKS, INC.	)	

FINAL DECREE OF THE APPELLATE DIVISION

This matter came before the Appellate Division upon the claim of appeal of the Respondent/Employer, and upon consideration thereof, the employer's appeal is granted, and in accordance with the Decision of the Appellate Division, the following findings of fact are made:

1. The trial judge committed error in misapplying the provisions of R.I.G.L. §28-33-47 (d).

It is, therefore

ORDERED, ADJUDGED, AND DECREED:

1. That the employer's appeal is granted and that the employee's petition is denied.

2. That the employee has failed to prove by a fair preponderance that he is entitled to reinstatement, retroactive wages and fringe benefits.

That the findings of fact and the orders contained in a Decree of this Court entered on September 30, 2025 be, and hereby are, reversed, and the employee's petition is denied and dismissed.

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

PER ORDER:

/s/ Nicholas DiFilippo
Administrator

ENTER:

/s/ Hardman, J.

/s/ Pepin Fay, J.

/s/Lazieh, J.

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DECISION OF THE APPELLATE DIVISION

HARDMAN, J. The above-entitled matter is before the Appellate Division on the Respondent/Employer's appeal from the trial judge's decision and decree granting the Petitioner/Employee's petition to review seeking reinstatement pursuant to Rhode Island General Laws §28-33-47. After the thorough review of the record and consideration of the arguments presented by both parties, we grant the Employer's appeal and overturn the trial judge's decision and decree.

Pursuant to a pretrial order entered in W.C.C. No. 2023-06120, the court found the employee to have sustained a work-related injury on August 9, 2023, described as a left shoulder strain and left arm strain, and was granted partial incapacity benefits beginning August 10, 2023, to May 29, 2024. Demand for reinstatement to his former position was made in writing on August 6, 2024.

The employee began working at Original Bradford Soap Works, Inc., (hereinafter "employer") in 2021 as a machine operator. His job duties included working the presses, as well

as maintaining and cleaning the equipment. He was responsible for making sure the hourly production rate was reached for the particular product he handled. He typically worked 40 hours per week, and he performed at least eight hours of overtime each week.

The employee was examined by Dr. A. Robert Buonanno, who was appointed by the trial judge. The examination took place on May 29, 2024. Dr. Buonanno opined that the employee sustained a work injury, the employee was at maximum medical improvement, and the employee was capable of returning to full duty with no restrictions (Employer's Exhibit A). The employee's testimony demonstrated that he was aware of Dr. Buonanno's opinion. The evidence indicated that the employee returned to light duty work with the employer. While on light duty, he received notice he was going to be terminated from the employer via a letter in the mail. The employee testified the letter stated if he did not get off light duty, did not respond to letter, and did not show up to work within five days, he would be voluntarily terminated. The employee went to the employer to beg for his job back, and spoke with Courtney Vasques in Human Resources. The conversation resulted in him voluntarily returning his badge. He testified he also spoke with Katherine Duncanson in Human Resources, who also advised him he was expected to work full duty. In his time working for the employer, he has been given verbal and written warnings for his attendance. The last warning was more than one year prior to the date of injury. He had never been reprimanded for his behavior. He testified he did not intentionally, voluntarily resign from employment.

The evidence further indicated that after leaving the employer, the employee worked as a delivery driver for Domino's. He earned three dollars an hour plus tips when making deliveries. He earned minimum wage when making pizzas in the shop. The employee was recalled as a witness for updated testimony and indicated he left Domino's for employment with Chili's. He

was terminated from Chili's for an unexcused absence. He testified he earned less with Chili's than he did with the employer. He was unemployed as of the date of his supplemental testimony.

The evidence of James T. Hornstein's testimony, the employer's counsel in the underlying matter, W.C.C. No. 2023-06120, acknowledged that the employee was awarded a closed period of benefits arising out of his August 9, 2023, injury. He admitted that employee's counsel indicated that he had an interest in returning to work for the employer. Mr. Hornstein indicated he would pass this information on to the employer. He further admitted that he did not inform the employer that the employee inquired about reinstatement.

Katherine Duncanson's testimony was also presented at trial. Ms. Duncanson is the vice-president of Human Resources with the employer. She testified she has been employed at Bradford Soap for two years and is familiar with the employee, and the work incident. She testified the employee was cleared by the doctors at Concentra medical for light duty and the employee reported to work for light duty. She testified that after the employer's insurer informed her that they had denied the employee's claim/injury, she told the employee that he was no longer eligible for the light-duty program through the company. Accordingly, he was required to either be cleared for work or to leave, and he was required to keep in communication with the company. She testified the employee did not respond to the five-day notice letter or the termination letter mailed to him. She testified to having a conversation with Courtney Vasques regarding the employee showing up at the employer and asking for his job back. The employee's conduct during the conversation was reported to be extremely confrontational and escalated quickly.

At the conclusion of the trial, the trial judge granted the employee's petition to review for reinstatement. The trial judge acknowledged that the pretrial order entered in W.C.C. No. 2023-

06120 delineated the findings of establishing liability for a closed period of time, including the employee's disability. He identified the issue before the Court as whether the court impartial examination report of Dr. Robert Buonanno triggered R.I.G.L. §28-33-47 (c)(1)(vi) entitling the employee to reinstatement.

The trial judge relied on R.I.G.L. 828-29-2(8) and *City of Pawtucket v. Pimental*, in defining and applying the definition of maximum medical improvement. *City of Pawtucket v. Pimental*, 960 A.2d 981, 986 (R.I. 2008) (quoting R.I.G.L. 828-29-2(8)). "'Maximum medical improvement' as defined by statute is 'a point in time when any medically determinable physical or mental impairment as a result of injury has become stable and when no further treatment is reasonably expected to materially improve the condition.'" The trial judge stated that inherent in a maximum medical improvement finding is that it requires either an order or decree of the Court, or an acceptance of such finding by mutual agreement. He further stated neither was secured here and absent a finding of maximum medical improvement by the Court, an employee's entitlement to benefits remains unchanged.

The trial judge found that since there was no finding of MMI by the Court, the 30-day limitation in R.I.G.L. 828-33-47 (c)(1)(vi) was not triggered and the employee's demand for reinstatement was made timely. He therefore found that the employer violated R.I.G.L. 828-33-47 (d) by failing to reinstate the employee to his former position, and the employer's conduct is deemed an unlawful employment practice. Accordingly, by finding a violation of the statute, R.I.G.L. 828-33-47 (d), the trial judge awarded back pay and the cost of fringe benefits to the employee.

In reviewing the decision of a trial judge, we are guided by the standard 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." R.I. Gen. Laws §28-35-28(b). In the present matter, the parties have stipulated to the pertinent facts. Consequently, we need only address how the relevant law applies to those facts. Accordingly, our panel is prohibited from engaging in a *de novo* review of the evidence 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, the 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. R.I. Gen. Laws §28-35-28(b).

The Employer submitted two (2) reasons of appeal. In the first reason of appeal, the employer contends the trial judge erred in his application of R.I.G.L §28-33-47(c)(1)(vi), by finding the employee was entitled to reinstatement when the demand came sixty-nine (69) days after Dr. Buonanno determined that the employee had reached maximum medical improvement and forty-one (41) days after the Court entered its Pretrial Order based upon Dr. Buonanno's report in W.C.C. No. 2023-06120. It is provided that under R.I.G.L §28-33-47(c)(1)(vi), the right to reinstatement terminates upon "[t]he expiration of thirty (30) days after the employee reaches maximum medical improvement . . . ." The employer argued that this thirty (30) day limitation began on May 31, 2024, the day the Court and both parties received the report of the impartial medical examiner, Dr. Buonanno, in which he stated that "Mr. Lewis has reached MMI . . . ." Neither party contested the Buonanno Report.

Alternatively, the employer argued the thirty (30) day limitation could have begun on June 26, 2024. On June 26, 2024, the Court entered a pretrial finding that the employee's partial incapacity had ended on May 29, 2024, the date that Dr. Buonanno had issued his report finding that the employee had reached maximum medical improvement and that he was fit to return to

full duty. The employee did not challenge the entry of the pretrial order that he had reached maximum medical improvement and that he was fit to return to work.

The decree entered on June 26, 2024 in W.C.C. No. 2023-06120 contained the finding of fact that the employee was no longer disabled after May 29, 2024. This finding was based on the report of Dr. Buonanno who provided as of May 29, 2024, the employee was at maximum medical improvement, and he was found capable of returning to full duty with no restrictions. Accordingly, the employee was awarded a closed period of partial disability benefits from August 10, 2023, to May 29, 2024. This finding is legally binding on the parties and the court. Debra Mello v. City of Providence, W.C.C. 2007-02822 (App. Div. ???)

On June 26, 2024, the Court entered an order and made the finding that the employee had reached MMI. This is when the 30-day deadline of R.I.G.L § 28-33-47(c)(1)(vi) was triggered. Both the report of Dr. Buonanno, which was relied on for the entry of the order in W.C.C. No. 2023-06120, and the entry of the order itself, were uncontested.

Therefore, the demand for reinstatement by the employee that was made forty-one (41) days after the Court entered its Pretrial Order based on Dr. Buonanno's report was untimely.

In the second reason of appeal, the employer argued the trial judge erred by determining that R.I.G.L. § 28-33-47(c)(1)(vi) requires the Court to make a finding of maximum medical improvement. Specifically, nothing in R.I.G.L. § 28-33-47(c)(1)(vi) requires an order, decree, or other judicial determination that the employee reached maximum medical improvement, and the Court improperly added to the statute when it ruled that such a finding is necessary.

R.I.G.L. § 28-33-47(c)(1)(vi) provides the right to reinstatement terminates thirty (30) days after the employee reaches maximum medical improvement. The trial judge correctly stated that "Inherent in a maximum medical improvement finding is that it requires either an order or

decree of the Court, or an acceptance of such finding by mutual agreement." However, the trial judge erred by concluding neither was secured in this case.

The entry of the pretrial order in W.C.C. No. 2023-06120, relied on a physician's opinion the employee had reached MMI. The trial judge utilized the opinion in awarding a closed period of partial incapacity. The end to incapacity found in the order is the date the physician stated the employee was an MMI. As a result, inherent in the pretrial order entered on June 26, 2024, is the finding the employee reached MMI on May 29, 2024, after which the employee was found no longer disabled. Accordingly, the trigger of the thirty (30) day deadline is not the physician's opinions standing alone, but rather the entry of the pretrial order which relied on the opinion. Therefore, the thirty (30) day deadline began when the order was entered on June 26, 2024, making the demand for reinstatement untimely.

After review of the relevant statutes and case law, we find the trial judge misapplied the provisions of R.I.G.L. §28-33-47 and the findings that the employee was entitled to reinstatement, the employee was entitled to back wages and fringe benefits, and that the employer violated R.I.G.L. §28-33-47 (d), to be clearly erroneous. Therefore, we grant the employer's appeal and overturn the decision and decree of the trial judge.

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 **October 29, 2026.**

Pepin Fay, J., and Lazieh, J., concur.

ENTER:

/s/ Hardman, J.

/s/ Pepin Fay, J.

/s/ Lazieh, J.