Rhode Island Worker Compensation
November 2000 - October 2001.

99-03252 (2001). JUDY MCQUAIDE VS. WESTERLY HEALTH CENTER

Term: November 2000 - October 2001

W.C.C. 99-03252

JUDY MCQUAIDE VS. WESTERLY HEALTH CENTER

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT APPELLATE DIVISION DECISION OF THE APPELLATE DIVISION

ROTONDI, J.

This matter came on to be heard before the Appellate Division upon an employee's appeal from an adverse decision and decree entered on March 16, 2000. The trial court heard this matter as an Employee's Petition to Review requesting a continuation of benefits pursuant to R.I.G.L. Sec. 28-33-18.3. At a pretrial conference conducted on July 6, 1999, the trial judge denied the employee's petition. The employee duly claimed a trial. At the conclusion of that proceeding, the trial judge entered a decree containing the following findings and order:

"1. That the petitioner has failed to demonstrate by proof beyond a reasonable doubt that the provisions of R.I.G.L. Sec. 28-33-18 are unconstitutional.

"2. That the petitioner has failed to demonstrate by proof beyond a reasonable doubt that she has been denied equal protection under the laws of the State of Rhode Island.

"3. That the petitioner has failed to demonstrate by a fair preponderance of the credible evidence that her work-related injury and resulting disability poses a material hindrance to obtaining employment suitable to her limitations.

"Wherefore, it is ordered:

"1. That the petition be denied and dismissed."

The employee duly filed the instant appeal alleging that the trial judge erred in rejecting her constitutional challenge and further, in failing to find that her partial incapacity posed a material hindrance to obtaining employment.

The pertinent facts of this matter are as follows. Ms. Judy McQuaide testified before the trial court that she was injured while working for the Westerly Health Center (employer) in April of 1993. (Tr. 10) At that time, Ms. McQuaide's job duties included AM care, lifting, heavy lifting and caring for seven (7) to twelve (12) patients a day. (Tr. 12) In early 1994, Ms. McQuaide returned to work and has continued to work since that time. (Tr. 10-11) When she first returned to work, Ms. McQuaide performed light-duty employment at Westerly Health Center for approximately six (6) weeks. (Tr. 12) Since that time, she has worked for Westerly Adult Day Care Center, Elms and Summit Health Services all in light-duty positions. (Tr. 11-14) Although Ms. McQuaide had returned to work, at no time did she earn wages more than the amount she earned while employed at Westerly Health Center. (Tr. 14)

The employee introduced a Memorandum of Agreement dated June 14, 1993 which established an April 4, 1993, work-related L4-L5 strain resulting in partial incapacity from April 5, 1993. (Pet. Exh. 1) The record contains a pretrial order in W.C.C. No. 95-00450 dated February 21, 1995 which found that the employee remained partially incapacitated. (Pet. Exh. 2) A pretrial order in W.C.C. No. 96-01667 again found that the employee remained partially incapacitated. (Pet. Exh. 3) The record contains a pretrial order in W.C.C. No. 97-06481 dated November 19, 1997 which denied the employer's petition to set an earnings capacity. (Pet. Exh. 4) The employee also entered a pretrial order in W.C.C. No. 99-04575 dated September 17, 1999 which found that the employer had paid the employee in accordance with R.I.G.L. Sec. 28-35-40 and was not in contempt of the Memorandum of Agreement. (Pet. Exh. 6) In addition, the record contains a letter dated June 17, 1999 from the employee's attorney to the Attorney General's Office giving notice of the constitutional challenge of R.I.G.L. Sec. 28-33-18.3 with respect to the 312-week period of benefits and two responses dated June 23, 1999 and September 29, 1999 respectfully from the Attorney General stating that the office will not intervene in her challenge of R.I.G.L. Secs. 28-33-18(d) and 28-33-18.3. (Pet. Exh. 7, 8 and 12) The trial judge and this Tribunal reviewed the remaining evidence of which a full rendition is unnecessary for the purposes of this appeal. After thoroughly reviewing all of the evidence, the trial judge found that the employee failed to demonstrate R.I.G.L. Sec. 28-33-18.3 was unconstitutional beyond a reasonable doubt. The trial court reasoned that at the time the employee was injured, the statute treated all employees equal. Rhode Island General Laws Sec. 28-33-18.3 did not create

a suspect classification which would shift the burden to the employer. Moreover, in reference to employees injured in 1992 versus 1990, the trial judge found that the Legislature set forth a rational basis for its action. The trial judge, therefore, found that the employee failed to demonstrate beyond a reasonable doubt that R.I.G.L. Sec. 28-33-18.3 was unconstitutional based upon an equal protection argument.

The trial judge next addressed the issue of whether the employee qualified for a continuation of benefits pursuant to R.I.G.L. Sec. 28-33-18.3. The trial judge reasoned that the employee did find employment suitable to her limitations; therefore, an employee who was able to obtain employment subsequent to a work-related injury cannot, generally, establish a material hindrance. The fact that the employee was able to return to work, was able to find employment and was able to sustain employment defeats the allegation that her disability has posed a material hindrance sufficient to entitle her to a continuing weekly workers' compensation benefit after the expiration of 312 weeks. Thereafter, the trial judge denied and dismissed the employee's petition. The employee filed the instant appeal.

Pursuant to R.I.G.L. Sec. 28-35-28(b), the Appellate Panel is charged with the initial responsibility to review the record to determine whether the decision and decree properly respond to the merits of the controversy. The role of the Appellate Division in reviewing factual matters is, however, sharply circumscribed. Rhode Island General Laws Sec. 28-35-28(b) states, "The findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." The Appellate Division is entitled to conduct a de

novo review only when a finding is made that the trial judge was clearly wrong. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996); Grimes Box Co. v. Miguel, 509 A.2d 1002 (R.I. 1986). Such review, however, is limited to the record made at the trial level. Whittaker v. Health-Tex, Inc., 440 A.2d 122 (R.I. 1982).

Cognizant of this legal duty imposed upon us, we have reviewed and examined the entire record. For the reasons set forth, we deny and dismiss the employee's reasons of appeal and affirm the trial judge's decision and decree.

The employee duly claimed an appeal and filed two (2) reasons in support thereof. The employee alleged that the trial judge erred in rejecting her constitutional challenge and further, failed to find that her partial incapacity posed a material hindrance to obtaining employment. We disagree.

First, the employee challenged the constitutionality of the so-called "Gate provision," R.I.G.L. Sec. 28-33-18(d) which she asserts violates the Equal Protection Clause of the Rhode Island Constitution. We disagree.

Rhode Island General Laws Sec. 28-33-18(d) states the following in pertinent part:

"In the event partial compensation is paid, in no case shall the period covered by such compensation be greater than three hundred and twelve (312) weeks. In the event that compensation for partial disability is paid under this section for a period of three hundred and twelve (312) weeks, the employee's right to continuing weekly compensation benefits shall be determined pursuant to the terms of Sec. 28-33-18.3..."

The Rhode Island Supreme Court has held that when considering the question of the constitutionality of a statute the court is bound to uphold it unless its unconstitutionality appears beyond a reasonable doubt. Gomes v. Bristol Mfg. Corp., 95 R.I. 126, 131, 184 A.2d 787, 790 (1962). Further, the party challenging the unconstitutionality of the statute has the burden of proving that fact beyond a reasonable doubt. Id. (citing State v. Garnetto, 75 R.I. 86, 63 A.2d 777 (1949)).

The employee relies upon the Rhode Island Supreme Court case of Boucher v. Sayeed, 459 A.2d 87 (R.I. 1983). In Boucher, the Supreme Court struck down a statute which treated plaintiffs in a medical malpractice case differently depending upon who the tortfeasor was. The court held that the statute denied litigants equal protection of the laws. Id. at 91. Although the strict scrutiny standard of review was not used in reviewing this statute, the court found that the statute did not meet the rational relationship test. Id. at 91-92. The court stated as follows:

"In the absence of an identifiable legitimate governmental interest, these class distinctions constitute a patent violation of one of the most fundamental tenets of equal protection, namely, that persons similarly situated shall be treated in a like manner." Id. at 93.

More specifically, in Boucher, the Legislature enacted a statute in 1981 which would require a Superior Court justice to hold a preliminary hearing for medical malpractice claims within ninety (90) days of the filing of the health-care providers' answer. 459 A.2d at 89-90.

Once the hearing was concluded, the trial justice was required to make a finding of fact as to whether the evidence properly substantiated would be sufficient to raise a legitimate question of liability appropriate for judicial

inquiry. Id. at 90. The plaintiffs challenged the constutionality of these preliminary-hearing procedures. Id. at 88.

The trial judge in each of the two matters found no rational basis existed to support the distinctions between (1) medical malpractice claimants and tort claimants as a whole and (2) certain defined medical tort feasors and others similarly situated in the field. Thus, the trial justices below ruled that the 1981 statute impermissibly discriminated between certain classes of individuals. 459 A.2d at 90.

The court reviewed the 1981 statute utilizing the lower-tier rational basis standard and essentially inquired whether the classificiations rationally furthered a purpose articulated by the state. Id. at 92. The court was unable to justify the separate and unequal treatment that the statute imposed upon medical malpractice litigants. Id. at 93.

The court reasoned as follows:

"The statute constitutes special class legislation enacted solely for the benefit of specially defined defendant health-care providers. As the trial justices correctly noted, the preliminary-hearing requirement applies when a plaintiff sues on a claim that he or she has been injured by the negligence of a medical doctor or a hospital but does not apply to actions against certain other tortfeasors in the health-care field such as unincorporated dentists, nurses, and physical therapists. Perhaps more egregious is the fact that the statute treats medical malpractice plaintiffs differently from nonmedical tort plaintiffs as a whole. " Id. at 93

Therefore, the court declared the statute unconstitutional.

This case is clearly distinguishable from the case at bar. While the employee insists that employees are treated differently when they have received 312 weeks of partial incapacity benefits, the employee misconceives the rationale in Boucher. In Boucher, medical malpractice plaintiffs injured at the same time were treated differently based upon who was responsible for the injury. In this case, employees who were injured at the time of the employee's injury are entitled to receive 312 weeks of partial incapacity benefits. When we examine all employees at the time of the employee's injury, all employees are entitled to receive up to 312 weeks of partial incapacity indemnity benefits. Further, if the employee fulfills the requirements of R.I.G.L. Sec. 28-33-18.3, he or she can continue to receive those benefits beyond the 312-week limit. The Legislature clearly sought to provide the employee with indemnity benefits for a long enough period to obtain other training and skills and find comparable employment. The Legislature chose to balance the appropriate length of time for employees to receive any retraining necessary to obtain

employment with the high cost of workers' compensation borne by the employers. We find that R.I.G.L. Sec. 28-33-18(d) does not treat similarly situated persons differently. Moreover, even if that were not the case, said statute clearly possesses a rational relationship to justify the differential treatment contained therein and does not violate the equal protection clause of the Rhode Island or United States Constitution. Accordingly, the employee's first reason of appeal is denied and dismissed, and we affirm the trial judge's decision and decree in this regard.

Next, the employee avers that the trial judge erred in failing to find that her partial incapacity posed a material hindrance to obtaining employment. We disagree.

Rhode Island General Laws Sec. 28-33-18.3 states as follows:

"(A) For all injuries occurring on or after September 1, 1990, in those cases where the employee has received a notice of intention to terminate partial incapacity benefits pursuant to Sec. 28-33-18, the employee or his or her duly authorized representative may file with the workers' compensation court a petition for continuation of benefits on forms prescribed by the workers' compensation court. In any proceeding before the workers' compensation court on a petition for continuation of partial incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence that his or her partial incapacity poses a material hinderance to obtaining employment suitable to his limitation, partial incapacity benefits shall continue. The term 'material hinderance' is hereby defined to include only compensable injuries causing a greater than sixty-five percent (65%) degree of functional impairment and/or disability..."

The Appellate Division decision of Beatrice Larence v. Almacs, Inc., W.C.C. No. 98-06362 (1999) is dispositive of the issue before us. In Larence, the employee injured her left knee while working for Almacs, Inc. in June of 1991. She returned to work at the employer's place of business from April 30, 1992 until April 13, 1994. In mid-1997, the employee began working for a new employer and continued her employment through the time of her trial. The employee had received partial incapacity benefits for approximately 312 weeks and sought to have benefits continued pursuant to R.I.G.L. Sec. 28-33-18.3. The trial court and Appellate Division found that the employee failed to demonstrate that her partial incapacity posed a material hindrance to obtaining employment suitable to her limitations. The court reasoned that her twenty (20) months of employment since August of 1997 at the time of the trial was directly contradictory to the material hindrance requirement.

In the instant matter, the employee has been continuously working for approximately six (6) years. Clearly, the statute requires that in order for

partial incapacity benefits to continue beyond the three hundred twelve (312) week gate, the employee must prove that her incapacity poses a material hindrance to her obtaining employment suitable to her limitations. The evidence in the record established that the employee is currently employed and had been working since early 1994. The fact that the employee had been working for approximately six (6) years at the time of her trial was directly contradictory to the requirement that her disability pose a material hindrance to her obtaining employment and belies the allegations contained in this reason of appeal. The employee's ability to obtain employment despite her partial incapacity and sustain said employment for approximately six (6) years clearly refutes the employee's claim. The trial judge, accordingly, denied the employee's petition because she failed to demonstrate said material hindrance. We agree with the trial judge and cannot find him clearly erroneous in this regard. We, therefore, deny and dismiss the employee's reason of appeal and affirm the trial judge's decision and decree.

For the aforesaid reasons, the employee's reasons of appeal are hereby denied and dismissed, and we, therefore, affirm the trial judge's decision and decree.

In accordance with Sec. 2.20 of the Rules of Practice of the Workers' Compensation Court, a decree, copy of which is enclosed, shall be entered on

Sowa and Connor, JJ. concur.

FINAL DECREE OF THE APPELLATE DIVISION

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT APPELLATE DIVISION

JUDY MCQUAIDE VS. WESTERLY HEALTH CENTER W.C.C. 99-03252

This cause came on to be heard by the Appellate Division upon the appeal of the Petitioner/Employee and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on March 16, 2000 be, and they hereby are affirmed.

Entered as the final decree of this Court this day of ,

BY ORDER:

_____ Dennis I. Revens, Administrator

ENTER: _____

Rotondi, J.

_____ Sowa, J.

_____ Connor, J.

I hereby certify that copies were mailed to Michael Wallor, Esq. and Gregory Boyer, Esq. on _____