

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

DAVID WALKER

)

)

VS.

)

W.C.C. 03-00518

)

AMTROL

)

DAVID WALKER

)

)

VS.

)

W.C.C. 02-08907

)

AMTROL, INC.

)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. These two (2) matters were consolidated by the court for hearing and decision. The appeals we are called upon to address involve two (2) basic questions: (1) was the trial judge clearly wrong to find that the Department of Labor and Training did not have an enforceable lien against the proceeds of the employee's lump sum settlement, and (2) was the trial judge clearly wrong to deny the employee's request for the award of interest and a penalty against the employer for withholding the proceeds of the settlement while seeking

clarification as to whether the Department of Labor and Training had a lien. After thorough review of the record and consideration of the arguments of the parties, we find no error and deny the appeals.

W.C.C. No. 02-08907 is a petition for a lump sum settlement, or commutation, filed pursuant to R.I.G.L. § 28-33-25. The trial judge granted the petition and entered an Order on January 8, 2003 ordering the employer to pay the settlement amount to the employee. On the same date, the trial judge entered a decree stating that the employee had been paid and that the employer was discharged from any further liability. On January 16, 2003, the employer filed a motion for clarification of the order granting the commutation after discovering that the Department of Labor and Training (hereinafter “the Department”) might have a lien against the proceeds of the settlement because the employee had received some Temporary Disability Insurance benefits at some point.

Pursuant to an order entered on January 27, 2003, the trial judge reopened the matter, ordered the employer to pay the employee the net proceeds in excess of the alleged lien, and ordered the employer to inform the Department of the next hearing regarding the dispute. The employee filed a claim of appeal, apparently from this order, which was subsequently withdrawn.

On January 23, 2003, the employee filed a petition to enforce alleging that the employer had failed to comply with the decree ordering payment of the

settlement to the employee. The petition was denied at the pretrial conference and the employee claimed a trial.

The parties, including counsel for the Department, submitted an agreed statement of facts to the court, for use in both petitions, which states as follows:

“1. On September 7, 2000, David Walker suffered an injury which arose out of and in the course of his employment with Amtrol Holdings, Inc.

“2. As a result of that work injury, David Walker became partially disabled on November 2, 2000.

“3. On February 14, 2001, the Beacon Mutual Insurance Company issued a memorandum of agreement which is attached hereto.

“4. Pursuant to a pre-trial order entered in reference to a petition filed by Amtrol, Inc. and/or Beacon Mutual Insurance Company, David Walker’s workers’ compensation indemnity benefits were suspended as of May 24, 2001. A copy of the pre-trial order is attached hereto.

“5. Pursuant to an interlocutory order, a copy of which is attached hereto, Amtrol, Inc. resumed payment of weekly compensation benefits from November 26, 2001 and continuing.

“6. From May 24, 2001 through November 17, 2001, David Walker received temporary disability insurance benefits in the total sum of \$7,236., per the T.D.I. payment history attached.

“7. David Walker and Amtrol, Inc. commuted the Workers’ Compensation claim pursuant to the attached order of Commutation and Decree in reference to W.C.C. No. 2002-8907.

“8. In conjunction with the Commutation, David Walker withdrew his claim of trial in regard to the pending workers’ compensation cases upon payment to counsel

of a fee of \$2,000. A copy of the stipulation withdrawing the claim of trial is attached.

“9. The Temporary Disability Insurance division of the Department of Labor and Training claims a lien in reference to the commutation recovery in the sum of \$7,236.

“10. During the time period David Walker collected temporary disability insurance benefits from May 24, 2001 through November 26, 2001 there was no order in effect directing that he receive workers’ compensation indemnity benefits and, the petitions in reference thereto having been withdrawn, no court order has entered determining David Walker’s right to indemnity benefits for that time frame.”

The trial judge noted that based upon the wording of the statute, the settlement was for future benefits and the proceeds are therefore not subject to the lien for TDI benefits paid during a prior period of time. In addition, the trial judge found that the employer acted in good faith in seeking clarification regarding the enforceability of the lien and he denied the employee’s request for the award of interest and a penalty.

Some procedural confusion then ensued. In W.C.C. No. 02-08907, a document entitled “Decree” was entered on March 17, 2003 incorporating the trial judge’s findings and orders regarding the lien. This document was apparently mailed to the attorneys representing the employee and employer. However, counsel for the Department did not receive a copy. Thereafter, the document was re-titled as an “Order” and was hand-delivered to all attorneys, but there is no indication as to what date this occurred. The court then issued an order dated March 20, 2003 vacating the “Decree” entered on March 17, 2003

and substituting the re-titled "Order." Another decree was apparently entered on March 27, 2003 identical to the original decree which stated that the settlement proceeds had been paid to the employee and that the employer's liability had been discharged. Both the employee and the Department filed claims of appeal.

In W.C.C. No. 03-00518, a decree was entered on March 17, 2003 denying the employee's petition to enforce. Both the employee and the Department filed claims of appeal in this matter as well.

In the decrees entered in the two (2) matters, the trial judge included the same two (2) findings indicating that there was no TDI lien against the settlement proceeds and that the employer acted in good faith in requesting guidance from the court regarding the lien. This appears to be the reason the Department and the employee filed appeals in both matters. However, it is obvious from the reasons of appeal filed by the respective parties that the Department is challenging only the determination that there is no lien, and the employee is challenging only the denial of his request for a penalty.

The standard of review on appeal is very limited. Section 28-35-28(b) of the Rhode Island General Laws states that a trial judge's findings on factual matters are final unless found to be clearly erroneous. The Appellate Division may conduct a *de novo* review of the evidence only after concluding that the trial judge was clearly wrong. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). After reviewing the determinations of the trial judge in this matter, we

find that he was not clearly wrong and we deny the appeals of the employee and the Department.

We will first address the appeal of the Department in W.C.C. No. 02-08907. The Department asserts that the trial judge was clearly wrong to find that its lien was not enforceable against the settlement proceeds. Section 28-41-6(b)(2) of the Rhode Island General Laws provides that the Department shall be reimbursed for any benefits “received by the individual under chapters 39—41 of this title, for any week or weeks for which that award, order, or settlement is made” (emphasis added). The Department has an enforceable lien only when an injured worker is awarded retroactive workers’ compensation benefits for a period during which he has already received Temporary Disability Insurance benefits.

The employee in this matter received TDI benefits from May 24, 2001 to November 26, 2001. There is no order or decree stating that the employee was entitled to weekly workers’ compensation benefits for this time period. At the time of the approval of the lump sum settlement of his workers’ compensation case, the employee did have several petitions pending, one of which was seeking workers’ compensation benefits for the period in question. However, this petition was withdrawn by stipulation when the settlement was approved.

Section 28-33-25(a)(1) of the Rhode Island General Laws allows the parties to petition the court for approval of “a settlement of the future liability” of the insurer for workers’ compensation benefits (emphasis added). There is no indication in the limited record before us that any portion of the settlement was

for a past liability, specifically that period for which the employee received TDI benefits. Therefore, the reimbursement provisions of R.I.G.L. § 28-41-6 would not be triggered.

This case is analogous to the circumstances in Tibbetts v. Stanley Bostitch, Inc., 706 A.2d 925 (R.I. 1998). That matter involved the assertion of a lien for public assistance benefits against a workers' compensation settlement. The wording of the statute regarding liens for public assistance benefits against workers' compensation awards is very similar to the TDI lien provisions. In Tibbetts, the Rhode Island Supreme Court agreed with the Appellate Division's conclusion that the lien was not enforceable against the settlement as there was no evidence that the settlement proceeds were for a period during which the public assistance benefits were paid.

Similarly, we find no evidence in the record from which to conclude that the settlement was for anything but potential future workers' compensation benefits. Accordingly, the Department's appeals are denied.

The employee's appeals are denied as well because there is nothing available to us to even establish that the employee was not paid in a timely manner. No transcript was ordered in this matter for purposes of appeal. The only "evidence" in the file is the "Agreed Statement of Facts" submitted by the parties and a number of documents related to the commutation petition. The employee's petition to enforce would therefore fail for lack of proof.

Even assuming that we can infer that the employee was not paid the settlement proceeds within fourteen (14) days of the order entered on January 8, 2003 in W.C.C. No. 02-08907, we find that the trial judge was not clearly wrong in denying the request for a penalty. The employer filed the motion for clarification regarding the lien on January 16, 2003 and specifically requested an expedited resolution of the issue because payment of the settlement was due on January 22, 2003. The motion was heard on January 21, 2003 and continued to January 28, 2003. On January 23, 2003, the employee filed his petition to enforce. In the meantime, the court did order the insurer to pay to the employee the proceeds of the settlement in excess of the disputed TDI lien. Apparently, this was done in a timely manner.

The insurer acted reasonably and in good faith in seeking the guidance of the court regarding the lien. Obviously there was a very real legal dispute over the lien as evidenced by the appeals of the Department in these matters. The insurer was not dragging its feet or unnecessarily causing delay in issuing the payment to the employee. In fact, the employee did receive a little over half of the settlement money around the end of January. Under the circumstances, we cannot say that the trial judge was clearly wrong to deny the request for a penalty. Consequently, the employee's appeals are denied.

In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, final decrees, copies of which are enclosed, shall be entered on

Connor and Salem, JJ. concur.

ENTER:

Olsson, J.

Connor, J.

Salem, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

DAVID WALKER

)

)

VS.

)

W.C.C. 03-00518

)

AMTROL

)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeals of the petitioner/employee and the Department of Labor and Training as intervenor and upon consideration thereof, the appeals are 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 17, 2003 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

ENTER:

Olsson, J.

Connor, J.

Salem, J.

I hereby certify that copies were mailed to Peter A. Schavone, Esq.,
Bernard P. Healy, Esq., and Susan Pepin Fay, Esq., on

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

DAVID WALKER

)

)

VS.

)

W.C.C. 02-08907

)

AMTROL, INC.

)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeals of the petitioner/employee and the Department of Labor and Training as intervenor and upon consideration thereof, the appeals are 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 17, 2003 and/or March 20, 2003 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

ENTER:

Olsson, J.

Connor, J.

Salem, J.

I hereby certify that copies were mailed to Peter A. Schavone, Esq.,
Bernard P. Healy, Esq., and Susan Pepin Fay, Esq., on
