

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

JANICE BRADLEY

)

)

VS.

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W.C.C. 01-00571

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RHODE ISLAND HOSPITAL

)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter came before the Appellate Division pursuant to the petitioner/employee's claim of appeal from the decision of the trial judge granting the employer's Motion to Dismiss the petition. We sustain the employee's appeal and remand the matter to the trial judge for further consideration.

The employee filed an Original Petition alleging that she was injured during her employment on November 13, 2000 and was disabled from that date and continuing. The petition was denied at the pretrial conference and the employee claimed a trial in a timely manner. During the trial, the employee testified and presented the affidavit and deposition of Dr. John A. Froehlich.

After the employee rested, the employer moved to dismiss the petition on the grounds that the employee had not presented any competent medical evidence to establish disability as a result of a work-related injury. The trial judge

reviewed Dr. Froehlich's deposition and concluded that there was a "failure of proof" and dismissed the petition.

The employee has filed seven (7) reasons of appeal, basically contending that the trial judge overlooked or misconceived the testimony of Dr. Froehlich. After review of the trial transcript and the deposition of Dr. Froehlich, we find that the trial judge erred in granting the Motion to Dismiss.

Ms. Bradley began treating at Dr. Froehlich's office on November 27, 2000 and was seen about every two (2) weeks through February 1, 2001. She did not keep appointments in March and April and did not return to the office until August 9, 2001. From November 2000 to February 2001, the employee was seen and examined by Kerry Clark, a certified registered nurse practitioner, who worked with Dr. Froehlich. Ms. Bradley did not actually see the doctor until August 9, 2001. By that time, the employee had been back to work at her regular job duties for about two (2) months.

Dr. Froehlich testified that he monitored Ms. Clark's work and in this case, he had reviewed the examination findings, the treatment plan and the x-rays for each visit by Ms. Bradley. During his deposition, the doctor rendered opinions regarding her diagnosis, causal relationship and disability, based upon his review of Ms. Clark's detailed reports. Counsel for the employer objected to the questions asking for the opinions of the doctor, but the deposition was introduced into evidence at the trial without any objection. There is no indication of any rulings made on the objections. Furthermore, during the doctor's deposition, his

reports, as well as those authored by Ms. Clark, were introduced as an exhibit without objection. Again, at the time of submission of the deposition into evidence during the trial, no objection to the reports were raised.

The trial judge, in her bench decision on the motion to dismiss, noted that there was no affidavit or testimony from Ms. Clark stating an opinion on disability. However, Ms. Clark's reports were in evidence without objection, and can, therefore, be used for all evidentiary purposes without the need for authentication or certification. The statements and opinions in the reports can then be considered as expert medical testimony. Under R.I.G.L. § 9-19-27(b), a certified registered nurse practitioner is considered in the same manner as a physician, with regard to authenticating medical reports and the opinions contained therein by affidavit.

The trial judge referred to the fact that Dr. Froehlich commented on the employee's disability based upon his review of Ms. Clark's reports, but she apparently disregarded those opinions, because the doctor had not examined the employee during that time. He did state that when he saw the employee in August 2001, he concluded that she was not disabled and he could not relate her ongoing complaints to the work injury. However, Dr. Froehlich's opinions, derived from his review of the registered nurse practitioner's reports, constitute competent probative medical evidence of injury and disability during the period from November 2000 to June 2001.

Based upon our review of the record, the nurse practitioner's reports were admitted into evidence without objection, and, provided a proper foundation for the opinions of Dr. Froehlich. Consequently, the trial judge erred in concluding that there was no competent medical evidence of injury or disability, and summarily, denying the employee's petition. The appeal of the employee is sustained and the decree entered on July 10, 2002 is, hereby, vacated. The matter is remanded to the trial judge for further proceedings and consideration of the employee's petition on the merits. An Order of Remand shall enter in accordance with our decision.

Healy and Connor, JJ. concur.

ENTER:

Healy, J.

Olsson, J.

Connor, J.

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ORDER OF REMAND FROM THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the appeal of the petitioner/employee from a decree entered on July 10, 2002. Upon consideration thereof, the appeal of the employee is sustained and in accordance with the decision of the Appellate Division, it is hereby ordered:

1. That the decree entered on July 10, 2002 granting the respondent/employer's motion to dismiss is vacated.
2. That the matter is remanded to the trial judge for further proceedings and consideration of the employee's petition on the merits.

Entered as the Order of this Court this day of

BY ORDER:

ENTER:

Healy, J.

Olsson, J.

Connor, J.

I hereby certify that copies were mailed to Stephen J. Dennis, Esq., and
James T. Hornstein, Esq., on
