

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

JUDY ZEIL

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VS.

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W.C.C. 01-01067

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ST. JOSEPH HOSPITAL

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JUDY ZEIL

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VS.

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W.C.C. 99-04343

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ST. JOSEPH HOSPITAL

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ST. JOSEPH'S HOSPITAL

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VS.

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W.C.C. 99-01348

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JUDITH ZEIL

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DECISION OF THE APPELLATE DIVISION

SOWA, J. These three (3) matters were consolidated by the court for trial and remain consolidated on appeal to the Appellate Division. The employee has appealed from the decision of the trial judge concluding that the employee's incapacity for work

has ended and denying the employee both an increase in her disability status and reimbursement for the cost of medication. After a plenary review of the record and thorough consideration of the arguments of the parties, we deny the employee's appeal and affirm the decision and decrees of the trial judge.

The employee initially began receiving weekly workers' compensation benefits pursuant to a consent decree dated February 15, 1995. This document memorialized the injuries to her head and neck on July 13, 1994 resulting in partial disability from July 14, 1994 to December 11, 1994. A second decree, W.C.C. No. 96-01445, entered on May 22, 1997, established that the employee suffered from "organic mood disorder," a condition which emanated from her original work-related head injury and thereby rendered the employee partially disabled as of October 20, 1995.

The present case arises from the following three (3) petitions. W.C.C. No. 99-01348 is an employer's petition to review alleging that the employee's incapacity for work has ended. At the pretrial conference, the petition was denied and the employee's weekly benefits were continued at the rate for partial incapacity. The employer duly claimed a trial. After a full trial on the merits, the trial judge concluded that the employee is no longer suffering from "organic mood disorder," or "mood disorder due to a general medical condition," flowing from the effects of the work-related injury she sustained on July 13, 1994. A decree entered finding that the employee's incapacity for work had ended.

W.C.C. No. 99-04343 is an employee's petition to review alleging that the employer has failed to reimburse the employee for the cost of medication prescribed by Dr. Robert Bessette. At the pretrial conference, the trial judge denied the petition. The

employee duly claimed a trial. After a full trial, the trial judge concluded that the employee was not entitled to reimbursement because she was no longer suffering from the condition for which the medication was allegedly prescribed.

W.C.C. No. 01-01067 is an employee's petition to review alleging that the employee's incapacity has increased from partial incapacity to total incapacity or, in the alternative, that her partial disability poses a material hindrance to obtaining employment and she is therefore entitled to a continuation of benefits beyond three hundred and twelve (312) weeks pursuant to R.I.G.L. § 28-33-18.3(a)(1). At the pretrial conference, the trial judge determined that the employee qualified for a continuation of benefits. The employer claimed a trial in a timely manner. Following a full trial, the trial judge ruled that, as a result of the employer's success in W.C.C. No. 99-01348, this petition must fail. The employee filed a timely claim of appeal challenging the trial judge's findings in each of the three (3) cases.

A review of the facts is appropriate at this time.

The employee worked as an operating room nurse for the respondent at the time of her 1994 head injury. In that capacity, she documented surgical procedures, obtained lab results, organized the surgical team, and assisted in surgery. The employee sustained an injury when she struck her head on a light fixture at work. She stopped working two (2) days after the accident and would remain out of work until December of 1994. The employee sought the treatment of Dr. Albert J. Marano, a neurologist, who referred her to Dr. Bessette, a psychiatrist. She returned to her nursing job in December of 1994, but left again beginning in October of 1995.

The employee divorced in 1989 and raised her two (2) children alone. Her ex-husband met his child support obligations; however, the employee related that the frequent court appearances necessary thereto caused her stress. The employee explained that she felt numb, and that she refrained from socializing with friends or participating in athletics. The employee declared that her daughter moved out of the house for want of adequate household finances evidenced by the frequent termination of utilities services. The employee stated that she would often miss sleep for days at a time. In addition, she stated that she felt useless, and would cry without any detectable explanation. She testified that upon experiencing stress she would lose control and cry as her tolerance for stress was virtually nonexistent.

The employee stated that she treated with Dr. Bessette monthly and he provided her with samples of Prozac and Valium. She testified that she took samples only because she could not afford a regular prescription. She indicated that the medication helped her and that upon ingesting it she would attempt productive activity.

The medical evidence presented by the parties consisted of the depositions and records of Dr. Robert Bessette, Dr. Daniel S. Harrop, Dr. Martin J. Kelly, and Dr. Norman M. Gordon. In addition, the reports of a health care review team appointed by the court were admitted as an exhibit.

Dr. Bessette, a psychiatrist, began treating the employee in August of 1994. He testified that he diagnosed the employee with organic mood syndrome, as demarcated in the Diagnostic and Statistical Manual of Mental Disorders, Version III Revised (DSM-III-R). He elucidated that this syndrome is characterized by “. . . prominent and persistent depressed, elevated or expansive mood resembling either a manic episode or

depressive episode, but it's due to a specific organic factor.” (Ee's Exh. A, p. 4). He attributed her condition to the work-related incident because the employee had no history of depression before the occurrence. He remarked that under the updated DSM (DSM-IV), her condition had changed to “. . . mood disorder due to general medical condition.”

The doctor suggested that it was common for the symptoms of the employee's mood disorder to continue after recovery from the organic problem, to wit, the work-related injury. He further maintained that the employee's mood disorder resulted from the work-related injury as she never experienced depression until that incident. The doctor declared that the employee could not return to her nursing responsibilities because she continued to endure depression, poor concentration, and poor attention.

The doctor stated that he prescribed Trazodone to help the employee sleep, Clonazepam as an anti-anxiety medication and Prozac to treat her depression. The doctor averred that all of the aforementioned medications were necessary to treat the employee's mood disorder. The doctor disclosed that he also treated the employee for attention deficit hyperactivity disorder (ADHD) and that some of the symptoms of that condition harmonized with the mood disorder. He indicated that he prescribed only Ritalin for her ADHD.

The doctor admitted that family problems and other situations catalyze stress and anxiety in the employee; however, he maintained that these would not cause clinical depression. Conversely, he proposed that the underlying depression would affect her ability to tolerate otherwise normal situations without any significant psychological consequences.

Dr. Daniel Harrop, a psychiatrist, evaluated the employee on February 23, 1999 at the employer's request. He opined that the employee suffered from a mild depressive disorder that the employee controlled with medication. He based his opinion on his own independent examination as well as certain medical records of her prior treatment. He testified that he found no evidence of a mood disorder on the date of his examination despite Dr. Bessette's earlier citations regarding evidence of a mood disturbance. He agreed that the employee continued to undergo situational problems with her son and finances which affected her mood and ability to concentrate. He concluded that, because of these problems, she should refrain from undertaking her prior responsibilities as an operating room nurse but that she was capable of performing some other modified work.

Dr. Martin J. Kelly, a psychiatrist, interviewed the employee on February 27, 2002 at the employer's request. The doctor also conducted some testing of the employee on March 28, 2002. The doctor reviewed the employee's extensive medical and psychiatric records. He noted that the neurologists and neurosurgeons who treated the employee subsequent to her work-related incident all deduced that she experienced no ongoing or permanent post-concussive symptomatology and that all of the diagnostic testing related to her head injury came back negative.

Dr. Kelly concluded that the employee could return to work as she had no present psychiatric or neuropsychiatric conditions. His examination did not detect symptoms of post-concussive syndrome or mood problems that were related to the work incident. He opined that a long-standing personality disorder or personality characteristics caused her condition, not the work injury, and that none of the medications she was taking were necessary to treat any effects of the work-related incident.

The court appointed a health care review team to evaluate the employee. Dr. Norman M. Gordon, a neurologist, Dr. Steven A. Feldman, a psychiatrist, and Estelle R. Hutchinson, a vocational rehabilitation counselor comprised the team. Dr. Gordon examined the employee on May 25, 2001 without any records of the employee's prior medical treatment; however, upon obtaining the opportunity to review records of her medical and psychiatric treatment, the doctor appended a follow-up letter to his initial report. The doctor concluded that the employee no longer suffered from the effects of any neurological disorder, but she did suffer from a psychiatric illness characterized by depression, anxiety disorder, and ADHD. He suggested that the minor head injury sustained at work likely did not cause these problems. Notwithstanding, the doctor did state that the work injury exacerbated the employee's pre-existing psychiatric illness.

Dr. Feldman evaluated the employee on May 11, 2001. He opined that the employee's alleged concentration problems could not be related to the work injury as her neurologist concluded that her post-concussive syndrome had resolved by November of 1994. The doctor further suggested that given the absence of pre-injury cognitive or psychiatric impairments or any other explanation for her depression, the work injury caused the anxiety and depression. The anxiety and depression, he opined, rendered the employee disabled and, accordingly, unable to work.

Ms. Hutchinson, a vocational counselor, testified that the employee had no vocational options. She rendered her opinion based on Dr. Feldman's assessment.

At the conclusion of the evidence, the trial judge chose to accept the medical opinions of Dr. Kelly over the opinions offered by Dr. Bessette regarding the origin of the employee's current psychiatric condition. The trial judge noted that although Dr.

Bessette supports the employee's assertion that she remains disabled he also acknowledged that ADHD and personal problems could affect her condition. Additionally, he admitted that he relied on the employee's personal recount of her history regarding past psychological conditions, or the lack thereof, and that the employee had apparently recovered from post-concussive syndrome. Dr. Kelly, on the other hand, conducted a thorough examination of the employee which included objective testing. His results were subject to evaluation by an outside agency utilizing standardized computer models. Further, the trial judge asserted, Dr. Gordon, Dr. Harrop, and Dr. Feldman significantly buttressed his opinions. The trial judge thus found that the employee no longer suffered from "organic mood disorder," or "mood disorder due to a general medical condition," flowing from the effects of the work-related injury. The trial judge then granted the employer's request to discontinue benefits. Because the trial judge deemed the employee free of disability, she denied the employee's two (2) petitions seeking reimbursement for the cost of medication and a continuation of benefits, respectively.

Pursuant to R.I.G.L. § 28-35-28(b), the Appellate Division must hold fast to the trial judge's findings on factual matters in the absence of clear error. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). The Appellate Division is empowered to conduct a *de novo* review only when a finding is made that the trial judge clearly erred. Id. (citing R.I.G.L. § 28-35-28(b); Grimes Box Co. v. Miguel, 509 A.2d 1002 (R.I. 1986)). If the record before the Appellate Division demonstrates evidence sufficient to support the trial judge's findings, the decision must stand. Cognizant of this legal duty imposed upon us, we have carefully reviewed the entire record of this proceeding. For



the following reasons, we find no merit in the employee's appeal, and we, accordingly, affirm the trial judge's decision and decrees.

The employee has filed three (3) reasons of appeal. First, the employee contends that the trial judge committed error by relying on the opinions of Drs. Kelly, Gordon, Harrop, and Feldman. The employee avows that the opinions were unfounded. Notwithstanding, the employee posits, the trial judge misconstrued the opinions. We disagree.

A vigilant evaluation of the record reveals that the trial judge was presented with the depositions and records of Drs. Bessette, Harrop, Kelly, Gordon, and Feldman. Upon diligently examining the medical opinions offered by each doctor, the trial judge, as is her prerogative, chose to rely primarily on the opinions offered by Dr. Kelly as opposed to those opinions offered by Dr. Bessette.

The Rhode Island Supreme Court held in Parenteau v. Zimmerman Eng., Inc., 111 R.I. 68, 299 A.2d 168 (1973), that where conflicting medical opinions of competent and probative value exist, it is the prerogative of the trial court to accept the medical opinions of one (1) provider over another. In the present case, the trial judge discussed all the medical evidence in considerable detail. After assiduously reviewing all of this evidence, the trial judge concluded that the opinions of Dr. Kelly, as supported by Dr. Harrop, Dr. Gordon, and Dr. Feldman, were more probative and persuasive as to whether the employee remained incapacitated as a result of a work-related incident.

Dr. Kelly's written tests of the employee's condition indicated that the employee suffered from multiple types of psychological disorders substantiating exaggeration of symptoms, tantamount to the claims of a hypochondriac. Dr. Feldman bolstered this

report noting discrepancies between the employee's complaints and what she disclosed during his examination. Similarly, Dr. Gordon found the employee's complaints inconsistent with a relatively minor head trauma especially considering she returned to work five (5) months after the incident and subsequently took college courses. Dr. Harrop attributed her condition, to some degree, to family relationships and finances. Dr. Bessette, on the other hand, relied markedly on the employee's own subjective complaints despite unequivocal alternative explanations for her condition. Therefore, the trial judge determined that Dr. Kelly's conclusions more persuasively account for the employee's condition than a minor head trauma sustained in 1994 and resulting post-concussive syndrome from which the employee completely recovered.

The employee also argues that the trial judge erred in denying her reimbursement for prescriptions. With respect to the petition for reimbursement, the trial judge accepted the testimony of Dr. Kelly supported by Dr. Gordon, Dr. Harrop, and, to some degree, Dr. Feldman. She found that Ms. Zeil may, in fact, be suffering from some sort of psychological disorder currently, but it is not the result of a work-related injury she sustained on July 13, 1994. If the disorder she is suffering from is not work-related, the trial judge is correct in finding that the request for reimbursement for prescriptions be denied.

Based on the foregoing, we find no error on the part of the trial judge in finding that the employee no longer suffers from a disability as a result of the effects of a head injury sustained at work on July 13, 1994. Consequently, the employee's appeal is denied and dismissed and the decision and decrees of the trial judge is affirmed.

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 Ricci, JJ. concur.

ENTER:

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Sowa, J.

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Connor, J.

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Ricci, J.

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PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

JUDY ZEIL

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W.C.C. 01-01067

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ST. JOSEPH HOSPITAL

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FINAL DECREE OF THE APPELLATE DIVISION

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 17, 2004 be, and they hereby are, affirmed.

Entered as the final decree of this Court this       day of

BY ORDER:

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John A. Sabatini, Administrator

ENTER:

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Sowa, J.

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Connor, J.

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Ricci, J.

I hereby certify that copies were mailed to Kenneth D. Haupt, Esq., and James T.  
Hornstein, Esq., on

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APPELLATE DIVISION

JUDY ZEIL

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VS.

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W.C.C. 99-04343

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ST. JOSEPH HOSPITAL

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FINAL DECREE OF THE APPELLATE DIVISION

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 17, 2004 be, and they hereby are, affirmed.

Entered as the final decree of this Court this       day of

BY ORDER:

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John A. Sabatini, Administrator

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ST. JOSEPH'S HOSPITAL

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VS.

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W.C.C. 99-01348

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JUDITH ZEIL

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the respondent/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 17, 2004 be, and they hereby are, affirmed.

Entered as the final decree of this Court this       day of

BY ORDER:

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John A. Sabatini, Administrator



ENTER:

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