STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT APPELLATE DIVISION

FEDERAL EXPRESS	)	
	)	
VS.	)	W.C.C. 01-06320
	)	
CHARLES WINTER	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter came on to be heard before the Appellate Division upon the respondent/employee's appeal from a decision and decree entered on February 27, 2002 which discontinued his weekly benefits. After review of the record and consideration of the arguments of counsel, we deny the appeal and affirm the findings and orders of the trial judge.

The employee sustained a work-related injury on March 2, 1999. The insurer issued a Memorandum of Agreement dated October 10, 2000 which describes the injury as a "back sprain/strain" and indicates that the employee was paid weekly benefits for total incapacity beginning June 13, 2000.

The present matter was initiated by the employer filing an Employer's Petition to Review requesting an "Anniversary Review" pursuant to R.I.G.L. § 28-33-46. Pursuant to Rule 2.31 of the Workers' Compensation Court Rules of Practice, the matter was referred to the Medical Advisory Board to schedule an evaluation of the employee by an independent health care review team.

Evaluations were performed by Dr. James E. McLennan, a neurosurgeon, and Estelle R. Hutchinson, a vocational rehabilitation counselor. Their reports were forwarded to the court and the case was assigned for hearing.

The record consists of the reports of Dr. McLennan and Ms. Hutchinson and the depositions of Dr. McLennan and Dr. William F. Brennan, Jr., the employee's treating physician. No live testimony was taken. The trial judge, relying upon the opinions expressed by Dr. McLennan, found that the employee was no longer disabled and was capable of returning to his former employment as a driver/delivery person. He ordered the employer to discontinue the payment of weekly benefits immediately. The instant appeal ensued.

The employee filed three (3) reasons of appeal contending that the trial judge committed clear error because: (1) the statute providing for the anniversary review does not authorize the court to make a finding that the employee is no longer disabled and; (2) that the statute confers the authority to make certain findings of fact, but does not authorize the issuance of orders implementing those findings. The third reason of appeal simply repeats the first two. We find no merit in the employee's arguments and deny his appeal.

The employer's petition requested an "Anniversary Review" pursuant to R.I.G.L. § 28-33-46, which reads:

> "**Anniversary review. –** Any employee receiving weekly benefits fifty-two (52) weeks after a compensable injury shall undergo an anniversary review by the court at which, unless waived by the employer, the court shall make findings as to whether maximum medical improvement has been reached, as to the degree of

> functional impairment and/or disability of the employee, and as to whether the employee should be classified as partially disabled or totally disabled. Temporary total disability does not last beyond the anniversary review. Unless waived by the employer, an anniversary review is conducted annually thereafter. The court shall perform this anniversary review of cases where injury occurs after May 18, 1992."

The employee argues that this statute merely authorizes the trial judge to determine whether an employee is partially or totally disabled and does not permit a finding of no disability. Such a restrictive interpretation of R.I.G.L. § 28-33-46 is contrary to the General Assembly's intent and would result in an absurd and unworkable result.

The Rhode Island Supreme Court has long held that when construing a statute, the court "has the responsibility of effectuating the intent of the Legislature by examining a statute in its entirety and giving the words their plain and ordinary meaning." Matter of Falstaff Brewing Corp. Re: Narragansett Brewery Fire, 637 A.2d 1047, 1049 (R.I. 1994). "... If the statutory language is clear and unambiguous, 'this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meaning' in determining the Legislature's intent." Local 400, International Federation of Technical and Professional Engineers v. Rhode Island State Labor Relations Board, 747 A.2d 1002, 1004 (R.I. 2000) (quoting Accent Store Design, Inc. v Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996).

In addition, a statute must be considered in the context of the entire statutory scheme, and the meaning attributed to it must be consistent with the

statute's underlying policies and purposes. Pullen v. State Of Rhode Island and City of Newport, 707 A.2d 686, 689 (R.I. 1998). Our Supreme Court has further stated that "this court will not ascribe to the Legislature an intent to enact legislation that is devoid of any purpose, is inefficacious, or is nugatory." Cocchini v. City of Providence, 479 A.2d 108, 111 (R.I. 1984).

Section 28-33-46, *supra*, specifically provides that the court shall make findings, *inter alia,* as to the degree of disability of the employee. The employee contends that because the statute goes on to state that a finding can also be made as to whether the employee should be classified as partially disabled or totally disabled, the trial judge is precluded from finding that the employee is no longer disabled. Such a restrictive interpretation would clearly produce an absurd result. The phrase "degree of disability" clearly encompasses the concept that there is no disability at all.

The purpose of R.I.G.L. § 28-33-46 is to trigger a review of the status of an employee's work-related injury and incapacity after a year and annually thereafter. If the insurer has been regularly monitoring the case, then they may waive the court-initiated review. Obviously, the question of whether the employee remains incapacitated from the work injury would be an appropriate part of that review. The employee asks the court to find that the statute confers on the trial judge the power to determine an employee's smallest degree, or fraction of a degree, of disability and/or functional impairment, but when that degree of disability or impairment dissipates, so too does the trial court's authority to

recognize such an occurrence, even in the face of credible medical evidence substantiating an end of disability. This proposition would not only be an absurd result, but would also run contrary to the General Assembly's intent in enacting this provision.

The employee's second reason of appeal argues that R.I.G.L. § 28-33-46 confers on the trial judge only the authority to make findings of fact and that there is no authority to enter orders implementing those findings. He suggests that the employer must file an additional petition requesting the court to discontinue weekly benefits under R.I.G.L. § 28-35-45 and that matter would be consolidated with the Anniversary Review petition and heard by the same judge at trial.

To hold that R.I.G.L. § 28-33-46 only authorizes the trial court to make findings of fact without the ability to issue accompanying decrees would render the proceedings and such findings meaningless and nugatory. The statute would have no purpose. Courts speak through decrees containing orders to implement or cease certain actions. A court's power lies in its authority to not just make findings, but to execute the court's will, based on those findings, through decrees. If the trial court is powerless to issue decrees based upon its findings, the findings themselves become moot and devoid of any relevance.

Both the Workers' Compensation Act and the rules of the Workers' Compensation Court provide for the issuance of decrees with regard to all

controversies submitted to the court. Rhode Island General Laws § 28-35-27 reads:

> **"Decision of controversies – Decrees. –** (a) In any controversy over which the workers' compensation court has jurisdiction pursuant to this chapter, any judge of the court shall, pursuant to §§ 28-35-11 – 28-35-28, and the procedural rules of the court, hear all questions of law and fact involved and presented by any party in interest, and he or she, shall, within ten (10) days after the hearing, unless the parties otherwise agree, decide the merits of the controversy pursuant to the law and the fair preponderance of the evidence and notify the administrator of the court of the decision, who shall immediately notify the parties by mail.
>
> "(b) Within seventy-two (72) hours of the mailing the notice, exclusive of Sundays and holidays, the judge shall enter a decree upon the decision, which shall contain findings of fact, but within that time any party may appear and present a form of decree for consideration." (emphasis added)

Workers' Compensation Court Rules of Practice 2.19 provides in part:

> **"Notices of Decisions.-** The Court shall forthwith forward a copy of the decision and decree in a cause heard by the Court or notice of the rendering thereof . . ." (emphasis added)

Workers' Compensation Court Rules of Practice 2.20 states:

> **"Decrees. -** The Court shall prepare an appropriate decree and copy thereof, and present the same for entry within time provided by the law. . . ."

The Legislature intended that the procedures set forth in the Workers' Compensation Act should follow the course of equity. Carr v. General Insulated Wire Works, 97 R.I. 487, 199 A.2d 24 (1964). It is fundamental that in a cause in equity, a decree must be entered, following a decision of the court, in order to implement and give effect to the decision and findings. Thompson v. Coats & Clark, Inc., 105 R.I. 214, 251 A.2d 403 (1969). For the court to issue a finding

that the employee is no longer disabled based upon the evidence, and not enter a decree ordering the employer to discontinue the payment of benefits would render the finding meaningless.

In addition, the employee's proposal that the employer file a second petition under R.I.G.L. § 28-35-45 to implement the findings made by the trial judge in the petition for anniversary review is unwarranted and unworkable. First, the process would be a waste of judicial resources and only delay the final resolution of the issues presented by the anniversary review. There would also be additional costs to both parties in terms of time and expenses. Such a procedure flies in the face of the court's mandate to ". . . secure a speedy, efficient, informal, and inexpensive disposition of its proceedings under chapters 29 – 38 of this title; . . . ." R.I.G.L. § 28-30-12.

Second, if the second petition was filed after the conclusion of the anniversary review petition, it could be assigned to another judge. What would be the purpose of this second hearing? Would additional evidence be taken? Would the prior findings made in the anniversary review petition be binding upon the second judge? Or would the second judge simply enter a decree implementing the previous findings? We cannot imagine that the Legislature contemplated such a convoluted procedure when it enacted R.I.G.L. § 28-33-46. Our conclusion that the general equity procedure employed with regard to other petitions brought under the Workers' Compensation Act, specifically making findings of fact and issuing orders contained in a duly entered decree, applies to anniversary review

petitions is consistent with the intent of the Legislature and the underlying purposes of the Act as a whole.

For the foregoing reasons, the employee's appeal is denied and dismissed and the decree appealed from is hereby affirmed.

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

Healy and Connor, JJ. concur.

ENTER:

_____
Healy, J.

_____
Olsson, J.

_____
Connor, J.

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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 February 27, 2002 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

_____

ENTER:

_____
Healy, J.

_____
Olsson, J.

_____
Connor, J.

I hereby certify that copies were mailed to John Harnett, Esq., and Tedford Radway, Esq., on

_____