STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MICHAEL GEREMIA	)	
VS.	)	W.C.C. 02-00567
ELECTRIC BOAT/ GENERAL DYNAMICS	)	
MICHAEL GEREMIA	)	
VS.	)	W.C.C. 01-02412
ELECTRIC BOAT/ GENERAL DYNAMICS	)	
MICHAEL GEREMIA	)	
VS.	)	W.C.C. 00-07237
ELECTRIC BOAT/ GENERAL DYNAMICS	)	

DECISION OF THE APPELLATE DIVISION

HEALY, J. These matters came to be heard before the Appellate Division upon the petitioner/employee's appeals from decisions and decrees of the trial court denying the employee's petitions. The first

petition (W.C.C. No. 00-07237) is an Original Petition seeking benefits for disfigurement to the employee's left hand, left leg, left foot, and groin. A pretrial order was entered in this matter denying the employee's request for disfigurement benefits. From this pretrial order, a timely claim for trial was taken by the employee's counsel. A second Original Petition, (W.C.C. No. 01-02412), was filed in this matter seeking workers' compensation benefits for a May 31, 1985 injury to the employee's groin and genitalia, as a result of a burn. The petition seeks total disability compensation from June 2, 1985 to July 22, 1985. This petition also seeks a "switch over from federal to state benefits." A pretrial order was entered in this matter denying the employee's request, and from this pretrial another claim for trial was taken by counsel for the employee. A third petition, (W.C.C. No. 02-00567), was filed by the employee in this matter. This is an Employee's Petition to Review seeking payment for medical bills for services rendered by Dr. Baumann. A pretrial order was entered in this matter denying the employee's request, and from this pretrial order yet another claim for trial ensued.

Following a trial in this matter, the court granted the Employer's Motions to Dismiss, and denied and dismissed the employee's consolidated petitions with prejudice. In her decision, the court found that the employee suffered an injury on May 31, 1985 in the course of his employment and was paid workers' compensation benefits from June 1,

1985 to July 25, 1985, pursuant to the Longshoremen's and Harbor Workers' Compensation Act. She further noted that the employee's medical bills were paid under the provisions of LHWCA and the last payment was made on March 6, 1986.

Based upon these findings, the court essentially found that the employee's claims were time barred. She also held that in the absence of a document establishing liability for the work-related injury under the Rhode Island Workers' Compensation Act, this Court had no jurisdiction to review the provisions of the Federal Compensation statute.

The employee, Michael Geremia, filed his reasons of appeal from the decisions and decrees essentially arguing that the court erred in its findings that the action was time barred. He also argued that the court misinterpreted the legal effect of the payments made to the employee under the Federal LHWCA and that those payments entitle the employee to a finding of liability.

The scope of review by this Panel is sharply limited. Pursuant to Rhode Island General Laws § 28-35-28(b), a trial judge's findings on factual matters are final unless found to be clearly erroneous. See Diocese of Providence v. Vaz, 679 A.2d 879 (R.I. 1996). The Appellate Division is entitled to conduct a *de novo* review only when a finding is made that the trial judge was clearly wrong. Grimes Box Co. v Miguel, 509 A.2d 1002 (R.I. 1986).

Mindful of our legal duty, we have carefully reviewed the entire record of this proceeding, and for the reasons set forth, we find no merit in the employee's appeal and, affirm the trial judge's decision and decree.

The Rhode Island Supreme Court has long held that the Workers' Compensation Appellate Division may decide only those questions of law properly raised on appeal that are before the Appellate Division. Bissonnette v. Federal Dairy Co., 472 A.2d 1223, 1226 (R.I. 1984). The court has frequently stated that the Workers' Compensation Appellate Division, "generally may not consider an issue unless the issue is properly raised on appeal by the party seeking review." Falvey v. Women & Infants Hosp., 584 A.2d 417, 419 (R.I. 1991). In order for issues to be properly before the Appellate Division, the statutory requirements of Rhode Island General Laws § 28-35-28 must be satisfied. The pertinent language of R.I.G.L. § 28-35-28 mandates, "...the appellant shall file with the administrator of the court reasons of appeal stating specifically all matters determined adversely to him or her which he or she desires to appeal..." This Tribunal is without authority to consider reasons of appeal that fail to meet the statutorily required level of specificity. Bissonnette, 472 A.2d 1223 (R.I. 1984). General recitations that a trial judges' decree was against the law and the evidence fail to meet the specificity requirements of R.I.G.L. § 28-35-28. Falvey, 584 A.2d 417 (R.I. 1991). Thus, the employees' reasons of appeal: (1) "The Decree is against the law."; (2)

"The Decree is against the evidence."; and (3) "The Decree is against the law and the evidence and the weight and sufficiency thereof." fail to meet the required standard of specificity. Accordingly, we deny and dismiss employee's so-called "general" reasons of appeal.

The employee next assails the trial judge's finding that the statute of limitations found in R.I.G.L. § 28-35-57 had expired prior to the filing of the instant petition. Under the holding in Rainville v. King's Trucking Co., 448 A.2d 733, 735 (R.I. 1982), a petitioner must satisfy the time limitation set forth in R.I.G.L. § 28-35-57, by filing a petition within three (3) years subsequent to the time when the condition of injury or disfigurement "had reached a plateau where nothing further could be done to improve...appearance." [1] Carter v. Lang Jewelry Co., 492 A.2d 1231, 1233 (R.I. 1985). Otherwise, the petition will be barred.

In the instant petition, the trial judge relied upon the transcript from the deposition of Dr. Harvey Baumann in finding that statute of limitations had tolled. The employee presented the deposition testimony of Dr. Baumann, a board certified plastic reconstructive hand surgeon. In his deposition testimony, Dr. Baumann testified that it generally takes between six (6) and eighteen (18) months for a scar to fully heal depending on the quality of the scar and its location. Dr. Baumann acknowledged that the

[1] It should be noted that Pursuant to Public Law 1990, Ch.332, the period of limitations was reduced from three (3) years to two (2) years. On the date of the employee's injury, the relevant period of limitations was three (3) years, and we base our decision on this three (3) year period.))

employee's injury occurred on May 31, 1985 and not on July 21, 2000 as he was originally informed, and, thereafter, testified that the employee's scarring should have reached an end result within sixteen (16) to eighteen (18) months subsequent to May 31, 1985. He also noted that the employee's scarring is obvious and is located in an area of his body in which the employee would be cognizant of his scarring on a daily basis.

Clearly, the uncontradicted testimony of the employee's treating physician, Dr. Baumann, supports the court's finding that the employee had failed to file his claim for benefits within the relevant time period. Dr. Baumann indicated that the employee's scarring had reached an end result sixteen (16) to eighteen (18) months after May 31, 1985. Even if the employee's recovery time was factored at eighteen (18) months, the longest period allowed by his expert, scarring would have reached and end result on or about the end of November 1987. The employee would have been required to file a petition within three (3) years of November 1987. Thus, the statute of limitations would have run on or about November 30, 1990. The instant petition was not filed until December 1, 2000, more than a decade after November 1987, the last date on which the statute would have begun to run. The trial judge was correct in her finding that the petition was barred by the time limitations set forth in R.I.G.L. § 28-35-57. Further, Dr. Baumann testified that the employee was aware of his scarring

on a daily basis and either "knew or by exercise of reasonable diligence should have known of the existence of his permanent disability." Rainville, at 735. Finally, the trial judge also noted that the employee failed to offer any testimony that he only became aware that his scarring had fully healed within the three (3) years prior to the filing of the instant petition. Thus, there is no factual predicate to even trigger the "state of mind" dispute discussed by the court in Rainville, supra.

More importantly, the Rhode Island Supreme Court has held that unlike other statutes of limitations, those periods of limitations specified in the Workers' Compensation Act, particularly § 28-35-57, are considered statutes of repose. Ponte v. Malina Co., 745 A.2d 127, 133 (R.I. 2000); Salazar v. Machine Works, Inc., 665 A.2d 567, 568 (R.I. 1995). A "statute of limitations" bars a right of an action unless the action is filed within a specified period after an injury occurs whereas a "statute of repose" terminates any right of action after the applicable time period elapses irrespective of whether there has been a discoverable injury as yet. Salazar, supra. The employee, in this matter, has neglected to present any evidence to satisfy his burden of persuasion in showing that his petition was filed within the time limitations of R.I.G.L. § 28-35-57.

Mr. Geremia also claims on appeal that he is entitled to payment of medical bills and specific compensation benefits for scarring and disfigurement under the Rhode Island Workers' Compensation Act

notwithstanding the fact that he had previously received disability benefits under the Federal Longshoreman's and Harbor Workers' Compensation Act. Although he fails to clearly enunciate the basis for this assertion, we presume he wishes to focus on the concurrent jurisdiction of the two (2) systems as enunciated in Young v. General Dynamics, 494 A.2d 100 (R.I. 1985). In that matter, the court noted that the federal and state acts confer concurrent jurisdiction and afford complementary remedies. Thus, the employee does not need to confront an election of remedies problem. However, this holding does not relieve the employee of his responsibility to act in a timely manner. The Young court went on to note: ..."where there is concurrent jurisdiction between federal and state compensation systems, payments made pursuant to the federal act stay the state limitations period in the same manner as payments made pursuant to the state act." Id. at 102. The court further stated, "Once the employer makes payments that 'constitute an admission that the employee is entitled to compensation...'[t]he result of such payments is that the period for filing a claim begins to run from the date of the last payment.'" Id. at 102; Aragao v. American Emery Wheel Works, 453 A.2d 762, 764 (R.I. 1982).

The facts of the present case relating to the payment of medical expenses are not in dispute. The employee presented Leslie Costa, the keeper of records for Electric Boat Corporation, who presented records which indicate that the employee received workers' compensation benefits

under the federal system from June 1, 1985 through July 21, 1985, in the amount of Two Hundred Twenty-five and 42/100 ($225.42) Dollars per week. These benefits were paid pursuant to the Longshoremen's and Harbor Workers' Compensation Act.

The records presented by Ms. Costa further show that the last medical payment made with reference to the employee's claim was made in March 1986. No payments, on behalf of the employee, have been made since that time. As such, the period of limitations began to run when the last payment was made under the Longshoremen's and Harbor Workers' Compensation Act in March of 1986. The employee did not file his claim for benefits under the Rhode Island Workers' Compensation System until April 11, 2001. Further, the employee presented no evidence to suggest that any payments were made during this fifteen (15) year period or that there was any other reason to excuse the delay in filing. In the face of this evidence, we are convinced that the trial judge was correct in her holding that this action was time barred. Therefore, the employee's reasons of appeal are hereby denied and dismissed and, we 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

Rotondi and Bertness, JJ. concur.

ENTER:

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Rotondi, J.

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Healy, J.

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Bertness, J.

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PROVIDENCE, SC.

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MICHAEL GEREMIA)
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VS.) W.C.C. 02-00567
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ELECTRIC BOAT/)
GENERAL DYNAMICS

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 April 19, 2002 be, and they hereby are affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

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ENTER:

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Rotondi, J.

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Healy, J.

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Bertness, J.

I hereby certify that copies were mailed to Stephen J. Dennis, Esq. and Michael J. Feeney, Esq. on

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