STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

STEPHEN STAMP	)	
	)	
VS.	)	W.C.C. 02-02333
	)	
PROVIDENCE GAS COMPANY	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the petitioner/employee's appeal from the decision and decree of the trial judge denying his request that statutory interest be added to the compensation benefits awarded to him in W.C.C. No. 96-00465 pursuant to R.I.G.L. §28-35-12(c). After careful review of the record and consideration of the arguments of the parties, we deny the employee's appeal, and affirm the decision of the trial judge.

W.C.C. No. 96-00465 was an original petition in which Mr. Stamp alleged that he sustained a work-related injury to his back on February 8, 1994. That case was heard together with two (2) additional original petitions filed by the employee, W.C.C. Nos. 96-02254 and 96-02253. In a decree entered on March 13, 2002 in W.C.C. No. 96-00465, the employee was awarded weekly benefits for partial incapacity from January 9, 1996 through July 29, 1996, for total incapacity from July 30, 1996 through October 14, 1996, and again for partial incapacity from October 15, 1996 through July 20, 1998. Pursuant to a decision issued simultaneously with this matter, the Appellate Division affirmed the trial judge's decision in W.C.C. No. 96-00465.

The original petition in W.C.C. No. 96-00465 was filed on January 22, 1996. A pretrial order was entered on February 21, 1996 which denied the petition and the employee filed a claim for trial. The matter proceeded to trial, consolidated with two (2) other original petitions which had been subsequently filed by the employee. On June 23, 1998, the employee rested and on November 4, 1999, the employer rested. The employee then moved to reopen all three (3) matters. That motion was granted on May 16, 2000. Further evidence was presented to the court. However, problems arose between the employee and his attorney and the matters were continued for several months pending the filing of a motion to withdraw as counsel. Apparently, the employee and his attorney resolved their differences. The cases were then continued a number of times for submission of memoranda and proposed findings of fact. The matters finally concluded on or about October 25, 2001. The trial judge's written decision was rendered on February 21, 2002 and the decree was entered on March 13, 2002.

In rendering his decision in this matter as to whether interest should be awarded, the trial judge considered testimony of the employee regarding his recollection of the course of the litigation, the docket sheets from the three (3) original petitions (W.C.C. Nos. 96-00465, 96-02253 and 96-02254) and the actual court files from those cases.

The trial judge denied the request for interest on the ground that the proceedings had been unduly delayed by the employee. He noted that the case was a standard original petition involving a low back injury which should have been completed in a much shorter period of time. The medical evidence which the trial judge relied upon in awarding benefits was available at least by late 1997. The trial judge stated that the employee sought continuances and further hearings thereafter in an unsuccessful effort to prove that his employer and their third party administrator for workers' compensation had committed fraud in failing to provide all of his

MRI films to one (1) of the doctors. This quest consumed a significant amount of time, leading the trial judge to conclude that the employer should not be penalized by paying interest when the delay in finalizing this litigation in a timely manner was attributable to the employee.

The scope of our review at the appellate level is very limited. The findings of fact made by a trial judge are final unless the appellate panel determines that they are clearly erroneous. R.I.G.L. § 28-35-28(b); see Diocese of Providence v. Vaz, 679 A.2d 879 (R.I. 1996). The Appellate Division may conduct a *de novo* review of the evidence only after a finding is made that the trial judge was clearly wrong. Id.; Grimes Box Co., Inc. v Miguel, 509 A.2d 1002 (R.I. 1986).

The employee has filed five (5) reasons of appeal. The first three (3) reasons are general recitations that the trial judge's decision is against the law and the evidence. These statements clearly do not satisfy the requirements of the statute and case law providing that reasons of appeal shall state with specificity the alleged errors committed by the trial judge. See R.I.G.L. §28-35-28(a); Bissonnette v. Federal Dairy Co., Inc. 472 A.2d 1223, 1226 (R.I. 1984); Falvey v. Women and Infants Hospital, 584 A.2d 417, 420 (R.I. 1991). Therefore, these reasons are denied and dismissed.

The employee next argues that the trial judge abused his discretion in denying the petition for interest under R.I.G.L. §28-35-12(c) when he was successful in his original petition for workers' compensation benefits in W.C.C. No. 96-00465. Section 28-35-12(c) provides as follows:

> "If any determination of the workers' compensation court entitles an employee to retroactive payment of weekly benefits, the court shall award to the employee interest at the rate per annum provided in § 9-21-10 on that retroactive weekly payment from six (6) months subsequent to the date that the employee first filed a petition for benefits to the time when that retroactive payment is

> actually made. If the proceedings are unduly delayed by or at the request of the employee or his or her attorney, the judge may reduce or eliminate interest on retroactive payment; provided that the provisions of this section as they relate to interest shall apply only to petitions filed on or after July 1, 1984."

The Rhode Island Supreme Court has previously stated that the award of interest under this statute is mandatory, not permissive, if all of the conditions are satisfied. Conrad v. State of R.I.—Medical Center—Gen. Hosp., 592 A.2d 858, 860 (R.I. 1991). However, the Court noted that a finding of undue delay attributable to the employee or his attorney is grounds for reduction or elimination of the award of interest. Id. In a subsequent case in 1991, the Court concluded that the Workers' Compensation Court (the Workers' Compensation Commission at the time) acted within its discretion, as provided in R.I.G.L. § 28-35-12(c), when it denied interest to an employee after the case had been delayed for six (6) months due to the inaction of the employee's attorney. Beaulieu v. State Dept. of Educ., 598 A.2d 1375, 1376 (R.I. 1991).

Obviously, the fact that the employee is ultimately successful in prosecuting his original petition does not automatically entitle him to an award of interest. In this matter, the trial judge reviewed in detail the course of the litigation. It is evident that most of the continuances requested in this matter were at the request of the employee. The matter was somewhat prolonged due to the large number of physicians (at least eight (8)) who saw the employee and the employee's determination that he needed to depose every one (1) of them. In addition, the protracted investigation into the alleged fraud lengthened the trial considerably.

The employee argues that all of the necessary medical evidence was not available until at least the middle of 1998, as evidenced by the trial judge's reliance on a report of Dr. Paul Welch from July 1998. This argument is without merit. That report of Dr. Welch was utilized as the basis for a finding that the employee was no longer disabled as of July 20, 1998 because Dr.

Welch had released him to return to his regular job. This information was not necessary for the employee to successfully prosecute an original petition requesting the award of weekly benefits for a work-related injury. The case could easily have been decided before July 1998 and the trial judge would have left the period of incapacity open-ended.

In his fifth reason of appeal, the employee contends that the trial judge was clearly wrong to conclude that he unjustly delayed the proceedings while investigating his allegations of fraud when the trial judge never specifically ruled on that allegation. We have addressed in more detail the issue of the appropriateness of the investigation into the alleged fraud and the lack of a specific finding regarding that issue in the trial decree in our decision in the underlying cases, W.C.C. Nos. 96-00465, 96-02253 and 96-02254. It is sufficient to state here that the question of why one (1) of the doctors was apparently not provided a complete set of the employee's MRI films was completely irrelevant to the merits of the original petition. Once it was established that the doctor's opinion was based upon an incomplete set of films and the missing films may have revealed additional damage to the spine, the probative value of the doctor's opinion was effectively depleted. The time spent attempting to establish some sort of conspiracy on the part of the hospital and the third party administrator to intentionally provide an incomplete set of films constituted undue delay in the context of the original petition pending before the court. Such an allegation may have been better addressed in a different forum.

After reviewing the record in this matter, and the trial judge's detailed decision, we find that he did not abuse his discretion in denying the award of interest in this case. For the reasons set forth above, we deny and dismiss the employee's appeal and affirm the decision and decree of the trial judge.

In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Bertness and Connor, JJ. concur.

ENTER:

_____
Olsson, J.

_____
Bertness, 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 petitioner/employee and upon consideration thereof, the employee's 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 September 3, 2002 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____

ENTER:

_____
Olsson, J.

_____
Bertness, J.

_____
Connor, J.

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

_____