

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

CAMILLE RUGGIERO)

)

VS.)

W.C.C. 02-06028

)

CITY OF PROVIDENCE)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter presents the unique question of whether the Workers' Compensation Court has the authority to grant an employee's request to discontinue her entitlement to workers' compensation benefits absent any evidence that she has regained her earning capacity. After reviewing the stipulated facts and considering the arguments of the parties, we agree with the trial judge and answer the question in the negative. Consequently, the employee's appeal is denied.

The matter was initiated with the filing of an Employee's Petition to Review stating that the "employee seeks the discontinuance of her weekly workers' compensation benefits so that she may receive her accidental disability benefits." The petition was denied at the pretrial conference and the employee claimed a trial. The parties submitted a stipulation of facts and memoranda to the trial judge and rested. The trial judge found that the court lacked the authority to

discontinue the employee's entitlement to benefits simply on her own request and denied the petition. The employee has claimed an appeal from that decision and decree.

The facts stipulated to by the parties are as follows:

"1. That the Petitioner, Camille Ruggiero sustained an injury in the course of her employment with the Respondent, City of Providence on August 4, 1997.

"2. That the Petitioner began receiving benefits pursuant to a Memorandum of Agreement issued February 12, 1998 [Exhibit 1].

"3. That Petitioner's injury was due to the negligence of a third party.

"4. That Petitioner received weekly workers' compensation benefits until May 5, 1998 at which time her benefits were discontinued by Pre-Trial Order in WCC No. 98-1810 [Exhibit 2].

"5. That a claim for trial was taken by the Petitioner and in a Decree entered on November 6, 1998, the Pre-Trial Order was upheld [Exhibit 3].

"6. That said Decree was appealed to the Appellate Division which affirmed the Trial Court's decision in a Decree dated April 23, 1999 [Exhibit 4].

"7. That the Petitioner began receiving weekly workers' compensation benefits again for total incapacity commencing on March 24, 1999 pursuant to Pre-Trial Order dated July 21, 1999 [Exhibit 5].

"8. That in September 1998 the Petitioner applied for a disability retirement pension with the Respondent.

"9. That said disability pension was granted effective November 28, 2001.

“10. That in December, 2001 Petitioner settled the third party matter which caused her August 4, 1997 work-related injury.

“11. That in January, 2002 Petitioner forwarded to the Respondent a check in the amount of \$78,699.50 in order to satisfy Respondent’s lien for workers’ compensation payments made to date pursuant to RIGL §28-35-58.

“12. On January 21, 2002 Respondent began to take its “holiday” pursuant to RIGL § 28-35-58 [Exhibit 6].

“13. That Petitioner requested that the Respondent allow her to sign a suspension agreement terminating her weekly workers’ compensation benefits [Exhibit 7].

“14. That the Respondent has refused the Petitioner’s request.

“15. That the Petitioner informed the Attorney General’s Office on October 25, 2002 of its intention to make constitutional arguments concerning her ability to voluntarily sign off her weekly workers’ compensation benefits [Exhibit 8].

“16. That the Attorney General’s Office declined to intervene in the above entitled matter [Exhibit 9].”

The employee has filed four (4) reasons of appeal. The first three (3) reasons are simply general recitations of error which do not satisfy the requirement for specificity in directing the appellate panel to alleged errors of the trial judge. Therefore, they are summarily denied. The fourth reason of appeal is a lengthy argument basically arguing that equity and constitutional concerns of

due process and equal protection dictate that the court must grant the employee's request to release her from the workers' compensation system.

The constitutional arguments asserted by the employee are simply not supported by the evidence, which consists solely of the Stipulation of Facts and the attached exhibits. The employee accuses her employer of holding her hostage to the workers' compensation system, thereby depriving her of her "right" to collect accidental disability benefits. We disagree.

The workers' compensation system is social legislation reflecting compromises by both employees and employers in order to provide the prompt replacement of wages and provision of medical care in exchange for limits on the liability of employers. It is, in a sense, a contract between employees and employers, the execution of which is overseen by the Workers' Compensation Court. The Workers' Compensation Act provides a method for employees to exempt themselves from the workers' compensation system and retain their common law rights to sue their employers for damages caused by an injury at work. See R.I.G.L. § 28-29-17. However, an employee must make this election prior to sustaining such an injury. If the employee does not opt out of the system, she is deemed to have accepted all of its terms and conditions.

Ms. Ruggiero received weekly workers' compensation benefits, apparently in a timely manner, from August 1997 to May 1998 and then again from March 1999 to January 2002. While receiving weekly benefits from her employer, she pursued a claim for damages against a third party whose negligence led to her

injury. This claim was not settled until December 2001. Obviously during those years of waiting to receive money from the third party claim, the employee reaped the benefit of her participation in the workers' compensation system which entitled her to the receipt of a weekly benefit to replace her lost wages and the provision of medical care at her employer's expense.

Upon receipt of the proceeds of her settlement with the third party, the employee reimbursed her employer for the weekly benefits she had received and the medical expenses paid on her behalf in accordance with R.I.G.L. § 28-35-58(a), a provision of the Workers' Compensation Act. This statute provides that when an employee receives damages from a third party in excess of the compensation already paid by her employer, the employer shall suspend the payment of weekly benefits for a period of time equal to the amount of the excess divided by the employee's weekly compensation rate. Ms. Ruggiero received damages from a third party in excess of the compensation paid by her employer and therefore, in January 2002, the employer suspended the payment of her weekly workers' compensation benefits pursuant to the statute.

The theory of this suspension, or "holiday," from the payment of benefits under the workers' compensation system is that the employee should not receive a windfall as a result of the third party recovery. Theoretically, the employee has received damages for future lost wages caused by the injury. If the employer is required to pay her workers' compensation benefits (which constitutes replacement of wages) as well, the employee is then recovering twice for the

same loss. The statute providing the “holiday” period anticipates that the employee is able to live on the excess damages spread out on a weekly basis over that period, in the same way she had survived on her weekly workers’ compensation benefit check prior to receiving the proceeds of the third party settlement. Consequently, an employee is not being held “economically hostage” or left “penniless,” as counsel for the employee contends in the reasons of appeal.

Considering that the employee benefited for almost five (5) years from the provisions of the Workers’ Compensation Act while she was seeking money damages from a third party and further taking into consideration the policy behind R.I.G.L. § 28-35-58(a), we find that the employee’s constitutional arguments regarding due process, equal protection, and access to justice are without merit. In addition, the principles of equity clearly do not dictate the granting of the employee’s request to now remove her from the workers’ compensation system.

The employee is bound by the provisions of the Workers’ Compensation Act and this court is limited in its jurisdiction and authority by the terms of the Act. The employee has conceded that she is currently totally disabled and there is no medical evidence, evidence of wages, or any other type of evidence that would establish that she is no longer disabled due to the injury or has regained her earning capacity. The employee cites the following language in R.I.G.L. § 28-35-

45(b), regarding petitions to review, as providing authority for the court to discontinue the employee's entitlement to benefits:

“Upon this review the workers’ compensation court may decrease, suspend, increase, commence, or recommence compensation payments in accordance with the facts, or make any other order that the justice of the case may require.” (emphasis added)

Although this language would appear to give the court broad powers to dispense justice, we are still bound by the confines of the statute which created this court and defines its jurisdiction. Ms. Ruggiero is entitled to workers’ compensation benefits under the terms of the Act and we cannot find that she is no longer entitled to those benefits simply because she requests that we do so. There is nothing in the stipulated facts that provides a basis or grounds for such a determination.

Based upon the foregoing, the employee’s appeal is denied and dismissed and the decision and decree of the trial judge are affirmed.

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

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 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 23, 2003 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

ENTER:

Healy, J.

Olsson, J.

Connor, J.

I hereby certify that copies were mailed to Andrew S. Caslowitz, Esq., and
Michael Tarro, Esq., on
