STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

JOHN TRANT	)	
	)	
VS.	)	W.C.C. 04-01981
	)	
LUCENT TECHNOLOGIES	)	

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 for a cost-of-living adjustment (hereinafter "COLA") for the year 2002. After reviewing the record and considering the arguments of the parties, we deny the appeal and affirm the decision and decree of the trial judge.

A consent decree entered in W.C.C. No. 00-05201 on April 6, 2001 established that the employee sustained injuries to his right ear, right arm and right hand, as well as post-traumatic stress syndrome, on July 26, 2000. The employee was totally disabled from July 27, 2000 through August 23, 2000 and partially disabled from August 24, 2000 and continuing. On October 10, 2001, a pretrial order was entered in W.C.C. 01-06459 which found that the employee's incapacity had increased to total incapacity as of May 25, 2001 and that he had also injured his neck on July 26, 2000.

The employee filed this petition on March 19, 2004 alleging that the employer had failed to pay him COLAs for the years 2002 and 2003 in accordance with R.I.G.L. § 28-33-17(f)(1).

At the pretrial conference, the trial judge ordered the employer to pay the COLA for the year 2003 plus a twenty percent (20%) penalty. He denied the request for a COLA for 2002. The employee claimed a trial in a timely manner.

The parties presented the following stipulation of facts:

> "1. The employee was injured on July 26, 2000 which injuries were right ear, right arm, right hand and post-traumatic stress syndrome. These injuries had been established by Consent Decree dated April 6, 2001. A pre-trial order dated October 10, 2001 enlarged the covered parts of the body to include "neck" in the description of the injury.
>
> "2. The Consent Decree dated April 6, 2001, found that as a result of the employee's injury he became totally disabled from July 27, 2000 through to August 23, 2000 and continuing partial thereafter. A subsequent pre-trial order dated October 10, 2001 found that the employee's incapacity increased to total and ordered that the employee receive benefits for total incapacity from May 25, 2001 and continuing.
>
> "3. The employee filed a petition alleging that the employer had failed to pay COLA.
>
> "4. The matter was heard before the Court and the employer was ordered to pay the COLA for 2003 plus a 20% penalty to the employee. The Court allowed the employer to deduct these monies from an outstanding credit which the employee owes the employer.
>
> "5. The Court denied any COLA for the year 2002.
>
> "6. The employee timely claimed a trial on the issue of the denial on the 2002 COLA. The employer did not claim a trial on the granting of the payment for the COLA of 2003.
>
> "The only issue before the Trial Court is whether or not the employee is entitled to a COLA for the year 2002. The parties will file Memoranda arguing respective positions."

The trial judge reviewed the statute in question and concluded that the employee was not entitled to a COLA for 2002 because he had not been totally disabled for fifty-two (52)

consecutive weeks prior to May 10, 2002. He, therefore, affirmed his pretrial order and denied the request for the 2002 COLA. The employee has appealed this decision, arguing that the statute does not require that the period of total disability must be fifty-two (52) consecutive weeks. We have reviewed the statute in question and the facts of this case and conclude that the trial judge was correct in his application of the statute to this case.

The pertinent portions of the 2000 version of R.I.G.L. § 28-33-17(f) read as follows:

> "(1) Where any employee's incapacity is total and has extended beyond fifty-two (52) weeks, regardless of the date of injury, payments made to all totally incapacitated employees shall be increased as of May 10, 1991, and annually on the tenth of May thereafter as long as the employee remains totally incapacitated. . .
>
> "(2) If the employee thereafter is found to be only partially incapacitated, the weekly compensation benefit paid to the employee shall be equal to the payment in effect prior to his or her most recent cost of living adjustment.
>
> * * * *
>
> "(5) The preceding computations are made by the director of labor and training and promulgated to insurers and employers making payments required by this section. Increases are paid by insurers and employers without further order of the court. If payment payable under this section is not paid within fourteen (14) days after the employer or insurer has been notified or it becomes due, whichever is later, there is added to the unpaid payment an amount equal to twenty percent (20%) of the payment, which shall be paid at the same time as, but in addition to the payment."

In the instant matter, Mr. Trant was totally disabled for a period of almost four (4) weeks immediately following his injury on July 26, 2000. He was then partially disabled for a lengthy period until May 25, 2001 when he was once again found to be totally disabled. On May 10, 2002, the triggering date for eligibility for a COLA, Mr. Trant had not been totally disabled for fifty-two (52) consecutive weeks. However, if the four (4) weeks of total disability in 2000 is added to his more recent period of total disability, he would have fifty-two (52) weeks of total

disability. The employee urges the court to find that he is eligible for a COLA as of May 10, 2002 because when all of his periods of total disability are added together, he has been totally disabled in excess of fifty-two (52) weeks as of May 10, 2002. We find that to adopt such a position would be a misinterpretation of the statute and certainly not consistent with the underlying purpose of this enactment.

In construing a statute, we first look to the plain and ordinary meaning of the language used and determine if such a reading is ambiguous or would lead to an absurd result. In this case, although the Legislature could have been clearer by using the term "consecutive," we believe that the language used clearly indicates that the fifty-two (52) week period of total incapacity must be continuous. The initial phrase of R.I.G.L. § 28-33-17(f)(1), "[w]here any employee's incapacity is total (emphasis added)," clearly conveys that the provision applies to an employee suffering from a current period of total incapacity. This is the first condition which must be met to qualify for a COLA.

The second condition is controlled by the next phrase, ". . . and has extended beyond fifty-two (52) weeks, . . ." (emphasis added). Black's Law Dictionary, 5th Edition, defines "extended" as follows:

> "A lengthening out of time previously fixed and not the arbitrary setting of a new date. Stretched, spread, or drawn out."

The definition of an "extension" in that text includes the following language:

> "An increase in length of time (*e.g.* of expiration date of lease, or due date of note).
>
> "The word "extension" ordinarily implies the existence of something to be extended."

We find that the plain language of the statute requires that an employee is currently totally disabled on May 10 of a given year and that current period of total incapacity has lasted

beyond fifty-two (52) weeks as of May 10, in other words, the fifty-two (52) week period is continuous. To allow an employee to piece together periods of total incapacity which may be accumulated over any number of years would lead to an absurd result. An employee who is totally disabled is unable to work and earn any wages at all. When such an employee is entirely unable to work for a period of a year or more and is locked in to a weekly compensation rate set at the time of his injury, he begins to lose ground against a rising cost of living and misses out on increases in wages. The implementation of a COLA for injured workers who have been continuously totally disabled for at least a year reflects an effort to assist these employees in keeping up with rising costs. Such a rationale would not apply to an employee who is only totally disabled for brief periods and is otherwise capable of some type of restricted work if he or she chooses to find work.

It may appear to be unfair or unjust that because of the selection of an arbitrary date for qualification for the COLA, some employees may miss out on qualifying for the COLA by one (1) or two (2) weeks. However, the condition that the employee must be totally disabled for fifty-two (52) weeks on May 10 has previously been upheld in Callaghan v. Occupational Info. Committee, 704 A.2d 740 (R.I. 1997). In that case, the employee was injured on June 1, 1990 and began receiving weekly benefits for total incapacity on June 2, 1990. The trial judge had awarded a COLA to the employee effective June 2, 1991. The Rhode Island Supreme Court upheld the Appellate Division's conclusion that the employee was not eligible to receive a COLA for 1991 because she was not totally disabled for fifty-two (52) weeks as of May 10, 1991. Id. at 743.

We also do not believe that the Legislature would have intended to impose an almost impossible administrative burden on insurers and self-insured employers by requiring that they

track each separate period of total incapacity for each individual employee over the life of the claim in order to determine if at any time the weeks add up to the required fifty-two (52) weeks. Rather, the task becomes much more ministerial in nature when each claim need only be checked on May 10 of each year to see if an employee has been totally disabled for the past fifty-two (52) weeks. We are also aware of the fact that the payment of the COLA is in a sense self-executing. Pursuant to R.I.G.L. § 28-33-17(f)(5), the COLA shall be paid to eligible employees without further order of the court and if it is not paid within fourteen (14) days of when it is due, a twenty percent (20%) penalty shall be automatically added to the payment. This statutory scheme certainly contemplates that the determination of which employees are eligible for the COLA would be a simple process easily executed by the insurers without judicial intervention.

Based upon the foregoing, we conclude that the trial judge was not clearly erroneous in his determination that R.I.G.L. § 28-33-17(f)(1) requires that an employee must be totally disabled for a period of fifty-two (52) consecutive weeks as of May 10 of a given year in order to qualify for a COLA for that year. Consequently, the employee's appeal is denied and dismissed and the decision and decree of the trial judge is 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

Sowa and Connor, JJ. concur.

ENTER:

____
Olsson, J.

____
Sowa, J.

____
Connor, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.		WORKERS' COMPENSATION COURT APPELLATE DIVISION
JOHN TRANT	)	
	)	
VS.	)	W.C.C. 04-01981
	)	
LUCENT TECHNOLOGIES	)	

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 June 30, 2004 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____

ENTER:

_____
Olsson, J.

_____
Sowa, J.

_____
Connor, J.

I hereby certify that copies were mailed to Gregory L. Boyer, Esq., and George E. Furtado, Esq., on

_____