STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

AMERICAN SHIPYARD CO., LLC	)	
	)	
VS.	)	W.C.C. 05 - 06262
	)	
MARK RODRIGUES	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the respondent/employee's appeal from a trial decision and decree which discontinued his weekly compensation benefits because the petitioner/employer demonstrated by a fair preponderance of the credible evidence that the employee's incapacity for work had ended. After a careful review of the record in this matter and consideration of the parties' respective arguments, we find no merit in the employee's appeal and affirm the decision and decree of the trial judge.

Mark Rodrigues, the employee, sustained a work-related injury on August 11, 2004 and was disabled as of August 12, 2004. The employer, American Shipyard Co., and employee entered into a Memorandum of Agreement under which the employer paid workers' compensation benefits to the employee for temporary partial disability resulting from his low back strain. Subsequently, the employer filed an Employer's Petition to Review on October 3, 2005 seeking to discontinue benefits because the employee's incapacity for work had ended. At the pretrial conference on October 26, 2005, the trial judge granted the petition, and the employee filed a timely claim for trial. After considering the evidence presented during the trial,

the trial judge affirmed his pretrial order discontinuing benefits. Thereafter, the employee filed the instant appeal.

Mr. Rodrigues was an apprentice electrician, and he provided general electrical maintenance in the employer's shipyard. The employee had to lift objects of varying weights, including his forty (40) pound tool box, coil rolls of cable weighing "a couple hundred pounds" onto a cart which he pushed on the docks, ascend to heights of approximately thirty (30) feet, and crawl into and work in confined compartments of yachts where the electrical components were housed. Tr. 10. The employee was injured at work on August 11, 2004, a rainy morning, when he slipped and twisted while moving a cable from one dock to another. Mr. Rodrigues stated that at the time of trial he was taking medication to manage his pain, but "the normal pain, the everyday pain that [he has], is consistent." Tr. 24. He also opined that he would be unable to perform his ordinary job duties as an electrician because he continued to be unable to lift things and to climb into small spaces.

The medical evidence before the court consists of reports of Drs. Susan M. Green, Sumit Das, Christopher Demers, and Stanley Stutz, the affidavit of Dr. Das, and the deposition and reports of Dr. A. Louis Mariorenzi.

Dr. Green of the Newport Hospital Occupational Health Center treated the employee on the day that he was injured at work and on several subsequent occasions for continued complaints of pain. Dr. Green eventually ordered an MRI to determine why the employee's healing was prolonged. She recommended cessation of physical therapy until she received more information based on the MRI. The doctor saw the employee on October 1, 2004 and referred the employee to Dr. Das, a neurosurgeon, for a consultation to determine whether the results of the MRI showing a free fragment had any clinical significance.

Dr. Das treated Mr. Rodrigues after the referral from Dr. Green, and on December 10, 2004, he noted that the employee could return to full duty, but he advised the employee to start at a slower pace working only four (4) hours a day. He observed that the employee's MRI exhibited degenerative changes and a herniated disc, and the employee's pain was most likely relatable to the degenerative changes. Subsequently, Dr. Das continued to treat the employee and recommended physical therapy. On May 1, 2006, the doctor authored a note stating that the employee was under his care and that he was released to work as of that date with the restrictions that he not lift over fifty (50) pounds and that he not engage in frequent bending or twisting at the waist.

On September 11, 2006, the employee was treated at the Rhode Island Hospital Neurosurgery Clinic where the employee's MRI was reviewed again, and the same conclusions drawn by Dr. Das were reiterated. An updated MRI was ordered. On September 25, 2006, after reviewing the new MRI results, Dr. Christopher Demers recommended that the employee resume physical therapy, continue with medication for pain control, continue soft bracing, and return for a follow up in three (3) to six (6) months. In an addendum to his report issued a few weeks later, he suggested that the employee return to work as tolerated and avoid heavy lifting.

Dr. Mariorenzi, an orthopedic surgeon, examined the employee at the request of the employer on April 18, 2005 and on September 13, 2005. In the reports from both visits, Dr. Mariorenzi indicated that the employee had fully recovered from his work-related injury. He also noted that his MRI was consistent with pre-existing degenerative disc disease that was neither caused by nor aggravated by the work-related injury and which had no clinical significance. In his deposition, Dr. Mariorenzi further clarified that the degenerative changes revealed by the MRI were insignificant because there were no objective findings relating to such

changes, and the employee's subjective complaints were inconsistent with the problems evidenced by the MRI. He noted in his April report that he believed the employee could return to work with no restrictions or limitations following a brief transitional period of fewer hours of work per day. In his September report, he stated that the employee could return to work with no restrictions or limitations. In his deposition, in response to a description of all of the duties required of the employee, Dr. Mariorenzi averred that the employee would be able to return to his previous job without difficulty.

Dr. Stutz, an orthopedic specialist, was appointed by the court to conduct an impartial medical examination upon the motion of the employee to help resolve any ambiguity caused by the differences in the medical reports before the court. Dr. Stutz saw the employee on June 27, 2006 and noted that he had reviewed the notes of Drs. Das and Mariorenzi and the Newport Hospital Occupational Health Center, and he concurred with the treatment provided to Mr. Rodrigues to that point. Dr. Stutz diagnosed the employee with a history of contusion and lumbar strain. He found that the employee had reached maximum medical improvement, and a return to his normal work would not be unduly injurious to the employee's health.

Based on the foregoing evidence, the trial judge affirmed his pretrial order discontinuing the employee's benefits. Specifically, he found that the employer had demonstrated by a fair preponderance of the credible evidence that the employee's incapacity for work had ended. The trial judge noted that the employee was a credible witness, but the decision rested on a medical determination. The trial judge explained that the employee must demonstrate not only that he has ongoing physical problems, but also that those problems were caused by or connected to the work-related injury. Drs. Stutz, Mariorenzi, Das, and Demers all noted that the employee exhibited pre-existing degenerative changes in his spine, and there was no evidence before the

court suggesting that the injury that the employee suffered at work exacerbated that condition. Accordingly, the trial judge found that the employee's incapacity for work, as related to his work-related injury, had ended, and he granted the employer's petition to discontinue benefits.

When considering a trial decision on appeal, "the findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." R.I.G.L. § 28-35-28(b). We will not conduct a *de novo* review of the evidence unless we first make a finding that the trial judge was clearly wrong. *See* Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). In the present case, we do not find that the trial judge was clearly wrong, and we are therefore constrained by his findings of fact.

On appeal, the employee contends that the employer failed to meet the burden of proof in this case because the doctors whose reports were before the court referred to the injury that the employee sustained while at work in the histories that they took of the employee's illness. The employee's assertion is misguided, because simple mention of an injury in a medical history does not, on its own, constitute proof of a causal relationship between the work-related injury and the employee's disability.

The employee has the burden of proving that there is a causal connection between the employee's work and the alleged injury. Natale v. Frito-Lay, Inc., 119 R.I. 713, 716, 382 A.2d 1313, 1314-1315 (1978). He must meet this burden by producing evidence of probative force in support of his position. *See* Delage v. Imperial Knife Company, Inc., 121 R.I. 146, 148, 396 A.2d 938, 939 (1979). Demonstrating a causal connection is typically complex and requires presentation of medical testimony to resolve the issue. Hicks v. Vennerbeck & Clase Co., 525 A.2d 37, 42 (R.I. 1987). The medical testimony must reflect that incapacity due to the injury is

the probable result of the employee's work rather than merely a possible result. Id.; *see also* Natale, 119 R.I. at 717, 382 A.2d at 1315.

The incident at work was appropriately included in the history that the doctors considered in reaching their diagnoses, but the mere mention of an incident at work does not amount to sufficient proof of the requisite causal connection. The employee was released to work by each physician who treated him, and the only continuing physical problems that the employee experienced were deemed the result of degenerative changes by each physician. None of the physicians made a clear and definitive statement that causally connected the degenerative changes to the employee's work, nor did they assert that the injury made the effects of the degenerative changes worse. Therefore, the employee has failed to meet his burden of proof that his ongoing back pain was the probable result of his August 11, 2004 fall at work.

The employee also contends that the trial judge failed to afford the appropriate weight to the employee's own testimony regarding the extent of his physical limitations from the back pain that he experienced after his work-related injury. Although the trial judge stated that the employee was a credible witness, Mr. Rodrigues' testimony relating his continued back problems to his work-related injury is insufficient, standing alone, to carry his burden of proof on the issue of causal connection.

It is a well-established rule that the trial judge may weigh the probative value of the employee's subjective assessment of incapacity. *See* Zabbo & Sons, Inc. v. Zabbo, 122 R.I. 79, 82, 404 A.2d 487, 488 (1979); Rossi v. Riverview Nursing Home, W.C.C. No. 2001-00477 (App. Div. 4/25/03). However, an employee's testimony as to his inability to work is not an adequate substitute for competent medical testimony when the issue of causal relationship is so complex as to require an expert medical opinion. Hicks, 525 A.2d at 42. In the present matter,

there is significant evidence of degenerative changes in the lumbar spine, the area of the body the employee injured at work on August 11, 2004. The question whether the continued subjective complaints of pain by the employee are solely due to the degenerative changes or due to the effects of the work-related injury necessitates a highly technical medical determination. Therefore, reliance solely on the employee's testimony regarding the cause of his incapacity would be inappropriate in this situation. *See* id. at 42-43. In this case, medical evidence is the only competent proof of the necessary causal connection, and there is no such evidence to support the employee's claim.

Finally, the employee contends that the trial judge afforded too much weight to the medical opinions of Drs. Stutz and Mariorenzi. Assuming, *arguendo*, that the medical evidence provided by Mr. Rodrigues sufficiently addressed the issue of causal connection, when a trial judge is faced with conflicting medical opinions, it is entirely appropriate for the trial judge to decide to give greater weight to some medical evidence over other medical evidence. Parenteau v. Zimmerman Engineering, Inc., 111 R.I. 68, 78, 299 A.2d 168, 174 (1973). Additionally, the trial judge is not required to give any greater weight to the opinion of the employee's treating physician. Grimes Box Co., Inc. v. Miguel, 509 A.2d 1002, 1004 (R.I. 1986). Therefore, even if it could be said that one of the doctors treating Mr. Rodrigues causally related his disability to his work-related injury with sufficient specificity and definiteness, the trial judge appropriately exercised his discretion in choosing to rely on the competent opinions of the other physicians who did not find a causal relationship.

In this case, Mr. Rodrigues failed to satisfy his burden of proof on the issue of the causal connection between his incapacity for work and his work-related injury because there is no evidence of probative force that his ongoing pain is the probable result of his August 11, 2004

injury at work. Rather, there is considerable medical evidence in the record that establishes that his continued back pain resulted from degenerative changes unrelated to his work, and the employee's testimony standing alone is insufficient to carry his burden. Further, even if one of the doctors had made a definitive statement of causal connection, the trial judge would have been justified in deciding to give greater weight to the opinion of any of the doctors who did not causally connect the employee's ongoing complaints of pain to his on the job injury.

Based upon the foregoing discussion, the employee's reasons of appeal are denied and dismissed, and the decision and decree of the trial judge are hereby 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

Connor and Hardman, JJ. concur.

ENTER:

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Olsson, J.

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Connor, J.

_____
Hardman, 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 December 6, 2006 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

_____
John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Connor, J.

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Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Kenneth G. Littman, Esq., and Bruce J. Balon, Esq., on

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