STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

KARYN MUMMA	)	
	)	
VS.	)	W.C.C. 05-08019
	)	
CUMBERLAND FARMS, INC.	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the petitioner/employee's appeal from a decision of the trial judge denying her request to reinstate the benefits which she was receiving pursuant to R.I.G.L. § 28-33-18.2 in a suitable alternative employment position, including vacation pay, sick pay, and health insurance benefits, as well as varying partial weekly benefits. After a thorough review of the record and careful consideration of the arguments of the parties, we deny the employee's appeal and affirm the decision of the trial judge.

The matter was submitted to the trial judge on an agreed statement of facts which states as follows:

> "1. On or about April 22, 1999, the Petitioner, Karyn Mumma, suffered an injury which arose out of and in the course of her employment, which injury became disabling on or about June 7, 1999.
>
> "2. Attached hereto as Exhibit "A" and incorporated by reference herein is a true and exact copy of the Memorandum of Agreement made by the employer in reference to Petitioner's work injury.
>
> "3. On or about February 8, 2001, the employer did by correspondence make to the employee, Karyn Mumma, an offer of

suitable alternative employment; a copy of this letter is attached hereto and labeled Exhibit "B".

"4. Thereafter, on or about July 13, 2001, this Court entered a Decree whereby the parties specifically agreed that Ms. Mumma's return to employment was to be considered a job offer of suitable alternative employment within the meaning of the Workers' Compensation Act.

"5. The Petitioner, Karyn Mumma, has continued to work for the Respondent in her suitable alternative employment position and did fully and faithfully perform all job duties pursuant to the requirement of the suitable alternative employment position.

"6. Petitioner has received 312 weeks of partial compensation and the parties have agreed that she is entitled to no further weekly compensation benefits under Sections 28-33-18.3 and 28-33-18 of the Workers' Compensation Act.

"7. While the Petitioner Karyn Mumma continues to work for the Respondent, Petitioner did receive on or about September 22, 2005, a Memorandum from the Respondent, a copy of which is attached hereto as Exhibit "C" and incorporated by reference herein.

"8. The Petitioner on October 24, 2005 stopped receiving benefits earlier paid her while performing the duties of her suitable alternative employment, including health insurance coverage, vacation pay and pension contributions from the employer.

"9. The Respondent now classifies the Petitioner as a part-time employee and Respondent pays Petitioner the benefits package payable to all part-time employees. Given the hours petitioner works at present, she would normally be classified as a part-time employee."

Jt. Exh. 1.

The documents attached to the Agreed Statement of Facts include a Memorandum of Agreement dated December 6, 1999 which states that the employee sustained a left knee ligament injury on April 22, 1999. Pursuant to this memorandum, the employee began receiving weekly benefits for partial incapacity. In a letter dated February 8, 2001, the employer offered

Ms. Mumma a "temporary modified duty position" tailored to the physical restrictions noted by her doctors. On July 13, 2001, a Consent Decree was entered in W.C.C. No. 01-02677 which concluded that the job offered to the employee qualified as suitable alternative employment under the Workers' Compensation Act. The Consent Decree also ordered that the employee would increase her work hours according to her physical abilities. Jt. Exh. 2.

In addition, a memorandum dated September 22, 2005 from the employer to Ms. Mumma was incorporated in the agreed statement of facts. This document advised the employee that because she continued to be unable to work a full-time, forty (40) hour a week schedule, she was being reclassified as a part-time employee effective October 22, 2005. As a result of this reclassification, the employee's health insurance benefits were modified and she was apparently no longer eligible for personal leave and vacation pay. Prior to this date, the employer had continued to provide the employee with the same level of employment benefits for which she was eligible as a full-time employee prior to her work-related injury.

The trial judge reasoned that because the employee was no longer entitled to receive weekly benefits for partial incapacity pursuant to R.I.G.L. § 28-33-18, she was no longer eligible for suitable alternative employment as provided for in R.I.G.L. § 28-33-18.2. Therefore, she could not compel the employer to continue to provide the same employment benefits she enjoyed when she was in the suitable alternative employment position. Her petition was denied and the employee filed this claim of appeal.

In reviewing the decision of a trial judge, we are bound by the deferential standard of review set forth in R.I.G.L. § 28-35-28(b) which provides as follows:

> "The findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous."

In the present matter, the facts have been stipulated by the parties, so we must simply consider whether the trial judge erred in applying the relevant statutes to those facts. After our review of this novel issue, we find that the trial judge was correct in her application of the law and we deny the employee's appeal.

The employee has filed three (3) reasons of appeal in this matter in which she contends that the trial judge's interpretation and application of R.I.G.L. §§ 28-33-18(d) and 28-33-18.3 has effectively and implicitly repealed § 28-33-18.2, the suitable alternative employment statute. The employee argues that despite the fact that she is no longer entitled to the receipt of weekly benefits for partial incapacity pursuant to § 28-33-18, the employer must continue to provide her with the incidental employment benefits she was receiving in the position which was deemed to be suitable alternative employment pursuant to § 28-33-18.2.

Several statutory provisions are involved in the determination of this issue. Section 28-33-18.2(a) of the Rhode Island General Laws, the so-called suitable alternative employment statute, provides as follows:

> "When an employee has sustained an injury which entitles the employee to receive benefits pursuant to § 28-33-18 or 28-34-3, the employee may become capable of suitable alternative employment as determined by the workers' compensation court, or may be offered suitable alternative employment as agreed to by the employee and employer with written notice to the director." (Emphasis added.)

Another subsection, § 28-33-18.2(b), of the same statute addresses the issue of employment benefits:

> "The acceptance of suitable alternative employment shall not be mandatory if it results in the inequitable forfeiture or loss of seniority with the employer or a monetary benefit or other substantial benefit including, but not limited to, vested pension and/or profit sharing contributions, arising from the employment relationship."

These provisions were enacted in 1982 and have not undergone any significant changes since that time.

The other significant provision is R.I.G.L. § 28-33-18(d), which was enacted in 1990, and mandates, in pertinent part, the following:

> "In the event partial compensation is paid, in no case shall the period covered by the compensation be greater than three hundred and twelve (312) weeks." (Emphasis added.)

It should be noted that the employee clearly stipulated in the Agreed Statement of Facts that she is no longer entitled to weekly compensation benefits pursuant to § 28-33-18(d).

We find no merit in the argument that denying the employee relief in this situation effectively repeals the suitable alternative employment statute. The employee overlooks the fact that the employer may terminate the suitable alternative employment position at any time. If the termination occurs prior to the employee having received partial incapacity benefits for 312 weeks, then the employee would be entitled to receive full partial incapacity benefits. However, the employee would obviously no longer be entitled to receive health insurance, pension contributions, or any other benefits incidental to employment. We see no reason why Ms. Mumma should be placed in any better position than such an employee.

In the present case, Cumberland Farms has effectively terminated the suitable alternative employment position, although it has not actually terminated Ms. Mumma's employment. The original job offer was significantly altered and is no longer the position that was deemed to be suitable alternative employment. Consequently, the employer is no longer required to comply with the provisions of § 28-33-18.2 requiring the maintenance of all the incidental benefits of employment enjoyed prior to the work injury. Ms. Mumma is in the same position as any other employee who has had their suitable alternative employment position terminated by the

employer. We cannot find anything in the Workers' Compensation Act which would provide Ms. Mumma ongoing entitlement to the benefits originally conferred by her status in a suitable alternative employment position.

The dire consequences and inequities alleged by the employee if we uphold the trial judge's decision are simply unfounded. The suitable alternative employment statute can provide benefit to both parties. The employer receives productive services from an injured worker who would otherwise be sitting at home collecting weekly workers' compensation benefits. The employee is provided the opportunity to be productive and receive whatever incidental benefits she was receiving prior to the injury. However, there is nothing in the statute indicating that once this relationship is entered into by the employer and employee, it is permanent. On the contrary, there are specific provisions regarding what occurs when one of the parties terminates the agreement. *See* § 28-33-18.2(d). The employee seems to overlook this reality in arguing that the trial judge's decision has unfairly limited the employee's entitlement to the protections of suitable alternative employment to 312 weeks.

The employee contends that under the trial judge's interpretation, an injured worker will be compelled to accept a potentially meaningless job and forego engaging in vocational rehabilitation or risk losing her weekly benefits, only to find that she will lose the rights and benefits she had prior to her injury after 312 weeks. First, a "meaningless" job would most likely never pass muster to qualify as suitable alternative employment which must bear "a reasonable relationship to the employee's qualifications, background, education, and training." R.I.G.L. § 28-29-2(10). Furthermore, as in Ms. Mumma's situation, acceptance of suitable alternative employment provided her with health insurance and other benefits, at least for a period of time, which she would not have had access to if she was not working. In fact, she

received the benefits accruing to a full-time position while only performing part-time work. It certainly appears from the job offer and the terms of the Consent Decree establishing the position as suitable alternative employment, that it was anticipated that Ms. Mumma's part-time hours would be temporary and she would gradually increase the number of hours she was working. Unfortunately, this goal was not achieved in her case. However, in many cases, injured workers accept suitable alternative employment in full-time, worthwhile jobs which pay wages equal to their pre-injury earnings. We do not believe that affirming the trial judge's decision in this case will encourage employers to suddenly find it advantageous to offer employees "meaningless" jobs to avoid paying weekly compensation benefits.

The employer in the present matter was aware that Ms. Mumma was no longer entitled to the payment of weekly benefits for partial incapacity pursuant to R.I.G.L. § 28-33-18(d), which sets the limit of 312 weeks for payment of those benefits. The employer then modified the employee's job status such that it implicitly terminated her suitable alternative employment position, though it did not terminate her employment. Termination of the suitable alternative employment obviously allows the employer to discontinue any incidental benefits provided to the employee pursuant to the statute governing suitable alternative employment. Usually, upon termination of suitable alternative employment by the employer, the employer must institute payment of full weekly compensation benefits. However, in Ms. Mumma's case, she is no longer entitled to the payment of weekly benefits because the 312 week period has expired. We cannot find any provision in the Workers' Compensation Act which would obligate the employer to continue the suitable alternative employment position along with the incidental benefits originally attached to it.

Accordingly, 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

Sowa and Hardman, JJ. concur.

ENTER:

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Olsson, J.

_____
Sowa, 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 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 11, 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.

_____
Sowa, J.

_____
Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Bernard P. Healy, Esq., Paul A. Lietar, Esq., and Michael S. Schwartz, Esq., on

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