STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.		WORKERS' COMPENSATION COURT APPELLATE DIVISION
MARTIN A. HENAO	)	
	)	
VS.	)	W.C.C. 2008-03224
	)	
NEPTCO INCORPORATED	)	
MARTIN A. HENAO	)	
	)	
VS.	)	W.C.C. 2008-02726
	)	
NEPTCO INCORPORATED	)	
NEPTCO, INC.	)	
	)	
VS.	)	W.C.C. 2005-06930
	)	
MARTIN HENAO	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. These three (3) matters were consolidated for trial and remain consolidated at the appellate level for purposes of addressing the employee's appeals from adverse decisions by the trial judge in all three (3) matters. After thorough review of the record and consideration

of the issues raised by the employee, we grant one (1) appeal regarding the allegation of a period of total incapacity, and deny the employee's appeals in the two (2) remaining cases.

W.C.C. No. 2005-06930 is an employer's petition to review alleging that the employee's incapacity resulting from an injury sustained on November 3, 2004 has ended. The petition was granted at the pretrial conference and the employee's weekly benefits were discontinued as of May 17, 2006. W.C.C. No. 2008-02726 is an employee's petition to review alleging that he was totally disabled from November 3, 2004 to March 17, 2005, rather than partially disabled, and requesting the payment of dependency benefits during that time for his non-working spouse and dependent child. That petition was denied at the pretrial conference. W.C.C. No. 2008-03224 is an employee's petition to review requesting that the description of the work-related injury in the memorandum of agreement should be amended to read "lumbar disc syndrome with sciatic radiculopathy," rather than "back strain." This petition was also denied at the pretrial conference. The employee filed claims for trial from the three (3) pretrial orders.

The employee had worked full time for the employer as a machine operator for twelve (12) years. On November 3, 2004, during the course of his employment, the employee began to experience back pain which progressively worsened over the course of the day. The following day he was unable to report to work. He began receiving weekly workers' compensation benefits for partial incapacity pursuant to a memorandum of agreement dated April 7, 2005, which documented the injury as a back strain. According to an on-site job evaluation conducted by the Dr. John E. Donley Rehabilitation Center (hereinafter "Donley Center"), the employee's job involved lifting up to fifty (50) pounds alone and up to eighty (80) pounds with assistance, as well as moving four hundred (400) pound boxes across the floor with a pallet jack. It also required constant standing and frequent reaching overhead, with frequent walking and occasional

bending. The employee was present during the site visit by the Donley Center personnel and agreed at trial that this description was accurate.

In late March 2005, the employee returned to work at Neptco for six (6) hours a day. Although he was supposed to be working light duty, Mr. Henao asserted that he was doing his regular job. He worked about one (1) week but was unable to continue due to weakness in his legs. Mr. Henao testified that he continues to be unable to perform his job duties due to back pain and lack of strength in his legs. He indicated that he takes Vicodin every day for the pain.

The employee previously injured his neck and back in a motor vehicle accident on January 19, 2004. He initially treated with a chiropractor and then with Dr. Eugene A. Russo, a neurosurgeon. The employee was out of work from the date of the accident until May 19, 2004. He denied having any pain in his back or legs when he returned to work; however, a report of Dr. Russo dated June 1, 2004 states that the employee was having difficulty working due to pain in his low back radiating to both legs and he was still taking Vicodin.

The medical evidence presented by the parties consists of the depositions and records of Dr. Eugene A. Russo, Dr. Stanley J. Stutz, and Dr. Vaughn G. Gooding, Jr., as well as the records of the Donley Center. Dr. Russo has been treating the employee for his work injury since November 5, 2004. He also treated the employee after the motor vehicle accident in January 2004. At the initial visit after the work injury, Mr. Henao complained of low back pain with radiation to the left leg, as well as paresthesias of the left thigh, calf and foot. Dr. Russo's diagnosis was lumbar disc syndrome with sciatic radiculopathy caused by activity at work. An MRI was done on November 16, 2004 which revealed the following findings:

> 1. Small to moderate sized central disc protrusion, slightly more eccentric to the left at L2-L3, which mildly indents the thecal sac and mildly narrows the left lateral recess and minimally narrows the inferior aspect of the left neural foramen.

> 2. Mild broad based disc protrusion at L4-L5, with bilateral facet hypertrophic degenerative changes and a tiny left paracentral partial annular tear. This creates a moderate right and mild left foraminal narrowing.
>
> 3. Mild broad based disc protrusion at L5-S1 with facet degenerative changes, creates a mild right foraminal narrowing. The left neural foramen is patent.

(Ee's Ex. 1, MRI report 11/16/04.) Dr. Russo indicated that his findings on physical examination and the results of the MRI were consistent and confirmed his diagnosis. He concluded that Mr. Henao was totally disabled for any type of employment.

The employee underwent a course of physical therapy and continued to take Vicodin for pain relief. As of March 17, 2005, Dr. Russo found the employee partially disabled with restrictions of no frequent bending and no lifting in excess of fifteen (15) to twenty (20) pounds. Mr. Henao returned to work in a light duty position on March 30, 2005; however, on April 14, 2005, he informed Dr. Russo that he was unable to perform the work required. As of that date, the doctor indicated that the employee's condition had reached maximum medical improvement. Thereafter, Mr. Henao was referred to the Donley Center for therapy and work hardening. As of March 20, 2007, Dr. Russo maintained his opinion that the employee is partially disabled. In a to the employee's attorney dated July 5, 2006, the doctor described the employee's restrictions as no heavy lifting, pushing, pulling or frequent forward bending and no lifting in excess of twelve (12) pounds.

Dr. Stutz, an orthopedic specialist, saw the employee on two (2) occasions at the request of the employer. For the initial examination on May 16, 2005, the doctor was provided with reports of Dr. Russo, the report of the MRI on November 16, 2004, and also the report of an MRI done on March 5, 2004, after the motor vehicle accident. The employee informed Dr. Stutz that

he returned to work in May 2004 after the motor vehicle accident and worked continuously without difficulty until the work injury in November. Based upon his finding of spasm and loss of motion, the doctor diagnosed a lumbar sprain. He reasoned that the diagnosis was causally related to the injury at work because the employee had been working without difficulty for about five (5) months after the motor vehicle accident and the MRI in November revealed an annular tear at L4-5 which was not reported in the previous MRI in March. Dr. Stutz concluded that the employee was partially disabled with restrictions of no heavy lifting, repetitive bending, or twisting, especially to floor level.

Dr. Stutz examined Mr. Henao for the second time on October 18, 2005. At that time, the employee stated that his condition was worse and he was still experiencing burning pain in his lower back which radiated down both of his legs. Despite the employee's complaints, the doctor did not record any positive objective findings during his physical examination. Dr. Stutz did note several inconsistent responses to portions of his examination and he did not find any spasm. The doctor concluded that the employee's condition had reached maximum medical improvement, that he could return to his regular employment, and that a return to his regular job duties would not be injurious to his health.

Dr. Stutz explained that his diagnosis of a lumbar sprain, which is a ligament tear, was consistent with the MRI finding of an annular tear, or tearing of the ligament tissue surrounding the disc. He also indicated that the radiologist's report of the November MRI did not state that there was any compression of the nerve root due to the annular tear or the disc protrusions.

Dr. Gooding, an orthopedic surgeon, conducted an impartial medical examination of the employee at the request of the trial judge on February 9, 2006. After examining Mr. Henao, the doctor noted that there were inconsistencies in the examination and a lack of positive objective

findings. He concluded that the employee had sustained a lumbar strain, but was presently capable of returning to his former employment without undue risk to his health.

Dr. Gooding stated that the report of the November MRI study did not indicate that any of the disc bulges or protrusions were compressing a nerve root. The doctor noted that an annular tear, in and of itself, may cause pain and possibly allow bulging of the disc, but it is less likely to cause nerve root compression. In his opinion, there was nothing on the MRI that would cause radiculopathy.

The employee was admitted to the Donley Center on May 12, 2005 for a course of physical therapy and work hardening. On August 12, 2005, Donley Center personnel conducted a site visit to the employer and obtained a detailed description of the employee's job duties. The employer represented that Mr. Henao was not required to lift more than fifty (50) pounds without assistance. The Donley Center records indicate that the employee was performing tasks in his work hardening program at the full duty level for his job, despite repeated displays of pain behavior and a significant focus on his pain. After agreeing to return to work in August 2005 after the site visit, the employee never returned to the Donley Center and did not return to work. He was discharged by the Donley Center for non-compliance on August 29, 2005.

The trial judge, relying on the opinions expressed by Drs. Stutz and Gooding, concluded that the employee's incapacity for work had ended. He rejected the employee's argument that because a subsequent report from Dr. Russo found the employee partially disabled, their opinions should be considered stale. The trial judge also found that the description of the injury as a "back strain" in the memorandum of agreement was correct in that it was consistent with Dr. Gooding's diagnosis of the employee's injury. He found that the impartial medical examiner had presented the most probative and persuasive evidence, noting that the memorandum of

agreement was entered into after Dr. Russo made his diagnosis. Lastly, the trial judge found that the employee did not establish that he was totally disabled for the period of November 3, 2004 through March 17, 2005 because he did not provide an opinion from a vocational counselor as to his inability to earn any wages in any type of employment. The employee filed a claim of appeal in each of the three (3) cases.

Pursuant to R.I.G.L. § 28-35-28(b), the findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous. Diocese of Providence v. Vaz, 679 A.2d 879 (R.I. 1996). The appellate division is entitled to conduct a de novo review of the record only after initially determining that the trial judge was clearly wrong. Id. (citing R.I.G.L. § 28-35-28(b); Grimes Box Co. v. Miguel, 509 A.2d 1002 (R.I. 1986)).

The employee has filed three (3) reasons of appeal in these consolidated cases, one (1) for each of the petitions. First, the employee argues that the trial judge erred in relying on the opinions of Dr. Stutz and Dr. Gooding in terminating the employee's benefits because they were stale and lacked credibility. Second, the employee contends that the trial judge misconceived or overlooked material evidence in failing to change the description of his injury to lumbar disc syndrome with sciatic radiculopathy. Lastly, the employee asserts that the trial judge erred in rejecting undisputed and uncontested medical evidence from the employee's treating physician that the employee was totally disabled from November 3, 2004 through March 17, 2005.

In attempting to discontinue the employee's weekly benefits, it is the employer's burden to produce competent evidence that the employee's incapacity for work has ended and that a return to his former employment would not be unduly injurious to his health. C.D. Burnes Co. v. Guilbault, 559 A.2d 637 (R.I. 1989). The employee argues that the employer did not meet this burden because the examinations of Drs. Stutz and Gooding took place well before Dr. Russo's

last examination of the employee and their opinions were therefore stale. We agree with the trial judge that this argument is without merit.

In Parkway IGA v. Lyon, 649 A.2d 1024 (R.I. 1994), the Rhode Island Supreme Court held that the important factor in determining if medical evidence is stale is whether there is more recent evidence of a change in the employee's condition, not the length of time that has passed since the examination. In a reversal of the Appellate Division, the Court found that the medical reports relied on in Lyon were indeed stale, in light of the subsequent examination by the treating physician showing that the employee's condition had changed for the worse. Id. at 1025. In making this determination, the Court relied on Leviton Mfg. Co. v. Lillibridge, 120 R.I. 283, 387 A.2d 1034 (1978), in which it stated that:

> [T]he lapse of a period of 7 months, per se, between the medical examination and the hearing under the circumstances of the whole record does not so attenuate the relevance of the report as to make it inadmissible or unworthy of consideration…in light of the absence of any evidence showing that the employee's condition had changed since the date of the examination.

Id. at 293, 387 A.2d at 1039-1040.

In the instant case, there is no evidence that the employee's condition had changed or worsened between the time of the examinations of Drs. Stutz and Gooding and the subsequent examinations by Dr. Russo. Dr. Stutz found the employee to be at maximum medical improvement (hereinafter MMI) and able to return to work as of October 18, 2005. Dr. Gooding examined the employee on February 9, 2006 and found the employee to be at MMI and able to return to work at that time. Dr. Russo's reports show that he found the employee capable of light duty work as of March 17, 2005, and made a finding of MMI on April 14, 2005; there is no indication of a change in Mr. Henao's condition reflected in the doctor's records since that time.

The employee contends that the time elapsed between the examinations by Drs. Stutz and Gooding and Dr. Russo's most recent examinations on May 16, 2006 and March 20, 2007 renders the opinions unreliable and stale because Dr. Russo diagnoses the employee with a more severe injury. The employee's interpretation is misplaced. It is not simply a differing medical opinion but evidence of a *change* in the employee's condition which renders a medical opinion stale. *See* Parkway IGA, 649 A.2d at 1025. The employee's interpretation would render virtually all contradicting medical opinions unreliable, merely because they preceded the opposing doctor's examination.

As mentioned *supra*, Dr. Russo found that the employee was capable of light duty work as of March 17, 2005 and had reached MMI as of April 14, 2005. From that time, Dr. Russo's findings on examination and opinion as to disability did not change. At his examination on May 16, 2006, Dr. Russo stated specifically that "[t]he patient has had no change in his clinical condition," and indicated that although he believed the employee was totally disabled from his current job, he would be considered partially disabled otherwise. (Ee's Ex. 1, report 5/16/06.) Dr. Russo found that the employee remained partially disabled in his last examination on March 20, 2007 and his report documented no change in the employee's condition from his previous examination. The trial judge correctly found that the opinions rendered by Drs. Stutz and Gooding were not stale because Dr. Russo's more recent examinations did not document any change in the employee's condition subsequent to their examinations. The trial judge was therefore free to rely on the opinions of Dr. Stutz and Dr. Gooding in finding that the employee's incapacity had ended and discontinuing his benefits.

The employee also contends that the trial judge overlooked material evidence in failing to change the description of his injury to lumbar disc syndrome with sciatic radiculopathy as

diagnosed by Dr. Russo. Specifically, the employee points to the testimony of Dr. Stutz and Dr. Russo which he alleges made it clear that the employee's injury was much more serious than a back strain, and Dr. Gooding's concession that Dr. Russo's description of the employee's injury was a reasonable diagnosis consistent with Dr. Russo's findings. We believe that the trial judge was acting within his discretion when he accepted and relied on the opinion of Dr. Gooding that the employee had sustained a lumbar strain consistent with the injury documented in the memorandum of agreement.

When conflicting medical opinions are offered that are of competent and probative value, it is the prerogative of the trial court to accept the medical opinions of one healthcare provider over the expert opinion of another. Parenteau v. Zimmerman Eng'g, Inc., 111 R.I. 68, 299 A.2d 168 (1973). Because the medical opinion of Dr. Gooding was not stale, and was therefore competent, the trial judge was free to rely on it when he denied the employee's petition to change the nature and location of the injury. The trial judge stated in his decision that the impartial medical examiner presented the most probative and persuasive evidence in this case. As his reasons for relying on Dr. Gooding's opinion, he noted that both Dr. Stutz and Dr. Gooding found inconsistencies between their objective findings and the employee's complaints upon examination. The trial judge also noted that Dr. Gooding and Dr. Stutz found there was nothing to indicate nerve root compression causing radiculopathy which was part of the diagnosis given by Dr. Russo. He also noted that the memorandum of agreement which described the injury as a back strain was entered into after Dr. Russo had made his diagnosis of lumbar disc syndrome with radiculopathy.

We would note that Dr. Russo treated the employee after his motor vehicle accident in 2004 for what the doctor described as a herniated disc at L2-3 which was causing significant low

back pain radiating to both legs and paresthesia such that Mr. Henao was unable to return to work. However, the employee did return to his regular job duties on May 19, 2004. Mr. Henao asserted that he had no difficulty when he returned to work despite Dr. Russo's statement in his June 1, 2004 report that the employee was having difficulty working and he was experiencing pain in his low back with intermittent radiation to both legs. The doctor even prescribed Vicodin with additional refills. These inconsistencies alone provide sufficient basis to reject the opinions of Dr. Russo.

In our review of the trial decision, it is clear that the trial judge reviewed all the medical evidence and testimony and he specifically mentions the differing medical opinions of Dr. Russo, Dr. Stutz, and Dr. Gooding. The trial judge chose not to credit Dr. Russo's opinion as to the employee's diagnosis and instead accepted Dr. Gooding's opinion. The trial judge also found that Dr. Stutz's findings at his second examination of the patient, including inconsistencies in the employee's examination and an absence of nerve root compression, were consistent with and lent credibility to Dr. Gooding's opinion. Furthermore, although Dr. Gooding did state that Dr. Russo's description was reasonable based on Dr. Russo's findings, Dr. Gooding emphasized later in his testimony that his own findings were very different from those of Dr. Russo. It is clear that the trial judge considered all of the evidence before accepting Dr. Gooding's opinion over Dr. Russo's opinion.

Lastly, the employee contends that the trial judge erred in rejecting undisputed and uncontradicted medical evidence that the employee was totally disabled from November 3, 2004 through March 16, 2005. The employee relies on Hughes v. Saco Casting Co., Inc., 443 A.2d 1264 (R.I. 1982), in which the Rhode Island Supreme Court held:

> [T]his court has recognized that a judge…may not reject uncontradicted testimony arbitrarily. Positive, uncontradicted

> evidence, we have said, may be rejected if it contains inherent improbabilities or contradictions that alone or in connection with other circumstances tend to contradict it. Such testimony may also be disregarded on credibility grounds as long as the factfinder clearly but briefly states the reasons for rejecting the witness's testimony.

Id. at 1266. *See also* Correia v. Norberg, 120 R.I. 793, 391 A.2d 94 (1978); Peloso v. Peloso, Inc., 107 R.I. 365, 267 A.2d 717 (1970); Laganiere v. Bonte Spinning Co., 103 R.I. 191, 236 A.2d 256 (1967); Walsh-Kaiser Co. v. Della Morte, 76 R.I. 325, 69 A.2d 689 (1949). The employee asserts that the trial judge did not cite any reason for rejecting Dr. Russo's testimony on credibility grounds, nor did he set forth any inherent improbabilities or contradictions. Therefore, he arbitrarily and erroneously rejected Dr. Russo's uncontradicted testimony. After reviewing the record and the trial judge's decision, we find that the trial judge was in error in denying the employee's petition for a period of total disability.

The well-settled rule stated in Walsh-Kaiser Co. v. Della Morte, 76 R.I. 325, 69 A.2d 689 (1949), and the cases which follow it holds that when the positive testimony of a witness is uncontradicted and unimpeached by other positive testimony or circumstantial evidence, either intrinsic or extrinsic, it cannot be disregarded and will control the decision of the trier of fact. *See also* Carr v. Gen. Insulated Wire Works, Inc., 100 R.I. 203, 213 A.2d 700 (1965); McDonald v. John J. Orr & Son, Inc., 94 R.I. 428, 181 A.2d 241 (1962); Jackowitz v. Deslauriers, 91 R.I. 269, 162 A.2d 528 (1960); Beals v. Lord, 86 R.I. 241, 134 A.2d 127 (1957). In the present matter, the trial judge failed to point to any evidence admitted at trial that either contradicted or impeached the opinion of Dr. Russo that the employee was totally disabled from November 3, 2004 through March 16, 2005. Neither Dr. Stutz nor Dr. Gooding had seen the employee until after this time period and were not questioned as to his ability to work prior to their examinations.

In his decision, the trial judge noted that the employee had not provided evidence from a vocational counselor as to his inability to earn wages in any type of employment. Based on the lack of testimony from a vocational counselor, the trial judge held that the employee had not met his burden of proof, reasoning that even if he was unable to perform his regular job duties, the employee may not have been incapable of all types of work. There is no requirement in the statute that testimony of a vocational counselor is necessary to establish total disability. In fact, our Supreme Court has held that a doctor's testimony, in combination with an employee's testimony as to the limitations on his activities, constitutes legally competent evidence sufficient to support a finding of total incapacity. *See* Tavares v. Aramark Corp., 841 A.2d 1124, 1132 (R.I. 2004).

In his uncontradicted testimony, Dr. Russo opined that the employee was totally incapacitated from November 3, 2004 through March 16, 2005. The doctor indicated that his use of the phrase "totally disabled" meant that the employee was not capable of performing any type of work. We find that this testimony, along with the employee's testimony as to his own incapacity, is sufficient to establish that the employee was totally disabled for that time period. Therefore, we find that the employee is entitled to dependency benefits for two dependents for the foregoing period.

Based upon the foregoing analysis, the appeals of the employee in W.C.C. Nos. 2005-06930 and 2008-03224 are denied and dismissed. The employee's claim of appeal in W.C.C. No. 2008-02726 is granted and the decree denying the petition is hereby vacated. In accordance with our decision, a new decree shall enter containing the following findings of fact:

1. That the employee was totally disabled from November 4, 2004 through March 16, 2005 due to the effects of the work-related injury he sustained on November 3, 2004.

2. That at the time of the work-related injury, the employee had two (2) dependents, a non-working spouse and a child, Edwin, date of birth March 6, 1987.

It is, therefore, ordered:

1. That the employer shall pay to the employee weekly benefits for total incapacity from November 4, 2004 through March 16, 2005.

2. That the employer shall take credit for payments of workers' compensation benefits previously made to the employee.

3. That the employer shall pay dependency benefits to the employee in accordance with the provisions of the Workers' Compensation Act for the period from November 4, 2004 through March 16, 2005.

4. That the employer shall reimburse Richard A. Sinapi, Esq., the employee's attorney, the sum of One Hundred Fifteen and 00/100 ($115.00) Dollars for the cost of filing the appeal and providing the transcript of the trial proceedings.

5. That the employer shall reimburse the employee, Martin Henao, the sum of One Thousand One Hundred Fifty and 00/100 ($1,150.00) Dollars for the expert witness fees paid to Dr. Eugene A. Russo and Dr. Vaughn G. Gooding, Jr., for their testimony by deposition.

6. That the employer shall reimburse Richard A. Sinapi, Esq., the sum of Seven Hundred Seventy-five and 80/100 ($775.80) Dollars for the cost of the depositions transcripts of Drs. Stanley J. Stutz, Vaughn G. Gooding, Jr., and Eugene A. Russo.

7. That the employer shall reimburse Richard A. Sinapi, Esq., the sum of One Hundred and 00/100 ($100.00) Dollars paid to The Interpreters Network, Inc., for interpreting services.

8. That the employer shall pay a counsel fee to Richard A. Sinapi, Esq., attorney for the employee, in the sum of Nine Thousand Five Hundred and 00/100 ($9,500.00) Dollars for services rendered at both the trial level and on the successful appeal in this matter.

In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, final decrees, copies of which are enclosed, shall be entered on

Salem and Ferrieri, JJ., concur.

ENTER:

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Olsson, J.

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Salem, J.

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Ferrieri, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

NEPTCO, INC.	)	
	)	
VS.	)	W.C.C. 2005-06930
	)	
MARTIN HENAO	)	

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the claim of 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 January 30, 2009 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

_____
John A. Sabatini, Administrator

ENTER:

_____
Olsson, J.

_____
Salem, J.

_____
Ferrieri, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Richard A. Sinapi, Esq., and Tracy McPeak-Morel, Esq., on

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MARTIN A. HENAO	)	
	)	
VS.	)	W.C.C. 2008-02726
	)	
NEPTCO INCORPORATED	)	

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the claim of appeal of the petitioner/employee from a decree entered on January 30, 2009. Upon consideration thereof, the appeal is granted, and, in accordance with the decision of the Appellate Division, the following findings of fact are made:

1. That the employee was totally disabled from November 4, 2004 through March 16, 2005 due to the effects of the work-related injury he sustained on November 3, 2004.

2. That at the time of the work-related injury, the employee had two (2) dependents, a non-working spouse and a child, Edwin, date of birth March 6, 1987.

It is, therefore, ORDERED:

1. That the employer shall pay to the employee weekly benefits for total incapacity from November 4, 2004 through March 16, 2005.

2. That the employer shall take credit for payments of workers' compensation benefits previously made to the employee.

3. That the employer shall pay dependency benefits to the employee in accordance with the provisions of the Workers' Compensation Act for the period from November 4, 2004 through March 16, 2005.

4. That the employer shall reimburse Richard A. Sinapi, Esq., the employee's attorney, the sum of One Hundred Fifteen and 00/100 ($115.00) Dollars for the cost of filing the appeal and providing the transcript of the trial proceedings.

5. That the employer shall reimburse the employee, Martin Henao, the sum of One Thousand One Hundred Fifty and 00/100 ($1,150.00) Dollars for the expert witness fees paid to Dr. Eugene A. Russo and Dr. Vaughn G. Gooding, Jr., for their testimony by deposition.

6. That the employer shall reimburse Richard A. Sinapi, Esq., the sum of Seven Hundred Seventy-five and 80/100 ($775.80) Dollars for the cost of the depositions transcripts of Drs. Stanley J. Stutz, Vaughn G. Gooding, Jr., and Eugene A. Russo.

7. That the employer shall reimburse Richard A. Sinapi, Esq., the sum of One Hundred and 00/100 ($100.00) Dollars paid to The Interpreters Network, Inc., for interpreting services.

8. That the employer shall pay a counsel fee to Richard A. Sinapi, Esq., attorney for the employee, in the sum of Nine Thousand Five Hundred and 00/100 ($9,500.00) Dollars for services rendered at both the trial level and on the successful appeal in this matter.

Entered as the final decree of this Court this day of

PER ORDER:

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John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Salem, J.

_____
Ferrieri, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Richard A. Sinapi, Esq., and Tracy McPeak-Morel, Esq., on

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MARTIN A. HENAO)
)
VS.) W.C.C. 2008-03224
)
NEPTCO INCORPORATED)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the claim of 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 January 30, 2009 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

_____
John A. Sabatini, Administrator

ENTER:

_____
Olsson, J.

_____
Salem, J.

_____
Ferrieri, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Richard A. Sinapi, Esq., and Tracy McPeak-Morel, Esq., on

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