STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERSô COMPENSATION COURT
APPELLATE DIVISION

JOHN CONROY	)	
	)	
VS.	)	W.C.C. 2009-01166
	)	
HIRSCH SPEIDEL, INC.	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employeeôs appeal from the decision and decree of the trial judge denying his request for a finding that his work-related injury has reached maximum medical improvement. After thorough review of the record and consideration of the respective arguments of the parties, we deny the employeeôs appeal in accordance with our previous decision in Rodi v. Waste Mgmt, W.C.C. No. 2000-07721 (App. Div. 6/20/02).

The employee suffered a work-related injury on May 1, 1999 while employed as a carpenter. He continued working with restrictions on lifting, but experienced progressive worsening of his condition. On January 29, 2001, the employee underwent surgery, specifically anterior cervical discectomy and fusion at the C5-6 and C6-7 levels. He began receiving weekly benefits for partial incapacity on January 27, 2001 pursuant to a Memorandum of Agreement dated January 30, 2001 which describes the injury as a disc herniation at C5-6. Subsequent to the surgery, Mr. Conroy retrained himself and returned to work as a medical laboratory technician. Unfortunately, his condition deteriorated further and in mid-2007 he stopped

working due to severe pain in his neck. He has continued to receive weekly benefits for partial incapacity pursuant to the Memorandum of Agreement.

The employee filed a petition to review alleging that his incapacity has increased from partial to total as of December 9, 2008. At the pretrial conference, the petition was granted and the employer was ordered to pay weekly benefits for total incapacity from December 9, 2008 and continuing. The employee claimed a trial. During the pendency of the trial, a motion to amend the pleadings was granted resulting in the addition of a request for a finding that the employeeôs condition had reached maximum medical improvement. After reviewing the evidence, the trial judge affirmed her pretrial order as to the finding of total disability and denied the employeeôs request for a finding of maximum medical improvement. The employee then filed this claim of appeal.

The only issue on appeal is whether the trial judge correctly concluded that there is no statutory authority in the Workersô Compensation Act to make a finding, in the context of an employeeôs petition to review, that he is at maximum medical improvement while totally disabled. We have previously addressed this specific issue in our decision in Rodi, W.C.C. No. 2000-07721. Based upon our review of the record in the present matter, we find no reason to deviate from that holding and, therefore, deny the employeeôs appeal.

The Workersô Compensation Court is a statutory creation and the powers of the court and rights and responsibilities of the parties appearing before it are solely derived from the statute. M. Samas Co. v. Cipriano, 110 R.I. 94, 100, 290 A.2d 402, 405 (1972). Rhode Island General Laws § 28-29-2(8) provides the definition ñmaximum medical improvement.ò

> ñMaximum medical improvementò means a point in time when any medically determinable physical or mental impairment as a result of injury has become stable and when no further treatment is reasonably expected to materially improve the condition. Neither

> the need for future medical maintenance nor the possibility of improvement or deterioration resulting from the passage of time and not from the ordinary course of the disabling condition, nor the continuation of a pre-existing condition precludes a finding of maximum medical improvement. A finding of maximum medical improvement by the workersô compensation court may be reviewed only where it is established that an employeeôs condition has substantially deteriorated or improved.

This provision on its own does not provide for any specific cause of action, nor does it confer any benefit or provide any type of relief that could be granted by the court. It simply provides the definition for the term as it is used in other sections of the statute.

In several other sections of the statute, a finding of maximum medical improvement is a condition precedent to the court granting or denying certain relief. *See* R.I.G.L. § 28-33-10(c) (number of palliative care visits limited to twelve (12) without further approval after reaching maximum medical improvement); § 28-33-18(b) (finding of maximum medical improvement required before reducing weekly benefits to seventy percent (70%) of weekly compensation rate); § 28-33-18(c)(2) (finding of maximum medical improvement required before reducing weekly benefits based upon degree of functional impairment); § 28-33-19(c) (employee entitled to specific compensation for loss of use only after condition has reached maximum medical improvement); § 28-33-47(c)(1) (various provisions regarding termination of the right to reinstatement after reaching maximum medical improvement). However, the finding of maximum medical improvement does not, in and of itself, confer or deny any type of relief or benefit to the employee. It is simply an element of the burden of proof in prosecuting or defending against a petition seeking relief under certain provisions of the Workersô Compensation Act.

The employee attempts to argue that authority exists for making a finding of maximum medical improvement while totally disabled because the statute provides for a finding of

permanent total disability for certain designated injuries and also provides that the employee is entitled to specific compensation for those injuries after the condition reaches maximum medical improvement. Section 28-33-17(b)(1) states that the following injuries shall be deemed to have resulted in permanent total disability:

> (i) The total and irrecoverable loss of sight in both eyes or the reduction to one-tenth ($1/10^{th}$) or less of normal vision with glasses;
> (ii) The loss of both feet at or above the ankle;
> (iii) The loss of both hands at or above the wrist;
> (iv) The loss of one hand and one foot;
> (v) An injury to the spine resulting in permanent and complete paralysis of the legs or arms; and
> (vi) An injury to the skull resulting in incurable imbecility or insanity.

Some of these injuries, such as loss of limbs and loss of eyesight, are also eligible for payment of specific compensation pursuant to § 28-33-19(a) for the loss of use of the limb or loss of eyesight. Section 28-33-19(c) states that an employee is not entitled to the payment of specific compensation for loss of use until the condition of the particular injured body part has reached maximum medical improvement.

We fail to see any logical connection between these two (2) statutory sections that would establish authority to make a finding that the condition of an employee who is totally disabled has reached maximum medical improvement. One section, § 28-33-17(b)(1), simply establishes an irrefutable presumption that in the case of certain injuries, the employee is entitled to weekly benefits for total disability. The other section, § 28-33-19(c), provides that as a condition precedent to the payment of specific compensation for certain injuries, the employee must establish that the condition of the particular body part has reached maximum medical improvement. This situation does not involve a finding by the court that the employee is totally

disabled and his overall condition resulting from the injury has reached maximum medical improvement, as requested by the employee in the present petition.

The other references to ñmaximum medical improvementò in the Workersô Compensation Act are in provisions regarding assessment and reporting by medical providers. *See* R.I.G.L. § 28-30-22(b)(ii) (Medical Advisory Board to set standards for court to use in determining nature and extent of injury and achievement of maximum medical improvement); § 28-33-7(a) (medical fee schedule to include rate of reimbursement for opinion regarding maximum medical improvement); § 28-33-8(c)(1) (treating physician shall file an affidavit every six (6) weeks until maximum medical improvement and include opinion whether maximum medical improvement has been reached or when it will be reached); § 28-33-34.1 (report of examination by impartial medical examiner or comprehensive independent health care review team to include assessment of further services needed to reach maximum medical improvement); § 28-33-46 (anniversary review by the court shall include finding whether employee is at maximum medical improvement). Our review of these sections does not reveal any statutory authority for the finding of maximum medical improvement when the employee is totally disabled without any request for some type of relief or benefit.

The employee states that the finding of maximum medical improvement will prevent him from having to undergo ñunnecessary and costly treatment.ò Reasons of App. at 3. The Act provides that the employer shall provide, and the employee shall accept, reasonable medical treatment and services for ñsuch period as is necessary, in order to cure, rehabilitate or relieve the employee from the effects of the injury.ò R.I.G.L. § 28-33-5; *see also* § 28-33-6. The employee is well protected from being compelled to undergo any ñunnecessary and costly treatmentò regardless of whether he has been found to be at maximum medical improvement.

In his final three (3) reasons of appeal, the employee makes some general statements to the effect that the trial judgeôs denial of his request violates equal protection principles. These general constitutional arguments were addressed adequately in our previous opinion in Rodi, W.C.C. No. 2000-07721, and we see no need to discuss them any further at this time.

In summary, we find no error in the trial judgeôs denial of the employeeôs request for a finding of maximum medical improvement and consequently, we deny the employeeôs appeal. The trial judgeôs decision and decree are hereby affirmed. In accordance with Rule 2.20 of the Rules of Practice of the Workersô Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Hardman and Ferrieri, JJ. concur.

ENTER:

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Olsson, J.

_____
Hardman, J.

_____
Ferrieri, 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 December 15, 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:

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Olsson, J.

_____
Hardman, J.

_____
Ferrieri, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to John M. Harnett, Esq., and Conrad M. Cutcliffe, Esq., on

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