STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.		WORKERS' COMPENSATION COURT APPELLATE DIVISION
STEPHEN STAMP	)	
	)	
VS.	)	W.C.C. 96-02254
	)	
PROVIDENCE GAS COMPANY	)	
STEPHEN STAMP	)	
	)	
VS.	)	W.C.C. 96-02253
	)	
PROVIDENCE GAS COMPANY	)	
STEPHEN STAMP	)	
	)	
VS.	)	W.C.C. 96-00465
	)	
PROVIDENCE GAS COMPANY	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. These three (3) matters are before the Appellate Division on the petitioner/employee's appeals filed in all three (3) cases. The matters were consolidated at the trial level and the evidence submitted was considered in all three (3) petitions. We will address

them as consolidated cases as well, particularly since the employee filed one (1) set of reasons of appeal for all of the cases.

W.C.C. No. 96-00465 is an original petition in which the employee alleged that he sustained a work-related injury to his back on February 8, 1994 resulting in incapacity from February 9, 1994 and continuing. The trial judge granted the petition and awarded the employee weekly benefits for different periods of total and partial incapacity covering the time from January 9, 1996 through July 20, 1998. The employee filed a claim of appeal.

W.C.C. No. 96-02253 is an original petition alleging that the employee sustained an injury to his back on September 12, 1992 during the course of his employment. In the petition, the employee sought weekly compensation benefits from September 13, 1992 and continuing. The trial judge acknowledged that the employee sustained a work-related injury on that date, but the evidence indicated that he did not miss any time from work. In addition, there was no evidence that the employee had been denied medical treatment for this injury or that any medical bills for treatment of this injury were not paid. Therefore, the trial judge denied the petition. The employee duly filed a claim of appeal.

W.C.C. No. 96-02254 is the third original petition. In this matter, the employee alleged that he developed a psychological overlay/stress injury on May 8, 1994 which resulted in incapacity from May 9, 1994 through July 5, 1994 and again from September 26, 1995 and continuing. In the alternative, the employee argued that he developed a psychological disorder flowing from the effects of the injuries to his back. The trial judge rejected both of these allegations and denied the petition. The employee filed an appeal from this decision.

The employee was working for the employer as a customer serviceman in September 1992. This position involved turning gas on or shutting it off in homes and businesses, installing

gas meters, servicing appliances, and cleaning furnaces. These activities required him to do a lot of lifting, bending, twisting, and kneeling. Occasionally, he had to be in awkward positions for lengthy periods of time. In emergencies, he might work up to sixteen (16) hours straight.

The employee testified that on September 12, 1992, he injured his back while moving a stove. Prior to that incident, he had been treating with Dr. Carl B. Carnevale, a chiropractor, for neck and right shoulder pain. He informed the doctor of the incident moving the stove. He continued working at his regular job. Sometime in early 1994, he took a position as a janitor with the employer. This job involved such tasks as cleaning toilets, vacuuming, occasionally changing light bulbs, shoveling snow and sweeping. Often he would have to move furniture or lift a water bucket weighing approximately forty (40) pounds.

On February 8, 1994, he injured his back again while shoveling snow at work that night. He felt severe pain on his left side and informed Don Brown, the night supervisor. He went home early and then stayed out of work the next day. The employer assisted him in getting an appointment with Dr. K. Nicholas Tsiongas on February 11, 1994. Despite the doctor's recommendation to work only modified duty, the employee testified that he continued to perform his regular job as a janitor, although he tried to take it easy. The reports of Dr. Tsiongas indicate that Mr. Stamp was released to his regular work on April 5, 1994 with no further back complaints.

The employee testified that in May 1994, he was having problems with his back but he could not get any doctor to see him. He felt that he was getting "the run-around" and was stressed out and upset at work. A meeting was held with the employee, representatives of the employee's union, and management. A representative of the employer told him that he should take some time off and get some psychiatric help. Mr. Stamp stayed out of work from that date

until July 11, 1994. He then missed three (3) days of work from August 3 to August 5 because of back problems, but he was not paid workers' compensation benefits for those days.

At some point thereafter, the employee began working as a dispatcher for the company which was a much lighter job. He was out of work again in September or October 1995, although there is apparently no medical opinion to support a period of disability for that period. On January 9, 1996, Dr. Gus G. Stratton, a neurologist, took the employee out of work due to his back complaints. He did not return to his job on a full-time basis until June or July of 1998, although he worked part-time for different periods during this time span.

The medical evidence, both depositions and records, introduced into evidence was voluminous. The employee had treated or been evaluated by at least ten (10) doctors over a six (6) year period. It is unnecessary to review all of the medical evidence in this decision because the parties are not contesting the trial judge's findings regarding the employee's physical injuries and periods of disability.

The trial judge granted the employee's original petition in W.C.C. No. 96-00465, relying on the medical opinions of Dr. Gus G. Stratton, a neurologist, and Dr. Paul T. Welch, a neurosurgeon. He found that the employee had sustained an injury to his low back on February 8, 1994 during the course of his employment. The employee was awarded weekly benefits for periods of partial and total incapacity from January 9, 1996 through July 20, 1998.

In W.C.C. No. 96-02253, despite finding that the employee did sustain an injury to his back at work on September 12, 1992, the trial judge denied the petition. He noted that the employee did not miss any time from work immediately after the injury and any subsequent disability was related to the February 1994 back injury. In addition, there was no evidence that

any of the medical bills for treatment of this injury were unpaid. Consequently, there was no relief that could be granted on this petition.

The trial judge also denied the employee's original petition in W.C.C. No. 96-02254, in which he alleged that he developed a psychological disorder as a result of his employment which disabled him on May 8, 1994, or, in the alternative, he developed a psychological disorder due to the effects of the work-related injuries he sustained in September 1992 and February 1994. The trial judge found that the employee had failed to prove that he sustained a mental injury caused by emotional stress at work as defined in R.I.G.L. § 28-34-2(36). He further concluded that the records and testimony of Dr. Frank D. E. Jones and Dr. John R. Ruggiano, both psychiatrists, did not establish that the psychological disorder was due to the effects of either the September 1992 back injury, or the February 1994 injury, or some combination of both.

On appeal, a trial judge's findings of fact are accorded great deference. Pursuant to our statute and relevant case law, a trial judge's findings on factual matters are final unless an appellate panel finds them to be clearly erroneous. R.I.G.L. § 28-35-28(b); 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 evidence only after initially finding that the trial judge was clearly wrong. Id.; Grimes Box Co., Inc. v. Miguel, 509 A.2d 1002 (R.I. 1986). After our review of these three (3) matters, we find no error on the part of the trial judge.

The employee has filed reasons of appeal in each of the three (3) cases and a number of them are duplicated in each case. The first three (3) reasons of appeal in each case are simply general recitations that the decision of the trial judge is against the law and the evidence. Rhode Island General Laws § 28-35-28(a) requires that an appellant file reasons of appeal stating specifically the alleged errors committed by the trial judge. See also Falvey v. Women and

Infants Hosp., 584 A.2d 417 (R.I. 1991); Bissonnette v. Federal Dairy Co., Inc., 472 A.2d 1223 (R.I. 1984). It is obvious that the statements by the employee in the first three (3) reasons of appeal in each of the three (3) cases do not satisfy the standard enunciated in the statute and the case law. Consequently, these reasons of appeal are denied and dismissed.

In W.C.C. No. 96-00465, the employee, in the sixth (6) reason of appeal, argues that the trial judge was clearly wrong when he did not award interest on the retroactive weekly benefits due to the employee. This allegation was actually the subject of a subsequent petition filed by the employee, W.C.C. No. 02-02333. The trial judge in that case denied the employee's request for interest. That matter came before the Appellate Division at the same time as these three (3) cases. We have addressed in detail the issues raised by the employee on this subject in our decision in W.C.C. No. 02-02333 in which we denied the employee's appeal. We see no need to discuss this issue again and would refer the parties to that decision for an in-depth explanation of the denial of the employee's appeal on this subject.

The fourth and fifth reasons of appeal are the same in each of the three (3) cases and involve the employee's allegation that representatives of the insurer intentionally provided only a partial set of the employee's MRI films to one (1) of the physicians to review. He alleged that such activity would constitute fraud under R.I.G.L. § 28-33-17.3. In his reasons of appeal, the employee argues that the trial judge was clearly wrong to require that the employee amend his petitions to specifically include the fraud allegation, and that the trial judge was clearly wrong when he declined to include a specific finding regarding the fraud allegation in his decrees.

Despite extensive and time-consuming efforts to produce evidence to support this allegation of fraud on the part of the insurer, the trial judge, in his decision, found no basis for this contention.

> "On that issue, I found nothing in the documentary evidence presented, nor in the testimony of the several witnesses, that would lead me to conclude there was any wrongdoing on the part of the employer, the third party administrator, Dr. McLennan or any other person of whom I am aware. Probably more significantly, though I allowed the petitioner ample time and latitude to investigate his suspicions, none of the petitions before me were amended to allege a violation under Sec. 28-33-17.3, which amendment would have been necessary for the respondent to prepare an answer and for that issue to be litigated. It appears from my reading through this voluminous record that the employee has raised this fraud issue (along with a number of other allegations and complaints) with other medical and state agencies. In my estimation he is free to pursue whatever avenue is available to him under the law in order to have his suspicions and allegations investigated, but as the petitions and the pleadings contained herein appear before me now, I make no finding regarding the employee's assertions of fraud." (Tr. Dec., pp. 15-16)

The trial judge did make a finding regarding the fraud allegation in his decision; he stated that the employee did not establish that there was any fraud. He simply did not include that specific finding in his decrees. He may have had some concern as to what the impact his negative finding would have on the actions that the employee had initiated before other agencies, as he specifically indicated that the employee was free to pursue his allegations in any other forum or perhaps through the filing of another petition before the court.

We are unable to discern in what manner the employee is aggrieved by the lack of a specific finding in the decrees denying his fraud allegation. He does not argue on appeal that he presented sufficient evidence to prove his allegation and is therefore entitled to some sort of additional benefits or other relief. We fail to see the rationale for requesting that the Appellate Division amend the trial judge's decrees to include a negative finding.

The trial judge faulted the employee for failing to amend his petitions to include the allegation of fraud under R.I.G.L. § 28-33-17.3. The pleadings in the petition are designed to provide notice to the opposing party of what the employee is attempting to establish and the

relief sought. Although trial judges may, in certain circumstances, raise the issue of fraud *sua sponte*, this generally only occurs when the fraudulent activity is evident from the testimony or documentary evidence presented before the trial judge. In addition, the parties are given an opportunity to respond to a specific allegation as to what activity is suspect. In the present case, we have a situation where the fraud, if any, could not easily be discerned by the trial judge during the course of presiding over the trial. Rather, the employee made some general statements that he was investigating some suspicious activity involving his MRI films. It was only his memorandum to the trial judge that he stated more specifically the substance of his allegation.

We believe that the better practice is to amend the petition in writing to include all of the allegations which the petitioner is requesting that the court address. The trial judge in the present matters noted that the employee failed to amend his petitions to include the fraud allegation. However, as noted above, this was not the only reason he denied the allegation. He also stated that the evidence did not support the allegation. Considering all of the circumstances, we find that the lack of a specific finding denying the employee's fraud allegation in the trial decrees is not grounds to reverse the trial judge or to remand the matter.

The employee's final reasons of appeal, numbered 6, 7, and 8 in W.C.C. No. 96-02254, contend that the trial judge was clearly wrong to deny the employee's petition alleging he sustained a psychological injury arising out of his employment or a psychological disorder flowing from the effects of his work-related back injuries. The employee argues that the trial judge overlooked or misconceived the uncontradicted testimony of Dr. Ruggiano and was clearly wrong in finding that Dr. Ruggiano did not have sufficient knowledge of the employee's back injuries to render a competent medical opinion regarding causation.

Rhode Island General Laws § 28-34-2(36) defines the type of mental injuries which are compensable.

> "The disablement of an employee resulting from mental injury caused or accompanied by identifiable physical trauma or from a mental injury caused by emotional stress resulting from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees encounter daily without serious mental injury shall be treated as an injury as defined in § 28-29-2(4)." (1994 version)

Neither the employee's testimony nor the testimony of the two (2) psychiatrists, Drs. Jones and Ruggiano, described any type of emotionally stressful situation at work which would satisfy the standard for what is commonly called a "mental-mental" injury. It actually appears from reading the employee's reasons of appeal regarding the psychological injury claim that the employee is not arguing that he sustained this type of mental injury. He has focused on the "psychological flow from" type of injury, a psychological disorder resulting from the effects of his work-related back injuries.

In his petition, the employee alleges that he developed a mental injury on May 8, 1994 resulting in disability from May 9, 1994 to July 5, 1994 and from September 26, 1995 and continuing. In order to obtain benefits for a "psychological flow from" type of injury, the employee must prove that his present psychological disorder resulted from the back injuries he sustained on September 12, 1992 and February 8, 1994. Amick v. National Bottle, 507 A.2d 1352, 1354 (R.I. 1986). The trial judge concluded that the psychological disorder was not the direct result of the employee's back injuries. We cannot say that he was clearly wrong in making that finding.

The employee presented the depositions and reports of two (2) psychiatrists, Drs. Jones and Ruggiano. Mr. Stamp began treating with Dr. Jones on February 5, 1994, prior to his second

back injury. The employee informed the doctor that he had injured his neck and right shoulder in September 1991, but the employer was not acknowledging this injury. He felt that the employer was hindering his attempts to obtain medical treatment for his ongoing pain complaints by denying that the injury was work-related. Mr. Stamp had treated with a physician for anxiety and depression after that injury. He complained to Dr. Jones about how the Providence Gas Company treated its employees and that people did not like him because he was so conscientious about doing his job correctly and following proper procedures. The doctor concluded that the employee suffered from a major depressive disorder with anxiety. He noted that the employee was born with this illness and then incidents at work, including the injury to his neck and shoulder, triggered the symptoms.

Dr. Jones saw the employee about every two (2) weeks through August 6, 1994. He stated that he had no information on any back injuries in 1992 or 1994. The testimony of Dr. Jones obviously does not assist the employee in proving that his psychological problems are due to the back injuries in September 1992 and February 1994. On the contrary, the doctor attributes the problem to issues arising from a 1991 neck and shoulder injury and to issues arising from work relationships.

Dr. Ruggiano first saw the employee on March 6, 1995. The employee advised the doctor that he injured his neck about three (3) years ago and that it had been "three years of hell" since then. He stated that his employer did not believe that the injury was work-related and no one would listen to him. He also complained that he had called several doctors and no one would see him because it was a workers' compensation claim. The doctor's diagnosis was adjustment disorder with depression. The first time he indicated that the employee was disabled was on October 26, 1995, primarily because the employee's wife reported that he was "out of

control" and she was afraid to leave him alone. However, Dr. Ruggiano testified that on November 13, 1995, he would have allowed the employee to do some type of work.

Dr. Ruggiano acknowledged that he had no history documented in his office notes regarding the employee's back injuries in 1992 and 1994, but he recalled Mr. Stamp complaining of back pain during some office visits. The doctor was provided a history of the incidents in September 1992 and February 1994 and asked his opinion as to the causal relationship between those incidents and the diagnosis and disability. He explained at one (1) point:

> "Yes. I see them as one thing leading to another. He did have the injury, he had pain, then he sought treatment for it. Then when people didn't listen to him he went off the wall." (Pet. Exh. 17, p. 15)

He noted that the recurrent theme in Mr. Stamp's treatment was his desperate obsessive need to be heard regarding his pain complaints and his perception that he was being ignored. The doctor characterized this as a personality trait or disposition that causes symptoms when the employee perceives that no one is listening to him or believing him. Therefore, the employee's psychological disorder was not due to problems adjusting to living with pain from his injuries, but rather the frustration due to his own perception that no one was listening to him or believing him when he complained of pain.

Amongst the voluminous medical records submitted in these matters is documentation that the employee began experiencing panic attacks around December 1990. He saw an osteopathic physician in July 1991 for "anxiety attacks." He described himself to the doctor as being nervous and a perfectionist. The diagnosis was panic disorder with agoraphobia and the doctor prescribed Xanax, an anti-anxiety medication. In December 1993, Mr. Stamp saw a psychiatrist. The doctor's notes indicate that for the past twelve (12) months he has had panic attacks weekly and is upset easily and irritable. At that point, the employee had filed a court

case, apparently regarding the 1991 neck injury, and was frustrated and angry with the system. There is also evidence that the employee saw various physicians from 1991 to at least early 1994 for evaluation and/or treatment for neck complaints.

Dr. Ruggiano's only information regarding prior psychiatric complaints or treatment was that the employee had treated with Dr. Jones for a period of time. It is clear from the information in the record that the employee had a long-standing psychological problem that predates the work-related back injuries. In his own testimony, the employee indicated that he was feeling stressed and believed he was being labeled as a hypochondriac due to complaints of pain in his neck which started in 1991. He also described how he felt his job as a serviceman was very stressful because of the dealings with angry customers and working with the dangers of natural gas.

As noted above, the employee's burden in establishing a "psychological flow from" type of injury is to prove that the mental injury and incapacity is "directly and exclusively referable" to the work-related injuries he sustained in 1992 and/or 1994. Amick at 1354. It is clear from the employee's testimony and the medical records submitted to the court, that there were many factors contributing to the employee's psychological complaints, including issues flowing from the alleged neck injury in 1991. Therefore, we find that the trial judge's determination that the employee has failed to establish that he sustained a mental injury flowing from the effects of the work-related back injuries in 1992 and 1994 is well-supported in the record and is not clearly erroneous.

For the reasons set forth above, we deny and dismiss the employee's reasons of appeal in all three (3) matters and affirm the decision and decrees of the trial judge in W.C.C. Nos. 96-00465, 96-02253, and 96-02254.

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

Bertness and Connor, JJ. concur.

ENTER:

_____
Olsson, J.

_____
Bertness, J.

_____
Connor, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

STEPHEN STAMP)
)
VS.) W.C.C. 96-00465
)
PROVIDENCE GAS COMPANY)

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 employee's 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 March 13, 2002 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____

ENTER:

_____
Olsson, J.

_____
Bertness, J.

_____
Connor, J.

I hereby certify that copies were mailed to Stephen J. Dennis, Esq., and James T. Hornstein, Esq., on

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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