STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

BARBARA MITCHELL	)	
	)	
VS.	)	W.C.C. 98-05743
	)	
HOSPICE CARE OF RHODE ISLAND, INC.	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the appeal of the petitioner/employee after her Original Petition was granted in part at the trial level. In her petition, the employee alleged that she tripped and fell at work on May 20, 1998, injuring her neck and back. She sought weekly benefits for incapacity beginning May 27, 1998 and continuing. The trial judge found that the employee sustained a neck injury on May 20, 1998. He awarded weekly benefits for total incapacity from May 21, 1998 to January 4, 1999 and weekly benefits for partial incapacity from January 5, 1999 to June 24, 2000. He further determined that the surgery done in November 1998 was necessary to treat the work injury. The employee filed a claim of appeal contending that the trial judge erred in finding that her incapacity has ended. After careful review of the record, we deny the appeal and affirm the trial judge.

At the time of her injury, the employee was working as an accounts payable supervisor. The employer had several locations in the state and Ms. Mitchell was required to travel to the different offices to perform her job. She spent most of her day sitting, but when she was traveling, she had to carry a briefcase of material which weighed between ten (10) and fifteen (15) pounds. While in the office, she occasionally would lift a box of ledgers, checks and other documents, weighing about ten (10) pounds, and also a box of copy paper weighing about forty (40) pounds.

The employee testified that she was involved in a motor vehicle accident on August 26, 1994 and sustained an injury to her neck. A CT scan done in November 1994 revealed a minimal central disc protrusion at C5-6 with some spur formation and a disc protrusion at C4-5. Medical records during this time period indicate that cervical radiculopathy was ruled out as a diagnosis. The employee asserted that she fully recovered from this injury prior to 1998. Records of Dr. Gary Johnson, a neurologist, were introduced into evidence which reflect that the employee was treated by him from January 1996 to June 1998 for complaints of headaches and neck discomfort. The doctor testified that he did not specifically treat the employee's neck, but focused on alleviating her headaches.

On May 20, 1998, Ms. Mitchell tripped over an electrical outlet in the floor and fell to the floor. She reported the injury to her supervisor and tried to continue working, however, she ended up leaving early due to pain in her back

and the right side of her body. The following day, she reported to work, but again left early and went to the hospital for treatment. Ms. Mitchell remained out of work and saw her internist, who referred her to Dr. William Buonanno.

The employee underwent a course of physical therapy but did not experience any improvement. Eventually, she was seen by Dr. Jonathan Diaz Day, a neurosurgeon at the Lahey Clinic in Boston, Massachusetts. An MRI study was done in July 1998 and revealed a central disc herniation at C4-5 and a large right paracentral C5-6 disc herniation with narrowing of the foramen and osteophyte formation. Dr. Day concluded that the disc herniation at C5-6 was the cause of the employee's complaints and that the condition was caused by the fall at work on May 20, 1998. The employee underwent surgery on her neck on November 4, 1998.

Ms. Mitchell initially had a good recovery from the surgery in that her right arm complaints resolved and her neck pain was diminished. Dr. Day stated that she could return to work on January 4, 1999 with a restriction of no lifting in excess of ten (10) pounds. When the employee attempted to return to her job, she was advised that her position had been eliminated and she elected to accept a severance package from the company. In April 1999, she secured similar employment with Innovative Clinical Solutions, except that she worked in only one (1) location and did not have to do any lifting. She worked in this position until January 2000. The employee testified that she left because of severe pain in her neck and between her shoulders.

She consulted with her internist again when the pain gradually worsened. He referred her to Dr. Donald Murphy, a chiropractor, who began treating her on January 18, 2000. Dr. Murphy testified that the employee suffered from joint dysfunction at C0-C1, T4-5 and T6-7, as well as sensitization of her central nervous system, which was the result of the pain she suffered when she fell at work and from the subsequent neck surgery. At the time of his last treatment in November 2000, the doctor maintained that the employee was unable to perform any type of work because she continued to suffer severe pain on some days.

Dr. Edward Feldman, a neurologist, evaluated the employee on several occasions at the request of the insurer. He maintained that the employee sustained only a soft tissue injury to her neck when she fell at work in May 1998. The doctor testified that the MRI findings were not the result of the fall at work and were simply indicative of pre-existing degenerative joint disease. At his first examination of the employee on October 27, 1998, he concluded that Ms. Mitchell was capable of returning to work without restrictions. He maintained this opinion at every subsequent evaluation, the last of which took place on May 23, 2000 and was described in a report dated June 24, 2000.

Our standard of review on appeal is clearly set forth in R.I.G.L. § 28-35-38(b):

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

The Appellate Division may conduct a *de novo* review of the record only after finding that the trial judge was clearly wrong, or overlooked or misconstrued material evidence. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996).

The employee filed six (6) reasons of appeal. The first four (4) are general recitations that the decree is against the law, the evidence, and the weight thereof. Such statements do not satisfy the statutory requirement that the appellant state specifically where in the record and in what manner the trial judge erred. R.I.G.L. § 28-35-28(a); see Falvey v. Women & Infants Hosp., 584 A.2d 417 (R.I. 1991).

In her fifth reason, the employee contends that the trial judge overlooked or misconceived the deposition testimony and records of Dr. Donald Murphy which established that she remained totally disabled. The trial judge found that the employee's disability ended as of June 24, 2000. After reviewing the record, we find no merit in the employee's argument.

It is clear that the trial judge did not overlook the deposition testimony and records of Dr. Murphy as he specifically mentions them in his decision. (Tr. Dec. p. 9) It is apparent, however, that he attributed little weight to the doctor's opinions. It should be noted that Dr. Murphy began treating the employee on January 18, 2000, twenty (20) months after the injury occurred and over a year after the surgery. Prior to beginning treatment with Dr. Murphy, the employee was discharged to return to work by the surgeon, Dr. Day, and was found capable of returning to work by Dr. Edward Feldman. In fact, the employee had

attempted to return to work for the employer in January 1999 and then obtained other full-time employment in April 1999. She continued working until January 2000, a period of eight (8) months.

In addition, there is evidence in the record that the employee did suffer from a pre-existing problem in her neck. The trial judge noted that the fall at work on May 20, 1998 aggravated a pre-existing condition and that the subsequent surgery and treatment returned her to her pre-injury state.

We find no merit in the contention that the trial judge overlooked the testimony and records of Dr. Murphy when he specifically mentioned them in his decision and referred to their contents. In light of the other factors in this case mentioned above, we cannot say that he committed clear error in rejecting the doctor's opinions regarding the employee's ongoing disability and the cause thereof.

In her sixth reason of appeal, the employee argues that the trial judge erred in relying upon the opinion of Dr. Edward Feldman that the employee was capable of returning to her regular job, when that opinion was based upon an inaccurate job description. The parties engaged in a dispute over what was the heaviest item that the employee had to lift as part of her regular job duties. The employer submitted a written job description which had a lifting limitation of ten (10) pounds. The employee testified that on occasion she would have to lift a forty (40) pound box of copy paper, as well as a box of ledgers or other documentation

that could weigh over ten (10) pounds. Her testimony was supported by her supervisor, Donna Hutson.

Dr. Feldman testified before the court. During the course of three (3) examinations (October 27, 1998, March 30, 1999, and May 30, 2000) and one (1) records review (January 20, 1999), the doctor had available to him medical treatment records and diagnostic testing dating back to 1994. From the date of his first examination, the doctor was of the opinion that the employee was capable of returning to work despite her subjective complaints.

The doctor testified on August 16, 2000. He acknowledged that he had reviewed the written job description and felt that the employee could perform those duties. However, on cross-examination, the doctor expanded on this opinion:

> "THE COURT: I will permit the question as to whether or not the doctor has an opinion concerning the petitioner's ability to return to work lifting 40 pounds. That's as far as I will go.
>
> "A: I do have an opinion, sir. Yes, my opinion is based on the evaluation of three times and looking at all of her records, there is no reason to limit any physical activity in any way whether it is work or sport related in any way at all.
>
> "Q: She can lift 40 pounds?
>
> "A: Absolutely." (Tr. p. 111)

Dr. Feldman was specifically asked about the additional weight that the employee contended was part of her regular job and he still maintained that she could return to work without restrictions. Clearly, the doctor's opinion is

competent evidence and the trial judge was not clearly wrong in relying on that evidence in finding that the employee's incapacity had ended.

Based upon the foregoing, the employee's reasons of appeal are denied and dismissed and the decision and decree of the trial judge is affirmed.

In accordance with Sec. 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

Arrigan, C.J. and Healy, J. concur.

ENTER:

_____
Arrigan, C.J.

_____
Healy, J.

_____
Olsson, 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 October 9, 2001 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____

ENTER:

_____
Arrigan, C.J.

_____
Healy, J.

_____
Olsson, J.

I hereby certify that copies were mailed to Thomas M. Bruzzese, Esq., and Jeffrey M. Liptrot, Esq., on _____