STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MARILYN WASHINGTON	)	
	)	
VS.	)	W.C.C. 2010-07060
	)	
RIPTA	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on claims of appeal made by both the employer and employee. The employer appeals from that portion of the decision and decree of the trial judge in which she found that the employee's partial incapacity poses a material hindrance to obtaining employment suitable to her limitations and ordered the continuation of partial incapacity benefits pursuant to R.I.G.L. § 28-33-18.3(a)(1). The employee advised the Appellate Division at oral argument that her claim of appeal from that portion of the decision and decree of the trial judge in which she found that the employee failed to prove she was totally disabled pursuant to R.I.G.L. §28-33-17(b)(2), commonly known as the "odd lot" provision of the Rhode Island Workers' Compensation Act, was taken as a precaution, and need not be addressed unless the Appellate Division grants the employer's appeal. After thoroughly reviewing the record in this matter and considering the arguments made by the parties, we deny the employer's claim of appeal, and therefore, deny the employee's appeal as well.

On August 28, 2001 a pretrial order was entered in W.C.C. No. 2001-04719 finding that on September 27, 2000, the employee sustained a low back strain (which had resolved) and injuries to both knees. The employee was awarded partial incapacity benefits from September 28, 2000 and continuing. A mutual agreement signed by the employee on July 27, 2002 modified her weekly benefits from partial to total incapacity as of May 30, 2002. On August 18, 2005, the parties entered a consent decree in W.C.C. No. 2005-02536 which modified the employee's weekly benefits from total to partial incapacity as of June 7, 2005. A pretrial order entered in W.C.C. No. 2007-00218 on February 21, 2007, found that the employee's left knee had reached maximum medical improvement and she remained partially incapacitated for work. On November 27, 2009, the employee signed a mutual agreement in which the employee's benefits were modified from partial incapacity to total incapacity as of November 11, 2009. The employee's benefits were subsequently reduced to partial incapacity as of September 1, 2010 by way of a pretrial order entered in W.C.C. No. 2010-04507.

The employee's petition to review, which is the subject of this appeal, was heard at a pretrial conference on January 4, 2011. A pretrial order was entered finding that the employee did not suffer a return to total incapacity, and her incapacity did not pose a material hindrance to obtaining suitable employment, resulting in the denial of her request for continuation of partial incapacity benefits beyond 312 weeks. The employee made a timely claim for trial. During the trial, the employee's petition was amended to clarify that she was seeking benefits for total incapacity pursuant to the so-called statutory "odd lot" provision, and, in the alternative, she requested continuation of her partial incapacity benefits beyond 312 weeks pursuant to R.I.G.L. § 28-33-18.3(a).

The employee, Marilyn Washington, who was sixty-seven (67) years old at the time of her testimony, stated that she injured both knees on September 27, 2000 while working for RIPTA as a bus operator, a job she had held for eighteen (18) years. She initially treated with Dr. Roy Aaron, who performed surgery on both knees, and subsequently came under the care of Dr. John Froehlich. The employee testified that she had her left knee replaced in 2004 and her right knee replaced in 2009. The employee explained that she still experiences knee pain for which she sees Dr. Froehlich, but is unable to take any prescription medication because she hallucinates and can become combative. Ms. Washington explained she usually ambulates outside of her home with the aid of a cane because her knees periodically "give out." She testified that on one occasion at her home in February of 2011, her right knee gave out, causing her to fall and knock over a nightstand which struck her head. The employee stated that as a result she suffered a seizure and was transported to Miriam Hospital. After being treated at Miriam Hospital, the employee underwent rehabilitation at Rhode Island Rehabilitation and at Hallworth House, a nursing home. The employee testified that she has experienced seizures intermittently since 2005 and treats with Dr. Gary Johnson for her condition.

Prior to her employment with RIPTA, the employee worked for approximately five (5) years as a school bus driver for Ryder Transportation. She testified that approximately thirty (30) years prior to working for Ryder she did clerical work at San Diego State University, including typing, answering phones, photocopying, filing, and serving as a switchboard operator. Tr. at 23:1-16. According to the employee, she also tended bar for about three (3) years and operated a small nursery on a United States military base in Europe. Id. at 35:24-36:20. Ms. Washington related that she graduated high school and had completed some basic college courses as recently as 2009. The employee explained that she had taken science, sociology, and

math but was unable to complete her math course because she underwent surgery at the end of the semester.

On cross-examination, Ms. Washington testified that she considered herself to be retired because she was unsure of what she would be capable of doing in the workforce. Id. at 26:11-12. Ms. Washington renewed her driver's license in February 2011, but stated that she did not drive regularly thereafter because of her recent seizure. The employee testified she has to navigate thirteen (13) stairs to reach her second floor apartment, where she lives by herself. She acknowledged that she is very active in her church where she serves as a deacon, sings in the choir, and sometimes attends choir practice. As a deacon, she occasionally reads poetry, serves communion once every three (3) to four (4) months, and attends monthly meetings when she can. Additionally, Ms. Washington is a member of the women's guild and book club at her church. She also explained that she enjoys visiting the casinos and the theater from time to time. While she admitted she is "intellectually curious," the employee testified she does not make much use of her computer and primarily uses its wordprocessing function when composing prayers for her church.

Edmond Calandra, a vocational counselor, met with the employee on October 9, 2010 to assess the employee's employment potential considering her bilateral knee injuries. His discussion with the employee included obtaining information as to any ongoing medical treatment, her socio-economic background, educational background, vocational background, and work history. Id. at 49:5-14. He also reviewed the medical records of Dr. John Froehlich, The Imaging Institute, Dr. Roy Aaron, Dr. Gary Ferguson, Rhode Island Rehabilitation, Dr. Stanley Stutz, Dr. W. Lloyd Barnard, Rhode Island Hospital, Dr. Lawrence Luppi, and Dr. A. Louis Mariorenzi. Mr. Calandra testified that he primarily relied on the physical restrictions noted on a

form completed by Dr. Froehlich dated July 6, 2010, which included no operating heavy machinery or vehicles, no climbing ladders or stairs, lifting up to ten (10) pounds occasionally, no repetitive twisting or bending, and no repetitive stooping, kneeling or squatting. The doctor also indicated that the employee could perform only sit-down work with the ability to alternate sitting and standing. After interviewing Ms. Washington and reviewing her medical records, Mr. Calandra opined that Ms. Washington was unable to perform any alternative occupations. Id. at 59:2-6. He explained that her bilateral knee injuries and corresponding medical restrictions, "by vocational definitions do not allow her to perform the full range of sedentary work physical exertion." Id. at 60:7-10.

Mr. Calandra noted that Ms. Washington's ability to find alternative employment was also significantly reduced by other factors such as her extended absence from the workforce, limited transferable skills, her age, and her level of education. Id. at 61:20-62:15. When questioned regarding Ms. Washington's previous employment as a secretary, Mr. Calandra testified that "really it offers nothing meaningful in terms of seeking new employment" because of advances in office equipment and technology. Id. at 66:24-67:1. The witness added that Ms. Washington's experience in running a daycare and tending bar were not what he would consider "meaningful transferrable skills to employment in any sense, but considering the amount of time since then they really have no transferability." Id. at 67:13-15. Mr. Calandra explained he did not conduct any interest testing with Ms. Washington because "it has no use" if the person is not capable of alternative employment. Id. at 68:3-4. Mr. Calandra opined to a reasonable degree of certainty in his field that Ms. Washington was unable to perform any alternative employment due to the effects of her bilateral knee condition. Id. at 70:13-20.

Counsel for the employer questioned Mr. Calandra extensively regarding his evaluation of the employee and whether or not he considered factors other than the restrictions placed on Ms. Washington by Dr. Froehlich in making his determination. Mr. Calandra asserted "[he] was aware of the other conditions, but [his] finding for her being disabled is totally on the knee situation." Id. at 122:1-3. He further indicated that "whether she had all these other conditions or not [he] would have formed the same opinion." Id. at 122:5-6. Mr. Calandra explained that the medical restrictions would not allow the employee to do even light assembly work because "there are very few assembly jobs where you sit all day and that is all you do." Id. at 126:12-14. He also acknowledged that if the employee did not have the physical restrictions relative to her knees, it would be "likely" she could obtain some sort of other sedentary job. Id. at 128:16-18.

After reviewing the evidence presented by the parties, the trial judge found that the employee remains partially incapacitated for work and that her work-related disability poses a material hindrance to obtaining suitable employment. The trial judge noted that Ms. Washington ambulates with the aid of a cane and complained of continuing episodes of her knees giving out. Additionally, the trial judge specifically referenced the testimony of Mr. Calandra with respect to his opinion that Ms. Washington was not even capable of performing sedentary work because she would be required to sit for at least six (6) hours a day and her physical restrictions require her to sit and stand as needed. The trial judge then granted Ms. Washington's request for continuation of her partial incapacity benefits pursuant to R.I.G.L. § 28-33-18.3(a) and denied the allegation that she was totally disabled pursuant to R.I.G.L. § 28-33-17(b)(2), the statutory "odd lot" provision.

Subsequent to the trial judge's decision, but prior to the entry of the final decree, counsel for the employer filed a motion to reconsider and stay the entry of the decree on the grounds that

RIPTA is a political subdivision of the State and therefore is immune from the award of prejudgment interest which the trial judge ordered in her proposed decree. After considering the employer's memorandum and oral arguments of the parties, the trial judge denied the employer's motion and awarded an additional counsel fee of One Thousand and 00/100 ($1,000.00) Dollars to be paid to Ms. Washington's attorney. The employer filed a claim of appeal to the Appellate Division after the trial judge entered her decree.

The appellate standard of review is very limited and is clearly delineated in R.I.G.L. § 28-35-28(b), which dictates that "[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." The appellate panel is precluded from engaging in a *de novo* review of the evidence and substituting our judgment for that of the trial judge without first determining that the trial judge was clearly wrong. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). In consideration of this standard and after a thorough review of the record, we find no error on the part of the trial judge and deny the employer's appeal.

The employer has filed five (5) reasons of appeal. In the first reason of appeal, the employer argues that the trial judge misapplied the law by inappropriately considering the employee's age, education, background, and non-work related medical obstacles in her analysis of whether the employee was entitled to continuing partial incapacity benefits under R.I.G.L. § 28-33-18.3(a)(1). This statute provides that an employee is entitled to the continuation of partial incapacity benefits beyond 312 weeks provided they are able to "demonstrate by a fair preponderance of the evidence that his or her partial incapacity poses a material hindrance to obtaining employment suitable to his or her limitation." R.I.G.L. § 28-33-18.3(a). The employer points to the decision of the trial judge where she references Ms. Washington's age, limited

education, lengthy absence from the workforce, and lack of transferable skills, as well as her physical restrictions resulting from the work injury, in concluding that "[t]he combination of these factors convinces the Court that Ms. Washington's partial incapacity resulting from her work injury poses a material hindrance to her obtaining suitable employment." Dec. at 7.

The employer correctly points out that the Appellate Division has held on several occasions that the employee's age, education, background, abilities, and other non-work-related medical issues may not be considered in determining whether an employee's partial incapacity poses a material hindrance to obtaining alternative employment. *See* Rothemich v. St. Joseph Health Services, W.C.C. No. 2006-07906 (App. Div. 1/25/11); Ponte v. Bechtel Corp., W.C.C. No. 01-00197 (App. Div. 1/10/08); Brown v. McLaughlin & Moran, W.C.C. No. 98-03586 (App. Div. 12/1/00). In the present matter, despite the phrasing used by the trial judge, it is clear that she relied upon the testimony of Mr. Calandra that the physical restrictions resulting from the work injury pose a material hindrance to obtaining employment. Mr. Calandra reiterated on a number of occasions that his opinion that the employee was not even capable of alternative work was based solely on the physical restrictions resulting from the bilateral knee injuries. The other factors noted by the trial judge only detracted further from Ms. Washington's employment potential. The record in this matter, in particular the uncontradicted testimony of Mr. Calandra, is more than sufficient to support the trial judge's ultimate finding of fact, that the employee's partial incapacity resulting from the effects of her work-related injury poses a material hindrance to her ability to obtain alternative employment.

In its second reason of appeal, the employer asserts that the trial judge erred by accepting the opinion of Mr. Calandra because his opinion lacked the proper foundation and he failed to provide the employee with any interest or vocational testing. The employer contends that Mr.

Calandra improperly assumed that Ms. Washington was unable to perform sedentary work because she was incapable of sitting for up to six (6) hours in an eight (8) hour period based upon Dr. Froehlich's restriction that the employee must be able to alternate sitting and standing while doing only sit-down work. Mr. Calandra testified before the trial judge that "being capable of sedentary physical exertion requires that you be capable of the full range of sedentary physical exertion and you need to be able to sit for six hours out of an eight hour day by its definition." Tr. at 55:17-21. Mr. Calandra went on to testify that one of Dr. Froehlich's restrictions would require Ms. Washington to sit and stand as needed and "maybe it is an assumption, but I'm led to believe that would not allow her to sit for six hours out of the day." Id. at 55:23-24.

In Lombardo v. Atkinson-Kiewit, 746 A.2d 679 (R.I. 2000), the Rhode Island Supreme Court held that expert testimony may be disregarded when the expert's opinion is based upon an inadequate factual foundation. Id. at 688. We must also bear in mind that credibility assessments made by the trial judge are entitled to great weight on review. Quintana v. Worcester Textile Co., 511 A.2d 294, 295 (R.I. 1986); Laganiere v. Bonte Spinning Co., 103 R.I. 191, 195, 236 A.2d 256, 258 (1967) (citing Lonardo v. Palmisciano, 97 R.I. 234, 197 A.2d 274(1964)).

The employer in this matter did not present any medical or vocational evidence to contradict the opinions presented by the employee, nor did the employer move to strike the testimony of Mr. Calandra at any time during the proceedings. Mr. Calandra drew a reasonable inference that the employee could not sit at least six (6) hours out of an eight (8) hour day from Dr. Froehlich's requirement that the employee have the ability to alternate sitting and standing at will. The classification of sedentary work in the vocational field includes the ability to sit for six (6) hours out of an eight (8) hour day as a physical requirement. Mr. Calandra then reasoned that

the employee did not meet the physical requirements for the sedentary work classification. We would note that the employee's burden under R.I.G.L. § 28-33-18.3(a)(1) is to show that her partial incapacity poses a substantial impediment to obtaining alternative employment, not that she is incapable of performing any type of work. The trial judge weighed the evidence before her and made the determination that Mr. Calandra was credible and his opinion was based on an adequate factual foundation. We find no error in that determination.

The employer also points to the fact that Mr. Calandra did not provide any interest testing or vocational services to the employee as grounds to find that his expert opinion was based on an inadequate factual foundation. Mr. Calandra testified before the trial judge that "to do interest testing on someone you don't think is employable is fruitless." Tr. at 104:7-8. The trial judge also noted on the record that she understood Mr. Calandra's testimony to be that "if he does an assessment of someone and really doesn't think that there is a reasonable possibility for them to be employed, that he would find it unethical to then offer these services." Id. at 110:6-9. It is clear from a review of the record and the trial judge's decision that she accepted Mr. Calandra's explanation as to why he did not administer any tests or provide any job search services and she did not find that this affected the probative value of his opinion. There is nothing in the record from which we can infer that his opinion would be altered in any way if he had administered interest testing at the employee's expense and assisted her in a fruitless job search. Consequently we find no merit in the employer's contention.

In the third reason of appeal, the employer argues that the trial judge erred in her determination that Ms. Washington's partial incapacity posed a material hindrance to obtaining employment suitable to her limitations because her physical restrictions are "somewhat minor," and such a finding is inconsistent with the employee's activity level. The employer argues that

Ms. Washington's physical restrictions related to her work-related injuries are similar to those in Donahue v. Ross Simons, Inc., W.C.C. 02-04486 (App. Div. 2005) and Cabral v. Crystal Brands, W.C.C. 99-02844 (App. Div. 2005), in which the employees' petitions for continuation of partial incapacity benefits were denied. The evidence in the matter currently before this appellate panel is clearly distinguishable from the record in both Cabral and Donahue.

In Donahue v. Ross Simons, Inc., W.C.C. 02-04486 (App. Div. 2005), the court was presented with three (3) different vocational assessments regarding the employment potential of the employee. The trial judge chose to rely on two (2) vocational assessments that opined that the employee was capable of light duty work and her partial incapacity was not a material hindrance to obtaining alternative employment and the Appellate Division affirmed. In Cabral v. Crystal Brands, W.C.C. 99-02844 (App. Div. 2005), the court was presented with conflicting vocational assessments. The employee's vocational expert opined that the employee was incapable of performing any type of employment, while the employer's vocational expert opined the employee was capable of semi-skilled employment. The trial judge chose to accept the opinion of the employer's vocational counselor and held that the employee failed to prove that her partial incapacity was a material hindrance to obtaining alternative employment. Again, the Appellate Division found no error on the part of the trial judge.

In these two (2) cases cited by the employer, vocational experts presented conflicting opinions as to the effect of the employees' partial incapacity on their employability. In the present matter, there is no expert opinion in the record stating that Ms. Washington's partial incapacity resulting from her work-related injury does not pose a substantial impediment to her ability to obtain a job within her physical restrictions. Mr. Calandra was the only vocational expert presented. The trial judge found his opinion to be competent and probative, despite

aggressive cross-examination by the employer's counsel. The employer contends that there is a multitude of jobs that Ms. Washington could do, but there is no evidence in the record to substantiate that claim. The findings and conclusions of the trial judge must be drawn from the evidence in the record, and in this type of case, particular reliance is placed upon vocational expert testimony. In the present matter, we cannot fault the trial judge for relying upon the only vocational expert testimony presented.

We would also note that the fact that some job classification may exist that is within the employee's physical restrictions is not enough to defeat an employee's petition for continuation of benefits under R.I.G.L. § 28-33-18.3(a)(1). "The fact that there may be some isolated job out in the community that the employee may be capable of performing is not sufficient to preclude the continuation of weekly benefits." Conte v. Fleet Financial Group, W.C.C. 99-05648 (App. Div. 2004). Additionally, "[t]he employee must have access to a reasonable number of jobs in the local labor market, as well as the ability to compete for such jobs and a legitimate opportunity to be hired." Id.

The employer asserts that the employee's activity level is inconsistent with a finding that her partial incapacity poses a material hindrance to obtaining alternative employment. The employee testified that she is able to drive, is active in her church, is able to navigate the thirteen (13) steps in and out of her apartment, shops for groceries with the aid of a scooter, and occasionally attends the theatre and casino. We find no merit in this argument.

To be successful in a petition for the continuation of benefits, the employee must show that the partial disability poses a material hindrance to obtaining alternate employment. "It is not necessary that [s]he establish that [s]he is totally disabled for all work, or that [s]he qualifies for total disability benefits pursuant to R.I.G.L. §28-33-17(b)(2)." Cappalli v. City of Providence,

W.C.C. 2009-00576 (App. Div. 2011). The activities of Ms. Washington noted by the employer simply demonstrate that she is not entirely immobile and has maintained some degree of independence despite her significant difficulties ambulating. Performing one or two (2) activities such as these in a day does not automatically translate to the ability to maintain a full-time job, eight (8) hours a day, five (5) days a week on a regular basis. Furthermore, there is no evidence in the record supporting such a proposition.

In the fourth reason of appeal, the employer argues the trial judge erred by awarding prejudgment interest against the employer because RIPTA is a political subdivision and instrumentality of the State and therefore immune from the imposition of prejudgment interest. The employer correctly notes that "absent an express statutory provision to the contrary, the doctrine of sovereign immunity insulates the state from paying prejudgment interest." Rhode Island Public Telecommunications Authority v. Russell, 914 A.2d 984, 995 (R.I. 2007). However, there is a specific statutory provision waiving immunity for RIPTA with regard to workers' compensation.

Section 28-35-12(c) of the Workers' Compensation Act mandates that "[i]f any determination of the workers' compensation court entitles an employee to retroactive payment of weekly benefits, the court shall award to the employee interest…" The employer, RIPTA, was created by Chapter 18 of Title 39 of the General Laws. Section 39-18-18.1, entitled "Authority deemed instrumentality and political subdivision of the state" provides,

> For the purposes of the chapters 42-44 of title 28, and chapters 29-37 of title 28 and with respect to chapter 31 of title 9, and not withstanding any inconsistent provisions of these chapters, the authority shall be deemed to be an instrumentality and a political subdivision of the state; provided, however, with respect to chapters 29 -- 37 of title 28 the authority shall pay all benefits, required by law, until the authority ceases to exist. Thereafter, the payments shall be the obligation of the state. (Emphasis added.)

In the present matter, the interest awarded to the employee by the trial judge is a benefit owed to the employee as required by R.I.G.L. §28-35-12(c). Ms. Washington's petition in this matter was filed on December 14, 2010 and the trial judge entered the final decree on February 15, 2012. It is clear that the trial judge was obligated to award prejudgment interest to the employee pursuant to R.I.G.L. §28-35-12(c), and RIPTA is obligated to pay this benefit to Ms. Washington pursuant to R.I.G.L. §39-18-18.1.

The employer also contends that the trial judge erroneously concluded that she did not have the authority to reconsider the award of interest prior to the entry of her decree. In light of our rejection of the employer's argument regarding the award of interest, we find it unnecessary to address this contention.

In the fifth reason of appeal, the employer argues that the trial judge had no authority under R.I.G.L. §28-35-32 to award the employee a counsel fee in connection with the defense of the employer's motion to reconsider. The employer asserts that because the employer's motion to reconsider was not an employer's petition seeking to reduce or terminate any and all workers' compensation benefits, the trial judge was incorrect to increase the amount of the counsel fee awarded. We find that this argument fails as the employer's motion to reconsider was part and parcel of the proceeding regarding the employee's petition for continuing partial incapacity benefits.

R.I.G.L. §28-35-32 clearly articulates that,

> [i]n proceedings under this chapter and in proceeding under chapter 37 of this title, costs shall be awarded, including counsel fees and fees for medical and other expert witnesses including interpreters, to employees who successfully prosecute petitions for compensation; petitions for medical expenses; petitions to amend a preliminary order or memorandum of agreement; and all other employee petitions…

In this case, the employer objected to the entry of the trial decree and filed a motion to reconsider and stay the entry of the decree. Because the decree had not yet been entered, the employee's petition for compensation benefits was still an open and ongoing matter before the trial judge. As the matter was still pending before the trial judge, she was obligated to take the time expended to oppose and defend the employer's motion to reconsider into consideration when determining the final award of counsel fees to the employee's attorney. Therefore, we find the trial judge did not abuse her discretion in determining her award of counsel fees.

In conclusion, we find no error in the trial judge's decision to grant the employee's petition for continuation of partial incapacity benefits pursuant to R.I.G.L. § 28-33-18.3(a)(1), and consequently, we deny the employer's claim of appeal and affirm the decision and decree of the trial judge. We also summarily deny and dismiss the employee's claim of appeal as it was filed as a precaution in the event we granted the employer's appeal. 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

Hardman and Ferrieri, JJ. concur.

ENTER:

_____
Olsson, J.

_____
Hardman, J.

_____
Ferrieri, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKER'S COMPENSATION COURT
APPELLATE DIVISION

MARILYN WASHINGTON)
)
VS.) W.C.C. 2010-07060
)
RIPTA)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the claims of appeal of the petitioner/employee and the respondent/employer, and upon consideration thereof, the appeals are both denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

1. That the findings of fact and the orders contained in a decree of this Court entered on February 15, 2012 be, and they hereby are, affirmed.

2. That the employer shall pay a counsel fee in the amount of Four Thousand Five Hundred and 00/100 ($4,500.00) Dollars to Andrew S. Caslowitz, Esq., attorney for the employee, for the successful defense of the employer's claim of appeal.

Entered as the final decree of this Court this day of

PER ORDER:

_____
John A. Sabatini, Administrator

ENTER:

_____
Olsson, J.

_____
Hardman, J.

_____
Ferrieri, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Andrew S. Caslowitz, Esq., and Nicholas R. Mancini, Esq., on

_____

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKER'S COMPENSATION COURT
APPELLATE DIVISION

MARILYN WASHINGTON	)	
	)	
VS.	)	W.C.C. 2010-07060
	)	
RIPTA	)	

CORRECTED DECREE ENTERED PURSUANT TO W.C.C. – R.P.12.10

This cause came on to be heard by the Appellate Division upon the claims of appeal of the petitioner/employee and the respondent/employer, and upon consideration thereof, the appeals are both denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

1. That the findings of fact and the orders contained in a decree of this Court entered on February 15, 2012 be, and they hereby are, affirmed.

2. That the employer shall pay a counsel fee in the amount of Four Thousand Five Hundred and 00/100 ($4,500.00) Dollars to Andrew S. Caslowitz, Esq., attorney for the employee, for the successful defense of the employer's claim of appeal.

Entered as the final decree of this Court this 13th day of March, 2015 *nunc pro tunc* to February 20, 2015.

PER ORDER:
/s/ John Sabatini, Court Administrator

ENTER:

/s/ Olsson, J.

/s/ Hardman, J.

/s/ Ferrieri, J.