Rhode Island Worker Compensation
November 1999 - October 2000.

98-06362 (2000). BEATRICE LARENCE VS. ALMACS, INC

Term: November 1999 - October 2000

W.C.C. 98-06362.

BEATRICE LARENCE VS. ALMACS, INC.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT APPELLATE DIVISION

DECISION OF THE APPELLATE DIVISION

ROTONDI, J.

This matter came to be heard before this Appellate Division upon an employee's appeal from an adverse decision and decree entered on June 30, 1999. The trial court heard this matter in the nature of an Employee's Petition to Review requesting the continuation of benefits pursuant to R.I.G.L. Sec. 28-33-18.3. At a pretrial conference conducted on December 3, 1998, the trial judge denied the employee's petition. As a result, the employee duly claimed a trial. At the conclusion of that proceeding, the trial judge entered a decree containing the following finding and order:

1. That the petitioner has failed to prove by a fair preponderance of the credible evidence that she is entitled to have benefits beyond the period provided for in Section 28-33-18.

It is, therefore, ordered:

1. That the petition be denied and dismissed.

From this decree, the employee filed the instant appeal. The pertinent facts of this matter are as follows. Beatrice Larence testified before the trial court that she worked for Almacs for thirty (30) years. (Tr. 12) Ms. Larence's job duties at Almacs included pricing all fresh meat products, displaying the product, packaging and checking the quality. (Tr. 12) Ms. Larence testified

that she was injured while working for Almacs on June 4, 1991. (Tr. 10) She sustained an injury to her left knee for which she subsequently had surgery. (Tr. 10) She returned to work at Almacs from April 30, 1992 until April 13, 1994. (Tr. 10) She treated with Dr. Bonnet-Eymard for her knee injury. (Tr. 14)

Subsequently, the Donley Center arranged for Ms. Larence to attend classes at the Learning Connection to obtain computer skills. (Tr. 11) Ms. Larence has been employed by Today's Temporary at CVS corporate headquarters since approximately mid-1997. (Tr. 11, 13) Her job duties at CVS included photo copying, filing, and taking care of the mail. (Tr. 12)

In support of her petition, Ms. Larence entered the deposition and reports of Dr. Jacques L. Bonnet-Eymard. (Pet. Exh. 8) The parties stipulated to the doctor's qualifications as an orthopedic surgeon. Id. at 3. Dr. Bonnet-Eymard first saw Ms. Larence on July 12, 1991 and diagnosed her with a torn medial meniscus of the left knee with contusion. Id. at 3-4. She had anthroscopy surgery performed on June 14, 1994. Id. at 4. Dr. Bonnet-Eymard opined that Ms. Larence reached maximum medical improvement as of November 13, 1997. Id. at 5. At that time, Dr. Bonnet-Eymard concluded that Ms. Larence was totally disabled with respect to her job at Almacs, but partially disabled from other employment. Id.

During cross-examination, Dr. Bonnet-Eymard admitted that he knew Ms. Larence is currently employed; however, he did not know when she began to work or what her job duties consisted of. Id. at 8.

The trial judge also reviewed a Memorandum of Agreement (MOA) dated June 13, 1994 (Pet. Exh. 1), a Mutual Agreement dated August, 1995 (Pet. Exh. 2), a suspension agreement dated July, 1992 (Pet. Exh. 3) and an MOA dated July 30, 1991 (Pet. Exh. 4). Also, the record contains a letter from Travelers dated October 10, 1998 notifying the employee of the discontinuation of her workers' compensation benefits after twenty-six (26) weeks (Pet. Exh. 5), a letter from the employee notifying the Attorney General of her intent to challenge the constitutionality of R.I.G.L. Sec. 28-33-18 (Pet. Exh. 6) and the response from the Attorney General's Office (Pet. Exh. 7).

The trial judge found that the petitioner failed to prove beyond a reasonable doubt that R.I.G.L. Sec. 28-33-18.3 is unconstitutional. The trial judge relied upon Gomes v. Bristol Mfg. Corp., 95 R.I. 126, 184 A.2d 787 (1962), and State v. Garnetto, 75 R.I. 86, 63 A.2d 777 (1949) in that the party raising the question of the constitutionality of the statute has the burden of proving that fact beyond a reasonable doubt. On the issue of continuing partial incapacity benefits beyond the three hundred twelve (312) week limit, the trial judge

found that since the employee has been employed since August of 1997, her work-related injury did not pose a material hindrance to her obtaining employment. Accordingly, the trial judge denied and dismissed the employee's petition.

Pursuant to R.I.G.L. Sec. 28-35-28(b), the Appellate Panel is charged with the initial responsibility to review the record to determine whether the decision and decree properly respond to the merits of the controversy. The role of the Appellate Division in reviewing factual matters is, however, sharply circumscribed. Rhode Island General Laws Sec. 28-35-28(b) states, The findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous. The Appellate Division is entitled to conduct a de novo review only when a finding is made that the trial judge was clearly wrong. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996); Grimes Box Co. v. Miguel, 509 A.2d 1002 (R.I. 1986). Such review, however, is limited to the record made at the trial level. Whittaker v. Health-Tex, Inc., 440 A.2d 122 (R.I. 1982).

Cognizant of this legal duty imposed upon us, we have reviewed and examined the entire record. For the reasons set forth, we affirm the trial judge's decision and decree.

In support of her appeal, the employee asserts three (3) reasons of appeal. Reasons of appeal two (2), and three (3) concern the constitutionality of R.I.G.L. Sec. 28-33-18.3. The employee argues that the trial judge erred in requiring the employee to present evidence to challenge the constitutionality of the statute when the issue is one to be ruled upon as a matter of law. Further, the employee claims that the statute violates the equal protection mandates of Article I, Section 2, of the Constitution that bars discrimination on the basis of disability. Reason of appeal one (1) contends that the trial judge erred in failing to consider Dr. Bonnet-Eymard's opinion that the employee was one hundred (100%) percent disabled from her normal employment. We find no merit in the employee's reasons of appeal, and for the reasons set forth we affirm the trial judge's decision and decree.

First, the employee contends that the trial judge committed error in requiring the employee to present evidence to challenge the constitutionality of the statute when the issue is a matter of law. We disagree. The Rhode Island Supreme Court has held that when considering the question of the constitutionality of a statute the court is bound to uphold it unless its unconstitutionality appears beyond a reasonable doubt. Gomes v. Bristol Mfg. Corp., 95 R.I. 126, 131, 184 A.2d 787, 790 (1962). Further, the party challenging the unconstitutionality of the statute has the burden of proving that fact beyond a reasonable doubt. Id. (citing State v. Garnetto, 75 R.I. 86, 63 A.2d 777 (1949)). The employee suggests that she is not required to

present evidence for the court to hold the statute unconstitutional beyond a reasonable doubt. While her assertion may be true in certain limited circumstances, she still has the burden of proving that the statute is unconstitutional beyond a reasonable doubt. The record in this matter, including the employee's memorandum, fails to convince the trial judge, as well as this Tribunal, that R.I.G.L. Sec. 28-33-18.3 is unconstitutional beyond a reasonable doubt. The trial judge essentially stated that without more than the employee's argument, he was unable to find that statute unconstitutional beyond a reasonable doubt. We cannot find that he was clearly wrong in this regard. We, therefore, find that the employee's reason of appeal has no merit. Accordingly, we deny and dismiss this reason of appeal and affirm the decision and decree of the trial judge.

Next, the employee suggests that R.I.G.L. Sec. 28-33-18.3 violates the equal protection mandates of the Constitution that bars discrimination on the basis of disability. We disagree. As discussed above the employee presented no evidence to sustain his burden that the statute violates the Equal Protection Clause of the Constitution. The employee merely argues in her brief that Gomes, supra, does not apply to the case at bar. While the employee attempts to distinguish Gomes on the basis that all employees were treated the same, her argument is misplaced. In Gomes, the employer challenged the constitutionality of R.I.G.L. Sec. 28-35-32 on the grounds that the employer, unlike the employee, is denied equal protection of the laws since it is not entitled to receive costs pursuant to said statute. The Supreme Court rejected this argument because all employers were treated the same, and since employees and employers were different, they could be treated differently. The employee contends that Gomes was not applicable to the case at bar because all employees were treated equally. The Rhode Island Supreme Court, however, did not address the issue of whether employees were treated the same as suggested by the employee in this case. In fact, employees were not treated the same under R.I.G.L. Sec. 28-35-32 because only successful employees were awarded costs.

This bears no weight on the instant case, however, because the court did not address this issue. In this matter, the employee failed to demonstrate beyond a reasonable doubt that R.I.G.L. Sec. 28-33-18.3 violated the Rhode Island Constitution. We, therefore, find that the employee's reason of appeal has no merit. Accordingly, we deny and dismiss the employee's reason of appeal and affirm the decision and decree of the trial judge.

Finally, the employee argues that the trial judge erred in failing to consider the opinion of Dr. Bonnet-Eymard that the employee was one hundred (100%) percent disabled from her normal employment. We disagree.

Dr. Bonnet-Eymard testified that the employee was totally disabled from her pre-injury employment; however, he opined that she was capable of performing light-duty work. The employee contends that the trial judge overlooked this testimony. This argument is misguided. The trial judge noted the deposition in his decision (Tr. 23), and therefore, it cannot be said that the trial judge overlooked his testimony. Further, the trial judge denied the employee's petition because she did not satisfy her burden of proving each element in R.I.G.L. Sec. 28-33-18.3. Said statute states as follows:

(A) For all injuries occurring on or after September 1, 1990, in those cases where the employee has received a notice of intention to terminate partial incapacity benefits pursuant to Sec. 28-33-18, the employee or his or her duly authorized representative may file with the workers' compensation court a petition for continuation of benefits on forms prescribed by the workers' compensation court. In any proceeding before the workers' compensation court on a petition for continuation of partial incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence that his or her partial incapacity poses a material hinderance to obtaining employment suitable to his limitation, partial incapacity benefits shall continue. (emphasis added.)

The statute requires that in order for partial incapacity benefits to continue beyond the three hundred twelve (312) week gate, the employee must prove that her incapacity poses a material hindrance to her obtaining employment suitable to her limitations. The evidence in the record established that the employee was currently employed and had been working since August of 1997. The fact that the employee had been working for approximately twenty (20) months at the time of her trial was directly contradictory to the requirement that her disability pose a material hindrance to her obtaining employment and belies the allegations contained in this reason of appeal. The trial judge, accordingly, denied the employee's petition because she failed to demonstrate said material hindrance. We agree with the trial judge and cannot find him clearly erroneous in this regard. We, therefore, deny and dismiss the employee's reason of appeal and affirm the trial judge's decision and decree. For the aforesaid reasons, the employee's reasons of appeal are hereby denied and dismissed, and we, therefore, affirm the trial judge's decision and decree. In accordance with Section 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 , 2000 at 10:00 a.m.

Arrigan, CJ., and Healy, J. concur.

FINAL DECREE OF THE APPELLATE DIVISION

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT APPELLATE DIVISION

BEATRICE LARENCE VS. ALMACS, INC. W.C.C. 98-06362

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 June 30, 1999 be, and they hereby are affirmed.

Entered as the final decree of this Court this day of , 2000.

BY ORDER:

Dennis I. Revens, Administrator

ENTER:

Arrigan, CJ. Rotondi, J. Healy, J.

I hereby certify that copies were mailed to Gerard Lobosco, Esq., and Gregory Boyer, Esq., on

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