STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

PATRICIA ST. JEAN	)	
	)	
VS.	)	W.C.C. 2016-00038
	)	
HOME DEPOT U.S.A., INC.	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the appeal of the employer, Home Depot U.S.A., Inc., from the trial judge's decision and decree granting the petition to enforce filed by the employee, Patricia St. Jean, and ordering reinstatement of her partial incapacity benefits as of December 16, 2015, based upon a ruling that the notice of termination of her weekly benefits required of the employer/insurer pursuant to Rhode Island General Laws § 28-33-18(d) was inadequate. As a result of that determination, the trial judge also awarded a twenty (20) percent penalty on the retroactive payment of weekly benefits. After a thorough review of the record and the applicable statute, we deny and dismiss the employer's appeal.

The evidence at trial consisted of an Agreed Statement of Facts prepared by the parties, copies of previous pretrial orders, a mutual agreement, and the relevant correspondence from the employer's third-party administrator. On May 18, 2009, while working for the employer, the employee suffered an injury to both wrists. Pursuant to a pretrial order entered in W.C.C. No. 2009-05343 on September 28, 2009, she began receiving weekly benefits for partial incapacity as of August 20, 2009. In accordance with a mutual agreement entered into by the parties and

three (3) subsequent pretrial orders, the employee received weekly benefits for various periods of total and partial incapacity thereafter. On March 2, 2015, a pretrial order was entered in W.C.C. No. 2014-06990 in which it was found that the employee had reached maximum medical improvement, and which ordered the continued payment of weekly benefits for partial incapacity.

On May 15, 2015, the third-party administrator for the employer mailed a letter to the employee stating that her benefits would cease because she "will soon have collected partial compensation benefits in excess of 312 weeks." The correspondence further advised the employee that she could file a petition at the Workers' Compensation Court requesting the continuation of her weekly benefits if she believed that her "partial incapacity poses a material hindrance to obtaining employment...." Er's Ex. G, Letter from Liberty Mutual Group, 5/15/2015.[1] The letter did not state the specific date that the checks for weekly compensation would stop, nor did the letter even indicate that the notice was being sent at least six (6) months in advance of the termination of payments.

On December 4, 2015, the third-party administrator for the employer sent a second letter to the employee stating that her "benefits have been paid in full and your last check pays you through 12/16/2015. No further checks will be released, and your claim has been closed." Er's Ex. H, Letter from Helmsman Management Services LLC, 12/4/15.

On January 5, 2016, the employee filed a petition to enforce alleging that the employer had failed to comply with the previous pretrial orders ordering the payment of weekly benefits to the employee because no payments had been made since December 16, 2015. The issue

[1] The letter cites R.I. Gen. Laws § 28-33-18(a), which is not the section of the statute that addresses this issue. This defect in the letter was not raised at the trial.

presented by the petition was whether the letter sent to the employee on May 15, 2015 satisfied the notice requirement in § 28-33-18(d). That statute provides as follows:

> In the event partial compensation is paid, in no case shall the period covered by the compensation be greater than three hundred and twelve (312) weeks. In the event that compensation for partial disability is paid under this section for a period of three hundred and twelve (312) weeks, the employee's right to continuing weekly compensation benefits shall be determined pursuant to the terms of § 28-33-18.3. At least twenty-six (26) weeks prior to the expiration of the period, the employer or insurer shall notify the employee and the director of its intention to terminate benefits at the expiration of three hundred and twelve (312) weeks and advise the employee of the right to apply for a continuation of benefits under the terms of § 28-33-18.3. In the event that the employer or insurer fails to notify the employee and the director as prescribed, the employer or insurer shall continue to pay benefits to the employee for a period equal to twenty-six (26) weeks after the date the notice is served on the employee and the director.

R.I. Gen. Laws § 28-33-18(d).

At the pretrial conference on February 2, 2016, the trial judge entered a pretrial order granting the employee's petition to enforce and ordering the employer to reinstate the employee's weekly benefits effective December 16, 2015 and pay a twenty percent (20%) penalty on any retroactive benefits. The employer filed a timely claim for trial.

The trial judge rendered a bench decision on February 21, 2017. In his decision the trial judge found that the notice sent by the employer stating that compensation checks "will soon" cease was too vague to comply with the requirements of the statute. He noted that, while the Rhode Island Supreme Court has not determined what constitutes "sufficient notice," he was guided by the principles found in Supreme Court cases such as *Smith v. Colonial Knife Co.*, 731 A.2d 724, 725 (R.I. 1999), stating that the provisions of the Workers' Compensation Act are to be "liberally construed in order to effectuate the benevolent purpose that led to its enactment." Tr. at 9:21-24. Applying that maxim as a guide, the trial judge determined that "notice is only

sufficient if it provides the employee with enough information from which to make an inference as to what date the benefits will expire." Tr. at 10:9-12. As a result, he affirmed his pretrial order granting the employee's petition, reinstating the employee's benefits as of December 16, 2015, and assessing the statutory penalty on retroactive benefits. The employer filed a claim of appeal in a timely manner.

The appellate standard of review is clearly delineated in Rhode Island General Laws § 28-35-28(b). The appellate panel will not disturb a finding of fact made by the trial judge unless it is found to be clearly erroneous. R.I. Gen. Laws § 28-35-28(b). Because the parties have stipulated to the relevant facts, which are consistent with the trial judge's findings, our review is limited to whether § 28-33-18(d) was properly applied to the pertinent facts. After a thorough review of the record and the relevant law, we find no error in the trial judge's conclusions and deny the employer's appeal.

The employer has submitted five (5) reasons of appeal which can be consolidated into two (2) central arguments. First, the employer asserts that the trial judge's ruling is contrary to the law and evidence and is arbitrary by finding that the notice to the employee was insufficient due to its failure to state a specific date that benefits would cease, despite the trial judge's acknowledgment that the statute contains no requirement that the notice cite a specific date. The employer contends that the trial judge improperly applied principles of statutory construction when there is no ambiguity in the statutory language. Second, the employer argues that the statute does not require that the employer notify the employee of the specific date that benefits will cease as the employee and her attorney are capable of calculating when she will have received 312 weeks of partial incapacity benefits.

As to the first issue on appeal, despite the trial judge's acknowledgement in his bench decision that the statute contains no requirement that the notice state a specific date and his subsequent statement that "the notice clearly was insufficient as not having indicated a specific date," his ultimate finding of fact that the notice was not in compliance with the statute is not contrary to the law and evidence nor arbitrary. Tr. at 11:3-4. The employer has mischaracterized the trial judge's decision as requiring that the employer state a specific date upon which benefits will cease. We are satisfied that his overall assessment of the notice aptly analyzed its deficiencies and led to the correct conclusion.

The trial judge found that the statement that the employee "will soon have collected partial compensation benefits in excess of 312 weeks" contained in the May 15, 2015 letter provided no reasonable method or guide for the employee to determine when her checks would cease. As the trial judge noted in his decision, if the insurance company had indicated that the letter was being sent twenty-six (26) weeks prior to the expiration of the 312-week period or that her benefits would cease twenty-six (26) weeks from the date of the letter, an acceptable inference might have been made. Yet even that language was not contained in the letter to the employee. The trial judge in his overall analysis found that a specific date was not necessary; rather, at a minimum, language that provides the employee enough information to easily determine the date her checks will stop would be sufficient.

In providing that the employer/insurer must notify the employee of the termination of their weekly benefits at least twenty-six (26) weeks prior to the expiration of the 312-week period, the Legislature intended to allow the employee sufficient time to file a petition with the Workers' Compensation Court requesting continuation of their benefits pursuant to § 28-33-18.3(a). If the employee establishes their entitlement to the continuation of benefits, there would

be little or no interruption in the payment of weekly compensation if the petition was filed shortly after receiving the notice. The purpose of the notification is thwarted if the notice does not provide specific information as to when the 312-week period expires, and the insurer intends to terminate the payment of benefits.

In his bench decision, the trial judge acknowledged the judicial doctrine that the Workers' Compensation Act is to be interpreted liberally. Although the trial judge used some general terms that may be consistent with the broad principles of statutory construction, he was clearly only concerned with whether the wording of the May 15, 2015 letter satisfied the notice requirement contained in the statute. Because the statute does not specifically state what information must be contained in the notice to the employee, the trial judge reviewed the wording of the letter in conjunction with the intended purpose of the statute to determine whether the letter accomplished that purpose.

The trial judge concluded that the notice from the insurer must contain sufficient information for the employee to easily determine when the insurer intends to terminate the payment of benefits and that to "read the statute any other way would be fundamentally unfair to the employee." Tr. at 10:12-13. The language that the employee "will soon have collected partial compensation benefits in excess of 312 weeks" provides no guidance as to when the benefits will actually cease; they could be stopped in one (1) week, one (1) month, or six (6) months. Such a vague statement clearly does not constitute adequate notice to the employee that her weekly checks will stop in twenty-six (26) weeks. The language also insinuates that the employee will receive more than what she is legally entitled to obtain, which was wholly inaccurate.

The employer's second contention is that the May 15, 2015 letter satisfied the terms of the statute as the employee is capable of determining the date on which she would have received 312 weeks of partial incapacity benefits. Obviously, in sending the notice required by § 28-33-18(d), the insurer has already made the calculation of when the 312 weeks will expire and that the notice is being sent at least twenty-six (26) weeks prior to that date. Since the insurer is the issuer of the compensation checks to the employee, it has all the payment information in hand and is in the best position to make the necessary calculations, accounting for any periods of total incapacity that should be excluded.

We agree with the trial judge that it would be fundamentally unfair to require that the employee calculate the date on which she will have received 312 weeks (the equivalent of six (6) years) of partial incapacity benefits. This would be unduly burdensome where, as in this case, the employee received benefits for several periods of total incapacity, which would not be included in the 312-week period, intermingled with periods of partial incapacity. Therefore, the trial judge did not err in holding that notice sent by the insurer in this case was not in compliance with the statute because it did not provide the employee with enough information to determine when her weekly checks would be terminated.

Based on the foregoing analysis, we deny the employer's claim of appeal and affirm the decision and decree of the trial judge. 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 **August 27, 2019.**

Connor and Salem, JJ., concur.

ENTER:

Olsson, J.

Connor, J.

Salem, J.