

STATE OF RHODE ISLAND

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

JEAN GEMINIANI

)

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VS.

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W.C.C. No. 2017-04838

)

ELECTRIC BOAT CORPORATION

)

FINAL DECREE OF THE APPELLATE DIVISION

This matter came on to be heard by the Appellate Division upon the claim of appeal of the petitioner/employee and upon consideration thereof, the employee's claim of appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

That the findings of fact and the orders contained in a decree of this Court entered on December 12, 2019 be, and they hereby are, affirmed.

Entered as the final decree of this Court this *10th* day of *January, 2023*.

PER ORDER:

/s/ Nicholas DiFilippo
Administrator

ENTER:

/s/ Ferrieri, C.J.

/s/ Olsson, J.

/s/ Reall, J.

STATE OF RHODE ISLAND

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ELECTRIC BOAT CORPORATION)

PROPOSED FINAL DECREE OF THE APPELLATE DIVISION

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/s/ Nicholas DiFilippo
Administrator

ENTER:

/s/ Ferrieri, C.J.

/s/ Olsson, J.

/s/ Reall, J.

I hereby certify that copies of the Decision and Proposed Final Decree of the Appellate Division were mailed to Ms. Jean Geminiani, 21 Riverdale Ave., West Warwick, RI 02893, and Stephen M. Capracotta, Esq., on *January 3, 2023.*

/s/ Ann Gateman

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WORKERS' COMPENSATION COURT
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DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employee's claim of appeal from the trial judge's decision and decree denying, in part, her original petition in which she alleged that she developed an occupational disease or repetitive motion injury to her neck, left arm, left wrist, left shoulder, and left hand, resulting in partial or total incapacity from June 8, 2016, and continuing. On September 12, 2017, the trial judge entered a pretrial order denying the employee's petition. The employee claimed a trial and after a full hearing on the merits, the trial judge found that the employee sustained a work-related repetitive motion injury, specifically left carpal tunnel syndrome, on May 7, 2016. However, the trial judge also ruled that the employee failed to prove she suffered any disability or lost time from work due to the injury and, therefore, she was not entitled to weekly indemnity benefits. After reviewing the record and considering the arguments of the parties, we affirm the decision and decree of the trial judge.

The employee was represented by counsel throughout the course of the trial of this matter, however, she has represented herself throughout the appellate process. We are somewhat limited in our ability to conduct a complete appellate review of this matter due to the failure of

the employee to order a transcript of the trial proceedings. Consequently, our recitation of the employee's testimony is derived from the summary of that testimony contained in the written decision of the trial judge.

Jean Geminiani (the employee) testified that she worked for Electric Boat Corporation (the employer) for five (5) years as a welder. The employee's job required her to weld, grind, burr, and buff in all directions, often using pneumatic tools and working extended periods in awkward positions. She testified that she carried items as heavy as fifty (50) pounds. She was able to perform these tasks holding the tools in either hand, however, she would usually use her dominant right hand.

The employee stated that her work activities caused her left-sided pain beginning in May 2016. The pain began in her left clavicle, spread to her left shoulder area, and made her left arm and fingertips feel numb. She asserted that she reported these symptoms to Miranda Tripp, the supervisor, as well as to some co-workers.

The employee was initially seen by Dr. John Cece, her primary care physician, and later by Dr. Jamiel Ambrad (a new primary care physician). She treated with Dr. Edward Akelman, an orthopedic surgeon, who diagnosed her with left carpal tunnel syndrome. She was provided a brace to use at night and was scheduled for an EMG, which she was unable to complete because she could not tolerate the test. Dr. Akelman also recommended a cortisone injection, which she declined. Subsequently, the employee saw Dr. Richard Anderson on two (2) occasions on referral from her attorney. As of the date of her court testimony, the employee stated that she believed she was unable to perform her work duties as she continued to have pain with repetitive activities. She also complained of numbness from her left shoulder into her left hand.

On cross-examination, the employee stated that due to her left hand and arm problems, she last worked for the employer on June 7, 2016. She alleged that she was advised not to seek treatment at the employer's dispensary. She has not treated with Dr. Akelman since September 14, 2016. The employee conceded that after leaving work in June of 2016 she filed an application for unemployment benefits and that she only began to pursue a claim for workers' compensation after her unemployment claim was denied. She also agreed that while working for a prior employer, she suffered a workers' compensation injury to her left shoulder that required surgery which was performed by Dr. J. Winslow Alford.

The medical evidence consists of the deposition and reports of Dr. Anderson, which included the records of Drs. Edward Akelman, J. Winslow Alford, and Jamiel J. Ambrad. The parties stipulated to Dr. Anderson's qualifications as an orthopedic surgeon after he testified that he is a licensed, practicing orthopedic physician in Rhode Island, who allowed his board certification to expire in 2011 when he stopped performing surgery.

Dr. Anderson first evaluated the employee on August 16, 2017 and obtained a history that the employee worked as a welder for the employer which required her to use pneumatic burring and grinding tools in confined spaces, often on her hands and knees. The employee complained of neck pain, left shoulder pain, pain radiating down her left arm, and numbness in her left hand which began in May of 2016. During the employee's physical examination, Dr. Anderson noted tenderness over the left paraspinal muscles and left trapezius and mildly limited range of motion of the neck and left shoulder. Regarding her left hand, the employee exhibited tenderness in the area of her left carpal tunnel, decreased sensation in her left thumb and index finger, and a positive Tinel's sign. Dr. Anderson diagnosed a cervical sprain/strain, cervical radiculopathy, left carpal tunnel syndrome, and a cumulative work injury/repetitive motion injury and stated

that these diagnoses were causally related to the employee's repetitive work activities. He also stated his belief that the employee's injuries prevented her from performing her usual work duties for the employer. Dr. Anderson recommended additional testing and physical therapy but did not write any orders for these services because he examined the employee in the capacity of a consultant and not a treating physician.

Dr. Anderson saw the employee for a re-evaluation on February 21, 2019. The physical findings on examination were nearly identical to his examination performed a year and a half earlier. After the second examination, he removed cervical radiculopathy from the list of diagnoses as he concluded it was no longer applicable. Dr. Anderson reiterated his opinion that the employee was partially incapacitated and that her conditions were causally related to her work activities for the employer.

On cross-examination, Dr. Anderson stated that the information he was given regarding how the employee's condition developed was provided to him by the employee. He admitted that he was not aware of how long she worked for the employer performing the reported job duties or when she stopped working. He agreed that when evaluating an alleged cumulative work injury, the duration of time the employee actually performed that job "would be an important piece of information." Ee's Ex. 3; Dep. of Dr. Richard C. Anderson, at 33:21-22. The doctor was later shown personnel documents from the employer which reflect that the employee began working in February of 2013 and he testified that three (3) years was more than sufficient time to develop a repetitive motion type of injury.

Prior to his initial evaluation, Dr. Anderson was provided the medical records of Drs. Akelman and Alford, which were admitted as exhibits during Dr. Anderson's deposition. Dr. Akelman's medical records reflect that he first saw the employee on July 25, 2016. She told the

doctor that she had been out of work for six (6) weeks due to left arm and neck discomfort that began about two (2) months previously. The employee advised the doctor that she also experienced numbness in her left thumb and some of her fingers while at work. The numbness would radiate up her left arm to her shoulder, and her neck pain would also travel into her left shoulder. Following his physical examination, Dr. Akelman indicated that he needed to rule out left carpal tunnel syndrome and that he wanted to determine if the upper arm symptoms were due to a problem with her left shoulder or her cervical spine. He provided the employee with a wrist splint, scheduled an EMG/NCS, and recommended radiograph films of the employee's neck. Dr. Akelman's report states that the employee's clinical diagnosis of left carpal tunnel syndrome was causally related to her work duties for the employer.

On September 14, 2016, the employee returned for her second and final appointment with Dr. Akelman. She continued to report the same left wrist complaints as expressed during her first visit. Unfortunately, the EMG was not completed, as the employee was unable to tolerate the procedure. The portion of the nerve conduction study that was done of the median nerve was considered to be normal. Dr. Akelman proposed a cortisone injection to the wrist for diagnostic and treatment purposes. The employee declined to undergo the injection as she felt that her primary problem stemmed from her cervical spine. Dr. Akelman noted in his report that he had received correspondence from the employer that it would not approve any diagnostic testing regarding the employee's neck and shoulder. It is important to note that Dr. Akelman's reports do not reflect any opinion regarding the ability of the employee to perform her regular job duties for the employer.

During his deposition, Dr. Anderson stated that Dr. Akelman's reports confirmed his diagnosis of left carpal tunnel and that the records also substantiated his concerns regarding the employee's neck and left shoulder.

Dr. Jamiel Ambrad's records indicate that the employee was seen as a new patient on August 11, 2016. She informed the doctor that she was concerned she was having a breakdown due to stress. She had decided to change primary care doctors as her previous provider (Dr. Cece) refused to complete her FMLA forms. The employee also mentioned that she had seen Dr. Akelman for her carpal tunnel complaints. She advised Dr. Ambrad that she was out of work due to four (4) factors: (1) stress, (2) a severe allergic reaction, (3) experiencing a breakdown in the Human Resources office at work, and (4) left carpal tunnel syndrome and a burn sustained at work. Dr. Ambrad's diagnosis was an acute panic state due to an acute stress reaction and he recommended that she remain out of work for at least a month to assist her in recovering from this condition.

The employee continued to treat with Dr. Ambrad on a monthly basis, primarily for her mental health complaints, through March 3, 2017. In addition to treating her stress related issues, on that date the doctor recommended she consult with Dr. Alford regarding her left shoulder symptoms.

Dr. Alford's records show that the employee sustained a left shoulder injury on November 22, 2006 while working for a previous employer. Dr. Alford performed a left shoulder SLAP repair and distal clavicle resection on August 2, 2007. After returning to work in May of 2008 the employee sustained a new work injury on July 16, 2008 to her right shoulder and neck. She participated in physical therapy and returned to work at the end of September of 2008. She was last seen by Dr. Alford on December 19, 2008.

Dr. Anderson testified that Dr. Alford's records were of limited significance in his evaluation of the employee as so much time had elapsed between the left shoulder injury and treatment in 2007 and 2008 and the employee's present situation in 2016 and 2017. Dr. Anderson reviewed Dr. Ambrad's records for the first time during his deposition and noted that Dr. Ambrad saw the employee for the first time about two (2) months after she had stopped working. Dr. Anderson acknowledged that none of the physicians' records that he reviewed contain a recommendation that the employee remain out of work after June 7, 2016. He also agreed that there is nothing in the records to show that the employee sought or received any medical treatment for her neck or left-hand complaints after her last visit with Dr. Akelman on September 24, 2016.

The employment records for the employee, offered as an exhibit during Dr. Anderson's deposition, reveal that the employee presented four (4) injury reports to her employer detailing four (4) different alleged work injuries. The four (4) reports were signed and submitted by the employee on June 7, 2016, her last day of work. The first report states that on May 7, 2016, after burring and grinding on her hands and knees for weeks, she developed increasing numbness in her left forefinger and thumb and that she now has constant pain in her neck, left arm and back and her fingers are always numb. In the second report, the employee alleged that on May 21, 2016, she sustained a burn injury to a knuckle on her left hand while welding. In the third report, she reported that on June 4, 2016, she became nauseated and ill while welding due to what she believed was an allergic reaction to zinc, cadmium and/or the dust or fumes from welding. In the fourth report, the employee alleged that on June 7, 2016, her last date of work, she was suffering from "extreme stress" due to the hostile work environment with the employer in which she felt

she was being harassed and targeted by her former boss and her new supervisor. Ee's Ex. 3, Dep. of Dr. Richard C. Anderson, Ee's Ex. 6 (attached).

After reviewing the testimony and evidence presented by the parties, the trial judge issued a comprehensive twenty-two (22) page written decision finding that the employee had met her burden of proof to demonstrate she sustained a left carpal tunnel injury on May 7, 2016 due to her repetitive work activities, however, she failed to show that this injury was the cause of any incapacity. In rejecting the employee's testimony that she stopped working on June 7, 2016 solely due to the repetitive motion injury to her neck, left shoulder, left arm, left wrist, and left hand, the trial judge cited the inconsistency between that assertion and the injury reports filed by the employee and the August 11, 2016 report of Dr. Ambrad. Specifically, the incident report dated June 7, 2016 and listing an injury date of June 7, 2016 indicates the employee suffers from extreme stress due to a hostile work environment. Although the other three (3) incident reports are also dated June 7, 2016, they reflect injury dates prior to June 7, 2016, indicating that the employee continued to work despite those alleged injuries. In his August 11, 2016 report, Dr. Ambrad recommended that the employee remain out of work for a month due to an acute stress reaction. The doctor did not offer any diagnosis or opinions regarding the employee's left-sided complaints. In addition, the trial judge noted that the employee did not seek any medical treatment for her left-sided complaints until she saw Dr. Akelman on July 25, 2016. For these reasons, the trial judge found the employee's assertion that she stopped working solely due to the repetitive motion injury to her neck and left upper extremity not credible.

Although the trial judge denied the employee's request for weekly workers' compensation benefits, he did find that she developed left carpal tunnel syndrome on May 7, 2016 as a result of repetitive activities at work. The trial judge rejected the testimony and

opinions of Dr. Anderson because they were based on an incomplete and inaccurate medical and work history and his evaluations were too far removed in time from the alleged date of injury and incapacity. The trial judge chose to accept the opinion of Dr. Akelman that the employee's left carpal tunnel syndrome was caused by her repetitive work activities; however, he denied the allegation of any other injuries to her neck, left shoulder, left arm, left wrist, and left hand. The employee filed a claim of appeal from this decision.

In support of her appeal, the employee, now self-represented, filed a three (3) page letter addressed, "Dear Judge," which we will consider as her Reasons of Appeal. The employee expressed complaints about the representation she received from her attorney and the alleged harassing treatment from the employer, yet, after thoughtfully reviewing the letter and considering the employee's presentation at oral argument, we are unable to discern where or how the employee asserts that the trial judge erred in his decision. In addition, the employee's expression of her grievances contains significant factual contentions regarding medical treatment and/or conduct of co-employees that are not in evidence. For example, the employee's letter questions the introduction of medical reports of Dr. Jameson Rogers by the employer, however, there are no reports of Dr. Rogers marked as evidence in the record of this case. It is clear that the employee believes that she was the victim of a physical assault, harassment, and emotional stress arising from her employment, but these allegations are not a part of the employee's petition presently before the court and we are not able to address these allegations in this forum.

The Appellate Division is bound to consider only the evidence presented at trial and that record cannot be expanded or amended. Additional information presented by the employee in her writings and oral argument to the appellate panel cannot be factored into our decision. *See Perfetto v. Fanning & Doorley Constr. Co.*, 114 R.I. 624, 629, 337 A.2d 791, 794 (1975) (citing

Larose v. Warwick Brass Foundry, Inc., 97 R.I. 459, 198 A.2d 668 (1964)); *Guiliana Perez v. UTGR, Inc.*, W.C.C. No. 2014-02425 (App. Div. December 18, 2019).

In addition, the employee's Reasons of Appeal lack the specificity required in stating reasons of appeal. General, conclusory comments do not satisfy the requirement that an appellant must file "reasons of appeal stating specifically all matters determined adversely to him or her which he or she desires to appeal" R.I. Gen. Laws § 28-35-28(a); *Bissonnette v. Federal Dairy Co.*, 472 A.2d 1223, 1226 (R.I. 1984); see *Falvey v. Women & Infants Hosp.*, 584 A.2d 417, 419 (R.I. 1991) (holding that a petitioner is not relieved of the burden to articulate specific reasons of appeal merely because the Appellate Commission is able to recognize the general result desired by the petitioner or discern the thrust of the petitioner's appeal). Although this defect warrants summary dismissal of the employee's appeal, we will nevertheless attempt to address the questions raised by the employee's letter.

In reviewing a trial judge's factual decision, the Appellate Division is limited by the deferential standard set forth in Rhode Island General Laws § 28-35-28(b), which states, "[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 Division is particularly deferential when reviewing a trial judge's assessment of a witness's credibility when the witness testifies live before the court. *Mulcahey v. New Eng. Newspapers Inc.*, 488 A.2d 681, 683 (R.I. 1985) (holding that a trial judge's credibility determinations may be disturbed only after the Appellate Division first finds that the determination was clearly wrong because either the trial judge's assessment was obviously mistaken or he overlooked or misconceived material evidence). In her letter, the employee appears to contend that the trial judge was wrong to question the veracity of her assertion that she left work on June 7, 2016 due to an injury to her neck, left shoulder, left arm,

left wrist, and left hand. After reviewing the record and the trial judge's decision, we find that his credibility judgment was not mistaken, and as such, the trial judge's decision must be affirmed.

In his written decision, the trial judge provided a detailed explanation as to why he was not persuaded by the employee's testimony regarding the reason she left work on June 7, 2016. Trial Dec. at 14-16. He questioned the candor of the employee's testimony that she became disabled on that date solely due to her left arm and left-hand discomfort as it was inconsistent with the injury report she had filed with her employer alleging stress and harassment at work on that date. That assertion also conflicted with the information and diagnosis in Dr. Ambrad's report. This other information in the record tends to indicate that the employee stopped working due to extreme stress rather than any physical injury.

It is well settled that the trial judge is in the best position to assess witness credibility because only the trial judge can observe the witness's appearance, demeanor, and manner of responding to questions. *E.g., Davol, Inc. v. Aguiar*, 463 A.2d 170, 174 (R.I. 1983); *Laganiere v. Bonte Spinning Co.*, 103 R.I. 191, 196, 236 A.2d 256, 258-59 (1967). After reviewing the record and the trial judge's decision, we cannot find any basis for concluding that the trial judge's credibility determination was clearly erroneous.

Most importantly, we hope to clarify the trial decision's impact on the availability of future medical treatment for the employee's left carpal tunnel syndrome. The trial judge's decision only denied the employee's original petition in part. As the trial judge found that the employee was unable to prove a nexus between her left carpal tunnel syndrome and her departure from the employer on June 7, 2016, or any period of resulting disability, he denied the employee's request for weekly indemnity benefits. The trial judge did, however, find that the

employee was successful in proving that she developed left carpal tunnel syndrome on May 7, 2016 due to her repetitive work activities while employed by Electric Boat. Armed with this legal determination that she sustained a work-related injury, the employee may seek, and the employer must provide for, reasonable medical treatment of the employee's injury in accordance with the Workers' Compensation Act. *See* R.I. Gen. Laws § 28-33-5.

Based upon the foregoing analysis of the employee's reasons of appeal, we hereby deny and dismiss the employee'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 proposed copy of which is enclosed, shall be entered on *January 10, 2023*

Ferrieri, C.J., and Reall, J., concur.

ENTER:

/s/ Ferrieri, C.J.

/s/ Olsson, J.

/s/ Reall, J.