STATE OF RHODE ISLAND

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

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| MICHAEL P. SANSONE | ) | |
| | ) | |
| VS. | ) | W.C.C. No. 2019-01768 |
| | ) | |
| PROVIDENCE AUTO BODY, INC. | ) | |

FINAL DECREE OF THE APPELLATE DIVISION

This matter came 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 August 13, 2021 be, and they hereby are, affirmed.

Entered as the final decree of this Court this 6th day of September 2023.

PER ORDER:

*/s/ Nicholas DiFilippo*
Administrator

ENTER:

*/s/ Olsson, J.*

*/s/ Pepin Fay, J.*

*/s/ Lazieh, J.*

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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 the employee's petition for compensation benefits. In his petition, the employee alleged that he sustained left and right hernia injuries at work on November 1, 2018, causing total and/or partial incapacity from February 20, 2019 and continuing. After a thorough review of the record and consideration of the arguments presented by both parties, we find that the trial judge's factual findings are not clearly erroneous and, therefore, deny the employee's appeal and affirm the trial judge's decision and decree.

Michael P. Sansone (the employee) testified that he was hired as a paint prepper by Providence Auto Body, Inc. (the employer) in the early part of 2017. His job duties required him to sand down vehicles using an electric sanding machine, remove doors from vehicles, mask windows and moldings of vehicle doors for spray-painting, and blow off excess dust with an air hose. He would also need to hang vehicle doors on a stand for sanding and painting, sometimes with the assistance of at least another employee. He estimated that a vehicle door weighed

anywhere from thirty-five (35) to forty (40) pounds. The employee would also have to carry plastic front and rear bumpers weighing between ten (10) and fifteen (15) pounds.

The employee stated that prior to the alleged date of injury, he had no health problems. He explained that the injury occurred in early November 2018 when, after holding a van door with co-workers, he "felt a little bit of a pull on my left lower quadrant, like a, not a tear, just maybe like a ripping . . .." Trial Tr. 20:21-23. The employee testified that within a half hour of the incident, he went to Nicholas Rampone's office and reported the incident. It was the employee's understanding that Rampone was the operations manager.

The employee asserted that he went to Roger Williams Medical Center (RWMC) the next morning, November 2, 2018, for evaluation of a bulge on his right side. He claimed that he continued to experience right-sided abdominal discomfort but continued to work in a full duty capacity until February 20, 2019. In addition to the RWMC visit, he was subsequently examined by Nurse Practitioner Mark E. Clarke and a surgeon, whose name he could not remember. The employee stated that he has not worked anywhere since February 2019.

On cross-examination, the employee acknowledged that he was born with a double hernia and that in 1991 he had a right-sided hernia repair at Brockton Hospital in Massachusetts. He repeated his statement that, prior to November 2018, he was in good health without any hernia problems. The employee was questioned about a June 25, 2018 RWMC medical report which states that he was seen on that date for hernia complaints which arose after helping a friend. The employee then testified that his work injury must have occurred in June 2018. He also claimed that the RWMC medical report was inaccurate, because he told the medical personnel that the injury occurred at work as described during his direct testimony. When asked to clarify where he felt pain at the time of the injury, the employee responded that he felt pain on his right side

when he stood up after setting the door on the stand and later had some slight pain on his left side.

The employee testified that he was holding the van door with a co-worker named Miguel and that Christopher Torres was the painter who was present when they were holding the van door. The employee stated that he told both Miguel and Mr. Torres that he was hurt shortly after the injury occurred. He also reasserted that he told Mr. Rampone about the June 2018 injury on the day that it happened. The employee continued to work in his regular capacity from June 2018 until February 2019 and did not seek any further medical treatment until after his employment ended in February 2019.

The employee acknowledged that he was asked to leave the employer's premises on February 21, 2019, for being impaired and was subsequently terminated. He did not inform Mr. Rampone or anyone else that he was leaving work on February 21, 2019 due to a hernia injury. The employee also admitted that, after he was asked to leave, he sent a text message to some co-workers that "said something like, oh, I would like to screw them for sending me home . . .." Trial Tr. 36:13-14.

The employer presented the testimony of two (2) witnesses. Christopher Torres, a painter, stated that the employee never told him about any work injury occurring in 2018 or 2019. Mr. Torres confirmed that the employee performed his regular job duties from November 1, 2018, through February 21, 2019. During that time period, the employee never indicated to Mr. Torres that he could not complete his regular job duties. When the employee was sent home on February 21, 2019, the employee never advised Mr. Torres that he had been injured while working for the employer.

Mr. Torres explained that hanging a vehicle door on a stand to prep and paint it required two (2) people to lift and hold the door and one (1) person to hold the stand. He stated that a vehicle door weighed about ten (10) pounds because it was just a shell without any glass. He was unaware of any incident where the employee was injured while holding a van door and went to the hospital the next day.

Nicholas Rampone, the general manager for the employer, testified that the employee did not report a work-related injury to him before the employee was asked to leave work on February 21, 2019. On that date, and on at least two (2) other occasions, Mr. Rampone was notified about the employee being impaired at work and he told the employee to leave. He asserted that the employee never told him in either 2018 or 2019 that he suffered an injury at work. Mr. Rampone stated that the employee performed his regular job duties without any complaints from November 1, 2018, through February 21, 2019.

On cross-examination, Mr. Rampone stated that, even though vehicle doors have to be lifted by two (2) employees, the vehicle doors are lightweight. He confirmed that no one ever told him that the employee had complained of pain when he was holding a vehicle door. He explained that if an individual was hurt while working, that individual would normally provide him with paperwork regarding the injury or medical care. The employee never provided Mr. Rampone with any paperwork regarding an alleged work injury.

To rebut the testimony of the two (2) employer witnesses, the employee again took the witness stand to assert that he felt pain in his lower right abdominal area when he stood up after stooping over to hold the van door with Miguel and that he told Mr. Torres about the pain, who told him to see Mr. Rampone. The employee repeated his contention that he went to Mr.

Rampone's office and reported the incident. The employee also realleged that he went to RWMC on November 2, 2018, the morning after his injury.

The medical evidence in the record consists of the affidavit and records of RWMC emergency department and the deposition of Nurse Practitioner Mark E. Clarke with attached reports.

The medical report of the June 25, 2018 visit to the RWMC emergency department documents the employee's complaints of "intermittent bulging in his groin area which [he] suspects is related to a recurrent hernia." Ee's Ex. 4, Roger Williams Medical Center Medical Records, Emergency Room Visit Notes dated 06/25/2018. The report states that his complaints began the previous Saturday when he felt discomfort after helping a friend. The employee advised the medical personnel that he had a history of bilateral hernias necessitating the placement of a surgical mesh in the 1990's. Following an examination, the employee was diagnosed with a recurrent hernia on his right side. The employee was advised to return to work on June 26, 2018, with the restriction of "no heavy lifting." *Id.* He was also advised to be seen for a surgical consultation.

Nurse Practitioner Clarke examined the employee on March 14, 2019 after referral by his attorney. The employee reported to Mr. Clarke that he felt pain in his lower abdomen after lifting something heavy at work on November 1, 2018. The employee was seen at RWMC where he was told that he had a hernia and needed to see a specialist. When seen by Mr. Clarke, the employee complained of continued lower abdominal pain on both the right and left side which rendered him unable to work. The physical examination revealed a two (2) centimeter by two (2) centimeter inguinal mass on the left side and a three (3) centimeter by three (3) centimeter inguinal mass on the right. Mr. Clarke diagnosed "[b]ilateral inguinal hernias without

obstruction or gangrene" which he causally related to the lifting incident which occurred during the employee's work activities as a paint prepper on November 1, 2018. Ee's Ex. 5, Mark E. Clarke, Nurse Practitioner, Dep. 20:7-8, 12-16.

During the deposition, Mr. Clarke was presented with the medical reports from RWMC as well as the report of an ultrasound of the employee's right lower abdomen, dated October 17, 2019, from Rhode Island Medical Imaging. The history contained in the ultrasound report states that the employee described a work injury resulting in "acute right inguinal symptoms and prolapsing mass." *Id.*, attached Ee's 4, 10/17/2019 report of Rhode Island Medical Imaging. The test was interpreted to show a right inguinal hernia with bowel prolapse. Mr. Clarke testified that these medical records reinforced the opinions that he had just provided.

On cross-examination, Mr. Clarke agreed that his opinion as to causal relationship was based upon his receipt of an accurate history from the employee. Mr. Clarke stated that he had no knowledge as to whether the employee had any prior problems with a hernia, any pain from a hernia, or had sought any emergency room treatment for a hernia before November 1, 2018. The employee did inform Mr. Clarke that he had undergone hernia surgery in the past but did not specify whether the surgery was on the employee's right or left side. Mr. Clarke stated that he had not seen any of the employee's medical records prior to his deposition. In addition, Mr. Clarke was under the impression that the employee had not returned to work after the alleged incident on November 1, 2018. He was not aware that the employee continued to perform his regular duty job until he was asked to leave work in February 2019.

In a comprehensive written decision, the trial judge explained that he did not find the employee to be credible. He reached this conclusion after observing the employee's trial testimony and after considering the factual inconsistencies between that testimony and the

RWMC reports. Specifically, the trial judge identified the employee's fluctuating statements as to whether the injury occurred in June or in November 2018. The trial judge also cited the history contained in the RWMC reports that the employee experienced his hernia pain while helping a friend. Although the employee claimed that the history in the RWMC reports was inaccurate, he failed to adequately explain how he was able to perform all of his work duties for several months after the alleged injury until he was told to leave on February 21, 2019. The trial judge concluded that this case is "not a matter of a poor historian." Trial Dec. 7. Additionally, the trial judge referenced the testimony of two (2) witnesses, Mr. Torres and Mr. Rampone, who each stated the employee never reported a work injury. Finally, the trial judge pointed to the employee's testimony that he told his co-workers through a text message that he would "screw" the employer after he was asked to leave work on February 21, 2019, for being impaired. Trial Tr. 36:14. In light of his finding that the employee was not credible, the trial judge stated that he could not rely upon the opinions of Nurse Practitioner Clarke, as they were based upon the questionable history provided to him by the employee.

The trial judge also noted that the evidence submitted by the employee failed to satisfy the criteria set forth in Rhode Island General Laws § 28-34-2(27) to establish the hernia as a work-related.[1] For these reasons, the trial judge denied the employee's petition for benefits and concluded that the employee had failed to prove by a fair preponderance of the credible evidence that he sustained a work injury on November 1, 2018. The employee filed a timely claim of appeal.

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[1] Rhode Island General Laws § 28-34-2 states that "[t]he disablement of any employee resulting from an occupational disease or condition described in the following schedule shall be treated as the happening of a personal injury . . .." That schedule includes "[h]ernia, clearly recent in origin and resulting from a strain arising out of and in the course of employment and promptly reported to the employer." R.I. Gen. Laws § 28-34-2(27).

When reviewing the decision of a trial judge, we are guided by the standard set forth in Rhode Island General Laws § 28-35-28(b), which states that "[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." R.I. Gen. Laws § 28-35-28(b). When evaluating credibility determinations on appeal, the Rhode Island Supreme Court has stated that:

> the commission, before disturbing findings based on credibility determinations, must first find that the trial commissioner was clearly wrong either because the commissioner was obviously mistaken in his or her judgment of the credibility of the witnesses or overlooked or misconceived material evidence in arriving at the conclusion reached.[2]

*Mulcahey v. New England Newspapers, Inc.*, 488 A.2d 681, 683 (R.I. 1985). "Absent a finding that the trial commissioner misconceived or overlooked material evidence, the commission should not review and reject the factual findings of the trial commissioner." *Grimes Box Co. v. Miguel*, 509 A.2d 1002, 1004 (R.I. 1986) (citing *Mulcahey*, 488 A.2d at 683). After our review of the record, we find no such error on the part of the trial judge.

In support of his appeal, the employee has asserted that the trial judge overlooked material evidence from Nurse Practitioner Clarke's deposition and the RWMC medical reports. He argues that the trial decision reflects a failure to appreciate the significance of the RWMC finding of only a right sided hernia, while the examination by Mr. Clarke (more than eight months later) demonstrated a hernia on both the left and the right sides. The employee contends that the left sided hernia must have occurred during the continued employment with the employer after June 25, 2018, thus the statutory requirements that the hernia is causally related to work and of recent origin are satisfied.

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[2] With the enactment of Public Laws 1990, chapter 332, article 1, § 2, the Workers' Compensation Commission was renamed the Workers' Compensation Court and the workers' compensation commissioners were designated as workers' compensation judges.

This allegation is without merit. The mere fact that a different hernia was discovered by Mr. Clarke in March of 2019 does not prove that the additional problem was recent or that it was caused by the activities of employment. The left sided hernia could have occurred at any point between June 25, 2018, and March 14, 2019. The employee repeatedly testified that he went to the RWMC emergency department on the morning after the alleged work incident. The only evidence of any visit to the hospital or any medical treatment for a hernia is the RWMC report from June 25, 2018. There is no medical report regarding treatment for a left-sided hernia immediately after November 1, 2018.

Furthermore, the employee's argument ignores the essential finding of the trial judge that the employee's testimony was not credible. When determining credibility, "[t]he Rhode Island Supreme Court has noted that the trial judge is 'uniquely qualified' to assess the credibility of the witnesses testifying before him." *Kenneth Ponte vs. JK Glass Company, Inc.*, W.C.C. No. 2007-06543 (App. Div. December 2009) (citing *Quintana v. Worcester Textile Co.*, 511 A.2d 294, 295 (R.I. 1986)).

> We believe that the trial commissioner is in the best position to observe the appearance of a witness, his demeanor, and the manner in which he answers questions. These impressions are invaluable in assessing the credibility of witnesses and ultimately in determining what evidence to accept and what evidence to reject.

*Davol, Inc. v. Aguiar*, 463 A.2d 170, 174 (R.I. 1983) (citing *Laganiere v. Bonte Spinning Co.*, 103 R.I. 191, 195, 236 A.2d 256, 258 (1967)). Additionally, "[t]he trial judge evaluates the testimony of any witnesses, and 'may reject some or all of the witness's testimony as being unworthy of belief. Such an evaluation is a finding of fact that, if supported by competent evidence, is binding.'" *Tavares v. Aramark Corp.*, 841 A.2d 1124, 1132 (R.I. 2004) (quoting *Buonauito v. Ocean State Dairy Distributors, Inc.*, 509 A.2d 988, 991 (R.I. 1986)).

The trial judge cited multiple reasons for his credibility determination: the employee quoted two different dates of injury; the RWMC record indicates that the pain began while the employee was helping a friend on a Saturday; the employee continued to work full duty until he was asked to leave on February 21, 2019; the alleged injury was apparently not reported; and the employee admitted to wanting to "screw" his employer. Each of these reasons would be sufficient to justify a finding that the employee was not credible. Taken together, the evidence to support this conclusion is overwhelming.

Once the trial judge found the employee was not credible, the trial judge properly exercised his discretion in rejecting and not relying upon the medical evidence proffered by the employee in support of his claim. The opinions of Nurse Practitioner Clarke were based upon the history provided to him by the employee as to how, when and where he was allegedly injured. "Where medical testimony is based to a large extent on statements of medical history by the employee whose credibility carries little if any weight with the commission, it is open to evaluation, and the commission is justified in not accepting it." *Mazzarella v. ITT Royal Electric Division*, 120 R.I. 333, 339, 388 A.2d 4, 7-8 (1978) (citing *La Fazia v. Canada Dry Corp.*, 99 R.I. 9, 205 A.2d 16 (1964)).

Based upon the record available to this panel, we cannot conclude that the trial judge's credibility determination was misguided or that the trial judge overlooked material medical evidence. Accordingly, the employee's reasons of appeal are denied and dismissed, and the decision and decree of the trial judge are affirmed. 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 September 6, 2023.

ENTER:

*/s/ Olsson, J.*

*/s/ Pepin Fay, J.*

*/s/ Lazieh, J.*