

Appeal Only When Appropriate: If the Court Committed an Error, Not Just Because You Don't Like the Results

In the case, *Andrea Elias v. Life Care Services, d/b/a Harrogate*, the employer filed an appeal when the Trial Judge awarded the employee temporary disability benefits, along with a 25 percent penalty in counsel fees on a motion for benefits filed by the employee. The employer believed the decision should be overturned. The Appellate Division disagreed with each point raised by the employer at appeal and affirmed the Trial Court's decision.

This case involves a compensable low back injury that occurred on December 3, 2010. Following treatment, the case ultimately settled on June 22, 2012, with an award of 20 percent disability for the residuals of a lumbar strain and sprain, with a credit of 5 percent for prior functional loss. After the employee made several attempts to return to work, both in a part-time and full-time capacity, a motion for medical and temporary was filed alleging that the employee's condition had significantly worsened and she was in need of additional treatment.

Initially, the employee was evaluated by a surgeon who concluded that she was not in need of additional treatment and was at maximum medical improvement. Thereafter, an evaluation was performed by another doctor who came to the same conclusion.

Not content with the opinion of the treating doctor, the employee was evaluated by a third doctor who felt that the employee's range of motion had decreased and that there was a material lessening of working ability. The employee was also evaluated by another doctor who said the prior surgery was not successful and more treatment was appropriate.

At trial, Judge Salvatore Martino was dissatisfied with the clarity of the medical evidence provided on the papers and suggested that the fourth doctor be available to testify by phone. The Trial Judge entered an order awarding the employee additional temporary disability benefits from July 11, 2014, through June 14, 2016. The Judge also ordered the employer to pay a 25 percent penalty, noting that the employer "unreasonably and negligently" delayed in failing to provide benefits to the employee in a timely manner. The Judge assessed a 20 percent attorney's fee pursuant to the statute.

The employer appealed. After reviewing all evidence and hearing arguments by both parties, the Appellate Court denied the appeal and affirmed the Trial Court's decision. In doing so, the Court quoted *Close v. Kordulak Bros.*, 44 N.J. 589, 599 (1965) for the general proposition that "we consider whether the findings made by the judge of compensation could reasonably have been reached on sufficient credible evidence in the record, considering the proofs as a whole, giving due regard to the judge's opportunity to observe and hear the witnesses and to evaluate their credibility, and to the judge's expertise in the field of workers' compensation." The Appellate Court deferred to the findings of the credibility made by a Judge of compensation, as well as to the Judge's expertise in analyzing medical testimony. Finally, the Appellate Court noted that "in the presence of sufficient credible evidence, a compensation Judge's findings of fact are binding on appeal, and those findings must be upheld even if the court believes that it would have reached a different result."

The Court reasoned that the employer did not object to the testimony from the fourth doctor, and the employer could not now claim an error on the part of the Trial Judge since that issue was not raised at time of trial. In the ruling, the Appellate Court also noted that the Trial Court did not misapply the principles of *Cunningham*, because while in *Cunningham*, the employee was terminated for good cause and did not present any evidence that he would have been working, but for his limitations. In this case, the employee

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was terminated for benign reason and she did testify that she was unable to find other work due to the limitations caused by her work injury.

Comment: When filing an appeal, the basis is to establish that the Court committed an error of law, either substantive or procedural. To appeal when not satisfied with the results of a trial won't change anything, but only confirm the trial results and add to the expenses and defense fees. Clearly, in this case, there was no true basis to appeal the ruling other than not being satisfied with the results.

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