

CASE NO. 03571 CRB-07-97-04
CLAIM NO. 700009657

EMANUEL PERRY : COMPENSATION REVIEW BOARD
CLAIMANT-APPELLANT

v.

COMMERCIAL INTERIOR SYSTEMS : WORKERS' COMPENSATION
EMPLOYER COMMISSION

and

SHELBY INSURANCE GROUP : JUNE 3, 1998
INSURER
RESPONDENTS-APPELLEES

APPEARANCES: The claimant was represented by Robert R. Sheldon, Esq.,
Tremont & Sheldon, 64 Lyon Terrace, Bridgeport, CT
06604.

The respondents were represented by Andrew James Hern,
Esq., Gordon, Muir & Foley, Hartford Square North, Ten
Columbus Blvd., Hartford, CT 06106-1944.

This Petition for Review from the March 25, 1997 Finding
and Dismissal of the Commissioner acting for the Seventh
District was heard December 19, 1997 before a
Compensation Review Board panel consisting of the
Commission Chairman Jesse M. Frankl and Commissioners
James J. Metro and John A. Mastropietro.

OPINION

JESSE M. FRANKL, CHAIRMAN. The claimant has petitioned for review from
the March 25, 1997 Finding and Dismissal of the Commissioner acting for the Seventh
District. He argues on appeal that the trier erred by dismissing his cervical injury claim.
We affirm the trial commissioner's decision.

The instant case was originally tried before Commissioner Arcudi in March 1995. The parties waived the 120-day time requirement of § 31-300 C.G.S., and another formal hearing was scheduled for September 26, 1996. However, the parties agreed to authorize a different commissioner to review the transcripts and exhibits previously submitted to Commissioner Arcudi (who is now retired) in order to render a Finding and Award as a successor commissioner.

After reviewing the record, the trial commissioner found that the claimant's testimony regarding the occurrence of a neck injury on February 15, 1994 was contradicted by the testimony of his supervisor and unsupported by the medical evidence. The claimant's neck symptoms were attributed to a pre-existing arthritic condition by a medical report that the commissioner cited, and the claimant's Form 30C mentioned only a hand injury. The commissioner denied the claimant's Motion to Preclude the respondents from contesting the cervical spine injury, and dismissed the claim on two separate grounds: untimeliness and a lack of corroborating evidence. The claimant has appealed that decision.

First, we observe that the trial commissioner incorrectly ruled that the claimant's notice of his cervical injury claim was filed in an untimely manner. Although the Form 30C indeed fails to mention a cervical injury, the respondents' October 12, 1994 Form 43 refers to an alleged injury to the claimant's cervical spine, and the respondents do not dispute that the neck injury issue was raised at an October 31, 1994 informal hearing. See § 31-294c(c). Thus, the instant claim should not have been dismissed on that ground.

However, the commissioner also based his decision on the fact that "no evidence was presented to corroborate the Claimant's allegations that his neck injury resulted from

an incident or accident at work.” As long as this ground for the trier’s decision is substantiated by the record, the error regarding late notice must be considered legally harmless. See Peters v. Corporate Air, Inc., 14 Conn. Workers' Comp. Rev. Op. 91, 93, 1679 CRB-5-93-3 (May 19, 1995). The claimant argues that there was substantial evidence presented to support the existence of a compensable injury to his cervical spine, and that the trial commissioner erred by denying his Motion to Correct. We remind the claimant that it is the function of the trial commissioner to determine the credibility of witnesses and to find the facts, even in the case of seemingly uncontradicted evidence. Kish v. Nursing Home & Care, Inc., 47 Conn. App. 620, 627 (1998). Where the corrections propounded in a Motion to Correct are not both material and undisputed, the commissioner is not bound to grant them. *Id.*; Webb v. Pfizer, Inc., 14 Conn. Workers' Comp. Rev. Op. 69, 71, 1859 CRB-5-93-9 (May 12, 1995).

In addressing the commissioner’s statement that “no evidence” was introduced to support the claimant’s allegations of a neck injury, we construe that remark to mean that he did not find any credible or persuasive evidence to support the claimant’s contentions. Cummings v. Twin Tool Mfg. Co., 12 Conn. Workers' Comp. Rev. Op. 341, 342 n. 2, 1542 CRB-1-92-10 (July 11, 1994). Even though many of the medical reports submitted by the claimant mention cervical spine problems, they are still dependent upon the history provided to the doctors in establishing the injury that led to those problems. As the trier noted, the claimant’s assertion that he reported the injury to his neck immediately after it occurred was contradicted by the testimony of William Miller, the claimant’s foreman. June 9, 1995 Transcript, p. 54-55. The medical reports from the Bridgeport Hospital on February 21, 1994, and the April 4, 1994 Form 30C filed by the claimant also fail to

make mention of a neck injury. See Respondents' Exhibits 2, 5. Further, there was mention made to at least one doctor of a pre-existing neck condition based on a January 1994 motor vehicle accident. Respondents' Exhibit 6.

If the trial commissioner was affected by this conflicting evidence in making his decision as to the credibility of the claimant's story, there is little this board can do on review to override that decision. Ubaldo v. Cold Metal Products, 3223 CRB-6-95-11 (decided April 25, 1997). The regulations did not require a commissioner to explain why he concluded that the claimant had not met his burden of proof. *Id.*; Admin. Reg. § 31-301-3. The parties agreed that the commissioner whose decision we are now reviewing would review the record from the previous formal hearings and make his decision based on its contents. We review this decision just as if the commissioner had presided over the formal hearings personally. The claimant ultimately has the burden of proving that a compensable injury has occurred. Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142, 151 (1972). He did not satisfy that burden. Thus, we must affirm the trial commissioner's decision and his denial of the claimant's Motion to Correct.

Commissioners James J. Metro and John A. Mastropietro concur.

CERTIFICATION

THIS IS TO CERTIFY that a copy of the foregoing was sent certified mail this
3rd day of June, 1998 to the following parties:

ROBERT R. SHELDON, ESQ.

Z 012 303 529

ANDREW JAMES HERN, ESQ.

Z 012 303 530

Lorraine Lockery
Administrative Hearings Lead Specialist