CASE NO. 03876 CRB-03-98-08
CLAIM NO. 300027847 : COMPENSATION REVIEW BOARD

ROY A. PALANDRO
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

BERNIE'S AUDIO-VIDEO TV & APPLIANCES
EMPLOYER : SEPTEMBER 2, 1999

and

TRAVELERS PROPERTY & CASUALTY
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Lawrence D. Church, Esq., Pirro, Church & Cook, L.L.C., 120 East Avenue, P.O. Box 487, Norwalk, CT 06852-0487.

The respondents were represented by Nancy Berdon, Esq., Sizemore Law Offices, Crossroads Corporate Park, 6 Devine Street, 1st Floor, North Haven, CT 06473.

This Petition for Review from the July 30, 1998 Finding and Dismissal of the Commissioner acting for the Third District was heard March 26, 1999 before a Compensation Review Board panel consisting of the Commission Chairman Jesse M. Frankl and Commissioners Angelo L. dos Santos and Stephen B. Delaney.

OPINION

JESSE M. FRANKL, CHAIRMAN. The claimant has petitioned for review from the July 30, 1998 Finding and Dismissal of the Commissioner acting for the Third District. He argues on appeal that the trier erred by dismissing his claim that he suffered a compensable back injury. We affirm the trial commissioner's decision.

The trier found the following relevant facts. The claimant, an appliance salesman at the respondent Bernie's, alleged that he sustained injuries to his lumbar spine and his cervical spine on November 26, 1995 while moving a refrigerator for a customer named Sarah Johnson. Though he was aware of the policy providing that work injuries had to be reported to a supervisor, the claimant did not do so at that time. A few weeks later, he was driving to work from his New York home when the right side of his body reportedly "locked up" and he felt numbness in his right foot. He was unable to continue driving, so his father picked him up in Westport and brought him home.

The claimant saw his family physician, Dr. Silverman, that same day, but his notes do not relate a history of a work-related injury. The next day, the claimant was examined by Dr. Sider, whose reports (other than a terse May 1996 letter) were not submitted into evidence. The claimant did not inform Walter Simcik, the respondent employer's vice-president of human resources, of his alleged work injury until January 17, 1996; previously, he had told Simcik that he was unaware of the cause of his back ailments. A neurologist, Dr. Turner, saw the claimant in May 1996 and diagnosed lumbar spinal stenosis. The trier found that the claimant did not give Dr. Turner a history of a work-related injury. Dr. Sava, another neurologist, examined the claimant at the

respondents' behest and reported that, according to tests, the claimant's lumbar spine was normal, and that his cervical MRI indicated only a minor bulge at C2/C3. Subsequent MRIs revealed small disc bulges at C3/C4, C5/C6 and C6/C7.

The trier ultimately drew a negative inference from the claimant's failure to mention his alleged workplace injury to his employer or his doctor either at the time it occurred, or the time he became disabled on December 14, 1995. He also noted that the sales records from November 26, 1995 introduced by the respondent did not indicate that the claimant made a sale to a Sarah Johnson. (Respondent's Exhibit 6.) The trier thus concluded that the claimant did not prove that he suffered a compensable injury. The claimant has appealed that decision, including the denial of his Motion to Correct.

In order for an injury to be compensable under the Workers' Compensation Act, it must arise out of and in the course of a claimant's employment. Herman v. Sherwood Industries, Inc., 244 Conn. 502, 505 (1998). The claimant bears the burden of proving this fact to the trial commissioner, who alone determines whether or not the evidence supports the claimant's allegations. Spatafore v. Yale University, 239 Conn. 408, 418 (1996). He is the sole arbiter of all issues concerning the weight and credibility of the testimony and documentary evidence presented by the parties, and this board may not retry the facts of the case on review. Ferri v. Double A Transportation, Inc., 3503 CRB-8-96 12 (April 29, 1998); Jusiewicz v. Reliance Automotive, 3140 CRB-6-95-8 (Jan. 24, 1997). We may disturb the findings of the trier only if they are unsupported by the evidence, or if they fail to include undisputed material facts. Webb v. Pfizer, Inc., 14 Conn. Workers' Comp. Rev. Op. 69, 71, 1859 CRB-5-93-9 (May 12, 1995). Where a requested correction will not affect the outcome of a case, we will uphold the trier's

refusal to grant it. Id. Also, with respect to credibility questions, the trier of fact is not generally required to explain why he is not relying on a particular witness. Id., 70.

Much of the claimant's brief concerns allegations of error in the trier's denial of requested corrections that implicated the content of the medical reports. The claimant attempts to show via records made by Dr. Sava in February 1996 and Dr. Saberski in March 1996 that his employment with Bernie's Audio-Video caused his injury in the manner he described. Given the type of injury alleged by the claimant in this case, i.e., moving a large, heavy object, the statements of the doctors regarding the cause of that injury are only as reliable as the history provided by the claimant. Whether or not the claimant mentioned a workplace injury while obtaining treatment is important because it shows that the claimant's explanation of the cause of his injury is consistent. However, insofar as his objectively observed back symptoms are consistent with a "torsion type injury" to the lumbar spine and cervical musculature; see Claimant's Exhibit F; it only goes to show that some type of a heavy-lifting injury may have occurred. Those symptoms would not themselves indicate that this injury occurred at the workplace. Thus, corrections regarding the content of the medical reports are not material to the outcome of this case.

What is material to the trier's decision is the two-month delay between the time the claimant allegedly suffered his injury and the time he first mentioned it to his employer and his medical treaters. Contrary to the claimant's assertion, Dr. Silverman's report of June 19, 1996 does not state that the claimant told him on December 14, 1995 that he was injured moving a refrigerator at work. Claimant's Exhibit C. Instead, it states that he "had been complaining of severe numbness and tingling sensations of his

right thigh and lower back for several days duration," and then leads into the conclusory statement that those symptoms began after the claimant moved a refrigerator at work on November 26, 1995. The claimant could very well have told him about the refrigerator later. The letter from Dr. Sider referring to the claimant's initial injury being "sustained on the job" is even less probative in that regard. Claimant's Exhibit B. The trier did not abuse his discretion in drawing inferences adverse to the claimant from this evidence.

Ultimately, that summarizes the resolution of this case. The trial commissioner relied upon certain pieces of evidence in determining that the claimant failed to immediately report his injury. Those pieces of evidence were reasonably susceptible to the inferences that the trier drew, and provide a sturdy legal basis for his dismissal of the instant claim. Thus, we must affirm the trial commissioner's decision.

Commissioners Angelo L. dos Santos and Stephen B. Delaney concur.