

CASE NO. 04035 CRB-03-99-04
CLAIM NO. 300031770

: COMPENSATION REVIEW BOARD

KEM CARLSON
CLAIMANT-APPELLEE

: WORKERS' COMPENSATION
COMMISSION

v.

WASTE CONVERSION TECHNOLOGIES
EMPLOYER

: MAY 24, 2000

and

TRAVELERS PROPERTY & CASUALTY
INSURER
RESPONDENTS-APPELLANTS

and

EBI COMPANIES
INSURER
RESPONDENT-APPELLEE¹

APPEARANCES: The claimant was represented by Leonard L. Levy, Esq., 129 Church Street, New Haven, CT 06510.

The respondent employer and Travelers were represented by Nancy Berdon, Esq., Sizemore Law Offices, 6 Devine Street, North Haven, CT 06473.

The respondent employer and EBI were represented by Robert Enright, Esq., McGann, Bartlett & Brown, 281 Hartford Turnpike, Suite 401, Vernon, CT 06066, who did not appear at oral argument.

This Petition for Review from the April 12, 1999 Finding and Award of the Commissioner acting for the Third District was heard December 3, 1999 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Angelo L. dos Santos and Stephen B. Delaney.

¹ EBI's Motion to Withdraw its appeal was accepted on May 13, 1999.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondent employer and its insurer, Travelers, (“respondents”) have petitioned for review from the April 12, 1999 Finding and Award of the Commissioner acting for the Third District. In that decision the trial commissioner found that the claimant sustained a compensable injury to his lungs while working for the respondent employer, and that he sustained a forty-five percent permanent partial disability of the lungs. In support of their appeal, the respondents argue that the forty-five percent assessment was based upon the claimant's condition if he was *not* taking medication, but in fact the claimant *was* taking medication which reduced his disability to twenty-five percent.²

The trial commissioner found the following relevant facts. In December of 1996, an independent medical examination was performed by Dr. Godar, a pulmonologist. Dr. Godar found that the claimant suffered from a toxic lung injury which started with exposure to fumes, dust and chemicals during the summer of 1995 when he worked at the respondent employer. Dr. Godar opined that the claimant's injurious toxic exposure occurred in the first few months of his employment. He further opined that the claimant had a twenty-five percent permanent disability of the lungs based upon tests which were administered after the claimant had taken medication, and that without medication, the claimant's disability would be forty-five to fifty percent. The trial commissioner concluded that the claimant sustained a forty-five percent permanent disability to his

² At oral argument, the respondents' counsel indicated that this was their sole argument on appeal.

lungs.

“This board has repeatedly held that ‘the determination of the extent of an injured worker’s permanent disability (is) within the trial commissioner’s province as the trier of the facts.’” Uttenweiler v. General Dynamics Corp./Electric Boat Division, 3110 CRB-8-95-6 (January 8, 1997), quoting Kerins v. Johnson Controls, 12 Conn. Workers’ Comp. Rev. Op. 72, 73, 1419 CRB-8-92-5 (Feb. 3, 1994). “Moreover, where ‘the medical evidence regarding the extent of the claimant’s permanency (is) in conflict, the trial commissioner’s conclusion must stand so long as there is evidence to support it.’” *Id.*, quoting Salz v. Oliver’s Taverne, 12 Conn. Workers’ Comp. Rev. Op. 325, 327, 1593 CRB-8-92-12 (July 5, 1994). “Once the commissioner makes a factual finding, [we are] bound by that finding if there is evidence in the record to support it....” Ferrara v. Hospital of St. Raphael, 54 Conn. App. 345, 349 (1999) (citations omitted).

In the instant case, the evidence in the record supports the trial commissioner’s conclusion that the claimant sustained a forty-five percent permanent impairment of his lungs. Specifically, Dr. Godar stated, in pertinent part: “You have asked what I believe his impairment would be in the absence of bronchodilators and steroids, and I believe that he likely would be at least 45-50% impaired were he not on medication.” (Claimant’s Exh. B). We are not persuaded by the respondents’ argument that the claimant’s permanent impairment assessment should be reduced because of the beneficial effects of his medication. Regarding permanent partial impairment, our Supreme Court has explained as follows:

An award of workers’ compensation benefits for permanent partial impairment. . . is a specific indemnity award. See General Statutes § 31-308(b); J. Asselin, Connecticut Workers’ Compensation Practice Manual (1985) pp. 151-54. Specific benefits are benefits for the loss of the use of

specific body parts. These [specific] benefits. . . are not paid as compensation for loss of earning power but to compensate the injured employee for the incapacity through life because of the loss or loss of use of the body member in question. Thus, compensation in such cases *is not dependent upon actual incapacity* in whole or in part.

Levanti v. Dow Chemical Co., 218 Conn. 9, 13 (1991) (citations omitted; internal quotations omitted) (emphasis added).

Indeed, if a claimant had a permanent partial hearing impairment, we would not reduce that assessment merely because a hearing aid reduced said impairment. We agree with the following treatise, which states as follows:

[A] question encountered in loss-of-use cases is whether the impairment should be evaluated before or after correction by such devices as glasses, contact lenses, or hearing aids. The usual holding is that loss of use should be judged on the basis of uncorrected vision or hearing, and that therefore loss of use will not be ruled out because some correction is achieved. . . .
4 A. Larson & L. Larson, *Workers' Compensation Law* (1999) § 86.04[6].

In the instant case, as the trial commissioner's determination is fully supported by the evidence in the record, we therefore will not disturb it.

The trial commissioner's decision is affirmed.

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