CASE NO. 4233 CRB-8-00-5
CLAIM NO. 800113823 : COMPENSATION REVIEW BOARD

ROBERT SUROWIECKI
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

UTC/ PRATT & WHITNEY
EMPLOYER : MAY 24, 2001

and

AIG CLAIM SERVICES
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Mark Merrow, Esq., Law Offices of Mark Merrow, 760 Saybrook Road, Middletown, CT 06457.

The respondents were represented by Jason M. Dodge, Esq., Pomeranz, Drayton & Stabnick, 95 Glastonbury Boulevard, Glastonbury, CT 06033-4412.

This Petition for Review from the April 26, 2000 Finding and Dismissal of the Commissioner acting for the Eighth District was heard January 12, 2001 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners George A. Waldron and Ernie R. Walker.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has petitioned for review from the April 26, 2000 Finding and Dismissal of the Commissioner acting for the Eighth District. In that decision the trial commissioner concluded that the claimant failed to provide timely notice pursuant to § 31-294c of his claim for a left knee injury which occurred on December 22, 1997. The trial commissioner found that the claimant filed a

Notice of Claim which incorrectly listed December 29, 1997 as the date of injury. In support of his appeal, the claimant contends that this Notice of Claim constituted timely but defective notice under § 31-294c(c), and that the defect does not affect the claimant's claim as the respondents failed to allege any prejudice as a result of the incorrect date.

The trial commissioner found the following relevant facts. The claimant was employed by the respondent employer on December 29, 1997. On February 24, 1998, the claimant filed a Notice of Claim (Form 30C), alleging that a left knee injury had occurred on December 29, 1997. Previously, on January 27, 1998, the respondents had filed a disclaimer (Form 43), denying a December 29, 1997 left knee injury. On October 7, 1999, a formal hearing was held at which the claimant testified for the first time that the actual date of his injury was December 22, 1997 rather than December 29, 1997. The respondents sought a dismissal of the claim, as a Notice of Claim was not received within one year of the December 22, 1997 injury, notwithstanding the Notice of Claim filed on February 24, 1998 for the December 29, 1997 date of injury. Finding ¶ 5. Based upon these limited facts, the trial commissioner concluded that "the claimant did not file a Notice of Claim within one year of the December 22, 1997 date of injury." Finding ¶ 6. Accordingly, the trial commissioner dismissed the claim as late under § 31-294c.

In support of his appeal, the claimant contends that the incorrect date of injury on the Form 30C was a curable defect pursuant to § 31-294c(c) C.G.S., which provides in pertinent part:

> No defect or inaccuracy of notice of claim shall bar maintenance of proceedings unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice. Upon satisfactory showing of ignorance and prejudice, the employer shall receive allowance to the extent of the prejudice.

In the case at hand, the trial commissioner did not address the applicability of this statutory section.

Section 31-294c C.G.S. requires that a Notice of Claim be filed within one year from the date of an accidental injury.[1] We recognize that "a notice of claim or the satisfaction of one of the statutory exceptions is a prerequisite that conditions whether the [workers' compensation] commission has subject matter jurisdiction under the act." Keegan v. Aetna Life & Casualty Ins. Co., 42 Conn. App. 803, 806 (1996). Our Appellate Court has explained as follows: "The purpose of § 31-294, in particular, is to alert the employer to the fact that a person has sustained an injury that may be compensable, and that such person 'is claiming *or proposes to claim* compensation under the Act.'" Black v. London & Egazarian Associates, Inc., 30 Conn. App. 295, 303 (1993) (internal citation omitted), *quoting* Rehtarchik v. Hoyt-Messinger Corp., 118 Conn. 315, 317 (1934); see also Funaioli v. New London, 52 Conn. App. 194, 198 (1999).

In his appeal, the claimant cites several cases in support of his contention that the erroneous date of injury on the Form 30C constituted a curable defect under § 31-294c C.G.S. In Roche v. Danbury Hospital, 3592 CRB-7-97-5 (July 13, 1998), the trial commissioner found that the claimant was injured on or about March 26, 1993, in the manner represented by her in her testimony, although the exact date of injury could not be precisely ascertained. The board explained as follows:

> We have already held in a case somewhat similar to this one that the failure to prove the exact date upon which an accidental injury occurred does not preclude this Commission from exercising jurisdiction over a

[1] Section 31-294c provides in pertinent part: "No proceedings for compensation . . . shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury. . . ."

> claim for compensation. Troske v. Wolcott View Manor, 13 Conn. Workers' Comp. Rev. Op. 323, 325, 1687 CRB-5-93-4 (April 26, 1995). We stated in Troske that ***the most profound effect of a failure to state the correct date of injury is upon the § 31-294c notice provision, which requires an exact date of injury to be included. However, timely but defective notice only affects the claim itself insofar as the respondents demonstrate that they were both ignorant of the facts concerning the injury and prejudiced by the inaccuracy of the notice.*** Roche, supra, (emphasis added).

In Troske, supra, the board explained that although the exact date of injury was unclear, the "possibilities were narrow enough to ensure that the one-year notice requirement of § 31-294 was comfortably satisfied." Id. at 326. Accordingly, the board held that the commissioner should have given the employer the opportunity to demonstrate prejudice as a result of the defect in the notice, as the absence of a correct date of injury may leave an employer with insufficient information to investigate a claim. Id. The board thus remanded that issue to the trial commissioner.

We find our decision in Troske, supra, to be instructive in the case at hand. Here, as in Troske, supra, it is apparent that the one-year statute of limitations was satisfied if the incorrect date on the Notice of Claim is construed as a "defect or inaccuracy" under § 31-294c(c) C.G.S. rather than an invalidation of said notice. The case at hand is certainly distinguishable from Devito v. Stamford, 4062 CRB-7-99-6 (July 27, 2000), where the board affirmed the trier's conclusion that the claimant failed to provide sufficient notice of a knee injury claim where his notice listed as the date of injury the date of a prior compensable injury that had occurred *nine years* prior.[2]

[2] In Devito, supra, the board stated: "Certainly, the instant case does not present a mere inaccuracy of a date, or a typographical error of some sort, which would be covered under the saving provision of § 31-294c(c), but rather presents a Notice of Claim for an injury which had already been accepted as compensable."

Section 31-294c(c) C.G.S. states clearly that "(n)o defect or inaccuracy of notice of claim shall bar maintenance of proceedings unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice. Upon satisfactory showing of ignorance and prejudice, the employer shall receive allowance to the extent of the prejudice." This provision has been a part of the Workers' Compensation Act since its adoption in 1913, as § 21 of the Act of 1913 requiring a timely notice of claim included the provision: "but no want, defect, or inaccuracy of such notice and claim shall be a bar to the maintenance of proceedings unless the employer shall show that he was ignorant of the injury and was prejudiced by want, defect, or inaccuracy of notice. Upon satisfactory showing of such ignorance and prejudice, the employer shall receive allowance to the extent of such prejudice." Schmidt v. O.K. Baking Co., 90 Conn. 217, 221 (1916). In Schmidt, supra, the court analyzed this section, and opined that even where an employer has demonstrated ignorance of the injury and prejudice, these "do not raise a bar to recovery. They simply require a reasonable allowance commensurate with the prejudice; and the burden of furnishing a basis for estimating that allowance is by the act cast upon the employer." Id. at 224.

In the instant case, we must remand this matter to the trial commissioner in order to address the provision in § 31-294c(c) which provides that an inaccuracy in a notice of claim shall not bar maintenance of proceedings "unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice…."

This matter is remanded to the trial commissioner in accordance with the above.

Commissioners George A. Waldron and Ernie R. Walker concur.