

CASE NO. 4514 CRB-6-02-4
CLAIM NO. 601018147

: COMPENSATION REVIEW BOARD

NATHALIE LANDRY
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION
COMMISSION

v.

LIGHT METALS COLORING CO. : APRIL 3, 2003
EMPLOYER

and

EBI COMPANIES
INSURER
RESPONDENTS-APPELLEES

APPEARANCES: The claimant was represented by Domenic D. Perito, Esq., Law Offices of Nicholas T. Kocian, P.C., 182 Collins St., Hartford, CT 06105.

The respondents were represented by James L. Sullivan, Esq., Maher & Williams, 1300 Post Road, P.O. Box 550, Fairfield, CT 06430-0550.

This Petition for Review from the March 13, 2002 Finding and Dismissal of the Commissioner acting for the Sixth District was heard October 18, 2002 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Amado J. Vargas and Howard M. Belkin.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has petitioned for review from the March 13, 2002 Finding and Dismissal of the Commissioner acting for the Sixth District. She contends on appeal that the trier erred by dismissing her claim for

permanent partial disability benefits pursuant to § 31-308(b) C.G.S. We find no error, and affirm the trial commissioner's decision.

The claimant was employed by the respondent Light Metals Coloring Company on January 28, 1999. She sustained a lifting injury to her pelvic and lower abdominal area at work that day, and the respondents accepted the compensability of that injury. Dr. Welna diagnosed her with a tear in her pelvic fascia, with a resulting bladder and rectal herniation proximal to the vagina. Surgery was successfully performed to correct the condition, which had caused the bladder to drop. The claimant was totally disabled through June 13, 1999. Dr. Welna, her gynecologist, assigned her a permanent 15 lb. lifting restriction, and rated her with a 15% permanent partial disability of the pelvic area. He explained that she continued to feel pelvic pressure and had sustained vaginal scarring as a result of the surgery, though there was no loss of function to either the bones of her pelvis or the "soft pelvis" (which includes the vagina, bladder and rectum). The trier concluded that this medical opinion was insufficient to prove a 15% permanent partial disability to the pelvic area within the meaning of the Workers' Compensation Act. The claimant has appealed that ruling to this board.

It is the claimant's position on review that the subordinate factual findings do not support the trier's conclusion that the claimant did not meet her burden of proof. When this board reviews a trial commissioner's decision, we must defer to the trier's authority to resolve all issues that concern the credibility of the evidence, including the degree of weight to place on a physician's medical opinion. Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999); Phaiah v. Danielson Curtain (C.C. Industries), 4409 CRB-2-01-6 (June 7, 2002); Pallotto v. Blakeslee

Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998). The claimant, of course, has the burden of proving all elements of her claim, including the existence of a permanent partial disability. Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (Oct. 23, 2002). As she attempts to meet that burden by offering medical evidence, the trial commissioner may accept or reject all, part or none of a doctor's testimony, and may disregard evidence that appears to be uncontradicted on its surface. Safford v. Brockaway, 262 Conn. 526 (2003); Pallotto, *supra*. In reviewing the trier's legal conclusions, we may disturb them only if they result from an incorrect application of the law to the facts found, or from an inference illegally or unreasonably drawn from them. Phaiah, *supra*; Warren v. Federal Express Corp., 4163 CRB-2-99-12 (Feb. 27, 2001).

Here, the trier found that Dr. Welna's testimony and evidence were insufficient to establish the claimant's permanency claim. Findings, ¶ J. Our law does not require a trial commissioner to give reasons why he does not find the testimony of a particular witness credible. Admin. Reg. § 31-301-3; Persico v. Sikorsky Aircraft Corp., 4464 CRB-4-01-12 (Nov. 15, 2002). The fact that the respondents did not obtain an independent medical examination or submit contrary evidence did not bind the trier to accept Dr. Welna's medical opinion. Tartaglino, *supra*. Thus, even if the trial commissioner had offered no explanation as to why he did not find this diagnosis of disability persuasive, we would not be able to overturn that decision on review.

However, it is clear from the findings that the trier was focusing on the doctor's explanation of the 15% permanency rating, which he attributed to the lifestyle effects from the claimant's permanent lifting restriction and her scarring in the vaginal area, rather than to a loss of function of any organ or bone structure in the pelvic region.

Findings, ¶¶ 14-18; H-J. Section 31-308(b) compensates the “loss of [a] member or organ and the complete and permanent loss of use of the member or organ referred to.” It does not specifically mention scarring, which subject is covered under § 31-308(c). Dr. Welna admitted that he did not consult an established ratings system such as the AMA guidelines in obtaining his 15% number. Respondent’s Exhibit 1 (Deposition), p. 14. He also identified no loss of function to either the pelvis, bladder, or vagina (which was not a scheduled body part until Public Act 00-8 took effect in 2000). Id., pp. 24-27. Rather, he arbitrarily tried to “pick a low number” in recognition of the claimant’s permanent restriction on lifting and prolonged standing, following her request for a permanency rating to the soft pelvis. Id., pp. 16-18.

We doubt that this diagnosis can be fairly stated to have been given within a reasonable degree of medical probability, as required by our law. Struckman v. Burns, 205 Conn. 542, 554-55 (1987); Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 449 (2001). There is no ascertainable diagnostic method behind the 15% rating; see Cabral v. Metropolitan District Employees, 3770 CRB-1-98-2 (May 13, 1999) (alternative diagnostic methods are admissible if scientifically valid); as Dr. Welna had no explanation as to why the claimant’s permanent lifting restrictions translate into a 15% loss of, or loss of use of, the soft pelvis. Compare Smith v. John’s Tree Service, Inc., 4272 CRB-3-00-7 (June 19, 2001)(trier may account for impact that loss of fingers (a scheduled body part) has on hand (another scheduled body part)); Bilotta v. Connecticut Natural Gas Corp., 4106 CRB-1-99-8 (Oct. 5, 2000)(doctor assessed physical condition, gauged impact of that condition on claimant’s ability to function as a whole, and applied AMA guidelines to that situation). The trier therefore had good cause

to doubt the reliability of Dr. Welna's permanent partial impairment rating. We have no ground to reverse this decision on review.

Accordingly, the trial commissioner's decision is affirmed.

Commissioners Amado J. Vargas and Howard M. Belkin concur.