CASE NO. 3324 CRB-2-96-4
CLAIM NO. 0800006096 : COMPENSATION REVIEW BOARD

FLORENCE BUCK, (Dependent Widow)
CHARLES BUCK (Deceased)
CLAIMANT- APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

GENERAL DYNAMICS CORPORATION
ELECTRIC BOAT DIVISION : JANUARY 21, 1998
EMPLOYER

and

NATIONAL EMPLOYERS CO.
SELF INSURED ADMINISTRATOR

and

AETNA CASUALTY & SURETY
INSURER
RESPONDENTS-APPELLANTS

and

SECOND INJURY FUND
RESPONDENT-APPELLANT

APPEARANCES:

The claimant was represented by Nathan J. Shafner, Esq., O'Brien, Shafner, Stuart, Kelly & Morris, P.C., 475 Bridge Street, P.O. Drawer 929, Groton, CT 06340.

The respondents Aetna Casualty & Surety were represented by Lucas D. Strunk, Esq., Pomeranz, Drayton & Stabnick, 95 Glastonbury Blvd., Glastonbury, CT 06033.

The respondent National Employers was represented at the trial level by Sharon Ramsey, Esq., Murphy & Beane, Two

Union Plaza, P.O. Box 590, New London, CT 06320. However, no one appeared at oral argument nor was a brief filed before the Compensation Review Board.

The Second Injury Fund was represented by Matthew Beizer, Esq., and Michael Belzer, Esq., Asst. Attorneys General, 55 Elm Street, Hartford, CT 06141-0120.

These Petitions for Review from the March 29, 1996 Finding and Award of the Commissioner acting for the Second District were heard January 10, 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 respondents, Aetna Casualty & Surety and Second Injury Fund have both appealed from the Commissioner acting for the Second District's March 29, 1996 Finding and Award. In that Finding and Award the trial Commissioner concluded that the claim of the surviving spouse, Florence Buck, satisfied the statute of limitations provisions contained in § 31-294 C.G.S.

In order to better understand the issues on review, a brief review of the procedural history of this matter is in order.[1] This matter was originally heard by the trial commissioner and resulted in a Finding and Award dated December 31, 1991. In that Finding and Award the trial commissioner concluded, inter alia, that the decedent's surviving spouse was entitled to Workers' Compensation survivor's benefits pursuant to § 31-306 due to the decedent's death on February 11, 1986. On February 11, 1986, the decedent succumbed to a myocardial infarction which was alleged to have been causally

[1] For more details as to the factual circumstances in this matter one should consult the Compensation Review Board's earlier opinion in Buck v. General Dynamics Corp., 12 Conn. Workers' Comp. Rev. Op. 96, 1374 CRB 2-92-1 (Feb. 28, 1994).

related to a work related myocardial infarction suffered by the decedent on or about July 11, 1975 and for which the decedent received federal Longshore Harbor Workers' Compensation Act benefits.

The respondents appealed the December 31, 1991 Finding and Award and sought review of various issues among which was the timeliness of the surviving spouse's claim under § 31-294.[2] In its February 28, 1994 opinion in that appeal, Buck v. General Dynamics Corp., 12 Conn. Workers' Comp. Rev. Op. 96, 1374 CRB-2-92-1 (Feb. 28, 1994) [hereinafter Buck I] the board remanded the instant matter to the Second District for findings as to whether the jurisdictional prerequisites set out in § 31-294 were satisfied.[3] Specifically, the board remanded the matter so that a determination could be made as to whether the federal Longshore Harbor Workers' Compensation Act, notice of claim filed by the decedent was sent within one year of the decedent's July 11, 1975[4] heart attack or whether the decedent was furnished medical care within the applicable time period. See, Buck I, supra.

Thereafter, the trial commissioner held further proceedings and issued his March 29, 1996 Finding and Award. In that Finding and Award, the trier concluded that the claimant's claim was timely. On appeal, the respondents contended that the claimant's claim was untimely as it was filed within 1 year of the decedent's death, but

---

[2] Given our ultimate conclusion in this matter we need not consider any of the other issues raised.

[3]It should be noted that subsequent to oral argument in Buck I, the claimant filed a Motion For Reconsideration. That motion was denied by the Compensation Review Board panel in its April 3, 1996 Ruling Re: Motion For Reconsideration.

[4] It appears that the parties and the trier vary as to the date of the decedent's July, 1975 heart attack. This date appears to vary between July 10, 1975 and July 11, 1975. However, the variance does not appear to be of any real significance.

more than 10 years after the decedent's heart attack which is alleged to be causally related to the resultant fatal heart attack.

As the Compensation Review Board panel which presided over Buck I had no jurisdictional factual findings to review it would have been impossible for that panel to review the adequacy and sufficiency of a notice purportedly provided pursuant to the Longshore Harbor Workers' Compensation Act. In determining the legal sufficiency of notice under our Workers' Compensation Act the law that applies is that which existed at the time of injury. Rice v. Vermilyn Brown, Inc., 232 Conn. 780 (1995). Sec. 31-294 as it existed in July, 1975 provided that:

> No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim is given within one year from the date of the accident or from the first
>
> manifestation of a symptom of the occupational disease and the nature of such disease as the case may be which caused the personal injury, provided, if death has resulted within two years from the date of the accident or first manifestation of a symptom of the occupational disease, a dependent or dependents, or the legal representative of the deceased employee, may make claim for compensation within such two-year period or within one year from the date of death, whichever is later. Such notice may be given to the employer or the commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting therefrom . . . and the name and address of the employee and of the person in whose interest compensation is claimed. . . . [I]f within said period of one year an employee has been furnished, for the injury with respect to which compensation is claimed, with medical or surgical care as hereafter provided in this section, no want of such notice of claim shall be a bar to the maintenance of proceedings . . . .(emphasis added).

We believe that the statute's language requiring the identification of the person in whose interest compensation is claimed subsumes that the compensation being claimed is compensation pursuant to this act, i.e., chapter 568. See, Weinberg v ARA Vending Co.,

223 Conn. 336 (1992). In the Longshore Harbor Workers' Compensation Act notice of claim form at issue (See Claimant's Exhibit B) there is no indication that the claimant intended to file a notice of claim seeking benefits pursuant to chapter 568.

Additionally, the trial commissioner's March 29, 1996 Finding and Award (the post Compensation Review Board remand decision) found that the claimant was rendered medical treatment at the employer's medical facility and that this "treatment" satisfied the constructive notice provision contained in § 31-294.[5] Sec. 31-294 provides that in order to satisfy this constructive notice provision the claimant must have been provided with medical care with respect to which compensation is claimed. As we noted above we believe that the statute's language infers that the claim for compensation is for compensation pursuant to chapter 568.

We note that the respondent sought a correction to the trial commissioner's Finding and Award as to these particular factual findings [6]which form the basis of the trier's conclusion that the claimant was provided with medical care so as to satisfy § 31-294. The trier denied the respondent's request for correction. We will not disturb the factual findings of the trial commissioner unless such factual findings are made without

---

[5] Sec. 31-294 provided in pertinent part:

> [I]f within said period of one year an employee has been furnished, for the injury with respect to which compensation is claimed, with medical or surgical care as hereafter provided in this section, no want of such notice of claim shall be a bar to the maintenance of proceedings. . . .

[6] As with Buck I, there appear to be some "scrivener errors" which need comment. Upon taking the appeal in Buck I the respondents, Aetna Casualty & Surety, filed a Motion To Correct (dated Jan. 7, 1992). In his April 7, 1992 Ruling on Respondents' Motion To Correct the trial commissioner granted paragraphs two and three of the respondents' Motion To Correct. Those corrections substantially affected and altered paragraph 24 of the trier's Dec. 31, 1991 Finding and Award. Yet it appears that the uncorrected language in paragraph 24 was resurrected and reuttered in the trier's March 29, 1996 Finding and Award. As part of the appeal from the March 29, 1996 Finding and Award , the respondent's filed a Motion To Correct which gave notice to the trier of his apparent oversight. The trier denied the respondents' Motion To Correct. However, as the factual finding to which these corrections relate go to the issue of causation and in light of our ultimate conclusions we need not consider the affect of this error.

evidence, contrary to law or based on unreasonable of impermissible inferences. Fair v. People's Savings Bank, 207 Conn. 535 (1988). The evidence upon which the trier relies as to the findings of medical treatment are contained in Claimant's Exhibit C. We have reviewed Claimant's Exhibit C and cannot see where these records can legally support the trier's findings. While the reports reflect that the decedent's recovery from his July, 1975 heart attack was being monitored by the respondent's occupational health facility, the reports seem more in the nature of reports as to decedent's condition and work capacity following his July 11, 1975 heart attack. On their face, none of these documents reflect that the respondent provided the claimant with medical care or treatment as that term has been construed by our case law. See Kulis v. Moll, 172 Conn. 104 (1976); Gesmundo v. Bush, 133 Conn. 607 (1947).

As this tribunal noted in Riccio v. Windsor, 15 Conn. Workers' Comp. Rev. Op. 279, 2232 CRB-1-94-12 (June 20, 1996) in its discussion of Gesmundo v. Bush, 133 Conn. 607 (1947), this board has stated that;

> "Gesmundo does not require a finding that formal notice is unnecessary to every employer who arranges treatment for a claimant regardless of who pays for the treatment. Rather, it gives the commissioner room to find that an employer's involvement in the treatment of the claimant's injury indicates that the employer was informed 'that an injury has been suffered upon which a claim for compensation will or may be founded.' " Griffith-Patton v. Connecticut, 13 Conn. Workers' Comp. Rev. Op. 177, 180, 1888 CRB-1-93-11 (March 10, 1995) (citing Gesmundo, supra, 607).

Again we believe that reading the above together with § 31-294, the injury for which "compensation will or may be founded" presumes a claim for compensation pursuant to chapter 568. Thus, as the factual finding of the trier is not supported by the evidence, the finding must be struck. Once the predicate factual findings are struck the

conclusion as to satisfying § 31-294's constructive notice provisions cannot stand. Therefore, the decedent's claim was not timely as to the July, 11, 1995 heart attack.

Furthermore, under the circumstances of this case and the decedent's filing of benefits pursuant to the Longshore Harbor Workers' Compensation Act there was no information which would reasonably have put the employer on notice that a claim for chapter 568 benefits was being made. During the period of time when the decedent arguably could have timely filed his claim, the United States Supreme Court's opinion holding that there was concurrent jurisdiction between a state's workers' compensation act and the federal Longshore Harbor Workers' Compensation Act was not decided. The United States Supreme Court case which ultimately concluded that concurrent jurisdiction existed was not decided until some five years after the decedent's July 11, 1975 heart attack. See Sun Ship, Inc., v. Pennsylvania, 417 U.S. 713, 100 S.Ct. 2432 (1980). Therefore, without the Supreme Court's definitive ruling in Sun Ship, supra, it is arguable that the employer would have no legal basis to reasonably foresee that the claimant "might" pursue chapter 568 benefits.

Thus, we must now consider whether the claimant, surviving-spouse's claim was therefore also untimely. We conclude that it was. In the instant matter there is no question that the claimant's claim was filed within one year of the decedent's death. [7] The claimant argues that in light of the Appellate Court's ruling in Capen v. General Dynamics, 38 Conn. App., 73 (1995) and this tribunal's ruling in Maher v. State, 5 Conn. Workers' Comp. Rev. Op. 19, 374 CRD-4-85 (March 24, 1988) the surviving spouse's claim for benefits is separate and distinct from the employee's. See also, Biederzycki v. Farrel Foundry & Machine Co., 103 Conn. 701 (1929). We think Biederzycki and Capen

are distinguishable from the underlying factual circumstances and thus, are not determinative of this matter. As for Maher, supra, insofar as our conclusion herein may be read to differ with the reasoning in Maher, we overrule Maher. Please note, we do not lightly reject the reasoning and result of past precedent decided by this tribunal. However, in light of our Supreme and Appellate Court's opinions since Maher was originally decided, we believe the reasoning applied here today is more consistent with the later decisions of those bodies. See, e.g., Duni, supra, and Keegan, supra, and Capen, supra.

In Biederzycki, supra, the employee from whom the widow's claim derived was "adjudged to have suffered an injury arising out of and in the course of the employment." The employer's attempt to try the facts surrounding the employee's injury de novo was rebuffed by the court.

> [T]he classes of compensation awarded the employee and his dependents are separate and independent of each other. But each arises out the same compensable injury. If the employee is awarded compensation for an injury, and in consequence of it, subsequently dies, the injury preceding the death and the death arose out of the one injury, compensation for the latter is payable to and belongs to the dependent, while the compensation awarded to the living employee is payable to and belongs to him.

Biederzycki, supra at 704-705. Unlike the instant case the employee's injury in Biederzycki, was timely and adjudged compensable *under Connecticut's Workers' Compensation Act.*

Additionally the claimant relies on Capen v. General Dynamics, 38 Conn. App., 73 (1995). However, in Capen, the Appellate Court affirmed the trial commissioner's factual finding that the employee died as a result of lung cancer which first manifested in the Spring of 1983. The decedent died Sept. 25, 1983

[7] Claimant's notice of claim for survivor's benefits was filed Jan. 27, 1987.

and the dependent's claim was filed Sept. 28, 1983. Thus, although the decedent did not file a claim under Connecticut's Workers' Compensation Act for his *lung cancer* one may assume that had one been filed the claim would have been found timely.

We note that in Capen the Appellate Court noted that as it upheld the trier's conclusion that the decedent's death was caused by lung cancer which manifested in the Spring of 1983, the court need not consider an "alternative argument that the decedent's 1980 claim under the Longshore Harbor Workers' Compensation Act satisfied the notice requirements of § 31-294" Capen, supra, at note 7, 80-81.

In the instant case if within one year of the decedent's July, 1975 heart attack, the employee filed a claim which was sufficient to apprise the employer that a claim was being made under chapter 568, then, arguably the jurisdictional tenets of our Act may have been satisfied. Under such circumstances it could be argued that a claim filed by the surviving spouse as in these circumstances would bring this more in the line of Capen, supra. However, we believe that the distinctions in Capen to which we refer do not make Capen dispositive of this appeal. Thus, we are not compelled under Capen to conclude that the claimant's appeal was timely.

Furthermore in support of our conclusion we turn to Duni v. UTC, 239 Conn. 19 (1996). In Duni, our Supreme Court held that a Stipulated Settlement executed by the employee effectively barred the employee's surviving spouse from survivor's benefits under § 31-306 following the decedent's death. In its

consideration of Duni, the Supreme Court, inter alia, based its holding on public policy favoring the " prompt and comprehensive resolution of Workers' Compensation claims." Id. at 27. The Duni court noted,

> "[T]he statutory interpretation advanced by the defendants promotes the public policy in favor of administrative simplicity. As we have noted in a related context, the plaintiff's statutory construction would require employers to maintain records for a considerable period of time after each disability compensation claim had been settled, an interpretation that "would undermine the statutory purpose of administrative simplicity." Davis v. Norwich, 232 Conn. 311, 323. This construction would also frustrate the related public interest in the finality of administrative determinations.

Id. at 28. In this matter we are being asked to permit a claim to go forward where the death arose more than a decade after the alleged causal agent. We believe if we were to so rule, we would run afoul of the purpose underpinning Sec. 31-294's time limitations. Our courts have expressed that public policy as:

> There are two principal reasons generally given for the enactment of a statute of repose: (1) it reflects a policy of law, as declared by the legislature, that after a given length of time a [defendant] should be sheltered from liability and furthers the public policy of allowing people, after the lapse of a reasonable time, to plan their affairs with a degree of certainty, free from the disruptive burden of protracted and unknown potential liability . . . and (2) to avoid the difficulty in proof and record keeping which suits involving older [claims] impose. (citations and internal quotations omitted) (Citations omitted; internal quotation marks omitted.)

Keegan v. Aetna Life & Casualty, 42 Conn. App. 803, 809 (1996).

We therefore reverse the trial commissioner's finding and award and dismiss the surviving spouse's claim for benefits.

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