CASE NO. 3334 CRB-8-96-4
CLAIM NO. 0800004187 : COMPENSATION REVIEW BOARD

THOMAS GOLANSKI
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

TOWN OF WALLINGFORD/ : FEBRUARY 2, 1998
BOARD OF EDUCATION
EMPLOYER
RESPONDENT-APPELLANT

and

ALEXSIS
SELF-INSURED ADMINISTRATOR

APPEARANCES: The claimant was represented by Kevin Coombes, Esq., 107 Oak St., Hartford, CT 06106.

The respondent was represented by James Quinn, Esq., Furniss & Quinn, 248 Hudson St., Hartford, CT 06106-1777.

This Petition for Review from the April 19, 1996 Ruling on Respondent's Motion to Dismiss of the Commissioner acting for the Eighth District was 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 respondent has petitioned for review from the April 19, 1996 Ruling on Respondent's Motion to Dismiss by the Commissioner acting for the Eighth District. It argues on appeal that the trial commissioner erred by

attempting to dismiss this case without prejudice. We agree in part with its argument, but remand this case due to inconsistent rulings in the decision.

The commissioner found that the claimant filed a Form 30C for a stress disorder on June 11, 1993. The respondent contested that claim. After numerous informal hearings, the parties finally agreed to schedule a formal for November 13, 1995. The claimant then sought a continuance. The case was reassigned to November 30, 1995. Again, it was marked off and rescheduled. On December 14, 1995, the claimant's attorney was in attendance at the formal hearing, but the claimant did not show up. He had sought a continuance, but was denied further postponement. The commissioner would not let claimant's counsel introduce medical reports regarding the alleged injury because the claimant was not present to establish a factual basis for the claim.

Accordingly, the commissioner ruled that the claimant had not established a prima facie case by failing to appear to prosecute his claim. The trier then dismissed the claim "without prejudice to the claimant to file a Motion to Reopen and set aside the dismissal within four months of the granting of said Motion to Dismiss. Failure by the claimant to file a Motion to Reopen within said four month period will result in a judgment of dismissal being entered upon motion by the respondent." The respondent appealed that decision to this board. The claimant did not file an appeal, but heeded the words of the trial commissioner by filing a Motion to Reopen on August 15, 1996, along with a brief explaining the claimant's absence at the formal hearing.

The respondent argues that the formal hearing was a trial of this claim on its merits. The December 12, 1995 transcript shows that after the commissioner denied the claimant's request for another continuance, the claimant's attorney attempted to introduce

eight exhibits in support of the merits of the claim. The commissioner sustained the respondent's objection to the introduction of all of those exhibits, largely due to the lack of foundation for their admission that was caused by the claimant's absence. The respondent argues that the only appropriate order that could have issued from such a proceeding was a Finding of Dismissal. It contends that the trier was mistaken in giving the claimant four months within which to move to open the dismissal; although § 52-212 C.G.S. allows such relief in the Superior Court, that procedural vehicle is not available in cases heard pursuant to the Workers' Compensation Act.

Recently, this board addressed a situation in which an employer and insurer had been unable to prove entitlement to a transfer of liability under § 31-349 C.G.S., and the trier attempted to avoid rendering a binding decision by making his dismissal of their claim "without prejudice." Santora v. A.C.E.S., 2299 CRB-3-95-11 (decided Feb. 26, 1997). We stated that "[a]lthough such decisions may be rendered occasionally in other venues, a dismissal 'without prejudice' is not an appropriate type of decision after a formal hearing in workers' compensation proceedings. If the respondents were unable to prove their case, the commissioner should have dismissed their claim unconditionally." Id. Unfortunately, the dismissal "without prejudice" not only failed to clearly resolve that case—it also left the parties confused regarding the effect of the decision and the proper course of action to take in response to it.

This case is very similar. The claimant's attorney attempted to introduce evidence in support of his case, which was not admitted because of an insufficient evidentiary foundation. Nonetheless, the formal hearing was still a trial on the merits. This was not a default judgment or nonsuit like the one we recently discussed in Murray

v. Black Tie Limousine, 3306 CRB-3-96-3 (decided Aug. 21, 1997). The claimant simply did not meet his burden of proof, and the commissioner should have issued a dismissal order. The trier was not obligated to further postpone the proceedings to wait for the claimant to make an appearance. See Weglarz v. Department of Corrections, 13 Conn. Workers' Comp. Rev. Op. 35, 36, 1648 CRB-4-93-2 (Nov. 8, 1994). His ruling that "[t]he claimant failed to appear to prosecute his claim and therefore, he has failed to establish a prima facie case" should have been dispositive of this matter. See ¶ A.

However, by including in ¶ B language suggesting to the claimant that he should move to reopen this claim, the commissioner led the claimant to believe that it was unnecessary to appeal the decision to this board. Not only was this "dismissal without prejudice" language inconsistent with the preceding conclusion and with our law as discussed in Santora, it also induced the claimant not to take advantage of his right to appeal under § 31-301(a) C.G.S. It would be unjust to deprive the claimant of his right of appeal by holding here that the dismissal order was a final judgment. We also cannot allow a decision to stand when it contains inconsistent conclusions of law. Therefore, we must remand this case for a new trial.

Commissioner John A. Mastropietro concurs.

JAMES J. METRO, COMMISSIONER, CONCURRING. I agree that this case should be remanded to the trial commissioner because ¶ A and ¶ B are somewhat inconsistent, and failed to give enough guidance to the claimant's attorney as to what procedure he should have followed next. However, I do not believe that a trial commissioner lacks the power to apply § 52-212 C.G.S. in giving a party four months within which to move to reopen a decision. If that power is available to a judge of the

Connecticut Superior Court, we should construe it as being available to a workers' compensation commissioner pursuant to § 31-278 and § 31-298 C.G.S. Thusly, I would not go as far as the majority has in its reasoning.