

CASE NO. 03449 CRB-08-96-10
CLAIM NO. 0800013555

: COMPENSATION REVIEW BOARD

EMMANUEL SBONA
CLAIMANT-APPELLEE

: WORKERS' COMPENSATION
COMMISSION

v.

CITY OF MIDDLETOWN
EMPLOYER
SELF INSURED
RESPONDENT-APPELLANT

: APRIL 23, 1998

APPEARANCES: The claimant was represented by Thomas P. Cella, Esq., Howard, Kohn, Sprague & Fitzgerald, 237 Buckingham St., P. O. Box 260896, Hartford, CT 06126-0896.

The respondent employer was represented by James Baldwin, Esq., Coles, Baldwin & Craft, LLC, 1200 Post Road East, Westport, CT 06880.

This Petition for Review, along with Motion For Additional Evidence, from the October 22, 1996 Finding and Award of the Commissioner for the Eighth District was heard June 27, 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 employer has petitioned for review from the October 22, 1996 Finding and Award of the Commissioner acting for the Eighth District. In that decision the trial commissioner concluded that the employer was not entitled to reduce the claimant's receipt of permanent partial disability benefits. In support of its appeal, the employer contends that the claimant has received a double

recovery because he received disability benefits under the employer's pension program together with benefits under the Workers' Compensation Act.

The trial commissioner found the following relevant facts. The claimant was employed as a patrol officer for the respondent employer, and sustained a compensable injury to his neck and back on July 17, 1992. A voluntary agreement was approved by which the employer agreed to pay the claimant 34.75 weeks of permanent partial disability benefits (also known as "specific") pursuant to § 31-308 C.G.S. On November 22, 1994, a commutation (i.e. lump sum) payment of said benefits was approved by a trial commissioner.

The claimant retired with a disability pension effective October 21, 1994. The employer paid 23.29 of the 34.75 weeks, representing the period between May 12, 1994, the date of maximum medical improvement, and October 21, 1994, the date on which payment of his disability pension commenced. The employer refused further payment, contending that the award of permanent partial disability benefits should be offset by the pension benefits. The trial commissioner ordered the employer to pay the full 34.75 weeks of specific benefits, explaining that these benefits "cannot be offset by the Employer's retirement system." (Finding C).

In support of its appeal, the employer contends that the claimant is not entitled to receive both workers' compensation benefits and pension benefits concurrently. In addition, the employer contends that the trial commissioner erred by ruling that the employer was required to pay the claimant the full 34.75 weeks of benefits. Specifically, the employer argues that those payments "had already been paid." (Employer's Brief at p.

2). To the contrary, the employer has repeatedly refused to pay these benefits.¹ Indeed, the employer's attorney specifically stated at the commencement of the formal hearing, “The issue, Commissioner, is *whether* or not Mr. Sbona is *entitled to the balance of his specific award*, which is a matter of record and documented with the Commissioner in a voluntary agreement, for that period following his October 21, 1994 disability pension.” (Feb. 29, 1996 TR. at p. 3.) (emphasis added). Moreover, during the formal hearing, the following was stated:

COMMISSIONER: Also, is there an agreement concerning how many weeks were paid on the voluntary agreement?

[ATTORNEY] BALDWIN: It was paid up until October 21st, 1994, the date that Mr. Sbona went out on disability pension.
(Feb. 29, 1996 TR. at p. 6.).

Moreover, the employer did not file a Motion to Correct, and therefore the trial commissioner's findings must stand, including Findings No. 11 and 12 which indicate that the employer refused payment of the specific benefits beyond October 21, 1994.

Colucci v. Mattatuck Manufacturing Co., 9 Conn. Workers' Comp. Rev. Op. 234, 1000 CRD-5-90-4 (Oct. 30, 1991).

The employer has filed a Motion for Additional Evidence pursuant to Conn. Agencies Reg. § 31-301-9 in which it seeks to present unspecified evidence that it has paid the full specific award. The employer contends that it did not present evidence regarding this issue at the formal hearing because the parties had “already stipulated² on

¹ In the employer's September 6, 1996 brief, which the employer attached to its brief to this board, the employer states: “On January 12, 1995, claimant's attorney requested payment of specific benefits beyond October 21, 1994, the date of the claimant's retirement. *The respondent refused payment* on the basis that it should be entitled to an offset of pension benefits paid during the period of October 21, 1994 through January 10, 1995 and any benefits paid under the Workers' Compensation Act should be deducted pursuant to City ordinances.” (emphasis added).

and off the record that the claimant was *construed* to have received the full specific award.” (Motion for Additional Evidence, p. 1) (emphasis added). As set forth above, the transcript of the formal hearing clearly indicates that the primary issue at the formal hearing was the employer's refusal to pay the specific award after October 21, 1994. The employer's motion is denied, as a motion to submit additional evidence may not properly be used to alter a party's evidentiary decisions regarding the presentation of evidence at a formal hearing. Lange v. J & B Excavating & Paving, 11 Conn. Workers' Comp. Rev. Op. 42, 1249 CRD-3-91-6 (March 18, 1993); Lesczynski v. New Britain Memorial Hospital, 10 Conn. Workers Comp. Rev. Op. 205, 208-9, 1289 CRD-6-91-9 (Dec. 2, 1992).

The employer contends in its appeal that the issue to be decided is “whether Chapter 20 Section 20-49 of the Middletown City Ordinance on retirement and pensions applies to the stipulated facts³ of the instant case.” (Employer's Brief at p. 2). Whether a municipal employee's pension plan may be reduced due to receipt of workers' compensation benefits is an issue for a superior court to determine. Lambert v. Bridgeport, 204 Conn. 563 (1987); Maciejewski v. West Hartford, 194 Conn. 139 (1984); Middletown v. Local 1073, 1 Conn. App. 58 (1983). The employer is obligated to pay the claimant the full 34.75 weeks of benefits, and the employer may pursue the reduction of the pension benefits in another forum.

The trial commissioner's decision is affirmed. Interest is awarded on any amount unpaid pursuant to § 31-301c(b).

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

² We note that the employer repeatedly refers to “stipulated facts.” However, the record does not include a joint stipulation of facts.

³ See footnote No. 2.