CASE NO. 5695 CRB-4-11-11 : COMPENSATION REVIEW BOARD
CLAIM NO. 400060191

PATRICK VAUGHAN
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: JANUARY 4, 2013

NORTH MARINE GROUP
EMPLOYER

and

HARTFORD INSURANCE GROUP
INSURER
RESPONDENTS-APPELLEES

APPEARANCES: The claimant was represented by Patrick D. Skuret, Esq., Law Offices of Daniel D. Skuret, P.C., 215 Division Street, PO Box 158, Ansonia, CT 06401-0158.

The respondents were represented by Jason Dodge, Esq., Pomeranz, Drayton & Stabnick, LLC, 95 Glastonbury Boulevard, Suite 216, Glastonbury, CT 06033-4412.

This Petition for Review[1] from the October 24, 2011 Finding and Dismissal of the Commissioner acting for the Fourth District was heard August 17, 2012 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Jodi Murray Gregg and Daniel E. Dilzer.

[1] We note that a postponement and extensions of time were granted during the pendency of this appeal.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant seeks benefits for an injury he says he sustained in the course of his employment on January 25, 2005. The claimant said that on that date he sustained a back injury at work, and he attributes his subsequent medical condition to that event. The trial commissioner found the claimant's testimony was not credible or reliable. The trial commissioner found to be credible a witness who refuted the claimant's narrative of injury, and found the testimony of the respondent's expert witness more credible and persuasive than the claimant's treating physicians. The trial commissioner dismissed the claim. On appeal, we conclude this case was based entirely on evaluating the credibility and persuasiveness of evidence. We find the Finding and Dismissal was supported by evidence the trial commissioner found probative. Therefore, we affirm the Finding and Dismissal.

The trial commissioner found the following facts at the conclusion of a formal hearing that commenced June 2, 2010, and continued until the record was closed on September 2, 2011. The claimant testified he received a GED in 1990 and had no post-secondary education. He had worked for the respondent lifting and wrapping heavy packages of sail cloth for about three and a half years prior to January 25, 2005. On that day, the claimant said he picked up a 150-pound roll of sail cloth and put it onto his shoulder when he felt extreme pain in his lower back and a sharp pop in his cervical spine. The claimant said it was a rush order for a customer and he was alone and had no help in picking up the roll. He dropped the roll, and felt numbness down his leg.

The claimant said he immediately reported the incident to Dick Ganser, the warehouse manager, who asked if he could walk off the pain. The claimant said Mr.

Ganser was skeptical of the injury and joked about it to another employee, but Mr. Ganser directed the claimant to go to MultiCare Physicians and Rehabilitation Group, where he was examined. The claimant said he stopped the examination at MultiCare because it was hurting him further. The claimant also said the medical report prepared by MultiCare regarding this examination was inaccurate because it does not say he hurt his cervical spine which he claimed at the time. The claimant said the report was also inaccurate as to his height and weight, and he did not say he had a moderate, constant dull ache but that he was in pain. MultiCare prescribed the claimant Vicodin and a muscle relaxant. The claimant then informed Mr. Ganser he would not be returning to work for a while.

The claimant said he saw Dr. Gary Richo of Valley Orthopedic Group on February 2, 2005, and was not cleared to return to restricted work on February 7, 2005. The claimant also testified as to other injuries he had sustained. He was involved in a motor vehicle accident in 1991 and sustained injuries to his back and cervical spine. He was involved in a motor vehicle accident in 1999 and injured his back and head. After this accident, he only treated occasionally with his treating physician, Dr. Joel Zaretzky, occasionally experienced back pain, and occasionally took pain medication. He said that prior to January 25, 2005 no pain radiated to his legs and his pain was normal and he never took Celebrex or Soma medication prior to January 25, 2005. After being cleared to return to work the claimant worked as an independent contractor in 2005 for Action Carpet Service, LLC. Since 2006 the claimant testified that he had been employed as a driver for a number of different firms. The claimant also testified he fell on stairs while

walking his dog in February or March 2008, hurt his coccyx and went to the St. Raphael Hospital emergency room, where he was given pain medication.

On cross-examination that claimant confirmed that Dr. Richo on February 2, 2005 did clear him to return to sedentary work on February 7, 2005. The claimant said he injured his back and cervical spine in the 1999 motor vehicle accident. Between 2001 and 2004 he treated with Dr. Zaretzky for chronic back and cervical spine pain every couple of months and could not recall telling Dr. Zaretzky he suffered severe pain if he stopped taking narcotic medications. He did tell Dr. Zaretzky of leg pain, and was given narcotic pain medication in December 2004, regularly taking narcotic pain medication prior to January 25, 2005. The claimant also said Dr. Zaretzky was "not professional" for not mentioning the January 25, 2005 incident in his February 3, 2005 report.

The trial commissioner noted that notwithstanding the testimony presented that the claimant's resume shows he received his GED on March 26, 1996. The documentation on the record also showed the claimant's employment application is dated June 10, 2003 and he began working for the employer on June 19, 2003, about 19 months prior to the date of injury.

The trial commissioner also heard live testimony from Mr. Ganser. The witness testified that he had been laid off from the respondent in 2009. The claimant told him at the time of the claimed injury that he felt back pain when he was bending over to cut shrink wrap on a pallet; therefore, he crossed out the words "lifting rolls" on the first report of injury. Mr. Ganser said the claimant did not tell him he had sustained a cervical spine injury, nor relate the narrative as to lifting the 150 pound sail roll, dropping it, and sustaining an injury. The supervisor investigation report completed by Mr. Ganser on the

day of injury shows the claimant alleged he pulled a back muscle when bending over to cut shrink wrap. Mr. Ganser also wrote a memo on February 8, 2005 to Mark Manuel, an adjuster for The Hartford, which stated the claimant was released to sedentary work for February 7, 2005, and that arrangements were made for meeting the medical restrictions. The claimant called at 6:45 a.m. on February 7 to say he was feeling worse, would see his doctor, and would be in touch regarding his status, but as of 11 a.m. on February 8, had left no word regarding when he can return to work.

The trial commissioner reviewed the medical evidence presented in the case. The MultiCare report of January 25, 2005 indicates the claimant reported a pop in his back when he bent down, and contains no record of a cervical spine injury. The trial commissioner also outlined the treatment notes of Dr. Zaretzky as follows:

a. On March 2, 1993 he gave the claimant permanent partial disability ratings of 10% to the back and 5% to the cervical spine from the 1991 motor vehicle accident.

b. On February 3, 2005 the claimant returned to him for ongoing lumbar pain.

c. On March 3, 2005 the claimant returned and said he fell walking his dog.

d. On April 4, 2005 the claimant returned and discussed the back injury, which he said occurred at work.

e. On June 2, 2005 the claimant returned because of lumbar pain, which was more severe when he was installing carpets.

f. On November 28, 2005, the claimant saw him in follow-up for the injuries sustained in the 1999 motor vehicle accident.

g. He regularly prescribed medication for the claimant's chronic back and cervical spine pain between 1999 and December 2004 for the injuries sustained in the 1991 and 1999 motor vehicle accidents. Prescriptions included, but were not limited to, Vicodin, Skelaxin, Soma, and Roxicodone.

The claimant also treated with Dr. Pardeep Sood, a pain management doctor. Dr. Sood's March 14, 2006 report showed the claimant said he had severe cervical spine and low back pain symptoms as a result of an accident he said occurred in 2001. He was advised he had chipped bones in the cervical spine and has suffered severe pain ever since. Dr. Sood also reviewed a September 30, 2005 MRI, performed at Griffin Hospital, he considered unremarkable. Dr. Sood did opine in a July 13, 2009 letter to claimant's counsel that the claimant's condition is causally related to the work injury of January 25, 2005 and the claimant continued to have a work capacity.

Dr. Patrick Mastroianni examined the claimant on March 8, 2011, and also called the September 30, 2005 lumbar MRI unremarkable. Dr. Mastroianni's report does not mention the 1991 and 1999 motor vehicle accidents, nor did it mention the narcotic pain medication that Dr. Zaretzky prescribed between 1999 and December 2004. He gave the claimant a 20% permanent partial disability rating of the lumbar spine and a 15% permanent partial disability impairment of the cervical spine, and recommended the claimant undergo anterior cervical discectomy and fusion surgery.

The trial commissioner also reviewed the deposition testimony of the respondent's medical examiner, Dr. Jarob Mushaweh. Dr. Mushaweh testified to the following:

1. The claimant told him that while at work he felt a pop in his back and did not mention the cervical spine.

2. The September 2005 lumbar MRI was normal. A subsequent lumbar MRI in March 2008 essentially was unchanged.

3. His initial report indicated the claimant was under-treated and needed to be medically worked up. He issued another report after being given additional medical reports that were not provided to him initially.

4. He does not believe the claimant has a permanency of the back due to the January 25, 2005 incident.

5. It is possible that the claimant sustained a cervical spine injury at work on January 25, 2005. If so, it would have been a temporary and self-limiting strain and no permanent partial disability rating would be assigned to it.

6. The claimant treated for the lumbar injury in December 2004 at which time he was receiving large doses of Percocet so he does not consider the January 25, 2005 incident to be an exacerbation. He would not consider any occurrence within a 6-week to 8-week period to be an exacerbation.

7. It is ludicrous to suggest that a foraminal narrowing present in 2005 could be related to the January 25, 2005 incident.

8. The August 25, 2005 cervical spine evaluation was normal.

9. The March 2007 motor vehicle accident played the biggest role in the claimant's current cervical spine condition.

10. If Dr. Sood is looking at the same facts, he cannot understand how Dr. Sood could come up with a different opinion regarding the role the motor vehicle accidents played in the claimant's condition.

11. Pain is a subjective complaint and a clinician prescribing narcotics must be careful and even skeptical rather than just increasing dosages.

Based on these subordinate facts, the trial commissioner concluded that the claimant was not credible or reliable and that "[h]is testimony is of no value." Conclusion, ¶ d. The trial commissioner found Mr. Ganser to be a credible and persuasive witness. The trial commissioner noted that before the January 25, 2005 incident, Dr. Zaretzky treated the claimant both with conservative measures and with narcotic medications on a consistent basis from 1999 through December 2004. The trial commissioner found Dr. Mushaweh was a persuasive witness that the claimant's lumbar back and cervical spine injuries were not exacerbated by the January 25, 2005 incident;

and the commissioner found Dr. Mushaweh's opinions more credible and persuasive than those of Dr. Sood and Dr. Mastroianni. The commissioner concluded the claimant did not sustain a compensable injury either to his cervical spine or his lumbar back in the course of his employment on January 25, 2005. The trial commissioner ordered the claim dismissed.

The claimant filed a Motion to Correct. Among the corrections sought were numerous new factual findings and a new conclusion that the claimant was a credible witness. The trial commissioner denied this motion in its entirety. The claimant then commenced the instant appeal.

The claimant raises a number of arguments on appeal. He argues that the trial commissioner failed to include material facts in the Finding and that the Motion to Correct should therefore be granted. He argues that the claimant should have been found a credible witness and Mr. Ganser should have been found not credible. He finally argues that the medical evidence of Dr. Mushaweh should not have been relied upon by the trial commissioner. We are not persuaded that any of these issues constitutes reversible error.

On appeal, we generally extend deference to the decisions made by the trial commissioner. "As with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Daniels v. Alander, 268 Conn. 320, 330 (2004). The Compensation Review Board cannot retry the facts of the case and may only overturn the findings of the trial commissioner if they are without evidentiary support, contrary to the law, or based on unreasonable or impermissible

factual inferences. Kish v. Nursing and Home Care, Inc., 248 Conn. 379 (1999) and Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). In addition, the burden of proof in a workers' compensation claim for benefits rests with the claimant. Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440 (2001).

Many of these issues presented by the claimant are essentially derivative of a single question: was the claimant's account of his injury credible? We note that the record shows there were no witnesses to the January 25, 2005 incident. We have lengthy and consistent legal precedent that when a trial commissioner does not find the claimant's account of injury credible under these circumstances the claim is dismissed, and we have upheld these dismissals. See Serrano v. Bridgeport Towers Apt., LLC, 5572-CRB-4-10-7 (September 29, 2011); Roberto v. Partyka Chevrolet, Inc., 5542 CRB-3-10-3 (February 8, 2011); Connors v. Stamford, 5484 CRB-7-09-7 (July 23, 2010); Baker v. Hug Excavating, Inc., 5443 CRB-7-09-3 (March 5, 2010); O'Leary v. Wal-Mart Associates, Inc., 5395 CRB-3-08-11 (October 27, 2009); Darby v. Hart Plumbing Company, 5325 CRB-2-08-2 (February 4, 2009) and Smith v. Salamander Designs, Ltd, 5205 CRB-1-07-3 (March 13, 2008).

We note that the claimant testified in person before the trial commissioner. It is black letter law that we may not revisit the findings of credibility a trial commissioner reaches after observing the testimony of a live witness.

> Credibility must be assessed . . . not by reading the cold printed record, but by observing firsthand the witness' conduct, demeanor and attitude . . . . An appellate court must defer to the trier of fact's assessment of credibility because [i]t is the [fact finder] . . . [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences therefrom . . . . As a practical matter, it is inappropriate to assess

> credibility without having watched a witness testify, because demeanor, conduct and other factors are not fully reflected in the cold, printed record.

Burton v. Mottolese, 267 Conn. 1, 40 (2003).

The trial commissioner in this matter had the opportunity to personally view the testimony of the claimant and Mr. Ganser. The commissioner determined Mr. Ganser was credible. This witness specifically refuted the claimant's narrative as to what the claimant told him he was doing when he was supposedly hurt, which was not consistent with the claimant's testimony. Moreover, the claimant said Mr. Ganser was skeptical as to circumstances of the alleged incident and Mr. Ganser's testimony corroborated this point. The trial commissioner in finding Mr. Ganser credible noted he no longer worked for the respondent and therefore, could reasonably be expected to be less likely to offer testimony beneficial to their cause than a current employee. We are struck by the factual similarity herein to two prior compensation review board decisions which support the outcome in this case.

In Brockenberry v. Thomas Deegan d/b/a Tom's Scrap Metal, Inc., 5429 CRB-5-09-2 (January 22, 2010), *aff'd,* 126 Conn. App. 902 (2011)(Per Curiam), the issues involved whether an employer-employee relationship existed and the respondent and the claimant offered diametrically opposing testimony to the commissioner. The trial commissioner found the respondent credible and dismissed the claim. We affirmed the commissioner on appeal.

> The trial commissioner in the present action specifically found the claimant "less than credible." This is dispositive of the appeal. We cannot revisit a trial commissioner's determination of credibility when witnesses present testimony for his consideration. Burton v. Mottolese, 267 Conn. 1, 40 (2003). While the claimant went to great lengths to prove that the respondent was not credible,

> this was not the critical issue in this case. The appellant in Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007) pursued this strategy, and we held that when two parties offer mutually inconsistent testimony, it is the commissioner's prerogative to find one narrative credible. Even if the claimant proved the respondent was less than credible, this would not have established the existence of an employer-employee relationship.

Id.

The trial commissioner in this matter found the claimant's testimony was "of no value." Conclusion, ¶ d. We find Brockenberry exactly on point. The claimant argues that for various reasons Mr. Ganser should have been deemed not credible by the trial commissioner.[2] However, as we pointed out in Brockenberry, this would not have caused the outcome to have changed. As we held in Toroveci v. Globe Tool & Metal Stamping Co., Inc., 5253 CRB-6-07-7 (July 22, 2008), when "neither party is credible that as a matter of law the claim should be dismissed." Id.

In Toroveci, supra, the trial commissioner did find that both the claimant and the respondent's witnesses were unworthy of belief. We *cited* Warren v. Federal Express Corp., 4163 CRB-2-99-12 (February 27, 2001) for this proposition.

> . . . the parties do not start from a precisely equal position, because the claimant has the burden of proving that he has sustained a compensable injury, that he has a disability, or (as in this case) that his acknowledged disability was caused by an accepted compensable injury. Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142, 151 (1972); Gibbons v. UTC/Pratt & Whitney, 4000 CRB-8-99-3 (April 12, 2000). To illustrate the effect of this burden, if a trial commissioner chose to believe none of the witnesses in a given case, and found all of the documentary evidence to be untrustworthy, the employer would essentially prevail by default.

[2] The claimant argues that he "proved" this witness "fabricated evidence." Claimant's Brief, p. 43. The trial commissioner was not persuaded by this argument. This is a factual conclusion that we cannot disturb on appeal. Fair v. People's Savings Bank, 207 Conn. 535 (1988).

Therefore, in light of the claimant's inability to persuade the trial commissioner he was a credible witness, it would have accomplished nothing to have proven that Mr. Ganser was not credible. We find this principle addresses the gravamen of the corrections sought by the claimant.

The trial commissioner is not required to grant corrections that essentially consist of the appellant's view of the facts. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003) and Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006). When a trial commissioner denies a Motion to Correct, we may properly infer that the commissioner did not find the evidence submitted probative or credible. Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008). A trial commissioner also is not required to offer a detailed explanation as to why he or she chose not to rely on certain evidence presented to the tribunal. See Biehn v. Bridgeport, 5232 CRB-4-07-6 (September 11, 2008), *citing* Cable v. Bic Corp., 270 Conn. 433, 440 (2004). We therefore believe this precedent addresses the denial of the Motion to Correct.

The claimant finally argues the trial commissioner erred by finding Dr. Mushaweh's testimony more credible and persuasive than that of the claimant's treating physicians. Counsel for the claimant characterized this testimony as "wishy-washy" and "all over the place" in oral argument before this panel. Notwithstanding the claimant's dissatisfaction with this testimony, we do not find reliance on this witness constitutes reversible error. As we held in Champagne v. O. Z. Gedney, 4425 CRB-5-01-8 (May 16, 2002), a trial commissioner has broad latitude in determining what medical testimony he or she finds probative and reliable.

> In matters such as these, it was up to the trial commissioner to determine which (if any) of the physicians who examined the claimant provided the most reliable testimony or documentary evidence. Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999); Warren v. Federal Express Corp., 4163 CRB-2-99-12 (Feb. 27, 2001). In doing so, the trier was entitled to accept all, part or none of any given doctor's medical opinion. Tartaglino, supra., Donaldson v. Duhaime, 4213 CRB-6-00-3 (April 30, 2001). This board does not have the power to disturb such a finding on appeal, unless the facts found are without any support in the evidence. Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988); Warren, supra.

The trial commissioner herein cited the treatment notes of Dr. Zaretzky as documenting a prior noncompensable back and cervical spine injury to the claimant, the ongoing provision of pain medication response to this injury, and an inconsistent narrative in early 2005 as to the source of his current condition. When one considers the commissioner's assessment of the claimant's credibility one is left concluding we are compelled to follow the precedent in Abbotts v. Pace Motor Lines, Inc., 4974 CRB-4-05-7 (July 28, 2006), *aff'd*, 106 Conn. App. 436 (2008), *cert. denied*, 287 Conn. 910 (2008) and Do v. Danaher Tool Group, 5029 CRB-6-05-12 (November 28, 2006). Those cases stand for the proposition that the trial commissioner could properly disregard even uncontroverted expert testimony when he or she found the claimant lacked credibility.

Based on the precedent in Abbotts and Do the trial commissioner could reasonably determine that neither Dr. Mastroianni nor Dr. Sood were reliable witnesses. Since their opinion as to the nexus between the claimant's condition and the alleged January 25, 2005 incident was reliant on a narrative from the claimant that the trial commissioner rejected, the trial commissioner could properly disregard even uncontroverted expert testimony. Therefore, even were we to conclude that Dr. Mushaweh's opinion was too equivocal as to be relied upon, see DiNuzzo v. Dan Perkins

Chevrolet Geo, Inc., 294 Conn. 132 (2009), we would not find such reliance by the trial commissioner to constitute reversible error.

The claimant places great emphasis on a statement Dr. Mushaweh made at his deposition wherein the witnesses allegedly opined in the claimant's favor on the issue of causation. Claimant's Brief, p. 28. The claimant argues that the trial commissioner should have relied solely on this exchange in rendering his decision.

> Q: What you are saying today, Doctor, is that based upon reasonable medical probability that Mr. Vaughan did suffer a lumbar and cervical strain as a result of his workplace injury of January 25, 2005?
>
> Mr. Aiken: Object to the form of the question. I think it mischaracterizes the doctor's testimony, but you can answer, Doctor.
>
> A: I'm saying based on his--the patients history, yes, he probably or possibility had sustained a strain to his cervical, as well as the lumbar spine.

Respondent's Exhibit 4, pp. 37-38.

We note some weaknesses in the claimant's arguments herein. First, the premise of the question presupposes the presence of a workplace injury which was not a conclusion reached by the trial commissioner, who found the claimant not credible. As a result, Abbotts, supra, argues the medical expert's testimony on causation was not decisive. Moreover, our review of the balance of Dr. Mushaweh's deposition testimony indicates it was not supportive of the claimant's position. "We have held that it is within the discretion of the trial commissioner to accept some, but not all, of a physician's opinion." See Williams v. Bantam Supply Co., 5132 CRB-5-06-9 (August 30, 2007) and Lopez v. Lowe's Home Improvement Center, 4922 CRB-6-05-3 (March 29, 2006). We also note that the trial commissioner must consider "the entire substance of testimony"

when considering a medical opinion. See O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 817-818 (1999) and Weir v. Transportation North Haven, 5226 CRB-1-07-5 (April 16, 2008). In considering the totality of Dr. Mushaweh's testimony, we believe the trial commissioner could reasonably conclude it did not support the claimant's position.

Prior to being asked the question which the claimant believes is definitive proof of causation the witness was asked a number of questions about the claimant's prior medical examinations. Dr. Mushaweh was first asked as to the nature of the claimant's alleged January 25, 2005 injury and stated as follows.

> Given the records, and of course in retrospect to that day the MRI scan he had to his lumbar spine, I would say if he sustained an injury it would be probably temporary and self-limited lumbar strain to the lumbar spine.

Id., p.16.

Dr. Mushaweh also expressed his opinion that based on the MRI scans done sometime after the alleged accident, "I couldn't tell if those findings were actually causally related to that injury of not." Id., p. 19. He continued that he believed the findings of the cervical spine "are probably unrelated to his incident on December--I mean January 25, 2005." Id. The witness testified consistently that the alleged accident to the claimant "played very little if any affect to his cervical spine." Id., p. 23.

The witness also clearly disagreed with assessing a permanency rating to the claimant as in his opinion "you really aren't supposed to render permanency purely on the basis of subjective complaints." Id., p. 34. Dr. Mushaweh characterized the claimant's neurological exams as "actually normal." Id. As for the claimant's foraminal narrowing identified in 2005 Dr. Mushaweh said it was "it's ludicrous to suggest even

that it was related to the January 25, 2005 incident." Id., p. 37. The witness reiterated his position that there was no objective substantiation for the claimant's "so-called radicular pain" as that "no one could really establish a reason" for the condition. Id., p. 39. The witness also opined that what occurred to the claimant on January 25, 2005 was not an "exacerbation" as "he presented approximately one month earlier with similar complaints" and "if you have the condition one month earlier, how can you exacerbate it four weeks later?" Id., p. 40. The witness pointed out that prior to the alleged date of injury that the claimant was "on Percocet, 10-500, that's a fairly large dose of Percocet, and that was in August of 2004, and I suspect that he was continued leading up to the incident in January of 2005." Id., p. 42.

The trial commissioner concluded that "Dr. Mushaweh's deposition testimony is persuasive concerning the claimant's lumbar back and cervical spine injuries not being exacerbated by the January 25, 2005 incident." Conclusion, ¶ g. We find that this conclusion was supported by medical evidence the trial commissioner found probative and the trial commissioner's conclusion was a reasonable one based on the totality of the evidence.

In Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010), the Supreme Court held it was a trial commissioner's prerogative to "consider medical evidence *along with all other evidence* to determine whether an injury is related to the employment." Id., at 595. (Emphasis in original.) The trial commissioner did not find the claimant credible and was not persuaded by the evidence he presented. "If the trier is not persuaded by the claimant's evidence, there is nothing that this board can do to override that decision on appeal." Wierzbicki v. Federal Reserve Bank of Boston, 4147 CRB-1-99-11 (December

19, 2000), *appeal dismissed*, A.C. 21533 (2001). We are bound by the precedent in Wiezbicki to affirm the Finding and Dismissal.

Commissioners Jodi Murray Gregg and Daniel E. Dilzer concur in this opinion.