CASE NO. 5714 CRB-8-11-12 : COMPENSATION REVIEW BOARD
CLAIM NO. 800172710

ROBERT TANGUAY : WORKERS' COMPENSATION
CLAIMANT-APPELLEE : COMMISSION

v. : JANUARY 8, 2013

RENT-A-CENTER, INCORPORATED
EMPLOYER

and

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.
THIRD-PARTY ADMINISTRATOR
RESPONDENTS-APPELLANTS

APPEARANCES

The claimant was represented by Matthew P. Lascelle, Esq., The Dodd Law Firm, L.L.C., 1781 Highland Avenue, Suite 105, Cheshire, CT 06410.

The respondents were represented by Bridget McCormack Ciarlo, Esq., Montstream & May, L.L.P., Salmon Brook Corporate Park, 655 Winding Brook Drive, P.O. Box 1087, Glastonbury, CT 06033-6087.

This Petition for Review from the December 14, 2011 Ruling on Motion to Preclude of the Commissioner acting for the Eighth District was heard on June 22, 2012 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Jodi Murray Gregg and Ernie R. Walker.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have petitioned for review from the December 14, 2011 Ruling on Motion to Preclude of the Commissioner acting for the Eighth District. We find error and accordingly reverse the decision of the trial commissioner.[1]

At trial, the parties stipulated to the following facts. At all relevant times, the claimant was employed by the respondent Rent-A-Center. On February 17, 2011, a First Report of Injury was submitted asserting that the claimant sustained an injury to his right knee on or about January 14, 2011 while helping to push a vehicle which had gotten stuck in the snow. The claimant began to feel pain in that knee a few days after the incident. The respondents filed a Form 43 dated February 23, 2011 disclaiming an injury to the claimant's left knee and indicating that the claimant suffered from a pre-existing condition and had provided no medical documentation which would link the claimed injury to the alleged workplace incident.[2] On April 5, 2011, the claimant filed with the Workers' Compensation Commission a Form 30C dated March 30, 2011 claiming an injury to his right knee and back on or about January 14, 2011.[3] On July 11, 2011, the respondents filed a second Form 43 dated July 8, 2011 contesting an injury to the claimant's right knee and again asserting the claimant suffered from a pre-existing condition and had provided no medical documentation in support of his claim.

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[1] We note that a motion for extension of time was granted during the pendency of this appeal.

[2] "A form 43 is a disclaimer that notifies a claimant who seeks workers' compensation benefits that the employer intends to contest liability to pay compensation. If an employer fails timely to file a form 43, a claimant may file a motion to preclude the employer from contesting the compensability of his claim." Mehan v. Stamford, 127 Conn. App. 619, 623 n.6, *cert. denied*, 301 Conn. 911 (2011).

[3] "A form 30C is the document prescribed by the workers' compensation commission to be used when filing a notice of claim pursuant to the Workers' Compensation Act, General Statutes § 31-275 et seq." Mehan v. Stamford, 127 Conn. App. 619, 622 n.4, *cert. denied*, 301 Conn. 911 (2011).

The respondents did not pay any medical or indemnity benefits in association with this claim. The claimant provided a prima facie medical report establishing causation for a right knee injury which occurred on January 14, 2011. On June 30, 2011, the claimant filed a Motion to Preclude. On July 11, 2011, the respondents filed a Motion in Opposition to the Claimant's Motion to Preclude along with a Memorandum of Law. The respondents contend that the reference in their Form 43 of February 23, 2011 to the claimant's left knee instead of the right knee occurred as a result of a clerical error which did not prejudice the claimant. Moreover, the respondents argue that their Form 43 complies with the provisions of § 31-294c(b) C.G.S.[4]

In his ruling, the trial commissioner noted that if the respondents had properly investigated the claim, "it would have been apparent that the reason the Claimant had

[4] Section 31-294c(b) C.G.S. (Rev. to 2011) states: "Whenever liability to pay compensation is contested by the employer, he shall file with the commissioner, on or before the twenty-eighth day after he has received a written notice of claim, a notice in accord with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested. The employer shall send a copy of the notice to the employee in accordance with section 31-321. If the employer or his legal representative fails to file the notice contesting liability on or before the twenty-eighth day after he has received the written notice of claim, the employer shall commence payment of compensation for such injury or death on or before the twenty-eighth day after he has received the written notice of claim, but the employer may contest the employee's right to receive compensation on any grounds or the extent of his disability within one year from the receipt of the written notice of claim, provided the employer shall not be required to commence payment of compensation when the written notice of claim has not been properly served in accordance with section 31-321 or when the written notice of claim fails to include a warning that (1) the employer, if he has commenced payment for the alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim, shall be precluded from contesting liability unless a notice contesting liability is filed within one year from the receipt of the written notice of claim, and (2) the employer shall be conclusively presumed to have accepted the compensability of the alleged injury or death unless the employer either files a notice contesting liability on or before the twenty-eighth day after receiving a written notice of claim or commences payment for the alleged injury or death on or before such twenty-eighth day. An employer shall be entitled, if he prevails, to reimbursement from the claimant of any compensation paid by the employer on and after the date the commissioner receives written notice from the employer or his legal representative, in accordance with the form prescribed by the chairman of the Workers' Compensation Commission, stating that the right to compensation is contested. Notwithstanding the provisions of this subsection, an employer who fails to contest liability for an alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim and who fails to commence payment for the alleged injury or death on or before such twenty-eighth day, shall be conclusively presumed to have accepted the compensability of the alleged injury or death."

complained of knee pain prior to reporting the injury was because thirty days had elapsed since the incident before the Claimant made the First Report of Injury." December 14, 2011 Ruling on Motion to Preclude. The trial commissioner also indicated that when the respondents received the Form 30C and realized their initial Form 43 was defective, "they had twenty-eight days to correct the error or to commence payment while they investigated the claim." Id. However, "[t]he Respondents did not correct their error and instead waited until July 8, 2011, three months after receipt of the Form 30C and not until after the Claimant filed a Motion to Preclude, to put the Claimant on notice of their intent to contest the right knee claim." Id. As such, having determined that the respondents' first Form 43 "did not substantially comply with the strictures of § 31-294c(b)," id., given that the form did not cite the correct body part and the form prescribed by the Chairman of the Workers' Compensation Commission for contesting claims specifically requires that the body part be listed, the trial commissioner granted the claimant's Motion to Preclude.

The respondents filed a Motion to Correct which was denied in its entirety, and this appeal followed. On appeal, the respondents contend that the trial commissioner's decision to grant the claimant's Motion to Preclude constituted error "because the respondents filed a timely and legally sufficient Form 43 … which contained a clerical error but no substantive deficiency." Appellants' Brief, p. 2. The respondents also claim as error the trial commissioner's denial of their Motion to Correct.

We begin our analysis with a recitation of the standard of deference we are obliged to apply to a trial commissioner's findings and legal conclusions. "The trial commissioner's factual findings and conclusions must stand unless they are without

evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s 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." Burton v. Mottolese, 267 Conn. 1, 54 (2003). "This presumption, however, can be challenged by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

In the matter at bar, the respondents challenge the trial commissioner's determination that the respondents' Form 43 was insufficient to put the claimant on notice that the respondents were contesting his claim because it listed the left rather than the right knee. The respondents assert that the Form 43 satisfied the provisions of § 31-294c(b) C.G.S., which, as previously mentioned herein, requires that a disclaimer be "in accord with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested."[5] § 31-294c(b) C.G.S. The respondents point out that their Form 43 "indicated that the claimant's right to compensation was being contested, and set forth the name of the claimant, the name of the employer, the date of the alleged injury (January 14, 2011), the body part (knee), and the grounds upon which the right to compensation was being contested…." Appellants' Brief, p. 7. Thus,

[5] See footnote 4, supra.

because the incorrect knee reference amounted to little more than a clerical error, the trier, in granting the claimant's motion, applied the law governing preclusion in a "hypertechnical" manner. Id., at 9.

It is well-settled that the determination as to whether a claimant's notice of claim "'is sufficient to allow the employer to make a timely investigation of the claim' is a question of law, not of fact." Chase v. State, 45 Conn. App. 499, 508 (1997), *quoting* Pereira v. State, 228 Conn. 535, 542-43 n.8 (1994). As such, "[i]t follows that whether a Form 43 is sufficient to communicate a respondent's intent to contest liability for a specific element of a claimant's case is also a question of law rather than fact." Duglenski v. Waterbury, 4913 CRB-5-05-2 (January 18, 2006), *dismissed for lack of final judgment/lack of jurisdiction*, A.C. 27333 (June 8, 2006). When evaluating a Form 43, "the sufficiency of the notice under the statute must be judged not by the technical meaning which a court might attach to it, nor by a meaning the defendant subsequently discloses at the hearing, but rather by the criterion of whether it reveals to the claimant specific substantive grounds for the contest." Menzies v. Fisher, 165 Conn. 338, 345 (1973). However, the disclaimer "need not be expressed with the technical precision of a pleading, but need only reveal the specific grounds on which the compensability is contested." Russell v. Mystic Seaport Museum, Inc., 252 Conn. 596, 621 (2000), *citing* Menzies, supra, at 347-348.

Section § 31-294c(b) C.G.S. provides that any employer who fails to either contest liability or commence payment for an alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim shall be conclusively presumed to have accepted the compensability of the alleged injury or death. As such, it

is clear that the consequences of failing to file a disclaimer, or filing a disclaimer which is subsequently deemed fatally defective, are significant. In 1967, the "notice" statute, then codified at § 31-297(b) C.G.S., was amended by legislature in order to:

> correct some of the glaring inequities and inadequacies of the Workmen's Compensation Act [such as] the needless, prejudicial delays in the proceedings before the commissioners, delays by employers or insurers in the payment of benefits, lack of knowledge on the part of employees that they were entitled to benefits and the general inequality of resources available to claimants with bona fide claims.

Menzies, supra, at 342.

The amended statute:

> [provided] that within 20 days after written notice of claim is made, the employer must file a statement of intention to contest and the basis upon which he will contest. If he fails to file this notice within the time stated or the notice is defective, the employer cannot thereafter contest either liability or extent of liability.

Id., at 343.

In reviewing the amended statute, the Menzies court remarked that "[t]he object which the legislature sought to accomplish is plain. Section 31-297(b) was amended to ensure (1) that employers would bear the burden of investigating a claim promptly and (2) that employees would be timely apprised of the specific reasons for the denial of their claim." Id.

Of somewhat more recent vintage, in Harpaz v. Laidlaw Transit, Inc., 286 Conn. 102 (2008), our Supreme Court embarked on a lengthy review of the various amendments to the notice statute since Menzies and concluded that Public Act 93-228, which made changes to the circumstances under which an employee can establish the conclusive presumption, "did not intend to change the status quo for employers that had not

complied with the statutory time limits for either commencing payment or contesting liability of the claim." Donahue v. Veridiem, Inc., 291 Conn. 537, 544-545 (2009). Rather, the purpose of the legislation was "to remedy a problem affecting employers that had complied with the statutory limitations by timely commencing payment of a claim…." Id., at 544. The Harpaz court "[concluded] that, under § 31-294c (b), if an employer neither timely pays nor timely contests liability, the conclusive presumption of compensability attaches and the employer is barred from contesting the employee's right to receive compensation on any ground or the extent of the employee's disability. Such a penalty is harsh, but it reflects a just and rational result." Harpaz, supra, at 130. See also Donahue, supra, at 544-545.

It should be noted, however, that in Harpaz, the Supreme Court referenced its earlier decision in Adzima v. UAC/Norden Division, 177 Conn. 107 (1979) for the proposition that "[t]he statute clearly speaks to a threshold failure on the employer's part to contest 'liability'…." Harpaz, supra, at 115, *quoting* Adzima, supra, at 113. Moreover, this board has previously held that neither the Workers' Compensation Act nor applicable legal precedent present a barrier to an employer seeking to file a "pre-emptive" disclaimer of liability if it appears that a workers' compensation claim is imminent. Lamar v. Boehringer Ingelheim Corporation, 5588 CRB-7-10-9 (August 25, 2011), *aff'd*, 138 Conn. App. 826 (2012), *cert. denied*, S.C. 120220. In Elmassri v. Vinco, Inc., 5 Conn. Workers' Comp. Rev. Op. 96, 584 CRD-7-87 (June 2, 1988), we remarked that "[t]o hold that only those employer § 31-297(b) contests issued after a perfect employee § 31-294 notice are valid to bar the irrebuttable presumption would be a tortured reading of the statute and truly elevate form over substance." Id., at 97.

There have been a number of instances when this board has reversed a trier's decision to grant a Motion to Preclude which was predicated on a technical deficiency. For instance, in West v. Heitkamp, Inc., 4587 CRB-5-02-11 (October 27, 2003), *appeal dismissed for lack of final judgment*, A.C. 24805 (February 11, 2004), the respondents filed a timely disclaimer which contained the necessary statutory elements but on which the preparer had typed "N/A" in the space reserved for the answer to the question "Occupational Illness or Repetitive Trauma?" Holding that the language of the disclaimer was sufficient to place the employee on notice that the respondents were contesting the relationship between the claimant's alleged heart injury and his employment, we went on to observe that "[w]here the commonsense interpretation of a disclaimer reveals concrete reasons for contesting a claim, it would be inappropriate to preclude an employer or insurer from maintaining its defense based on the absence of two or three "magic words" in the Form 43." Id.

Similarly, in Lamar, supra, we affirmed the trier's dismissal of a Motion to Preclude brought by a claimant asserting that the respondents' disclaimer was fatally defective because it merely recited as the grounds for contest that the claimant did not suffer an injury which "arose out of or in the course of his employment." The disclaimer also failed to indicate that the claimant was bringing a repetitive trauma claim. In assessing the merits of the appeal, we referred to our Appellate Court's decision in Tovish v. Gerber Electronics, 19 Conn. App. 273 (1989), *cert. denied*, 212 Conn. 814 (1989), wherein the court set forth the five elements which a claimant must prove in order to establish a prima facie claim.[6] Noting that the language in the disclaimer, in addition

[6] The Tovish court articulated these elements as follows: "(1) the workers' compensation commission has jurisdiction over the claim; (2) the claim has been timely brought by filing a notice of claim within the

to being "a virtual paraphrase of the title of § 31-275(1) C.G.S.," Lamar, supra, also asserted the defense that the claimant had not satisfied the fifth element of a prima facie claim as propounded in Tovish, we reiterated that because "preclusion is a 'harsh remedy,' this commission is loathe to order it under circumstances where the underlying basis for preclusion appears to be allegations of technical deficiencies and not substantive deficiencies." (Internal citation omitted). Lamar, supra, *quoting* West, supra. The Appellate Court concurred, remarking, relative to the disclaimer's failure to reference the claimant's repetitive trauma claim, "that such a 'technical deficiency' did not prejudice the plaintiff and that the 'harsh remedy' of preclusion is not warranted." Lamar v. Boehringer Ingelheim Corp., 138 Conn. App. 826, 840 n. 13 (2012), *cert. denied*, S.C. 120220. The Appellate Court also concluded that "[b]ecause this form 43 alerted the plaintiff to the specific substantive ground on which the defendant contested compensability, we conclude that the form 43 was sufficient."[7] Id.

Finally, in Walter v. State, 63 Conn. App. 1 (2001), *cert. denied*, 256 Conn. 930 (2001), our Appellate Court affirmed, inter alia, this board's reversal of the trier's decision to grant a Motion to Preclude predicated on the respondent's failure to reference

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requisite time period or by coming within one of the exceptions thereto; (3) the claimant is a qualified claimant under the act; (4) the respondent is a covered employer under the act; and (5) the claimant has suffered a personal injury as defined by the act, arising out of and in the course of employment." Tovish v. Gerber Electronics, 19 Conn. App. 273, 275-276 (1989), *cert. denied*, 212 Conn. 814 (1989), *citing* J. Asselin, Connecticut Workers' Compensation Practice Manual (1985) § 1.

[7] The Lamar claimant contended, inter alia, that the Supreme Court's analysis in Russell v. Mystic Seaport Museum, 252 Conn. 596 (2000), wherein the court reversed the trier's dismissal of a Motion to Preclude in a repetitive trauma claim, was dispositive of his appeal. The Appellate Court disagreed, observing that Russell was distinguishable given that in Russell, the Supreme Court had concluded that the respondents' multiple disclaimers were insufficient because they treated the claim as an accidental injury occurring on a specific date rather than a repetitive trauma injury, whereas the date listed on the Lamar respondents' disclaimer fell within the time period set forth in the claimant's notice of claim. It should also be noted that the Russell court stated that the respondents' disclaimers were insufficient to defeat a Motion to Preclude because "none of the disclaimers provided the plaintiff with the 'specific substantive grounds on which compensability [would] be contested.'" Id., at 621, *quoting* Pereira, supra, at 541.

the proper claimants in its disclaimer of liability.[8] The claimants, the widow and daughter of the decedent, had filed a claim for death benefits which the respondent disclaimed via a notice of contest sent to the decedent's last home address. The claimants asserted that the respondent's failure to send the notice of contest directly to them violated the provisions of §§ 31-321 C.G.S. and 31-297(b) C.G.S. [now § 31-294c(b) C.G.S.].[9] The court disagreed, noting that "[n]either § 31-297(b) nor § 31-321 expressly provides for notice to claimants who are not employees. Both statutes refer to notice requirements applicable to employers, employees or the commissioner." Id., at 7. The court rejected outright the respondent's contention that the lack of an "express" requirement that a notice of the disclaimer be sent to claimants who are not employees signified that there was no requirement whatsoever for the respondents to have sent the dependent claimants notice of the filing of their disclaimer. However, the court also observed that in accordance with its holding in Vachon v. General Dynamics Corp., 29 Conn. App. 654 (1992), *cert. denied*, 224 Conn. 927 (1993), motions to preclude are not available in situations when a respondent timely files its notice of contest with the Workers' Compensation Commission but does not send its notice of contest to the employee until after the statutory twenty-eight day time period has expired.

The Walter court determined that the claimants were entitled to "adequate" notice, which it defined as notice which "fairly and sufficiently apprises those who may be affected of the nature and character of the action proposed, so as to make possible

[8] The trial commissioner granted the Motion to Preclude after granting the respondent's motion to open the record following a hearing at which the respondent had failed to appear due to lack of notice.

[9] Section 31-321 C.G.S. (Rev. to 1989) states: "Unless otherwise specifically provided, or unless the circumstances of the case or the rules of the commission direct otherwise, any notice required under this chapter to be served upon an employer, employee or commissioner shall be by written or printed notice, service personally or by registered or certified mail addressed to the person upon whom it is to be served at his last-known residence or place of business. Notices in [sic] behalf of a minor shall be given by or to his parent or guardian or, if there is no parent or guardian, then by or to such minor."

intelligent preparation for participation in the hearing." (Internal quotation marks omitted.) Id., at 10, *citing* Woodburn v. Conservation Commission, 37 Conn. App. 166, 177, *cert. denied*, 233 Conn. 906 (1995). The court concluded that "[t]here is little doubt that the notice provided to the plaintiffs of the disclaimer of liability was adequate," id., at 11, and the notice "fell short only with respect to the statutory requirement that the name of the claimant be included in the form 43, which requirement was certainly not clear from the form 43 itself."[10] Id.

Turning to the matter at bar, as previously discussed herein, the disclaimer filed by the instant respondents comported with the essential elements as articulated in the provisions of § 31-294c(b) C.G.S., which requires that the notice state "that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested." § 31-294c(b) C.G.S. However, because the disclaimer erroneously cited an injury to the wrong knee, the notice was not technically "in accord with [the] form prescribed by the chairman of the Workers' Compensation Commission," which in addition to the statutory elements also requires that the injured body part be stated. Nevertheless, in light of the general tenor of the precedent discussed above, we simply do not concur with the trier that the defect in the respondents' disclaimer constituted a sufficiently substantive error such that the granting of a Motion to Preclude was warranted.

In support of their appeal, the respondents have also asserted that the claimant neither demonstrated nor claimed that he suffered some prejudice as a result of the defective Form 43. We hasten to point out that unlike 31-294c(c) C.G.S., which

[10] The court noted that the Form 43 then in use did not include a block for the claimant's name.

specifically requires a showing of prejudice on the part of the respondent in order to defeat a defective notice of claim, § 31-294c(b) C.G.S. includes no such requirement.[11] That being said, we are inclined to agree with the respondents. Had the claimant initially filed a claim for multiple injuries, or even for both knees, then the trier might have reasonably inferred that the claimant could have been confused by the inaccuracy in the respondents' denial of his claim. But the claimant's initial claim was for an injury to one knee, and given that the other particulars of the disclaimer were correct, the persuasiveness of any argument raised by the claimant alleging he was confused by the disclaimer to the point of prejudice would be doubtful at best. This is particularly so given that prior to the filing of the Motion to Preclude, the compensability of the correct, i.e., right, knee was discussed at two hearings and two depositions.

In Walter, supra, our Appellate Court examined the issue of prejudice, concluding that the claimants had not demonstrated they were prejudiced by the allegedly defective notice of contest, particularly as they were obviously in receipt of the notice when they filed their Motion to Preclude. The court therefore stated that under the facts of the matter, "we believe that it would be … inequitable to rule that § 31-297(b) was not satisfied by the state in this case." Id., at 11. Given the facts of the matter at bar, we are

[11] Section 31-294c(c) C.G.S. (Rev. to 2011) states: "Failure to provide a notice of claim under subsection (a) of this section shall not bar maintenance of the proceedings if there has been a hearing or a written request for a hearing or an assignment for a hearing within a one-year period from the date of the accident or within a three-year period from the first manifestation of a symptom of the occupational disease, as the case may be, or if a voluntary agreement has been submitted within the applicable period, or if within the applicable period an employee has been furnished, for the injury with respect to which compensation is claimed, with medical or surgical care as provided in section 31-294d. *No defect or inaccuracy of notice of claim shall bar maintenance of proceedings unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice.* Upon satisfactory showing of ignorance and prejudice, the employer shall receive allowance to the extent of the prejudice." (Emphasis added.)

similarly persuaded that allowing the claimant to prevail on his Motion to Preclude would likewise constitute an inequity.[12]

Finally, the respondents contend that the trier's denial of their Motion to Correct constituted error. Generally speaking, when "a Motion to Correct involves requested factual findings which were disputed by the parties, which involved the credibility of the evidence, or which would not affect the outcome of the case, we would not find any error in the denial of such a Motion to Correct." Robare v. Robert Baker Companies, 4328 CRB-1-00-12 (January 2, 2002). However, given that in the instant matter we have determined that the trial commissioner misapplied the law governing preclusion, insofar as the trier's denial of the proposed corrections was inconsistent with the analysis presented herein, the denial constituted error.

Having found error, the December 14, 2011 Ruling on Motion to Preclude of the Commissioner acting for the Eighth District is hereby reversed and remanded to the trial commissioner for additional proceedings consistent with this opinion.

Commissioners Jodi Murray Gregg and Ernie R. Walker concur in this opinion.

[12] It should be noted that in Walter v. State, 63 Conn. App. 1 (2001), *cert. denied*, 256 Conn. 930 (2001), the Appellate Court expressly rejected the application of the doctrine of "substantial compliance" in its assessment of the sufficiency of the respondent's notice of contest. The court differentiated between the analysis required in reviewing the sufficiency of a notice of claim as opposed to a notice of contest, stating that, "[i]n a notice of claim, the employee or an employee's dependent, an intended beneficiary of the act, is seeking compliance with notice requirements. In a notice of contest, it is the employer, not an intended beneficiary of the act, who is seeking compliance with notice requirements. Thus, the justification for liberally construing the notice provision to serve one who is not an intended beneficiary of the act would not apply." Id., at 12 n. 4.