CASE NO. 5717 CRB-7-12-1 CLAIM NO. 700139734	: COMPENSATION REVIEW BOARD
BRYON HODGES CLAIMANT-APPELLEE	: WORKERS' COMPENSATION COMMISSION
v.	: JANUARY 4, 2013
FEDERAL EXPRESS CORPORATION EMPLOYER	
and	
SEDGWICK CMS THIRD PARTY ADMINISTRATOR RESPONDENTS-APPELLANTS	

APPEARANCES:

The claimant was represented by John B. Cantarella, Esq., Law Offices of John B. Cantarella, LLC, 999 Asylum Avenue, 2nd Floor, Hartford, CT 06105.

The respondents were represented by Matthias J. DeAngelo, Esq., The Cotter Law Firm, LLC, 2563 Main Street, Stratford, CT 06615.

This Petition for Review from the December 19, 2011 Finding and Award of the Commissioner acting for the Fourth District was heard June 22, 2012 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Jodi Murray Gregg and Daniel E. Dilzer.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have appealed from a Finding and Award wherein the trial commissioner concluded the claimant fulfilled the statutory obligations of § 31-294c C.G.S. to inform the respondent the claimant would be seeking benefits under Chapter 568. The respondent argues as the claimant did not file a Form 30C within one year of the date of injury his claim was time barred. The trial commissioner concluded the totality of the circumstances, including being brought to a medical facility by his employer immediately after the incident, satisfied the exceptions to formal notice under the statute. On appeal, we affirm the trial commissioner's decision. The record herein, which included a pre-emptive Form 43 filed by the respondent, clearly reflects the respondent was aware the claimant had been injured while working and would be seeking benefits for such injury.

The trial commissioner found the following facts at the conclusion of the formal hearing. The claimant testified that he was employed by Federal Express as a courier and delivered packages every day. The job required he be able to lift a minimum of 75 pounds. He was injured on April 25, 2005, while lifting a bag of letters, which caused a sharp pain in his back that went down the left leg. He immediately called the dispatcher and was told to go back to the station. He attempted one more stop but couldn't get out of the truck, and then proceeded to the station. A manager told him to go to the hospital because he could barely walk and a co-worker drove him to the hospital around 6 p.m. or 7 p.m. He was helped to the car because he could not walk on his own. At the hospital he was placed into a wheelchair, admitted, and ended up staying for five days, eventually learning he had a herniated disc.

As a result of the claimant's herniated disc he underwent a lumbar disc excision at L5-S1 performed by Dr. C. Cory Rosenstein on May 17, 2005. The claimant eventually underwent a second discectomy in 2007 performed by Dr. Javid Shahid, and a fusion procedure in January 2010 performed by Dr. Armory Fiore.

A first report of injury was filed on April 27, 2005 by Carol Gamblin, a claims specialist. It indicates that Bryon Hodges had an injury on April 25, 2005 in Norwalk, and has a decreased range of motion in the upper back. The name and address of the employer was given as Federal Express Corporation, 4 Meadow Street, Norwalk, CT 06854. On June 3, 2005, an attorney representing the claimant sent written correspondence both to the Commission and to Sedgwick Claims Management Corp. Inc., the respondent's claims manager. The June 3, 2005 letter to the Commission indicated the claimant was represented by counsel and listed the employer, date, place and type of injury, and noted that all future correspondence, including voluntary agreements and various correspondence, should be sent to counsel's office. The June 3, 2005 letter to Sedgwick, sent to the attention of Jean Perry, a claims manager, identified the claimant, the insured, the insured's claim number and date of injury. Counsel sought a copy of any statements made by the claimant, personnel and payroll records, medical and hospital reports, a record of benefits paid on the claim to date, and voluntary agreements if the claim is not contested. A similar letter was sent to Sedgwick on September 6, 2005, to the attention of Bob Palleschi.

On June 13, 2005, Ms. Perry replied to claimant's initial counsel enclosing the documentation requested. She also stated her letter should be used as receipt of his letter of representation dated June 3, 2005. Ms. Perry had previously filed a Form 43 on May

24, 2005, disclaiming the injury as allegedly not arising out of and in the course of employment.[1] The Form 43 was received by this Commission on May 27, 2005. The Form 43 indicated the claimant's name, the employer's name and address, the insurer claim number, date, city, and nature of injury, and affected body part.

Respondent's counsel contended at the hearing that Kulis v. Moll, 172 Conn. 104 (1976) was on point. The respondent argued this case holds that the mere act of driving a claimant to the hospital did not constitute medical care under § 31-294c C.G.S. and therefore the claimant failed to satisfy the statute.

Based on these facts, the trial commissioner concluded the claimant was an employee of Federal Express on April 25, 2005; he sustained an injury while on the job, and he immediately reported the injury to his supervisor and assisted in preparing a First Report of Injury that included the necessary elements for a valid Notice of Claim. Claimant's counsel at the time provided correspondence on June 3, 2005 and received by this Commission on June 7, 2005, that met the statutory requirements for a valid Notice of Claim, and the respondent acknowledged receipt of this correspondence. The respondent also issued a disclaimer of the claim.

The trial commissioner further concluded while the first report of injury alone in this case did not meet the notice requirements of § 31-294c C.G.S., the supporting documentation cited by the commissioner constituted substantial compliance with the notice requirements. The totality of the circumstances were such that the respondent-employer was advised of the work-related injury and responded to the allegations of the

[1] The Form 43 denied that the claimant's injury occurred in or arising out of his employment, but did not challenge such jurisdictional facts as the absence of an employer-employee relationship or that the claimant had not suffered a "personal injury" as defined by § 31-275(16) C.G.S., as was advanced in DelToro v. Stamford, 270 Conn. 532, 543 (2004).

claimant within 30 days of the injury occurring. The trial commissioner distinguished Kulis v. Moll as in that case 15 months passed after the accident before the respondent was made aware of a potential claim for benefits. In the present case, the respondent had an immediate awareness of the incident and the ability to conduct a meaningful investigation. The trial commissioner further found the claimant's injury compensable as the claimant was credible and persuasive as to the circumstances as to his injury. The trial commissioner denied the respondent's Motion to Dismiss and directed the respondent to accept the claim as compensable.

The respondent did not file a Motion to Correct, so for the purposes of this appeal we may rely on the facts found by the trial commissioner and give them conclusive effect. Stevens v. Raymark Industries, Inc., 5215 CRB-4-07-4 (March 26, 2008), *appeal dismissed*, A.C. 29795 (June 26, 2008). We are limited to determining if the trial commissioner properly applied the law in this matter. Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

The respondent's arguments on appeal are basically that the notice statute has a limited number of exceptions to the filing of a Form 30C, and in their view, the claimant failed to qualify under those exceptions. We look to the terms of the statute itself, in accordance with § 1-2z C.G.S. We find both subsections (a) and (c) of § 31-294c C.G.S., applicable herein.

> a) No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational 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 the two-year period or within one year from the date of death, whichever is later. Notice of a claim for compensation may be given to the employer or any commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident, or the date of the first manifestation of a symptom of the occupational disease and the nature of the disease, as the case may be, and the name and address of the employee and of the person in whose interest compensation is claimed. An employee of the state shall send a copy of the notice to the Commissioner of Administrative Services. As used in this section, "manifestation of a symptom" means manifestation to an employee claiming compensation, or to some other person standing in such relation to him that the knowledge of the person would be imputed to him, in a manner that is or should be recognized by him as symptomatic of the occupational disease for which compensation is claimed.
>
> (c) 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.

The purpose of the notice statute is clear: to prevent a respondent from being prejudiced by a claim brought long after an injury has occurred and when it may be impractical to prepare a defense. The incongruity of this argument being raised by the respondent herein is apparent by the fact that even prior to the claimant's attorney contacting the respondent, the respondent filed a Form 43 disclaiming liability for the accident. The respondent's argument appears to be that although they had sufficient

information to disclaim liability for the incident, they were not properly advised that a potentially compensable injury had occurred.[2] We find this argument similar to the argument we rejected in Berry v. State/Dept. of Public Safety, 5162 CRB-3-06-11 (December 20, 2007), where years after a claim was filed, the respondent challenged the jurisdictional adequacy of the notice they received. We cited Hayden-LeBlanc v. New London Broadcasting, 12 Conn. Workers' Comp. Rev. Op. 3, 1373 CRD-2-92-1 (January 5, 1994), in Berry, supra, as outlining the "totality of the circumstances" test for determining the adequacy of a written notice of claim.

We note that the respondent correctly points out the claimant did not file a Form 30C within the one year period following the accident. However, § 31-294c(a) C.G.S., does not mandate that a claimant can only use the official Commission form to provide notice of a claim for benefits. The notice need only be in writing, be sent to the respondent and to the Commission, and provide the necessary information required to identify the claimant, the date and location of the injury, and the nature of the injury.[3]

---

[2] We note that in considering issues arising under Chapter 568 we must look first to our own statutes, "[T]he workers' compensation system in Connecticut is derived exclusively from statute . . . . A commissioner may exercise jurisdiction to hear a claim only under the precise circumstances and in the manner particularly prescribed by the enabling legislation." Cantoni v. Xerox Corp., 251 Conn. 153, 160 (1999). We also note that subject matter jurisdiction may be raised at any time. DelToro v. Stamford, 270 Conn. 532, 543 (2004). However, we note in this matter the respondent is essentially seeking to contest jurisdiction after having filed a disclaimer with the Commission that did not challenge jurisdiction, and only contested the causation of the claimant's injury. We believe that this is akin to filing an appearance and an answer to a complaint in civil court that does not contest jurisdiction; only to raise the issue later in the proceedings. "A general appearance is a consent to the jurisdiction of the court and a waiver of all jurisdictional defects; except the competency of the court" Johnson v. Zoning Board of Appeals, 166 Conn. 102, 107 (1974) (Internal citations omitted.) While the practice of filing a preemptive Form 43 has recently been upheld by the Appellate Court, Lamar v. Boehringer Ingelheim Corp., 5588 CRB-7-10-9 (August 25, 2011), *aff'd*, 138 Conn. App. 826 (2012), we seriously question the equity of allowing a respondent to file a preemptive Form 43 that appears to concede jurisdiction to a compensable injury only to then allow the respondent to wait a year to assert a defense of nonclaim.

[3] The respondent places great emphasis on whether certain documentation omitted the claimant's address. In light of the "totality of the circumstances" standard delineated in Hayden-LeBlanc v. New London Broadcasting, 12 Conn. Workers' Comp. Rev. Op. 3, 1373 CRD-2-92-1 (January 5, 1994), we do not place such weight on this element of the claim.

The trial commissioner concluded the correspondence sent by claimant's counsel at the time in June of 2005, met this statutory requirement.[4] In examining the verbiage of the letters and the plain meaning of the statute, we are satisfied the trial commissioner made a reasonable decision on the facts herein.

The precedent in Hayden-LeBlanc is based on the trial commissioner's evaluation of the factual information provided to the respondents following the claimant's injury. In that case the trial commissioner concluded the written correspondence to the employer, and the denial letter sent to the claimant by the insurance carrier regarding her back injury was sufficient indicia showing the respondents had actual notice that a claim for benefits was being sought. We also find in Funaioli v. New London, 52 Conn. App. 194 (1999), this panel reversed a factual finding that determined a notice to the respondent similar to that utilized in this case was sufficient. The Compensation Review Board instead found the claimant did not comply with the notice statute. On appeal the Appellate Court reversed our decision. Id., 197-198. We find the circumstances herein legally and factually indistinguishable from Hayden-LeBlanc and Funaioli and therefore must affirm the similar result reached by the trial commissioner herein.

We do note that we have recently upheld trial commissioners who, after evaluating the factual circumstances, concluded the claimant had not proven they had properly noticed the respondent in a timely manner about their claim. All such cases are clearly distinguishable from the facts herein. In Pegolo v. Trueline Corp., 5656 CRB-5-

---

[4] We also note similarity between this case and Mehan v. Stamford, 5389 CRB-7-08-10 (October 14, 2009), *aff'd*, 127 Conn. App. 619 (2011), *cert. denied*, 301 Conn. 911 (2011). In Mehan the claimant, a fire fighter, left an incomplete Form 30C with a superior officer in the Fire Department, who completed the form. The respondents argued that this notice and service was improper to commence a claim under Chapter 568. We affirmed the trial commissioner's finding that the employer received adequate notice.

11-6 (May 15, 2012), the claimant failed to submit any written claim to his employer within the one year statutory notice period. In Miller v. State/Judicial Branch, 5584 CRB-7-10-8 (November 28, 2011), the claimant filed a First Report of Injury, but filed no further documentation within the one year period and the trial commissioner concluded the claimant's documentary filings did not put the respondent on notice a claim was being sought for the injury. The trial commissioner in this case concluded the claimant did provide sufficient notice to the employer to satisfy the statute.

We then turn to the other argument raised by the respondents, that the "medical care" exception under § 31-294c(c) C.G.S. was not met by the claimant. To some extent, this issue is irrelevant as the trial commissioner found the written notice requirement of § 31-294c(a) C.G.S. was met by the claimant. Moreover, the trial commissioner specifically rejected the respondent's position that the present matter was governed by the Kulis v. Moll precedent. A close reading of that case indicates the Supreme Court was influenced by the fact that upon finding the claimant injured, the respondent had no contemporaneous information as to the etiology of Mr. Kulis' injury. Kulis, supra, 111-112. The facts herein indicate that the claimant's co-workers and supervisor were advised prior to bringing the claimant to the hospital that he had injured his back while working. We concur with the trial commissioner that Kulis is inapplicable to the facts in this case.

Instead, we find the facts herein more congruent with Spencer v. Manhattan Bagel Company, 5419 CRB-8-09-1 (January 22, 2010), where the claimant's supervisor had actual knowledge of a work related injury and transported the claimant to seek medical treatment. In that case, we upheld a finding that the claimant satisfied the "medical care

exception." Id. The claimant also argues Pernacchio v. New Haven, 63 Conn. App. 570 (2001) supports a finding that the medical care exception was met in the present case, as well as reiterating the "totality of the circumstances" standard of Hayden-LeBlanc, supra. We concur. In Pernacchio, the claimant had been transported to the hospital in an ambulance procured by the respondent. This board found that action, when accompanied with a first report of injury, meant "that the employer was provided with sufficient notice of the claimant's hypertension claim." Pernacchio v. New Haven, 3911 CRB-3-98-10 (September 27, 1999) aff'd, 63 Conn. App. 570 (2001). We agree that to the extent there was a question as to the adequacy of the claimant's written notice in this matter, a trial commissioner could properly resolve this question in the claimant's favor. The commissioner believed the procurement of medical transportation alerted the respondent to the likelihood of a compensable injury, hence this would cause any written notice to meet the Hayden-LeBlanc standard.

The trial commissioner believed the respondents were sufficiently informed by the claimant of his intent to seek compensation to provide jurisdiction under Chapter 568. We believe the facts of this case support the trial commissioner's legal conclusion on this issue, as it is in accord with our precedent.

The Finding and Award is affirmed. Commissioners Jodi Murray Gregg and Daniel E. Dilzer concur in this opinion.