CASE NO. 5721 CRB-6-12-1 : COMPENSATION REVIEW BOARD
CLAIM NO. 601059533

HAYDEN SANTIAGO
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: JANUARY 8, 2013

JUNK BUSTERS, LLC
EMPLOYER
NO RECORD OF INSURANCE
RESPONDENT-APPELLEE

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

The claimant was represented by Rene Rosado, Esq., 312 Park Road, Suite 205, West Hartford, CT 06119 and Susanne D. McNamara, Esq., 19 Bassett Street, New Britain, CT 06051.

The respondent employer Junk Busters, LLC was represented by Robert M. Fitzgerald, Esq., 22 North Street, Willimantic, CT 06226.

The respondent Second Injury Fund was represented by Michael J. Belzer, Esq., Assistant Attorney General, Office of the Attorney General, 55 Elm Street, PO Box 120, Hartford, CT 06141-0120.

This Petition for Review from the January 10, 2012 Finding and Dismissal of the Commissioner acting for the Sixth District was heard July 20, 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 claimant alleges he was involved in a serious motor vehicle accident on June 29, 2009. The claimant contends that at the time of the accident he was in the course of his employment with the respondent employer Junk Busters, LLC. The core issue presented to the trial commissioner was whether at the time of the accident the claimant was an employee of the respondent Junk Busters. In his January 10, 2012 Finding and Dismissal the Commissioner acting for the Sixth District concluded that on June 29, 2009 there was no employer/employee relationship between the claimant and the respondent Junk Busters. The claimant has taken this appeal from the January 10, 2012 Finding and Dismissal.

Both the claimant and the owner/manager of Junk Busters, Christopher Craven testified before the trial commissioner. Mr. Craven testified that the claimant performed services for Junk Busters on a subcontractor basis beginning in the fall of 2008. The services provided by the claimant included such tasks as changing locks and winterizing homes which were among the services provided by Junk Busters to its bank clients seeking to manage properties in the foreclosure process. Mr. Craven testified that after June 22, 2009 he no longer had a business relationship with the claimant because the claimant had failed to perform some services requested by Mr. Craven. The witness also testified that he telephoned the claimant to inform him his services were no longer needed but as the calls went unanswered Mr. Craven communicated to the claimant via text messaging.

As to the activities which led to the June 29, 2009 motor vehicle accident, Mr. Craven testified that he asked Mr. Sepulveda to drive to a property in Washington, CT

and take a photograph of the property. This activity was among the services Junk Busters provided to its clients. For performing this task Mr. Sepulveda was to be paid $20 for his time and $20 for gas for his vehicle.

For whatever reason, the claimant accompanied Mr. Sepulveda on the trip to Washington, CT on June 29, 2009. The claimant argued that the motor vehicle accident on June 29, 2009 must have occurred while the claimant was working for Junk Busters because he would not have gotten into Mr. Sepulveda's motor vehicle to go out to Washington, CT unless it was for a business purpose on behalf of Junk Busters. More specifically, the claimant alleges he would not have gone with Mr. Sepulveda unless he was being paid for it.

The existence of an employer/employee relationship is a threshold jurisdictional element that must be satisfied in order for a claimant to be entitled to benefits under our Workers' Compensation Act. Castro v. Viera, 207 Conn. 420 (1988). As with any claim for benefits brought pursuant to the Workers' Compensation Act, the burden of proof of an employer/employee relationship rests on the claimant. See e.g., Rodriguez v. E.D. Construction, Inc., 126 Conn. App. 717 (2011), *cert denied*, 301 Conn. 904 (2011); Bourgeois v. Cacciapuoti, 138 Conn. 317 (1951). As this board quoted in Maskowsky v. Fed Ex Ground, 5200 CRB-3-07-2 (July 28, 2008),

> [W]e note that the determination of whether an employment relationship existed at the time of the injury is largely a factual question to be resolved by the commissioner. Merlin v. Labor Force of America, Inc., 3920 CRB-4-98-10 (December 22, 1999), *aff'd*, 62 Conn. App. 906 (2001)(per curiam), *cert. denied*, 256 Conn. 922 (2001)." [Parkman v. Express Courier Systems, Inc., 5203 CRB-1-07-3 (February 25, 2008)].

Therefore such determinations are dependent upon the weight and credibility the trier assigns to the testimony and evidentiary record. The weight and credibility to be accorded the evidence are matters specifically within the purview of the trial commissioner. Mele v. Hartford, 118 Conn. App. 104 (2009). As an appellate body we do not engage in *de novo* review. Anderton v. WasteAway, 91 Conn. App. 345 (2005). Conclusions which are predicated on the weight and credibility assigned by the commissioner ordinarily will not be set aside unless they are contrary to law, without evidentiary support or based on unreasonable or impermissible factual inferences. See e.g., Fair v. People's Savings Bank, 207 Conn. 535 (1988). Nor will such conclusions stand when they result from an abuse of the trial commissioner's discretion. As we have previously stated an abuse of discretion may exist "when a court could have chosen different alternatives but has decided the matter so arbitrarily as to vitiate logic, or has decided it based on improper or irrelevant factors." In re Shaquanna M., 61 Conn. App. 592, 603 (2001).

In the instant matter the trial commissioner's determination rests solely on the credibility he assigned to the testimony presented. As Conclusions, ¶¶ A-D[1] reflect the trial commissioner accorded greater credibility to the testimony of Mr. Craven than the

[1] Conclusions paragraphs A-D state:

A. Any business relationship that existed between Hayden Santiago and Junk Busters, LLC prior to June 29, 2009 was terminated on June 22, 2009.
B. There was no evidence presented by the Claimant that he had any business purpose relating to Junk Busters, LLC on June 29, 2009, or that anyone on Junk Busters' behalf had requested that he go on the trip to Washington, CT.
C. The Claimant speculated that he would not have been on the trip to Washington, CT on June 29, 2009, unless he was being paid to go. That testimony was not credible.
D. It is likewise not plausible that Junk Busters would pay two people to travel to Washington, CT for the purpose of taking a photograph.

testimony provided by the claimant. We, therefore, are not persuaded that the conclusion reached by the trial commissioner constitutes error.

The claimant-appellant additionally argues that the trial commissioner erred in failing to grant his Motion To Correct. In his appellate argument on this issue, the claimant has put forth an extensive number of corrections he seeks.[2] As this board recently stated in Miller v. Thyssen Krupp Elevator Corporation, 5669 CRB-7-11-7 (August 29, 2012), in its review of an appellate issue relating to the trial commissioner's ruling on a Motion To Correct,

> In Testone v. C. R. Gibson Co., 114 Conn. App. 210, 221-222 (2009), the court re-uttered the level of scrutiny to be applied to such reviews [of rulings on Motions To Correct]:
>
> [T]his court, in D'Amico v. Dept. of Correction, 73 Conn. App. 718, 812 A.2d 17 (2002), *cert. denied*, 262 Conn. 933, 815 A.2d 132 (2003), noted: "We will not change the finding of the commissioner unless the record discloses that the finding includes facts found without evidence or fails to include material facts which are admitted or undisputed. . . . It [is] the commissioner's function to find the facts and determine the credibility of witnesses . . . and a fact is not admitted or undisputed merely because it is uncontradicted. . . . A material fact is one that will affect the outcome of the case." (Citation omitted; internal quotation marks omitted.) Id., 727-28. Thus, a motion to correct is properly denied when the additional findings sought by the movant would not change the outcome of the case. See Brinson v. Finlay Bros. Printing Co., 4307 CRB-1-00-10 (November 1, 2001), aff'd, 77 Conn. App. 319, 823 A.2d 1223 (2003); Fusco v. J. C. Penney Co., 1952 CRB-4-94-1 (March 20, 1997).

It strikes us that the findings which the claimant seeks to correct are either disputed, rooted in the credibility assigned by the trial commissioner, or even if granted

[2] We note the trial commissioner did grant one of the corrections proposed. The correction that was granted amended ¶ 1.c. so as to reflect the correct date, June 29, 2009. See January 24, 2012 Ruling on Motion To Correct.

would not compel a different outcome. Therefore, the trial commissioner's failure to grant all the corrections sought by the claimant does not constitute legal error.

We therefore affirm the January 10, 2012 Finding and Dismissal of the Commissioner acting for the Sixth District.

Commissioners Jodi Murray Gregg and Daniel E. Dilzer concur.