CASE NO. 5723 CRB-7-12-1 : COMPENSATION REVIEW BOARD
CLAIM NO. 700129437

JAMES BRYANT
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: JANUARY 24, 2013

PITNEY BOWES, INC.
EMPLOYER

and

ACE USA INSURANCE
INSURER
RESPONDENTS-APPELLANTS

TRAVELERS INSURANCE COMPANY
INSURER

LIBERTY MUTUAL INSURANCE COMPANY
INSURER

APPEARANCES:

The claimant was represented by Douglas P. Karp, Esq., 706 Bedford Street, Stamford, CT 06901.

The respondents Pitney Bowes and Ace USA were represented by Michael M. Buonopane, Esq., McGann, Bartlett & Brown, LLC, 111 Founders Plaza, Suite 1201, East Hartford, CT 06108.

The respondents Pitney Bowes and Travelers Insurance Company were represented by Anne Zovas, Esq., Pomeranz, Drayton & Stabnick, LLC, 95 Glastonbury Boulevard, Glastonbury, CT 06033-4412.

The respondents Pitney Bowes and Liberty Mutual Insurance Company were represented by Jeffrey Klein, Esq., Maher Williams, PO Box 550, Fairfield, CT 06824 at trial level.

This Petition for Review from the January 13, 2012 Finding and Award of the Commissioner acting for the Fourth District was heard July 20, 2012 before a Compensation

Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Daniel E. Dilzer and Stephen B. Delaney.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have appealed in this matter from a Finding and Award granted the claimant. While the respondents have presented an extensive argument claiming the trial commissioner erred in this decision, we find this case hinged on the trial commissioner's evaluation of the claimant's credibility and the probative value of contested medical evidence. The trial commissioner's conclusions on these matters must be upheld if they are reasonably supported by the record. We find the record supports the trial commissioner. We also find the trial commissioner appropriately followed the law as delineated in the Hatt v. Burlington Coat Factory, 263 Conn. 279 (2003) decision. We affirm the Finding and Award.

The trial commissioner reached the following factual findings which are relevant to our consideration. The commissioner noted the long and sinuous procedural history of this claim; which included two prior trial commissioners recusing themselves and a formal hearing which commenced March 29, 2010, with the record finally closing on November 8, 2011. The issues considered at the formal hearing were whether the claimant sustained a compensable injury in 2001, whether he is permanently totally disabled, whether a Form 36 discontinuation of benefits concerning extent of injury should be approved, and determining if the claimant's medical treatment was approved.

The commissioner found the claimant was hired by Pitney Bowes on February 21, 1978 and was laid off in 2002. The claimant reported mid-back pain after moving boxes

on July 10, 1984 and filed a first report of injury but never filed a claim for this incident. He testified he did not seek medical treatment for this injury. Liberty Mutual was the respondent's carrier at the time of that event. On January 9, 1990, the claimant slipped on ice and sustained a low back strain. Travelers, which insured the employer on that date, paid for physical therapy and reimbursed the employer for 6.7 hours of time the claimant spent in therapy. The claimant testified he was pain-free after therapy and his back felt good.

The claimant testified he sustained a back and left leg injury on April 16, 2001 when he slipped on a carpet put down on the shop floor to soak up an oil spill, testifying he grabbed a table to keep from falling while his left knee buckled, and twisted his back. Ace USA insured the employer on that date. The claimant said he had pain in his left knee and reported the incident to a nurse at the nurse's station. He testified that approximately three days later he felt pain in his back, which he also reported to the nurse's station. A voluntary agreement was approved by this Commission on March 18, 2002 that designated Dr. Henry Rubinstein as the authorized treating physician and listed a basic compensation rate of $718.34. Separate voluntary agreements stemming from the April 16, 2001 injury were approved by this Commission on January 15, 2003, one listing a 5 percent permanent partial disability of the left knee and the other a 10 percent permanent partial disability of the lumbar spine.

The claimant testified to his job duties at the respondent as an inspector and technician which included lifting various pieces of equipment weighing up to 45 pounds. He also testified to his limited reading and writing skills, although he had graduated from high school in Alabama. The claimant also discussed his back problems during the

1990's and his weight gain, as he reached 290 pounds by April 2001 and 310 pounds by the time of the formal hearing. He developed diabetes and hypertension that were controlled with medications prescribed by his family physician, Dr. Michael Fusco. Dr. Fusco's notes indicate the claimant described left lumbar radiculopathy on April 6, 2001, but the claimant testified he had no recollection of left leg pain problems at that time.

The claimant testified he has pain all the time in the back, buttocks, and left leg. He is on a number of prescription medications to control his diabetes, hypertension and high cholesterol, and takes Cymbalta for depression. As the pain never leaves him except when he sleeps; the claimant takes two Avinza tablets each day and one Oxycodone tablet every four hours to deal with the pain. He testified he has to move about and change positions, even when sitting in a chair or standing. He said the pain is so bad on some days that medication doesn't help, adding the pain allows him only two to three hours of sleep at night. The claimant does not believe he could work a five day per week job schedule because of the pain, which has increased in recent years. He did testify to going to the Planet Fitness gym to use a treadmill, visiting a casino and traveling by car to Chicago and South Carolina, as well as shoveling light snow from the steps, shopping and various household activities.

The claimant was referred by his family doctor to Dr. Rubinstein, an orthopedic surgeon, who after a MRI on October 4, 2001 diagnosed degenerative disc disease at L4-L5 with spinal stenosis at L4-L5. He referred the claimant for a neurosurgical consult on September 5, 2003 with Dr. C. Cory Rosenstein. Dr. Rubinstein gave the claimant permanent partial disability ratings of 10 percent to the lower back and 5 percent to the left knee as a direct result of the April 16, 2001 incident, basing the ratings on his records

as of November 16, 2002. He stated in a February 10, 2009 letter that the January 9, 1990 incident cannot be considered a significant contributing factor to later back symptoms. He later testified that he did not find the 1990 injury to be considered a significant contributing factor to the claimant's need for treatment in 2001. Dr. Rosenstein testified the claimant began having back pain in 1990 after a job-related injury and had an "acute exacerbation" of the back pain in 2001. At Dr. Rosenstein's request, the claimant on October 18, 2003 underwent an MRI of the lumbar spine, and on January 29, 2004 underwent a CT myelogram of the lumbar spine and a lumbar puncture. Dr. Rosenstein performed a decompressive laminectomy on February 24, 2004 and testified he did not find a herniated disc at L4-L5 on either the left or right side. The claimant testified he has been on temporary total disability benefits since that surgery. After the surgery the claimant was referred on June 9, 2004 to Dr. Vincent Carlesi for pain management. Dr. Rubinstein has opined the April 16, 2001 incident was a substantial contributing factor in aggravating the pain symptoms of the claimant.

Dr. Rosenstein and Dr. Carlesi offered opinions as to the causation and extent of the claimant's injuries, as well as to appropriate treatment. Dr. Rosenstein testified that the claimant's obesity, diabetes, and hypertension affected his overall ability to tolerate trauma and compromised his ability to recover from trauma and from surgical decompression and although the 2001 incident would have been the reason for spinal fusion surgery, the claimant was not a suitable candidate for such surgery. Dr. Rosenstein on July 10, 2006 recommended the claimant undergo a trial of dorsal column stimulation to be performed by Dr. Carlesi. Dr. Carlesi suggested either a stimulator or an intra-thecal pump would be recommended, and in 2010 opined in a letter these

palliative modalities would improve the claimant's ability to deal with pain and improve his functional capacity so he could return to work. Dr. Carlesi preferred the stimulator over the pump. He opined as of July 20, 2010 that the claimant has not reached maximum medical improvement. He testified the 2001 incident aggravated the claimant's underlying degenerative disc disease, resulted in an increase in the back and left leg pain symptoms, and was a significant contributing factor in increasing and worsening those pain symptoms. He concurred with Dr. Rosenstein as to the 2001 incident creating the need for fusion surgery, but also agreed the claimant was not a suitable candidate for such surgery.

Dr. Carlesi further opined the claimant does not have a work capacity, sedentary or otherwise, adding the claimant has been disabled from any kind of employment from October 25, 2004 and the claimant presently could not do a part-time sedentary job because sitting or standing too long would aggravate his pain, and his concentration level would be reduced because of his extensive medications. Dr. Carlesi said that Waddell's tests on the claimant indicated his pain was legitimate and that as there has been no consistent improvement in the claimant's back pain over the past 6 ½ years he is suggesting a spinal cord stimulator, as there is nothing else to offer.

The trial commissioner noted the opinions of other medical professionals who examined the claimant. Dr. Abraham Mintz performed a respondent's medical examination on August 6, 2004 and stated the claimant's lower back and left leg pain is causally related to the 2001 incident. He said the claimant cannot return to work at this time. Dr. Roger H. Kaye performed a respondent's medical examination on September 28, 2005 and stated the 2001 incident exacerbated the claimant's previous underlying

stenosis. He called the claimant unemployable at present. Dr. Paul J. Apostolides performed a commissioner's examination on August 21, 2006 and stated the 2001 work-related injury is the primary cause of his symptoms and the need for subsequent surgery, and totally disabled the claimant. In a subsequent January 14, 2008 letter to Commissioner Leonard Paoletta, Dr. Apostolides did not discuss causation but said the claimant may be able to perform sedentary light duty work in a job that allows him to take narcotic pain medications on a chronic basis and change positions as necessary. The claimant is not capable of work that requires repetitive bending, lifting, squatting, kneeling, crawling, or climbing, and would have a 10 to 15-pound lifting restriction. He called a spinal cord stimulator potentially curative. Dr. Walter A. Camp, a neurologist, performed a medical examination at the claimant's request on June 10, 2008. He testified that based on reasonable medical probability the incident of April 16, 2001 aggravated the claimant's pre-existing back condition and was a substantial and significant factor in causing the aggravation. He said if the claimant continues not to seek other improvement options, then he is permanently totally disabled, with the cause of the disability being the April 16, 2001 incident.

The respondents had their expert, Dr. Lawrence C. Schweitzer, examine the claimant on August 9, 2009. He testified the claimant's back and left leg conditions were unrelated to the April 16, 2001 accident. He said the claimant had insufficient trauma at the time of the incident, adding that a delay in reporting the back symptoms, as shown by a seven-week delay in the employer's nurses' station medical records, also led him to believe the incident was not causally related. He further opined that the claimant had reached maximum medical improvement and that further treatment will not be curative.

Noting that Dr. Rosenstein had not found disc herniation he opined the claimant's condition was the result of a long term degenerative process and the claimant's condition never really changed during the past 10 to 20 years, so the 2001 incident cannot be deemed a material aggravation.

The trial commissioner also received evidence as to the claimant's vocational abilities. Dr. Jeff R. Blank, Ph.D., conducted a vocational assessment of the claimant's capabilities during sessions on July 20, 28, and 29, 2008 and commented in an August 5, 2008 report that the claimant's functional capacity is not consistent with employment at a minimal level of exertion. The claimant was not feeling well during some or all of the examinations because of his pain. Dr. Blank reiterated this opinion after reviewing surveillance tapes and medical reports of the claimant and stated the claimant did not have the capacity to work full or part-time, as the claimant would be unable to attend work on a regular basis or to stay at work for the entire shift, even on a part-time basis. The respondent's vocational expert, David Soja, testified he relied on the opinion of commissioner's examiner Dr. Apostolides that the claimant had a part-time entry-level unskilled sedentary to light duty work capacity for up to four hours a day. Mr. Soja said the claimant completed a job application form, but he did not conduct any tests to determine the speed and accuracy of the claimant's fine or gross motor skills. Mr. Soja testified he performed a labor market analysis and supported that opinion with the State Labor Department's vocational forecast and job growth data. He concluded the claimant was employable and could work as a parking lot attendant, as a ticket taker, desk surveillance guard, greeter at BJ's or Walmart's, assembler, inspector, and movie ticket seller.

The trial commissioner noted a Form 36 was filed on May 18, 2006 seeking to place the claimant at maximum medical improvement based on a respondent's medical examination conducted by Dr. Michael E. Opalak. Dr. Opalak in his report placed the claimant at maximum medical improvement with a 25 percent permanent partial disability of the lumbar spine. He did not give the claimant a capacity for full-duty work. The commissioner also noted that the respondents had filed Form 43's on April 22, 2009, April 24, 2009, and August 11, 2009, alleging the extent of injury and disability is not related to the work injury of April 16, 2001, et al. The respondents also contested pain management treatment by Dr. Carlesi.

Based on these facts the trial commissioner concluded that the claimant was credible and persuasive. No testimony was presented ascribing the claimant's medical condition to the July 10, 1984 incident; and the claimant did sustain a lumbar strain at work on January 9, 1990 which was responded to by providing physical therapy. The commissioner determined that pursuant to Hatt v. Burlington Coat Factory, 263 Conn. 279 (2003), the 2001 injury relieved Travelers Insurance Co. of liability for the current claim for medical or indemnity benefits for the lumbar back injury. The commissioner determined that Dr. Rosenstein, Dr. Rubinstein, Dr. Carlesi, Dr. Mintz and Dr. Camp were more persuasive than Dr. Schweitzer regarding the April 16, 2001 incident being causally related to the claimant's back and left leg medical condition. The commissioner found Dr. Carlesi was fully credible and persuasive regarding the claimant's lack of a work capacity and found Dr. Blank's vocational assessment to be more persuasive than that of Mr. Soja. Therefore, the trial commissioner found the claimant to have no work capacity and to be permanently and totally disabled. The commissioner denied the Form

36 and the Form 43's which had been filed, and refused to reopen and revise the 2003 voluntary agreement. The commissioner further ordered Pitney Bowes and Ace USA to pay claimant total disability benefits on a permanent basis and to provide all reasonable and necessary medical treatment as recommended by Dr. Carlesi, including any medications to improve the claimant's sleep, a spinal cord stimulator trial and a psychiatric consultation prior to the institution of the trial.

The appellant, ACE USA, filed a Motion to Correct which sought a number of corrections. Among the proposed corrections were findings that the claimant was not credible, that the Hatt case was inapplicable to this dispute, the pain management treatment was not curative and that the claimant had a work capacity. The trial commissioner denied this motion in its entirety and the present appeal before the Compensation Review Board was subsequently pursued.

In reviewing this instant decision, our standard of review is deferential to the finder of fact. "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). We will proceed to consider each averment of error.

The appellant's brief raises a number of claims of error. The first argument is that the trial commissioner improperly commingled the concepts of compensability, extent of injury, and laches. As the appellant views the case, they conceded the claimant sustained a compensable injury in 2001 but were merely contesting whether the claimant's present medical condition was the result of that injury. The appellant believes the trial commissioner adopted the argument of the claimant that he was entitled to continued

benefits based on a theory of laches. Appellant's Brief, pp. 10-11. We do not agree with this characterization of the Finding and Award.

In Schenkel v. Richard Chevrolet, Inc., 4639 CRB-8-03-3 (March 12, 2004), we pointed out that "[a]bsent the execution and approval of a full and final settlement, an accepted workers' compensation claim theoretically remains open for the duration of a claimant's lifetime. Though a commissioner may determine that current circumstances at the time of a formal hearing do not warrant further benefits or ongoing treatment such as pain management therapy, a claimant always retains the right to seek medical treatment or benefits for future time periods should circumstances change." Id. The actual terms of the Finding and Award contain no reference to the commissioner being bound by a prior determination as to the extent of disability. See Schenkel v. Richard Chevrolet, Inc., 5302 CRB-8-07-12 (November 21, 2008), *aff'd*, 123 Conn. App. 55 (2010), where we discussed the proper role of claim and issue preclusion in later proceedings, as well as Gilbert v. Ansonia, 5342 CRB-4-08-5 (May 14, 2009), where we discussed the "law of the case" doctrine. The claimant presented evidence which the trial commissioner found probative and persuasive that linked his present medical condition to the compensability injury. We do not believe the trial commissioner applied an improper standard in his evaluation of this evidence. We therefore find this averment of legal error unpersuasive.

The appellant raises an issue on appeal as to the approval of pain management treatment for the claimant. As the appellant views the record herein, the claimant has been undergoing pain management for an extensive period and appears no closer to rejoining the work force now than when he commenced the modality of treatment. The appellant believes this treatment is merely palliative and not curative and therefore should

not have been approved by the trial commissioner. The appellant also believes that the spinal cord stimulator should not be approved as treatment as it will not return the claimant to the workforce.

The claimant argues that Dr. Carlesi opined that pain management treatment was necessary and that this treatment can be linked to the compensable injury. The claimant draws particular attention to a December 8, 2010 letter by Dr. Carlesi which stated the goals of the pain management program for the claimant was to "to improve his functional capacity so he can return to work in some capacity." This letter also suggested the spinal cord stimulator was an alternative to the nonviable surgical options. Claimant's Exhibit O. As the claimant views the situation, pain management treatment constitutes 'reasonable and necessary' treatment pursuant to § 31-294d C.G.S. and therefore it should be approved by the trial commissioner.

The legal standard for resolving this dispute is stated in Bowen v. Stanadyne, Inc., 2 Conn. Workers' Comp. Rev. Op. 60, 232 CRD-1-83 (June 19, 1984). This standard is as follows:

> Reasonable or necessary medical care is that which is curative or remedial. Curative or remedial care is that which seeks to repair the damage to health caused by the job even if not enough health is restored to enable the employee to return to work. Any therapy designed to keep the employee at work or to return him to work is curative. Similarly, any therapy designed to eliminate pain so that the employee can work is curative. Finally, any therapy which is life prolonging is curative. Id., at 64.

The trial commissioner concluded there was sufficient medical evidence to find that pain management for the claimant was "curative" as defined in Bowen, supra. We generally provide great deference to the finder of fact to resolve such issues. See Palumbo v. Bridgeport, 4991 CRB-4-05-9 (September 7, 2006), "[w]e have in past cases

addressed the subject of the 'curative/palliative' distinction upon which the compensability of his medical treatment hinges, and have explained that it is a *factual matter* as to whether medical care satisfies the 'reasonable and necessary' standard of § 31-294d C.G.S. (Emphasis added.)" Id. We do not find the trial commissioner's conclusion on this issue was "clearly erroneous" Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007), hence we affirm this decision.[1]

The appellant also argues the trial commissioner improperly determined the claimant lacked work capacity. The appellant raises numerous factual issues regarding the opinions of Dr. Blank and suggests that Mr. Soja offered more persuasive testimony that the claimant had a work capacity. Appellant's Brief, pp. 18-24. We note the trial commissioner concluded that Dr. Blank's methodology offered the most persuasive position that the claimant lacked a work capacity. Conclusion, ¶ k. We are not persuaded this differs from the usual "dueling expert" case where a trial commissioner finds one expert witness more persuasive and credible than the other party's witness. Dellacamera v. Waterbury, 4966 CRB-5-05-6 (June 29, 2006), n. 1. While the appellant focuses on the claimant's potential suitability for certain jobs in the workforce, the trial commissioner made findings that the claimant was taking narcotic pain medication, which clearly impacts a claimant's potential employability. See DiDonato v. Greenwich/Board of Education, 5431 CRB-7-09-2 (May 18, 2010). We therefore find the trial commissioner reached a reasonable conclusion based on the record presented that the claimant was not employable.

[1] The claimant argues that no physician contested the claimant's need for pain management treatment. While this was a relevant factor in the trial commissioner's consideration, had no physician opined in favor of the treatment, the record would not sustain the commissioner's decision on appeal, as the burden was on the claimant to establish the treatment was medically necessary.

The appellant also argues that the trial commissioner's decision to permit the claimant to view surveillance videos prior to the hearing constitutes reversible error. Appellant's Brief, pp. 40-42. We have reviewed our precedent concerning the presentation of video surveillance evidence and find that we have provided great latitude to trial commissioners pursuant to § 31-298 C.G.S. in determining the most appropriate manner to resolve such evidentiary disputes. See Montenegro v. Palmieri Food Products, 5701 CRB-3-11-11 (November 15, 2012) and Catale v. Physicians Health Services, 4495 CRB-4-02-2 (March 5, 2003). We find no error herein.

The appellant also argues that the trial commissioner improperly applied the Hatt precedent by allocating the entire share of the claimant's injury upon the 2001 incident. We note that in the Appellant's Brief no appellate authority is cited for this position, although counsel for the appellant argued before this panel the trial commissioner committed "clear legal error" in the Finding and Award. Counsel for the carrier on the risk for the claimant's prior work injuries, Travelers, points out that the appellant did not seek in their Motion to Correct to assess a share of the indemnity and permanency award against prior insurers. Therefore, we are limited to determining whether based on the facts found by the trial commissioner the law was misapplied.

The trial commissioner in the present case determined no evidence was presented that ascribed the claimant's current condition to the 1984 injury. Conclusion, ¶ e. He also concluded the 1990 injury required only physical therapy as a response. Conclusion, ¶ f. On the other hand the trial commissioner pointed to a substantial quantum of evidence all in accordance with the position that the 2001 injury was a substantial factor in the claimant's present medical condition. See Findings, ¶¶ 16, 17, 18, 20, 21, 23, 30

and 31. Perhaps most relevant is that on this issue the commissioner's examiner, Dr. Apostolides, opined that the 2001 incident was the primary cause of the claimant's symptoms and need for surgery. Findings, ¶ 32. The appellant focuses their argument on the point that their witness, Dr. Schweitzer, was not deemed persuasive by the trial commissioner, and in their opinion his opinion should have been credited. In light of the fact that on the issue of causation the commissioner relied on the commissioner's examiner's opinion, we find no error. See McClaren v. Fed/Ex Ground Package System, Inc., 5619 CRB-1-11-1 (January 24, 2012), "we are extremely hesitant to overrule a trial commissioner who bases his decision on the opinion of the commissioner's examiner. See Damon, supra, and Carroll v. Flattery's Landscaping, Inc., 5385 CRB-8-08-10 (September 24, 2009)." Id.[2]

The legal standard behind Hatt has been extensively examined in such cases as Malz v. State/University of Connecticut Health Center, 4701 CRB-6-03-7 (August 20, 2004) and Kelly v. Dunkin' Donuts, 4621 CRB-4-03-2 (April 5, 2004). These cases stand for the proposition that when a subsequent injury is the substantial cause of a claimant's disability, apportionment is not available and the responsibility for the injury rests with the carrier responsible for the more recent injury. Given the factual findings that the prior injuries to the claimant were not substantial factors causing his current

[2] We note that the commissioner's examiner did opine that the claimant "may" have had a sedentary work capacity. The trial commissioner, however, chose to rely on the opinion of the claimant's vocational expert. We believe there is a sufficient factual basis in the record herein to explain the commissioner's reasoning herein. A trial commissioner may choose not to rely on the opinion of a commissioner's examiner on a contested issue, Alvarez v. Wal-Mart Stores, Inc., 5378 CRB-5-08-9 (July 27, 2009), in part because a commissioner may decide to rely on a medical witness on one issue and not another. See Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999); Williams v. Bantam Supply Co., 5132 CRB-5-06-9 (August 30, 2007) and Lamontagne v. F & F Concrete Corporation, 5198 CRB-4-07-2 (February 25, 2008). This is particularly true when the opinion rendered by a witness on an issue may not reach the evidentiary standard outlined in Struckman v. Burns, 205 Conn. 542 (1987).

medical condition, we find no legal error in placing the entire burden on the carrier on the risk for the claimant's 2001 injury.

The appellant also argues that 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), involves a very similar factual scenario to the present case and the Compensation Review Board should intervene to dismiss the claim. In Abbotts, a delay in reporting an injury to the claimant's employer led the trial commissioner to find the claimant was not credible, and consequently, rendered all medical evidence that relied on his narrative unreliable. In the present case, unlike Abbotts, the trial commissioner heard the claimant's live testimony and found him credible. We have *cited* Burton v. Mottolese, 267 Conn. 1, 40 (2003) numerous times for the proposition the Supreme Court stated that this is a decision we may not revisit on appeal.

We finally note that the appellant believes that their Motion to Correct should be granted. Those corrections sought to interpose the respondents' conclusions as to the law and the facts presented. The trial commissioner was legally empowered to deny this motion, as we may properly infer that the commissioner did not find the evidence submitted probative or credible. See 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), 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). We find that much of the present appeal appears to be an effort to reargue the factual evidence already presented over an extensive formal hearing. For the reasons clearly

stated in Fair v. People's Savings Bank, 207 Conn. 535 (1988), we are not persuaded by such arguments.

The Finding and Award is affirmed. Commissioners Daniel E. Dilzer and Stephen B. Delaney concur in this opinion.