CASE NO. 5728 CRB-3-12-2 : COMPENSATION REVIEW BOARD
CLAIM NO. 300082096

FRANKLIN PRINGLE : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : FEBRUARY 6, 2013

NATIONAL LUMBER, INC.
EMPLOYER

and

YORK CLAIM SERVICES (FORMERLY BERKLEY ADMINISTRATORS OF CONNECTICUT, INC.)
INSURER
RESPONDENTS-APPELLEES

APPEARANCES

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

The respondents were represented by Anne Kelly Zovas, Esq., Pomeranz, Drayton & Stabnick, 95 Glastonbury Blvd., Glastonbury, CT 06033.

This Petition for Review from the January 13, 2012 Decision and Order on Motion to Preclude of the Commissioner acting for the Third District was heard on July 20, 2012 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Jodi Murray Gregg and Daniel E. Dilzer.

# OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has petitioned for review from the January 13, 2012 Decision and Order on Motion to Preclude of the

Commissioner acting for the Third District. We find error and accordingly remand for additional findings the decision of the trial commissioner.[1]

On October 23, 2009, the claimant filed with the Workers' Compensation Commission a Motion to Preclude which contained the following contentions. On June 16, 2008, the claimant executed a notice of claim, or Form 30C, against his employer, National Lumber, Inc., predicated on a back injury sustained by the claimant on June 5, 2008.[2] The notice of claim was sent by certified mail and received by both the Workers' Compensation Commission and the employer on June 18, 2008.[3] The respondent employer neither filed a notice of contest nor commenced paying benefits to the claimant within twenty-eight days of June 18, 2008. On October 23, 2009, the claimant, citing the provisions of § 31-294c(b) C.G.S., sought an order from the Workers' Compensation Commission precluding the employer from contesting the compensability of the claimant's back injury.[4]

---

[1] We note that three motions for extension of time were granted during the pendency of this appeal.

[2] "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).

[3] The Form 30C and a copy of the certified mail return receipt from the employer were attached to the claimant's Memorandum of Law in Support of Motion to Preclude as Exhibits A and B, respectively.

[4] Section 31-294c(b) C.G.S. (Rev. to 2007) 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

Five formal hearings were held in this matter, and on January 13, 2012, the trial commissioner issued a Decision and Order denying the claimant's Motion to Preclude. The trier made no findings of fact but concluded that the claim was accepted and had never been contested; he also stated that "[t]he result sought by the Claimant is contrary to the letter and spirit of Chapter 568, Workers' Compensation Act, and Connecticut General Statutes Section 31-294."

The claimant filed a Petition for Review on February 1, 2012. On February 10, 2012, the claimant filed a Motion to Correct, which was denied in its entirety, and a Motion for Articulation, which was also denied. The claimant then filed a wide-ranging appeal, the gravamen of which is the claimant's contention that the trial commissioner erroneously denied his Motion to Preclude. The claimant also avers, *inter alia*, that the trier's failure to make any factual findings or to take into account the evidence presented at the formal hearings constituted error. In addition, the claimant argues that the trial commissioner erroneously determined that the claim was accepted and not contested. As such, the claimant also claims as error the trier's conclusion that "[t]he result sought by the Claimant is contrary to the letter and spirit" of the Workers' Compensation Act.

The standard of deference we are obliged to apply to a trial commissioner's findings and legal conclusions is well-settled. "The trial commissioner's factual findings

---

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."

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).

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.[5] Further, "once a motion to preclude is granted, the only role an employer plays is to decide whether to stipulate to the compensation claimed. If the employer does not so stipulate, the claimant proceeds with her case, subject to examination by the commissioner." Donahue v. Veridiem, Inc., 291 Conn. 537, 546-547 (2009). Nevertheless, a motion to preclude does not absolve the claimant of the requirement to prove that he has a prima facie claim – "i.e., an injury that arose out of and in the course of the employment, including the extent of his disability." Harpaz v. Laidlaw Transit, Inc., 286 Conn. 102, 131 (2008), *quoting* § 31-275(1) C.G.S. Furthermore, "[t]he statute clearly speaks to a threshold failure on the employer's part to contest 'liability'…." Adzima v. UAC/Norden

[5] See footnote 4, supra.

Division, 177 Conn. 107, 113 (1979). As such, preclusion will not lie in situations when an employer has issued a voluntary agreement pursuant to § 31-296 C.G.S. "acknowledging its initial liability to pay compensation, and, in accordance with this agreement, medical services [are] immediately provided and all compensation payments for disability [are] paid as directed by [the claimant's] treating doctors."[6] Id., at 112-113.

Turning to the matter at bar, as noted previously herein, the trier made no factual findings in support of his decision to deny the claimant's Motion to Preclude. Absent a recitation of the specific factual findings which the trial commissioner believes support his conclusion that the Motion to Preclude was "contrary to the letter and spirit of Chapter 568, Workers' Compensation Act, and Connecticut General Statutes Section 31-294," this board is unable to engage in meaningful review of his decision. As such, we are obliged to remand the matter for additional findings of fact, given that this board is simply "not authorized to make our own findings from conflicting facts." Russo, supra.

Moreover, we note that in their brief, the respondents made multiple references to this board's decision in Callender a/k/a Woodbury v. Reflexite Corporation, 5504 CRB-6-09-10 (October 8, 2010), *rev'd*, 137 Conn. App. 324 (2012), *cert. granted*, 307 Conn. 915 (2012) in support of their argument that the claimant's Motion to Preclude was without merit. In Callender, this board affirmed the trier's denial of a Motion to Preclude when the respondents failed to file a disclaimer in response to a second Form 30C filed

[6] Section 31-296 C.G.S.(a) (Rev. to 2007) states, in pertinent part: "If an employer and an injured employee, or in case of fatal injury his legal representative or dependent, at a date not earlier than the expiration of the waiting period, reach an agreement in regard to compensation, such agreement shall be submitted in writing to the commissioner by the employer with a statement of the time, place and nature of the injury upon which it is based; and, if such commissioner finds such agreement to conform to the provisions of this chapter in every regard, he shall so approve it…."

by a claimant in a repetitive trauma claim. Although this board concurred with the trier's assessment that the second Form 30C was predicated on the same injuries, or, in the alternative, sequellae of those injuries, cited in the claimant's original Form 30C, our Appellate Court disagreed and, in August 2012, reversed this board's decision. In its analysis, the Appellate Court set forth the following two-part inquiry which a trial commissioner must follow when deciding a Motion to Preclude:

> First, he must determine whether the employee's notice of claim is adequate on its face…. Second, he must decide whether the employer failed to comply with § 31-294c either by filing a notice to contest the claim or by commencing payment on that claim within twenty-eight days of the notice of claim…. If the notice of claim is adequate but the employer fails to comply with the statute, then the motion to preclude must be granted. (Internal citations omitted.)
>
> Id., at 338.

The respondents appealed the Appellate Court decision and on October 10, 2012, our Supreme Court granted certification on the following question: "Did the Appellate Court properly reverse the compensation review board's ruling affirming the trial commissioner's determination denying the plaintiff's motion to preclude?"[7] The appeal is currently pending in Supreme Court. Given, then, that neither the trial commissioner nor the parties had the benefit of the Appellate Court decision in Callender at the time the parties argued this matter at the trial level or the claimant brought his appeal before this board, we also remand this file so that the trier may reconsider his decision in light of the Appellate Court's holding in Callender. We recognize that it very well may be the case that the parties agree to stay further proceedings relative to the claimant's Motion to Preclude until such time as the Supreme Court issues its decision in the Callender appeal.

[7] See 307 Conn. 915 (2012).

Having found error, the January 13, 2012 Ruling on Motion to Preclude of the Commissioner acting for the Third District is hereby remanded to the trial commissioner for additional factual findings consistent with this opinion.

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