CASE NO. 5741 CRB-1-12-3 : COMPENSATION REVIEW BOARD
CLAIM NO. 100011261

JOSEPH ALBUQUERQUE : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : APRIL 9, 2013

TOWN OF EAST HARTFORD
EMPLOYER

and

TRAVELERS INDEMNITY CO.
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES

The claimant was represented by Thomas E. Crosby, Esq., Crosby Law Firm, LLC, 23 Boston Street, Guilford, CT 06437.

The respondents were represented by Timothy G. Zych, Esq., Law Offices of Cynthia M. Garraty, One Hamden Center, 2319 Whitney Avenue, Suite 4C, Hamden, CT 06518.

This Petition for Review from the March 21, 2012 Finding and Award of the Commissioner acting for the Eighth District was heard on September 28, 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 March 21, 2012 Finding and Award of the Commissioner acting for the Eighth District. We find no error and accordingly affirm the decision of the trial commissioner.

The trial commissioner made the following factual findings which are pertinent to our review. The claimant was employed as a police officer by the Town of East Hartford when he was involved in a motor vehicle accident in October 1983. The respondents accepted the compensability of an injury to the claimant's spine arising from this accident and the claimant was ultimately awarded a permanent partial disability rating of ten percent to his cervical spine attributable to the October 1983 injury. This award was in addition to a ten percent permanent partial disability rating for a prior injury to the claimant's cervical spine given by Dr. Greene in 1979, resulting in a total permanent partial disability award of twenty percent.

In 1986, the claimant underwent a single-level fusion at C6-7 performed by John F. Raycroft, M.D., and James Collias, M.D.[1] The claimant testified that he was symptomatic for the following twenty years and periodically sought treatment. In 2002, the claimant was treating with Jeffrey A. Bash, M.D. when he complained of cervical pain radiating into his arms. In 2006, Dr. Bash, noting that the claimant was not interested in surgery, recommended several conservative measures and, in 2007, noted flare-ups of the same symptoms and prescribed pain medication. In 2010, Dr. Bash noted

[1] In his Finding and Award, the trial commissioner referred to Dr. Raycroft as Dr. Raymond Raycroft. Findings, ¶ 2. We deem this harmless scrivener's error. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 729 (2002), *cert. denied*, 262 Conn. 933 (2003).

severe disk degeneration at C3-4, C4-5, and C5-6 and recommended the claimant for a multi-level fusion or disk replacement. Dr. Bash opined that the claimant's 1983 automobile accident and subsequent surgical fusion in 1986 were substantial contributing factors to the aggravation and progression of the claimant's underlying degenerative disk disease.

In 2009, Ahmed Khan, M.D., reviewed the results of an MRI taken on April 27, 2009 and found worsening spondylytic changes and disk protrusions at C3-4, C4-5, and C5-6 for which Dr. Khan recommended either injections for pain management or anterior cervical fusion at those levels. On October 6, 2010, Dr. Khan issued a report in which he identified the 1983 motor vehicle accident as a significant and substantial contributing factor to the progressive deterioration of the cervical disks adjacent to the prior surgical site of C6-7. Although Dr. Khan believed that the 1983 accident was not the sole cause of the claimant's symptoms, in that some apportionment was due to the intervening motor vehicle accident in 2001, the doctor opined that the 1983 accident was a "significant and substantial contributing factor." Claimant's Exhibit A. In a report dated May 30, 2005, Dr. Khan attributed two-thirds of the claimant's need for surgery to the motor vehicle accident of 2001 and one-third to the motor vehicle accident of 1983 and the subsequent surgery of 1986.

On April 20, 2010, the claimant underwent a Respondents' Medical Examination with Stephen A. Torrey, M.D., who concluded that the claimant had fully recovered from the 1986 surgery. The doctor found no evidence of adjacent level syndrome, instead opining that the claimant's MRI's showed progressive naturally-occurring disk degeneration without any potential nerve compression and the claimant was not a surgical

candidate. Dr. Torrey also indicated that the motor vehicle accident of 2001 was not a significant contributing factor to the claimant's current condition. On July 14, 2011, the claimant underwent a Commissioner's Examination with Jarob N. Mushaweh, M.D., who reviewed the claimant's imaging studies and found some progression of the claimant's cervical spondylosis, particularly at the C5-6 level. Dr. Mushaweh agreed with Dr. Bash that the claimant had developed adjacent level disease which was causally related to the 1983 injury and 1986 cervical fusion and attributed fifty percent of the claimant's current condition to the prior fusion. Dr. Mushaweh also opined that the claimant was not a suitable candidate for either a three-level fusion or even a one-level fusion at C5-6, instead recommending a disk arthroplasty at C5-6, provided an "independent" EMG and detailed nerve conduction study confirmed C6 radiculopathy.

The trial commissioner found credible and persuasive Dr. Mushaweh's opinion that the claimant's 1983 work-related injury and subsequent fusion surgery in 1986 was a substantial contributing factor to the claimant's current adjacent level disk disease. The trier also accepted Dr. Mushaweh's recommendation that the claimant undergo an independent EMG and nerve conduction study in order to determine if disk arthroplasty is warranted, rather than the one-level or multi-level fusions as contemplated by Drs. Bash and Khan. The trial commissioner expressly rejected the opinion propounded by Dr. Torrey ascribing the claimant's current symptoms to a natural progression of his degenerative disk disease, unrelated to either the 1983 injury or the intervening motor vehicle accident of 2001.

The respondents filed a Motion to Correct which was denied in its entirety, and this appeal followed. The respondents claim as error the trier's finding that the

claimant's injury of 1983 and subsequent fusion at C6-7 in 1986 are substantial contributing factors to his current condition. The respondents also assert that the trier erroneously determined that the claimant's motor vehicle accident of 2001 did not break the sequence of causation. The respondents aver that because the injuries sustained by the claimant in the motor vehicle accident of 2001 essentially constituted an aggravation of his original injury, the trier erred in failing to apply to reasoning as set forth by this board in Kelly v. Dunkin' Donuts, 4621 CRB-4-03-2 (April 5, 2004) such that all liability for the claimant's condition would be attributed to the motor vehicle accident of 2001, thereby absolving the instant respondents of any ongoing liability. The respondents also contend that the trier's decision to hold the instant respondents liable for the claimant's current condition and need for surgery is inconsistent with the theory of proximate causation as articulated in Sapko v. State, 305 Conn. 360 (2012). We find no merit in any of the respondents' claims of error.

We begin with a recitation of the well-settled standard of review 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). Thus, "[i]t is … immaterial that the facts permit the drawing of diverse inferences. The [commissioner] alone is charged with the

duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair, supra, 540 (1988), *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

In the instant matter, the respondents assert that with the exception of Dr. Torrey, "there is a unity of medical opinions that the claimant's March, 2001 motor vehicle accident was a substantial contributing factor to his current cervical condition and need for surgery." Appellants' Brief, p. 5. As such, the respondents assert that the totality of the medical record indicates that the motor vehicle accident of 2001 constituted an aggravation of the claimant's prior injury and therefore should have been considered a separate and identifiable injury under the Workers' Compensation Act. Such a finding would have been consistent with this board's reasoning in Kelly, supra, wherein we stated that "an 'aggravation' in legal parlance signifies the intervention of a proximate cause that plays a role in worsening the effects of a prior injury, with benefits payable by the employer for whom the claimant is working at the time of the aggravation." Id. See also Epps v. Beiersdorf, Inc., 41 Conn. App. 430, 432 (1996).

In Kelly, this board was presented with the issue of apportionment of liability between two separate and distinct accepted injuries: a right shoulder/right elbow and carpal tunnel injury of October 6, 1997 and a slip-and-fall injury to the claimant's cervical, thoracic and lumbar spine, right shoulder and right elbow of January 19, 1999. Both injuries occurred during the claimant's employment with one employer, but two different insurers were on the risk for the dates of injury. The trial commissioner found credible a medical report attributing ninety-nine percent of the claimant's right shoulder and right elbow symptoms to the 1997 injury but because one percent of the claimant's

symptoms could be attributed to the second injury, the trial commissioner, in light of the plain language of § 31-349 C.G.S., ordered the insurer on the risk for the second injury to assume liability for the claim with the right to seek apportionment against the first insurer for ninety-nine percent of all payments made on the right shoulder and right elbow.[2] This board affirmed the trial commissioner, noting that in Hatt v. Burlington Coat Factory, 263 Conn. 279 (2003), which was issued after the trier's decision in Kelly but prior to the issuance of this board's opinion, our Supreme Court rejected the application of common-law apportionment under § 31-349 C.G.S. for separate and distinct second injuries and also held that § 31-299b C.G.S. applies only to occupational disease or repetitive trauma injuries.[3] Although we recognized that "the relative percentage of responsibility for the claimant's symptoms seems dramatically skewed, a 99% to 1% apportionment of symptoms would still involve the recognition of an identifiable second injury under § 31-349…." Kelly, supra. We concluded that "[u]nder current law, therefore, the trial commissioner would have had to find that the claimant's

[2] Section 31-349(a) (C.G.S.) (Rev. to 2001) states, in pertinent part: "The fact that an employee has suffered a previous disability, shall not preclude him from compensation for a second injury, nor preclude compensation for death resulting from the second injury. If an employee having a previous disability incurs a second disability from a second injury resulting in a permanent disability caused by both the previous disability and the second injury which is materially and substantially greater than the disability that would have resulted from the second injury alone, he shall receive compensation for (1) the entire amount of disability, including total disability, less any compensation payable or paid with respect to the previous disability, and (2) necessary medical care, as provided in this chapter, notwithstanding the fact that part of the disability was due to a previous disability."

[3] Section 31-299b C.G.S. (Rev. to 2003) states, in pertinent part: "If an employee suffers an injury or disease for which compensation is found by the commissioner to be payable according to the provisions of this chapter, the employer who last employed the claimant prior to the filing of the claim, or the employer's insurer, shall be initially liable for the payment of such compensation. The commissioner shall, within a reasonable period of time after issuing an award, on the basis of the record of the hearing, determine whether prior employers, or their insurers, are liable for a portion of such compensation and the extent of their liability. If prior employers are found to be so liable, the commissioner shall order such employers or their insurers to reimburse the initially liable employer or insurer according to the proportion of their liability."

January 19, 1999 injury was unrelated to her right shoulder symptoms in order to relieve [the second insurer] of liability for that injury." Id.

In the matter at bar, the respondents point out that Dr. Mushaweh, whom the trier found credible, attributed fifty percent of the claimant's current condition to a combination of the effects of the 2001 motor vehicle injury and the continuation of the claimant's degenerative disk disease. Respondents' Exhibit 12, p. 11. Thus, as noted previously herein, it is the respondents' contention that because the 2001 motor vehicle accident essentially constituted an aggravation of the claimant's prior injury, the trier was therefore compelled to attribute all liability for the claimant's current condition to the 2001 motor vehicle accident, thereby removing the instant respondents from any additional exposure. However, it should be noted that in Marroquin v. F. Monarca Masonry, 121 Conn. App. 400 (2010), our Appellate Court stated the following:

> … we simply cannot agree that the mere use of the word "aggravate" under these circumstances demonstrated a causal relationship…. "Whether an expert's testimony is expressed in terms of a reasonable probability that an event has occurred does not depend [on] the semantics of the expert or his use of any particular term or phrase, but rather, is determined by looking at the entire substance of the expert's testimony."

Id., at 419, *quoting* Struckman v. Burns, 205 Conn. 542, 555 (1987).

Moreover, given that the issue before us is not a question of apportionment of liability but, rather, an analysis of whether the claimant's current condition and need for medical treatment is causally related to the compensable injury of October 11, 1983, we are not inclined to find persuasive the respondents' attempts to conflate the two lines of inquiry. Rather, our examination of this matter is more properly governed by an assessment of whether the trier correctly applied the "traditional concepts of proximate

cause [which] furnish the appropriate analysis for determining causation in workers' compensation cases." Dixon v. United Illuminating Co., 57 Conn. App. 51, 60 (2000).

It is axiomatic that "the test for determining whether particular conduct is proximate cause of an injury [is] whether it was a substantial factor in producing the result." (Internal quotation marks omitted.) Paternostro v. Arborio Corp., 56 Conn. App. 215, 222 (1999), *cert. denied*, 252 Conn. 928 (2000), *quoting* Hines v. Davis, 53 Conn. App. 836, 839 (1999).

> The personal injury must be the result of the employment and flow from it as the inducing proximate cause. The rational mind must be able to trace resultant personal injury to a proximate cause set in motion by the employment and not by some other agency, or there can be no recovery. (Internal quotation marks omitted.)

Brown v. United Technologies Corp., 112 Conn. App. 492, 498 (2009), *quoting* Ryker v. Bethany, 97 Conn. App. 304, 309 (2006), *cert. denied*, 280 Conn. 932 (2006).

> It should be noted, however, that:
>
> [t]he term "substantial" … does *not* connote that the employment must be the *major* contributing factor in bringing about the injury; … nor that the employment must be the *sole* contributing factor in development of an injury…. In accordance with our case law, therefore, the substantial factor causation standard simply requires that the employment, or the risks incidental thereto, contribute to the development of the injury in *more than a de minimis way*. (Emphasis in the original; internal citations omitted.)

Birnie v. Electric Boat Corp., 288 Conn. 392, 412 (2008).

In the matter at bar, the trier's analysis of proximate causation was necessitated by the claimant's involvement in a motor vehicle accident subsequent to the accepted injury of 1983 and surgery of 1986. As mentioned previously herein, Drs. Bash and Khan attributed some portion of the claimant's current symptomatology to the 2001 motor vehicle accident, as did Dr. Mushaweh, who attributed fifty percent of the claimant's

current condition to the accepted injury of 1983 and subsequent surgery of 1986 but attributed the remaining fifty percent to a combination of the effects of the 2001 motor vehicle injury and the continuation of the claimant's degenerative disk disease. The respondents contend that had the trial commissioner considered the totality of Dr. Mushaweh's opinion as to causation, the only reasonable conclusion he could have reached is that the 2001 motor vehicle accident, rather than the 1983 work injury, is the proximate cause of the claimant's cervical condition because it broke the causal connection in a manner contemplated by the recent Supreme Court decision in Sapko, supra.

In Sapko, the court upheld this board's affirmance of the trial commissioner's finding that the claimant's decedent's death was the result of multiple drug toxicity due to the interaction of excessive doses of Oxycodone and Seroquel. The claimant's decedent, a correction officer for the State of Connecticut, had been prescribed Oxycodone for a compensable back injury, and Seroquel for depression which had not been deemed compensable. The trier determined that the claimant's decedent's "ingestion of excessive quantities of oxycodone and seroquel, though accidental, constitute a superseding cause of his death."[4] April 3, 2008 Finding and Dismissal of the Commissioner Acting for the Eighth District, Findings, ¶ gg.

[4] "[T]he doctrine of superseding cause serves as a device by which one admittedly negligent party can, by identifying another's superseding conduct, exonerate himself from liability by shifting the causation element entirely elsewhere." Wagner v. Clark Equipment Co., 243 Conn. 168, 179 (1997). "If a third person's negligence is found to be the superseding cause of the plaintiff's injuries, that negligence, rather than the negligence of the party attempting to invoke the doctrine of superseding cause, is said to be the sole proximate cause of the injury." Barry v. Quality Steel Products, Inc., 263 Conn. 424, 434-35 (2003). "The function of the doctrine is to define the circumstances under which responsibility may be shifted entirely from the shoulders of one person, who is determined to be negligent, to the shoulders of another person, who may also be determined to be negligent, or to some other force." Wagner, supra, *quoting* 2 Restatement (Second), Torts § 440.

This board, *inter alia*, rejected the claimant's argument that the doctrine of superseding cause had been abrogated in the workers' compensation forum by Barry v. Quality Steel Products, Inc., 263 Conn. 424 (2003).[5] Rather, we distinguished between the Barry court's abrogation of the superceding cause doctrine in a claim of negligence and the application of the doctrine in the workers' compensation forum, which is predicated on a system of strict liability. We then concluded that "the record supported the commissioner's finding that an outside causal agency, namely, the decedent's ingestion of excessive quantities of prescribed medication, had intervened and broken the chain of causation between the decedent's compensable injuries and his death." Sapko v State, 305 Conn. 360, 368 (2012).

Our Supreme Court ultimately affirmed our decision in Sapko, stating,

> [u]pon consideration of that question in the present case, we agree with the board that the concerns that caused us to abrogate the doctrine in Barry simply are not implicated in our workers' compensation scheme, which, in contrast to our comparative negligence tort scheme, is a no-fault compensation system that imposes a form of strict liability on employers.

Id., at 377.

Rather, the inquiry is more properly one of proximate causation, which "is determined by looking from the injury to the negligent act complained of for the necessary causal connection." Peterson v. Oxford, 189 Conn. 740, 749 (1983). "Because actual causation, in theory, is virtually limitless, the legal construct of proximate cause serves to establish how far down the causal continuum tortfeasors will be held liable for

[5] In this tribunal's analysis of Sapko, we discussed Barry v. Quality Steel Products, Inc., 263 Conn. 424 (2003), noting that the Barry court had "held that as a general rule the intervening or superseding cause theory was no longer viable under the law of negligence … [because] the amendment to our negligence law wherein liability was subject to apportionment under the theory of comparable negligence obviated an analysis under superseding cause theory concepts." Sapko v. State/Dept. of Correction, 5335 CRB-8-08-4 (March 23, 2009), *aff'd*, 123 Conn. App. 18 (2010), *cert. granted*, 298 Conn. 923 (2010), *aff'd*, 305 Conn. 360 (2012).

the consequences of their actions." First Federal Savings & Loan Assn. Rochester v. Charter Appraisal Co., 247 Conn. 597, 604 (1999). As such, "the term superseding cause merely describes more fully the concept of proximate cause when there is more than one alleged act of negligence, and is not functionally distinct from the determination of whether an act is a proximate cause of the injury suffered by the plaintiff." Barry, supra, at 440.

The Sapko court also remarked that,

> [t]he question of proximate causation … belongs to the trier of fact because causation is essentially a factual issue…. It becomes a conclusion of law only when the mind of a fair and reasonable [person] could reach only one conclusion; if there is room for a reasonable disagreement the question is one to be determined by the trier as a matter of fact. (Citations omitted; internal quotation marks omitted.)

Sapko, supra, at 373, *quoting* Stewart v. Federated Dept. Stores, Inc., 234 Conn. 597, 611 (1995).

Specifically with regard to subsequent injuries, the Sapko court stated that, "[t]he basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury." Id., at 380, *quoting* 1 A. Larson & L. Larson, Workers' Compensation (2011) § 10.01, pp. 10-2 through10-3. "Consequently, all the medical consequences and sequelae that flow from the primary injury are compensable." Id., at 381. The Sapko court ultimately held that,

> when the commissioner referred to the decedent's accidental overdose as a "superseding cause" of his death, his use of the term accurately reflected his finding as to the causal effect of the decedent's ingestion of excessive quantities of Oxycodone and Seroquel, that is, that it broke the chain of causation between the decedent's compensable work injuries and his death.

Id., at 378.

Turning to the matter at bar, we note at the outset that, "[u]nless causation under the facts is a matter of common knowledge, the plaintiff has the burden of introducing expert testimony to establish a causal link between the compensable workplace injury and the subsequent injury."[6] Id., at 386. The instant claimant having provided such expert testimony, our role is therefore "to examine the record to determine whether competent evidence supported the commissioner's findings, inferences drawn from such findings and conclusions." Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 450 (2001). Our review of the record indicates, as previously recited herein, that Dr. Bash, who first evaluated the claimant on November 14, 2002 at the request of Mario Amleto, M.D., stated in correspondence dated February 8, 2010 to claimant's counsel that "[i]t is my opinion within a reasonable degree of medical probability that the 1983 work injury when he was involved in a car accident is a significant and substantial contributing factor to his current condition of herniated discs, disc protrusion and disc degeneration at C3-4, 4-5, 5-6." Claimant's Exhibit A. In addition, again in correspondence to claimant's counsel dated June 29, 2010, Dr. Bash opined that the claimant's "underlying degenerative disc disease of the cervical spine was made substantially and considerably worse by his 1983 automobile accident and his subsequent surgery in 1986," id., and that the surgical fusion at C6-7 was "a significant and substantial contributing factor to acceleration of adjacent level disc degeneration at C5-6." Id.

[6] "Expert testimony should be admitted when: (1) the witness has a special skill or knowledge directly applicable to a matter in issue, (2) that skill or knowledge is not common to the average person, and (3) the testimony would be helpful to the court or jury in considering the issues." (Internal quotation marks omitted.) Dixon v. United Illuminating Co., 57 Conn. App. 51, 54 (2000), *quoting* State v. Freeney, 228 Conn. 582, 591 (1994).

The record also indicates that in correspondence to claimant's counsel dated October 6, 2010, Dr. Khan identified the 1983 motor vehicle accident as "a significant and substantial contributing factor that led to progressive deterioration of the adjacent disks in [the claimant's] cervical spine." Claimant's Exhibit A. While the doctor did believe that some of the claimant's symptoms could be attributed to the intervening motor vehicle accident in 2001, he opined that "the underlying pre-existing condition was due to his motor vehicle accident in 1983." Id. The doctor stated, "[c]ertainly I do not feel the 1983 accident is the sole cause or factor for [the claimant's] symptoms, however, I do stand by my opinion that it was a significant and substantial causative factor." Id. Finally, we note that in a neurosurgical consultation report dated April 27, 2009, Dr. Khan noted that the claimant's "symptoms have never recovered" from the motor vehicle accident of 1983 or the cervical fusion in 1986. Id.

The claimant underwent a Respondents' Medical Examination with Stephen A. Torrey, M.D., on April 20, 2010. While Dr. Torrey concluded, contrary to Drs. Bash and Khan, that the claimant's condition was "naturally occurring, with superimposed self-limiting strains or contusions and possibly some functional overlay," Respondents' Exhibit 10 (April 20, 2010 Respondents' Medical Examination), p. 4, the doctor also stated that he did not believe that the claimant's motor vehicle accident of March 24, 2001 was a significant contributing factor to the claimant's current condition. Id. At his deposition, Dr. Torrey essentially reiterated this opinion, stating that neither the motor vehicle accident of 2001, the claimant's work as a landscaper, nor the claimant's motor vehicle accident of October 1983 were significant contributing factors to the claimant's symptomatology. Respondents' Exhibit 10 (May 25, 2010 Transcript), p. 16. Rather, the

doctor again opined that the claimant's symptoms were due to "natural arthritic progression in the neck with ongoing symptoms…." Id., at 17. See also Respondents' Exhibit 10 (July 8, 2010 Transcript), p. 23. Dr. Torrey further opined that the claimant was not suffering from adjacent disk syndrome, remarking that a tiny focal herniated disk at the C5-6 level revealed in an MRI taken in 1994 "fails to cross the threshold of being a significant adjacent level pathology."[7] Respondents' Exhibit 10 (May 25, 2010 Transcript), p. 42. See also Respondents' Exhibit 10 (July 8, 2010 Transcript), p. 29.

The claimant underwent a Commissioner's Examination with Dr. Mushaweh on July 14, 2011. In his report, Dr. Mushaweh stated that the progression of the claimant's cervical spondylosis as revealed by MRI imaging studies, particularly at level C5-6, "constitute[d] an adjacent level disease and by extension, it would be causally related to his prior injury and the subsequent ACDF procedure at the C6-7 level." Respondents' Exhibit 1 to Respondents' Exhibit 12, p. 4. Dr. Mushaweh essentially reiterated this opinion at his deposition, testifying that although all of the incidents in which the claimant had been involved could conceivably have contributed to the progression of the claimant's degenerative disk disease, the fact that the claimant had undergone fusion surgery at C6-7 made it "more likely than not" that the claimant would develop adjacent disk disease. Respondents' Exhibit 12, p. 9. The doctor was reluctant to apportion responsibility for the claimant's symptoms among the different incidents, remarking that any attempt to do so would be "purely speculative," id., at 10, but ultimately opined that he would attribute fifty percent of the claimant's symptoms to the adjacent disk disease

[7] Dr. Torrey conceded that despite being specifically requested by respondents' counsel to address the issue of whether the motor vehicle accident of 1983 was a substantial contributing factor to the claimant's current condition, he did not answer that question in his report of April 20, 2010. Respondents' Exhibit 10 (May 25, 2010 Transcript), p. 21. See also Claimant's Exhibit A (March 22, 2010 correspondence from Timothy G. Zych, Esq., to Stephen A. Torrey, M.D., p. 3).

resulting from the 1986 fusion surgery and fifty percent to a combination of the 2001 motor vehicle accident and the natural degenerative process. Id., at 11. Dr. Mushaweh also questioned the link between the 2001 motor vehicle accident and the degenerative disk disease at the C5-6 level because that deterioration had occurred more recently rather than immediately following the motor vehicle accident.[8] Id., at 15.

We also note that the claimant submitted into evidence correspondence from William Druckemiller, M.D., dated October 26, 2005 in association with the claimant's third party lawsuit against the defendant in the 2001 motor vehicle accident. In that report, Dr. Druckemiller opined that "[t]here does not appear to be a significant clinical change in the five years prior to the injury to the two years after the injury." Claimant's Exhibit C, p. 2. He rejected Dr. Bash's conclusion that the claimant had sustained a twelve-percent impairment as a result of the motor vehicle accident, opining instead that the claimant had more likely sustained an impairment in the range of two to five percent. Id. Dr. Druckemiller concluded that "the records do not support any dramatic change in his clinical symptomatology following [the 2001 motor vehicle accident]," id., at 3, and the records likewise "do not support that the motor vehicle accident is a significant contributing factor to his recommendation for his surgery but is more likely a continuation of his long term, degenerative changes." Id.

Having reviewed the foregoing, we find that the record in the instant matter provided more than ample support for the trier's conclusion that the claimant's motor vehicle accident of 1983 and subsequent fusion surgery of 1986 constituted substantial

[8] We note that the record contains an MRI report of the claimant's cervical spine taken on April 12, 2001 which found post-operative changes at C6-7 and mild degenerative changes at C4-5 and C5-6 but no focal disk herniation. Claimant's Exhibit A. The report concluded that there was no change when compared with an MRI taken on August 17, 2000. Id.

contributing factors to the claimant's current symptomatology. There is no question that the motor vehicle accident of 2001 also played some role in the development of the claimant's symptoms. However, we find little to no evidence which could have reasonably led to the inference that the effects of the 2001 motor vehicle accident were of sufficient severity as to constitute a superseding cause that broke the chain of causation or caused the link between the claimant's injuries of 1983 and his current condition to become so "attenuated" that the trier could not have reasonably inferred that the injury of 1983 and the claimant's current condition were related. Sapko v. State, 305 Conn. 360, 370 (2012). We also recognize that Dr. Torrey opined that neither the accident of 1983, the fusion surgery, nor the accident of 2001 contributed to the claimant's symptomatology. Nevertheless, "[i]t is the quintessential function of the finder of fact to reject or accept evidence and to believe or disbelieve any expert testimony. The trier may accept or reject, in whole or in part, the testimony of an expert." (Internal citations omitted.) Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999).

Moreover, we find that the medical evidence in the file was bolstered by the claimant's testimony at trial, wherein he testified that his neck and right shoulder problems were "consistent since the '83 accident," November 17, 2010 Transcript, p. 28, and he has "had consistent medication since the accident of 1983." Id., at 31. The trial commissioner could permissibly rely upon these statements because "it is proper to consider medical evidence *along with all other evidence* to determine whether an injury is related to the employment." (Emphasis in the original.) Marandino v. Prometheus Pharmacy, 294 Conn. 564, 595 (2010). Given, then, that the trier's findings were well

supported by the instant record, we will not reverse these findings on appeal. "If there is evidence in the record to support the factual findings of the trial commissioner, the findings will be upheld on appeal." McMahon v. Emsar, Inc., 5049 CRB-4-06-1 (January 16, 2007), *citing* Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002); Phaiah v. Danielson Curtain (C.C. Industries), 4409 CRB-2-01-6 (June 7, 2002).

Lastly, the respondents have filed a Motion to Correct which the trier denied in its entirety. Our review of the motion indicates that the respondents were primarily attempting to recast Dr. Mushaweh's opinion in a light more favorable to their own position. Having determined that the inferences drawn by the trier relative to Dr. Mushaweh's testimony were in no way improper, we find no error in the trier's refusal to grant the Motion to Correct. D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003).

There is no error; the March 21, 2012 Finding and Award of the Commissioner acting for the Eighth District is hereby affirmed.

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