CASE NO. 5742 CRB-6-12-4 : COMPENSATION REVIEW BOARD
CLAIM NO. 601003267

JEFF PELTIER
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: MARCH 20, 2013

TOWN OF AVON
EMPLOYER
RESPONDENT-APPELLANT

APPEARANCES:

The claimant was represented by Jill Morrissey, Esq., Morrissey, Morrissey & Mooney, LLC, 203 Church Street, Naugatuck, CT 06770.

The respondent was represented by Michael C. Harrington, Esq., Murtha Cullina, LLP, City Place One, 185 Asylum Street, Hartford, CT 06103-3469.

This Petition for Review from the March 19, 2012 Finding and Award of the Commissioner acting for the Sixth District was heard September 28, 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 respondent in this matter has appealed from the trial commissioner's award of § 31-284b C.G.S. benefits to the claimant. We find the trial commissioner's ruling is consistent with precedent on this statute. We affirm the Finding and Award.

The trial commissioner cited a joint stipulation of facts in his Finding and Award. The claimant commenced his employment with the Town of Avon as a police officer in October 1983 and was continuously employed in that capacity until he retired on January 1, 2010. Findings, ¶ 1.a. The claimant successfully passed a pre-employment physical which did not reveal hypertension. Findings, ¶ 1.b. On or about April 30, 1995 the Claimant, while still employed by the Town of Avon as a police officer, was informed by his treating physician that he suffered the condition of hypertension. Findings, ¶ 1.c. The claimant filed a timely claim with the Workers' Compensation Commission pursuant to § 7-433c C.G.S. Findings, ¶ 1.d. A voluntary agreement for the claim was approved by the Commission on January 24, 1997. Findings, ¶ 1.e.

The claimant was employed for the 52 weeks prior to April 1, 1995 as a police officer and earned $57,961.20 in wages. During this time period, the claimant also received a medical insurance plan for him and his family and a dental insurance plan for him and his family through the Town of Avon. The cost of the family medical insurance plan during this time period was $6,812.00, of which the Town of Avon paid 95% ($6,471.40) of the premium, and the Claimant paid 5% ($340.60). It is unknown what the cost of the family dental insurance plan was during this time period, although it is

estimated to be approximately $930.84, of which the Town of Avon paid 100% of the premium. Findings, ¶ 1.f.

During his service with the Town of Avon the claimant never missed work due to hypertension and at all times the claimant received family medical and family dental insurance benefits. Findings, ¶¶ 1.g, i. The claimant voluntarily retired from the Town of Avon on January 1, 2010 as a result solely of his years of service and in no way related to his hypertensive condition. Findings, ¶ 1.j. Since his retirement, the claimant has received, and continues to receive, a monthly pension benefit from the Town of Avon in the amount of $6,551.93, which equates to a yearly benefit of $78,623.16. Findings, ¶ 1.k.

Since his retirement the claimant has had a part time job, where he earned about $5,400 in 2010 and expected to earn the same amount in 2011. Findings, ¶ 1.l. He has received, and continues to receive, family medical and family dental insurance benefits through the Town of Avon. Findings, ¶ 1.m. The cost of the claimant's family medical insurance plan during the period of July 2010 through June 2011 was $20,812.80, of which the Town of Avon paid $13,304.61 of the premium, and the Claimant paid $7,508.19. The cost of the Claimant's family dental insurance plan during this time period was $1,367.16, of which the Claimant paid 100% of the premium. Findings, ¶ 1.n. The claimant received similar coverage in 2011 which cost $21,312.31, where the town paid $13,623.92 of the premium, and the Claimant is paying $7,688.39. The cost of the dental coverage fully paid by the claimant was $1,430.04. Findings, ¶ 1.o.

On August 19, 2010, the Claimant was examined by Joseph Robert Anthony, M.D., who assigned the Claimant a 22% combined permanent partial disability rating due to hypertensive cardiovascular disease and arrhythmia. Findings, ¶ 1.p. The Town's independent medical examiner, Dr. Kevin Talley, examined the claimant and assigned the claimant a 6% permanent partial disability rating due to hypertension in a report dated December 8, 2010. Findings, ¶ 1.q. The parties have since stipulated in regards to § 31-308(b) C.G.S. benefits that the claimant is entitled to benefits based upon a 14% permanent partial disability rating with a date of maximum medical improvement of August 19, 2010. The parties have further agreed that these benefits are subject to the cap contained in § 7-433b(b) C.G.S. Findings, ¶ 1.r.

The claimant asserts that he is now entitled to § 31-284b[1] benefits and that he should receive the same health and dental benefits he was receiving prior to retirement for a 72.8 week period as a result of the permanent partial disability award under § 31-308(b) C.G.S. Findings, ¶ 1.t. The Town of Avon contests the claimant's entitlement to such benefits. Findings, ¶ 1.u.

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[1] The relevant term of this statute is as follows:
Sec. 31-284b. Employer to continue insurance coverage or welfare plan payments for employees eligible to receive workers' compensation. Use of Second Injury Fund. (a) In order to maintain, as nearly as possible, the income of employees who suffer employment-related injuries, any employer who provides accident and health insurance or life insurance coverage for any employee or makes payments or contributions at the regular hourly or weekly rate for full-time employees to an employee welfare plan, shall provide to the employee equivalent insurance coverage or welfare plan payments or contributions while the employee is eligible to receive or is receiving compensation pursuant to this chapter, or while the employee is receiving wages under a provision for sick leave payments for time lost due to an employment-related injury. As used in this section, "income" means all forms of remuneration to an individual from his employment, including wages, accident and health insurance coverage, life insurance coverage and employee welfare plan contributions and "employee welfare plan" means any plan established or maintained for employees or their families or dependents, or for both, for medical, surgical or hospital care benefits.

The trial commissioner concluded based on the stipulated facts that the Town of Avon was responsible for payment of 95% of the premium for the Claimant's family medical benefits plan during the 72.8-week period commencing August 9, 2010,[2] pursuant to § 31-284b C.G.S. Conclusion, ¶ A. The commissioner also concluded the Town of Avon was responsible for paying 100% of the claimant's family dental insurance benefits for that same period. Conclusion, ¶ B. The commissioner ordered the Town of Avon to reimburse the claimant for these expenses.

The respondent filed a timely appeal asserting the trial commissioner had reached an improper interpretation of law in awarding the claimant § 31-284b C.G.S. benefits. They argue that based on the text of the statute its purpose was to maintain insurance coverage for those employees who were incapable of working. They argue that the claimant was never medically prevented from working due to his hypertension and that he voluntarily left the employment of the town as a result of a non-medical retirement. They also point out that as a retiree the claimant has access to health insurance benefits, and the claimant's pension is greater than his wages were when he was diagnosed with hypertension. As the town views the situation, the statute was intended to maintain a level playing field for an injured worker and in this situation the claimant is receiving a windfall.

[2] It appears the date of August 9, 2010 may be a scrivener's error. However, the respondent did not file a Motion to Correct.

The claimant argues that case law supports the trial commissioner's position. To that end he cites two Compensation Review Board cases from the 1990's, Distiso v. Southington, 16 Conn. Workers' Comp. Rev. Op. 93, 3073 CRB-6-95-6 (November 13, 1996) and Hodgkins v. Southington, 16 Conn. Workers' Comp. Rev. Op. 96, 3074 CRB-6-95-5 (November 13, 1996). These cases stand for the proposition that the employer is obligated under § 31-284b C.G.S. to provide benefits in the same manner as were provided to the claimant at the date of injury. The trial commissioner was persuaded by this argument. We must ascertain if this was a reasonable application of the law. On appeal, we generally extend deference to the decisions made by the trial commissioner. "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). "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).

The respondent argues that the term in the statute "maintain, as nearly as possible" evince a legislative determination that notwithstanding possible changes in compensation since a claimant's date of injury that a claimant entitled to compensation benefits after leaving employment should receive the same level of benefits as an

uninjured retiree received.[3] [4] However, after reviewing the applicable precedent we conclude this is not the interpretation previous appellate courts have reached as to § 31-284b C.G.S. When Appellate Courts have interpreted a statute, Hummel v. Marten Transport, Ltd., 282 Conn. 477 (2007) stands for the principle that judicial interpretation of a statute governs if those decisions predate the enactment of § 1-2z C.G.S. Id., at 501.

Having reviewed applicable precedent we conclude the Appellate Court promulgated a "bright-line rule" wherein entitlement to § 31-284b C.G.S. benefits is dependent on whether a claimant is receiving indemnity benefits. The Appellate Court decisions in Wilson v. Stamford, 81 Conn. App. 339 (2004); Auger v. Stratford, 64 Conn. App. 75 (2001) and Kelly v. Bridgeport, 61 Conn. App. 9 (2000) govern the situation herein. These cases deal with the eligibility of retired employees to § 31-284b C.G.S. benefits. Upon review of those cases, we are satisfied the trial commissioner properly applied the law.

We considered issues related to the then recently decided Kelly and Auger cases in Graham v. State/Univ. of Conn. Health Center, 4418 CRB-6-01-7 (July 23, 2002). In

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[3] The respondent also argued at oral argument before our tribunal that § 31-284b C.G.S. should be read so to be limited to "time lost" injuries, and therefore it would be inapplicable to voluntary retirement claims. We note that the statute is written in disjunctive form, therefore making all recipients of compensation under Chapter 568 eligible as well as those receiving benefits under a "sick leave" policy. In addition, we find Kelly v. Bridgeport, 61 Conn. App. 9 (2000) and Auger v. Stratford, 64 Conn. App. 75 (2001) stand for the proposition that § 31-284b C.G.S. benefits may be awarded to retirees during the period when they are receiving indemnity benefits.

[4] The "date of injury" rule affixing a claimant's right to benefits at the time he is injured or diagnosed with a compensable ailment has been restated numerous times, see Distiso v. Southington, 16 Conn. Workers' Comp. Rev. Op. 93, 3073 CRB-6-95-6 (November 13, 1996) and Hodgkins v. Southington, 16 Conn. Workers' Comp. Rev. Op. 96, 3074 CRB-6-95-5 (November 13, 1996). See also, Iacomacci v. Trumbull, 209 Conn. 219, 222 (1988), as cited in an official opinion of the Attorney General, dated March 3, 2000.

Graham, the claimant had received an 8% permanent partial disability rating and had been paid that indemnity award but continued to receive medical treatment for the compensable injury. The claimant, who was totally disabled due to a non-work injury, argued that he was still receiving "compensation" for his injury and sought to have his employer provided health insurance reinstated pursuant to § 31-284b C.G.S. We noted that our Compensation Review Board decisions in Kelly and Auger interpreted the statute to extend § 31-284b benefits to a claimant when any provision of Chapter 568 was provided to the claimant. However, the Appellate Court had determined our application of the law was legally incorrect and in Graham, the Compensation Review Board adhered as follows:

> However, both Kelly and Auger were later reversed by our Appellate Court. Auger v. Stratford, 64 Conn. App. 75 (2001)(relying on the analysis in Kelly); Kelly v. Bridgeport, 61 Conn. App. 9 (2000). The court reached its decision in Kelly by looking at the language of § 31-284b(a) at the time of the claimant's injury, and reasoning that the meaning of "compensation payments" does not include payments for medical care after the indemnity compensation period has ceased. Id., 16. The court rejected this board's reliance on the broader definition of "compensation" that was moved from § 31-293 to § 31-275(4), holding that the version of the statute in place on the date of the claimant's injury restricted that definition to § 31-293 only.

Id.

We note Kelly and Auger were decided based on applying an earlier codification of Chapter 568. However, in Graham we reviewed the revised statute enacted in 1991 that governed the claimant's date of injury and found it offered no relief to the claimant. After reviewing the legislative history of P.A. 91-32 in some detail "we conclude that we must interpret § 31-284b(a) to require the continuation of insurance coverage only during

the period of time that a claimant is eligible to receive weekly compensation benefits, despite the current language of § 31-284b(a) that suggests the possibility of a more liberal reading." Id.

In Wilson, supra, the Appellate Court considered a similar fact pattern to Graham where a party was receiving medical benefits but no longer receiving indemnity benefits. The claimant asserted that since he was still receiving "compensation" in the form of medical treatment he was entitled to continued health insurance coverage. The Appellate Court reached the same result as we reached in Graham, since "[o]n the basis of the doctrine of stare decisis, we stand by our holding in *Kelly* v. *Bridgeport*, supra, 61 Conn. App. 16, that compensation 'does not include payments for medical care after the indemnity compensation period has ceased.'" Wilson, supra, 345.

The respondent has pointed out that this is a § 7-433c C.G.S. case where the claimant lost no time from work. The claimant has responded that that is correct pursuant to the stipulation of facts in this case. Nonetheless, § 7-433c C.G.S. awards have been treated as qualifying for § 31-284b C.G.S. coverage in the same manner as claimants within the ambit of Chapter 568. See Deschnow v. Stamford, 214 Conn. 394, 398-399 (1990). We also note that in Kelly, supra, the Appellate Court specifically approved the grant of benefits to a voluntarily retired employee who received an indemnity award for his permanency rating. In light of the clear imprimatur of the Appellate Court that the period that a claimant is paid indemnity awards shall be deemed a period where a claimant is being paid "compensation," see Kelly, supra, we find the trial commissioner's decision herein consistent with legal precedent.

The legal precedent on point states that a claimant is entitled to the maintenance of the insurance coverage he or she had at the time of their injury until any indemnity award for permanent partial disability is exhausted. The trial commissioner ordered this relief. Accordingly, we affirm the Finding and Award.

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