CASE NO. 5743 CRB-1-12-4 : COMPENSATION REVIEW BOARD
CLAIM NO. 100166098

KATHLEEN STOLL
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: APRIL 2, 2013

TOWN OF WINDSOR/
BOARD OF EDUCATION
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLEE

and

WORKERS' COMPENSATION TRUST
ADMINISTRATOR

APPEARANCES:

The claimant was represented by Neil Johnson, Esq., AAAA Legal Services, 96 Webster Street, Hartford, CT 06114.

The respondent was represented by Vincent Oswecki, Esq., O'Malley, Deneen, Leary, Messina & Oswecki, 20 Maple Avenue, Windsor, CT 06095.

This Petition for Review[1] from the March 27, 2012 Finding and Dismissal of the Commissioner acting for the First 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.

[1] We note that extensions of time were granted during the pendency of this appeal.

# OPINION

JOHN A. MASTROPIERO, CHAIRMAN. The claimant in this matter was a school teacher injured during an extracurricular activity at the school where she was employed. She claimed her injury was sustained while in the course of employment, but the trial commissioner dismissed the claim for lack of jurisdiction, finding that § 31-275(16)(B)(i) C.G.S. determined that such injuries were not compensable injuries under Chapter 568.[2] On appeal, the claimant argues that the facts of this case do not support the application of this statute to the claim, and that a statutory revision governing school personnel makes the claim compensable. The fact finding prerogative of the trial commissioner herein is supported by the evidence. We affirm the Finding and Dismissal.

The trial commissioner found the following facts at the conclusion of the formal hearing. The claimant, her supervisor (the school's principal, Patricia Phelan) and the school nurse testified at the hearing. The commissioner also received testimony from witnesses via deposition and a large number of written exhibits. After consideration of this evidence the trial commissioner found the dispute concerned the compensability of a March 9, 2007 injury sustained by the claimant at a PTO dance held at Oliver Ellsworth School in Windsor. The claimant was employed at that time as a teacher at Oliver Ellsworth School. The trial commissioner found she attended the dance with her fiancé and with two of her sons. The claimant participated as a volunteer at the event and

[2] The text of this statute reads:

> (B) "Personal injury" or "injury" shall not be construed to include:
> (i) An injury to an employee that results from the employee's voluntary participation in any activity the major purpose of which is social or recreational, including, but not limited to, athletic events, parties and picnics, whether or not the employer pays some or all of the cost of such activity.

brought soda and pizza. During the course of the event she injured her ankle after contact with a student. The trial commissioner found there was a collective bargaining agreement in place wherein the claimant would be paid extra if she was directed to attend an extracurricular event. The trial commissioner found the claimant attended the dance as a volunteer and as a parent, and was not directed by any of her supervisors to attend.

Among the specific matters testified to by the claimant, the trial commissioner drew particular attention to the claimant's testimony that her sons attended the Oliver Ellsworth School and that two of her sons attended the dance with her, along with her fiancé and that it was the obligation of parents at these dances to supervise their own children. The commissioner also found she testified that she volunteered to help at the event and had not been directed to do so. Findings, ¶¶ 1d and 1e and Conclusion, ¶ D. Based on that factual determination, the trial commissioner concluded that the claimant's attendance at the event where she was injured was as a volunteer and as a parent, and therefore she had not sustained a work-related injury pursuant to the statute. The commissioner dismissed the claim.

The claimant filed a Motion to Correct. She sought corrections noting the PTO required the participation of teachers; and that the PTO was an authorized entity and the event in question was sponsored by the Board of Education. She also sought findings that participation in the PTO was a factor in her evaluations by her employer, and that her principal, Patricia Phelan, was present at the event in her official capacity. The claimant also sought findings that the employer appealed through various forms of invitations to promote teacher attendance at PTO events. The claimant also noted that another witness had testified that teachers were expected to attend at least one PTO event per year. The

respondent objected to the Motion to Correct, claiming that the evidence was unsupportive of those corrections. The trial commissioner denied the Motion to Correct in its entirety and the claimant has pursued this appeal.

The claimant asserts in her appeal that the circumstances of her injury constitute a work-related injury. In particular she argues that Public Act 97-205, which modified § 31-275(16)(B)(i) C.G.S., makes an injury which occurred under these circumstances compensable.[3] The claimant argues that her participation at PTO social events was expected in her role as a teacher at Oliver Ellsworth School, and the revision to the statute makes injuries to those acting as chaperones at school sponsored events within the scope of Chapter 568. The claimant also believes that the precedent in Anderton v. WasteAway Services, LLC, 91 Conn. App. 345 (2005) argues in favor of finding compensability for the claimant's injury, as in the claimant's view in both cases the injury occurred during a recreational activity that the employer had promoted.

The respondent rest its arguments on the factual findings of the trial commissioner, who determined the claimant attended the dance as a volunteer and had not been specifically directed by her supervisor to attend the event in question. The respondent points out in its brief that the claimant's children attended the dance and due

[3] The relevant portion of this act has been codified as § 31-275(16)(B)(iv) C.G.S. and reads as follows:

> (iv) Notwithstanding the provisions of subparagraph (B)(i) of this subdivision, "personal injury" or "injury" includes injuries to employees of local or regional boards of education resulting from participation in a school-sponsored activity but does not include any injury incurred while going to or from such activity. As used in this clause, "school-sponsored activity" means any activity sponsored, recognized or authorized by a board of education and includes activities conducted on or off school property and "participation" means acting as a chaperone, advisor, supervisor or instructor at the request of an administrator with supervisory authority over the employee.

to the "no drop off" policy of the PTO, a parent had to attend the dance if the children attended. Respondent's Brief, p. 4; see also Respondent's Exhibit 1, p. 30 and p. 38. They characterize the claimant's participation at the event as being social in nature, as she was accompanied by her fiancé as well as her children. Finally, the respondent argues that Sendra v. Plainville Board of Education, 3961 CRB-6-99-1 (January 20, 2000) is on point and finds that the statute does not allow for recreational injuries sustained by school personnel to be compensated under the statute.

We find both arguments have limited persuasiveness in this matter. We find this is a matter of first impression before our tribunal as to the applicability of § 31-275(16)(B)(iv) C.G.S. The Sendra case relied upon by the respondent involved an injury to a teacher which occurred in 1995, prior to the effective date of Public Act 97-205. Hence, while this case is instructive as to how we have interpreted the "social-recreational exception," it is not dispositive of the issues herein. Meanwhile, the claimant's argument rests heavily on Anderton, supra. That case involved a private sector employee. In addition, in that case the trial commissioner found after weighing the evidence that the claimant had sustained a compensable injury in the course of employment. The Compensation Review Board vacated that award, and on appeal the Appellate Court reversed this tribunal's decision. In the present case, the trial commissioner reached a factual finding that the injury in question was not compensable. In distinguishing Anderton in Mleczko v. Haynes Construction Co., 5109 CRB-7-06-7 (July 17, 2007), *aff'd,* 111 Conn. App. 744 (2008) we cited it as authority for the proposition "[t]his board

cannot reverse a trial commissioner's factual determination as to whether an activity is social in nature or part of one's duties of employment." Id.[4]

We have extended deference to a trial commissioner's fact-finding prerogative. "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." Burton v. Mottolese, 267 Conn. 1, 54 (2003). We must review how a commissioner applies the law, as "[t]his 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 claimant argues she is entitled to an award as a result of the 1997 revision to the statute. This revision carved out an exception to the general rule barring compensability for recreational accidents. See, e.g., Brown v. United Technologies Corp./Pratt & Whitney Aircraft Div., 5145 CRB-8-06-10 (October 23, 2007), *aff'd*, 112 Conn. App. 492 (2009). This exception covered board of education employees injured at a "school-sponsored" activity while acting as a chaperone, advisor, supervisor or instructor at the request of an administrator with supervisory authority over the employee. The claimant argues the plain meaning of this statute is somehow ambiguous and affixed

[4] In Mleczko v. Haynes Construction Co.,5109 CRB-7-06-7 (July 17, 2007), *aff'd,* 111 Conn. App. 744 (2008) the claimant argued that he was still fulfilling the duties of his employment when he was injured crossing a street after leaving an off-premises restaurant. The trial commissioner concluded based on the facts that the claimant's work day had concluded prior to the accident, and rejected his contention that it was necessary for him to return to a worksite after dinner.

to her brief a floor statement from the Connecticut House of Representatives as to the legislative intent behind the bill. We have reviewed the statement by the bill's sponsor, Labor Committee Chairman (later House Speaker) Christopher Donovan relied upon by the claimant and find it offers little additional clarity as to the statute's parameters.[5] The parameters of the exemption in this statute from the general rule on recreational injuries involve two prongs: the activity must be "school sponsored" and the injured employee must be been present "at the request" of his or her supervisor.[6]

We must view the evidence presented at the formal hearing to ascertain if the trial commissioner's factual conclusions are supported by the evidence. Having done that, we must then ascertain if the factual conclusions are supportive of the legal conclusion that the injury was noncompensable.

After considering the evidence the trial commissioner reached no conclusion on whether the March 9, 2007 dance was a "school-sponsored activity" within the meaning of the statute. The claimant asserts that she presented probative evidence that this event was indeed "sponsored, recognized or authorized" by the respondent board of education, and therefore, she has met this prong of the statutory test. The claimant cites testimony by Ms. Phelan as supporting this conclusion. See Claimant's Brief pp. 7-8, *citing* Claimant's Exhibit F, pp. 8-9. We note the trial commissioner did not find this fact, and

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[5] See House Proc. Vol. 40, Part 14, p. 5179 (May 31, 1997). The entire discussion on this statute was as follows:
"One is a clarification of volunteer work within a school system. If you are asked to volunteer at a school function and you get injured there you should be covered by workers compensation. The other one is as a chaperon at a dance."

[6] There is no dispute in this matter that the claimant was a board of education employee at the time of her injury.

denied a Motion to Correct which would have added this factual finding. While the trial commissioner cited testimony that suggested PTO events were not "sponsored" by the Board of Education in the Finding and Dismissal (see Findings, ¶ 1e), we acknowledge the claimant offered probative evidence supportive of a finding of "sponsorship" or that the event was "authorized." See, for example, Claimant's Exhibit A, the respondent's "Use of School Facilities" policy.

The claimant also had to prove that she had attended this event at the request of her supervisor in order to have this injury deemed compensable. The trial commissioner made specific factual findings to the contrary, and concluded her attendance at the event was a voluntary act on her part. The commissioner cited in Findings, ¶ 1e, testimony from the claimant supporting this conclusion; the relevant factual findings being as follows:

> she testified that there was not a specific request from Mrs. Phelan, Principal of Oliver Ellsworth School, for her to participate in the PTO event; she testified that she agreed that she was a volunteer at the PTO event on March 9, 2007; she testified that the event on March 9, 2007 was a dance sponsored by the PTO…

The trial commissioner also cited testimony from Ms. Phelan consistent with the conclusion the claimant's participation at the PTO event was voluntary. This testimony was summarized by the trial commissioner as follows in Findings, ¶ 2a.

> she testified that she had attended the PTO dance on March 9, 2007; she testified it was sponsored by the PTO, that it was conducted in the cafeteria in the gymnasium of the Oliver Ellsworth School; she testified the time was between 6:00 and 8:00; she testified she did not request Ms. Stoll be at the dance; she testified that she never requires any teachers to be members of the PTO;she testified that she does not order any of the teachers to go to the PTO events…

The statute requires that a claimant attend an event at the request of their supervisor so as to make an injury sustained at the event compensable. The trial commissioner cited testimony from the claimant and her supervisor that the claimant had not been specifically directed to attend the dance.[7] The claimant focuses therefore on a mutual benefit theory that would create compensability. She points out that her job evaluation did include a reference to whether she had been involved in PTO activities. She also points out that the school presumably benefited from an active PTO which would engage parents with the school's mission. Claimant's Brief p. 8. The respondent cites evidence culled from depositions of other teachers at Ellsworth School (Joint Exhibits, ¶¶ 1, 2 and 3) that there were no negative consequences for teachers that did not attend PTO functions. In addition, the respondent points out that in 19 years of employment only one of the claimant's job evaluations referenced participation in PTO activities. Respondent's Brief, p. 6.

We are unwilling to extend a "mutual benefit" application to the facts of this case for a number of reasons. First, the plain meaning of the statute (see § 1-2z C.G.S.) requires that an employee's supervisor request the employee's presence at the event where the injury occurs in order to create compensability. The claimant testified that she had not been specifically directed by Ms. Phelan to attend the dance, and Ms. Phelan testified that she had not directed the claimant to attend the dance. Notwithstanding the claimant's position that Anderton, supra, was on point and the employer expected the

[7] The record reflects the claimant received notice of the dance by means of an e-mail generally circulated to school staff notifying them the dance was scheduled to be held. See Respondent's Exhibit 1, pp. 28-29 and July 26, 2011 Transcript, pp. 19 and 61.

claimant to participate in this event, the trial commissioner reached a contrary factual conclusion.[8] The trial commissioner rejected the claimant's argument in the Motion to Correct and we may therefore conclude he found the evidence supporting this argument was not probative. 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).

We note that the trial commissioner focused on his factual conclusion that the claimant's participation in the March 7, 2009 dance was voluntary in the Finding and Dismissal. We also note that in Brown, supra, the Appellate Court focused on the legislative history as to the social/recreational exception in § 31-275(16)(B)(i) C.G.S. and noted the importance of determining whether an activity was voluntary in determining if the activity was incidental to employment.

> These remarks make clear that the amendment was intended to exclude *voluntary* participation in sporting activities, regardless of the specific nature of such activities. (Emphasis in original.)

Id., 508.

It is clear that the 1997 amendment to this statute afforded greater coverage under Chapter 568 to school employees for certain social and recreational events. It is also clear that the plain meaning of the statute as now amended requires that one's presence at the event in question must be requested by the employee's supervisor to make an injury compensable. We do not believe the amended statute was intended to make injuries sustained after volitional participation at school social events compensable injuries, as

[8] We also note the majority opinion in Anderton v. WasteAway Services, LLC, 91 Conn. App. 345 (2005) made specific reference to the injury having occurred during the claimant's normal work hours. Id., 351. The claimant testified she was not paid for the time she spent at the March 7, 2009 PTO dance. Respondent's Exhibit 1, p. 29.

this interpretation would essentially constitute an evisceration of the prior statute as related to school employees. We are unwilling to define "request" to cover what the record depicts what is at best an inchoate expectation on the part of the school administration that teachers attend PTO functions.

We note that in Anderton, supra, the claimant was specifically asked to play basketball by his supervisor on the day he was injured. Id., 346. The trial commissioner in this case cited numerous facts that would suggest the primary reason for the claimant's attendance at the March 7, 2007 dance was to enjoy a social event with her children. We find this scenario the mirror image of the facts presented in O'Day v. New Britain General Hospital, 3580 CRB-6-97-4 (June 5, 1998). In O'Day, the trial commissioner found the employer requested the claimant to attend a luncheon for a co-worker, and the claimant "did not enjoy socializing or going to parties or luncheons." Id. We affirmed the trial commissioner's conclusion in O'Day that the claimant's participation in the event where she was hurt was not voluntary. We must defer to the trial commissioner's conclusion in the present case that the claimant's participation was voluntary and not solicited by her supervisor.

There was probative evidence supporting his decision. Therefore, we affirm the Finding and Dismissal.

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