CASE NO. 5750 CRB-4-12-5 : COMPENSATION REVIEW BOARD
CLAIM NO. 400070149

RONALD MORALES
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: APRIL 29, 2013

CITY OF BRIDGEPORT/
FIRE DEPARTMENT
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLEE

and

BERKLEY ADMINISTRATORS
ADMININSTRATOR

APPEARANCES:

The claimant was represented by Christopher Richtarich, Esq., and Thomas Weihing, Esq., Daly, Weihing & Bochanis, 1776 North Avenue, Bridgeport, CT 06604.

The respondent was represented by Marie E. Gallo-Hall, Esq., Montstream & May, LLP, PO Box 1087, Glastonbury, CT 06033-6087.

This Petition for Review from the April 26, 2012 Ruling On Respondents' Motion To Dismiss For Lack Of Subject Matter Jurisdiction of the Commissioner acting for the Fourth District was heard October 19, 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 claimant has appealed from the granting of a Motion to Dismiss his claim seeking payment of full salary while on disability. The trial commissioner determined that the claimant's position that § 31-314 C.G.S. provided legal jurisdiction to consider the claim and to grant this relief was unfounded. We find the trial commissioner's interpretation of law legally sound, and affirm the ruling on the Motion to Dismiss.

The following facts are pertinent to our consideration of this appeal. A formal hearing was commenced on January 4, 2012 to address pending Form 36's filed by the respondent. The claimant advised that he would be addressing an issue of salary continuation as a defense, and the trial commissioner continued the hearing to allow the respondent an opportunity to contest the jurisdiction to consider this issue. The respondent filed a Motion to Dismiss and both parties briefed this issue prior to the trial commissioner ruling on this question.

The trial commissioner cited the precedent in Del Toro v. Stamford, 270 Conn. 532 (2004) as standing for the principle the Workers' Compensation Commission may act only in the precise manner provided for by statute. After considering the claimant's argument that § 31-314 C.G.S. not only conferred jurisdiction on the Commission, but mandates the commissioner to calculate a compensation rate based on the alleged practice of providing full pay to injured firefighters, the commissioner found reliance on this statute was unwarranted. The commissioner found the precedent in Starks v. University of Connecticut, 270 Conn. 1 (2004) applied to this statute. That case applied this statute to advances of funds made to a claimant by an employer such as payments without

prejudice, which may subsequently be deemed payable under Chapter 568. The trial commissioner further concluded that other statutes (§ 31-307 C.G.G. thru § 31-310 C.G.S.) addressed the manner in which a compensation rate was calculated. The commissioner noted that although this Commission has found it necessary to consider the terms of a collective bargaining agreement in some circumstances so as to rule on a claim, the argument herein involved an alleged "past practice." Finding that the Workers' Compensation Commission lacked jurisdiction to consider issues as to "past practice," the trial commissioner granted the Motion to Dismiss.

The claimant has appealed this ruling. His argument is that pursuant to the precedent in Starks, supra, he should receive full pay during the period in which he is disabled. We are not persuaded by this argument.[1]

This is a case governed by statutory interpretation. Pursuant to § 1-2z C.G.S. we must apply the "plain meaning" of the text of the statute unless it yields an absurd or irrational result. Connecticut General Statutes § 31-314 reads as follows:

> **Sec. 31-314. Allowance for advance payments.** In fixing the amount of any compensation under this chapter, due allowance shall be made for any sum which the employer has paid to any injured employee or to his dependents on account of the injury, except such sums as the employer has expended or directed to be expended for medical, surgical or hospital service.

The "plain meaning" of this statute is that for "any" individual employee who is injured, the Commission must consider whether any compensation was previously

[1] The respondent has moved to dismiss this appeal claiming it was prejudiced by the late filing of an appellant brief. We deny this motion. We are not persuaded that the respondent was prejudiced by the delay herein in receiving the claimant's appellate brief. As we stated in Vitoria v. Professional Employment & Temps, 5217 CRB-2-07-4 (April 4, 2008), we are reluctant to dismiss a claim for procedural lapses in the absence of prejudice to the respondents. As the appellant filed a brief well in advance of the hearing before our panel, the respondent had sufficient time to prepare a defense to the legal claims advanced by the claimant.

tendered to the employee for their injury prior to setting an award of benefits. The statute does not reference any other employee. Essentially, the claimant suggests "any injured employee" be read as encompassing whatever benefits may have been paid to any coworker by the respondent. We do not find that to be the "plain meaning" of the statute.[2] [3] We are unwilling to extend this statute beyond what the legislature stated herein. We also note the statute references "the injury" in the singular; presumably that would reference the injury sustained by the claimant themselves, and not a similar injury to another claimant.

This statute was referenced by the Supreme Court in the Starks opinion. That case dealt with one question: whether disability benefits paid to the claimant should be deemed to be payments "by the employer" which were "on account of the injury." The court noted a prior opinion, Loftus v. Vincent, 49 Conn. App. 66 (1998) stood for the proposition this statute existed for the purpose of preventing a claimant from obtaining a double recovery.[4] The court concluded based on its reading of the relevant terms of the State Employee Retirement Act that those statutes already provided for an offset against benefits under Chapter 568, and that the Workers' Compensation Commission should not

[2] Had the General Assembly intended this interpretation, presumably the title of this section would have suggested this and the verbiage of the statute would have referenced something akin to "any **similar** injured employee" as being the standard for establishing compensation. Since "[t]he absence of a term from the language of a statute can be telling." Walter v. State, 63 Conn. App. 1, 8 (2001), we cannot add language simply because we may be persuaded there is an omission in the statute. See Bailey v. Mars, 138 Conn. 593, 598 (1952).

[3] We also note the title of the statute is **"Allowance for advance payments."** "The title of legislation when it is acted upon by the legislature is significant and often a valuable aid to construction. . . ." Travelers Ins. Co. v. Pondi-Salik, 262 Conn. 746, 755 (2003); Zichichi v. Middlesex Memorial Hospital, 204 Conn. 399, 405 (1987). As we held in Russell v. State/Dept. of Developmental Services/Southbury Training School, 5212 CRB-5-07-3 (March 18, 2008) "[w]e cannot separate the title of this statute from the underlying text."

[4] See also McFarland v. Dept. of Developmental Services, 115 Conn. App. 306 (2009).

have considered the claimant's disability retirement benefits. This opinion does not address collective bargaining agreements, or the situation of any other employee other than Ms. Starks. Therefore, we do not find this decision is salient to the issues herein.

The respondent points out the similarity between the claimant's position in this case and the claimant's position in Boulay v. Waterbury, 27 Conn. App. 483 (1992). In Boulay the court held that once the claimant received the two-thirds of her salary as compensation benefits she was entitled to pursuant to § 31-307 C.G.S.; the defendant's obligations under Chapter 568 were satisfied. The Appellate Court further held this Commission did not have the ability to adjudicate the claimant's argument she was entitled to the balance of her salary due to a collective bargaining agreement with the respondent. Since the claimant received the benefit she was entitled to under the statute, the Commission had no further jurisdiction.

The claimant may wish to seek redress as to his rights under his labor union agreement in another forum. The trial commissioner correctly determined that our Commission lacks jurisdiction to order payments to a claimant that are not authorized by Chapter 568. As we may only act on a matter within our jurisdiction, see Cantoni v. Xerox Corp., 251 Conn. 153, 160 (1999), we affirm the Ruling on the Motion to Dismiss.

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