CASE NO. 5768 CRB-4-12-7 : COMPENSATION REVIEW BOARD
CLAIM NO. 400076623

DAVID WOODMANSEE
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: DECEMBER 18, 2013

CITY OF MILFORD
EMPLOYER
SELF-INSURED

and

CIRMA
ADMININSTRATOR
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Eric W. Chester, Esq., Ferguson, Doyle & Chester, PC, 35 Marshall Road, Rocky Hill, CT 06067.

The respondents were represented by Colette S. Griffin, Esq., and Melissa A. Federico, Esq., Howd & Ludorf, LLC, 65 Wethersfield Avenue, Hartford, CT 06114.

This Petition for Review[1] from the June 28, 2012 Finding and Orders of the Commissioner acting for the Fourth District was heard May 31, 2013 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Charles F. Senich and Peter C. Mlynarczyk.

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

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have appealed from Findings and Orders in this matter which determined the claimant sustained an occupational disease in the course of his employment as a paramedic for the Milford Fire Department. The claimant developed Hepatitis C which was discovered in 2009. The claimant asserts that he contracted this disease as the result of a needle stick with an infected needle which occurred in the course of his employment in 1981. The trial commissioner accepted this position and determined that the claimant's job duties were such that hepatitis C was an "occupational disease" within the scope of § 31-275(15) C.G.S.[2] The respondents have appealed this determination. After review, we conclude the trial commissioner could reasonably determine that the claimant's illness was an occupational disease and the preponderance of the evidence supported the claimant's position it was contracted in the course of his employment. We affirm the Findings and Orders.

The trial commissioner reached the following findings at the conclusion of the formal hearing. The commissioner considered the issue of compensability of the injury, as a well as a Motion to Dismiss filed by the respondents challenging jurisdiction over the claim. The commissioner found on July 7, 1981 the claimant was employed by the City of Milford as a firefighter/paramedic. On that date, in the course of his employment,

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[2] The statute reads as follows:

(15) "Occupational disease" includes any disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such, and includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course of his employment.

the claimant was providing emergency medical services to an unconscious male in a telephone booth in the city of Milford. The treatment of the patient involved administrating an IV injection into his arm. As the claimant's partner removed the IV from the patient's arm and attempted to place the needle in its sheath, which the claimant was holding, he missed and the needle ended up puncturing the skin of the claimant's hand.

Following the needle stick the claimant and his partner transported the patient to a local hospital. The following morning, the claimant received a telephone call from Dr. Brandt of Milford Hospital who advised him that the patient that the claimant had treated the night before had tested positive for hepatitis and that the claimant would have to get tested and inoculated. The claimant immediately went to Milford Hospital where he was tested and given two shots of gamma globulin. The tests indicated that the claimant was negative for hepatitis. The claimant was not tested for hepatitis C, as testing for same did not exist in 1981. He was not told to receive any other care as a result of the incident. On July 7, 1981, the claimant completed an Incident Report documenting his injury and exposure to hepatitis. The claimant's supervisor completed a Supervisor's Report of Injury on that date, on a form entitled "Connecticut Interlocal Risk Management Agency." This report states that while the claimant was attending a patient in a phone booth he was stuck in the hand with a used, dirty needle. The report of the incident also included handwritten notes by a "Chief Johnson" documenting the suspected exposure to hepatitis and the claimant having received a tetanus shot.

The claimant was first diagnosed with hepatitis C, also referred to as HCV, on or about February 10, 2009, by Dr. Dean Chang, after recent testing had revealed the

presence of chronic hepatitis C. On that date, Dr. Chang reported that the claimant's abnormal liver function tests were detected for the first time in 11/22/08…. "His main risk factor for HCV infection was due to two occupational exposures-the first one occurred in 7/7/1981 when he sustained a needlestick injury as a paramedic while caring for a known IVDU with hepatitis. The 2nd episode occurred in 4/12/1984 when he was exposed to blood during an intubation in the field….I explained to David and his wife that he most likely acquired the HCV infection over 20 years ago due to occupational exposure." Findings, ¶ 9.

The claimant filed his first Form 30C on June 1, 2009, alleging that he contracted hepatitis C attending a patient in a telephone booth, stuck in the hand with a dirty needle. The injury date listed is "11/2008." The commissioner noted that prior to June 1, 2009, there had been no hearings requested, scheduled or held. The commissioner also noted the respondents had filed a Motion to Dismiss challenging the claim as untimely, as the notice of claim was filed 28 years after the specific date of injury and none of the exceptions to C.G.S. Section 31-294c(c) apply.[3] The respondents also challenged the characterization of hepatitis C as an "occupational disease" under the statute.

[3] The relevant portions of this statute read as follows:

(a) No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury, provided, if death has resulted within two years from the date of the accident or first manifestation of a symptom of the occupational disease, a dependent or dependents, or the legal representative of the deceased employee, may make claim for compensation within the two-year period or within one year from the date of death, whichever is later. Notice of a claim for compensation may be given to the employer or any commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident, or the date of the first manifestation of a symptom of the occupational disease and the nature of the disease, as the case may be, and the name and address of the employee and of the person in whose interest compensation is claimed. An employee of the state shall send a copy of the notice to the Commissioner of Administrative Services. As used in this section, "manifestation of a symptom" means manifestation to an employee claiming compensation, or to

The trial commissioner noted the claimant's testimony at the formal hearing. He testified to the following.

> a. The only place he believed he could have gotten the hepatitis C was from the July 7, 1981 needle stick.
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> b. When he was administering emergency care to the unconscious patient in the phone booth, he and his partner moved the patient out of the phone booth and began an IV into the patient's arm. He noticed pinpoint pupils in his assessment of the patient and found track marks on the patient's arm, thus concluding that the patient was an IV drug user.
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> c. The patient's blood was drawn through the needle that was placed in his arm by the claimant and his partner. He was able to confirm that blood traveled through the hollow bore needle in that the IV did start and fluid began flowing into the patient's arm.
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> d. When his partner ended up sticking the needle in his (the claimant's) hand the blood that was in the catheter went into his hand and emptied out into it.
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> e. He married his present wife in 1981 and has been in a monogamous marriage ever since.
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> f. He has never had any tattoos or body piercings.
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> g. He has never used any intravenous drugs and has never used any other type of recreational drug.
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> h. He has never been in prison and has never spent any time in any third world countries.

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some other person standing in such relation to him that the knowledge of the person would be imputed to him, in a manner that is or should be recognized by him as symptomatic of the occupational disease for which compensation is claimed.

(**b**) Failure to provide a notice of claim under subsection (a) of this section shall not bar maintenance of the proceedings if there has been a hearing or a written request for a hearing or an assignment for a hearing within a one-year period from the date of the accident or within a three-year period from the first manifestation of a symptom of the occupational disease, as the case may be, or if a voluntary agreement has been submitted within the applicable period, or if within the applicable period an employee has been furnished, for the injury with respect to which compensation is claimed, with medical or surgical care as provided in section 31-294d. No defect or inaccuracy of notice of claim shall bar maintenance of proceedings unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice. Upon satisfactory showing of ignorance and prejudice, the employer shall receive allowance to the extent of the prejudice.

> i. He does not live with anyone that has HCV and he has never experienced any other instances in which he was exposed to the hepatitis C virus other than the 1981 work-related incident.

Findings, ¶ 12.

The claimant argued that his claim was timely based on having received medical care for the initial needle stick on July 7, 1981, thus satisfying the exception to notice under § 31-294(d) C.G.S.[4] He notes that as no test at the time could discover hepatitis C

[4] This statute reads as follows:

Sec. 31-294d. Medical and surgical aid; hospital and nursing service. (a)(1) The employer, as soon as the employer has knowledge of an injury, shall provide a competent physician or surgeon to attend the injured employee and, in addition, shall furnish any medical and surgical aid or hospital and nursing service, including medical rehabilitation services and prescription drugs, as the physician or surgeon deems reasonable or necessary. The employer, any insurer acting on behalf of the employer, or any other entity acting on behalf of the employer or insurer shall be responsible for paying the cost of such prescription drugs directly to the provider.

(2) If the injured employee is a local or state police officer, state marshal, judicial marshal, correction officer, emergency medical technician, paramedic, ambulance driver, firefighter, or active member of a volunteer fire company or fire department engaged in volunteer duties, who has been exposed in the line of duty to blood or bodily fluids that may carry blood-borne disease, the medical and surgical aid or hospital and nursing service provided by the employer shall include any relevant diagnostic and prophylactic procedure for and treatment of any blood-borne disease.

(b) The employee shall select the physician or surgeon from an approved list of physicians and surgeons prepared by the chairman of the Workers' Compensation Commission. If the employee is unable to make the selection, the employer shall do so, subject to ratification by the employee or his next of kin. If the employer has a full-time staff physician or if a physician is available on call, the initial treatment required immediately following the injury may be rendered by that physician, but the employee may thereafter select his own physician as provided by this chapter for any further treatment without prior approval of the commissioner.

(c) The commissioner may, without hearing, at the request of the employer or the injured employee, when good reason exists, or on his own motion, authorize or direct a change of physician or surgeon or hospital or nursing service provided pursuant to subsection (a) of this section.

(d) The pecuniary liability of the employer for the medical and surgical service required by this section shall be limited to the charges that prevail in the same community or similar communities for similar treatment of injured persons of a like standard of living when the similar treatment is paid for by the injured person. The liability of the employer for hospital service shall be the amount it actually costs the hospital to render the service, as determined by the commissioner, except in the case of state humane institutions, the liability of the employer shall be the per capita cost as determined by the Comptroller under the provisions of section 17b-223. All disputes concerning liability for hospital services in workers' compensation cases shall be settled by the commissioner in accordance with this chapter.

it could not have been detected at the hospital visit he made at the time. In the alternative he argued that hepatitis C is an occupational disease and therefore the timeliness of the claim is dependent on the date of discovery; consistent with precedent from Ricigliano v. Ideal Forging Corp., 280 Conn. 723 (2006). The claimant supported his position that hepatitis C was an occupational disease by entering into evidence an April 2010 publication from the Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health entitled "Workplace Solutions." This report outlined how exposure to blood put paramedics at risk of exposure to a variety of pathogens, including hepatitis and HIV. The publication noted the risk to paramedics from needle sticks and cited a study done in 2002-2003 where 22% of all paramedics cited exposure to blood during the previous year.

The respondents presented testimony from their expert witness, Dr. Bala Shanmugam. Dr. Shanmugam conducted a records review followed by an examination of the claimant. He testified that according to the Centers for Disease Control, health care workers are considered at higher risk of acquiring hepatitis C than the general population, but the incidence of hepatitis C infection in health-care workers is not higher than the incidence of hepatitis C in the general population. He testified that the average risk of contracting Hepatitis C from a single exposure was 1.8%, which applied whether the person stuck was a health care worker or a member of the general public. The witness also testified that is was most likely the patient the claimant encountered in 1981

(e) If the employer fails to promptly provide a physician or surgeon or any medical and surgical aid or hospital and nursing service as required by this section, the injured employee may obtain a physician or surgeon, selected from the approved list prepared by the chairman, or such medical and surgical aid or hospital and nursing service at the expense of the employer.

had only hepatitis B and not both hepatitis B and hepatitis C; and although it was "theoretically possible" the claimant contracted Hepatitis C in that incident, it was unlikely. Findings, ¶ 16.e. The witness testified to the various means of transmission of hepatitis C, which included injection drug use and-accidental exposure to IV needles that have been used on patients with hepatitis C. Another way is via blood transfusions or organ transplants from people infected with hepatitis C. It is also spread via sexual transmission. The witness also noted that one means of transmission was from mother to child during pregnancy. The claimant is adopted and does not know his biological mother. Dr. Shanmugam said he had treated patients who discover late in life they contracted hepatitis C from their biological mother after a latency period of 60 to 70 years. Dr. Shanmugam testified that he could not state with reasonable medical certainty how the claimant contracted hepatitis C.

On cross-examination Dr. Shanmugam testified that a hollow bore needle, such as the one the claimant testified was involved in the 1981 incident, would probably be a more efficient form of transmission than another needle due to the larger amount of blood in the needle. He also said that if the patient in 1981 was an IV drug user that would have increased the risk of that patient being a latent carrier of hepatitis C. The witness was also asked a question as to whether the 1981 incident would be a more likely cause of the claimant's infection in the absence of other risk factors. He answered as follows.

> "…given the fact that the claimant lives in the United States and has been in a monogamous marriage for decades and is not among a population, or any of the populations that you described, would you agree, Doctor, that if one were to conclusively rule out the other forms of transmission which you've testified to, which we know about, would you agree Doctor, that it is more likely than not, within a reasonable degree of medical certainty, that the means

> in which he contracted hepatitis C-of those that we know about, would be the only remaining method, that is, the contamination of the needle in 1981? " The doctor's response was "I guess, yup."

Findings, ¶ 17.c.

Dr. Shanmugam also testified on cross-examination that it was not common for someone to be born with hepatitis C and for it to remain latent until his sixties. He also testified that Immunoglobulin (which the claimant was treated with subsequent to the 1981 incident) is for preventing infection with hepatitis B and does nothing to reduce the risk of being infected with hepatitis C. The trial commissioner also noted that documentation from the CDC relied upon by the respondent's expert witness noted that testing for hepatitis C exposure was recommended for those emergency medical or public safety workers who sustained needle sticks or other exposures to hepatitis C positive blood. The commissioner also took administrative notice of § 31-294j C.G.S.[5]

Based on those aforementioned factual findings the trial commissioner concluded that the claimant was fully persuasive and credible. She found the duties of the claimant's employment as a paramedic increased his risk of exposure to blood borne disease and for emergency medical workers such as the claimant hepatitis is an occupational disease within the meaning of § 31-294c(a) C.G.S., and the criteria set forth

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[5] This statute reads as follows:

Sec. 31-294j. Eligibility of municipal firefighters, police officers, constables and volunteer ambulance service members re benefits for diseases arising out of and in the course of employment. For the purpose of adjudication of claims for payment of benefits under the provisions of this chapter, a uniformed member of a paid municipal or volunteer fire department, a regular member of a paid municipal police department, a constable, as defined in section 31-294i, or a member of a volunteer ambulance service shall be eligible for such benefits for any disease arising out of and in the course of employment, including, but not limited to, hepatitis, meningococcal meningitis, tuberculosis, Kahler's Disease, non-Hodgkin's lymphoma, and prostate or testicular cancer that results in death or temporary or permanent total or partial disability.

in Hansen v. Gordon, 221 Conn. 29 (1992). The commissioner found that pursuant to Ricigliano, supra, the time period to file a claim for benefits commenced upon the date of discovery of hepatitis C by the claimant on February 10, 2009 and the Form 30C filed on June 1, 2009 was timely under § 31-294c(a) C.G.S. As a result the trial commissioner denied the Motion to Dismiss, finding the Workers' Compensation Commission had jurisdiction over the claim.

The trial commissioner also concluded that the reports and opinions of Dr. Chang were credible and persuasive and that she found the report and opinion of Dr. Chang that the claimant most likely acquired the hepatitis C infection over 20 years ago due to occupational exposure, to be more persuasive than the testimony, opinion and report of Dr. Shanmugam that he cannot state with reasonable medical probability when and where the claimant contracted hepatitis C. The trial commissioner did find various statements that Dr. Shanmugam made persuasive; a) that were the patient that the claimant treated in 1981 an IV drug user the risk of contracting hepatitis C would be higher than the general population; b) that a hollow bore needle would be more likely to spread an infection than a solid needle; and c) that if one ruled out other means of transmission the 1981 needle incident was the only remaining means under which the claimant could have contracted hepatitis C. Based on these conclusions the trial commissioner ordered the respondents to accept the compensability of the claimant's hepatitis C claim.

The respondents filed a Motion to Correct seeking to substitute findings that the claimant had not proven he contracted hepatitis C in the course of his employment. The trial commissioner denied this motion in its entirety and the respondents commenced the instant appeal.

The respondents argue in their appeal that their Motion to Dismiss should have been granted and that the claimant's 2009 filing of claim was untimely for an injury associated with a 1981 incident. The respondents also make the related argument that the evidence herein does not support the trial commissioner's determination that hepatitis C is an occupational disease as defined by statute. Finally, they argue the evidence relied on by the trial commissioner to find causation in this case was too equivocal to merit reliance. We do not find these arguments persuasive.

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 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).

We further note that issues as to the quantum of evidence required to prove causation of a compensable injury have been frequently litigated before this tribunal in recent months. In the wake of the Supreme Court's opinion in Sapko v. State, 305 Conn. 360 (2012) we issued an opinion clarifying the evidentiary standards for finding

compensability in Madden v. Danbury Hospital, 5745 CRB-7-12-4 (April 22, 2013). In Madden we cited Love v. William W. Backus Hospital, 5255 CRB-2-07-8 (June 24, 2008) as delineating what a commissioner must consider in finding a nexus between a claimant's current medical condition and a compensable injury.

> It is well settled that the responsibility rests with the trial commissioner to determine whether the facts admitted into a trial record establish causation. "Before he can make a valid award the trier must determine that there is a direct causal connection between the injury, whether it be the result of accident or disease, and the employment. The question he must answer is, was the employment a proximate cause of the disablement, or was the injured condition merely contemporaneous or coincident with the employment?" McDonough v. Connecticut Bank & Trust Co., 204 Conn. 104 (1987)] supra, 117, quoting Madore v. New Departure Mfg. Co., 104 Conn. 709, 713 (1926). Thus, "[W]hen the board reviews a commissioner's determination of causation, it may not substitute its own findings for those of the commissioner." Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 451 (2001)], supra, 451, quoting O'Reilly v. General Dynamic Corp./Electric Boat Div., 52 Conn. App. 813 (1999)], supra, 819. "A commissioner's conclusion regarding causation is conclusive, provided it is supported by competent evidence and is otherwise consistent with the law. Id., 451, quoting Funaioli v. New London, 61 Conn. App. 131, 136 (2000). The trial commissioner is charged with assessing the credibility of the evidence before him, and his "findings of basic facts *and* his finding as to whether those facts support an inference that the plaintiff's injury arose from his employment are subject to a highly deferential standard of review." Blakeslee v. Platt Bros. & Co., 279 Conn. 239, 253-254 (2006) (emphasis in the original.)

Id.

As an appellate body our charge is to ascertain if probative evidence on the record supports the trial commissioner's determination that the proximate cause of the claimant's injury was a result of his or her employment. If such evidence is present on the record, we must affirm the award.

The respondents argue that their Motion to Dismiss should have been granted and this claim should not have been considered on the merits. The authority for this position is two Compensation Review Board decisions from past decades, Altamura v. Altamura Landscaping, 15 Conn. Workers' Comp. Rev. Op. 427, 2170 CRB-7-94-10 (September 3, 1996) and Otero v. Bridgeport, 13 Conn. Workers' Comp. Rev. Op. 248, 1713 CRB-4-93-4 (April 17, 1995). The respondents argue these cases prove the claimant did not sustain an "occupational disease" and the claim is jurisdictionally deficient. We find these cases have little weight on the present matter. Both cases involve back injuries and as we pointed out in Lee v. Standard Oil of Connecticut, Inc., 5284 CRB-7-07-10 (February 25, 2009), such injuries are rather common and may not require expert opinions regarding causation. We can take administrative notice that back injuries are ubiquitous both in the workplace and outside the workplace and are therefore, more akin to the cardiac injuries found not to be an occupational disease in Malchik v. Division of Criminal Justice, 266 Conn. 728 (2003). As we pointed out in Chappell v. Pfizer, Inc., 5139 CRB-2-06-10 (November 19, 2007), *aff'd*, 115 Conn. App. 702 (2009); we have treated workplace exposure to harmful agents in a far different manner than other injuries not so clearly associated with one's occupation.

Moreover, both cases predate the Supreme Court's decision in Ricigliano v. Ideal Forging Corp., 280 Conn. 723 (2006), and now are of limited utility to the extent they conflict with precedent from a higher court. We dealt with a similar nonclaim defense in Chappell, supra, and held "[w]e believe the Supreme Court's opinion in Ricigliano v. Ideal Forging Corp., 280 Conn. 723 (2006) is dispositive of this issue, since it restates the concept of scienter as delineated in Bremner v. Eidlitz & Son, Inc., 118 Conn. 666

(1934), noting that since "'[m]ost symptoms of disease are not peculiar to one disease alone and their recognition is matter largely within the field of expert medical knowledge,' many diseases are not linked exclusively to one cause and it may take advances in medical knowledge to establish the workplace connection." Ricigliano, supra, 739-740." Id. Given the lengthy incubation period of hepatitis C it is clear the claimant could not have had scienter of a possible work related injury until long after the accidental injury claim period for the initial exposure would have expired. The claim therefore is timely pursuant to the statute. The trial commissioner concluded reasonably based on the record herein the claimant asserted an occupational disease claim within two years of the date of initial manifestation of symptoms.[6]

[6] The trial commissioner did not issue a finding on whether the claim herein was timely under the medical care exception of § 31-294c C.G.S., but our review of the holding of Pernacchio v. New Haven, 63 Conn. App. 570 (2001) suggests that the claimant may have met this exception to formal notice even were he not to have sustained an injury that was ultimately deemed an occupational disease. In Pernacchio, the claimant got ill during the course of his work day and was transported by an ambulance at the direction of his employer to the emergency room. The trial commissioner concluded that filing a First Report of Injury, coupled with the respondent's employees having witnessed the event and summoning medical treatment, was sufficient to meet the "totality of the circumstances" test promulgated in Hayden-Leblanc v. New London Broadcasting, 12 Conn. Workers' Comp. Rev. Op. 3, 1373 CRD-2-92-1 (January 5, 1994). In addition, the trial commissioner concluded that by sending the claimant to the hospital in an ambulance the respondents "furnished medical care" within the meaning of the statute. The Appellate Court relied on the medical care exception to the statute in affirming the trial commissioner's decision.

"We agree with the conclusion of the majority of the board that the exception to the requirement of § 31-294c(a) that a written notice of claim for compensation be given within one year from the date of the accident that caused the personal injury created by § 31-294c(c) is applicable because the defendant, immediately after the accident, furnished the plaintiff with medical and hospital care, as provided in § 31-294d." Id., 577-578.

In the present case the uncontroverted evidence was that the claimant was directed by his employer to seek medical treatment for the July 7, 1981 needle stick and the claimant received this treatment. See Findings, ¶¶ 7 and 8. As we have affirmed the Finding and Orders on the issues the trial commissioner decided, it is not necessary for our panel to rule on the validity of the medical care exception herein; although we do note that were this exception met, the claimant would not need to prove his Hepatitis C was an occupational disease; only that it had been contracted via workplace exposure.

Having asserted an occupational disease claim the claimant still has the burden of proving his case in order to obtain benefits under Chapter 568, see Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440 (2001) and Voronuk v. Electric Boat Corporation 5167 CRB-8-06-12 (January 17, 2008), *aff'd*, 118 Conn. App. 248 (2009). This required the claimant to prove that hepatitis C is an occupational disease and that he contracted this disease in the course of his employment. The trial commissioner was persuaded of this and we must determine if this was a reasonable conclusion.

The respondents argue that hepatitis C should not be considered an occupational disease as it not peculiar to the claimant's occupation, and its primary means of transmission is nonoccupational. They argues that the evidence herein presented by the claimant supportive of this conclusion is akin to the evidence found wanting by the Supreme Court in DiNuzzo v. Dan Perkins Chevrolet Geo, 294 Conn. 132 (2009). Respondent's Brief, p. 14. The respondents argue that their evidence in the Motion to Dismiss and from the testimony of Dr. Shanmugam demonstrated health care workers are not at a greater risk of contracting this illness than the general population.

We note that the trial commissioner chose not to rely on the respondent's evidence and it is the quintessential duty of the fact-finder to ascertain what evidence he or she deems reliable. We also find the citation of DiNuzzo, unpersuasive as unlike the unreliable witness in that case, there is no averment that the claimant's treating physician, Dr. Chang, failed to sufficiently acquaint himself with the claimant's illness prior to rendering an opinion. Id., 144-148. The trial commissioner in Findings, ¶ 18, also noted the documentary evidence proffered by the respondents included a publication by the

Centers for Disease Control delineating the risk to health care professionals after needle sticks.[7]

The trial commissioner cited Hansen v. Gordon, 221 Conn. 29 (1992) as grounds for finding that hepatitis C is an occupational disease for emergency medical response workers such as the claimant. Conclusion, ¶ D. The trial commissioner noted that the duties of the claimant's employment required actions that increased his exposure to blood borne illnesses. Conclusion, ¶ B. We find the record supports that conclusion. Moreover, we cannot distinguish this case from the situation in Estate of Doe v. Dept. of Correction, 268 Conn. 753 (2004). In Doe, the claimant was a correction officer who contracted HIV. The Supreme Court found the claimant's injury herein to be an occupational disease *citing* Hansen, supra, "[s]imilar to the duties of the dental hygienist in *Hansen*, the duties of employment for members of the emergency response unit requires participation in employment activities that increase their risk of exposure to a blood borne disease." Id., 762.

An examination of the Supreme Court's rationale in Doe is illuminating as to how the term "occupational disease" has been defined. The respondents appear to argue that if the illness in question is one that is prevalent in the general population to some extent; that therefore it cannot be peculiar to a claimant's job responsibilities and therefore

[7] It appears the Centers for Disease Control has reissued its publication on the risk of Hepatitis C. In "Hepatitis C FAQs for Health Professionals" (last updated May 28, 2013, accessed on CDC website November 26, 2013) the federal government reiterates that heath care workers after neeedlesticks involving HCV positive blood are at risk for infection and recommends persons with known exposures, such as health care workers after needlesticks involving HCV positive blood should be tested for exposure. An article entitled "Hepatitis C" on the Mayo Clinic website dated August 13, 2013 (accessed November 26, 2013) states the risk of hepatitis C infection is increased for health care workers exposed to infected blood via an infected needle piercing the skin, and such health care and emergency workers should be screened for the illness.

cannot be an "occupational disease" under Chapter 568. The Supreme Court rejected that argument in Doe. In that case the claimant's "duties of employment also included responding to medical emergencies, altercations and other disturbances." Id., 755. "In the course of his employment, the decedent experienced numerous incidents when he could have come into contact with blood or other bodily secretions from inmates through splash incidents, or through other conduct by inmates that would bring the inmates' bodily fluids into contact with the decedent's skin or mucous membranes." Id., 761. "These 'duties of the employment' are not common occurrences in most of the working world, and are 'so distinctively associated with the [decedent's] occupation that there is a direct causal connection between the duties of the employment and the disease contracted.' (Internal quotation marks omitted.) *Hansen* v. *Gordon*, supra, 221 Conn. 35." Id., 762. As a member of the prison's emergency services unit the Supreme Court found the claimant had to interact with inmates "in a manner that greatly increases their risk of contracting the disease." Id. "Therefore, in the present case, the decedent's HIV infection constitutes an occupational disease because his employment as a correction officer in the emergency response unit was more likely to cause this disease 'than would other kinds of employment carried on under the same conditions.' *Madeo* v. *I Dibner & Bro., Inc.*, supra, 121 Conn. 667." Id., 763.

We also find Doe addresses the claim by the respondents in this case that the infrequency of infections in the manner sustained by the claimant argues against finding he sustained an occupational disease. "We rejected this argument as early as 1942 in *LeLenko* v. *Wilson H. Lee Co.*, 128 Conn. 499, 24 A.2d 253 (1942). In that case, this court concluded that '[o]ccupational diseases result ordinarily in incapacity in a relatively

small proportion of the number of employees subjected to the risk; indeed if this were not so, economic considerations would require an abandonment of the employment or a change in its conditions to obviate the risk. There is nothing in the terms of our statutory definition of an occupational disease which suggests that to fall within it a disease must be one which is a usual or generally recognized incident of the employment, . . .'" Id., 766. "It is sufficient . . . [to] show that [the claimant's] contracting the disease, *no matter how rar*e, or unusual, was occasioned by conditions characteristic of and peculiar to [the claimant's] job.'' Id., 767. (Emphasis in original.)[8]

We find the trial commissioner could reasonably determine that a paramedic performing emergency response (such as the claimant in this case) was at greater risk of sustaining exposure to a blood borne illness than the average employee, or even other employees of the fire department or other health care workers. Such a determination is entirely consistent with the precedent in Doe, and fulfills the statutory requirement of defining the claimant's illness as an occupational illness under Chapter 568. See also Chappell, supra, (asthma an occupational disease for employee who worked in pharmaceutical fermentation tank). "In interpreting the phrase occupational disease, we have stated that the requirement that the disease be peculiar to the occupation and in excess of the ordinary hazards of employment, refers to those diseases in which there is a causal connection between the duties of the employment and the disease contracted by

[8] For that reason, the trial commissioner could reasonably discount the opinion of Dr. Shanmugam that health care workers did not have a greater risk of contracting hepatitis C than the general population. See Respondent's Brief, p. 22, where the trial commissioner's failure to credit this opinion is asserted as error. We also note that one of the most common forms of transmission of hepatitis C is intravenous drug abuse, and no evidence on the record was submitted linking the prevalence of this behavior to health care workers.

the employee. In other words, [the disease] need not be unique to the occupation of the employee or to the work place; it need merely be so distinctively associated with the employee's occupation that there is a direct causal connection between the duties of the employment and the disease contracted. . . ." Id., 115 Conn. at 708, *citing* Doe, supra.

While hepatitis C may well be properly defined as an occupational disease for paramedics, the claimant in this matter still had the burden of proving to the trial commissioner's satisfaction that he contracted this disease in the course of his employment. The respondents argue that the evidence behind this conclusion was insufficient to sustain an award, *citing* DiNuzzo, supra. They argue that the opinions of the claimant's treating physician, Dr. Chang, were inadequate to support an award. They also argue that as another possible source of exposure (the claimant's birth mother) could not be conclusively ruled out that the evidence does not establish workplace causation.

The trial commissioner based her decision that the claimant's hepatitis C was a compensable injury based on the following subordinate findings. She found the claimant was "fully credible and persuasive." Conclusion, ¶ A. The claimant testified the only place he believed he could have gotten the hepatitis C was from the July 7, 1981 needle stick, Findings, ¶ 12.a., and further testified that he had experienced none of the other commonly known means of transmission of this disease; as he had not had a transfusion or a tattoo; had not been incarcerated or traveled overseas; did not use intraveneous drugs and was in a monogamous marriage. Findings, ¶ 12.e.-i. The trial commissioner also found the opinions and reports of Dr. Chang to be persuasive and credible. Conclusion, ¶ G. Dr. Chang has opined "I explained to David and his wife that he most likely acquired the HCV infection over 20 years ago due to occupational exposure." Findings, ¶ 9, and

Claimant's Exhibit C. The trial commissioner also credited various statements of Dr. Shanmugam supportive of finding compensability, specifically his statements as to the likelihood of claimant's workplace exposure to hepatitis C in the absence of other viable forms of exposure. Findings, ¶ 17.c.

The respondents argue that this is an inadequate foundation of expert opinion evidence to support an award, *citing* Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142 (1972). The respondents further argue that Dr. Chang's opinion fails to meet the standard in Struckman v. Burns, 205 Conn. 542 (1987) as to expressing an opinion to a substantial medical certainty. We are not persuaded by this argument. "When the board reviews a commissioner's determination of causation, it may not substitute its own findings for those of the commissioner." Dengler, supra, 451, *quoting,* O'Reilly v. General Dynamics Corp., 52 Conn. App. 813 (1999), supra, 819. The trial commissioner is charged with weighing the medical evidence presented at the hearing, O'Reilly, supra. The trial commissioner was persuaded by the claimant's evidence in this case.

In determining whether Dr. Chang's opinions are sufficient we must not search for "magic words" Struckman, supra, but instead in the absence of such a "magic word" standard, an expert's testimony "is determined by looking at the entire substance of testimony." O'Reilly, supra, 817-818. In Dr. Chang's February 10, 2009 report the physician outlines a past medical history of the claimant and documents a full physical examination. In the "History of Present Illness" the report notes "[h]is main risk factors for HCV infection was due to 2 occupational exposures—the 1st one occurred in 7/7/1981 when he sustained a needlestick injury as a paramedic while caring for a known IVDU with hepatitis. The 2nd episode occurred in 4/12/1984 when he was exposed to blood

during an intubation in the field." Claimant's Exhibit C. The "History of Present Illness" also documents the claimant's denial of other risk factors for hepatitis C. In "Assessment" the report states "I explained to David and his wife that he most likely acquired the HCV infection over 20 yrs ago due to occupational exposure."[9]

Dr. Chang's report places no weight on any other possible nonoccupational source of hepatitis exposure. The claimant testified as to his belief he was exposed in the course of his employment. Taken together we believe this evidence reaches the threshold for proving causation stated by the Supreme Court in Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010). The Supreme Court in Marandino pointed out that a medical opinion cannot be considered in a vacuum, but must be considered in the context of the factual circumstances surrounding the claimant's injury. "Moreover, as we have explained previously herein, it is proper to consider medical evidence *along with all other evidence* to determine whether an injury is related to the employment. Murchison v. Skinner Precision Industries, Inc., supra, 162 Conn. 151." Id., at 595 (Emphasis in original.) Considered in the context of the totality of the evidence presented, which included opinions from the respondents' expert[10] the conclusion herein was reasonable and not arbitrary, capricious or unsupported by probative evidence.

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[9] The respondents did not depose Dr. Chang. Therefore, the trial commissioner was permitted to rely on his report "as-is" and draw any reasonable conclusions therein. Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007).

[10] The respondents assert it was error to find their expert credible and persuasive on some issues but not to rely on his entire opinion. A trial commissioner may find an expert witness persuasive on one issue and find his or her opinion unpersuasive on other issues. Lopez v. Lowe's Home Improvement Center, 4922 CRB-6-05-3 (March 29, 2006).

We finally wish to discuss an issue claimant's counsel discussed at some length at oral argument before our tribunal. Counsel argues that since an alternative potential source of exposure to hepatitis C had not been ruled out by the various witnesses, i.e., exposure from the claimant's unknown birth mother; that therefore there was insufficient support for the trial commissioner's Conclusion, ¶ L,[11] and the basis to award benefits to the claimant did not exist. We do not agree with this reasoning, as it essentially moves the burden of proof for a claimant beyond that of proving causation by a reasonable likelihood to something akin to the "beyond a reasonable doubt" standard of Anglo-American criminal jurisprudence. Having reviewed the precedent defining the standard of "proximate cause" for Chapter 568 litigation, we find no support for the position that in order to prove "proximate cause" for an injury one must conclusively rule out any other potential cause. See Sapko, supra.

> The 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.) *Stewart* v. *Federated Dept. Stores, Inc*., supra, 611.

Id., at 373.

The trial commissioner was presented with probative evidence supportive of workplace causation for the claimant's injuries and evidently discounted any evidence

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[11] This conclusion reads as follows:

"While no one can say with absolute certainty how the claimant contracted hepatitis C, I find that given the totality of the evidence, it is more likely than not that the claimant contracted hepatitis C as the result of the needlestick incident that occurred on July 7, 1981."

supportive of the alternative means of exposure.[12] Pursuant to the precedent in Sapko cited herein the trial commissioner had the right to reach a factual determination on that issue.

On appeal, this panel must provide "every reasonable presumption" supportive of the Findings and Orders, Torres v. New England Masonry Company, 5289 CRB-5-07-10 (January 6, 2009). We are satisfied the evidence on the record was sufficient to enable the trial commissioner to find that the claimant's hepatitis C was contracted in the course of his employment.

We affirm the Findings and Orders.

Commissioners Charles F. Senich and Peter C. Mlynarczyk concur in this opinion.

[12] We uphold the trial commissioner's denial of the respondent's Motion to Correct. The corrections in this motion sought to interpose the respondents conclusions as to the law and the facts presented. Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006), and D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003).