CASE NO. 5772 CRB-6-12-8 : COMPENSATION REVIEW BOARD
CLAIM NO. 601005577

VERNARD L. DUNTZ, JR.
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: JULY 22, 2013

ALES ROOFING AND CAULKING CO.
EMPLOYER
RESPONDENT-APPELLANT

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

The claimant was represented by Jeffrey C. Nicholas, Esq., The Nicholas Law Firm, LLC, 373 Prospect Street, Torrington, CT 06790.

The respondent Ales Roofing and Caulking Co., was represented by Greg S. Krieger, Esq., Howard, Kohn, Sprague & Fitzgerald, PO Box 261798, Hartford, CT 06126-1798.

The respondent Second Injury Fund was represented by Joy L. Avallone, Esq., Assistant Attorney General, Office of the Attorney General, 55 Elm Street, Hartford, CT 06141-0120.

This Petition for Review from the August 14, 2012 Order of the Commissioner acting for the Fifth District was heard February 15, 2013 before a Compensation Review Board panel consisting of Commissioners Peter C. Mlynarczyk, Nancy E. Salerno and Scott A. Barton.

OPINION

PETER C. MLYNARCZYK, COMMISSIONER. The respondent has appealed from an Order issued by the trial commissioner for the Fifth District authorizing a medical examination of the claimant by James A. Nunley, M.D. at the Duke University Medical Center in North Carolina. We are not persuaded by the respondent's legal argument that the trial commissioner erred by ordering this examination. We affirm the Order.

The claimant in this matter sustained a compensable injury in the late 1990's, which was the injury we discussed in our decision in Duntz v. Ales Roofing & Caulking Co., 3771 CRB-6-98-2 (December 22, 1998). Subsequent to his injury, the claimant relocated to the South and obtained authorization from this commission to treat with Dr. Nunley. The claimant had not been examined by Dr. Nunley for an extended period of time, and his counsel in Connecticut sought Commission approval for the claimant to be examined again. Counsel for the respondent objected on the grounds that there could have been an intervening event that would shift liability away from his client, and that the claimant should present evidence of causation to the trial commissioner prior to being examined. The hearing transcript indicated that although the respondent had been provided an opportunity to have deposed the claimant prior to the hearing, they had not availed themselves of this opportunity. The respondent offered no evidence of an intervening event having occurred. Based on this record, the trial commissioner ordered the examination to occur.

The respondent has appealed arguing that the claimant was obligated to present evidence to the trial commissioner demonstrating causation of his current medical

condition prior to having any treatment approved. In their brief they cite Sapko v. State, 305 Conn. 360 (2012) and Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440 (2001) for the proposition it is the claimant's burden to prove disability. We are not persuaded as both cases are clearly distinguishable. In both of those cases, the claimant was seeking indemnity benefits and the record before the trial commissioner indicated that an intervening event was the proximate cause of the claimants' injury. In the present case, the claimant is seeking medical treatment under § 31-294d C.G.S. and there is no evidence on the record that the claimant has sustained any new injury.

The plain meaning of § 31-294d(a)(1) C.G.S. is rather unambiguous. "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." Once the respondent is aware of a compensable injury, it is their duty to furnish appropriate medical care for the injury. There is no time limitation in the statute. The record herein is that the claimant's injury is compensable and he has an authorized treating physician. The trial commissioner merely restated the status quo in the case and permitted additional authorized treatment. While there may have been delays in the case, such delays do not bar the trial commissioner authorizing additional treatment. See Wiggins v. Middletown, 5300 CRB-8-07-12 (January 15, 2009).

We find the Compensation Review Board has issued two decisions in recent years pertaining to medical treatment for claimants who have relocated out of state. Neither supports the respondents' reasoning. In Burns v. Wal-Mart Stores, Inc., 5343 CRB-7-08-

5 (March 23, 2009) the claimant was injured in Connecticut, relocated to South Carolina, and then sought surgery for her injuries in that state. We rejected the respondent's apparent belief that Connecticut lost jurisdiction over the claim after the claimant relocated. "Counsel for the respondents appear to base his argument on the unstated position that the claimant's decision to move out of Connecticut caused jurisdiction over her compensable 2003 injury to lapse. There is no precedent for this position and we specifically reiterate this Commission maintains continuing jurisdiction over such claimants."[1] Id. In Evensen v. Stamford, 5541 CRB-7-10-4 (March 31, 2011), a case involving reimbursement of travel expenses, the dispute centered on whether the claimant should treat in Connecticut or Florida. We pointed out such a decision was in the hands of the trial commissioner. "We reject the respondents' belief that Melendez, supra, mandates that the claimant must change treating physicians when he or she relocates outside Connecticut. The trial commissioner is the ultimate judge of what modalities of treatment at what locations constitute reasonable or necessary treatment for the claimant's injuries. Cervero v. Mory's Association, Inc., 5357 CRB-3-08-6 (May 19, 2009), *aff'd*, 122 Conn. App. 82 (2010), *cert. denied*, 298 Conn. 908 (2010)." Id.

Consistent with Cervero, supra, the trial commissioner authorized a new examination for the claimant by his treating physician. We note that our policy has been to encourage injured workers to be examined at the earliest possible juncture so that remedial measures can commence in an expedited manner. See Lee v. Cultec, Inc., 5546

[1] Were the claimant seeking a new surgery or modality of treatment for his compensable injury at this time our precedent states that he would need to present expert testimony establishing causation Weir v. Transportation North Haven, 5226 CRB-1-07-5 (April 16, 2008). We do not extend the precedent in Weir to resuming examinations with a previously authorized treating physician.

CRB-7-10-4 (February 25, 2011) and McInnis v. Shelter Workz, 5299 CRB-3-07-11 (June 11, 2009). We also note that the respondent failed to depose the claimant or present any evidence to the trial commissioner of an intervening event that would break causation. See Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007), where when the respondents did not depose a medical witness the trial commissioner was permitted to rely on his opinion "as is." The claimant seeks medical treatment. The respondent offers no evidence contesting the request.

There is an appropriate means for a respondent to seek to discontinue treatment or benefits for a compensable injury. The respondent can file a Form 43 or a Form 36 with appropriate documentation seeking the Commission's approval to discontinue the claimant's benefits or treatment. The respondent failed to take this action. As the claimant sought essentially to continue treatment previously authorized by the Commission, the trial commissioner reached a legally sound decision.

The Commissioner's Order is affirmed.

Commissioners Nancy E. Salerno and Scott A. Barton concur in this opinion.