CASE NO. 5773 CRB-4-12-8 : COMPENSATION REVIEW BOARD
CLAIM NO. 400083993

DOLORES WILSON
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: AUGUST 8, 2013

MAEFAIR HEALTH CARE CENTERS
EMPLOYER

and

GALLAGHER BASSETT SERVICES
INSURER
RESPONDENTS-APPELLANTS

and

LIBERTY MUTUAL INSURANCE
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

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

The respondents Maefair Health Care Center and Liberty Mutual Insurance were represented by Vincent DiPalma, Esq., Law Offices of Loccisano, Turret & Rosenbaum, 101 Barnes Road, 3rd Floor, Wallingford, CT 06492.

The respondents Maefair Health Care Center and Gallagher Bassett were represented by Timothy D. Ward, Esq., McGann, Bartlett & Brown, LLC, 111 Founders Plaza, Suite 1201, East Hartford, CT 06108.

This Petition for Review[1] from the August 7, 2012Finding and Award/Orders of the Commissioner acting for the Fourth District was heard January 18, 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 extensions of time were granted during the pendency of this appeal.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondent-insurer Gallagher Bassett Services ("Gallagher") has appealed from a Finding and Award/Orders issued to the claimant. Gallagher bases its appeal on its opinion that a prior insurer for the claimant's injuries, Liberty Mutual, should be the party responsible for the claimant's cervical disc surgery. This appeal turns on whether the trial commissioner properly applied the precedent in Hatt v. Burlington Coat Factory, 263 Conn. 279 (2003). We find that, consistent with our opinion in Weir v. Transportation North Haven, 5226 CRB-1-07-5 (April 16, 2008), the determination of what constitutes a "substantial contributing factor" is a legal question that a trial commissioner must resolve, and is a decision under which a commissioner retains discretion in weighing the evidence presented at the hearing. We believe given the facts of this case a trial commissioner could reasonably find the claimant's injury, while Gallagher was the employer's insurer, substantially and materially increased the claimant's disability. We find no error, and affirm the Finding and Award/Orders.

The trial commissioner found the following facts at the conclusion of the formal hearing. The claimant had worked since 2000 for the respondent-employer Maefair Health Care Centers ("Maefair") as a certified nursing assistant. In 2006 the claimant sustained a work related injury to her neck, but it resolved itself in a prompt manner and the claimant continued her work. On April 4, 2010, during the course of her employment with Maefair, the claimant sustained a second injury to her neck while walking with a patient whose legs suddenly gave in, jerking the claimant to her left side while she was

trying to hold the patient up. At that time, Liberty Mutual was the carrier for Maefair. The claimant treated after the April 4, 2010 incident first at a walk-in clinic and later at Orthopaedic and Sports Medicine Center where she was examined by Dr. David J. Martin. On April 8, 2010 Dr. Martin noted symptoms of neck pain that radiated into the claimant's left hand and finger. He referred the claimant for chiropractic treatment. Following the April 4, 2010 incident the claimant was unable to work. After several days, she returned to work without restrictions. The claimant underwent chiropractic treatment from April 9, 2010 through August 4, 2010, at which time it was reported that the claimant had noted significant improvement with the treatment, and had no pain in her neck or arm. She continued to have numbness from her left elbow to her first three fingers, but was not taking any medication and she was continuing to work.

Issues concerning authorization of medical examinations and tests accompanied the claimant's recovery. On May 19, 2010 Dr. Martin requested approval for an MRI of the claimant's neck due to her ongoing symptoms. The MRI was not approved until August 2010, and was ultimately performed on August 7, 2010. The MRI revealed multiple levels of degenerative cervical disc disease, some stenosis at C4-5, C5-6 and C6-7 with a herniation on the left side at C6-7. Dr. Martin referred the claimant to Dr. Mark E. Wilchinsky for evaluation. On August 17, 2010, Dr. Wilchinsky noted that the claimant was having pain radiating from the neck down to the radial three digits of her left hand and that now she was getting similar symptoms on her right hand. He noted that her reflexes were symmetrically decreased and noted no hyperflexia and no clonus. He referred the claimant to Dr. Abraham Mintz, a neurosurgeon, for a second opinion and noted that the claimant would continue with her present job duties. The appointment

with Dr. Mintz was never authorized by Liberty Mutual. The claimant testified that she did not see Dr. Mintz after Dr. Wilchinsky referred her to him in 2010 because the insurance never responded back.

After August of 2010, the claimant did not treat with any doctors for her neck injury until after March 22, 2011. The claimant testified that despite ongoing symptoms from her neck into her left arm and fingers, she continued to work without restrictions, albeit with difficulty. On March 22, 2011 the claimant re-injured her neck during the course of her employment with Maefair while assisting a patient in bed. At that time, Gallagher was the workers' compensation carrier for Maefair. Following the March 22, 2011 incident the claimant presented to MED-Now where she was diagnosed with a cervical sprain and was prescribed Naprosyn and Skelaxin. At that time, she was issued light duty work restrictions and referred back to an orthopedic doctor. She presented to Dr. Wilchinsky on April 5, 2011.

At the April 5, 2011 examination, after noting that the claimant was returning to him after a long absence, Dr. Wilchinsky reported that she had generalized tenderness of the cervical spine and some tenderness in the right and left supraclavicular fossae. He found that the claimant's reflexes were symmetrically increased. He noted that he had referred the claimant the previous year to Dr. Mintz for his opinion regarding possible surgery, but that the visit had not been approved by the insurance carrier. He stated that the claimant needed cervical disc surgery, and again referred her to Dr. Mintz for a neurosurgical evaluation. Dr. Wilchinsky also continued the claimant with light duty work restrictions. The claimant testified that her employer was only able to accommodate her light duty restrictions for a short period of time. Since that time, she has made

diligent efforts to find work within her restrictions without any success, and that she has documented these efforts through the use of job search forms. The claimant saw Dr. Mintz on August 12, 2011. Dr. Mintz recommended a multi-level anterior cervical disc excision and fusion.

The treating physicians offered opinions as to the claimant's need for surgery. Dr. Mintz opined in a letter dated October 10, 2011 that based on the findings of the MRI scan of August 2010 the claimant was a surgical candidate prior to the injury of March 22, 2011. Dr. Mintz further testified that when he saw the claimant in August 2011 she had additional findings that were not noted to have existed in 2010. With regard to the differences he specifically found that the claimant had some weakness in her left upper extremity; that her reflexes were diffusely hyperactive and that she had Hoffman signs bilaterally. However, he agreed that the claimant was a surgical candidate prior to the incident of March 2011. Dr. Wilchinsky testified that the claimant was a surgical candidate on August 17, 2010 based on his evaluation of the MRI of that date. He said if the claimant hadn't had the March 2011 incident, he would have recommended the surgery anyway, which he did. Dr. Wilchinsky further testified the March 2011 incident probably aggravated the claimant's preexisting condition and made it worse. He said it was hard to quantify, but if pinned down he would probably attribute 10% of her current condition to the March 2011 incident.

Liberty Mutual had the claimant examined by their expert witness, Dr. John G. Strugar, on January 11, 2012. Dr. Strugar opined the surgery could easily have been recommended at the time of the August 7, 2010 MRI because the claimant was exhibiting signs and symptoms of spinal cord injury and the MRI confirmed the spinal cord injury.

He further testified the claimant was a surgical candidate before the March 22, 2011 incident and that both the 2010 and 2011 incidents were substantial factors in causing the claimant to need surgery much sooner than otherwise would have been necessary. He deemed the 2011 incident as less of a substantial factor as the claimant was developing symptoms as time went on. Dr. Strugar opined that the 2010 incident is 30% responsible for the claimant's need for surgery, the 2011 incident is 10% responsible, and the underlying disc disease is 60% responsible.

The claimant also testified that her 2006 neck injury did not cause her to lose any time from work or debilitate her in any way. She testified after the April 4, 2010 incident she was out of work for a couple of days but then continued to work without restrictions until the March 22, 2011 incident. She also testified that prior to the March 22, 2011 incident she had some symptoms in her right arm but they became worse after that incident. After the March 22, 2011 incident she was getting numbness constantly down her arm and her hand was cramping. She did not have that problem before the March 22, 2011 incident. She also said that she had been given light duty restrictions after the 2011 incident which limited her to five pounds of lifting, and she could not lift, pull or push patients, and she had not had these restrictions as a result of the 2010 incident.

After reviewing the evidence presented, the trial commissioner concluded that the claimant was credible and persuasive; thereby meeting the burden of proof that her injuries and need for surgery were work-related. The commissioner found the surgery proposed by Dr. Mintz to be reasonable and necessary. She also found the opinions of Dr. Wilchinsky, Dr. Mintz and Dr. Strugar to be credible and persuasive with regard to the claimant's need for surgery and with regard to the fact that the claimant was a

surgical candidate prior to March 22, 2011. However, she noted Dr. Mintz had testified that the claimant had additional findings in 2011 which she had not had in 2010. The commissioner also found the opinion of Dr. Wilchinsky credible and persuasive that the claimant's pre-existing condition had been aggravated by the 2011 injury. The trial commissioner also credited Dr. Strugar's opinions on allocation of causation of the claimant's condition between her underlying disc disease and the two work-related injuries. The commissioner noted the claimant was unable to return to her job within the restrictions provided after the 2011 injury and had been unsuccessful in obtaining employment despite good faith efforts.

The trial commissioner acknowledged that the proportion of responsibility between the two work related accidents "seems dramatically skewed" but "that the March 22, 2011 incident was an identifiable second injury that worsened the claimant's condition and adversely affected her ability to work." Conclusion, ¶ J. Therefore, "I find that despite the fact that the claimant may have been a surgical candidate prior to the March 22, 2011 incident, the totality of the circumstances indicate that that incident caused the claimant's condition to worsen in a material and substantial way." Conclusion, ¶ K. The commissioner determined that the precedent in Hatt, supra, and Kelly v. Dunkin' Donuts, 4621 CRB-4-03-2 (April 5, 2004) relieved Liberty Mutual of obligation for the claimant's medical condition subsequent to the March 22, 2011 injury and that Gallagher was responsible for the claimant's injuries subsequent to that date.

Gallagher filed a Motion to Correct and a Motion for Articulation in response to the Finding and Award/Orders. The Motion to Correct sought a wholesale replacement of the factual findings with findings supportive of placing the onus of addressing the

claimant's injuries on the initial compensable injury where Liberty Mutual was the insurer. The commissioner denied the Motion to Correct in its entirety. Gallagher's Motion for Articulation sought to obtain the source of the trial commissioner's conclusion that the subsequent injury was a substantial contributing factor in the claimant's condition as to her need for surgery and ongoing disability. The commissioner restated the factual findings she reached in the original Finding. In response, Gallagher has pursued this appeal. The gravamen of their appeal is based on their belief that as the claimant was already a candidate for surgery prior to the 2011 incident that it is inconsistent to apply Hatt to place the onus for the surgery and disability on the subsequent event.

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 also note that in recent months we have opined on various issues related to what evidence a trial commissioner may find reliable in determining causation. See, for example, Madden v. Danbury Hospital, 5745 CRB-7-12-4 (April 22, 2013) where 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.

The appellant argues that in this case the trial commissioner lacked sufficient evidence from expert witnesses to support her conclusion that the 2011 injury was a

substantial contributing factor in the claimant's present condition. They argue that in their Motion to Correct they identified specific statements made by each of the physicians cited as credible and persuasive that the 2011 injury was not in their opinion a "substantial contributing factor" in the claimant's need for surgery. They argue that the Motion to Correct should have been granted, and had it been granted, the condition precedent under § 31-349(a) C.G.S.[2] to find liability against Gallagher would not exist.

We are not persuaded by this argument as we find that for the purposes of following the statute and the precedent in Hatt the concept of "substantial contributing factor" is essentially a legal concept and not a medical concept. We must follow the plain meaning of the statute in applying § 31-349(a) C.G.S. as a result of § 1-2z C.G.S. This requires the commissioner to affix responsibility to the employer and insurer responsible for the later injury when that injury creates a "disability" which is "materially and substantially greater" than the prior disability. We discussed this standard in our decision in Neville v. Baran Institute of Technology, 5383 CRB-8-08-10 (September 24, 2009).

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[2] The statute reads as follows: **Sec. 31-349. Compensation for second disability. Payment of insurance coverage. Second Injury Fund closed July 1, 1995, to new claims. Procedure**. (a) The fact that an employee has suffered a previous disability, shall not preclude him from compensation for a second injury, nor preclude compensation for death resulting from the second injury. If an employee having a previous disability incurs a second disability from a second injury resulting in a permanent disability caused by both the previous disability and the second injury which is materially and substantially greater than the disability that would have resulted from the second injury alone, he shall receive compensation for (1) the entire amount of disability, including total disability, less any compensation payable or paid with respect to the previous disability, and (2) necessary medical care, as provided in this chapter, notwithstanding the fact that part of the disability was due to a previous disability. For purposes of this subsection, "compensation payable or paid with respect to the previous disability" includes compensation payable or paid pursuant to the provisions of this chapter, as well as any other compensation payable or paid in connection with the previous disability, regardless of the source of such compensation.

> The "plain meaning" of the statute governing second injuries is that for the employer or insurer on the risk at the time of the second injury to become solely liable, the resulting disability must be "permanent" and "materially and substantially greater" than the disability resulting from the initial injury. As a result, we cannot impose the terms of Hatt against the party responsible for a second injury if the second injury results in only temporary disability. See Hatt, supra, 307-309. Since the statute is written in conjunctive fashion, in order to apply Hatt we must also find, even if the additional disability is permanent, that the claimant's resulting disability is "materially and substantially greater" than the disability attributable to the second injury.

Id.

In determining whether the claimant's "disability" increased we find the standard promulgated by the Supreme Court in Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010) guides us. In Marandino, the Supreme Court enunciated this legal standard for determining causation. "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., 595. (Emphasis in original.) This standard enables a trial commissioner to consider both medical evidence and lay testimony in determining causation. In the present case, where the standard is whether the claimant's disability was materially greater after the 2011 injury than before that event, we believe the trial commissioner could consider both lay testimony and expert opinion.

The evidence herein is that the claimant had a work capacity prior to the 2011 injury and subsequent to that injury, was unable to continue to perform the job that she had been performing after her 2010 injury. The claimant testified that her symptoms got worse after that event, and she started experiencing hand cramping, which had not

occurred prior to the accident. She had a five pound lifting restriction, and testified that her employer was only able to accommodate her light duty restrictions for a short period of time. She was not working as of the formal hearing and had made good faith efforts to find work within her restrictions. We believe the claimant's testimony, which was found persuasive and credible by the trial commissioner, provides a basis to conclude that the disability she had sustained as a result of the 2010 injury was made materially and substantially worse by virtue of the 2011 injury.

While the trial commissioner credited the claimant's testimony that her condition had materially deteriorated after the 2011 injury, we must review the record to see if the medical evidence is consistent with this conclusion, and if the proper standard had been followed. The appellant points to Turrell v. State/DMHAS, 5640 CRB-8-11-3 (March 21, 2012), *aff'd*, 144 Conn. App. __ (2013), for the proposition that a work injury must be a substantial factor in the claimant's medical condition in order to make the injury compensable. We do note that neither Turrell nor the other cases cited in support of this proposition, Weir, supra, and Voronuk v. Electric Boat Corporation, 5167 CRB-8-06-12 (January 17, 2008), *aff'd,* 118 Conn. App. 248 (2009), were cases which dealt with the applicability of Hatt or § 31-349(a) C.G.S. and may be distinguished on those grounds. Indeed, we find that all these cases stand for the proposition of upholding a trial commissioner's evaluation of contested and often equivocal medical evidence.

In both Turrell and Weir the claimant appealed a ruling by the trial commissioner that their need for surgery was not related to a compensable injury. In Turrell, the claimant argued that some of the testimony of the commissioner's examiner was supportive of her bid to have her surgery deemed compensable. She argued the trial

commissioner should have relied on those opinions. We affirmed the trial commissioner's decision to the contrary as "[w]e have held that it is within the discretion of the trial commissioner to accept some, but not all, of a physician's opinion" *citing* Lopez v. Lowe's Home Improvement Center, 4922 CRB-6-05-3 (March 29, 2006).

In Weir, the claimant argued that the testimony of the commissioner's examiner ascribed some weight to the work injury as creating the need for surgery and therefore the "substantial factor" test had been met to establish compensability. We noted that the commissioner's examiner placed the least weight (10%) on the work injury of three factors causing the need for surgery. We also quoted counsel for the claimant in that case as defining the appropriate standard for reviewing a trial commissioner's decision of this question on appeal.

> And there's no percentage. You know, it's not that it has to be more than 50 percent to be a substantial factor. It just needs to be substantial and *it's really for the Workers' Comp. Commissioner to determine what is or is not substantial*. Joint Exhibit, p. 22. (Emphasis added.)

Id.

Based on the precedent in O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 817-818 (1999) we held in Weir "[w]hether or not a factor behind the need for surgery is "substantial" is a matter left to the discretion of the trial commissioner, as 'it is the trial commissioner's function to assess the weight and credibility of medical reports and testimony. . . .'" In the present case, the appellant may believe the result is inconsistent with Weir, as the trial commissioner in the present case concluded that Dr. Strugar's opinion that the 2011 incident was 10% responsible for the need for surgery was sufficient to constitute a "substantial contributing factor" and in Weir the trial

commissioner found 10% inadequate.[3] We note however that in Weir the trial commissioner found the work injury was "a temporary self limiting aggravation" wherein in the present case the trial commissioner found the claimant's condition deteriorated in a long term fashion following the 2011 injury. We also note that in our recent opinion in Madden, supra, we discussed how the "substantial factor" test has been criticized by some for its imprecision, but in Sapko v. State, 305 Conn. 360 (2012), the Supreme Court reiterated the discretionary standard which has been in place since Mahoney v. Beatman, 110 Conn. 184 (1929).

> 'The criticism . . . usually leveled at the [substantial factor] test . . . is that . . . it is too general. . . . The answer is that the formula cannot be reduced to any lower terms. . . . It presents a question of fact. . . . The answer to any such [question] when proposed to [the commissioner] must be found by the [commissioner] after a consideration of all the facts that bear upon it.'

Sapko, supra, at 392.

While the test delineated herein is broadly discretionary, the trial commissioner still must base their decision on a sufficient quantum of probative evidence to sustain their Finding. We look to the evidence relied on by the trial commissioner to ascertain if it supports her conclusions. We have reviewed the depositions of the three medical witnesses in this case. Gallagher correctly states that all of the witnesses believed the claimant was a surgical candidate prior to the 2011 injury. However, in Conclusion, ¶ D, the trial commissioner acknowledged this fact. In Conclusion, ¶ F, the trial

[3] We note that in Kelly v. Dunkin' Donuts, 4621 CRB-4-03-2 (April 5, 2004) we affirmed a finding that a subsequent carrier was liable for an injury pursuant to § 31-349(a) C.G.S. when the expert witness testimony ascribed only a 1% weight of causation on the later injury.

commissioner determined that Dr. Wilchinsky's opinion was credible and persuasive that the 2011 injury probably aggravated the claimant's condition and made it worse. Dr. Wilchinsky stated this in a July 20, 2011 letter to claimant's counsel (Respondent's Exhibit 1) and in a November 18, 2011 deposition (Gallagher Basset Exhibit 1, p. 16). In Conclusion, ¶ E, the trial commissioner determined that Dr. Mintz was credible and persuasive in testifying the claimant had additional findings in 2011 she had not had when he examined her in 2010. At his deposition, Dr. Mintz testified the claimant had not had hyperflexia prior to 2011. Liberty Mutual Exhibit 2, p. 49. Perhaps more significantly, Dr. Mintz also testified "I think her condition now has deteriorated. She requires surgery more, so to speak, so her current condition has become--has progressed." Id., p. 43.[4] Finally, the trial commissioner credited Dr. Strugar's opinion that the 2011 injury was 10% responsible for the claimant's need for surgery. Conclusion, ¶ G. The witness did testify to this at his deposition. See Liberty Mutual Exhibit 4, p. 36.

Finally we note that as to Conclusion, ¶ K, "that despite the fact that the claimant may have been a surgical candidate prior to the March 22, 2011 incident, the totality of the circumstances indicate that that incident caused the claimant's condition to worsen in a material and substantial way" we find there was probative evidence from expert witnesses on the record to support this conclusion. Dr. Strugar testified the claimant's condition worsened after March 22, 2011. Liberty Mutual Exhibit 4, p. 41. Dr. Mintz

[4] Dr. Mintz in his deposition expressed frustration at his interlocutors attempting to put their own personal spin on his answers; telling counsel at one point "Look, you're playing with words," Liberty Mutual Exhibit 2, p. 42, and comparing the requested responses to which he was asked to agree or disagree with to the responses from a controversial deposition of former President Bill Clinton. Id.

testified in similar fashion. Liberty Mutual Exhibit 2, p. 43. Dr. Wilchinsky testified to this point as well. (Gallagher Basset Exhibit 1, p. 16 and Respondents' Exhibit 1). This evidence from expert witnesses as to the deterioration of the claimant's condition subsequent to the 2011 injury, when coupled with the claimant's testimony, conforms to the evidentiary standards established in Marandino, supra.

The trial commissioner's Conclusion, ¶ K therein supports her Conclusion, ¶ J. There was an identifiable second injury, although of lesser significance than the 2010 injury, which worsened the claimant's condition and adversely affected her ability to work. The presence of this injury supports the trial commissioner's Conclusion, ¶ J. The precedent in Hatt places the burden of the claimant's medical condition on the more recent compensable injury when it renders the claimant disability materially and substantially greater than prior to the injury. We believe a reasonable fact finder could reach this conclusion from the evidence on the record. As an appellate panel, we cannot revisit this decision.[5] We affirm the Finding and Award/Orders.

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

[5] The trial commissioner denied Gallagher's Motion to Correct. We find this Motion was an effort to obtain factual conclusions more favorable to the appellant. The trial commissioner is not obligated to adopt factual findings, even those that may be uncontradicted, when the commissioner does not find them probative. See Anderson v. Target Capital Partners, 5615 CRB-6-10-12 (January 3, 2012) and Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006). We do not find this denial arbitrary and capricious. In re Shaquanna M., 61 Conn. App. 592 (2001).