

CASE NO. 5775 CRB-2-12-8  
CLAIM NO. 200162306

: COMPENSATION REVIEW BOARD

AGNES P. MCCLAREN  
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION  
COMMISSION

v.

: AUGUST 8, 2013

FEDEX GROUND PACKAGE  
SYSTEMS, INC.  
EMPLOYER

and

BROADSPIRE  
INSURER  
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant appeared without legal representation at oral argument.

The respondents were represented by Richard W. Lynch, Esq., Lynch, Traub, Keefe and Errante, P.C., 52 Trumbull Street, New Haven, CT 06506-1612.

This Petition for Review from the August 27, 2012 Finding and Dismissal of the Commissioner acting for the First 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.

## OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant in this matter appeals from a Finding and Dismissal in which the trial commissioner denied her claim for benefits for injuries to her left side, left arm, left leg, left knee, bilateral shoulders, bilateral finger, hands, elbows and back related to a March 1, 2008 work injury. The claimant argues that she presented medical evidence demonstrating these injuries were compensable. We find the trial commissioner could reasonably find this evidence unpersuasive as the Commissioner's examiner opined that these injuries were self-limiting. Therefore, we affirm the Finding and Dismissal.

The trial commissioner reached the following factual findings at the conclusion of the formal hearing. The commissioner noted that there had been a prior Finding and Award to the claimant on December 22, 2010, but that decision had left open issues of compensability for injuries to various body parts for which benefits were not awarded at that time. The Compensation Review Board in a decision dated January 24, 2012, affirmed the decision of December 22, 2010. The claimant sought benefits at the formal hearing for injuries to her left side; left arm; leg; left knee; bilateral shoulders; fingers; bilateral hands; bilateral elbows and back, stating all had been injured on March 1, 2008 in the course of her employment.

The trial commissioner noted that the claimant had testified extensively as to the nature of her injuries at formal hearings held on September 13, 2011, December 1, 2011 and January 19, 2012. The claimant submitted a substantial amount of medical evidence to the record, which the commissioner summarized as follows:

A. Packet of medicals from Dr. Buonomano

- B. Color photo of Claimant's body parts
- C. Binder containing additional records (11/20/07-2/23/09)
- D. Black binder containing additional records (12/28/09-6/18/10)
- E. Binder containing additional records (1/6/09-3/13/09)
- F. Binder containing additional records (3/23/11-6/20/11)
- G. Copies of UPS pay stubs (12/27/07-12/22/2001)
- H. Packet of medicals from Dr. Buonomano
- I. UConn Health Center records of Dr. Aronow

The commissioner noted that the respondents submitted only one exhibit into the record, a 22-page report dated December 4, 2008 from Philo F. Willetts, Jr., M.D. After considering this evidence the trial commissioner determined that while the claimant offered testimony about numerous injuries, many of the injuries occurred earlier than the date of the incident. The commissioner also determined the claimant's testimony, although not deceitful, was "less than accurate." The trial commissioner found the medical evidence voluminous, and noted that they referenced numerous prior injuries. The trial commissioner concluded the medical reports submitted by the claimant were not credible and persuasive on the issue of compensability of the March 1, 2008 injury the claimant may have suffered. The trial commissioner found the medical reports of Dr. Willetts to be persuasive and credible.

In reliance on Dr. Willetts' report, the trial commissioner concluded the claimant, in addition to a cervical incident found by Commissioner Delaney, suffered self-limiting injuries to her left shoulder, left elbow, left index finger and contusion of her chest wall. The commissioner adopted Dr. Willetts' opinion there was no indication for any

treatment other than regular exercises for strengthening, range of motion, a continued walking program and anti-inflammatories. There was no indication for any surgery or injections, any bracing nor any physical therapy or chiropractic treatment. The trial commissioner further agreed with Dr. Willetts that the claimant reached maximum medical improvement on December 4, 2008. As the trial commissioner found the claimant's injuries had reached a point of maximum medical improvement with no permanencies or need for additional treatment, he dismissed the claim in regard to injuries not previously adjudicated by Commissioner Delaney.

Both the claimant and the respondent filed Motions to Correct from the Finding and Dismissal. The respondent's Motion to Correct, which sought to clarify the name of the insurer and the nature of the previous relief ordered by Commissioner Delaney, was granted. The claimant's Motion to Correct was granted as to correct the claimant's address, but denied as to the corrections which sought to reach findings of compensability for the injuries related to the March 1, 2008 incident. Both parties initially filed appeals from the Finding and Dismissal, but the respondents subsequently withdrew their appeal. The claimant has pursued her appeal based on her position that she proved that she sustained a compensable injury and is entitled to continuing medical treatment for the injury.

On appeal, we generally extend deference to the decisions made by the trial commissioner. "As with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Daniels v. Alander, 268 Conn. 320, 330 (2004). The Compensation Review Board cannot retry the facts of

the case and may only overturn the findings of the trial commissioner if they are without evidentiary support, contrary to the law, or based on unreasonable or impermissible factual inferences. Kish v. Nursing and Home Care, Inc., 248 Conn. 379 (1999) and Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). We also note a trial commissioner has a great deal of discretion in evaluating medical evidence. “[I]t is the trial commissioner’s function to assess the weight and credibility of medical reports and testimony. . . .” O’Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818 (1999).

The respondents argue in their brief that the claimant’s appeal is “substantially deficient” and as “the alleged facts are interspersed with the alleged claims” that they are unable to ascertain the relief sought by the claimant. Respondent’s Brief, p. 3. They seek to dismiss the claimant’s appeal. Nonetheless, we are able to determine from the pleadings the nature of the relief sought by the claimant and her rationale for bringing this appeal. We are disinclined to penalize a self-represented claimant for procedural deficiencies in their appeal, see Herbert v. State/Department of Correction, 5547 CRB-8-10-4 (September 13, 2012) and Vitoria v. Professional Employment & Temps, 5217 CRB-2-07-4 (April 4, 2008). We therefore will consider the merits of the claimant’s appeal.

The claimant argues that she submitted a substantial quantum of evidence from her treating physicians that would support an award of benefits for the various injuries she said she sustained on March 1, 2008. We note that the claimant has the burden of persuasion before the trial commissioner. Wierzbicki v. Federal Reserve Bank of Boston, 4147 CRB-1-99-11 (December 19, 2000), *appeal dismissed*, A.C. 21533 (2001). However, the trial commissioner was not persuaded by the claimant’s evidence. The

commissioner offered the explanation that he found the Commissioner's examiner, Philo Willetts, M.D., offered the more persuasive opinions in this matter. As we held in Damon v. VNS of CT/Masonicare, 5413 CRB-4-08-12 (December 15, 2009) we will generally affirm a trial commissioner who finds the Commissioner's examiner offers what is deemed a persuasive opinion on the claimant's medical condition.

We have reviewed Dr. Willetts' report. The report opined the claimant did not sustain a significant knee injury on March 1, 2008. The report also concluded the claimant's finger had healed from that injury and there was no credible evidence she sustained a thoracic or lumbar injury as a result of that incident. The examiner did not believe any further treatment was indicated for the claimant's injuries of March 1, 2008 and she had reached maximum medical improvement from those injuries. While the claimant may disagree with the opinions of Dr. Willetts, they are consistent with the trial commissioner's resolution of this dispute.

The claimant believes the trial commissioner reached the wrong result based on the factual evidence presented on the record. An appellate body cannot retry the facts considered by the trier of fact. The trial commissioner's decision is supported by evidence he found credible. We affirm the Finding and Dismissal.

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