

CASE NO. 5784 CRB-1-12-9  
CLAIM NO. 100161450

: COMPENSATION REVIEW BOARD

DAVID PATTISON  
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION  
COMMISSION

v.

: SEPTEMBER 10, 2013

HARTFORD HOSPITAL  
EMPLOYER

and

TRAVELERS PROPERTY CASUALTY  
INSURER  
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant filed an appeal on his own behalf and waived oral argument.

Attorney Alan Wein, Wein & Palermo, LLC, 32 Park Road, West Hartford, CT 06119, claimant's former counsel and the appellee in this matter, was present but waived oral argument at the hearing.

The respondents were represented at the trial level by Richard Stabnick, Esq., Pomeranz, Drayton & Stabnick, 95 Glastonbury Boulevard, Suite 216, Glastonbury, CT 06033 but were not an interested party in this appeal.

This Petition for Review from the September 24, 2012 Finding and Decision of the Commissioner acting for the Fifth District was heard March 22, 2013 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Stephen B. Delaney and Daniel E. Dilzer.

## OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has appealed from a Finding and Decision in which a trial commissioner determined the claimant's former attorney was entitled to legal fees and expenses resulting from his representation of the claimant. The claimant argues on appeal that his former counsel did not earn his fees. We find that this is essentially a factual determination, and as an appellate panel, we must respect the fact-finding role of the trial commissioner. We also find that issues regarding the possible settlement of the claim are not ripe for adjudication at this time. We affirm the Finding and Decision.

The trial commissioner found the following facts at the conclusion of the formal hearing. The claimant, David Pattison, retained Attorney Alan Wein and his law firm on January 30, 2009 and claimant's counsel attended several informal hearings, pre-formals and formal hearings in regard to this matter. In 2011, the respondents were prepared to offer approximately \$300,000 plus the funding of a Medicare set aside account to resolve this matter. On October 28, 2011, Mr. Pattison terminated his relationship with Attorney Wein. On November 10, 2011, the claimant began receiving specific award benefits as a result of the granting of a Form 36.

The commissioner further noted that Attorney Wein filed an affidavit in regard to his claim for fees and that the attorney claims that he has spent more than 120 hours in regard to this matter to date. The claimant asserted that Attorney Wein breached his contract of representation, submitted various exhibits purported to support this position, and due to the alleged breach of contract, refused to pay any fee to Attorney Wein. The

commissioner also noted Attorney Wein claimed legal expenses in regard to this matter in the amount of \$17.55.

Having considered the oral arguments and written submission, the trial commissioner concluded that the testimony and exhibits presented by Attorney Wein to be fully credible and persuasive. The commissioner concluded Attorney Wein provided legal services on behalf of the claimant from January 30, 2009 to October 28, 2011, for a total in excess of 110 hours. The commissioner also found pursuant to the fee agreement, Attorney Wein and his law firm were entitled to an attorney's fee of twenty (20) percent of the entire specific award that the claimant has been receiving since October 6, 2011. The commissioner awarded Attorney Wein the sum of \$17.55 for legal expenses and found Attorney Wein has a possible claim for fees against the proposed settlement of the claim. The commissioner ordered the fee deducted at a rate of 20% from whatever further award payments, either weekly or lump sum, due to the claimant.

The claimant filed a Motion to Correct, which was denied by the trial commissioner. The claimant also filed a Motion to Modify Finding, a Motion to Include Facts, a Motion to Quash, a Motion to Rescind, and a Motion to Vacate. The trial commissioner denied all these motions. The claimant also filed a Motion to Dismiss and a Motion to Submit Additional Evidence. The trial commissioner did not rule on these motions, and pursuant to Spatafore v. Yale University, 14 Conn. Workers' Comp. Rev. Op. 310, 312 (September 14, 1995), *aff'd*, 239 Conn. 408 (1996), we deem this the functional equivalent of a denial.

The claimant, who is self-represented, did not appear at oral argument before this panel and advised the Commission he would rely on his brief. His brief details his

contention that due to the deterioration of his relationship with counsel, and his ultimate dismissal of Attorney Wein, Attorney Wein should not be paid a fee. The claimant cites Grayson v. Wofsey, Rosen, Kweskin & Kuriansky, 231 Conn. 168 (1994) for the proposition that a lawyer can be found financially liable for promoting an economically imprudent settlement of a case.<sup>1</sup> The appellee argues in his brief that pursuant to § 31-327 C.G.S.<sup>2</sup> any attorney fees for representation before the Commission require the approval of a commissioner, and the commissioner had sufficient grounds to approve this fee based on the evidence in the record. The appellee cites DiLieto v. New Haven, 4709 CRB-3-03-8 (August 5, 2004) as supportive of the commissioner's decision herein.

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).

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<sup>1</sup> We note that in Grayson v. Wofsey, Rosen, Kweskin & Kuriansky, 231 Conn. 168 (1994) the Supreme Court affirmed a lower court decision wherein the jury as fact finders awarded damages to the plaintiff/client. In the present case, the fact finder did not reach any findings adverse to the attorney of record. Therefore, we find Grayson distinguishable and unpersuasive.

<sup>2</sup> This statute reads as follows:

**Sec. 31-327. Award of fees and expenses.**

(a) Whenever any fees or expenses are, under the provisions of this chapter, to be paid by the employer or insurer and not by the employee, the commissioner may make an award directly in favor of the person entitled to the fees or expenses, which award shall be filed in court, shall be subject to appeal and shall be enforceable by execution as in other cases. The award may be combined with an award for compensation in favor of or against the injured employee or the dependent or dependents of a deceased employee or may be the subject of an award covering only the fees and expenses.

(b) All fees of attorneys, physicians, podiatrists or other persons for services under this chapter shall be subject to the approval of the commissioner.

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).

We have reviewed the record in this case, and are satisfied that the trial commissioner was proffered sufficient documentary evidence and testimony which he found credible to sustain this decision. An appellate panel cannot second-guess the fact-finder’s determination as to the credibility of witnesses. Burton, supra. The claimant has raised issues as to his counsel’s actions in regards to a third-party action, which is outside the scope of our consideration of whether counsel was owed a fee for his appearance at compensation hearings. The appellant also alleges that his counsel was disrespectful to him. While that may explain his decision to cease retaining Attorney Wein’s services, it does not act to negate the counsel’s prior time and expenses rendered on his behalf.

We also note that the claimant and the trial commissioner both raise issues as to a proposed settlement of the claim. Since this settlement has not been presented to a commissioner for consideration, any issues as to whether a legal fee would be due to Attorney Wein under such a settlement are not ripe for adjudication. We decline to address that issue for that reason.

In DiLieto, supra, we held the trier has the discretion to determine a reasonable fee and “[w]e will not overturn a fee award unless there is evidence of the trial commissioner’s abuse of that discretion.” *Id.* We do not believe the trial commissioner abused this discretion, as defined in the precedent of In re Shaquanna M., 61 Conn. App. 592 (2001).

We affirm the Finding and Decision.

Commissioners Stephen B. Delaney and Daniel E. Dilzer concur in this opinion.