

CASE NO. 5805 CRB-3-12-11
CLAIM NO. 300061576

: COMPENSATION REVIEW BOARD

PETRAQ BODE
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION
COMMISSION

v.

: DECEMBER 3, 2013

CONNECTICUT MASON, THE LEARNING CORRIDOR OCIP
EMPLOYER

and

HARTFORD INSURANCE GROUP
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

Mr. Petraq Bode, 21 Wyman Street, 2nd Floor, Worcester, MA 01610, was unrepresented by counsel. Also present with the claimant was Ms. Silvana Konda, who served as the interpreter.

The respondents were represented by Heather Porto, Esq., Pomeranz, Drayton & Stabnick, LLC, 95 Glastonbury Boulevard, Glastonbury, CT 06033-4412.

This Petition for Review from the September 4, 2012 Finding Re: Remand by Appellate Court of August 16, 2011 of the Commissioner acting for the Fifth District was heard on May 31, 2013 before a Compensation Review Board panel consisting of Commissioners Charles F. Senich, Daniel E. Dilzer, and Stephen M. Morelli.

OPINION

CHARLES F. SENICH, COMMISSIONER. The parties in this claim previously appeared before this board on August 28, 2009.¹ The claimant has now petitioned for review from the September 4, 2012 Finding Re: Remand by Appellate Court of August 16, 2011 [hereinafter “Finding”] of the Commissioner acting for the Fifth District. We affirm the decision of the trial commissioner.

The following factual and procedural background is pertinent to our review. On October 29, 2002, while in the employ of the respondent employer, the claimant fell approximately thirty feet from scaffolding and suffered fractures of the cervical spine, lumbar spine, and right shoulder and a right inguinal hernia. Pursuant to a voluntary agreement approved by the Workers’ Compensation Commission on June 16, 2004, the parties agreed that the claimant had reached maximum medical improvement on July 29, 2003 having sustained a ten percent (10%) permanent partial disability to his lumbar spine, a fifteen percent (15%) permanent partial disability to his cervical spine, and a seventeen percent (17%) permanent partial disability to his right master arm.

In December 2007, the parties went to trial on the issues of temporary total disability benefits and psychiatric treatment.² Following four formal hearings, the trial commissioner dismissed both claims. This board affirmed the trial commissioner’s findings in their entirety and the claimant appealed to the Appellate Court. The Appellate Court affirmed the trial commissioner’s denial of the claim for psychiatric treatment but reversed the trier’s dismissal of the temporary total disability claim on the basis that the

¹ See Bode v. Connecticut Mason, The Learning Corridor OCIP, 5423 CRB-3-09-2 (March 3, 2010).

² It should be noted that the claimant was represented by counsel in these proceedings.

trier, whose findings did not address the reliability of the vocational evidence, “improperly disregarded the weight of the evidence that the plaintiff was temporarily totally disabled under Osterlund because, as a matter of law, he was unemployable for at least a portion of the time he claimed.” Bode v. Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672, 689 (2011), *cert. denied*, 302 Conn. 942 (2011). The Appellate Court also determined that the trier improperly applied the law in reaching his findings relative to the issue of the claimant’s refusal to undergo right shoulder surgery.

The Appellate Court remanded the matter for additional proceedings, and the parties again appeared before the Workers’ Compensation Commission on May 8, 2012.³ The trial commissioner “took administrative notice of all prior Formal hearing transcripts, exhibits, testimony of those individuals who testified, Form 30C’s, Form 43’s, Form 36’s, as well as other pertinent legal documents, and made them part of the Formal hearing record in regards to the reversal and Remand.” Finding, p. 2. Based on the evidence presented, which in addition to the foregoing items also included the testimony of the claimant, the trier concluded that the claimant was entitled to temporary total disability benefits for a period of six months commencing on September 16, 2005, which was the date of the claimant’s surgery. The trial commissioner also determined that the claimant was unemployable as of July 27, 2008, the date of the vocational report provided by Ronald Freedman, M.Ed., CRC. As such, the trier awarded ongoing temporary total disability benefits pending submission and approval of a Form 36.

³ The claimant was unrepresented by counsel for these proceedings.

Following the issuance of the Finding on September 4, 2012, the claimant sent correspondence to the trial commissioner dated September 18, 2012 explaining that because he had not received notice of the “hearing” of September 4, 2012 until after the date in question, he was unable to attend the hearing. The claimant also indicated that he believed the calculations for his disability checks were incorrect and stated, “[i]f you do not take a decision that will implement the findings of the above court I ask for \$600,000.00 damages.” On November 27, 2012, the claimant filed a Petition for Review accompanied by a document dated November 23, 2012 entitled “Statement” declaring that the trial commissioner had failed to “take in consideration the decision of the Appellate Court...” November 23, 2012 Statement. The claimant also complained that his other injuries were not discussed at the formal hearing of May 8, 2012 and reiterated that the calculations underlying his disability checks were incorrect. *Id.*

On January 14, 2013, the respondents filed a Motion to Dismiss on the basis that the claimant’s Petition for Review was untimely. On May 8, 2013, the claimant filed additional correspondence again explaining that he had been unable to attend the September 4, 2012 “hearing;” the claimant also reiterated that the trial commissioner had not adequately considered the Appellate Court decision and contended that the trier had “acted as a dictator during our meetings or hearings....” Appellant’s Brief, p. 2. The claimant attached to this correspondence several additional medical reports, none of which had previously been introduced into the record and one of which concerned his wife’s treatment for depression. Also included was a copy of the letter he had written to the trial commissioner on September 18, 2012.

It is of course well-settled that “[t]he 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).

Turning to the matter at bar, we note that in his Finding, the trial commissioner awarded the claimant temporary total disability benefits for two discrete time periods, one of which was ongoing pending the submission and approval of a Form 36. Our review indicates that this Finding was properly in accordance with the directive of the Appellate Court as set forth in Bode v. Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672, *cert. denied*, 302 Conn. 942 (2011). However, the claimant has appealed from this Finding on the basis that the trial commissioner failed to adequately consider the Appellate Court’s directive. We find this claim to be utterly without merit in light of the language of Appellate Court’s directive and the trier’s concomitant award of temporary total disability benefits to the claimant.

As an alternate basis for his appeal, the claimant asserts that the calculations on which the amount of his disability checks is based are incorrect and he has also proffered

additional medical documentation. It is of course axiomatic that “it is the policy of Connecticut courts and this board to accommodate pro se claimants as much as possible by liberally construing procedural rules where doing so does not interfere with the rights of other parties.” Walter v. Bridgeport, 5092 CRB-4-06-5 (May 16, 2007), *citing* Ferrin v. Glen Orne Leasing/Webster Trucking, 4802 CRB-8-04-4 (March 28, 2005). *See also* Vanguard Engineering, Inc. v. Anderson, 83 Conn. App. 62, 65 (2004). As such, this board has, on occasion, overlooked certain procedural irregularities attendant upon an unrepresented claimant’s prosecution of an appeal. However, in reviewing the circumstances of the instant matter, we find that the issues raised by the claimant are simply far too removed from the scope of the trier’s findings for us to consider on appeal. For instance, while the claimant’s contentions regarding inaccuracies in the amount of his disability checks may or may not have merit, this board is not the proper forum for that investigation. Rather, the claimant may wish to seek an informal hearing to determine if additional proceedings on that issue are necessary.

In addition, our ability to accept the proffered medical reports into the evidentiary record is constrained by the requirements governing the submission of additional evidence to an appellate body such as this board. See Admin. Reg. § 31-301-9.⁴ Having reviewed the claimant’s submissions, we are not persuaded that the additional documents submitted by the claimant warrant admission into the record at this time. At this juncture,

⁴ Administrative Regulation § 31-301-9 (Rev. to 2005) states, “[i]f any party to an appeal shall allege that additional evidence or testimony is material and that there were good reasons for failure to present it in the proceedings before the commissioner, he shall by written motion request an opportunity to present such evidence or testimony to the compensation review division, indicating in such motion the nature of such evidence or testimony, the basis of the claim of materiality, and the reasons why it was not presented in the proceedings before the commissioner. The compensation review division may act on such motion with or without a hearing, and if justice so requires may order a certified copy of the evidence for the use of the employer, the employee or both, and such certified copy shall be made a part of the record on such appeal.”

we cannot determine whether the subject medical reports are relevant to the claimant's ongoing litigation with his employer; however, we are able to state without reservation that the reports are not relevant to our analysis of this appeal.

It is abundantly clear that the claimant in this matter is hampered by a profound misunderstanding of the parameters of appellate litigation. Be that as it may, in light of the claimant's failure to raise a cognizable appellate issue, we have absolutely no justification for reversing the trier's findings. "[T]he claimant's failure to take certain steps at trial and on this appeal cannot simply be remedied through a policy of leniency toward pro se claimants." Drew v. Sears Roebuck & Co., 4400 CRB-7-01-5 (May 2, 2002), *appeal dismissed*, A.C. 23094 (August 21, 2002).

The September 4, 2012 Finding Re: Remand by Appellate Court of August 16, 2011 of the Commissioner acting for the Fifth District is hereby affirmed.

Commissioners Daniel E. Dilzer and Stephen M. Morelli concur in this opinion.