

CASE NO. 5792 CRB-1-12-10  
CLAIM NO. 601060991

: COMPENSATION REVIEW BOARD

WILFREDO QUINONES  
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION  
COMMISSION

v.

: JANUARY 16, 2014

RW THOMPSON COMPANY, INC.  
EMPLOYER

and

FEDERATED MUTUAL INSURANCE CO.  
INSURER  
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Harvey L. Levine, Esq., and Jennifer B. Levine, Esq., Law Offices of Levine & Levine, 754 West Main Street, New Britain, CT 06053.

The respondents were represented by Nicholas C. Varunes, Esq., Varunes & Associates, PC, Five Grand Street, Hartford, CT 06106-1505.

This Petition for Review<sup>1</sup> from the October 15, 2012 Order of the Commissioner acting for the First District was heard August 23, 2013 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Charles F. Senich and Ernie R. Walker.

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<sup>1</sup> We note that a postponement and extensions of time were granted during the pendency of this appeal.

## OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has appealed from a decision by the trial commissioner to take additional evidence in this matter prior to reaching a decision on a pending Motion to Preclude. Upon review, it is this panel's opinion that this is the sort of interlocutory decision that should not be appealed to the Compensation Review Board. We herein remand this matter to the trial commissioner for further proceedings.

The pertinent facts concerning this appeal are as follows. The claimant filed a Form 30C dated September 7, 2010 and received October 25, 2010 and another Form 30C dated February 4, 2011 and received on February 10, 2011 alleging he sustained an injury while at work on March 16, 2010. A Motion to Preclude was filed by the claimant dated February 9, 2012 and received on February 29, 2012. The respondent's filed an objection to this Motion on March 9, 2012, asserting that they had paid indemnity benefits and medical treatment for this injury and that a Form 36 regarding this injury had been approved on November 2, 2011. A formal hearing was held on the pending Motion on April 18, 2012 before Commissioner Clifton E. Thompson. At the conclusion of that hearing Commissioner Thompson ordered the litigants to submit briefs and documentary evidence on the matter, with the record closing at a subsequent pro forma formal hearing. April 18, 2012 Transcript, pp. 13-15.

Subsequent to that hearing and prior to rendering a decision on the pending Motion, Commissioner Thompson unexpectedly died on May 18, 2012. As a result of that sad event, counsel for the litigants exchanged correspondence on how to proceed.

On May 24, 2012 counsel for both the claimant and the respondent sent letters to the Commission seeking to have a new Commissioner rule on the record of the April 18, 2012 formal hearing. The parties then submitted briefs outlining their positions on the legal issues presented at that hearing. The final brief, a reply brief to the respondent's reply brief, was filed on July 3, 2012.

The case was transferred to Commissioner Stephen B. Delaney. On August 31, 2012 Commissioner Delaney issued an order to the litigants, *sua sponte*, setting the matter down for an additional formal hearing on October 1, 2012 "to allow the parties articulate on the record their respective arguments and positions in this claim before a decision is to issue." Counsel for the claimant filed an objection on September 5, 2012 to the matter being reopened by the commissioner. The hearing before Commissioner Delaney was held on October 1, 2012. At that hearing the commissioner ruled that the precedent in the case of Stevens v. Hartford Accident & Indemnity Co., 29 Conn. App. 378 (1992) empowered him to reopen the hearing for the purpose of recalling a witness to the proceeding. The commissioner stated that he had questions that he wished to present to the claimant. October 1, 2012 Transcript, pp. 12-15.

The claimant filed a Motion for Articulation which was denied by the trial commissioner. He also filed a Motion to Correct which was denied November 2, 2011 noting "a trial de novo was not ordered by the undersigned." The claimant filed a Petition for Review and Reasons for Appeal seeking to have to this panel overrule Commissioner Delaney's orders in this matter.

The claimant's appeal is based on his belief that Commissioner Delaney had no choice but to rule solely on the record that was present before Commissioner Thompson

and that Commissioner Delaney had no authority to seek any additional testimony. The claimant cites Gorelick v. Montanaro, 94 Conn. App. 14 (2006) and Pinto v. General Signal Corp., 2277 CRB-5-95-1 (January 22, 1997), *dismissed for lack of a final judgment*, A.C. 16874 (October 30, 1997) for this proposition. The claimant also argues that the exchange of correspondence between counsel on May 24, 2012 created a binding agreement upon the trial commissioner to rule on the record that existed as of that point. The respondent disputes these arguments, and further argues citing Richardson v. Bic Corporation, 4953 CRB-3-05-6 (September 7, 2006) that this dispute is unripe for appellate consideration at this time.

We are persuaded by the respondents' argument on ripeness, in part after our review of the holding of Gorelick, *supra*. While we have not required a "final judgment" from a trial commissioner as a prerequisite to an appeal, see § 31-301<sup>2</sup>, not all

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

**Sec. 31-301. Appeals to the Compensation Review Board. Payment of award during pendency of appeal.** (a) At any time within twenty days after entry of an award by the commissioner, after a decision of the commissioner upon a motion or after an order by the commissioner according to the provisions of section 31-299b, either party may appeal therefrom to the Compensation Review Board by filing in the office of the commissioner from which the award or the decision on a motion originated an appeal petition and five copies thereof. The commissioner within three days thereafter shall mail the petition and three copies thereof to the chief of the Compensation Review Board and a copy thereof to the adverse party or parties. If a party files a motion subsequent to the finding and award, order or decision, the twenty-day period for filing an appeal of an award or an order by the commissioner shall commence on the date of the decision on such motion.

(b) The appeal shall be heard by the Compensation Review Board as provided in section 31-280b. The Compensation Review Board shall hear the appeal on the record of the hearing before the commissioner, provided, if it is shown to the satisfaction of the board that additional evidence or testimony is material and that there were good reasons for failure to present it in the proceedings before the commissioner, the Compensation Review Board may hear additional evidence or testimony.

(c) Upon the final determination of the appeal by the Compensation Review Board, but no later than one year after the date the appeal petition was filed, the Compensation Review Board shall issue its decision, affirming, modifying or reversing the decision of the commissioner. The decision of the Compensation Review Board shall include its findings, conclusions of law and award.

interlocutory rulings are appealable and upon review this ruling falls into the category of decisions that are not appealable.

The present appeal is essentially from a decision on an interlocutory motion upon an interlocutory motion. There is a pending Motion to Preclude before the trial commissioner. The claimant's objection and subsequent motions are essentially motions seeking to address the trial commissioner's consideration of the pending, and yet unresolved, underlying Motion to Preclude. Once the present dispute over the

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(d) When any appeal is pending, and it appears to the Compensation Review Board that any part of the award appealed from is not affected by the issues raised by the appeal, the Compensation Review Board may, on motion or of its own motion, render a judgment directing compliance with any portion of the award not affected by the appeal; or if the only issue raised by the appeal is the amount of the average weekly wage for the purpose of determining the amount of compensation, as provided in section 31-310, the commissioner shall, on motion of the claimant, direct the payment of the portion of the compensation payable under his award that is not in dispute, if any, pending final adjudication of the disputed portion thereof. In all appeals in which one of the parties is not represented by counsel, and in which the party taking the appeal does not prosecute the case within a reasonable time from the date of appeal, the Compensation Review Board may, of its own motion, affirm, reverse or modify the award.

(e) When an appeal is taken to the Compensation Review Board, the chief clerk thereof shall notify the commissioner from whose award the appeal was taken, in writing, of any action of the Compensation Review Board thereon and of the final disposition of the appeal, whether by judgment, withdrawal or otherwise, and shall upon the decision of the appeal, furnish the commissioner with a copy of the decision. Whenever any appeal is pending, if it appears to the Compensation Review Board that justice so requires, the Compensation Review Board shall order a certified copy of the evidence for the use of the employer, the employee or both, and the certified copy shall be made a part of the record on the appeal. The procedure in appealing from an award of the commissioner shall be the same as the procedure employed in an appeal from the Superior Court to the Supreme Court, where applicable. The chairman of the Workers' Compensation Commission shall adopt regulations, in accordance with the provisions of chapter 54, to establish rules, methods of procedure and forms as the chairman deems expedient for the purposes of this chapter.

(f) During the pendency of any appeal of an award made pursuant to this chapter, the claimant shall receive all compensation and medical treatment payable under the terms of the award to the extent the compensation and medical treatment are not being paid by any health insurer or by any insurer or employer who has been ordered, pursuant to the provisions of subsection (a) of this section, to pay a portion of the award. The compensation and medical treatment shall be paid by the employer or its insurer.

(g) If the final adjudication results in the denial of compensation to the claimant, and he has previously received compensation on the claim pursuant to subsection (f) and this subsection, the claimant shall reimburse the employer or its insurer for all sums previously expended, plus interest at the rate of ten per cent per annum. Upon any such denial of compensation, the commissioner who originally heard the case or his successor shall conduct a hearing to determine the repayment schedule for the claimant.

evidentiary rulings is addressed, the trial commissioner will still have to rule on the underlying Motion to Preclude. Presumably, the party aggrieved by the ultimate decision on that issue will appeal that decision to the Compensation Review Board at that time. It is possible that appeal may well result in even more proceedings before the trial commissioner before the ultimate issues in this matter are resolved.

As a result, we find this portion of our Richardson opinion applicable to the issues at hand.

The claimant does not contend that this board lacks subject matter jurisdiction over the appeal, as § 31-301(c) allows us to consider appeals from certain interlocutory rulings prior to the adjudication of the merits of a case. Bailey v. Stripling Auto Sales, Inc., 4516 CRB-2-02-4 (May 8, 2003). The claimant instead seeks a ruling that this appeal conflicts with a standard of judicial economy articulated in Kuba v. Michael's Landscaping & Lawn Service, 4266 CRB-4-00-7 (August 29, 2001), in which we stated, "Unless the immediate actualization of an interlocutory ruling may result in some form of irreparable harm, such as the disclosure of sensitive and confidential information to opposing counsel; see Vetre v. State/Dept. of Children and Youth Services, 3948 CRB-6-98-12 (February 14, 2000); this board discourages parties from filing appeals before the commissioner has had a chance to rule on the merits of a case."

This board has given voice to that principle in order to provide guidance to parties inclined to appeal interlocutory rulings. "The efficient and timely resolution of cases is of prime importance given the urgent need for remedial relief that many injured claimants experience. Maintaining the integrity of final judgments is crucial to the stability of our legal system, but this concern should not overshadow the fundamental need for speedy decisionmaking in the workers' compensation arena." Bailey, supra. Appeals create delay, and participants in this system should strive to keep in mind the need for deliverance of timely decisions. Unfortunately, this Commission works with limited resources, and it takes time to process cases and appeals. Thus, it helps to expedite decisionmaking if parties refrain from immediately appealing evidentiary rulings and other interlocutory rulings.

Id.

We determined that in Richardson, as that matter had already been appealed once to our tribunal previously, the overall agenda of judicial economy was better served by considering the merits of that appeal. We find however, in the present case, where no decision on the merits has yet been reached by the trial commissioner, the circumstances are more akin to the situation in Kuba, supra. In Kuba, the claimant filed a Motion to Preclude testimony from a witness which the trial commissioner denied. The claimant's claim that he sustained an injury as a result of Lyme Disease was dismissed and he appealed. The respondents argued that the claimant could not raise adverse evidentiary decisions on his appeal. We disagreed.

We disagree with the respondents' assertion that the claimant should be precluded from raising these evidentiary issues on appeal. Though § 31-301(a) allows either party to appeal within ten days "after entry of an award by the commissioner, *after a decision of the commissioner upon a motion* or after an order by the commissioner according to the provisions of section 31-299b" (emphasis added), it would be imprudent for a party to delay the progress of an action for many months at a time in order to immediately appeal every one of a commissioner's interlocutory rulings to the Compensation Review Board before moving forward. In a complicated action that involved numerous contested evidentiary rulings, it could conceivably take the better part of a decade to resolve the claim. Unless the immediate actualization of an interlocutory ruling may result in some form of irreparable harm, such as the disclosure of sensitive and confidential information to opposing counsel; see Vetre v. State/Dept. of Children & Families, 3948 CRB-6-98-12 (Feb. 14, 2000); this board discourages parties from filing appeals before the commissioner has had a chance to rule on the merits of a case. Bailey v. State/Greater Hartford Community College, 3694 CRB-1-97-9 (Jan. 12, 1999); Dixon v. United Illuminating Co., 14 Conn. Workers' Comp. Rev. Op. 215, 1996 CRB-4-94-3 (Aug. 4, 1995) (Brouillet, C., dissenting). Otherwise, the speedy and efficient resolution of workers' compensation claims will frequently be

impeded, contrary to the design of the Act. Menzies v. Fisher, 165 Conn. 338, 346 (1973).

Id.

We note that were the trial commissioner in this matter to grant the claimant's Motion to Preclude after considering additional evidence, presumably the claimant's current objections would be mooted and the respondents would be the aggrieved party bringing an appeal. We find that circumstance similar to the situation we described in Bailey v. Stripling Auto Sales, Inc., supra.

The transcript from the March 12, 2002 formal hearing shows that the parties understood that the trial commissioner intended to rule on the Motion to Dismiss and the Motion to Preclude before he could fully consider the merits of this case. Transcript, pp. 41-43. When those motions were denied, the respondents filed this appeal instead of allowing the case to move forward for the consideration of the exhibits that originally had been marked for identification only, and any related testimony. Though this board has the statutory authority to consider this appeal, we note that no irreversible harm would have been occasioned by letting this case go forward on the merits. The respondents' res judicata defense would have been just as viable following a full adjudication of the case, and might have been rendered moot by a dismissal of the underlying claim.

Id.

We cannot identify the irreversible harm that would occur to the claimant were this case to go forward and the trial commissioner rule on the record that he deemed appropriate. The claimant could present for our consideration any and all errors made by the trial commissioner in the underlying proceeding if and when he appealed a final decision on the Motion to Preclude. At that point, once a decision on the merits was reached, we could determine whether the trial commissioner went beyond his general



authority pursuant to § 31-298 C.G.S.<sup>3</sup> to manage the hearings he was charged with deciding.<sup>4</sup> The precedent of Bailey v. Stripling Auto Sales, Inc., supra, suggests that this would be the appropriate manner in which to proceed.

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<sup>3</sup> This statute reads as follows:

**Sec. 31-298. Conduct of hearings.** Both parties may appear at any hearing, either in person or by attorney or other accredited representative, and no formal pleadings shall be required, beyond any informal notices that the commission approves. In all cases and hearings under the provisions of this chapter, the commissioner shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of this chapter. No fees shall be charged to either party by the commissioner in connection with any hearing or other procedure, but the commissioner shall furnish at cost (1) certified copies of any testimony, award or other matter which may be of record in his office, and (2) duplicates of audio cassette recordings of any formal hearings. Witnesses subpoenaed by the commissioner shall be allowed the fees and traveling expenses that are allowed in civil actions, to be paid by the party in whose interest the witnesses are subpoenaed. When liability or extent of disability is contested by formal hearing before the commissioner, the claimant shall be entitled, if he prevails on final judgment, to payment for oral testimony or deposition testimony rendered on his behalf by a competent physician, surgeon or other medical provider, including the stenographic and videotape recording costs thereof, in connection with the claim, the commissioner to determine the reasonableness of such charges.

<sup>4</sup> We do note that had the trial commissioner acted in a *sua sponte* manner after an appeal had been taken, our precedent states that he would have lacked jurisdiction to have acted. See Spatafore v. Yale University, 2011 CRB-3-94-4 (September 14, 1995).

Once a petition for review is filed with the Compensation Review Board pursuant to § 31-301 C.G.S., the CRB has jurisdiction over the appeal. During the appeal, this board has the power to admit additional evidence if justified. See Admin. Reg. § 31-301-9. Trial commissioners are often requested to make changes to their findings via a Motion to Correct, as was done in this case by the respondent. The granting of a Motion to Correct acts as an amendment of a Finding and Award. See Admin. Reg. § 31-301-4.

There have been instances where this board has dismissed appeals because a trial commissioner has vacated the order or award underlying the appeal. Hutchinson v. C. Cowles & Co., 12 Conn. Workers' Comp. Rev. Op. 387, 1934 CRB-3-93-12 (Aug. 29, 1994); Discuillo v. Stone & Webster, 12 Conn. Workers' Comp. Rev. Op. 1, 1366 CRD-2-91-12 (Jan. 4, 1994). In both of those cases, however, a party had requested additional proceedings before the trial commissioner. Also, the circumstances surrounding those cases warranted vacating the underlying decisions.

Here, the trial commissioner appears to have withdrawn his decision as an alternative to ruling on a Motion to Correct, without a request by either party to take such action. We do not think that such an order was permissible. Once the commissioner's award was appealed, it was not appropriate for him to reconsider the factual findings on his own terms. The only decision facing him with respect to those findings was whether to grant all or part of the Motion to

We have reviewed the primary case relied upon by the claimant, Gorelick v. Montanaro, 94 Conn. App. 14 (2006) and find that the holding of that case supports our reasoning herein. In Gorelick, the Appellate Court dealt with the issue of whether it was appropriate to appeal the interlocutory rulings in that case from the trial court to the Appellate Court. Citing precedent in State v. Curcio, 191 Conn. 27 (1983) the Appellate Court found the appeals were unripe for consideration.

An otherwise interlocutory ruling can be immediately appealed in two circumstances: (1) where the order terminates a separate and distinct proceeding; or (2) where the order so concludes the rights of the parties that further proceedings cannot affect them. *Id.*, 31. In the present case, neither prong of the *Curcio* test is satisfied.

Gorelick, *supra*, 32.

The trial commissioner's evidentiary decision in the present case did not terminate a proceeding by either party, nor did it conclude the right of any party in a manner that further proceedings could not affect them. The Appellate Court, in Gorelick, found that the appeal did not serve to "prevent the irreparable loss of a cognizable legal right." *Id.* It further held "we observe no risk of loss of any cognizable right if appellate review is delayed until final judgments enter." *Id.* The Appellate Court dismissed the

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Correct. A *sua sponte* withdrawal of the Finding and Award in order to hear further evidence was inappropriate, as the trial commissioner no longer had jurisdiction over the determination of the issues appealed. Absent the type of irregularity that would invalidate his or her decision as a whole, a trial commissioner should not attempt to rescind an award once it has been appealed to the CRB. See Hutchinson, *supra* (trial commissioner disqualified herself after award issued).

In the present matter the trial commissioner issued a *sua sponte* order while he retained jurisdiction over the case. We reach no decision herein as to the merits of the trial commissioner's order, except to note that it is not inconsistent with Spatafore, *supra*.

appeal in that case for lack of a final judgment. *Id.*, 33. We find this logic compelling in consideration of the present appeal, and adopt that rationale in reaching a similar result.<sup>5</sup>

We are of the opinion the present dispute is unripe for appellate adjudication. We therefore remand this case to the trial commissioner to complete his deliberations on the pending Motion to Preclude.

Commissioners Charles F. Senich and Ernie R. Walker concur in this opinion.

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<sup>5</sup> The Supreme Court restated that general rule concerning whether an interlocutory order is capable of being appealed in Levarge v. General Dynamics Corp., 282 Conn. 386 (2007).

This rule is an application of the more general final judgment principle that an otherwise interlocutory order is appealable [when] (1) it terminates a separate and distinct proceeding, or (2) so concludes the rights of the parties that further proceedings cannot affect them.’’ (Internal quotation marks omitted.) *Doe v. Connecticut Bar Examining Committee*, 263 Conn. 39, 49 n.5, 818 A.2d 14 (2003).

*Id.*, 390.

The Supreme Court concluded that as additional proceedings were necessary in order to apportion liability for the award to the claimant in that matter, an appealable final judgment had not occurred. In the present case, the trial commissioner has not rendered a decision upon the pending Motion to Preclude.