CASE NO. 5801 CRB-4-12-11 : COMPENSATION REVIEW BOARD
CLAIM NO. 400046167

JONATHAN VAN FLEET
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: MARCH 17, 2014

BALFOUR BEATTY CONSTRUCTION
EMPLOYER

and

LIBERTY MUTUAL GROUP
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant appeared without legal representation at oral argument.

The respondents were represented by Vincent DiPalma, Esq., Law Offices of Loccisano, Turret & Rosenbaum, 101 Barnes Road, 3rd Floor, Wallingford, CT 06492.

This Petition for Review[1] from the November 6, 2012 Findings and Orders of the Commissioner acting for the Fourth District was heard October 25, 2013 before a Compensation Review Board panel consisting of Commissioners Stephen B. Delaney, Ernie R. Walker and Daniel E. Dilzer.

[1] We note that a postponement was granted during the pendency of this appeal.

OPINION

STEPHEN B. DELANEY, COMMISSIONER. The claimant has appealed from a Findings and Orders which dismissed many of his claims for benefits under Chapter 568. Upon review we find the trial commissioner could reasonably have reached the conclusions he reached in this case. We affirm the Findings and Orders.

The trial commissioner reached the following factual findings at the end of the formal hearing which are pertinent to this appeal. The trial commissioner took administrative notice of the prior proceedings involving the claimant, including voluntary agreements in this matter wherein the respondents accepted compensability for a variety of injuries sustained by the claimant on June 26, 2001. The respondents also acknowledge the claimant sustained compensable injuries to three of his teeth (8, 9 and 14) on June 19, 2001. The claimant testified at the hearing that on June 19, 2001 he swung his head into an angle iron and sustained injuries to a number of his teeth. He said that he had paid for a root canal on tooth #9 out of his own pocket and it had not been reimbursed. He also said that he paid for treatment for tooth #21 and had not been reimbursed. He also said he believed he had injured his cervical spine in the June 19, 2001 incident. He also sought medical treatment or examinations for a variety of other ailments he believed were related to the work injury, such as a MRI of his right knee, a consultation and EMG regarding bilateral elbows and carpal tunnels, authorization for chiropractic and acupuncture treatment, and a cardiology evaluation. He believes there is scar tissue on "the heart and all of the organs" and says "[t]here's definitely an issue with the right hip." Findings, ¶ 8 o. When he was injured on June 19, 2001 he continued to

work until the injury of June 26, 2001. He is claiming total disability benefits from June 27, 2001 to October 31, 2001 and also since 2002. He is also seeking reimbursement for bills to a chiropractor and to Dr. Nadim M. Ramadan, a foot surgeon.

The commissioner found that the respondents paid the claimant Temporary Total, Temporary Partial, Permanent Partial, and Post-Specific indemnity benefits from June 27, 2001 through March 1, 2010. He also noted that William R. Blanck, DMD, apparently performed a post and core on tooth #14 on April 6, 1998 and a crown on April 15, 1998 on the same tooth, but it was not clear whether he had been paid for this work. He also noted the claimant incurred charges in the amount of $880 for services performed on February 27, 2009 and March 2, 2009 by Moin Ahmed, DDS, on teeth #2 and #7; and noted a letter from Alan H. Cooper, DDS, to the insurer which stated that the claimant was seen on August 15, 2007 for endodontic treatment to tooth #8 from the work injury. Dr. Cooper further stated that a crown would likely be needed in the future on that tooth, as well as endodontic treatment and a crown on tooth #9.

The commissioner also considered evidence from the claimant's treating physician, Dr. David F. Bindelglass. On April 15, 2011 Dr. Bindelglass stated that the claimant was "unable to return to work until further notice" and in a letter to Commissioner Goldberg dated July 20, 2011 Dr. Bindelglass stated that he felt that the claimant would never be able to resume any type of work. He also stated that he finds it "unlikely that acupuncture or chiropractic care will be in any way curative." Findings, ¶¶ 15-16. In 2012 Dr. Bindelglass recommended an MRI without contrast of the right knee. He also requested a cardiology referral in 2010, but indicated that was unlikely to be related to the work injury.

On December 14, 2011, Dr. Clinton A. Jambor performed a Respondents' [Independent] Medical Examination on the claimant. He concluded that the then-recommended treatment (chiropractic and epidural injections) was not curative and palliative, at best. He also stated that the claimant had reached maximum medical improvement and that no further treatment was warranted. Also, he indicated that the claimant had a sedentary work capacity, but would be unlikely to ever be able to return to full duty. On February 9, 2007, Dr. Enzo Sella performed a commissioner's examination regarding the claimant's feet and ankle and recommended a bone scan. The bone scan was performed on May 24, 2011. Dr. Sella concluded that the claimant has reached maximum medical improvement and that no further treatment is warranted.

Based on these facts the trial commissioner concluded that on June 19, 2001, the claimant sustained compensable injuries to teeth #8, 9, and 14; and that the claimant had failed to meet his burden of proof that the injuries to his other teeth, or the other body parts where he sought treatment, were related to that work related injury. The commissioner found the claimant had been paid all indemnity benefits he was due for the period from June 27, 2001 through March 1, 2010. The commissioner concluded that the claimant's testimony and evidence that he had been totally disabled since the date of the injury was neither credible nor persuasive. The commissioner did not find Dr. Bindelglass's opinions as to the claimant's total incapacity persuasive. The commissioner rejected the claimant's bid for chiropractic treatment and acupuncture as being neither reasonable nor medically necessary as curative treatment. The commissioner also rejected the claimant's bid for an MRI, an EMG and upper extremity

evaluation, and a cardiology evaluation are not supported by a current recommendation or causally linked to the compensable injury.

Therefore the trial commissioner determined the respondents were responsible for the claimant's injuries to teeth 8, 9 and 14; but that the claimant had not presented sufficient documentation as to what expenses related to those teeth, and directed the claimant to present this documentation. The commissioner denied any claim for injuries to the claimant's other teeth. The commissioner dismissed the balance of the claims presented by the claimant.

The claimant filed a Motion to Correct, challenging the factual conclusions of the trial commissioner. This Motion was denied in its entirety. The claimant has now pursued the instant appeal.

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 find that in the present matter it is difficult to discern what the averments of legal error are, as the claimant, who is a self represented party, did not file an appellant brief. While we acknowledge the difficulties *pro se* claimants may have in advancing an appellate argument, and generally extend considerable leeway to such litigants, there must still be a reasonable effort to comply with the rules to enable this panel to take action. The appellant is expected to present a cogent explanation to the tribunal and the respondent prior to this board's hearing that explains why the trial commissioner erred in their decision. Claros v. Keystone Pipeline Services, 5399 CRB-1-08-11 (October 28, 2009). The respondents have moved to dismiss this appeal pursuant to Practice Book Section 85-1, alleging that they were prejudiced by the manner in which the claimant pursued his appeal. We are persuaded by this argument and grant the motion. As we pointed out in Marino v. Cenveo/Craftman Litho, Inc., 5448 CRB-5-09-3 (March 16, 2010), when an appellant fails to sufficiently apprise the tribunal and the opposing party of their rationale for the appeal prior to the hearing, the appeal is subject to dismissal.

While we believe the procedural deficiencies in the claimant's appeal were sufficiently material as to warrant a dismissal, were we to have considered the merits of the claimant's appeal we would have affirmed the trial commissioner's decision. We believe that the claimant is essentially seeking to have this panel retry the factual underpinnings of the commissioner's decision, which is beyond our role as an appellate panel. Warren v. Federal Express Corp., 4163 CRB-2-99-12 (February 27, 2001). We considered the arguments raised by the claimant in his oral presentation to this tribunal. We note that many of the points he raised were on issues beyond the scope of the trial commissioner's ruling, such as a Medicare set-aside, a proposed settlement offer, and

potential future dental treatment. These issues cannot serve as grounds to overturn a trial commissioner's decision after a formal hearing.

The claimant argued that his Motion to Correct should have been granted. Upon review we conclude the trial commissioner determined that the corrections sought were not probative to the ultimate findings. The trial commissioner is not obligated to adopt the legal opinions and factual conclusions of a litigant. Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006) and D'Amico v. Dept. of Correction, 73 Conn. App. 718 (2002). We also have considered the claimant's averment during oral argument that the failure of the trial commissioner to credit the opinions of Dr. Dwight Ligham constituted error. See Claimant's Exhibit R. We note that the claimant did not include this issue in his Motion to Correct. We also infer that the trial commissioner found Dr. Sella's opinions as the Commissioner's examiner more credible and persuasive on the issue of ongoing pain. Dr. Sella opined that the claimant exhibited "symptom magnification." Respondent's Exhibit 3. We have generally deferred to a trial commissioner's decision to rely on the medical opinions of the Commissioner's examiner. Carroll v. Flattery's Landscaping, Inc., 5385 CRB-8-08-10 (September 24, 2009). The claimant also argued before our tribunal that another physician not relied on by the trial commissioner, Dr. Paul L. Wineland, supported additional dental treatment and believed it was compensable. We have reviewed Dr. Wineland's August 2, 2002 letter, which is Respondent's Exhibit 5. The letter does not support the claimant's position.

While we can reverse a trial commissioner's decision when it is unsupported by the evidence or inconsistent with the law, Neville v. Baran Institute of Technology, 5383 CRB-8-08-10 (September 24, 2009), the claimant in this matter is essentially seeking to

retry the case on appeal. As we held in Hernandez v. American Truck Rental, 5083 CRB-7-06-4 (April 19, 2007) *citing* Goldberg v. Ames Department Stores, 4160 CRB-1-99-2 (December 19, 2000), "[w]e may not retry a case on appeal and substitute our own findings for those of the trier." It is the trial commissioner's job to weigh medical evidence. O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818 (1999) and Weir v. Transportation North Haven, 5226 CRB-1-07-5 (April 16, 2008). We must respect his conclusions as to the evidence presented. The claimant has the burden of persuasion before this Commission. See Hernandez, supra, and Lentini v. Connecticut College, 4933 CRB-2-05-4 (May 15, 2006). The claimant did not meet this burden and after evaluating the record we do not find the trial commissioner's decision was "clearly erroneous." Burns v. Wal-Mart Stores, Inc., 5343 CRB-7-08-5 (March 23, 2009) and Dudley v. Radio Frequency Systems, 4995 CRB-8-05-9 (July 17, 2006).

Therefore, we affirm the Findings and Orders in this matter.

Commissioners Ernie R. Walker and Daniel E. Dilzer concur in this opinion.