

CASE NO. 5816 CRB-3-12-12
CLAIM NO. 300093535

: COMPENSATION REVIEW BOARD

CORONA TALTON
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION
COMMISSION

v.

: JANUARY 16, 2014

SAINT RAPHAEL HEALTHCARE SYSTEM
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLEE

and

PMA CUSTOMER SERVICE CENTER
THIRD-PARTY ADMINISTRATOR

APPEARANCES:

The claimant was represented by Jeffrey S. Armas, Esq., Gillis & Gillis, One Century Tower, 265 Church Street, Suite 203, New Haven, CT 06510.

At the proceedings below, the respondent was represented by Michael McGoldrick, Esq., Siegel, O'Connor, O'Donnell & Beck, P.C., 150 Trumbull Street, Hartford, CT 06103. On appeal, the respondent was represented by Joseph J. Passaretti, Jr., Esq., and Dominick Statile, Esq., Montstream & May, L.L.P., 655 Winding Brook Drive, P.O. Box 1087, Glastonbury, CT 06033.

This Petition for Review from the December 10, 2012 Finding and Dismissal of the Commissioner acting for the Third District was heard on June 28, 2013 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Charles F. Senich and Peter C. Mlynarczyk.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has petitioned for review from the December 10, 2012 Finding and Dismissal of the Commissioner acting for the Third District. We find no error and accordingly affirm the decision of the trial commissioner.

The trial commissioner made the following factual findings which are pertinent to our review. The claimant, who was employed by the respondent health care facility as a medical secretary in its cardiology department, alleges that she suffered a work-related injury to her back on March 7, 2011. The claimant testified that on the date in question, she was in the process of preparing patient charts for the following day's appointments and when she stood up from her chair, she "felt a severe sharp like pain shoot from my left side all the way down from my left buttock area all the way down to the back of my leg." March 6, 2012 Transcript, p. 12. The claimant was holding a bundle of patient charts in her hand at the time which she estimated weighed approximately five (5) pounds. She completed her work day but went home in pain and did nothing that evening but took some Tylenol and go to bed with a heating pad. The claimant returned to work the next day, reported the injury to her supervisor in an e-mail shortly before noon, and went to the employer's emergency department accompanied by a nurse/co-worker.

The resident on duty at the emergency department, after reaching a diagnosis of acute back pain/lumbar strain with sciatica, gave the claimant some ibuprofen and recommended that she remain out of work until March 14, 2011. The report from this visit states that the claimant "noted left lower back soreness while pulling files during work." Claimant's Exhibit A. At trial, the claimant explained that the phrase "pulling

files” meant that she was going into the back room and removing files from the file cabinet or shelf. When questioned regarding this emergency department visit, the claimant specifically testified that she was carrying files when she was injured. March 6, 2012 Transcript, p. 12.

On March 10, 2011, the claimant was examined by Adedayo Adetola, M.D., of The West Haven Medical Group, LLC. The report from this visit did not indicate how the claimant had injured her back but merely stated that the claimant had experienced left lower back pain, went to an emergency department, and was sent home on pain medication. On March 17, 2011, Adetola reported that the patient was continuing to experience lower left back pain radiating to the left front side groin area which had been ongoing for one week and three days. Under “History,” the report states that the claimant was experiencing “persistent lower left back pain radiating down the posterior leg to below mid calf and anterior thigh.” Claimant’s Exhibit A. In addition, Adetola authored an undated letter in which he said that the claimant had “developed severe back pain apparent [sic] at work while bending.” Claimant’s Exhibit A.

Adetola was also the claimant’s primary physician for several years prior to the incident of March 7, 2011. In an office note dated September 18, 2003, the doctor wrote that the claimant was experiencing:

[complaints of] back pain in mid back, no injury, also dizzy ...
Intermittent episode of back pain usually sporadic. Occasional
incapacitating ... inability to get up from lying position. Usually
begins as spasm and then locks up ... prevents mobility for day or
2. [M]ild will relieve with Tylenol. In addition there is a temporal
remote h/o of MVA with back injury 1994?

Respondent’s Exhibit 1.

In addition, in an office note dated October 28, 2008, Adetola stated that the claimant was experiencing:

Back pain going to [left] side groin area, pressure only in back x 2 months. But get [sic] worse yesterday. Pt went to ER @ HSR ... CT scan done, no kidney stone ... Lt LQ pain x 2-3 weeks ago. Started 1st as Lt sided back pain ... constant. [Increasing] intensity last few days ... chronic back pain....

Id.

At trial, when the claimant was cross-examined regarding the similarity between the description of her pain as set forth in Adetola's October 28, 2008 letter and the doctor's note of March 17, 2011, the claimant at first denied, but eventually agreed, that it was the same pain. The claimant also testified that she had previously experienced spasms in her upper back.

On March 14, 2011, the claimant was seen by John Pinto, PA-C, at St. Raphael's occupational health center. Pinto's report states that the claimant sustained her injury as follows: "when sitting in a chair, she went to stand and she felt a sharp pain in her low back ... This occurred by getting up to stand from her chair, twisting at waist and she felt a sharp pain." Claimant's Exhibit A. When the claimant was queried at trial regarding this description of the mechanics of the injury, the claimant responded that she gave Pinto the same information she had given everyone else and that "[i]t just depends on how they do their dictations and what they choose to write. Nonetheless, the outcome isn't any different." March 6, 2012 Transcript, p. 29. Pinto's note also stated that "[b]ased on the history presented and the physical examination, this incident is consistent with a work-related injury." Claimant's Exhibit A.

The evidentiary record also contained a report from the claimant's cardiologist dated August 1, 2008 noting that the claimant had a history of back pain and hypertension. Respondent's Exhibit 2.

Following the incident of March 7, 2011, the claimant was seen by Stephen Piserchia, D.C., on March 31, 2011 who reported that the claimant had presented "with a complaint of pain in her low back, SI joint on the left and buttocks on the left." Claimant's Exhibit A. In his office note dated April 1, 2011, Piserchia wrote that the claimant "reported that she was gathering and sorting the patients charts for the next day, sat down at her desk and when she arose from the seated position she had back pain that shot down her left leg." Id. On May 10, 2011, Piserchia issued an office note indicating that the claimant "has been treating in this office for a work related injury that occurred when she was lifting files," Id., and on May 23, 2011 issued another note stating that the claimant "was lifting heavy medical charts as a medical secretary at the Hospital of Saint Raphael's and injured her low back." Id. On July 5, 2011, Piserchia authored correspondence in which he stated that the claimant "injured her low back when she was required to lift heavy patient charts." Id.

Piserchia referred the claimant to Jonas Lieponis, M.D., an orthopedist, who examined the claimant on June 6, 2011 and reported that the claimant's injury occurred while the claimant "was moving stacks of charts. She noted the acute onset of discomfort during lifting. She sat down at her desk and upon standing up she experienced sharp incapacitating shooting pain from the left buttock down to the left foot into the heel on the left side." Id. Lieponis indicated that the claimant "has not had any previous spinal problems and denies any previous spinal surgery." Id. On November 7, 2011, the

claimant saw Shirvinda Wijesekera, M.D., also an orthopedist. Wijesekera reported that the claimant was “complaining of a history of left leg pain that began in March of 2011 while she was lifting some files.” Id.

On January 16, 2012, the claimant was seen by Stuart Belkin, M.D., another orthopedist, for a Respondent’s Medical Examination. In his report, Belkin stated that the claimant “had no significant preexisting conditions” and attributed the claimant’s back symptoms to the incident of March 7, 2011. Id. Following his review of the claimant’s medical records, Belkin noted the following: (1) the claimant had stated that “she never had any significant problem with her back prior to the date of the injury; (2) the claimant had seen Adedayo Adetola, M.D., on September 18, 2003 complaining of mid-back pain with no specific injury; (3) the claimant had seen Adetola on October 28, 2008 complaining of back pain traveling to her left side and groin of two months duration, and Adetola’s impression was chronic low back pain; and (4) on March 7, 2011, the claimant stood up from her chair at work and experienced sharp lower back pain, after which incident the claimant was seen at St. Raphael’s occupational health center on March 14, 2011. Id.

Having heard the foregoing, the trial commissioner dismissed the claim, concluding that the claimant had not sustained a work-related injury on March 7, 2011. The trier determined that even though the claimant was in her office when the incident occurred, the claimant’s back symptoms did not “arise out of or in the course of her employment” pursuant to § 31-275(1) C.G.S.¹ The trial commissioner also found that the

¹ Section 31-275(1) C.G.S. (Rev. to 2011) states: “‘Arising out of and in the course of his employment’ means an accidental injury happening to an employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee's duty in the business or

medical reports “contain[ed] inconsistent descriptions of the incident of March 7, 2011” and the claimant had “a history of back pain and treatment which was not shared with all medical providers after the March 7, 2011 incident.” Conclusion, ¶¶ C, D. As such, the trier concluded that not all of the testimony offered by the claimant was credible. In addition, the trier, noting that the various providers’ medical diagnoses were predicated on statements from the claimant, also concluded that “[a]lthough some of [the claimant’s] medical providers have said her injury was work related, their opinions are based on incomplete and inconsistent information.” Conclusion, ¶ G.

The claimant has appealed the dismissal of her claim, contending that the trial commissioner erroneously failed to properly weigh the medical evidence presented at the formal hearing. The claimant asserts that five physicians, including the respondent’s medical examiner, provided reports attesting to causation and, as such, the claimant successfully established a prima facie case. Although the claimant recognizes that the medical reports are not identical relative to their descriptions of the mechanics of the injury, she argues that all of the doctors agree that the claimant was lifting files at work and injured her back when she stood up from her chair. The claimant concedes that the record does reflect she was evaluated by her general practitioner twice within the last ten years for back pain but asserts that those visits revealed nothing of any real significance and her history is devoid of any prior motor vehicle accidents, falls or prior workers’ compensation injuries.² The claimant also points out that because the respondent’s medical examiner rendered his opinion on causation after conducting a review of the

affairs of the employer upon the employer's premises, or while engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer....”

² We note that the September 18, 2003 progress note of Adedayo Adetola, M.D., contains the following reference: “In addition there is a temporal remote h/o of MVA with back injury 1994?” Claimant’s Exhibit A.

claimant's entire medical history, the trier's conclusion that the medical diagnoses were based solely on statements from the claimant constituted error.

The standard of deference we are obliged to apply to a trial commissioner's findings and legal conclusions is well-settled.

... the role of this board on appeal is not to substitute its own findings for those of the trier of fact. Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 451 (2001). The trial commissioner's role as factfinder encompasses the authority to determine the credibility of the evidence, including the testimony of witnesses and the documents introduced into the record as exhibits. Burse v. American International Airways, Inc., 262 Conn. 31, 37 (2002); Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), cert. denied, 251 Conn. 929 (1999). If there is evidence in the record to support the factual findings of the trial commissioner, the findings will be upheld on appeal. Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002); Phaiah v. Danielson Curtain (C.C. Industries), 4409 CRB-2-01-6 (June 7, 2002). This board may disturb only those findings that are found without evidence, and may also intervene where material facts that are admitted and undisputed have been omitted from the findings. Burse, supra; Duddy, supra. We will also overturn a trier's legal conclusions when they result from an incorrect application of the law to the subordinate facts, or where they are the product of an inference illegally or unreasonably drawn from the facts. Burse, supra; Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998).

McMahon v. Emsar, Inc., 5049 CRB-4-06-1 (January 16, 2007).

We note at the outset that the claimant did not file a Motion to Correct pursuant to § 31-301-4 C.G.S.,³ as a result, "we must accept the validity of the facts found by the trial commissioner and this board is limited to reviewing how the commissioner applied

³ Admin. Reg. § 31-301-4 (Rev. to 2011) states: "If the appellant desires to have the finding of the commissioner corrected he must, within two weeks after such finding has been filed, unless the time is extended for cause by the commissioner, file with the commissioner his motion for the correction of the finding and with it such portions of the evidence as he deems relevant and material to the corrections asked for, certified by the stenographer who took it, but if the appellant claims that substantially all the evidence is relevant and material to the correction sought, he may file all of it so certified, indicating in his motion so far as possible the portion applicable to each correction sought. The commissioner shall forthwith, upon the filing of the motion and of the transcript of the evidence, give notice to the adverse party or parties."

the law.” Corcoran v. Amgraph Packaging, Inc., 4819 CRB-2-04-6, 4948 CRB-2-05-5 (July 26, 2006). The scope of our review of the merits of this appeal is therefore somewhat constrained, given that the gravamen of the appeal appears to rest upon a challenge to the trier’s assessment of the evidentiary record and does not implicate any claim that the trier improperly applied the law to the facts as found. Given, therefore, that we must proceed on the basis that the facts found by the trial commissioner may not be disturbed, it then becomes our role on review to establish whether those factual findings allow for the reasonable inference that the claimant’s back symptoms did not arise out of the incident of March 7, 2011. Our review of those findings indicates that they provide ample support for the trier’s conclusions in this regard.

For instance, relative to the trier’s determination that the providers’ medical reports contain inconsistent descriptions of the incident on March 7, 2011, we note the trier made the following factual findings: the St. Raphael’s emergency room report of March 8, 2011 indicated that the claimant felt soreness in her left low back while pulling files at work, Findings, ¶ 11; the undated letter of Adedayo Adetola, M.D., stated that the claimant developed back pain at work while bending, Findings, ¶ 15; the March 14, 2011 occupational health report indicated that the claimant felt pain when she got up to stand from her chair and twisted at the waist, Findings, ¶ 19; the April 1, 2011 report of Stephen Piserchia, D.C., indicates that the claimant felt back pain when she stood up from a seated position, Findings, ¶ 25, while his May 10, 2011 and May 23, 2011 office notes state that the claimant’s injuries occurred while she was lifting files, Findings, ¶¶ 28, 29; and the June 6, 2011 office note from Jonas Lieponis, M.D. states that the claimant noted “the acute onset of discomfort” while lifting some files, sat down, and

then felt shooting pain from the left buttock to the left foot when she stood back up.
Findings, ¶ 31.

The foregoing clearly illustrates that the trier did not unreasonably infer that the medical reports in the record contained inconsistent descriptions of the mechanics of the claimant's injury. Moreover, of arguably perhaps even greater significance to the outcome of this case was the trier's determination that the claimant failed to inform all of the physicians who examined her about her history of back pain and treatment. On that point, the trier found that the record contains the note from Jonas Lieponis, M.D., dated June 6, 2011 stating that the claimant had denied having any previous spinal problems or surgery. Finding, ¶ 32. In addition, Stuart Belkin, M.D., in his RME report of January 16, 2012, indicated that the claimant had stated that "she never had a significant problem with her back prior to the date of the injury."⁴ Finding, ¶ 36.1.

However, as mentioned previously herein, the trier also found that the record contains a note from Adedayo Adetola, M.D., dated September 18, 2003 ascribing to the claimant mid-back pain which was "[o]ccasional[ly] incapacitating," usually began as a spasm, and then locked up. Finding, ¶ 16. The record also contains a second office note from Adetola dated October 28, 2008 indicating that the claimant was experiencing back pain which was traveling to her left groin and referencing the claimant's "chronic back pain." Finding, ¶ 17. Relative specifically to this report, it bears repeating that under cross-examination, the claimant conceded that the back pain she experienced after the incident of March 7, 2011 was similar to the pain referenced in this note of October 28, 2008. Finding, ¶ 18. In addition, Ajoy Kapoor, M.D., the claimant's cardiologist, in his

⁴ The trier found that the report from Stephen Piserchia, D.C., dated April 1, 2011 indicated that the claimant "admits [that] she has a past medical history of neck pain." Finding, ¶ 26.

note of August 1, 2008, attributed to the claimant “a history of back pain and hypertension.” Finding, ¶ 23.

Having reviewed the foregoing factual findings, we conclude that they clearly provided a more than adequate basis for the trier’s conclusion that the claimant did not supply all of her examining physicians with a complete medical history, and thus allowed for the trier’s reasonable inference that the claimant was not a fully credible witness. Such credibility determinations are “uniquely and exclusively the province of the trial commissioner,” Smith v. Salamander Designs, Ltd, 5205 CRB-1-07-3 (March 13, 2008), and are not generally subject to reversal on review.

Credibility must be assessed . . . not by reading the cold printed record, but by observing firsthand the witness’ conduct, demeanor and attitude An appellate court must defer to the trier of fact’s assessment of credibility because [i]t is the [fact finder] . . . [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences therefrom As a practical matter, it is inappropriate to assess credibility without having watched a witness testify, because demeanor, conduct and other factors are not fully reflected in the cold, printed record.

Burton v. Mottolese, 267 Conn. 1, 40 (2003).

It is also well-settled that determinations as to the weight to be assigned to evidentiary submissions, including but not limited to medical reports, lie solely with the trier. “It is the quintessential function of the finder of fact to reject or accept evidence and to believe or disbelieve any expert testimony. The trier may accept or reject, in whole or in part, the testimony of an expert.” (Internal citations omitted, emphasis added.) Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999). The power to reject medical opinions would logically extend to

opinions which the trier deems “derivative of the claimant’s narrative.” Do v. Danaher Tool Group, 5029 CRB-6-05-12 (November 28, 2006). See also Abbotts v. Pace Motor Lines, Inc., 4974 CRB-4-05-7 (July 28, 2006), *aff’d*, 106 Conn. App. 436 (2008), *cert. denied*, 287 Conn. 910 (2008).

In the matter at bar, the claimant accurately points out that the various physicians who rendered medical opinions relative to causation, including the respondent’s examiner, concluded that her injury was sustained in the incident which occurred on March 7, 2011. Generally, such opinions would successfully demonstrate that the claimant’s injury was “causally connected to the employment.” Spatafore v. Yale University, 239 Conn. 408, 417 (1996). Nevertheless, while opinions regarding causation are indisputably necessary to establish a prima facie claim, they are not dispositive if the trial commissioner has not been persuaded that the basis for such causation opinions is sound. The trier was evidently not so persuaded in this matter, and this board is simply not empowered to engage in de novo review of the medical opinions which were submitted into evidence. Vonella v. Rainforest Café, 4788 CRB-6-04-2 (March 16, 2005). See also Fair v. People’s Savings Bank, 207 Conn. 535 (1988); Papapietro v. Bristol, 4674 CRB-6-03-6 (May 3, 2004).

We therefore find no justification for reversing the decision of the trial commissioner. The burden of proving that the claimant sustained a compensable injury rests with the claimant. Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142, 151 (1972). Thus, “[i]f the trier is not persuaded by the claimant’s evidence, there is nothing that this board can do to override that decision on appeal.” Wierzbicki v. Federal

Reserve Bank of Boston, 4147 CRB-1-99-11 (December 19, 2000), *appeal dismissed*,
A.C. 21533 (2001).

There is no error; the December 10, 2012 Finding and Dismissal of the
Commissioner acting for the Third District is accordingly affirmed.

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