CASE NO. 5824 CRB-3-13-3 : COMPENSATION REVIEW BOARD
CLAIM NO. 300048616

JODI E. SHEVLIN
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: MARCH 3, 2014

SNET
EMPLOYER

and

SEDGWICK CMS
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES: The claimant was represented by Cheryl E. Heffernan, Esq., Farver & Heffernan, 2858 Old Dixwell Avenue, Hamden, CT 06518.

The respondents were represented by Anne Kelly Zovas, Esq., Pomeranz, Drayton & Stabnick, LLC, 95 Glastonbury Boulevard, Glastonbury, CT 06033.

This Petition for Review from the February 28, 2013 Finding and Orders of the Commissioner acting for the Third District was heard October 25, 2013 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Peter C. Mlynarczyk and Stephen B. Delaney.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have appealed from Finding and Orders dated February 28, 2013 which determined that the claimant was eligible for temporary total disability benefits. They argue that the weight of the evidence presented at the hearing did not support that result. We find this argument without merit as the trial commissioner relied on medical evidence and lay testimony he found persuasive that the claimant was totally disabled. We affirm the Finding and Orders.

The commissioner reached the following factual findings at the conclusion of the formal hearing. He found the claimant began working for the respondent Southern New England Telephone (SNET) in 1979 and sustained a lumbar spine injury at work on November 9, 1999 while moving boxes. The respondents have accepted the compensability of that injury and paid benefits. Subsequent to the incident the claimant treated with an orthopedic doctor, Jeffrey Sumner, and she returned to work within a couple of weeks after being prescribed Vicodin. The claimant was diagnosed with scoliosis as a child and underwent a spinal fusion in about 1969. On December 7, 1999 Dr. Rowland Mayor diagnosed "an acute lumbar strain" and recommended conservative treatment; indicating that the claimant "does not require any particular special care due to her previous scoliosis" fusion surgery. Dr. Mayor returned the claimant to work in a limited duty capacity.

The claimant treated for another two years with Dr. Sumner and Dr. Mayor. Their reports indicated that the claimant "may require early dismissal from her job on

certain days when the pain is more severe." After suffering a setback in 2002 from her 1999 injury the claimant became totally disabled as her "pain kept getting worse." Findings, ¶ 9. She said that some days the pain was so intense that she was forced to go home at lunchtime to lay down. The respondent accommodated the claimant's pain symptoms by allowing her to work "two days and get a day off so [she] could rest up and return to work for another two days." Findings, ¶ 11. Finally, on October 15, 2002, the claimant "couldn't even get out of bed anymore." Id. She has been out of work ever since.

In November 2002 the claimant was examined by Dr. Sumner, who ordered a CT scan which revealed a possible stress fracture. In December 2002 Dr. Sumner diagnosed the claimant with degenerative disc disease and referred the claimant to Dr. James Yue. The claimant presented to Dr. James J. Yue on February 13, 2003 for a neurosurgical evaluation due to "lumbar degenerative disc disease and pain." Findings, ¶ 14. Dr. Yue notes the claimant's prior "scoliotic fusion" surgery "in 1969." Id. This report also recognizes the claimant's "heart murmur." Id. In addition to lumbar pain, Dr. Yue provides that the claimant is "complaining of neck pain." Id. As a result of the examination and review of diagnostic studies, Dr. Yue diagnosed "severe cervical kyphosis with possible myelopathy." Findings, ¶ 15. He ordered an MRI of the cervical spine and lumbar spine.

On May 29, 2003, Dr. Yue indicates that the claimant "has an extremely expansive dural sac" also known as "dural ectasia." Findings, ¶ 16. He also diagnosed "a very small dural sac tear" in her lumbar spine that occurred as a result of the "lifting accidents" at work. Id. Dr. Yue did not believe the claimant would benefit from surgery

for this condition and recommended "chronic pain management." Id. Dr. Yue also diagnosed a "very dysmorphic kyphotic deformity starting at about C3-4, and extending down to C6-7." Findings, ¶ 17. He recommended "an anterior three-level cervical corpectomy and diskectomy" with a "posterior cervical fusion." Id. In an August 27, 2003 report Dr. Yue causally related the claimant's cervical spine condition "to her 11/9/99 work related injury." Findings, ¶ 19. He also states that due to the claimant's "chronic and debilitating low back pain" from the 1999 incident she has developed "evolving neck symptomatology." Id. The claimant's cervical spine condition and surgery was accepted as compensable by the respondent. Dr. Yue performed the cervical fusion surgery on September 9, 2003.

Dr. Yue then referred the claimant to Dr. John Strugar for a surgical consultation as to whether surgery in the form of a possible CSF catheter shunt to address her lumbar spine disease would be beneficial. In his December 10, 2003 report, Dr. Strugar noted the claimant's "**quite severe**" pain. (Emphasis in original.) Findings, ¶ 21. He suggested the shunt was the best available surgical option but it was not certain to work and he would not perform the surgery unless the claimant was willing to undergo it.

Dr. Yue subsequently opined in an April 8, 2004 medical opinion letter that the claimant was totally disabled from employment; and that from an orthopedic standpoint her lumbar spine was inoperable. His rationale behind that opinion was as follows.

> I can say without any reservation that this patient is completely disabled from any form of employment, due to the fact that when she sits, she fills her thecal sac and pressurizes her spinal cerebral fluid pressure both within her brain as well as her spinal sac. As soon as the pressure reaches a maximum amount, the patient has to lie down flat in order to alleviate the amount of pressure that is building up within her lower spine as well as her brain.

Findings, ¶ 22.

Dr. Yue further opined that due to the claimant's pain medication he did not believe she should be driving and he deemed her "**permanently and totally completely disabled** from the point which I saw her in February of 2003 until eternity, unless the thecal sac variable decompression shunt can be performed and possibly at that juncture she may be a candidate for simple clerical duties." (Emphasis in original.) Id. Dr. Yue regarded the shunt procedure as high risk and left the decision on whether to proceed with the claimant.

On May 17, 2004 the respondent's examiner, Dr. Enzo J. Sella, examined the claimant. After examining the claimant and reviewing her medical records Dr. Sella opined as follows:

> The patient has been and **remains permanently totally disabled for any kind of occupation**. She has very little mobility. She has chronic pain. She is on heavy dosages of medications all of which militate against getting any kind of job. (Emphasis in original.)

Findings, ¶ 23.

Dr. Yue issued another opinion as to the claimant's condition on February 9, 2005 wherein he described how the claimant exacerbated "preexisting dural ectasia" due to her underlying "Marfan's syndrome", a condition "**she did not know she had**" until after the injury. Findings, ¶ 24. He opined that "50% of her present" condition is due to the work injury and "50%" is due to her "preexisting," previously unknown condition. Id. On December 5, 2005, Dr. Yue again restated his opinion that the claimant is permanently totally disabled. He does not believe the claimant can sit "greater than one hour" or

"stand greater than 20 minutes at a time." Findings, ¶ 25. He attributed this disability status to the "Workers' Compensation Injury." Id.

The claimant was referred by Dr. Yue to Dr. Steven C. Levin for pain management treatment. Dr. Levin has prescribed Oxycontin to the claimant. The claimant says her dose has been reduced by 100 milligrams a day but she is still taking 260 milligrams a day of Oxycontin. Dr. Levin's medical records document the claimant's narrative as to her lumbar spine condition and suffering sleepiness, inability to leave her home on any regular basis, moderate relief obtained from her medication, pain flare-ups and forgetfulness. The claimant testified that she "is in pain all day long" even when taking her medications. Findings, ¶ 28. She said that occasionally she would skip a dose of medication, but then was unable to do anything besides sitting and resting, as her pain level would rise. She testified as to the impact pain had on her daily activities.

> There's a lot of things that I used to be able to do that I can't do anymore. I used to be a very active, very social, independent single woman. And now I need to call my brother, my sister-in-law, family members to drive me places, to help with my house work, yard work. I can't walk around the block. I can barely make it through a grocery store. I can't go out and enjoy myself, I can't dance, I can't go to happy hour and have a good time and hang out with everybody, I can't stand that long."

Findings, ¶ 30.

The claimant also testified that she found it difficult to drive as the medications made her sleepy. She said she could use a computer for 30 or 45 minutes at a time but would need to get up and move around or lay down. She described her lumbar spine pain as excruciating and that she suffered from post-surgical neck pain. She said that she did

not get more than two hours at a time of sleep. While the claimant testified that she "would love to" work, she discounted that she had a work capacity.

> What could I possibly do for three hours every two days? If I stay up for three to four hours outside walking or being in an upright position moving around today for instance being here, tomorrow my pain is going to come faster when I'm upright. I'm not going to get that full four hours tomorrow.

Findings, ¶ 37.

The record also reflects the claimant's testimony as to her other noncompensable ailments, including Marfan's syndrome, as well as a heart condition she has had since she was about 25 years old. She is also treating for osteoarthritis. She also testified her pain symptoms were increasing during the formal hearing and she needed to take another pill to finish the session.

The claimant was examined by the respondent's expert witness, Dr. Gerald Becker, on June 18, 2007. Dr. Becker concluded the claimant had a 10% permanent partial disability rating of the lumbar spine, half of which was attributable to pre-existing conditions. He also opined the claimant had a part-time sedentary work capacity and the claimant should not need narcotic pain medication. Subsequent to Dr. Becker's report, the respondent on June 25, 2007 filed a Form 36 to reduce or discontinue benefits.

On August 17, 2007 Dr. Yue responded to Dr. Becker's opinion letter and reiterated his position that the claimant had no work capacity and due to her inability to sit for an extended period, was unlikely to have one in the future. The claimant was then referred to Dr. Michael E. Karnasiewicz for a commissioner's examination. This exam was held on June 10, 2008 and at this exam it was noted the claimant "is able to sit to stand or sit for approximately two to three hours a day" before "she must lay down

because of complaints of back and leg pain." Findings, ¶ 49. Dr. Karnasiewicz later opined that it was “improbable that this patient has a work capacity” due to her limitations on standing and sitting due to back pain. Findings, ¶ 50. He placed the claimant at "maximum medical improvement" and assigned a "10% permanent partial disability of her lumbar spine." Id. Subsequent to this report, Commissioner Charles Senich denied the Form 36 at an informal hearing held February 24, 2009.

Dr. Karnasiewicz was deposed on March 7, 2011. At the deposition Dr. Karnasiewicz opined that the claimant had a work capacity for two to three hours a day. The trial commissioner noted that this opinion was inconsistent with the prior report which opined the claimant lacked a work capacity, and at the deposition the witness said that the claimant’s pain condition had been consistent since the work related injury. Dr. Karnasiewicz did not reveal what had changed in the claimant's circumstances or physical condition between his examination and the deposition that lead him to change his opinion on her work capacity.

Dr. Karnasiewicz is of the opinion the claimant's pain symptoms are "probably not" related to her pre-existing "dural ectasia" as this condition was present "long before" her injury and "wasn't symptomatic before" the compensable injury. Findings, ¶ 57. However, Dr. Karnasiewicz does not address Dr. Yue's opinion that the injury was a catalyst for her current pain symptoms. Dr. Karnasiewicz further opined, consistent with Dr. Yue’s analysis that a lumbar strain can have an effect on dural ectasia. Dr. Karnsiewicz said “the pre-existing weak structure, weakness caused by the dural ectasia makes her back **more vulnerable** to a lifting injury." (Emphasis in original.) Findings, ¶ 58.

Dr. Yue and Dr. Becker both offered updated opinions as to the claimant's status in 2011. Dr. Yue after examining the claimant on March 28, 2011 found that her condition was "essentially unchanged" and opined that she "continues to be" totally disabled. Findings, ¶ 61. Dr. Becker examined the claimant again on April 25, 2011 and was deposed on May 11, 2011. Dr. Becker opined that the Claimant's "inability to work is largely based upon subjective complaints of pain" and ultimately believes that she can "perform at least part-time sedentary work." Findings, ¶ 63. At his deposition Dr. Becker noted that the claimant's medical condition was uncommon and his opinions as to work capacity were based on an average lumbar spine patient. Dr. Becker also testified that the claimant's pre-existing back condition was made significantly worse by the 1999 work injury.

The claimant testified again after the Becker and Karnasiewicz depositions. She specifically denied that she could work four to six hours a day, as Dr. Becker opined. She said she could not go more than three hours without lying down. She also disputed Dr. Karnasiewicz' s opinion she could stand for two hours and work two to three hours a day five days a week. The Commissioner noted that throughout the formal hearing process, the claimant appeared to be quite uncomfortable and she made frequent position changes in an apparent attempt to alleviate pain.

Based on this record the trial commissioner concluded there had been a compensable injury to the claimant on November 9, 1999 which the respondents had accepted as compensable by paying benefits. He concluded Dr. Yue, who had been the claimant's treater, had opined that the claimant was totally disabled as a result of the compensable November 9, 1999 injury. He also found that one of the respondent's

examiners, Dr. Sella, had also opined that the claimant was permanently disabled from all occupations as a result of her medications. The trial commissioner found Dr. Yue and Dr. Sella as "fully credible and persuasive," and adopted their opinion as to the claimant's work capacity. The trial commissioner did not find the opinions of Dr. Becker or Dr. Karnasiewicz as fully credible and persuasive and outlined his rationale for reaching this conclusion. The commissioner also found the claimant's testimony credible and persuasive, for the following reasons.

> I find the testimony of the Claimant as fully credible and persuasive regarding the issues presented. I specifically find her testimony credible regarding her daily routine and associated pain symptoms that increase to a point where she is forced to lie down due to intractable and debilitating pain. I specifically find the Claimant exhibited pain symptoms throughout the formal hearing that were consistent with the medical records and consistent with her statements that her pain symptoms increase with time.

Conclusion, ¶ DD.

As a result the trial commissioner denied the Form 36 filed on June 25, 2007 and ordered the respondents to pay the claimant ongoing temporary total disability benefits. The respondents filed a Motion to Correct and an Amended Motion to Correct, which sought to add findings that addressed alleged inaccuracies in the Findings and find Dr. Karnasiewicz justified his more recent opinion as to the claimant's employability. The trial commissioner granted one correction as to the surgery performed by Dr. Yue on the claimant, and denied the balance of the Motion. The respondents have subsequently pursued this appeal.

The respondents appeal is based on their opinion that the claimant proffered insufficient probative evidence to support her bid for § 31-307 C.G.S. benefits. They

challenge the trial commissioner's reliance on Dr. Yue's opinion, arguing that this opinion was based on an old physical examination that was no longer applicable to the claimant's present medical condition. They also argue that Dr. Karnasiewicz, as the commissioner's examiner, should have been the expert witness the trial commissioner found offered the weightiest testimony in this matter. They argue that as Dr. Karnasiewicz opined that the claimant had a work capacity, her bid for temporary total disability benefits should have been denied. We are not persuaded by these arguments.

On appeal, we generally extend deference to the decisions made by the trial commissioner. "As 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." Daniels v. Alander, 268 Conn. 320, 330 (2004). The Compensation Review Board cannot retry the facts of the case and may only overturn the findings of the trial commissioner if they are without evidentiary support, contrary to the law, or based on unreasonable or impermissible factual inferences. Kish v. Nursing and Home Care, Inc., 248 Conn. 379 (1999) and Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Nonetheless, while we must provide deference to the decision of a trial commissioner, we may reverse such a decision if the commissioner did not properly apply the law or reached a decision unsupported by the evidence on the record. Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

The trial commissioner in this matter clearly found Dr. Yue a persuasive and credible witness. We note that Dr. Yue treated the claimant and had performed surgery on the claimant. In previous cases, we have noted that a trial commissioner could

properly rely on the opinion of a physician who had treated and performed surgery on the claimant. Burns v. Southbury, 5608 CRB-5-10-11 (November 2, 2011). At oral argument before this tribunal, counsel for the respondents argued that Dr. Yue's opinions were too old to warrant reliance and asked this tribunal to review the medical evidence supporting the Finding and Orders. While we may not retry the case, Fair, supra, we did review the medical evidence. We find that Dr. Yue's May 9, 2011 report is dispositive of this argument. Dr. Yue examined the claimant on that date and reiterated that "sitting and walking for long periods of time are very difficult for her." The report stated that "her exam today was unchanged." A review of Dr. Yue's medical records indicates that at no time since originally finding the claimant totally disabled from a work-related injury has he wavered from this position. There is no evidence in the record which would substantiate an improvement in the claimant's condition from that original opinion.

It is black letter law that, "it is the trial commissioner's function to assess the weight and credibility of medical reports and testimony. . . ." O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818 (1999). The trial commissioner could properly find Dr. Yue offered a persuasive opinion on the claimant's condition and choose to rely on that opinion over the opinions offered by the witnesses relied upon by the respondents. See Dellacamera v. Waterbury, 4966 CRB-5-05-6 (June 29, 2006). See also Strong v. UTC/Pratt & Whitney, 4563 CRB-1-02-8 (August 25, 2003), "[i]f on review this board is able to ascertain a reasonable diagnostic method behind the challenged medical opinion, we must honor the trier's discretion to credit that opinion above a conflicting diagnosis."

We turn to the trial commissioner's decision to discount the opinions on work capacity offered by the commissioner's examiner, Dr. Karnasiewicz. It is long standing

precedent that when a trial commissioner does not rely on the opinions of a commissioner's examiner, the trial commissioner should generally explain in the text of their decision why they found another expert witness more persuasive. Madden v. Danbury Hospital, 5745 CRB-7-12-4 (April 22, 2013). The trial commissioner explained his reasoning in great detail herein. See Conclusions, ¶ JJ, ¶ KK & ¶ LL. While the respondents argue in their brief that Dr. Karnasiewicz did explain why his position on the claimant's employability changed between his original report and his deposition, Respondent's Brief, pp. 14-15., we find that the trial commissioner could reasonably determine that a change of opinion on this central issue rendered the witnesses' testimony less than persuasive.

The respondents challenge the adequacy of Dr. Yue's opinion on the claimant's employability. In light of the Appellate Court's recent opinion in O'Connor v. Med-Center Home Healthcare, Inc., 140 Conn. App. 542 (2013) we are not persuaded by this argument. This opinion restates the "totality of the factors' standard for temporary total disability we promulgated earlier in Romanchuk v. Griffin Health Services, 5515 CRB-4-09-12 (October 20, 2010).[1]

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[1] In Romanchuk v. Griffin Health Services, 5515 CRB-4-09-12 (October 20, 2010) we held that the evidentiary standard for awarding § 31-307 C.G.S. benefits was as follows:

In the present case, the trial commissioner found the evidence presented in the commissioner's examination was sufficient to meet the claimant's burden herein. In other recent cases we have found other factors may be persuasive in establishing total disability. In Ciaglia v. ITW Anchor Stampings, 5440 CRB-5-09-3 (March 2, 2010) the trial commissioner found vocational experts persuasive in their opinion the claimant was unemployable. We also found, *citing* Leandres v. Mark IV Construction, Inc., 5159 CRB-4-06-11 (October 22, 2007), that "a claimant's demeanor evidence may be relevant in the commissioner's decision." Id.

We also have recently reiterated that a trial commissioner may decide medical evidence is sufficiently compelling to warrant a finding of total disability. In Camp v. State/Capital Community Technical College, 5401 CRB-1-08-11 (November 17, 2009) we concluded the medical evidence on its own supported the finding the claimant was totally disabled. We also pointed out that when a claimant attempts

In O'Connor, the claimant presented medical opinions that she believed established that she lacked a work capacity. The trial commissioner and this tribunal found this medical evidence was adequate to support an award for temporary total disability benefits. See O'Connor v. Med-Center Home Healthcare, Inc., 5142 CRB-5-06-10 (August 28, 2007), but the Appellate Court ruled the medical opinions did not support such a conclusion. O'Connor, supra, at 549-550. The respondents argued that the award of benefits was therefore unsupportable. This argument was rejected. "The defendants argue that without direct medical evidence indicating that the plaintiff was totally disabled, the commissioner could not properly find that the plaintiff was totally disabled. We disagree." Id., at 550.

The Appellate Court undertook an extensive review of the standards for awarding benefits under § 31-307 C.G.S. and the relevant precedent, i.e., Bode v. Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672 (2011) and Dengler v. Special Attention Health Services, Inc. 62 Conn. App. 440 (2001). The O'Connor decision cited Bode, supra, as permitting a trial commissioner to weigh both medical evidence and lay testimony in determining whether a claimant was totally disabled.

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to perform a job, but finds he or she cannot maintain "tenets of employability regarding consistent work performance" that this can constitute probative evidence that they lack a work capacity, *citing* Latham v. Caraustar Industries, 5241 CRB-2-07-6 (June 25, 2008) and Howard v. CVS Pharmacy, Inc., 5063 CRB-2-06-3 (April 4, 2007).

This panel, on the other hand, has upheld a denial of a § 31-307 C.G.S. claim when the claimant asserted he was "unemployable"; but was found not to be credible. Clarizio v. Brennan Construction Company, 5281 CRB 5-07-10 (September 24, 2008). The medical testimony credited by the trial commissioner in Clarizio determined the claimant had a work capacity. In the present case, the medical evidence credited by the trial commissioner found the claimant lacked a work capacity.

The sum total of our recent decisions applying the Osterlund precedent has been that our trial commissioners may consider the "totality of the factors" in ascertaining whether at the time of the formal hearing the claimant has proven he is entitled to temporary total disability benefits.

> In *Bode*, this court explained that a medical determination of total disability is merely one way a claimant can establish total incapacity to work, and one of many types of evidence the commissioner may consider in making this finding. ‘‘[I]n order to receive total incapacity benefits . . . a plaintiff bears the burden to demonstrate a diminished earning capacity by showing either that she has made adequate attempts to secure gainful employment *or* that she is truly unemployable. . . . Whether the plaintiff makes this showing of unemployability by demonstrating that she actively sought employment but could not secure any, or by demonstrating through nonphysician vocational rehabilitation expert or medical testimony that she is unemployable . . . as long as there is sufficient evidence before the commissioner that the plaintiff is unemployable, the plaintiff has met her burden. . . .

O’Connor, supra, 553-554.

The Appellate Court continued “*Bode* highlighted that the evaluation of whether a claimant is totally disabled is a holistic determination of work capacity, rather than a medical determination. Moreover, *Bode* categorically rejected the notion that claimants must present a particular kind of evidence to meet their burden of proving their total disability.” Id. They concluded that “[t]he commissioner had before him competent medical evidence that detailed the plaintiff’s significant physical limitations with respect to work capacity, along with the plaintiff’s credible testimony regarding her inability to do even desk work because of the pain associated with sitting for extended periods of time and her restricted mobility. While the commissioner did not receive medical evidence categorically stating that the plaintiff was totally incapacitated from work, nor did he receive expert vocational evidence, the commissioner had sufficient evidence in the record to support his finding that the plaintiff had met her burden to show that she was temporarily totally disabled.” Id., 555-556.

In the present case we find that Dr. Yue did unequivocally opine that the claimant was "permanently and totally completely disabled." Findings, ¶ 22. He also opined that the cause of the claimant's disability was her work injury. The trial commissioner noted in detail Dr. Yue's rationale behind these conclusions. Conclusion, ¶ J. The trial commissioner also noted the claimant's testimony as to the physical limitations she has been under since the compensable injury. Findings, ¶¶ 28-42. The trial commissioner found this testimony was "fully credible and persuasive." Conclusion, ¶ DD.[2] In reviewing the "holistic" standard delineated in O'Connor to determine whether the claimant was totally disabled, we believe the trial commissioner could reasonably conclude from this evidence that the claimant had met her burden of persuasion.

In oral argument before this tribunal, counsel for the respondents argued that the precedent in O'Connor was inapplicable to the facts at hand. After reviewing the record, we find no support for that assertion. The claimant presented her own testimony as well as expert medical opinions that she lacked a work capacity. The trial commissioner found this evidence credible and persuasive and awarded benefits.[3] Since it is the duty of

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[2] We note that the trial commissioner took into account the claimant's demeanor while testifying and her narcotic usage in determining she lacked a work capacity. See Findings, ¶¶ 29, 31, 70 & 73, and Conclusions, ¶¶ AA, BB & CC. Our precedent indicated that these are relevant factors to consider in whether the claimant meets the standard of being able to engage in remunerative labor. See Bryant v. Pitney Bowes, Inc., 5723 CRB-7-12-1 (January 24, 2013) and DiDonato v. Greenwich/Board of Education, 5431 CRB-7-09-2 (May 18, 2010).

[3] We uphold the trial commissioner's denial of the respondents' Motion to Correct. We conclude he did not find the evidence cited in this motion probative or persuasive. See Brockenberry v. Thomas Deegan d/b/a Tom's Scrap Metal, Inc., 5429 CRB-5-09-2 (January 22, 2010), *aff'd*, 126 Conn. App. 902 (2011) (Per Curiam) and Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008).

the trier of fact to weigh the evidence presented, we find no basis to overturn the Finding and Orders. We affirm the Finding and Orders.

Commissioners Peter C. Mlynarczyk and Stephen B. Delaney concur in this opinion.