CASE NO. 5834 CRB-2-13-4 : COMPENSATION REVIEW BOARD
CLAIM NO. 601061442

JOHN FERREE
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: FEBRUARY 20, 2014

TOWN OF WEST HARTFORD
EMPLOYER
SELF-INSURED

and

PMA MANAGEMENT CORP. OF NEW ENGLAND
ADMINISTRATOR
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Charles K. Norris, Esq., Chinigo, Leone & Maruzo, LLP, 141 Broadway, PO Box 510, Norwich, CT 06360.

The respondents were represented by Melissa A. Murello, Esq., Montstream & May, LLP, 655 Winding Brook Drive, PO Box 1087, Glastonbury, CT 06033.

This Petition for Review from the April 3, 2013 Ruling on Motion to Transfer of the Commissioner acting for the Second District was heard September 27, 2013 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Charles F. Senich and Ernie R. Walker.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondent Town of West Hartford has appealed from a decision reached by the trial commissioner hearing this case that proceedings should move to the Second District office in Norwich from the Sixth District office in New Britain. The respondent argues that this action is in derogation of a 1923 court decision regarding the transfer of hearings between districts. We note that this is an interlocutory appeal, and the substantive issues before the trial commissioner have yet to be addressed. Therefore, for the reasons stated in Quinones v. RW Thompson Company, Inc., 5792 CRB-1-12-10 (January 16, 2014) and Kuba v. Michael's Landscaping & Lawn Service, 4266 CRB-4-00-7 (August 29, 2001), we deem this matter unripe for appellate consideration. We remand this matter to the trial commissioner for further proceedings.

The following facts are relevant to our consideration. On August 18, 2011 the late Commissioner Clifton E. Thompson responded to an objection filed by counsel for the respondent and an inquiry as to the reasons why this claim was being transferred to the Second District. Commissioner Thompson advised that the claimant had requested the transfer as he lived in Hebron and that in accordance with § 31-297 C.G.S.[1] hearings

[1] This statute states as follows:

Sec. 31-297. Hearing of claims. If an employer and his injured employee, or his legal representative, as the case may be, fail to reach an agreement in regard to compensation under the provisions of this chapter, either party may notify the commissioner of the failure. Upon such notice, or upon the knowledge that an agreement has not been reached in a case in which a right to compensation may exist, the commissioner shall schedule an early hearing upon the matter, giving both parties notice of time and place not less than ten days prior to the scheduled date; provided the commissioner may, on finding an emergency to exist, give such notice as he finds reasonable under the circumstances. If no agreement has been reached within sixty days after the date notice of claim for compensation was received by the commissioner, as provided in section 31-294c, a formal hearing shall be scheduled on the claim and held within thirty days after the end of the sixty-day period, except that if an earlier hearing date has previously been scheduled, the earlier date

were to occur in the town where the claimant resides, or if that was not possible, in a convenient place as prescribed by the commissioner. On March 29, 2013 the respondent restated their objection to the file being assigned to the Second District. On April 3, 2013 Commissioner David Schoolcraft heard oral argument on the respondent's objection and ruled against it. The respondent filed a Motion for Articulation dated April 17, 2013 seeking to elicit Commissioner Schoolcraft's rationale for denial of their objection. Commissioner Schoolcraft issued an Articulation on April 29, 2013 explaining his legal basis for denying the respondent's objection. The present appeal ensued.

We note that we have frequently ruled on rulings on interlocutory motions appealed to this tribunal. Those rulings, however, have generally resolved a significant dispute between the litigants which warranted appellate review. As we noted in Quinones, supra,

> [u]nless 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.

Citing Richardson v. Bic Corporation, 4953 CRB-3-05-6 (September 7, 2006).

The substantive argument advanced by the respondent in objecting to the hearing being held in Norwich is one of convenience. They argue that the witnesses they would present to a hearing are located closer to New Britain. We find no argument herein that

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shall prevail. Hearings shall be held, if practicable, in the town in which the injured employee resides; or, if it is not practicable to hold a hearing in the town, in any other convenient place that the commissioner may prescribe. Sufficient notice of the hearing may be given to the parties in interest by a brief written statement in ordinary terms of the date, place and nature of the injury upon which the claim for compensation is based.

this decision being appealed herein would in any de facto or de jure manner prevent the respondents from presenting any and all witnesses supportive of its case.[2]

We cannot identify the irreversible harm that would occur to the respondent were this case to go forward and the trial commissioner reach a decision on the merits. The respondent could present for our consideration any and all errors made by the trial commissioner in the underlying proceeding if and when they appealed a final decision. In Gorelick v. Montanaro, 94 Conn. App. 14 (2006) the Appellate Court opined that an appeal should not be considered if "we observe no risk of loss of any cognizable right if appellate review is delayed until final judgments enter." Id., 33.

We also note that the case relied upon by the respondent, Jester v. Thompson, 99 Conn. 236 (1923) was cited extensively by the Supreme Court in Dixon v. United Illuminating, Co., 232 Conn. 758 (1995), but that opinion reflects a declaration that issues as to the transfer of files are now governed by § 31-280(b) C.G.S. Id., 774.[3] The court in Dixon remanded the matter for a hearing as the underlying reason for the transfer of that case was an issue of perceived bias by a trial commissioner, for which a hearing as to disqualification should have been held under § 31-278 C.G.S. Id., 777-779. In regards to the strictly administrative transfer of files, the Dixon decision unequivocally found that

[2] We therefore find this case the antithesis of the situation we considered in Valiante v. Burns Construction Company, 5393 CRB-4-08-11 (October 15, 2009) where the trial commissioner reached a final decision on whether a witness would be compelled to testify at a formal hearing. We ruled on that issue as it was clear that the claimant did not believe he could complete his case in the absence of the testimony of a claim examiner. As noted, there is no representation herein that any potential witness cannot testify in this matter if a party so desires.

[3] The present § 31-280(b) C.G.S. which centralized management of the Workers' Compensation Commission under the control of the Chairman's office was substantially adopted by the General Assembly as a result of Public Act 91-339. Therefore, it postdates the decision in Jester v. Thompson, 99 Conn. 236 (1923) which dealt with the prior, decentralized operational structure of the Workers' Compensation Commission.

there was no due process right to have a case heard in a specific district. Id., 775. Dixon also suggested decisions by the Chairman as to the locations of hearings are not properly subject to review by the Compensation Review Board. Id., 776.[4]

We are of the opinion the present dispute is unripe for appellate adjudication. We therefore remand this case to the trial commissioner for further proceedings.

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

[4] We do note that as the decision herein was reached by a trial commissioner, and not the Chairman, we may have the right to entertain an appeal. Nonetheless, the principle of promoting the speedy and efficient resolution of workers' compensation claims implies that unripe matters should not be appealed to our tribunal.