CASE NO. 5839 CRB-7-13-5 : COMPENSATION REVIEW BOARD
CLAIM NO. 700158965

MICHAEL TYSKIEWICZ
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: APRIL 4, 2014

CITY OF DANBURY
EMPLOYER

and

CONNECTICUT INTERLOCAL RISK MANAGEMENT
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Jonathan H. Dodd, Esq., The Dodd Law Firm, LLC, Ten Corporate Center, 1781 Highland Avenue, Suite 105, Cheshire, CT 06410.

The respondents were represented by Colette S. Griffin, Esq., Howd & Ludorf, LLC, 65 Wethersfield Avenue, Hartford, CT 06114-1102.

This Petition for Review from the April 29, 2013 Finding and Award of the Commissioner acting for the Seventh District was heard November 22, 2013 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Charles F. Senich and Peter C. Mlynarczyk.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. On February 19, 2011 the claimant, Michael Tyskiewicz, sustained nonfatal injuries in the course of his employment at an active fire scene in Danbury. The respondents challenge the claim on the basis that the claimant's injuries did not arise out of his employment, based primarily on the respondent's position that firefighting is not a stressful occupation. The trial commissioner, after considering this argument, awarded the claimant benefits under Chapter 568. The respondents have appealed this decision. We find the arguments presented on appeal unmeritorious and contrary to public policy. We affirm the Finding and Award.

The trial commissioner found the following facts at the conclusion of the formal hearing. On February 19, 2011 the claimant was a firefighter for the City of Danbury, and had been employed in that capacity for 26 years. Just before midnight the claimant was part of the force sent to respond to a fire in a three story single family dwelling. The claimant testified that he put on his fire gear, walked up the driveway, and then started climbing a stairway to the inside of the building. He said that visibility inside the building was poor due to it being dark and the amount of smoke. He recalled taking 3 or 4 steps inside the building, and then he woke at the base of the outside staircase. He believed that he was struck by a falling object or he slipped and fell. He testified that upon awakening his fellow firefighters were standing over him asking him "what happened"? Findings, ¶ 4. The respondents pointed to various inconsistencies in the claimant's narrative in the Danbury Hospital triage report and the claimant's deposition;

which suggested he might not have progressed inside the burning building at the time of his collapse and that he did not have knowledge as to why he had collapsed.

Following this incident the claimant was admitted overnight at Danbury Hospital, where he received a prescription for an MRI of the neck. This MRI revealed the claimant had a herniated disc at the C5-C6 level. On January 10, 2012 the claimant underwent a spinal fusion with plating by Drs. David L. Forshaw and Michael Karnasiewicz. As of the commencement of this formal hearing, the claimant testified that he still has neck pain, difficulty sleeping and left arm numbness in certain positions. The claimant testified that for the most part, he has been out of work following his date of injury. He attempted to return to work in the summer of 2011 when he was released to light duty work. He attempted to work light duty for approximately 1-1/2 months, however, he was unable to continue. The claimant testified that the only neck injury he has sustained was the February 19, 2011 incident, and denies any syncopal episodes prior to that date, nor after that date. He further testified that he had been examined by a cardiologist, a neurologist and a pulmonologist, none of whom informed him that he suffered from any conditions to his heart, brain, nervous system or lungs. The claimant did testify that one physical during his career as a firefighter evidenced a slightly elevated blood pressure, but he had not been diagnosed with hypertension or prescribed medication, merely directed to cut back on salt.

The respondents presented evidence from their expert witness, Dr. Martin Krauthamer, that the claimant sustained a vasovagal syncopal episode of unknown cause. Dr. Krauthamer stated that 36% of syncopal episodes are unknown in etiology. However, it was noted by the claimant's attorney that Dr. Krauthamer rendered this opinion without

examining the claimant and that he is not presently practicing medicine or treating patients; and that he had testified 90% of the time for respondents in workers' compensation cases. The claimant also pointed out that Dr. Krauthamer's initial report indicated that stress or trauma could cause a vasovagal episode. The commissioner also noted that Dr. Krauthamer seemed to opine that the claimant's 26 year career fighting fires would somehow eliminate stress or emotions as a causative factor for a syncopal episode. The commissioner noted the other expert witness presented by the respondent, Dr. Steven J. Tenenbaum of Corporate HealthCare, testified that he could not only *not* state the cause of the claimant's syncopal episode, he could not even verify that he had a syncopal episode at all. Dr. Tenenbaum said he needed to take the claimant's word that it occurred.

The trial commissioner noted that the respondents argued that the medical evidence was inadequate because in their view, it only supported the claimant to the extent that he was injured at the scene of a fire on February 19, 2011 and that the injuries, therefore, must be work related because they were sustained at the scene of the accident. The claimant's medical experts, Dr. Robert V. Dawe (orthopedist/treating physician) and Dr. Karnasiewicz, however, both relate the claimant's syncopal episode to his fire fighting activities on the claimant's date of injury based upon the claimant's report of his activities that day.

Based on this record the trial commissioner concluded the claimant's work-related injury did not have to arise out of a witnessed event. She noted the fact that the claimant entered a burning, smoky building around midnight with an air tank and mask on his face was sufficient to infer a certain amount of stress or high emotion associated with the

claimant's activity. Both stress and high emotion have been implicated by Dr. Krauthamer as causative factors for syncopal episodes, and his opinion that the claimant's experience in firefighting would negate stress as a factor was specious as he had not interviewed the claimant. The trial commissioner noted that the claimant entered the fire scene without a neck injury and injured his neck while fighting the fire, and therefore it was of little importance whether the claimant slipped and fell, was hit by falling debris or had a stress related syncopal incident that precipitated the fall. The commissioner found the claimant's injury arose out of the employment and awarded benefits.

The respondents filed a Motion to Correct. The gravamen of their Motion was based on their opinion that firefighting should not be a stressful occupation for an experienced firefighter and therefore the claimant's injury did not arise out of his employment. The trial commissioner rejected the Motion to Correct in toto. The respondent then commenced 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).

As the respondents' view the case, as the claimant offered alternative explanations for what precipitated an unwitnessed accidental injury, his claim must be dismissed for want of evidence. Moreover, as their medical witness opined that a person such as the claimant would not have found the events of February 11, 2011 unusually stressful, the respondent believes the trial commissioner was obligated to adopt this opinion. This is not the legal standard governing consideration of claims brought under Chapter 568.

Recently the Supreme Court considered what appropriate standard of evidence would be necessary to establish causation of a compensable injury. The respondents rest their argument that Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142 (1972) requires expert testimony on the causation of an injury prior to awarding benefits, and this serves as grounds for overturning the commissioner's award on this issue. However, a more recent decision, Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010) clarified the precedent in Murchison, supra. "Moreover, as we have explained previously herein, it is proper to consider medical evidence *along with all other evidence* to determine whether an injury is related to the employment," Marandino, supra, at 595. (Emphasis in original.)

We note that the actual injury the claimant is seeking benefits for is not the alleged cardiovascular ailment which is the focus of respondents' arguments; rather he is seeking benefits for the traumatic injury he sustained to his neck. We note some similarities herein with Blakeslee v. Platt Bros. & Co., 279 Conn. 239 (2006) where the

claimant had an initial seizure which the trial commissioner deemed unrelated to work, but the subsequent orthopedic injuries he sustained were deemed compensable by the Supreme Court. In this case the claimant needed only to persuade the trial commissioner, based on the totality of the evidence that his traumatic injuries arose out of his employment. ''An injury is said to arise out of the employment when (a) it occurs in the course of the employment and (b) is the result of a risk involved in the employment or incident to it or to the conditions under which it is required to be performed. . ." Id., 244.

The evidence herein suggests that there were four possible reasons for the claimant sustaining a traumatic injury to his neck at the fire scene on February 19, 2011. He could have slipped and fallen, he could have been hit by a falling object, he could have collapsed due to a stress induced syncopal event, or he could have collapsed due to an idiopathic event. The proximate cause analysis in Sapko v. State, 305 Conn. 360 (2012) is relevant to our consideration of this matter. "The question of proximate causation . . . belongs to the trier of fact because causation is essentially a factual issue. . . . It becomes a conclusion of law only when the mind of a fair and reasonable [person] could reach only one conclusion; if there is room for a reasonable disagreement the question is one to be determined by the trier as a matter of fact.'' Id., 373. See also Turrell v. State/DMHAS, 144 Conn. App. 834, 845 (2013).

The trial commissioner concluded that while it was uncertain as to whether or not a syncopal event precipitated the claimant's injury; that had such an event occurred it was a result of stress received from fighting the fire. See Conclusions, ¶¶ E and G. The respondents argue that there is insufficient probative evidence to support this conclusion. We disagree. If the claimant's injury at the fire scene was due to slipping or being hit by

a falling object and then falling, we do not believe expert testimony would be necessary to establish compensability, based on the precedent in Sprague v. Lindon Tree Service, Inc., 80 Conn. App. 670, 676 (2003). The prevalence of these types of injuries at fire scenes is in accord with "ordinary human experience" id., and can be established by lay testimony. Also Lee v. Standard Oil of Connecticut, Inc., 5284 CRB-7-07-10 (February 25, 2009). Given the claimant's uncertainty as the mechanism of his injury, the trial commissioner properly considered whether a syncopal event preceded the claimant's fall. She concluded that had this occurred the injury was compensable and as we review the evidence, the evidentiary foundation for this conclusion was in accord with the precedent in Murchison, supra.

The record herein included testimony from Dr. Karnasiewicz as to his opinions regarding the cause of the claimant's injury. See this witness's deposition transcript, dated October 25, 2012.

> A: And I admit I am not a smoke inhalation expert. And I am not. But I don't know how they are ruling that out, unless they did a chest X-ray and saw white in your chest. Maybe he had a little smoke in his lungs that caused him to faint. And if he did, if he did faint, if he did have a syncopal episode that was unrelated to a blow on the head, unrelated to smoke, unrelated to cardiac issues, which they ruled out cardiac issues, **then it had to do with the stress of fighting the fire.** That's my opinion.
>
> Q: Would it be fair to say, though, that that's your opinion…
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> A: That's my opinion based on a **reasonable degree of medical probability, yes.**

Claimant's Exhibit BB, pp. 30-31. (Emphasis added.)

Counsel for the respondents specifically asked the witness if the claimant's long experience as a firefighter would reduce the level of stress he faced on the job. Dr. Karnasiewicz rejected that position.

> I totally disagree with you. I have been a neurosurgeon for thirty-eight years now and it's just as stressful as thirty-eight years ago, so I disagree totally. Just as I'm sure it's no less stressful doing a deposition now that it was twenty years ago either.

Id., p. 32.

We note that Dr. Karnasiewicz's opinion on causation was consistent in his deposition with his November 22, 2011 examination report. See Claimant's Exhibit, 3. The trial commissioner was therefore presented with both lay testimony and an expert opinion ascribing the claimant's injuries to the work related incident of February 19, 2011.[1] In addition, she rejected the key opinion of the respondents expert witness, Dr. Krauthamer, as "specious." Conclusion, ¶ F.[2] Therefore, the award of benefits herein is consistent with evidence on the record credited by the trial commissioner.

The respondents argue that this case is similar to matters where the ultimate cause of the claimant's injury proved idiopathic, and therefore the claimant did not meet his

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[1] The respondents argue that Dr. Karnasiewicz's opinion should not have been credited by the trial commissioner as he was not a cardiologist. Our precedent is that it is the job of the trial commissioner to weigh the relative value of competing expert opinions. See Dsupin v. Wallingford, 5757 CRB-8-12-6 (November 1, 2013) and Huertas v. Coca Cola Bottling Company, 5052 CRB-1-06-2 (January 22, 2007). "If 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." Strong v. UTC/Pratt & Whitney, 4563 CRB-1-02-8 (August 25, 2003). "We must defer to the factual findings of the trial commissioner in such 'dueling expert' cases."' (Internal citations omitted.) Dellacamera v.Waterbury, 4966 CRB 5-05-6 (June 29, 2006), n.1.

[2] We note that the trial commissioner specifically noted that Dr. Krauthamer rendered an opinion on causation without examining the claimant, which would provide an appropriate reason to find his opinion less weighty than that of the claimant's treating physician. See O'Reilly v. General Dynamics Corp., 52 Conn. App. 813 (1999).

burden of persuasion. We find evidence was presented where a reasonable fact finder could award benefits. We also believe this case can be readily distinguished from cases where the panel found the claimant's injury did not arise from the employment. The claimant's fall did not occur in a stairwell where there was no evidence any hazardous condition was present, see Loehfelm v. Stratford-Board of Education, 5710 CRB-4-11-12 (November 14, 2012).[3] Nor is this a case where the claimant sustained a cardiac injury and the trial commissioner rejected his argument his work related stress precipitated the incident, see Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008). An injury which is merely contemporaneous with one's work hours, such as collapsing in an open lot for reasons unrelated to one's employment, may reasonably be found not to be compensable by a trial commissioner.[4] Sufficient evidence was presented in this case, however, for the trial commissioner to find the claimant's injury "arose from his employment."

In addition, the trial commissioner's conclusions in this case are entirely consistent with a long line of authorities which have found work-related stress can precipitate a compensable physical injury. See, for example Chesler v. Derby, 96 Conn.

[3] We also note in Loehfelm v. Stratford-Board of Education, 5710 CRB-4-11-12 (November 14, 2012) the trial commissioner reasonably concluded from the evidence presented that the claimant's fall was due to a sequelae from a noncompensable motor vehicle accident. The record herein indicates that the trial commissioner was presented with no evidence whatsoever that the claimant's fall was related to any noncompensable injury or medical condition.

[4] See for instance, the factual scenario in Kulis v. Moll, 172 Conn. 104 (1976) which did not put the employer on notice that a compensable injury had occurred. "Here, there was no evidence to indicate whether the plaintiff, when found on the ground, had suffered a sudden illness, an accidental fall or even an external assault…" id., 111-112. In the present case the claimant was found by his co-workers stricken at an active fire scene, which clearly imputes substantial knowledge as to the circumstances of the injury.

App. 207 (2006), which held a heart attack after a contentious board hearing was a compensable injury, and not "mental or emotional impairments" exempted from coverage by § 31-275(16)(B)(ii) C.G.S. Id., 212. We also note that the firefighting profession has a long history of being associated with compensable work related stress. Over eighty years ago, in Richardson v. New Haven, 114 Conn. 389 (1932) the Supreme Court upheld a death benefit to a firefighter's widow whose husband died while driving a fire truck which he had found difficult to steer. The court concluded that claimant's husband sustained heart strain from steering the truck, which was the proximate cause of his demise. Id., 391. More recently, in Jamieson v. State/Military Dept., 132 Conn. App. 225 (2011) the Appellate Court considered the compensability of an atrial fibrillation claim brought by a firefighter at Bradley Airport under § 5-145a C.G.S.[5] In considering

[5] The statute reads as follows:

Sec. 5-145a. Hypertension or heart disease in certain university, aeronautics, State Capitol police, correction, mental health, criminal justice or hazardous duty personnel. Any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a member of the security force or fire department of The University of Connecticut or the aeronautics operations of the Department of Transportation, or to a member of the Office of State Capitol Police or any person appointed under section 29-18 as a special policeman for the State Capitol building and grounds, the Legislative Office Building and parking garage and related structures and facilities, and other areas under the supervision and control of the Joint Committee on Legislative Management, or to state personnel engaged in guard or instructional duties in the Connecticut Correctional Institution, Somers, Connecticut Correctional Institution, Enfield-Medium, the Carl Robinson Correctional Institution, Enfield, John R. Manson Youth Institution, Cheshire, the Connecticut Correctional Institution, Niantic, the Connecticut Correctional Center, Cheshire, or the community correctional centers, or to any employee of the Whiting Forensic Division with direct and substantial patient contact, or to any detective, chief inspector or inspector in the Division of Criminal Justice or chief detective, or to any state employee designated as a hazardous duty employee pursuant to an applicable collective bargaining agreement who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in the performance of his duty and shall be compensable in accordance with the provisions of chapter 568, except that for the first three months of compensability the employee shall continue to receive the full salary which he was receiving at the time of injury in the manner provided by the provisions of section 5-142. Any such employee who began such service prior to June 28, 1985, and was not covered by the provisions of this section prior to said date shall not be required, for purposes of this section, to show proof that he successfully passed a physical examination on entry into such service.

the applicability of the statute they noted "[i]t is well settled that '[§]5-145a provides a benefit for the heart disease of those employees who work in designated **categories of employment legislatively determined to be especially stressful** and who had a physical examination at the time employment commenced showing no evidence of heart disease.'" Id., 231. (Emphasis added.) The Federal Emergency Management Agency has reiterated this position noting that "[f]irefighting is extremely strenuous physical work and can be one of the most physically demanding of human activities."[6] FEMA also concluded that in 2012, 45 firefighters in the United States died of stress or overexertion.[7] Therefore, the respondent's argument that firefighting is not a stressful activity is simply refuted by unambiguous public policy to the contrary.

As we noted, the trial commissioner was presented with four possible explanations for why the claimant sustained a traumatic injury at the fire scene on February 19, 2011, three of which would be consistent with the injury arising out of his employment. The trial commissioner did not find the respondents' explanation persuasive and as we explained, did not have to credit the testimony of Dr. Krauthamer. The respondents argue that unless the claimant proved one specific explanation for his injury to the exclusion of all other possible causes that he was barred from recovery. We find this misstates the law, and moreover reiterates the same arguments this insurance

[6] "Firefighter Fatalities in the United States in 2012" U.S. Fire Administration; Federal Emergency Management Agency, August 2013, p. 13. http//www.usfa.fema.gov./fireservice/fatalities (accessed March 19, 2014).

[7] Id.

carrier advanced in Woodmansee v. Milford, 5768 CRB-4-12-7 (December 18, 2013) which we rejected.

> We finally wish to discuss an issue claimant's counsel discussed at some length at oral argument before our tribunal. Counsel argues that since an alternative potential source of exposure to hepatitis C had not been ruled out by the various witnesses, i.e., exposure from the claimant's unknown birth mother; that therefore was insufficient support for the trial commissioner's Conclusion, ¶ L (fn. 11) and the basis to award benefits to the claimant did not exist. We do not agree with this reasoning, as it essentially moves the burden of proof for a claimant beyond that of proving causation by a reasonable likelihood to something akin to the "beyond a reasonable doubt" standard of Anglo-American criminal jurisprudence. Having reviewed the precedent defining the standard of "proximate cause" for Chapter 568 litigation, we find no support for the position that in order to prove "proximate cause" for an injury one must conclusively rule out any other potential cause.

Id.

A claimant must present a reasonable inference between his activities at work and his injury in order to receive benefits under Chapter 568. The test is not one of "leniency" or "humanitarianism"; it's a test based on considering the totality of the evidence presented and determining whether it is more reasonable than not that the claimant's injuries arose from their employment. As we pointed out in O'Connor v. Med-Center Home Healthcare, Inc., 4954 CRB-5-05-6 (July 17, 2006) "[t]here are few principles of jurisprudence more fundamental than the principle that a trier of fact must be the one party responsible for finding the truth amidst conflicting claims and evidence." Our charge as an appellate panel is to conclude whether a fair and reasonable person could reach the conclusion the trial commissioner reached based on the evidence presented. Sapko, supra. The totality of the evidence in this case would reasonably allow one to find the claimant's injury compensable.

We believe the trial commissioner reached a reasonable decision in finding the claimant's injury compensable.[8] The commissioner was not compelled, as a matter of law, to rule for the respondents. Sapko, supra, at 373.

We affirm the Finding and Award.

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

[8] We uphold the trial commissioner's denial of the respondents' Motion to Correct. The corrections in this motion sought to interpose the respondent's conclusions as to the law and the facts presented. D'Amico v. State/Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003), and Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006).