CASE NO. 5844 CRB-3-13-5 : COMPENSATION REVIEW BOARD
CLAIM NO. 300097756

SEAN ROWLAND : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : JUNE 6, 2014

TOWN OF WOODBRIDGE
EMPLOYER

and

TRAVELERS PROPERTY & CASUALTY
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES:

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

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

This Petition for Review from the April 26, 2013 Finding and Award of the Commissioner acting for the Third District was heard on November 22, 2013 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Ernie R. Walker and Charles F. Senich.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have petitioned for review from the April 26, 2013 Finding and Award of the Commissioner acting for the Third District. We find no error and accordingly affirm the decision of the trial commissioner.[1]

The trial commissioner made the following factual findings which are pertinent to our review. The claimant, the chief of the Woodbridge Volunteer Fire Department (hereinafter "fire department"), sustained an injury to his left ankle while responding to a fire. The injury occurred when the claimant, who was still at home, attempted to enter his vehicle and rolled his ankle "all the way over." Findings, ¶ 3. The claimant proceeded to the fire scene and performed his duties as fire chief, after which he sought treatment for his injury that same night. The claimant underwent ankle surgery on April 17, 2012; at the time of the formal hearing, the claimant had not yet been released to full duty. The respondents accepted compensability of the incident and have paid workers' compensation benefits. The issue in dispute is the proper compensation rate for the payment of indemnity benefits.

The claimant testified that when he applied for the position of fire chief, he submitted his application to the Woodbridge Volunteer Fire Association (hereinafter "Fire Association"). The claimant explained that when firefighters are responding to a call, they are acting as the Woodbridge Fire Department; however, when they are not on call, they are considered to be acting as the Woodbridge Volunteer Fire Association. All members of the fire department are members of the Fire Association, and vice versa.

[1] We note that a motion for extension of time was granted during the pendency of this appeal.

When the claimant initially joined the Fire Association, applications for new members were reviewed by an investigating committee comprised of five active members of the Fire Association selected by the fire chief. The claimant testified that the town's personnel department is not involved in the selection process for new members of the Fire Association and all members of the Fire Association report directly to the fire chief. The fire chief is elected every two years by members of the Association who are in good standing. The town's personnel department is not involved in this process; however, the election of the fire chief as well as the other officers of the Association must be ratified by the Board of Fire Commissioners (hereinafter "Fire Commission").[2] This board is comprised of five individuals who are chosen by the town's Board of Selectmen. The fire commissioners must be residents of Woodbridge, and members of the Fire Association are prohibited from sitting on the Fire Commission.

The claimant testified that his duties as a fire chief are "[t]o oversee the 50-plus member fire department and to be in charge of suppression and rescue and also to maintain and distribute the budget…." September 24, 2012 Transcript, p. 17. There are no established hours for performing the duties of fire chief. When at the scene of a fire, the chief is in charge of "[i]ncident command," id., at 50, which entails coordination of the fire scene and rescue activities. The claimant explained that although he is not required to attend every fire scene, he responds to most calls unless he is out of the area or unable to leave his job. The claimant also stated that although he is the fire chief, he is also a volunteer firefighter because he still responds to fire calls.

[2] The Fire Association also elects an assistant chief, the captain, three lieutenants and several sergeants on an annual basis.

The fire chief reports to the Fire Commission, which performs an annual performance review. A copy of this review is also provided to the Board of Selectmen. The fire chief is paid pursuant to a stipend program which the claimant testified evolved in the early 1990's as a response to the increasing administrative duties of the fire chief. The stipend is currently $20,000.00 and is paid monthly in equal installments. The town does not take deductions for payroll taxes, health insurance, or social security, and at the end of the year the fire chief is given an IRS Form 1099 indicating that the stipend monies are "nonemployee compensation." The town also maintains a U.S. savings bond program for the retention of its volunteer firemen which is available to volunteers who are in good standing and meet certain criteria relative to longevity and the performance of firefighting activities. The bonds are paid once a year according to a formula devised by a special committee. The program is identified in the town budget as "volunteer incentives" and the amount to be included in the town's budget is furnished by the Fire Association. The claimant testified that he receives bonds pursuant to this program in addition to his stipend. The town provides an IRS Form 1099 listing these payments as "other income." As was the case for the stipend, these payments are not subject to withholding for payroll taxes or social security.

The claimant testified that the town provides the fire chief with a vehicle which is owned jointly by the Fire Association and the town. The vehicle is available to him at all times and the only restriction on its use is that the chief notify the Fire Commission if he plans to use the vehicle out of state. The town pays for the vehicle maintenance and fuel. The town also issues the chief a cell phone which can be used for personal calls in addition to fire department business.

The claimant testified that the fire department employs a part-time administrative assistant and two part-time mechanics. These individuals are paid by the hour and receive payroll checks which reflect that the town has deducted payroll taxes and social security.

Anthony Genovese, the director of finance and operations for the Town of Woodbridge, also testified at trial. Genovese indicated that as part of his duties, he is responsible for making recommendations to the town personnel committee regarding "full-time hires," as well as handling disciplinary issues and advertising for new hires. July 2, 2012 Transcript, p. 10. Genovese stated that to the best of his knowledge, the fire chief is elected by the membership of the Fire Association; Genovese neither maintains a personnel file for the fire chief nor has any involvement with any aspect of the fire chief's performance of his duties. Genovese testified that he was unaware of any involvement on the part of either the town personnel committee or the Board of Selectmen relative to the selection or retention of the fire chief.[3] Genovese indicated that he was responsible for providing the IRS Form 1099's to the claimant for the retention bond and stipend, and that the stipend program is paid through the accounts payable department while employee checks are issued by the town payroll department. Genovese reviewed the claimant's IRS Form 1099 for 2010 and 2011 which were entered into evidence and testified that the "other income" amount represented proceeds from the incentive program and the "nonemployee compensation" designation represented the payments of the chief's monthly invoices.

[3] Genovese testified that part-time employees are not required to be reviewed and approved by the town personnel committee.

The minutes of the meeting of the Board of Selectmen held on February 25, 1993 were introduced into evidence. The minutes indicate that the board voted unanimously to recommend to the Board of Finance that the fire chief receive an annual stipend in the amount of $5,000.00 "contingent upon Board of Selectmen approval and ratification of an appropriate job description from the Fire Commission, the right of the Board of Selectmen to ratify the selection of a Fire Chief by the Volunteer Fire Association and the Fire Commission's adoption and institution of an annual evaluation procedure."[4] Claimant's Exhibit D.

Also submitted into evidence was a memorandum dated March 4, 1996 provided by Nan Birdwhistell, the First Selectwoman for the Town of Woodbridge, to the Fire Commission outlining the procedure for implementation of the stipend approved at the 1993 meeting. Claimant's Exhibit E. On May 22, 1996, the Fire Commission adopted "Personnel Performance Appraisal Procedures" for the Fire Chief and Fire Marshal. Claimant's Exhibit F.

Having heard the foregoing, the trial commissioner concluded that the injury to the left ankle sustained by the claimant on October 30, 2011 occurred while the claimant was engaged in performing fire duties as an active member of the fire department. As such, the claimant is eligible for benefits pursuant to §§ 7-314a and 7-314b C.G.S. subject to the requirements of § 7-314b(c) C.G.S., and the claimant's compensation rate should be determined in accordance with the provisions of those statutes.[5] The trial

[4] The minutes from the Board of Fire Commissioners' meeting of December 19, 2011 reflect that the Fire Commission unanimously passed a motion to recommend to the Board of Selectmen that the annual fire chief stipend be increased to $20,000.00. Claimant's Exhibit A.

[5] Section 7-314a C.G.S. (Rev. to 2011) states, in pertinent part: "(a) Except as provided in subsections (e) and (f) of this section, active members of volunteer fire departments and active members of organizations

commissioner also determined that neither the stipend monies nor the proceeds from the incentive program are to be considered as income in calculating the claimant's compensation rate.

The respondents filed a Motion to Correct which was denied in its entirety, and a Motion for Articulation to which the trial commissioner responded by drawing the respondents' attention to Conclusion, ¶¶ G and J of his Finding and Award. On appeal, the respondents contend that the trial commissioner erroneously concluded that the claimant's compensation rate should be calculated pursuant to the provisions of §§ 7-314a and 7-314b C.G.S. Rather, the respondents assert that the trial commissioner

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certified as a volunteer ambulance service in accordance with section 19a-180 shall be construed to be employees of the municipality for the benefit of which volunteer fire services or such ambulance services are rendered while in training or engaged in volunteer fire duty or such ambulance service and shall be subject to the jurisdiction of the Workers' Compensation Commission and shall be compensated in accordance with the provisions of chapter 568 for death, disability or injury incurred while in training for or engaged in volunteer fire duty or such ambulance service."

"(b) For the purpose of this section, the average weekly wage of a volunteer fireman or volunteer ambulance service member shall be construed to be the average production wage in the state as determined by the Labor Commissioner under the provisions of section 31-309."

"(c) For the purpose of this section, there shall be no prorating of compensation benefits because of other employment by a volunteer fireman or volunteer ambulance service provider."

Section 7-314b (C.G.S.) (Rev. to 2011) states: "(a) Any active member of a volunteer fire company or department engaged in volunteer fire duties or any active member of an organization certified as a volunteer ambulance service in accordance with section 19a-180 may collect benefits under the provisions of chapter 568 based on the salary of his employment or the amount specified in subsection (b) of section 7-314a, whichever is greater, if said firefighter or volunteer ambulance service provider is injured while engaged in fire duties or volunteer ambulance service."

"(b) As used in this section, the terms 'fire duties' includes duties performed while at fires, answering alarms of fire, answering calls for mutual aid assistance, returning from calls for mutual aid assistance, at fire drills or training exercises, and directly returning from fires, 'active member of a volunteer fire company or department' includes all active members of said fire company or department, fire patrol or fire and police patrol company, whether paid or not paid for their services, 'ambulance service' includes answering alarms, calls for emergency medical service or directly returning from calls for the emergency situations, duties performed while performing transportation or treatment services to patients under emergency conditions, while at any location where emergency medical service is rendered, while engaged in drills or training exercises, while at tests or trials of any apparatus or equipment normally used in the performance of such medical service drills, and 'active member of an organization certified as a volunteer ambulance service in accordance with section 19a-180' includes all active members of said ambulance service whether paid or not paid for their services."

"(c) The provisions of subsection (a) of this section shall only apply if the volunteer firefighter or volunteer ambulance service provider is unable to perform his regular employment duties."

should have determined that because the claimant is an employee of the respondent municipality by virtue of the provisions of § 31-275(9)(A)(vi) C.G.S., the claimant's compensation rate should be calculated pursuant to the provisions of § 31-310 C.G.S.[6] The respondents also claim as error the trial commissioner's failure to grant the proposed corrections in the Motion to Correct and his failure to respond substantively to their Motion for Articulation.

We begin our analysis with a recitation of the well-settled standard of review we are obliged to apply to a trial commissioner's findings and legal conclusions. "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."

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[6] Section 31-275 (9)(A)(vi) C.G.S. (Rev. to 2011) defines an employee as "an elected or appointed official or agent of any town, city or borough in the state, upon vote of the proper authority of the town, city or borough, including the elected or appointed official or agent, irrespective of the manner in which he or she is appointed or employed…."

Section 31-310(a) C.G.S. (Rev. to 2011) states, in pertinent part: "For the purposes of this chapter, the average weekly wage shall be ascertained by dividing the total wages received by the injured employee from the employer in whose service the employee is injured during the fifty-two calendar weeks immediately preceding the week during which the employee was injured, by the number of calendar weeks during which, or any portion of which, the employee was actually employed by the employer…. Where the injured employee has worked for more than one employer as of the date of the injury and the average weekly wage received from the employer in whose employ the injured employee was injured, as determined under the provisions of this section, are insufficient to obtain the maximum weekly compensation rate from the employer under section 31-309, prevailing as of the date of the injury, the injured employee's average weekly wages shall be calculated upon the basis of wages earned from all such employers in the period of concurrent employment not in excess of fifty-two weeks prior to the date of the injury, but the employer in whose employ the injury occurred shall be liable for all medical and hospital costs and a portion of the compensation rate equal to seventy-five per cent of the average weekly wage paid by the employer to the injured employee, after such earnings have been reduced by any deduction for federal or state taxes, or both, and for the federal Insurance Contribution Act made from such employee's total wages received from such employer during the period of calculation of such average weekly wage, but not less than an amount equal to the minimum compensation rate prevailing as of the date of the injury. The remaining portion of the applicable compensation rate shall be paid from the Second Injury Fund upon submission to the Treasurer by the employer or the employer's insurer of such vouchers and information as the Treasurer may require…."

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). Thus, "it is … immaterial that the facts permit the drawing of diverse inferences. The [commissioner] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair, supra, 540 (1988), *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

In the instant appeal, the respondents assert that the trial commissioner should have found that the claimant was an employee of the respondent municipality because the claimant's position as fire chief comports with the provisions of § 31-275(9)(A)(vi) C.G.S.; i.e., the fire chief position is "an elected position with an election held every two years." Appellants' Brief, p. 10. The respondents also point out that following the election, the appointment of the new fire chief must be ratified by the Fire Commission. Given, then, that the instant claimant was elected fire chief in May of 2011 and his election was ratified in due course by the Fire Commission, the claimant was therefore "serving as an elected official and agent under § 31-275(9)(a)(vi)." Id. We are not so persuaded. The record before us indicates quite clearly that the only individuals who are entitled to cast a vote for the fire chief are volunteer members of the Fire Association who are in good standing. No other town citizen or official is authorized to participate in this process. Moreover, the record indicates that only the five-member Fire Commission,

which is appointed by the Board of Selectmen, possesses the authority to ratify the election; this power is not held by the Board of Selectmen generally. Thus, in light of the highly exclusionary nature of the process by which a volunteer fire fighter becomes the fire chief, we do not find erroneous the trial commissioner's refusal to infer that the position of fire chief is an "elected or appointed position" as contemplated by the provisions of § 31-275(9)(A)(vi) C.G.S.

The respondents also contend that because § 31-275(9)(A)(iv) C.G.S. defines an employee as "a salaried officer or paid member of any police department or fire department," the fire chief is therefore an employee of the town by virtue of his entitlement to the monthly stipend. We find this argument unmeritorious given that it essentially begs the question of whether the monthly stipend should be considered a "salary," which is one of the ultimate issues for determination by the trier in this matter.

In addition, the respondents argue that because our Supreme Court, in Going v. Cromwell Fire District, 159 Conn. 53 (1970), "held that the statute specific to volunteer firefighters controls over Sec. 31-310 in establishing the claimant's compensation rate," Appellants' Brief, p. 11, the compensation rate in the instant matter should be predicated on § 31-310 C.G.S. to reflect the claimant's presumably more specific status as an elected or appointed official pursuant to § 31-275 (9)(A)(vi) C.G.S. rather than the more general status of a volunteer fire fighter. In support of this contention, the respondents point to the following statement by the Going court: "Where there are two inconsistent methods of computation such as we have in the present case, the method of computation which covers the subject matter in specific terms, herein as particularly applied to volunteer firemen, will prevail over the general language of another statute which might otherwise

prove controlling." Id., at 60, *quoting* Charlton Press, Inc. v. Sullivan, 153 Conn. 103, 110 (1965). We concede that this sentiment does reflect the "well-settled principle of [statutory] construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling." Kepner v. United States, 195 U.S. 100, 125 (1904) *quoted in* Oles v. Furlong, 134 Conn. 334, 342 (1948).

However, our review of Going indicates that the insurer for the respondent municipality had actually accepted liability pursuant to the provisions of § 7-314a C.G.S. and the issue confronting the court was whether the respondent municipality could invoke the provisions of § 31-310 C.G.S. relative to proration given that the claimant was also employed by a local electric company.[7] The court examined the evolution of § 7-314a C.G.S. and concluded that because the statute specifically articulates that the applicable compensation rate for volunteer firefighters should be based on the average production wage, while § 31-310 C.G.S. requires a more general calculation based on the wages earned by a claimant from all employers, the respondent insurer could not invoke the proration provisions of § 31-310 C.G.S. The court stated that "[s]ince the proration provision of 31-310 is inextricably linked to a method of computation which is incompatible with 7-314a, it cannot be read into or reconciled with that statute and therefore is inapplicable to the facts of this case." Going, supra, at 60.

Nevertheless, while the issue of law presented in Going differs markedly from the issue presented in the instant matter, we do find instructive the following observation made by the Supreme Court: "An historical review of the legislation pertaining to

[7] See footnote 5, supra.

volunteer firemen suggests the conclusion that the General Assembly created a fictitious relationship of employer-employee between volunteer firemen and the municipality only to ensure the payment of benefits to volunteer firemen similar to those provided for regular firemen." Id. The court also stated that, "[i]t is reasonable to suppose that the legislature devised the latter method of computation [described in § 7-314a(b) C.G.S.] to benefit and protect volunteer firemen in cases where wages actually 'earned' by them, if any, might be wholly inadequate as a basis for determining their disability benefits." Id., at 59. Both of these statements would seem to reflect the court's grasp of the remedial nature of the Workers' Compensation Act, similarly echoed in the court's remark that "[t]he purpose of the workmen's compensation law is to provide for the workman, and it is presumed that the General Assembly acted with the knowledge that the object in enacting [§ 7-314a C.G.S.] was to protect the employee." Id. In reviewing the matter at bar, we find that the trier's decision to base the claimant's compensation rate on the provisions of §§ 7-314a and 7-314b C.G.S. rather than § 31-310 C.G.S. more accurately reflects the letter and spirit of the Supreme Court's analysis in Going than the result advocated by the respondents.

The respondents also assert that the claimant should have been deemed an employee of the town because the town has the "right to control" the claimant consistent with the standard set forth in Hanson v. Transportation General, Inc., 245 Conn. 613 (1998). In Hanson, our Supreme Court stated that the "ultimate test" for determining whether a worker is an employee as defined by the Workers' Compensation Act "is the right of general control of the means and methods used by the person whose status is involved." Id., at 617. The court set forth a "totality of the evidence test," id., at 624,

such that "[i]t is the totality of the evidence that determines whether a worker is an employee under the act, not 'subordinate factual findings that, if viewed in isolation, might have supported a different determination.'" Rodriguez v. E.D. Construction, Inc., 126 Conn. App. 717, 728 (2011), *cert. denied*, 301 Conn. 904 (2011), *quoting* Hanson, supra, at 624. However, "[i]t is not the fact of actual interference with the control, but the right to interfere, that makes the difference between an independent contractor and a servant or agent." (Internal quotation marks omitted.) Tianti v. William Raveis Real Estate, Inc., 231 Conn. 690, 697 (1995), *quoting* Latimer v. Administrator, 216 Conn. 237, 248 (1990).

In the matter at bar, the respondents point to a number of factors relative to the relationship between the claimant and the town which would seem to indicate that the town retains the "right to control" the claimant. For instance, in addition to being the entity that issues payment to the claimant, the town retains the right to ratify the selection of the fire chief; the town provides the fire chief with a vehicle and pays for the maintenance, gas and repairs for the vehicle; the town provides the fire chief with a cell phone; and the town is authorized to perform a personnel evaluation of the fire chief. "The respondents submit that the mere right to control that the Town holds (beyond the right to ratify his appointment) in the ability to evaluate the Chief's performance is sufficient to show that the Town has control over his performance as an employee, *whether or not* the Town exercises that right." (Emphasis in the original.) Appellants' Brief, p. 14, *citing* Johnson v. Braun Moving, Inc., 3861 CRB-7-98-7 (November 2, 1999).

However, our review of the record reveals additional factors which serve to effectively mitigate this purported "right to control." For instance, the March 4, 1996 memo from Nan Birdwhistell states that the fire chief stipend is contingent upon "the right of the Board of Selectmen to ratify the selection of a Fire Chief by the Volunteer Fire Association." Claimant's Exhibit E. However, a document dated May 22, 1996 prepared by the Fire Commission indicates that "[i]n 1994 the Board of Selectmen determined that an evaluation procedure for the Fire Chief and Fire Marshal be developed by the Fire Commission for the purpose of performance appraisal." Claimant's Exhibit F. Similarly, § 3.1 of the "Personnel Performance Appraisal Procedures" states that "[t]he Board of Fire Commissioners will conduct the performance appraisals for the Fire Chief and the Fire Marshal." Id., p. 3. In addition, the claimant testified that in his experience, the Fire Commission, not the Board of Selectmen, ratifies the election of the fire chief and, when asked under cross-examination "whether the Board of Selectmen could take some separate action in addressing your election as the chief of the fire association…," the claimant replied, "I don't know." September 24, 2012 Transcript, p. 41. Finally, Anthony Genovese, the director of finance and operations for the Town of Woodbridge, testified that he was unaware that the Fire Commission played any role relative to the election of the fire chief and stated that he has been attending Board of Selectmen meetings since 2001 and could not "recall a time that they have ever ratified a chief." July 2, 2012 Transcript, p. 21.

The foregoing clearly suggests that the town's procedures for the ratification of the election of the fire chief were amorphous, at best. Moreover, the town's "right to control" relative to these proceedings becomes even more attenuated if, as the record

suggests, the authority for ratification rests not with the Board of Selectmen but, rather, with the Fire Commission, which is appointed by the Board of Selectmen. The tenuous nature of the evidence relative to the town's role in the ratification of the fire chief election stands in stark contrast to the testimony offered by Genovese indicating that "employees are hired and fired by the Board of Selectmen ultimately. And that would be a way to – one major way to acknowledge that we have an employee as opposed to a subcontractor or contractor." Id., at 17. Regarding the town's "right to control" generally, Genovese also testified that while his duties of employment extended to making recommendations for new hires to the town's personnel committee, he had never made any recommendations concerning the position of fire chief, and the town's personnel committee does not review the individuals who are being considered for the fire chief position. Finally, Genovese testified that he was not responsible for making any decisions regarding the day-to-day duties or performance reviews for the fire chief, and he was unaware of any separate process set up by the town for that purpose.[8] Id., at 23.

In addition to offering the testimony outlined previously herein relative to his understanding of the role of the Fire Commission in the ratification of the fire chief appointment, the claimant testified regarding the absence of a civil service testing requirement for fire fighters and the town personnel committee's lack of involvement generally in the hiring of volunteer fire association members. The claimant also indicated

[8] Genovese also testified at length regarding the information shown on the IRS Form 1099's used by the town to report its payments to the claimant in 2010 and 2011. Claimant's Exhibit I. While the town's decision to utilize this particular tax form is relevant to the trier's overall inquiry, as the respondents correctly point out, it is not dispositive. Ogdon v. Treemasters, Inc., 3071 CRB-4-95-6 (December 20, 1996).

that he did not have a set hourly schedule and he retained the discretion to decide whether to attend a particular fire call.[9] Moreover, although the claimant recognized that when he assumed the role of fire chief, the scope of his responsibility at a fire had expanded such that he is "in charge of the entire scene," September 24, 2012 Transcript, p. 51, he also stated that, "I became the fire chief, but I'm still a volunteer firefighter because I respond to calls." Id., at 62. The claimant testified that prior to becoming fire chief, he began as a volunteer firefighter in 1996, after which he became a sergeant, followed by a lieutenant, and then assistant fire chief for eight years.

In Chute v. Mobil Shipping & Transportation Co., 32 Conn. App. 16, *cert. denied*, 227 Conn. 919 (1993), our Appellate Court observed that "[t]he determination of the status of an individual as an independent contractor or employee is often difficult … and, in the absence of controlling considerations, is a question of fact…." (Citations omitted; internal quotation marks omitted.) Id., at 19-20, *quoting* Latimer v. Administrator, 216 Conn. 237, 249 (1990). Therefore, as in all inquiries of this nature, the trial commissioner was called upon to assign a certain weight to a number of discrete variables and render a decision consistent with his assessment of "the totality of the evidence." Hanson, supra, at 624. Having reviewed the record in its entirety, we can find no basis for concluding that the trier in any way abused his discretion in finding that, based on the facts of this matter, the claimant satisfied the definition of "employee" of the respondent municipality as contemplated by §§ 7-314a and 7-314b C.G.S and, as such,

[9] The claimant testified that he made the decision whether to attend a certain fire call "[j]ust like everybody else. If a major call comes in, you do what you can do to break away. Some people can break away, some people can't break away." September 24, 2012 Transcript, p. 52.

the calculation of the claimant's compensation rate should be governed by the provisions of those statutes.

Moreover, while the exhibits in the record are silent as to the town's original rationale for instituting the fire chief stipend, both Genovese and the claimant testified as to their understanding that the stipend evolved because of the increasing administrative responsibilities associated with the position of fire chief. Nevertheless, as the claimant's testimony indicates, he is still a volunteer firefighter. The premise behind the establishment of a volunteer firefighting company is that unpaid individuals will voluntarily place themselves in hazardous situations for the safety and protection of their fellow citizens. The record before us clearly demonstrates that the fire chief of a volunteer fire department assumes more, not less, responsibility by virtue of accepting the position of fire chief. The respondents' arguments failed to convince the trier that the claimant should essentially be penalized financially for his decision to accept these additional responsibilities. Having reviewed the circumstances of this matter, we can discern no sound basis in either the law or public policy to reverse the decision rendered by the trial commissioner.

There is no error; the April 26, 2013 Finding and Award of the Commissioner acting for the Third District is accordingly affirmed.

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