CASE NO. 5850 CRB-3-13-5 : COMPENSATION REVIEW BOARD
CLAIM NO. 300093596

CARLOS RIVEIRO
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: APRIL 29, 2014

FRESH START BAKERIES
EMPLOYER

and

TRAVELERS INSURANCE COMPANY
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by John J. Morgan, Esq., Barr & Morgan, 22 Fifth Street, Stamford, CT 06905.

The respondents were represented by Anne K. Zovas, Esq., Pomeranz, Drayton & Stabnick, LLC, 95 Glastonbury Boulevard, Suite 216, Glastonbury, CT 06033-4412.

This Petition for Review from the May 11, 2013 Finding and Dismissal of the Commissioner acting for the Third District was heard December 20, 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. The claimant has appealed from a Finding and Dismissal which denied his claim for injuries allegedly sustained at his employment at a bakery. The trial commissioner was not persuaded by the claimant's testimony as to the circumstances of the alleged injury, which was also disputed by other witnesses. The claimant argues that as the respondent's disclaimer focused on medical issues that the trial commissioner should have credited medical evidence supportive of compensability. We find that this is inconsistent with the role of a trial commissioner which is to weigh all the evidence on the record. We affirm the Finding and Dismissal.

The trial commissioner found the following facts at the conclusion of the formal hearing. The claimant testified with the aid of a Spanish interpreter. He had been employed by Fresh Start Bakeries since July 12, 2010 as a "Sanitor", which was a job that included the removal of contaminated dough from the bakery. He was employed on March 9, 2011 in that position. His job included taking the waste dough in a wheeled bin to a computerized scale which weighed the bin and the dough, and noted the name of the person disposing of the dough. The weight of the bin was stated as being 100 pounds.

On March 9, 2011, the claimant testified he and another sanitation worker, Herminio Veloz, and a production worker, Naisha Patel, pushed a heavily loaded bin of dough to the scale. The claimant said that Mr. Patel then left and he and Mr. Veloz completed the task by themselves. They attempted to push the bin up the ramp to the scale. "When we got to it, one of the tires, like a car tire, tore. The cart went back and pressured my left leg. And because of the bread that was inside the cart, it weighed one thousand pounds." Findings, ¶ 7. The claimant then testified, "I sat down on the ground

on a stainless steel bar that's there because I had a lot of pain in my left leg. And my lower back cracked, it made a sound." Findings, ¶ 8. The claimant said he, Mr. Patel and another worker completed the task of pushing the dough up the ramp and disposing of the dough. The claimant said he told Mr. Patel he was injured and asked him to report it to either Delma Ortiz, the lead sanitation employee, or Derek Cable, his supervisor. At the end of his shift the Claimant completed a "Sanitation Daily Operating Report" indicating which tasks all of the sanitation workers had performed on March 9. All sanitation workers are responsible for the report and any one of them can sign it. Mr. Cable testified that equipment damage should be noted on this report and injuries to sanitation employees should be noted at the bottom of the form and accompanied by an accident report. The report from March 9 includes writing in English and Spanish. There is no mention on it of the Claimant's injury or of a damaged bin or tire.

The trial commissioner noted that the claimant signed a "Daily Scrap Report – 1st Shift," which documented that three loads of scrap dough had been discarded which weighed 758, 737 and 304 pounds. She also noted the claimant testified that he had not been able to inform Mr. Cable of the injury he sustained on the 9th as Mr. Cable had been in meetings. The claimant testified he did inform Delma Ortiz of his injury on the 9th, and recalled speaking to her for about 15 minutes. The claimant testified she told him if he made an injury report he would be fired. The trial commissioner noted that Fresh Start maintained attendance records and unexcused absences were grounds for termination. The claimant at the time of the alleged accident had received disciplinary warnings for his attendance record and was subject to termination for an additional offense. The claimant said at their meeting Ms. Ortiz suggested the claimant take a vacation and look

for a doctor to examine him. However, Ms. Ortiz testified that as March 9, 2011 was a Wednesday she was not at work as it was her usual day off. She testified the claimant never reported a work injury to her and she never told the claimant not to report a work injury. She testified the claimant had complained of back problems before March 2011. She said the first time she was aware the claimant said he injured his back at work was when she translated a conversation between the claimant and Mr. Cable on March 22, 2011 as to filling out a report of injury.

The claimant testified that he worked Thursday and Friday after the incident as Ms. Ortiz gave him lighter work. He also testified that he informed Mr. Cable of the incident three days later and Ms. Ortiz translated for him. He said that Mr. Cable directed him to take a week off of work and see a physician during that period. The claimant did take a week of vacation from work between March 16 and March 23, 2011, which was requested on March 14, 2011 and approved by Derek Cable, although Mr. Cable said he did not know when the request form had been completed. Ms. Ortiz testified that she had advised the claimant to see a doctor about his back when he was out on vacation. The human resources director for Fresh Start, Kim Green, testified that the claimant and his wife visited the firm on March 22, 2011. The claimant denied speaking to anyone at human resources on that day. Ms. Green however, testified she discussed leave via the Family and Medical Leave Act with the claimant on that date. She said the claimant sought to use the FMLA so as to obtain back surgery. Ms. Green said the claimant initially said he had been injured on March 1, 2011. When she confirmed he had not been at work on March 1, 2011 he then said the date of injury was March 9, 2011. When Ms. Green said that as the claimant was not eligible for FMLA leave as he

had not been on the job for a year, she said that the claimant said "I need the report to fill out for an injury." "What kind of injury?" she asked. "A work injury," the Claimant answered. Findings, ¶ 41. The claimant said he did not remember being told he was ineligible for FMLA leave. Ms. Green said that at that time she walked the claimant to Mr. Cable's office.

Mr. Cable filled out a Safety Incident Report for the claimant. The report described the incident as "Employee stated he was pushing gray cart full of dough to be trashed." Findings, ¶ 44. The statement was consistent with the claimant's narrative that he and his co-workers were trying to push a damaged cart to the compactor. Mr. Cable testified he had never heard of the claimant injuring his back at work and he had not received a verbal report of a cart being removed from service due to a broken wheel. He also believed that as the bakery was short of bins he would have received an e-mail advising him a bin was out of service. He said on March 22 he checked a storage room and found two bins which were already damaged and the wheels taped so they could not be used, but Mr. Cable did not know how long they had been there. He described the scale and the ramp; the ramp being about two or three feet long and the scale platform being three inches above a concrete floor. Mr. Cable said it was not possible for a bin with dough to weigh 1000 pounds and that a bin with more than 600 to 700 pounds would overflow, and a bin weighing 1000 pounds would drop down and break its wheels. Mr. Cable also testified as to informing employees as to the FMLA and telling them to report work injuries.

The claimant was examined on March 22, 2011 by Dr. Vasant Patel. In the doctor's records the date of injury is noted as March 1, 2011. His diagnosis was back

pain with left radiculopathy. The handwritten note states, "He attributes it to pushing the cart with breads at work in bakery." "3-9-11" is written next with no explanation. It is followed by "It happened on March 1, 2011." Findings, ¶ 54. Dr. Patel recommended an orthopedic consult. The claimant was also examined on March 22, 2011 by John Pinto, PA-C and Dr. John Pito at Saint Raphael's Occupational Health. Their report noted, "It has been three weeks since the onset of the pain. This occurred by pushing a mixer containing 1000 pounds of dough." Mr. Pinto and Dr. Pito wrote, "Based on the history presented and the physical examination, the causation is not known at this time." Findings, ¶ 56. The claimant later treated with Dr. William DeAngelo, D.C. who restated the claimant's narrative he was injured pushing a heavy machine at work. He later treated with Dr. Jeffrey Sumner who also restated the claimant's narrative as to his injury and said the claimant suffered from spondylolisthesis aggravated by his work injury. He recommended fusion surgery.

The respondents sent the claimant to Dr. Alan Waitze for a Respondents' Medical Examination on August 10, 2011. Dr. Waitze noted the Claimant was accompanied by an interpreter. Dr. Waitze described the accident, "Upon attempting to move the dumpster weight approximately 1,000 pounds the dumpster fell on him and he began having low back pain." Findings, ¶ 61. Dr. Waitze reviewed an MRI from May 11, 2011. He agreed the Claimant was unable to work. "The injury on 3/9/11 is a substantial factor in his symptoms and current need for treatment. I agree with decompression and fusion for the findings on the lumbar MRI scan. He most likely did have a preexisting spondylolisthesis that was asymptomatic." Findings, ¶ 62. Dr. Waitze was deposed on October 2, 2012. He agreed his opinions were based on the history he received from the

Claimant and the records that he reviewed and said it was not his job to contest the veracity of the claimant.

Based on these subordinate facts the trial commissioner concluded that the claimant's testimony as to the circumstances of his injury and the events thereafter was unreliable. The commissioner noted that the claimant offered no corroborating evidence as to the events that allegedly led to his injury, and that the other witnesses who testified disputed his account as to what happened after the alleged accident. The trial commissioner also noted that the computerized scale indicated that a fully loaded bin would weigh considerably less than the 1000 pounds cited by the claimant. She also noted that the testimony that the bin could be moved and was then unloaded was inconsistent with the bin being so heavy that its tire had broken. The trial commissioner found the testimony offered by the respondents' witnesses credible and found the testimony of Kim Green and Derek Cable was also detailed and persuasive. The commissioner found the medical testimony credible, but also found that it was dependent on the narrative offered by the claimant and were that narrative unreliable, the medical opinions were also unreliable.

The trial commissioner therefore determined that due to the inconsistencies in the claimant's testimony that the claim for benefits for a March 9, 2011 injury should be dismissed. The claimant did not file a Motion to Correct from this Finding and Dismissal.[1] Rather he has appealed on the basis that on legal grounds this trial commissioner's decision must be reversed. The claimant essentially argues that as the

[1] In the absence of a Motion to Correct we must accept the validity of the facts found by the trial commissioner, and that this board is limited to reviewing how the commissioner applied the law. See Admin. Reg. § 31-301-4. Stevens v. Raymark Industries, Inc., 5215 CRB-4-07-4 (March 26, 2008).

respondent's disclaimer identified only a lack of medical evidence supporting causation as grounds for defense, and as the medical experts in this case opined in favor of the claimant, that he had proven his case. We are not persuaded by this argument.

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 & 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). We also note that in cases wherein causation of an injury is contested the trial commissioner's " . . . findings of basic facts *and* his finding as to whether those facts support an inference that the plaintiff's injury arose from his employment are subject to a highly deferential standard of review." Blakeslee v. Platt Bros. & Co., 279 Conn. 239, 253-254 (2006). (Emphasis in the original.)

The claimant argues that pursuant to Menzies v. Fisher, 165 Conn. 338 (1973) that the respondents defense must be limited to the specific grounds stated in their disclaimer. We note that the Supreme Court cited Menzies in Harpaz v. Laidlaw Transit,

Inc., 286 Conn. 102 (2008) as standing for the principle that the purpose of the notice and disclaimer statute § 31-294c C.G.S.[2] was "for the purpose of protecting employees with 'bona fide claims.'" Id., 131. We also note that in Donahue v. Veridiem, Inc., 291 Conn. 537 (2009) the Supreme Court also noted that when a respondent is precluded from contesting a claim that "the claimant proceeds with her case, *subject to examination by the commissioner."* Id., 538. (Emphasis added.)

We also note that statutorily the trial commissioner has broad powers as to their conduct of hearings. See § 31-298 C.G.S. "In all cases and hearings under the provisions of this chapter, the commissioner shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, *in a manner that is best calculated to ascertain*

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[2] The statute governing disclaimers under Chapter 568 reads as follows:

(b) Whenever liability to pay compensation is contested by the employer, he shall file with the commissioner, on or before the twenty-eighth day after he has received a written notice of claim, a notice in accord with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested. The employer shall send a copy of the notice to the employee in accordance with section 31-321. If the employer or his legal representative fails to file the notice contesting liability on or before the twenty-eighth day after he has received the written notice of claim, the employer shall commence payment of compensation for such injury or death on or before the twenty-eighth day after he has received the written notice of claim, but the employer may contest the employee's right to receive compensation on any grounds or the extent of his disability within one year from the receipt of the written notice of claim, provided the employer shall not be required to commence payment of compensation when the written notice of claim has not been properly served in accordance with section 31-321 or when the written notice of claim fails to include a warning that (1) the employer, if he has commenced payment for the alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim, shall be precluded from contesting liability unless a notice contesting liability is filed within one year from the receipt of the written notice of claim, and (2) the employer shall be conclusively presumed to have accepted the compensability of the alleged injury or death unless the employer either files a notice contesting liability on or before the twenty-eighth day after receiving a written notice of claim or commences payment for the alleged injury or death on or before such twenty-eighth day. An employer shall be entitled, if he prevails, to reimbursement from the claimant of any compensation paid by the employer on and after the date the commissioner receives written notice from the employer or his legal representative, in accordance with the form prescribed by the chairman of the Workers' Compensation Commission, stating that the right to compensation is contested. Notwithstanding the provisions of this subsection, an employer who fails to contest liability for an alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim and who fails to commence payment for the alleged injury or death on or before such twenty-eighth day, shall be conclusively presumed to have accepted the compensability of the alleged injury or death.

*the substantial rights of the parties* and carry out the provisions and intent of this chapter." (Emphasis added.) In order to award compensation under Chapter 568 a trial commissioner must be satisfied that the claimant has met the jurisdictional requirement of having sustained a "personal injury" or "injury" as defined under § 31-275(16)(A) C.G.S. or an "occupational disease" as defined under § 31-275(15) C.G.S.

The claimant essentially argues that the respondent's disclaimer amounted to a concession that the claimant sustained an injury in the course of his employment on March 9, 2011 as that they were contesting only the lack of contemporaneous supporting documentation. The actual disclaimer issued by the respondents on April 12, 2011 reads as follows. The disclaimer contests an alleged low back injury sustained by the claimant on March 9, 2011 and asserts the following as the reason for contest.

> Respondents contend that there is a lack of medical evidence supporting causal connection of the low back injury to the claimant's employment. Respondents contend there is lack of medical documentation supporting current and ongoing disability as required by Connecticut General Statutes 31-294. Respondents therefore deny liability for medical bills, disabilities, etc. in connection with said claim/injury.

We do not read this disclaimer in the circumscribed manner that the claimant does. We find that essentially the respondents are contesting the presence of a causal connection between the claimant's employment and the claimant's injury. This constitutes a valid ground for a disclaimer as it challenges one of the essential elements of a valid claim. See Tovish v. Gerber Electronics, 19 Conn. App. 273, 276 (1989).[3] We

[3] We note an incongruity herein based on the claimant's argument regarding the verbiage of the Form 43. Pursuant to Donahue v. Veridiem, Inc., 291 Conn. 537, 553 (2009) had the respondents been precluded from contesting the claim as a result of filing no disclaimer at all the trial commissioner would be permitted to examine the claimant and ascertain if his narrative was reliable. However, the claimant herein is arguing that the commissioner should be barred from considering the claimant's reliability as a witness if the disclaimer is contesting "medical evidence." We find this interpretation of the Menzies v. Fisher, 165

also note the disclaimer "need not be expressed with the technical precision of a pleading, but it must, as required by the statute, reveal to the claimant 'the specific grounds on which the right to compensation is contested.'" Russell v. Mystic Seaport Museum, Inc., 252 Conn. 596, 621 (2000), *citing* Menzies, supra, at 347-348. See also Lamar v. Boehringer Ingelheim Corp., 138 Conn. App. 826, 836-838 (2012), *cert. denied*, 307 Conn. 943 (2013).[4]

The claimant argues that the medical evidence in this matter was uncontroverted. However, our precedent stands for the fact that a trial commissioner is under no obligation to credit even uncontroverted medical evidence. See Do v. Danaher Tool Group, 5029 CRB-6-05-12 (November 28, 2006). Also, see Tartaglino v. State/Dept. of Correction, 55 Conn. App. 190 (1999) where the Appellate Court held, "[t]he trier may accept or reject, in whole or in part, the testimony of an expert." Id., 195. See also Gagliardi v. Eagle Group, Inc., 4496 CRB-2-02-2 (February 27, 2003), *aff'd*, 82 Conn. App. 905 (2004)(per curiam) "Inconsistencies in the evidence must be resolved by the trier, and she may give credit to all, part or none of the testimony given by a lay or expert

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Conn. 338 (1973) precedent would yield an incongruous result particularly as the disclaimer herein does not concede an injury occurred on the date cited in the Form 30C.

[4] In Beshah v. U. S. Electrical Wholesalers, Inc., 5781 CRB-7-12-10 (August 14, 2013) we cited Lamar v. Boehringer Ingelheim Corp., 138 Conn. App. 826 (2012), *cert. denied*, 307 Conn. 943 (2013) for the following standard regarding a valid disclaimer.

> We look to the Appellate Court's decision in Tovish v. Gerber Electronics, 19 Conn. App. 273 (1989) where the opinion defined the necessary prerequisites of an effective disclaimer.
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> In Tovish, supra, the five elements of a viable workers' compensation claim are outlined: (1) jurisdiction; (2) timely notice or the presence of an exception to notice; (3) the legal qualification of the claimant as employee; (4) the legal qualification of the respondent as employer; and (5) the occurrence of a "personal injury" as per the statute. An effective disclaimer must contest one of the five elements of the claim. The disclaimer upheld in Tovish stated, "Injury (heart attack) did not arise out of or in the course and scope of employment." Id., 274. The Appellate Court concluded, "[t]he defendants' disclaimer clearly contests the fifth element. We are persuaded the disclaimer was sufficient to apprise the plaintiffs that the defendants were challenging an element the plaintiffs were obliged to prove in order to meet the prima facie threshold for their claim." Id., 276.

witness, while also retaining the authority to reject evidence that superficially may appear to be uncontradicted."

It is also black letter law that when a medical opinion is reliant on the narrative of the claimant that a trial commissioner may reasonably determine that if the claimant is not a reliable witness then his or her narrative to their physician was unreliable as well. We dealt with this issue at some length recently in Ritch v. Connecticut Materials Testing Labs, 5766 CRB-7-12-7 (October 24, 2013). In Ritch, the claimant argued that as the commissioner's examiner agreed with the claimant on the issue of causation of an injury that the trial commissioner erred by not adopting his opinion and finding that injury compensable. We affirmed the trial commissioner's denial of that element of the claim, citing in part Morales v. FedEx Ground Package Systems, Inc., 5666 CRB-2-11-7 (July 6, 2012) noting that despite certain findings in that case supportive of compensability.

> …we found the trial commissioner reached other findings that allowed us to 'infer the trial commissioner was not persuaded by the claimant's narrative. The commissioner is entitled to make this determination and may find medical evidence dependent on the claimant's narrative unreliable. Abbotts v. Pace Motor Lines, Inc., 4974 CRB-4-05-7 (July 28, 2006), *aff'd*, 106 Conn. App. 436 (2008), *cert. denied*, 287 Conn. 910 (2008).'

Id.

We noted that in Ritch there was evidence presented on the record and cited in the Finding that could lead a fact finder to conclude the claimant's narrative was not reliable. As a result, we concluded that the trial commissioner could reasonably discount the medical evidence supportive of the claimant.

> When viewed in its totality the claimant's bid to find his back ailment compensable does not appear materially different from a number of other recent cases before this tribunal where a trial commissioner did not find a claimant credible, and therefore deemed any medical opinion as to causation reliant on the

> claimant's narrative equally unreliable. See Abbotts, supra, Vaughan v. North Marine Group, 5695 CRB-4-11-11 (January 4, 2013); Anderson v. Target Capital Partners, 5615 CRB-6-10-12 (January 3, 2012); Nicotera v. Hartford, 5381 CRB-1-08-9 (September 2, 2009) and Do v. Danaher Tool Group, 5029 CRB-6-05-12 (November 28, 2006). As we pointed out in Anderson, supra, "[a] claimant's credibility also bears heavily on whether medical testimony reliant on his or her narrative is to be given weight by the trial commissioner. When a trial commissioner does not find the claimant credible, the commissioner is entitled to conclude any medical evidence which relied on the claimant's statements was also unreliable." Id. We have followed this rule even when a claimant argues his or her medical evidence was uncontroverted. See Do, supra, and Nicotera, supra.

Id.

In the present case the trial commissioner cited a number of reasons for not finding the claimant's account of his injury reliable. She noted the claimant's account was not corroborated by any witness. Conclusion, ¶ B. She also noted that the claimant's actions at work subsequent to the March 9, 2011 incident were disputed by other witnesses. Conclusion, ¶ C. She noted that there was no evidence that the bin which allegedly broke down could actually weigh 1000 pounds, as the claimant testified. Conclusion, ¶ D. She also found the testimony of the witnesses that disputed the claimant's account credible. Conclusions, ¶¶ G & H. Those witnesses testified that the claimant had not notified them of a work related injury on March 9, 2011 and had reported back pain prior to that date. If the trial commissioner believed that testimony, she could reasonably entertain doubt the claimant was injured in the manner in which he claimed to be injured.[5] We note that

[5] We note that a respondent may acknowledge the claimant sustained a work injury on a certain date and then leave the claimant to his proof that his present medical condition is the result of that incident. In Kingston v. Seymour, 5789 CRB-5-12-10 (September 10, 2013) the respondents Form 43 acknowledged the claimant was injured on a certain date; but challenged the medical evidence supportive of causation. The present Form 43 does not contain any acknowledgment or concession that the claimant was injured on the date cited in the Form 30C.

on appeal we may not substitute our opinion of the credibility of a witness for the opinion of credibility that the trier of fact reached after observing the witness testify.

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

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

"Where the veracity of a witness' factual representations is at issue, the trial commissioner's credibility assessment is virtually inviolable on appeal." Goldberg v. Ames Department Stores, 4160 CRB-1-99-2 (December 19, 2000). We note that pursuant to recent Supreme Court precedent we have held that a trial commissioner must evaluate the totality of the evidence in reaching a decision as to compensability. Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010) stands clearly for the proposition that a trial commissioner may "consider medical evidence *along with all other evidence* to determine whether an injury is related to the employment." Marandino, supra, at 595. (Emphasis in the original.) If a trial commissioner concludes that the claimant's testimony does not support the opinions offered by medical witnesses, the commissioner may choose to discount their opinions as per Abbotts, supra.[6] As an appellate board we must respect that determination. "When the board reviews a

[6] We are not persuaded that the claimant's argument that the respondent's disclaimer could be solely limited to "medical evidence" can be reconciled with the broad discretion granted to trial commissioners to consider all the evidence on the record in Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010).

commissioner's determination of causation, it may not substitute its own findings for those of the commissioner." Dengler v. Special Attention Health Services, 62 Conn. App. 440, 451 (2001), supra, 451, *quoting,* O'Reilly v. General Dynamic Corp., 52 Conn. App. 813 (1999), supra, 819.

We believe the trial commissioner could reasonably determine based on the record herein that the claimant had not proven his injuries were the result of an incident at work. The weight and persuasiveness of medical evidence is, pursuant to Abbotts, supra, dependent on the reliability of the claimant's narrative. Accordingly, the trial commissioner could reasonably dismiss this claim. We affirm the Finding and Dismissal.

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