CASE NO. 5853 CRB-2-13-5
CLAIM NO. 200174296 : COMPENSATION REVIEW BOARD

LISA BROWN
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: APRIL 21, 2014

LAWRENCE & MEMORIAL HOSPITAL
EMPLOYER
SELF-INSURED

and

WORKERS' COMPENSATION TRUST
ADMINISTRATOR
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant appeared without legal representation at oral argument. At the trial level the claimant was represented by James Hall, IV, Esq., Hall & Johnson, LLC, PO Box 1774, Pawcatuck, CT 06379.

The respondents were represented by John Letizia, Esq., Letizia, Ambrose & Falls, PC, 667-669 State Street, New Haven, CT 06511.

This Petition for Review from the July 27, 2012 Finding and Denial of the Commissioner acting for the Second District was heard December 20, 2013 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Charles F. Senich and Peter C. Mlynarczyk.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant appeals from the July 27, 2012 Finding and Denial of the Commissioner Acting for the Second District. In that Finding and Denial the trial commissioner dismissed the claimant's claims for benefits alleged to relate to dates of injury occurring on or about; June 6, 2003, December 20, 2009 and May 1, 2011.

Although the claimant was represented in the proceedings before the trial commissioner, on appeal she appears pro se. The threshold issue before us is whether the claimant's appeal must be dismissed as it was not filed within the time frame set out in § 31-301(a). Section 31-301(a) provides in pertinent part, "At any time within twenty days after entry of an award by the commissioner, after a decision of the commissioner upon a motion or after an order by the commissioner according to the provisions of section 31-299b, either party may appeal therefrom to the Compensation Review Board by filing in the office of the commissioner from which the award . . . originated an appeal petition…." Our courts have determined that the failure of a party to file a timely appeal deprives the board of jurisdiction over the appeal. See Stec v. Raymark Industries, Inc., 299 Conn. 346 (2010).

In the instant matter the claimant did not file an appeal until May 28, 2013 more than 10 months after the trial commissioner's July 27, 2012 Finding and Denial. The claimant argues that while she received notice of the trial commissioner's July 27, 2012 Finding and Denial within the twenty day appeal period, the statutory appeal period failed to provide the claimant with adequate time to file her appeal. The board generally accords some leniency to those who may be less familiar with the more technical,

procedural aspects of the adjudicative/appellate process. See e.g., Feldmann v. State/Department of Correction, 5513 CRB-2-9-12 (July 8, 2010). However, given that the appeal time is governed by statute and in accordance with Stec, supra, we do not have the authority to excuse the claimant's delay in filing her appeal.

For purposes of context we note the pertinent facts giving rise to the claim(s) for benefits are as follows. The claimant was employed by the respondent employer as a Patient Care Assistant. The claimant's duties included a number of aspects of patient care including, but not limited to; assisting patients in ambulating, repositioning patients in bed, and carrying trays and bags of laundry. See Findings, ¶ 4. At various times and dates the claimant sustained injuries, some of which arose out of and in the course of her employment, and others that did not. Sometime in 1999 and prior to beginning her employment with the respondent employer, the claimant was advised she suffered from an L-4 radiculopathy. In February 2000 while working for a different employer, but in the capacity as one providing care to a patient, the claimant injured her back while lifting a patient. The injury was described as a "lumbar muscle strain." See Findings, ¶ 7.

On June 6, 2003, while in the course of her employment with the respondent employer, the claimant strained her back while attempting to reposition a patient in bed. See Findings, ¶ 8. This injury was initially diagnosed as a lumbar strain. The claimant was treated with medication and underwent a course of physical therapy. The claimant also missed some time from work and was placed on modified duty. An MRI taken on August 25, 2003 showed "disc desiccation throughout the lumbar spine, most notably at L4-5. At the L5-S1 level there was disc bulging, with some osteophyte formation on the

left. At L4-5 there was annular bulging and a 'small partially extruded disc' extending into the left foramen and which was compressing the thecal sac." Findings, ¶ 13.

While at home on January 15, 2004 the claimant slipped on snow and fractured her right thumb. The trial commissioner found that she was treated at the respondent-employer's emergency room the following day and while at the emergency room reported back pain. Approximately 2 weeks later returned to the emergency room complaining of a pain in her left leg. The left leg pain was diagnosed as a left leg contusion. Findings, ¶ 16.

The trier also found that there was no evidence indicating the claimant engaged in active treatment for her back following the June 6, 2003 work-related injury, nor that she incurred significant periods of lost time relating to her back. On February 6, 2008 the claimant was involved in a motor vehicle accident. Again the claimant treated at Lawrence & Memorial Hospital's emergency room and reported pain in her lower back as well as a headache.

The claimant thereafter pursued treatment with her primary care physician Dr. Helar Campos on a regular basis. During the course of treating the claimant Dr. Campos prescribed Percocet as well as other medications. Dr. Campos also referred the claimant for chronic pain management and to a rheumatologist for an assessment as to whether the claimant had arthritis. During this period the claimant also complained of neck pain.

On December 20, 2009 following the conclusion of her shift the claimant was walking to her car and slipped and fell on ice and snow on a sidewalk. The fall occurred on hospital premises. The claimant's right ankle swelled. She complained her foot could not bear weight and walking was difficult. On December 22, 2009 the claimant worked

her next scheduled shift, and completed an accident report. On December 23, 2009 the claimant saw Dr. Campos. Dr. Campos' note from that visit does not mention the fall of 3 days earlier. On January 11, 2010 the claimant was seen by a podiatrist who noted that the claimant suffered a right ankle sprain and "right foot peroneal tendonitis and left foot L4 radiculopathy."

In January 2010 the claimant was seen by Neurosurgical Associates in New London, CT. Over the course of the year the claimant was given prescriptions for various narcotic and non-narcotic medications. She was ultimately seen by Dr. Patrick Doherty a neurosurgeon associated with Neurosurgical Associates. Dr. Doherty indicated, inter alia, that the claimant was a poor surgical candidate and referred the claimant for physical therapy. On or about May 11, 2010 the claimant was evaluated by physical therapists at Lawrence & Memorial Hospital and physical therapy commenced. The claimant testified she stopped working on or about May 19, 2010. In October, 2010 the claimant was seen by pain management specialists at Lawrence & Memorial Hospital and underwent a series of epidural steroid injections in her back. At the end of 2010 the claimant returned to work on a part-time basis and by the second half of January 2011 she was working her usual 32 hours a week. See Findings, ¶¶ 72-73.

On May 1, 2011 the claimant experienced severe back pain. The claimant did not "allege any unusual work activities that day and no specific incident of trauma was noted." Findings, ¶ 79. An MRI was performed that same day and did not reveal any "appreciable difference from her prior studies" according to Dr. Doherty. Findings,

¶ 81. Claimant was seen again by Lawrence & Memorial Hospital pain specialists and a sacroiliac injection under fluoroscopy was performed. The claimant was diagnosed as having suffered a sacroiliac strain. Findings, ¶ 83. The trial commissioner found the claimant has not worked since May 1, 2011.

The trial commissioner concluded that the claimant failed to prove she sustained a compensable work injury on or about May 1, 2011. Trial commissioner also concluded that although the claimant sustained a compensable injury to her back on June 6, 2003, she failed to prove the causal relationship between this event and subsequent complaints. Likewise the trial commissioner concluded that while the claimant sustained a compensable work injury on December 20, 2009 she failed to prove a causal relationship between this incident and subsequent complaints. He therefore denied; all claims for compensation relative to an alleged May 1, 2011 work injury, her claim for total and or partial disability benefits from May, 2010 to January, 2011 relating to her December 20, 2009 injury, her claim contending that the incident on June 6, 2003 was causally related to her lost time in 2010 and was the proximate cause of the incident alleged on May 1, 2011.

We note that in addition to the arguments set out in the claimant-appellant's brief positing why the claimant should be excused from the time requirements for filing an appeal pursuant to § 31-301, the claimant also suggests that the trial commissioner failed to meet his statutory obligation pursuant to § 31-294f.[1] In light of our holding as to the

[1] Sec. 31-294f. Medical examination of injured employee. Medical reports. (a) An injured employee shall submit himself to examination by a reputable practicing physician or surgeon, at any time while claiming or receiving compensation, upon the reasonable request of the employer or at the direction of the commissioner. The examination shall be performed to determine the nature of the injury and the incapacity resulting from the injury. The physician or surgeon shall be selected by the employer from an approved list of physicians and surgeons prepared by the chairman of the Workers' Compensation Commission and shall be paid by the employer. At any examination requested by the employer or directed by the commissioner

untimeliness of the appeal we need not reach this issue, however, we believe some further commentary is warranted. The claimant contends that the trial commissioner was under an obligation to utilize his authority pursuant to § 31-294f to "call in a medical expert to determine the cause of injury to the appellant's L5-S1." See Claimant-Appellant's Brief p. 5 filed October 22, 2013. The trial commissioner is under no such obligation. Whether the trial commissioner chooses to compel the claimant to attend an examination pursuant to § 31-294f is an act totally within his discretion. Chery v.Community Visiting Nurse & Home Care, 3654 CRB-7-97-7 (February 13, 1998). As has been noted on numerous occasions and nearly from the inception of the Connecticut Workers' Compensation Act, the burden of proof rests on the claimant. See e.g. Linnane v. Aetna Brewing Co., 91 Conn. 158 (1916).

We therefore dismiss the claimant's appeal from the July 27, 2012 Finding and Denial of the Commissioner acting for the Second District.

Commissioners Charles F. Senich and Peter C. Mlynarczyk concur.

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under this section, the injured employee shall be allowed to have in attendance any reputable practicing physician or surgeon that the employee obtains and pays for himself. The employee shall submit to all other physical examinations as required by this chapter. The refusal of an injured employee to submit himself to a reasonable examination under this section shall suspend his right to compensation during such refusal.