CASE NO. 5869 CRB-5-13-8 : COMPENSATION REVIEW BOARD
CLAIM NO. 500142561

GENE J. DiGIOVANNI, SR. : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : AUGUST 5, 2014

LOMBARDO BROTHERS MASON
BROTHERS CONTRACTORS, ET AL
EMPLOYER

and

LIBERTY MUTUAL INSURANCE GROUP, ET AL
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Christopher M. Harrington, Esq., Howard, Kohn, Sprague & FitzGerald, LLC, 237 Buckingham Street, P.O. Box 261798, Hartford, CT 06126-1798.

Respondents Lombardo Brothers, Peerless Insurance, Carmody Concrete, and Liberty Mutual Insurance Group were represented by Christopher J. Powderly, Esq., Loccisano, Turret & Rosenbaum, 101 Barnes Road, 3rd Floor, Wallingford, CT 06492.

Respondents Joseph Zandri and Zurich North America were represented by Brian L. Smith, Esq., Sharp, Shields & Smith, 500 Enterprise Drive, Suite 4B, Rocky Hill, CT 06067.

Respondents Connecticut Mason Contractors, LLC, and The Hartford Insurance Group were represented by Christopher J. Buccini, Esq., The Law Offices of David J. Mathis, 150 Cogswell Street, 2nd Floor, Hartford, CT 06105.

Respondents Civitillo Masonry and Phoenix Insurance were represented by Sharon Ramsay-McLoughlin, Esq.,

Law Offices of Charles G. Walker, 300 Windsor Street, P.O. Box 2138, Hartford, CT 06145-2138.

This Petition for Review from the July 19, 2013 Finding and Dismissal of the Commissioner acting for the Fifth District was heard on February 28, 2014 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Michelle D. Truglia and Stephen M. Morelli.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has petitioned for review from the July 19, 2013 Finding and Dismissal of the Commissioner acting for the Fifth District. We find no error and accordingly affirm the decision of the trial commissioner.[1]

The trial commissioner noted that the parties stipulated to the following: (1) the claimant last worked for Lombardo Brothers Mason Brothers in June of 2005; (2) the claimant last worked for Carmody Concrete Corporation in October of 2005; (3) the date of injury listed on the Form 30C [notice of claim] is June 26, 2006, which is also the date the claimant underwent surgery for a partial left knee replacement; (4) the claimant filed his notice of claim on June 14, 2007; and (5) all of the Form 43's [disclaimers] filed by the respondents were timely. In addition, the trial commissioner made the following factual findings which are pertinent to this review. At the time of trial, the claimant was fifty-nine years old and had worked as a mason for a number of employers from 1978 through 2005. In 2003, the claimant was involved in a motor vehicle accident in which he injured his left knee.

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

The medical records of Arthur Geiger, M.D., were submitted into evidence. In Geiger's first report dated August 14, 2003, Geiger noted that the claimant, who had been involved in a motor vehicle accident some three to four weeks earlier wherein he sustained an injury to his left knee, was currently experiencing pain over the medial joint area. In his report dated October 19, 2005, the doctor opined that the claimant had had a left medial meniscal tear for "quite a while," Findings, ¶ 4.d, and on June 26, 2006, the doctor indicated that the claimant underwent the partial left knee replacement surgery. On July 5, 2007, Geiger reported that the claimant had undergone the partial knee replacement because of "severe degenerative changes…." Findings, ¶ 4.h. He further opined that:

> [o]ver many hears of doing masonry work, kneeling, squatting, things of that nature, [the claimant] has had a chronic medial meniscal tear for quite a long period of time, then he went on to develop osteoarthritic changes in his medial compartment of his left knee. A lot of this [was] certainly due to repetitive type activity he did on a repeated basis especially with the squatting, kneeling and things of that nature.

Id.

On July 17, 2007, Geiger issued a report to the claimant's prior attorney opining that the degenerative changes in the claimant's left knee were the result of many years of doing masonry work, including kneeling and squatting, and the meniscal tear was probably caused by the motor vehicle accident of 2003. On October 3, 2012, Geiger issued a report in which he stated that the claimant's work as a mason "added to" the development of his osteoarthritis. Findings, ¶ 4.j. Finally, on November 20, 2012, Geiger opined that the claimant's employment as a mason "was a substantial factor in

causing and contributing to his osteoarthritis" which "led to him requiring a partial or unicondylar knee replacement." Findings, ¶ 4.k.

At a deposition held on December 5, 2012, the claimant testified that his work activities caused pain in his left knee prior to the motor vehicle accident of July 22, 2003. At trial, the claimant testified that he knew his work activities may have been contributing to his left knee symptoms as far back as the year 2000, and again indicated that his work activities had contributed to his left knee symptoms prior to the motor vehicle accident. The claimant did not offer any expert or medical evidence or produce any other testimonial or documentary evidence which would serve to establish that the claimant's left knee injury was "peculiar to the occupation" of a mason as contemplated by the provisions of § 31-275(15) C.G.S.[2]

Having heard the foregoing, the trial commissioner found credible the claimant's testimony at trial relative to his knowledge that his work activities were contributing to his left knee symptoms as far back as the year 2000. The trier also found credible the claimant's deposition testimony indicating that his job-related activities were causing pain in his left knee prior to the motor vehicle accident of July 22, 2003. The trial commissioner thus concluded that "the claimant reasonably knew or should have known that the development or aggravation of the osteoarthritis in his left knee was related to his work." Conclusion, ¶ B. The trial commissioner also found credible Geiger's medical reports indicating that as of the office visit on January 2, 2004 and continuing through subsequent office visits, Geiger and the claimant discussed the relationship between the

[2] Section 31-275(15) C.G.S. (Rev. to 2006) states: "'Occupational disease' includes any disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such, and includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course of his employment."

claimant's work as a mason and his left knee symptoms. As such, the trier concluded that "the claimant had actual and constructive knowledge of the work-related nature of his left knee symptoms and knew or should have known that his work activities were contributing to his symptoms between the period of [the year] 2000 and January 4, 2004." Conclusion, ¶ D.

The trier also determined that the claimant had failed to prove that his left knee injury was an occupational disease in light of his failure to produce evidence establishing that the left knee injury was "distinctively associated with" or "peculiar to the occupation" of a mason as contemplated by the provisions of § 31-275(15) C.G.S. Conclusion, ¶ E. As such, the trier concluded that the claimant's left knee injury "more closely resembles an accidental injury than an occupational disease." Conclusion, ¶ F. Noting that the claimant's notice of claim "was filed more than one year after the date of claimant's last injurious exposure and more than three years after he had actual or constructive knowledge … that his work activities were contributing to his left knee symptoms," Conclusion, ¶ G, the trier concluded that the notice of claim filed with the Workers' Compensation Commission on June 14, 2007 was late for jurisdictional purposes. The trial commissioner therefore dismissed the claim due to the lack of subject matter jurisdiction.

The claimant filed a Motion to Correct which was denied in its entirety, and this appeal followed. On appeal, the claimant contends that the trial commissioner's conclusion that the claimant's injury more closely resembled an accidental injury rather than occupational disease, thus implicating the one-year rather than three-year statute of limitations as set forth in § 31-294c(a) C.G.S., constituted error. The claimant also

asserts that the trial commissioner erroneously determined that the claimant's notice would have been untimely even if she had applied the three-year statute of limitations. In addition, the claimant challenges the trier's denial of proposed corrections to findings relative to the claimant's testimony that his work activities caused pain in his left knee prior to the motor vehicle accident of 2003 and the finding that the claimant failed to produce evidence substantiating the claim that "the claimant's left knee injury was peculiar to his occupation as a mason within the meaning of C.G.S. § 31-275(15)." Findings, ¶ 10.

We begin 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." 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).

Turning to the matter at bar, we note that the inquiry before the trial commissioner concerned the threshold issue of whether the claimant's notice of claim

was timely. Such a determination is critical, given "that the workers' compensation system in Connecticut is derived exclusively from statute," Discuillo v. Stone & Webster, 242 Conn. 570, 576 (1997), and the commission "must act strictly within its statutory authority." Id., *quoting* Figueroa v. C & S Ball Bearing, 237 Conn. 1, 4 (1997). As such, "[a] commissioner may exercise jurisdiction to hear a claim only 'under the precise circumstances and in the manner particularly prescribed by the enabling legislation.'" Id., *quoting* Heiser v. Morgan Guaranty Trust Co., 150 Conn. 563, 565 (1963). An examination of the timeliness of a notice of claim necessarily implicates the provisions of § 31-294c(a) C.G.S., which state, in pertinent part, the following:

> No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury…. As used in this section, "manifestation of a symptom" means manifestation to an employee claiming compensation, or to some other person standing in such relation to him that the knowledge of the person would be imputed to him, in a manner that is or should be recognized by him as symptomatic of the occupational disease for which compensation is claimed.

As mentioned previously herein, the trier found that the instant claimant filed his Notice of Claim on June 14, 2007 alleging a repetitive trauma injury with a date of injury of June 26, 2006.[3] It is of course well-settled that § 31-275(16)(A) C.G.S. includes a reference to repetitive trauma in the definition of personal injury;[4] however, "although § 31-294 specifically addresses the jurisdictional filing prerequisites that must be

[3] June 26, 2006 is the date the claimant underwent the partial knee replacement surgery.
[4] Section 31-275(16) (A) C.G.S. (Rev. to 2006) states: "'Personal injury' or 'injury' includes, in addition to accidental injury that may be definitely located as to the time when and the place where the accident occurred, an injury to an employee which is causally connected with his employment and is the direct result of repetitive trauma or repetitive acts incident to such employment, and occupational disease."

satisfied in order to bring an accidental injury or occupational disease claim, the statute is silent both as to the duration of the filing period for repetitive trauma claims and as to when that period begins to run." Discuillo, supra, at 575. In light of the lacuna in the statute relative to the filing period for repetitive trauma injuries, the Discuillo court held that:

> the terms 'accident' and 'occupational disease' as they are used in § 31-294 must be read broadly enough so that even an injury that is *defined* as stemming from repetitive trauma pursuant to [§ 31-275 (16) (A) C.G.S.] may nonetheless be deemed to fall into one of the two extant *jurisdictional* categories, as appropriate to the facts of each particular claim.

(Emphasis in the original.) Id., at 578.

In Veilleux v. Complete Interior Systems, Inc., 296 Conn. 463 (2010) the court revisited this holding, reversing and remanding a matter in which the trial commissioner had concluded that the repetitive trauma injuries suffered by the claimant did not qualify as an occupational disease claim but failed to specifically determine whether those injuries "more closely resembled an occupational disease or an accidental injury for purposes of determining whether [the claimant] had met the jurisdictional requirements of § 31-294c, as required by Discuillo v. Stone & Webster…." Veilleux, supra, at 467.

In the instant matter, our review of the findings indicates that the trier did perform this analysis, and determined "that the claimant's left knee injury more closely resembles an accidental injury than an occupational disease." Conclusion, ¶ F. However, the claimant asserts that in reaching this conclusion, the trial commissioner "erred in applying the specific facts of this case…," Appellant's Brief, p. 13, because the evidence actually demonstrates the opposite; i.e., the claimant's repetitive trauma injuries more

closely resemble an occupational disease than an accidental injury. We are not so persuaded.

Section 31-275(15) C.G.S. defines occupational disease as:

> any disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such, and includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course of his employment.

In Glodenis v. American Brass Co., 118 Conn. 29 (1934), the court explained that:

> [t]he phrase "peculiar to the occupation" is not here used in the sense that the disease must be one which originates exclusively from the particular kind of employment in which the employee is engaged, but rather in the sense that the conditions of that employment must result in a hazard which distinguishes it in character from the general run of occupations….

Id., at 40.

Moreover, in order

> to constitute an occupational disease, the disease must be a natural incident of a particular kind of employment, one which is likely to result from that employment because of its inherent nature. It does not include a disease which results from the peculiar conditions surrounding the employment of the claimant in a kind of work which would not from its nature be more likely to cause it than would other kinds of employment carried on under the same conditions.

Madeo v. I. Dibner & Brother, Inc., 121 Conn. 664, 667 (1936).

In a case of more recent vintage, the Supreme Court further amplified the definition of occupational disease, remarking that:

> [i]n interpreting the phrase occupational disease, we have stated that the requirement that the disease be peculiar to the occupation and in excess of the ordinary hazards of employment, refers to those diseases in which there is a causal connection between the

> duties of the employment and the disease contracted by the employee. In other words, [the disease] need not be unique to the occupation of the employee or to the work place; it need merely be so distinctively associated with the employee's occupation that there is a direct causal connection between the duties of the employment and the disease contracted.

(Internal quotation marks omitted.) Estate of Doe v. Dept. of Correction, 268 Conn. 753, 758 (2004), *quoting* Malchik v. Division of Criminal Justice, 266 Conn. 728, 734 (2003).

It should also be noted that § 31-294c(a) C.G.S. defines "manifestation of a symptom" as "manifestation to an employee claiming compensation, or to some other person standing in such relation to him that the knowledge of the person would be imputed to him, in a manner that is or should be recognized by him as symptomatic of the occupational disease for which compensation is claimed." In Ricigliano v. Ideal Forging Corp., 280 Conn. 723 (2006), the court observed that "[t]his language strongly suggests that the legislature intended for the claimant to recognize the disease as one causally connected to his employment before the limitations period would commence." Id., at 732.

> The other implication arising out of the phrase in question is that there must be a clear recognition of the symptom as being that of the occupational disease in question; however plain is the presence of the symptom itself, unless its relation to the particular disease also clearly appears, there cannot be said to be a manifestation of a symptom of that disease.

Bremner v. Eidlitz & Son, Inc., 118 Conn. 666, 670 (1934).

Thus, "[i]n Bremner, [the] court held that the limitation period for an occupational disease claim *does not begin to run until the claimant knew or should have known that the disease is work-related.*" (Emphasis in the original.) Ricigliano, supra, at 737.

Returning to the matter at bar, we note, and the trial commissioner so found, that the medical reports provided by Arthur Geiger, M.D., contain a number of references to the claimant's work as a mason and the role his work activities played in the development of his left knee injury.[5] It is also apparent that the doctor expressed a considerable degree of reluctance to release the claimant back to work as a mason following the knee surgery of June 26, 2006.[6] In his report of July 5, 2007, Geiger indicated:

> Over many years of doing masonry work, kneeling, squatting, things of that nature, he has had a chronic medial meniscal tear for quite a long period of time, then he went on to develop osteoarthritic changes of his medial compartment of his left knee. A lot of this certainly was due to repetitive type activity he did on a repeated basis especially with the squatting, kneeling and things of that nature.

Claimant's Exhibit A.

On July 17, 2007, Geiger issued a "final disability rating and a formal narrative" in which he related the history of his treatment of the claimant, attributed the meniscal tear to the motor vehicle accident of 2003, and recommended that the claimant undergo vocational retraining as he would not be able to perform masonry work in the future. On October 3, 2012, in response to correspondence from claimant's counsel, Geiger stated, "I do feel that him working as a mason probably added to the development of

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[5] See, e.g., report of January 2, 2004 (claimant is "a construction worker who does masonry type work…"); report of October 19, 2005 (the claimant "is a mason, so he's on his knees a lot, doing a lot of squatting, kneeling, strenuous activities…"); report of January 19, 2006 ("[h]e is a mason and still does a lot of strenuous activities"); and May 10, 2006 ("[h]e is a mason who does a lot of kneeling and a lot of strenuous activities"). Claimant's Exhibit A.

[6] See, e.g., note of August 28, 2006 (He is a bricklayer. I don't want him going back to that type of activity yet); report of October 24, 2006 ("[h]e is a brick layer and mason and I do not think he can go back to that type of activity on a regular basis permanently"); and report of December 20, 2006 ("I have written in most of my notes previously he was a bricklayer. He is not going to be able to go back to this type of work because he will wear this thing out very quickly. He cannot be kneeling on this at all, no further kneeling on the knee and I do not want him doing any heavy lifting on a permanent basis for his knee replacement"). Claimant's Exhibit A.

osteoarthritis secondary to the fact of him doing a lot of kneeling, squatting, carrying heavy objects, etc." Claimant's Exhibit A. Finally, in a follow-up note of November 20, 2012 to claimant's counsel, Geiger opined that "I do feel, as mentioned, that Mr. DiGiovanni working as a mason, with all the kneeling, squatting, climbing, lifting, etc., was a substantial factor in causing and contributing to his osteoarthritis …which led to his knee replacement." Id.

Having reviewed the foregoing, it is clear that the claimant adduced a great deal of evidence in support of the causative link between the claimant's work activities and his left knee injury. Such an evidentiary basis is of course necessary to the successful prosecution of a workers' compensation claim, which requires that an injury "[arise] out of and in the course of his employment." Section 31-275(1) C.G.S. However, while causation is a necessary element, it is not in and of itself sufficient in light of the statutory requirements previously discussed herein relative to the Workers' Compensation Commission's ability to retain subject matter jurisdiction over a claim. As such, it was incumbent upon the claimant to file a notice of claim for his repetitive trauma injury which comported with the requirements set forth in § 31-294c(a) C.G.S. Generally, "with regard to repetitive trauma claims to which the limitation period for accidents applies, the date on which the 'accident' is deemed to have occurred is the last day of exposure to the work-related incidents of repetitive trauma."[7] Discuillo, supra, at 581. In this matter, the parties stipulated that the claimant last worked for Lombardo Brothers

[7] In Discuillo v. Stone & Webster, 242 Conn. 570 (1997), the court explained, "[w]e have adopted this general rule out of recognition that, in many cases involving repetitive trauma, the very nature of the injury will make it impossible to demarcate a specific date of injury. Thus, out of necessity, some other clear threshold had to be established as the start of the applicable limitation period. The last day of exposure to the relevant trauma is a logical choice, as the process of injury from repetitive trauma is ongoing until that point." Id., at fn. 11.

Mason Brothers in June of 2005 and for Carmody Concrete Corporation in October of 2005. The claimant also testified both at trial and at deposition that he stopped working sometime towards the end of 2005. See Respondents' Exhibit 1, pp. 15, 38; April 2, 2013 Transcript, p. 14. As such, in light of the stipulations of the parties and the claimant's testimony, we can discern no basis for reversing the trial commissioner's finding that the claimant's notice of claim was filed more than one year after the last injurious exposure and was therefore untimely under the one-year statute of limitations for repetitive trauma deemed the result of an accidental injury.

With regard to whether the claimant's injury constituted an occupational disease such that the three-year proviso of § 31-294c(a) C.G.S. would be applicable, we note at the outset that the trier specifically found that the claimant failed to provide persuasive evidence establishing that the claimant's knee injury was "distinctively associated with" or "peculiar to the occupation of" a mason as contemplated by § 31-275(15) C.G.S.[8] Our review of the evidentiary record does not suggest that the trier in any way overlooked or disregarded evidence which might have been probative on that issue. As the respondents rightfully point out, the "[c]laimant has produced no evidence that would support a finding that heavy labor as a Mason was demonstrably distinguishable from heavy labor in other related construction work, or other related fields in general in which heavy labor is performed." Brief of Respondents Carmody Concrete Corp. and Liberty Mutual Insurance, p. 7. Moreover, Geiger, in his correspondence of October 3, 2012, remarked that "[t]here are a lot of people who do this kind of work that don't develop osteoarthritis to the point where they require knee replacement." Claimant's Exhibit A. As such, it

[8] See footnote 2, supra.

may be reasonably inferred that the trial commissioner viewed the circumstances giving rise to the claimant's repetitive trauma knee injury as more akin to the factual scenario in Discuillo, supra,[9] rather than the fact patterns present in such occupational disease cases as Hansen v. Gordon, 221 Conn. 29 (1992)[10] or Estate of Doe, supra.[11] Having reviewed the record in its entirely, we can find no basis for reversing the trial commissioner's findings in this regard.

Moreover, even had the record contained evidence which succeeded in persuading the trier that the claimant's repetitive trauma injury was more akin to occupational disease than an accidental injury, we also note that the trial commissioner specifically determined that the claim still would have been untimely in light of the claimant's testimony at trial to the effect that "he knew his work activities may have been contributing to his left knee symptoms as far back as the year 2000," Conclusion, ¶ B, and the claimant's deposition testimony indicating "that prior to the motor vehicle accident on July 22, 2003, his work activities would cause pain in his left knee." Id. These findings would appear to be consistent with the holding of our Supreme Court in

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[9] The Discuillo court, noting that "the workplace circumstances that allegedly caused the plaintiff's heart attack [could not] be said to be 'peculiar to' his occupation as a painter," Discuillo v. Stone & Webster, 242 Conn. 570, 579 (1997), also observed that because the physical stressors cited by the claimant as factors leading to his heart attack were present in other jobs requiring manual labor, and the mental stressors were common to workplaces generally, "[n]either type of stress is 'distinctively associated with' the plaintiff's *particular occupation* as a painter." (Emphasis in the original.) Id.

[10] The Hansen court upheld this board's affirmance of a Finding and Award wherein the trial commissioner had concluded that dental hygienists were "at a particular risk of contracting HBV because of their contact with blood and other secretions." Hansen v. Gordon, 221 Conn. 29, 37 (1992). The court stated that "[a]lthough HBV is contagious, and can be transmitted through means outside the work place, for dental hygienists it is a disease so distinctly associated with their profession that the necessary causal connection is present." Id.

[11] In Estate of Doe v. Dept. of Correction, 268 Conn. 753 (2004), the court held that the HIV infection acquired by the claimant's decedent "[constituted] an occupational disease because his employment as a correction officer in the emergency response unit was more likely to cause this disease 'than would other kinds of employment carried on under the same conditions.'" Id., at 763, *quoting* Madeo v. I. Dibner & Brother, Inc., 121 Conn. 664, 667 (1936).

Ricigliano, supra, mentioned previously herein to the effect that "the limitation period for an occupational disease claim *does not begin to run until the claimant knew or should have known that the disease is work-related.*" (Emphasis in the original.) Id., at 737.

In his appeal, the claimant asserts that because of his "inability to precisely state when he first noticed that his work activities were aggravating his left knee, we need to look to Dr. Geiger's written reports to determine when he made the causal connection between the development or aggravation of the Claimant's arthritis and his work activities." Appellant's Brief, p. 15. We disagree. While it is not uncommon to rely upon a diagnosis provided by a medical practitioner in order to determine at what point a claimant knew or should have known his disease is work-related, in the matter at bar, we note that at the claimant's deposition, he testified that prior to the motor vehicle accident, he would experience pain "when [he] was pouring concrete – throbbing, when [he] would be working on jobs before the accident." Respondents' Exhibit 1, p. 13. The claimant also stated that the pain was dependent on "the job situation I was doing, if I was on my knees a period of a long time, I would feel it often, then, to where – you know, let's say I wasn't working." Id.

Moreover, at trial, the claimant testified that he began experiencing throbbing, sharp pain, and swelling in his left knee in "early 2000," April 2, 2013 Transcript, p. 17, and that prior to the motor vehicle accident, his knee would bother him "depending how much … [he] was on it, kneeling and stuff, squatting…. Or if [he] poured a lot of concrete, when [he] first got up, for the first couple minutes, it would really be stiff and sore." Id., at 18-19. The claimant also testified that when he returned to work in 2003 following the motor vehicle accident, his work activities "aggravated" and "bothered" his

knee and his knee began swelling. Id., at 19. When the claimant was queried as to when he began to realize the physical activity associated with his employment as a mason was affecting his left knee, he replied, "I would say probably the early 2000s, like 2001, 2002, where, you know, I was starting to really, you know, be aware of the throbbing and all that." Id., at 28.

Having reviewed the foregoing testimony, we can discern no logical basis to reverse the trier's finding that the claimant knew or should have known that his activities as a mason were contributing to the problems in his left knee prior to the motor vehicle accident of 2003. In addition, we find that Geiger's reference to the claimant's occupation in his note of January 4, 2004 and subsequent notes provides a more than adequate basis for the trier's conclusion that Geiger and the claimant discussed the connection between the claimant's activities as a mason and his left knee symptoms. As such, we decline to reverse the trier's conclusions in this regard.

Finally, we note that the claimant has claimed as error the trier's denial of several proposed corrections proffered in his Motion to Correct. As the proposed corrections would seem to reflect the claimant's desire "to have the commissioner conform his findings to the [claimant's] view of the facts," D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003), we find no error in the trial commissioner's denial of the motion. "The [claimant] cannot expect the commissioner to substitute the [claimant's] conclusions for his own." Id.

There is no error; the July 19, 2013 Finding and Dismissal of the Commissioner acting for the Fifth District is accordingly affirmed.

Commissioners Michelle D. Truglia and Stephen M. Morelli concur in this opinion.