CASE NO. 5871 CRB-3-13-8
CLAIM NO. 700151285 : COMPENSATION REVIEW BOARD

PAULINE VALENTI
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: JULY 16, 2014

NORWALK HOSPITAL
EMPLOYER
SELF-INSURED

and

PMA CUSTOMER SERVICE CENTER
ADMINISTRATOR
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant appeared without legal representation at oral argument. At the trial level the claimant was represented by Mark H. Pearson, Esq., 62 Trumbull Street, New Haven, CT 06510.

The respondents were represented by James D. Moran, Jr., Esq., Williams Moran, LLC, PO Box 550, Fairfield, CT 06824.

This Petition for Review[1] from the July 29, 2013 Finding and Dismissal of the Commissioner acting for the Third District was heard March 28, 2014 before a Compensation Review Board panel consisting of Commissioners Stephen B. Delaney, Daniel E. Dilzer and Stephen M. Morelli.

[1] We note that extensions of time were granted during the pendency of this appeal.

OPINION

STEPHEN B. DELANEY, COMMISSIONER. The claimant appeals from the July 29, 2013 Finding and Dismissal of the Commissioner acting for the Third District. In that Finding and Dismissal the trial Commissioner dismissed the claimant's claim for benefits relating to a fall suffered by the claimant on March 13, 2007. The basis for the dismissal was that the claimant failed to file a timely claim as required by § 31-294c(c) thereby depriving the trial Commissioner of jurisdiction over the claim.

The pertinent facts giving rise to the claimant's claim include the following. On March 13, 2007 the claimant was employed by the respondent-employer as a sleep technologist. Her duties required that she set up a patient for a sleep study and monitor the patient through the night. The monitoring of a patient required that the patient be hooked up with a number of wire leads to a monitor. On the particular night at issue, the claimant was helping a patient reposition his mask when her foot became entangled in the wires attached to the patient and the monitor. The claimant fell. The claimant claims that as a result of this incident she suffered an injury to her left knee.

The claimant alleges that she informed her supervisor of the incident the next morning and the response of her supervisor was his casual acknowledgment, "Oh all right, okay." See Findings, ¶ 7. The claimant contended that she worked through the pain and did not seek medical treatment until October or November, 2007. On November 7, 2007, while working, the claimant requested permission to go down to the emergency room as her left leg was bothering her. The claimant's supervisor gave her permission to go.

In his findings the trial Commissioner referenced the claimant's testimony that she believed the supervisor was aware that her request, to be seen at the emergency room, was related to her March 13, 2007 fall at work. On cross examination, however, the claimant testified that her impressions as to the supervisor's understanding of the relationship between her need to be seen at the emergency room and the March 13, 2007 fall were the result of her own speculation. Findings, ¶ 11. Additionally, the claimant contends that she informed the emergency room staff member that she was injured at work and her symptoms had worsened over time. Findings, ¶ 13. However, the records from the emergency room visit did not mention the March 13, 2007 injury. Claimant's complaint was noted as "51 year old white female complains of 1 week of left knee pain." Findings, ¶ 12.

Ultimately, the claimant was found to have sustained a torn meniscus in her left knee and underwent two surgeries to correct the problem. The first surgery occurred on April 15, 2008. The claimant anticipates that she will need additional surgery on her left knee and may require surgery on her right knee all of which she contends relate to the March 13, 2007 fall at work.

The claimant testified that she did not file a Form 30C written notice of claim within one year of the March 13, 2007 incident as required by § 31-294c(c).[2] We note

[2] Section 31-294c(c) provides:
Failure to provide a notice of claim under subsection (a) of this section shall not bar maintenance of the proceedings if there has been a hearing or a written request for a hearing or an assignment for a hearing within a one-year period from the date of the accident or within a three-year period from the first manifestation of a symptom of the occupational disease, as the case may be, or if a voluntary agreement has been submitted within the applicable period, or if within the applicable period an employee has been furnished, for the injury with respect to which compensation is claimed, with medical or surgical care as provided in section 31-294d. No defect or inaccuracy of notice of claim shall bar maintenance of proceedings unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice. Upon satisfactory showing of ignorance and prejudice, the employer shall receive allowance to the extent of the prejudice.

that our Workers' Compensation Act provides additional methods by which a claimant may preserve the right to bring a claim. Among the means by which a claimant is deemed to have provided constructive notice is to have requested a hearing or submitted a voluntary agreement within one year from the date of accident. There is no contention that there was any action by the claimant that would have satisfied these constructive notice provisions. See Findings, ¶¶ 23-24.

What is at issue here is whether the constructive notice provision of the § 31-294c(c) tolling the statute of limitation, "if within the applicable period an employee has been furnished, for the injury with respect to which compensation is claimed, with medical or surgical care as provided in section 31-294d" was satisfied. The trial Commissioner concluded it was not and therefore the claimant's claim was untimely. The claimant-appellant challenges the trial commissioner's conclusion.

The claimant argues that the March 13, 2007 incident was captured on video tape and the trial commissioner so found. See Findings, ¶ 5. While the claimant was represented in the proceedings below she appears pro se on appeal. Much of her argument centers on the fact that there was a videotaping of her fall. Her argument appears to be premised on the fact that videotaping was an integral part of the sleep study process and thus, the trial commissioner should have accorded a greater degree of credibility to the videotape and its probative value. As part of the prosecution of her appeal the claimant filed a Motion To Produce Additional Evidence by which she sought to introduce a letter written by an experienced licensed Respiratory Therapist and Registered Polysomnographer. According to the claimant the additional evidence was

material as it served to provide further evidence as to the function and purpose of a videotape in a sleep study.

Administrative Regulation § 31-301-9 provides in pertinent part:

> If any party to an appeal shall allege that additional evidence or testimony is material and that there were good reasons for failure to present it in the proceedings before the commissioner, he shall by written motion request an opportunity to present such evidence or testimony to the compensation review division, indicating in such motion the nature of such evidence or testimony, the basis of the claim of materiality, and the reasons why it was not presented in the proceedings before the commissioner.

Consideration of a motion to submit additional evidence requires that the evidence the party seeks to proffer must be material and not merely cumulative of evidence already in the record. The evidence the claimant seeks to add speaks to the fact that she fell and hurt her left knee. However, that fact was found by the trial commissioner in his July 29, 2013 Finding and Dismissal. See Findings, ¶ 4 and Conclusion, ¶ B. Thus, the evidence can only be considered as cumulative of other evidence existing in the record.

Further, in the claimant's motion to submit additional evidence the reasons for not submitting the letter from the experienced licensed Respiratory Therapist and Registered Polysomnographer in the proceedings below were stated to be the result of oversight. This board has long held that a party's failure to appreciate the need to present certain evidence in the proceedings below is not a basis for granting a motion to submit additional evidence. See Diaz v. Pineda, 117 Conn. App. 619 (2009).

Whether the trial commissioner erred in failing to conclude that the alleged actions of the employer constituted providing medical or surgical care so as to obviate the need to file a written notice of claim as required by § 31-294c(c) is a factual

determination. See e.g., Distassio v. HP Hood, Inc., 4592 CRB-4-02-11 (May 5, 2004). Two of the leading appellate cases concerning the application of the constructive notice provision at issue are Kulis v. Moll, 172 Conn. 104 (1976) and Gesmundo v. Bush, 133 Conn. 607 (1947).

In Gesmundo, supra, the claimant sustained a frost bite injury to his foot as a result of driving an unheated truck. The claimant reported the incident to his employer who told the claimant to consult with a particular medical provider. The Gesmundo court held that the actions of the employer constituted furnishing medical care. The court stated:

> The purpose of the notice is to inform the employer that an injury has been suffered upon which a claim for compensation will or may be founded. *Tolli v. Connecticut Quarries Co.*, 101 Conn. 109, 116, 124 A. 813. The exception is, no doubt, based upon the fact that if the employer furnishes medical treatment he must know that an injury has been suffered which at least may be the basis of such a claim. The injury in this case was reported to the defendant's superintendent, and he sent the plaintiff to a doctor who attended injured employees of the defendant.

Id., at 612.

A number of years later our Supreme Court considered Kulis v Moll, 172 Conn. 104 (1976) where the factual predicate concerned a worker who was hired to clean the outside of a house. The employer found the claimant lying at the base of a ladder. The claimant requested that the employer take him to the hospital. The employer gave him a ride to the hospital. Upon arrival the employer asked that the hospital staff remove the claimant from the car and the staff complied. The employer did not; provide the hospital with any information, visit the claimant nor pay the hospital bill. Fifteen months following the incident the claimant filed a written notice of claim. The Kulis court

distinguished the factual circumstances from those in Gesmundo. The Kulis court held that the statutory exception for filing a written notice of claim was to be narrowly construed and:

> It is apparent from the foregoing provisions, as well as from others disclosed by a reading of the entire statute, that the legislature intended to define and limit, with some degree of specificity, the acts of furnishing medical or surgical care by the employer which would relieve the employee of the statutory requirement to give written notice of his claim for compensation within one year from the date of the accident.

Id., at 108.

> It was not until receipt of the notice of claim fifteen months later that the defendant had any indication of his potential exposure, at which time much of his opportunity for investigation had passed.

Id., at 112.

The Kulis court also held that the respondent's actual notice of an injury to the claimant did not meet the statute's requirement that the employer furnished medical care. According to the Kulis court the circumstances under which the medical care was provided must indicate to the employer that there is a potential exposure for an injury arising out of and in the course of employment.

In the instant matter the claimant argues vehemently that there are a number of instances which should have alerted the employer of the nexus between her March 2007 fall and her subsequent medical treatment. However, that is a factual determination to be made by the trial commissioner.

Among the facts found by the trial commissioner were; the claimant did not seek medical treatment until November 2007, nearly eight months after the March 2007 fall, the claimant's supervisor did not direct the claimant to go to the Emergency Room for

medical treatment but merely granted permission that she could leave her shift to go to the Emergency Room, and the claimant's treatment at Norwalk Hospital's Emergency Room was covered under her group health insurance. See Findings, ¶ 10; Conclusions, ¶¶ F and M.

This board has considered cases where claimants attempted to rely on the furnishing of medical care exception and where one of the allegedly pertinent facts was payment of the providers' services by the employer through its group health insurer. We have held that relying on payment by an employer's group health insurer, in and of itself, does not confer knowledge on the employer that there is a potential Workers' Compensation claim. See Culver v. Cyro Industries, 4444 CRB-7-01-10 (February 21, 2003). See also; Pegolo v. Trueline Corp., 5656 CRB-5-11-6 (May 15, 2012); Miller v. State/Judicial Branch, 5584 CRB-7-10-8 (November 28, 2011); Collins v. Jiffy Auto Radiator, Inc., 9 Conn. Workers' Comp. Rev. Op. 232, 993 CRD-3-90-3 (October 30, 1991); Janco v. Fairfield, 1 Conn. Workers' Comp. Rev. Op. 189, 102 CRD-4-81 (September 13, 1982), *rev'd and remanded,* 39 Conn. Sup. 403 (1983); Clapps v. Waterbury Iron Works, 1 Conn. Workers' Comp. Rev. Op. 115, 20 CRD-5-80 (February 19, 1982), *error; judgment directed,* 38 Conn. Sup. 644 (1983).

As we stated in Spencer v. Manhattan Bagel Company, 5419 CRB-8-09-1 (January 22, 2010)

> Our review of prior case law, particularly Gesmundo, supra, and Kulis, supra, suggests that the relevant line of inquiry in ascertaining whether the requirements of the medical care exception have been satisfied does not hinge upon whether an employer paid a certain medical invoice. Rather, the inquiry is global in nature, and should ideally lead to a determination as to whether the employer could reasonably expect that a workplace injury for which a claimant has received medical attention might

> conceivably lead to a workers' compensation claim against the employer.

Id.

In Salerno v. Mount Sinai Hospital, 4518 CRB-1-02-4 (April 9, 2003) this tribunal stated, "the predicate findings and ultimate conclusion of the trier are dependent upon the weight and credibility assigned to the evidence. The trier can credit all, none or only parts of a witness's testimony. Morneault v. D M & M Restaurants, 4389 CRB-3-01-5 (March 27, 2002)." Additionally, the factual findings and conclusions of the commissioner will not be disturbed unless they are found without evidence, contrary to law or based on unreasonable or impermissible factual inferences. Fair v. People's Savings Bank, 207 Conn. 535 (1988). See also, Distassio, supra. As the court in Fair also stated, "[i]t 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).

We fail to find that the trier committed any legal error. We understand that the essence of the claimant's appeal is the trier should have considered her testimony and evidence and reached a different conclusion. As we have referenced herein legal precedent and the rules of statutory construction require that the exceptions to the written notice requirement are to be narrowly construed. See Kulis, supra.

Proving that a claimant was furnished medical care sufficient to overcome the need to file a written notice of claim is a difficult burden. In her brief the claimant-appellant cites cases which she believes require a different result from the conclusion

drawn by the trial commissioner. See e.g. Pernacchio v. New Haven, 63 Conn. App. 570 (2001) and Hodges v. Federal Express Corporation, 5717 CRB-7-12-1 (January 4, 2013). However there are distinctions which may be drawn between the matter under review and the cases identified by the claimant as instances where jurisdiction was found to exist.

In Pernacchio, supra, a claim was made for heart and hypertension benefits pursuant to § 7-433c. Section 7-433c was a statutory program which accorded a conclusive presumption of liability for police and firefighters who demonstrated they met certain conditions and during their period of employment suffered either one, or both of these afflictions. The claimant in Pernacchio was a New Haven firefighter who, while at the firehouse, suffered a bout of dizziness, and nausea. Onsite at the firehouse was an emergency medical response unit. The onsite paramedic took the claimant's blood pressure which registered 184/124. The paramedic then initiated the claimant's transportation to Yale New Haven Hospital. During the claimant's transportation, the paramedic continued to monitor the claimant and stayed in contact with the hospital.

In our mind the facts in Pernacchio differ significantly from those alleged in this matter. In Pernacchio, medical treatment was provided the same day as the date the injury was claimed to have occurred. That was not the case here. In Hodges, supra, the compensation review board opined that the issue of whether medical care was furnished was largely irrelevant as the claimant had provided a timely written notice of claim.

The claimant also references Chaney v. Riverside Health Care Center, 4270 CRB-1-00-7 (December 17, 2001) as legal support for her claim that medical care was furnished. In Chaney, while working the claimant heard a snap in her back. She immediately informed her supervisor who provided her with a back brace. Further, a

supervisor, who was also a nurse, signed the accident report which indicated the claimant was provided a back brace.

The claimant also cites Hayden-LeBlanc v. New London Broadcasting, 12 Conn. Workers' Comp. Rev. Op. 3, 1373 CRD-2-92-1 (January 5, 1994) and this board's affirmance of the trial commissioner's conclusion that under the "totality of the circumstances" the claimant had filed a timely written notice of claim within one year from the time she fell off her chair at work and sustained an injury to her back. In Hayden-LeBlanc, the claimant sought medical treatment within several weeks of the injury. The claimant's employer provided the claimant with a group health insurance form. In response to the question included on the form the claimant provided a "description of how the back injury occurred at work." Id. The group health insurer thereafter denied the claim stating, "WC related illness or injury is not covered." When the claimant discussed the group health insurer's denial of her claim with the employer's general manager she was informed that it was too late to file a Workers' Compensation claim as "a claim had to be filed at the time of injury." We find that the facts in Hayden-LeBlanc are distinguishable from the facts in the instant matter.

We also note that the conclusion reached in Hayden-LeBlanc was a factual determination dependent upon the weight and credibility the trial commissioner accorded to the evidence presented in that matter. Given that this appellate body does not engage in a de novo review and must be guided by the previously referenced deference to a trial commissioner's conclusions and factual findings, we cannot compel a trial commissioner to reach a different conclusion in the absence of legal error. In its opinion in Hayden-

LeBlanc this body found no such legal error, nor do we find any such error in the instant matter.

Finally, we note that there is a broad humanitarian purpose which underlies the Connecticut Workers' Compensation Act. However, the broad humanitarian purpose does not render the clear and unambiguous text of the statute a nullity. Section 1-2z. Our Workers' Compensation Act provides that a claim for a personal injury that results from an accident which arose out of and in the course of employment must be filed within one year from the date of accident. Although the Act does carve out certain exceptions as noted above, the claimant did not carry her burden of proof that her claim fell within any of these exceptions.

The claimant also emphasizes that she was unaware of her obligation to file a timely written notice of claim. That fact is indeed unfortunate. Our system of jurisprudence has long embraced the legal maxim that everyone is presumed to know the law and ignorance of the law is not an excuse. See e.g., Atlas Realty Corp. v. House, 123 Conn. 94 (1937) and Provident Bank v. Lewitt, 84 Conn. App. 204 (2004). See also, Usher v. Waddingham, 62 Conn. 412 (1892). To that end § 31-284(f)[3] and Administrative Regulations Sec. 31-279(b)-1 and Sec. 31-279(b)-5 impose an obligation on all employers to conspicuously post information pertaining to Workers' Compensation at the worksite.

We therefore affirm the July 29, 2013 Finding and Dismissal of the Commissioner acting for the Third District.

[3] Sec. 31-284(f) provides, "Each employer subject to the provisions of this chapter shall post, in a conspicuous place, a notice of the availability of compensation, in type of not less than ten-point boldface. The notice shall contain, at a minimum, the information required by regulations adopted pursuant to section 31-279.

Commissioners Daniel E. Dilzer and Stephen M. Morelli concur.