CASE NO. 5883 CRB-1-13-10 : COMPENSATION REVIEW BOARD
CLAIM NO. 100131175

JOHN M. WIBLYI, JR. : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION
CROSS-APPELLEE

v. : OCTOBER 3, 2014

McDONALD'S CORPORATION
EMPLOYER

and

GALLAGHER BASSETT SERVICES
INSURER
RESPONDENTS/APPELLEES
CROSS-APPELLANTS

APPEARANCES:

The claimant was represented by Jennifer B. Levine, Esq., and Harvey L. Levine, Esq., Law Offices of Levine & Levine, 754 West Main Street, New Britain, CT 06053.

The respondents were represented by John B. Cantarella, Esq., Law Offices of John B. Cantarella, 999 Asylum Avenue, 2nd Floor, Hartford, CT 06105.

This Petition for Review from the September 19, 2013 Ruling on Claimant's Motion to Preclude Respondent McDonald's Corporation by the Commissioner acting for the Eighth District was heard on April 25, 2014 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Stephen B. Delaney and Michelle D. Truglia.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The parties have petitioned for review from the September 19, 2013 Ruling on Claimant's Motion to Preclude Respondent McDonald's Corporation by the Commissioner acting for the Eighth District. We find error and remand the decision for additional proceedings consistent with this Opinion.

The trial commissioner made the following findings relative to his review of this matter. The file has been the subject of many hearings, including oral argument before this board resulting in a decision affirming the parties' ability to bifurcate the Motion to Preclude. The respondents contend that the Motion to Preclude should be denied on several grounds, "particularly laches and prejudice," Findings, ¶ 3, and liability should be determined based on the merits of the claim. The claimant properly filed a timely Notice of Claim ("Form 30C") on June 28, 2000 citing a date of injury of September 8, 1999. The respondents did not file a Form 43 denying the claim within twenty-eight days of the receipt of the Form 30C. The claim was dormant for many years, and as a result many of the claim's insurance adjusters are no longer available and some documents no longer exist. Both sides presented testimony and offered exhibits into the record.

Having heard the evidence presented, the trial commissioner concluded as follows:

> Based on the totality of the circumstances, I hereby deny the Motion to Preclude. I am persuaded by the Respondents' position on this issue, particularly as to the laches and prejudice claim, as this Motion to Preclude was filed eleven years after the filing of the 9/8/1999 injury claim. See [Kalinowski v. Meriden, 5028 CRB-8-05-11]. See also prejudice section in 31-294. The

Harpaz/Donahue line of cases do not apply as this may now constitute an exception.

Conclusion, ¶ 8.

The trial commissioner ordered that the matter proceed on the merits and be kept open subject to future hearings at the request of the parties or District Office.

The parties filed Motions to Correct, both of which were denied in their entirety, and this appeal followed. The claimant-appellant contends that the trial commissioner's decision to deny the Motion to Preclude on the basis of laches and/or prejudice constituted an abuse of discretion. The respondents cross-appellants argue that the trial commissioner erroneously concluded that the claimant properly filed a notice of claim and allege that the claimant failed to sustain his burden of proof that the Form 30C was served on the respondent employer such that the respondents were obligated to file a denial within the twenty-eight days required by the provisions of § 31-294c(b) C.G.S.[1]

[1] Section 31-294c(b) C.G.S. (Rev. to 1999) states, in pertinent part: "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…. 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

Both parties also contend that the trier's denial of their respective Motions to Correct constituted error.

We begin our analysis with a recitation of the well-settled standard of review we are obliged to apply to a trial commissioner's findings and legal conclusions. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." 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). "This presumption, however, can be challenged by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

We turn first to the claimant-appellant's claim of error relative to the trial commissioner's invocation of laches and prejudice as grounds to defeat a Motion to Preclude. It is of course axiomatic that the Workers' Compensation Commission is a creature of statute, and "[i]t is a familiar principle that a court which exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation."

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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."

Castro v. Viera, 207 Conn. 420, 427-428 (1988), *quoting* Heiser v. Morgan Guaranty Trust Co., 150 Conn. 563, 565 (1963). As such, the commission "must act strictly within its statutory authority, within constitutional limitations and in a lawful manner…. It cannot modify, abridge or otherwise change the statutory provisions, under which it acquires authority unless the statutes expressly grant it that power." Id., at 428, *quoting* Waterbury v. Commission on Human Rights & Opportunities, 160 Conn. 226, 230 (1971).

As referenced previously herein, § 31-294c(b) C.G.S. sets out the statutory framework according to which a claimant can bring a Motion to Preclude.[2] Nowhere in those provisions did the legislature indicate that a respondent can defeat an otherwise valid Motion to Preclude through the affirmative defense of laches, which, "if proven, bars a plaintiff from seeking equitable relief in a case in which there has been an inexcusable delay that has prejudiced the defendant…. First, there must have been a delay that was inexcusable, and, second, that delay must have prejudiced the defendant…." (Internal quotation marks omitted.) John H. Kolb & Sons, Inc. v. G & L Excavating, Inc., 76 Conn. App. 599, 612, *cert. denied*, 264 Conn. 919 (2003). "*Laches is purely an equitable doctrine*, is largely governed by the circumstances, and *is not to be imputed to one who has brought an action at law within the statutory period*…. It is an equitable defense allowed at the discretion of the trial court *in cases brought in equity*." (Emphasis in the original; internal quotation marks omitted.) Id., at 613. Given that the remedy of claim preclusion, as set forth in the provisions of § 31-294c(b) C.G.S., is

[2] See footnote 1, supra.

clearly statutory in nature, we find that the instant trier was prohibited as a matter of law from denying the Motion to Preclude on the basis of the equitable doctrine of laches. As our Supreme Court observed in a case concerning the Connecticut Unemployment Compensation Act:

> The statutory language in question is clear and describes a specifically delineated procedure which admits of no ambiguities. We, cannot 'search out some intent which we may believe the legislature actually had and give effect to it, . . . we are confined to the intention which is expressed in the words it has used.'[3]

United Aircraft Corporation v. Fusari, 163 Conn. 401, 410-411 (1972), *quoting* Connecticut Light & Power Co. v. Walsh, 134 Conn. 295, 301 (1948).

The appellant's claim of error is sustained and we hereby remand this matter for additional proceedings in order to determine whether the statutory requirements for granting a Motion to Preclude were satisfied.

As mentioned previously herein, the respondents filed a cross-appeal in this matter challenging the trier's conclusion that "[t]he Claimant properly filed a timely

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[3] We do not mean to suggest that equitable considerations generally have no role in the workers' compensation forum. Indeed, § 31-298 C.G.S. specifically states that, "[i]n 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 the substantial rights of the parties and carry out the provisions and intent of this chapter." Moreover, this board has on occasion affirmed the trier's denial of relief to a claimant who was found to have "slept on his rights." See, e.g., Kalinowski v. Meriden, 5028 CRB-8-05-11 (January 24, 2007) in which we affirmed the trial commissioner's denial of partial incapacity benefits pursuant to § 31-308(a) C.G.S. in 2005 for an injury sustained in 1990. Nevertheless, we would point out that § 31-298 C.G.S. "deals with the manner in which testimony is obtained and hearings are conducted. It does not provide the commissioner with any specific jurisdiction over particular types of claims or questions." Stickney v. Sunlight Construction, Inc., 248 Conn. 754, 765 (1999). Furthermore, as discussed herein, a trier's denial of compensation to a claimant deemed to have slept on his rights may be distinguished from the decision to graft an equitable doctrine onto the precise statutory provisions governing preclusion. "The court may not, by construction, supply omissions in a statute or add exceptions or qualifications, merely because it opines that good reason exists for so doing…. This is especially so where it appears that the omission was intentional…. In such a situation, the remedy lies not with the court but with the General Assembly." (Citations omitted.) Bailey v. Mars, 138 Conn. 593, 598 (1952).

Notice of Claim on 6/28/00 for a 9/8/99 injury." Findings, ¶ 4. The trial commissioner provided no subordinate findings in support of this conclusion. It is the respondents' contention that the claimant failed to sustain his burden of proof that he properly filed his Form 30c with the employer such that the statutory obligation to file a disclaimer within twenty-eight days was triggered. We agree, given that our review of the totality of the evidence reveals ambiguities in the record which would not necessarily support the inferences apparently drawn by the trier.

As previously discussed herein, the statutory provisions setting out the procedures for claim initiation are contained in § 31-294c(a) C.G.S. [Rev. to 1999], and state, in pertinent part, that:

> [n]o 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…. Notice of a claim for compensation may be given to the employer or any commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident, or the date of the first manifestation of a symptom of the occupational disease and the nature of the disease, as the case may be, and the name and address of the employee and of the person in whose interest compensation is claimed….

Generally, claimants utilize the "Form 30C" as their written notice of claim for compensation; the instructions for filing this form state that the form must be served upon both the employer and the Workers' Compensation Commissioner by either personal

presentation or registered or certified mail.[4] The Form 30C also states that "[f]or the protection of both parties, the employer should note the date when this notice was received and the claimant should keep a copy of this notice with the date it was served."

In Callender v. Reflexite Corp., 137 Conn. App. 324 (2012), our Appellate Court stated that when deciding whether to grant a Motion to Preclude,

> the commissioner must engage a two part inquiry. First, he must determine whether the employee's notice of claim is adequate on its face…. Second, he must decide whether the employer failed to comply with § 31-294c either by filing a notice to contest the claim or by commencing payment on that claim within twenty-eight days of the notice of the claim…. If the notice of claim is adequate but the employer fails to comply with the statute, then the motion to preclude must be granted.

Id., at 338.

However, because § 31-294c(b) C.G.S. "is remedial legislation that should be liberally construed to accomplish its humanitarian purpose," Pereira v. State, 228 Conn. 535, fn. 8 (1994), our Supreme Court has held that "strict compliance" with the provisions of § 31-294c(b) C.G.S. is not required. Id. Rather, "if the notice of claim is sufficient to allow the employer to make a timely investigation of the claim, it triggers the employer's obligation to file a disclaimer." Id. Nevertheless, it cannot be reasonably inferred that the Supreme Court's acceptance of a certain degree of lenience when assessing the sufficiency of a notice of claim can be extended to a complete absence of

[4] These directions are in accordance with the provisions of § 31-321 C.G.S. (Rev. to 1999), which state: "Unless otherwise specifically provided, or unless the circumstances of the case or the rules of the commission direct otherwise, any notice required under this chapter to be served upon an employer, employee or commissioner shall be by written or printed notice, service personally or by registered or certified mail addressed to the person upon whom it is to be served at the person's last-known residence or place of business. Notices in behalf of a minor shall be given by or to his parent or guardian or, if there is no parent or guardian, then by or to such minor."

notice altogether. In fact, proof of proper service is particularly significant in claims involving a Motion to Preclude given that preclusion is such a "harsh remedy." Harpaz v. Laidlaw Transit, Inc., 286 Conn. 102, 130 (2008). Thus, § 31-294c(b) C.G.S. specifically states that a respondent is not obligated to file a disclaimer "when the written notice of claim has not been properly served in accordance with § 31-321…."[5]

Turning to the matter at bar, we note at the outset that while a copy of the Form 30C received on June 28, 2000 by the Workers' Compensation Commission for the First District was submitted into evidence (see Claimant's Exhibit A), the record does not contain the "green cards" which generally serve as proof that the notice was mailed to both the Workers' Compensation Commission and the employer via U.S.P.S. certified mail in accordance with the provisions of § 31-321 C.G.S. In light of this lack of pertinent documentary evidence, then, it may be reasonably inferred that the trial commissioner relied upon the testimony of the parties in reaching his conclusions.

At trial, the claimant testified that he was responsible for handling workers' compensation claims for the employer, and as such he had "a general knowledge of the law on Connecticut Workers' Compensation," July 26, 2012 Transcript, p. 27. The claimant indicated that he had been "doing Workers' Compensation for fifteen years," id., at 42, and his employment duties included training other human resource employees in Connecticut workers' compensation law. The claimant testified that he and another co-worker generally handled the claim notices served on the employer and that he

[5] See footnote 1, supra.

"absolutely" understood the significance of the Form 30C, id., at 28, because he was aware there was a denial period associated with the filing of these forms.

With regard to the circumstances surrounding the filing of his own Form 30C following the incident of September 8, 1999, the claimant testified that he wrote out the Form 30C while "sitting in his cubicle" and he "absolutely" filed the notice of claim with the Workers' Compensation Commission. Id., at 38. The claimant also indicated that "I have been doing Workers' Compensation for a long time, so I am sure I sent it to McDonald's Corporation itself." Id., at 38. The claimant explained that he "certainly" mailed the form, id., at 39; when queried as to whether he sent it via certified mail, he replied, "Yes. Well, I believe I sent it certified. I have been doing this for a long time, so I can't believe I didn't." Id. The claimant was also shown the copy of the Form 30C filed with the Workers' Compensation Commission First District office dated June 28, 2000 and testified that "I have been doing Workers' Compensation for a long time, and I know certification is required, so I am sure that's what I did." Id., at 44. He also testified that he would "always" send both forms at the same time and that he "[knew] the process." Id. However, the claimant did admit under cross-examination that he did not have the green card which would verify that he sent his Form 30C to the employer via certified mail.[6] October 11, 2012 Transcript, p. 15.

As mentioned previously herein, the trial commissioner made no factual findings regarding the claimant's credibility or the credibility of the witnesses who testified for the

[6] We confess to being somewhat perplexed that an individual as well-versed in workers' compensation procedures as the claimant professed himself to be was unable to produce documentary evidence attesting to the proper filing of his own workers' compensation claim.

respondents.[7] Nevertheless, it may be inferred that the trial commissioner, having heard the claimant's testimony relative to his own familiarity with the procedures for filing workers' compensation claims and his responsibility within the respondent employer's organization for training other individuals in the proper handling of workers' compensation claims, concluded that the claimant had likely followed proper procedures in filing his own claim. Ordinarily, findings as to credibility of witnesses are unassailable on appeal, given that "[s]uch credibility determinations are "uniquely and exclusively the province of the trial commissioner." Smith v. Salamander Designs, Ltd, 5205 CRB-1-07-3 (March 13, 2008). However, in the instant matter, there exist inconsistencies in the testimony which do not allow us to afford the customary deference we generally extend to credibility findings.

For instance, the claimant initially testified that "I recall, I know I mailed two forms, one to the employer, one to the Workers' Compensation Sixth District." July 26, 2012 Transcript, p. 42. However, the record indicates that the Form 30C was actually mailed to the First District, and the claimant acknowledged this fact when his recollection was refreshed at trial. More troubling, however, is the claimant's testimony that he was "sitting in his cubicle," id., at 38, at the time he prepared and mailed the Form 30. As mentioned previously herein, the Form 30C was received by the Workers' Compensation Commission for the First District on June 28, 2000; however, our review of the exhibits in this matter indicates that the respondents submitted into the record employment documents demonstrating that the claimant's employment with the respondent was

[7] The testimony of the witnesses primarily concerned a description of the employer's internal procedures relative to the handling of workers' compensation claims.

terminated on or about April 4, 2000. Respondents' Exhibit 2. The record contains no explanation for the discrepancy between the claimant's testimony relative to the circumstances surrounding the preparation of the Form 30C and his apparent termination date with the employer.

Generally speaking, of course, the logistical circumstances under which a claimant prepares his notice of claim are not particularly relevant to the prosecution of the claim as long as the notice itself comports with the statutory requirements. Moreover, counsel for the respondents stipulated at trial that the claimant was still employed by the respondent-employer both at the time he sustained his injury in 1999 and at the time he filed the Form 30C.[8] July 26, 2012 Transcript, p. 25. Again, generally speaking, it is not the role of the court to gainsay stipulations when they are offered by the parties. Under the peculiar circumstances of this claim, however, it would appear that the trial commissioner relied upon both the stipulation of respondents' counsel and the claimant's testimony relative to the circumstances surrounding the filing of his Form 30C in order to reach his conclusion that the claimant sufficiently complied with the provisions of § 31-294c(a), § 31-294c(b), and § 31-321 C.G.S. such that the employer was obligated to file a disclaimer within twenty-eight days of the filing date of the Form 30C served on the Workers' Compensation Commission.

Unfortunately, the documentary evidence submitted into the instant record is not consistent with either the stipulation offered by respondents' counsel or the claimant's

[8] Generally, the employment status of a claimant at the time he files his Form 30C is likewise not particularly relevant to the prosecution of the claim, as the statutory elements which must be satisfied in order to confer jurisdiction are primarily associated with the date of injury.

testimony. [9] In light of this ambiguity, it simply cannot be determined whether the claimant provided sufficient notice of his claim to the respondents. Given that § 31-294c(b) C.G.S. specifically states that proper initiation of a claim is a necessary prerequisite for triggering the obligation to file a disclaimer and allowing a subsequent claim for preclusion to lie, we therefore sustain the respondents' claim of error. This matter is hereby remanded for additional proceedings on the issue of the adequacy of the claimant's notice of claim. "We have held that, where the findings of a trial commissioner appear to be inherently inconsistent amongst themselves, or with the trier's conclusions, the correct approach is to remand the matter for clarification." Ortiz v. Highland Sanitation, 4439 CRB-4-01-9 (November 12, 2002).

Finally, as mentioned previously herein, both parties filed Motions to Correct which were denied in their entirety. Insofar as the trial commissioner's denial of the proposed corrections was inconsistent with the findings presented herein, the denial constituted error.

There is error; the September 19, 2013 Ruling on Claimant's Motion to Preclude Respondent McDonald's Corporation by the Commissioner acting for the Eighth District is accordingly remanded for additional proceedings consistent with this opinion.

Commissioners Stephen B. Delaney and Michelle D. Truglia concur in this opinion.

[9] The claim notes prepared by the respondent insurer and submitted into the record do little to resolve the ambiguities associated with this file. In fact, a note dated August 14, 2000 prepared by Mary Abbate states that the claimant had indicated he would be formally withdrawing his claim. See Respondents' Exhibit 4. Mary Abbate did not testify at trial.