

CASE NO. 5896 CRB-4-13-11  
CLAIM NO. 400081244

: COMPENSATION REVIEW BOARD

MIGUEL HEYER  
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION  
COMMISSION

v.

: OCTOBER 14, 2014

CITY CARTING HOLDING COMPANY  
EMPLOYER

and

LIBERTY MUTUAL  
INSURER  
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Beverly Carswell, Esq., Carswell Law Offices, LLC, 924 Noble Avenue, Bridgeport, CT 06608 at the trial level. Claimant filed an appeal on his own behalf. Claimant did not attend oral argument.

The respondents were represented by James P. Mooney, Esq., Williams Moran, LLC, 268 Post Road, PO Box 550, Fairfield, CT 06824.

This Petition for Review from the October 28, 2013 Finding and Award/Denial of the Commissioner acting for the Seventh District was heard May 30, 2014 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Stephen B. Delaney and Stephen M. Morelli.

## OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has commenced an appeal from a Finding and Award/Denial issued to him subsequent to a March 18, 2010 injury, asserting the relief in that award was inadequate. As the claimant did not file Reasons for Appeal or a brief, the respondents filed a Motion to Dismiss arguing the claimant failed to properly prosecute his appeal. We note the claimant did not appear for oral argument before our tribunal on May 30, 2014 and the respondents have alleged prejudice in the manner the claimant pursued this appeal. Therefore, we grant the Motion to Dismiss.

The facts herein are as follows. The claimant testified at the formal hearing he sustained injuries on March 18, 2010 while pulling out a tree stump. After the incident he went to Concentra where he was examined and directed to return to work and pursue further therapy. The claimant did not follow up with further therapy. The claimant also said that although he had a prior pinched nerve in his neck, the doctor at Concentra did not examine his neck. The claimant says this delayed his ability to get a second medical opinion. Dr. Larry Moy at Concentra prepared a report on the day of the injury however, referencing the pinched nerve but diagnosing a trapezius injury and contusions. After leaving the respondent's employ on April 21, 2010, the claimant was seen by Dr. Debasish Das, M.D, on April 26, 2010. Dr. Das reported the claimant complained of dizziness and said it was difficult to turn his neck. The trial commissioner noted the claimant had also treated with Dr. Das prior to the March 18, 2010 incident, including March 12, 2010 x-rays of the claimant's cervical spine which were essentially normal.

On August 3, 2010, the claimant was seen by Dr. Victor M. Ribeiro, D.O., a chiropractor with Carpenter Chiropractic Associates for neck pain, dizziness and headaches. Dr. Ribeiro diagnosed the claimant with a healed fracture to his C-7 spinous process consistent with the mechanism of injury described in the March 18, 2010 incident. Dr. Ribeiro testified at the formal hearing. The doctor testified that he found evidence of a healed fracture of the claimant's cervical spine in August of 2010 and that this type of fracture doesn't require surgery, heals on its own with no permanency and does not require therapy different from treatment for a soft tissue injury. Dr. Ribeiro also testified he had not seen Dr. Moy's records and was unaware Dr. Moy had identified no restricted range of motion for the claimant's neck after the incident, and had prescribed physical therapy for the claimant. The claimant treated with Dr. Ribeiro from August 3, 2010 through September 7, 2011, and in May and June of 2011, the claimant treated with CORE Physical Therapy & Sports Medicine.

On June 23, 2011, the claimant presented for a Respondent's Examination with Dr. Kanaga N. Sena, M.D. Dr. Sena reported the claimant had sustained soft tissue injuries in the 2010 accident, which he associated with the claimant's reports of dizziness. Soft tissue injuries usually heal in a period of six months and that the claimant was capable of returning to work. On July 26, 2010, after reviewing updated chiropractic reports, Dr. Sena reported that the claimant's symptoms were a direct result of the March 18, 2010 work related injury. He further noted that the claimant had suffered from a thoracic sprain, cervical and lumbar radiculitis, trauma, headaches, and dizziness, all of which have resolved. He reported that he had nothing else to offer the claimant and that the claimant had reached medical maximum improvement. At a deposition, Dr. Sena

testified that while the claimant could have taken a few days off work after the incident he did not believe there was a loss of work capacity and he also opined the claimant had not sustained a neck fracture.

Three witnesses who worked for the respondent, Christopher Follen, Christopher Oxer and Bryan Ayers also testified. Mr. Follen, the claimant's supervisor, said the claimant never sought approval for physical therapy but had he requested this he would not have been denied. Mr. Oxer testified the claimant discussed seeking a second medical opinion after the incident but did not follow up on it. Mr. Ayers said the claimant had been directed to seek treatment at Concentra and that he was not informed that the claimant was dissatisfied with the recommendations of Concentra and that he wanted a second opinion; nor was he aware that the claimant had been denied medical treatment.

Based on this record the trial commissioner concluded the claimant sustained soft tissue injuries in the March 18, 2010 incident. She found the reports and opinions of Dr. Sena to be credible and persuasive and the opinions of Dr. Ribeiro not to be persuasive. She further found that the claimant had not proven the treatment with Dr. Ribeiro and CORE was reasonable and necessary treatment as a result of the alleged denial of medical treatment; and also found that the claimant failed to prove his long term indemnity claim. The trial commissioner determined that the claimant's neck injury was compensable, and ordered the respondents to accept the injury, but denied the claimant's bid for further medical treatment or for temporary total disability benefits.

The claimant filed a Motion to Correct. The gravamen of the Motion to Correct was based on two points; a) that the respondents' witnesses were not credible and did not

offer an accurate narrative of events and; b) Dr. Ribeiro's opinions as to the claimant's injury and level of disability should have been credited. Based on Dr. Ribeiro's opinions and treatment the claimant believed the trial commissioner's findings were contradictory. The trial commissioner denied the Motion in its entirety. The claimant filed a timely Petition for Review, but subsequently did not file Reasons for Appeal or a brief. As noted previously, the respondents have moved to dismiss the appeal for a failure to prosecute, citing Van Fleet v. Balfour Beatty Construction, 5801 CRB-4-12-11 (March 17, 2014).

We concur and grant the Motion to Dismiss. The respondents have asserted they were prejudiced by the manner in which the claimant pursued this appeal. As the claimant failed to present a cogent description of legal error to this tribunal; see Claros v. Keystone Pipeline Services, 5399 CRB-1-08-11 (October 28, 2009), we agree the respondents were prejudiced. As we pointed out in Marino v. Cenveo/Craftman Litho, Inc., 5448 CRB-5-09-3 (March 16, 2010), when an appellant fails to sufficiently apprise the tribunal and the opposing party of their rationale for the appeal prior to the hearing, the appeal is subject to dismissal. We also note the claimant was properly noticed that the matter would be heard on our docket of May 30, 2014, and the appellant did not appear for oral argument on that date. For the reasons cited in Lopez v. A. Anastasio Fence Co., 5101 CRB-4-06-6 (May 23, 2007), we must dismiss the appeal.

Even were we to have considered this appeal on the merits we are unable to identify from the sole document filed asserting error, the Motion to Correct, legal error in the decision herein. The claimant challenges the trial commissioner's credibility determination as to various witnesses, as well as her weighing of expert medical

testimony. While we can reverse a trial commissioner's decision when it is unsupported by the evidence or inconsistent with the law, Neville v. Baran Institute of Technology, 5383 CRB-8-08-10 (September 24, 2009), the claimant in this matter is essentially seeking to retry the case on appeal. As we held in Hernandez v. American Truck Rental, 5083 CRB-7-06-4 (April 19, 2007) *citing* Goldberg v. Ames Department Stores, 4160 CRB-1-99-2 (December 19, 2000), "[w]e may not retry a case on appeal and substitute our own findings for those of the trier." It is the trial commissioner's job to weigh medical evidence. O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818 (1999) and Weir v. Transportation North Haven, 5226 CRB-1-07-5 (April 16, 2008). We must respect her conclusions as to the evidence presented. The claimant has the burden of persuasion before this Commission. See Hernandez, *supra*, and Lentini v. Connecticut College, 4933 CRB-2-05-4 (May 15, 2006). The claimant did not meet this burden and after evaluating the record we do not find the trial commissioner's decision was "clearly erroneous." Burns v. Wal-Mart Stores, Inc., 5343 CRB-7-08-5 (March 23, 2009) and Dudley v. Radio Frequency Systems, 4995 CRB-8-05-9 (July 17, 2006).

We affirm the Finding and Award/Denial.

Commissioners Stephen B. Delaney and Stephen M. Morelli concur in this opinion.