CASE NO. 5897 CRB-2-13-11 : COMPENSATION REVIEW BOARD
CLAIM NO. 200167948

WILLIAM D. HART
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: NOVEMBER 12, 2014

FEDERAL EXPRESS CORPORATION
EMPLOYER
SELF-INSURED

and

SEDGWICK CMS, INC.
ADMINISTRATOR
RESPONDENTS-APPELLANTS

APPEARANCES: The claimant was represented by Robert B. Keville, Esq., Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, PC, 2 Union Plaza, Suite 200, New London, CT 06320.

The respondents were represented by David A. Kelly, Esq., Montstream & May, LLP, 655 Winding Brook Drive, Glastonbury, CT 06033-6087.

This Petition for Review[1] from the October 23, 2013 Finding and Award of the Commissioner acting for the Second District was heard June 20, 2014 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Stephen B. Delaney and Michelle D. Truglia.

[1] An extension of time was granted during the pendency of this appeal.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have appealed from a Finding and Award issued to the claimant, finding that his medical condition was linked to an injury the claimant sustained while at work on September 15, 2009. The respondents argue there was inadequate expert testimony linking the claimant's medical condition to the events of that date. We have reviewed the record and conclude there was a sufficient basis presented from which the trial commissioner could have awarded benefits to the claimant. Accordingly, we affirm the Finding and Award.

The trial commissioner reached the following factual findings at the conclusion of the formal hearing. The claimant was a 51 year old man who had been employed by the respondent Federal Express ("FedEx") as a courier from 1987 through September 15, 2009. He was based at a terminal in Norwich and his delivery territory was the town of Stonington. His route started with making high priority deliveries prior to 10:30 a.m. and he would then make another round of deliveries until he finished his route. His work day averaged 10 to 12 hours. The claimant won an award from his employer in 2004, but in early 2009 a new manager began supervising the claimant. The new manager expanded the claimant's delivery area and required him to average 12.5 stops per hour to complete his route. The claimant asked for help but was told nothing could be done. The claimant's challenges were exacerbated by the heavy traffic along U.S. Route 1 and the need to cross a drawbridge on this road. FedEx policy called for the courier to take a one half hour lunch break but the firm also had strict standards for the timeliness of deliveries. As a result the claimant was unable to find time for bathroom breaks, let alone lunch breaks until after 4:30 p.m. The claimant's managers at FedEx were made aware

that his route had become unworkable, but they took no steps to mitigate the situation and, according to the claimant, the demands of his route continued to increase. Indeed, on September 15, 2009 the claimant's stop count was 15 per hour, meaning he had to average one stop every 4 minutes.

The claimant was involved in a fuel spill incident at the FedEx terminal in June 2009. The claimant was chastised for this incident, and he was also reprimanded for allegedly taking too much time off in May 2009. The claimant said this was a result of how the employer accounted for the time he took off following the death of his mother in February 2009. As the claimant, who had previously had an unblemished work record, was being reprimanded and being given a greater workload, he started fearing that he was being set up by his employer for dismissal. On September 15, 2009 the claimant began his work day as usual. After loading his vehicle he was convinced that he had too many stops to make and that it would be impossible to complete all the deliveries in the allotted time. When he reported his "stop count" to the manager on duty, Mike DeSalvo, he asked if some of the stops could be assigned to another driver. This was refused. The day was hot and due to a transparent roof, the truck, which did not have air conditioning, got very warm.

The claimant began his day making deliveries and made all his priority deliveries before 10:30 a.m. except one where the customer was not present to sign for the package. Along the rest of his route he found it was not feasible to bring his truck down a long overgrown driveway to deliver at a customer's door, so he left the parcel in a mailbox and left a voice message on the customer's phone. He continued to try and complete his "SOS" deliveries before 3:00 p.m. when he was relayed a complaint from the customer

who did not receive doorstep delivery; and he was then directed to return to the customer who was not present in the morning to sign for the parcel. This required backtracking across town and when he arrived to that house, the customer was not present. At this point he testified that he was very far behind schedule and under great stress. He had not had time to stop for food or drink (or to use the restroom) and he was hot and sweating. He also got stuck in traffic during his return trip as the town high school let out. He was by then a full hour behind in his deliveries. He would need to make 30 stops per hour to get back on schedule. The claimant began to feel ill and light headed, as he rushed through his stops, often running between the truck to the customer's house. He noticed a fluttering sensation in his chest and shortness of breath, along with a growing sense of panic. His pace started to slow down as he felt increasingly winded and more panicky.

Fearing that he would be written up again, the claimant pressed on for about an hour before deciding he could not finish his route. He stopped at the fire station on Liberty Street in Pawcatuck, where he was scheduled to make a delivery, and called FedEx for a substitute driver. He took time to organize his remaining parcels for the next driver, then went into the fire station, made his scheduled delivery, and asked to be checked out by fire personnel. His heart rate was found to be over 200 beats per minute and an ambulance and paramedics were called. The claimant was rushed to Backus Hospital in Norwich where he came under the care of Amr Atef, MD, a cardiologist. He was put on an electrocardiogram (EKG) which, at one point, showed his heartbeat to be 300 beats per minute.

At the Backus Hospital emergency room the claimant gave a history of having intermittent palpitations over the last few months but related no history of cardiac disease

and recent dizziness and shortness of breath which he related to stress. Testing in the ER showed that the claimant originally presented with an abnormal heart rhythm known as "atrial flutter"; but at some point during his time in the emergency room the rhythm devolved to "atrial fibrillation." In "A-Fib," the heart was still beating much too fast and the timing of the atrial signals was no longer consistent causing an irregular tachycardia. Blood work taken at the hospital showed low potassium, but no other significant chemical abnormalities. The claimant was kept overnight at Backus and, with medication, his heartbeat eventually returned to normal. An echocardiogram was performed the next day and the claimant was discharged that afternoon. The diagnosis on discharge was *"paroxysmal atrial flutter and fibrillation."* The claimant was also diagnosed with hypertension and had beta-blocker medication prescribed as a result of the incident.

The claimant was seen in follow-up by Dr. Atef on September 30, 2009. The palpitations had stopped and the claimant was feeling well. An EKG done that day showed normal sinus rhythm. While Dr. Atef suspected the September 15 incident had been an isolated one, he told the claimant to stay out of work until he could get the results from a 24-hour event monitor. On November 6, 2009 the claimant returned to Dr. Atef and the doctor reviewed the results of the event monitor the claimant had worn following the last office visit. It showed the claimant was still having runs of paroxysmal atrial arrhythmia, so Dr. Atef increased the claimant's dosage of beta-blockers and referred him for a consultation with a cardiac electrophysiologist to consider treatment recommendations, including whether he was a candidate for an ablation procedure. Dr. Atef told the claimant to avoid dehydration, but he had no specific instructions regarding

his level of activity at that time. However, he did agree the claimant should not return to work until after his consultation. At this examination the claimant, who had been avid about physical fitness prior to September 15, 2009, noted that he has resumed going to the gym after the cardiac incident and had not had difficulty, but continued to have anxiety and stress. Dr. Atef also recommended that the claimant see his primary care physician to discuss medication for anxiety.

The claimant then was examined by his primary care physician, Roger El-Hachem, MD, and by Steven L. Zweibel, MD, Director of Cardiac Electrophysiology at Hartford Hospital. On November 2, 2009 Dr. El-Hachem found that the claimant still had high blood pressure so the doctor commenced treatment for hypertension. The claimant was already on metoprolol for his arrhythmia, but due to the claimant's high blood pressure he was prescribed an ACE inhibitor, lisinopril, in addition to the metoprolol. Dr. Zweibel examined the claimant on November 18, 2009. He reviewed the claimant's medical records, performed a physical examination and an in-office EKG. Dr. Zweibel felt the EKGs done at Backus documented a diagnosis of atrial flutter, but that other EKG strips were consistent with atrial fibrillation. Based on the information available at that time of his examination, Dr. Zweibel thought that on September 15, 2009 the claimant had atrial flutter and possibly atrial tachycardia. Dr. Zweibel suggested the claimant either continue to treat with medication or undergo an ablation procedure.

The claimant was disabled from work during the winter of 2009 and the spring of 2010 by his treating physician, but began spending long hours at the gym. The three physicians who were treating the claimant offered opinions as to the nature and causation of the claimant's injuries. In addition, the respondents had the claimant examined by

their expert, Kevin J. Tally, MD, a cardiologist in the Hartford area. Dr. Tally said following his April 10, 2010 examination that the cause for the claimant's atrial fibrillation and/or flutter is unknown, but that once the claimant developed an arrhythmia, the physical conditions and stress under which he worked that day could have sped up his heart rate and thereby "aggravated his uncontrolled atrial arrhythmias." Dr. Tally, however, did not believe the claimant was disabled from work, noting in part his ability to undergo long endurance workouts on a treadmill.

The claimant's cardiologist, Dr. Zweibel, opined on December 9, 2009 that "[i]t is my professional opinion as a Cardiac Electrophysiologist that the physical stress of Mr. Hart's job at FedEx was a significant contributing factor in the development of his cardiac arrhythmias." Findings, ¶ 42. Dr. Zweibel was deposed by the respondents on March 19, 2010, and his opinions at the deposition were more equivocal. He testified that he only meant to say that stress *can* be a contributing factor in arrhythmia. Dr. Zweibel also declined to offer an opinion as to the claimant's work capacity. Dr. El-Hachem, on the other hand, testified that in January 2010 the claimant was not working and still seemed to be anxious and under stress. Because "aggravating factors" can worsen symptoms of palpitations, Dr. El-Hachem felt, as of January 2010, "the best thing to do is to have him rest or give him some time to recover until we figure out what's going on." Findings, ¶ 45. At an April 23, 2010 deposition Dr. El-Hachem testified that he agrees with the other physicians' diagnosis of atrial flutter/tachycardia and atrial fibrillation, though he classifies the condition as "paroxysmal atrial fibrillation." Findings, ¶ 55. He testified that many people have atrial fibrillation and do not know it. He opined that if a person has an underlying atrial fibrillation, stress could increase the

heart rate enough to make the condition symptomatic. He further voiced accord with Dr. Zweibel's position that physical stress could lead to a manifestation of atrial fibrillation. "I would say that the physical stress, in addition to the hypokalemia, in addition to other factors, probably all together significant [sic] in doing so." While he conceded physical stress could be a significant factor, he added: "How significant it is, I don't know, but it is so." Findings, ¶ 57.

The claimant was also treating with Dr. Atef in 2010. On May 26 of that year the claimant was examined by Dr. Atef who noted the claimant related having had "a long legal battle regarding his job over the last few months," and that this had caused him significant anxiety. Findings, ¶ 59. His blood pressure was 150/85 and his in-office EKG was essentially normal, being unchanged from September. The claimant indicated he was not interested in an ablation procedure to address his cardiac issues, so Dr. Atef ordered use of an event monitor for the next four weeks and changed the claimant's prescription to Diovan. That same day, May 26, 2010, Dr. El-Hachem examined the claimant and noted the claimant complained of a "few weeks" of anxiety and feeling depressed. Findings, ¶ 60. Dr. El-Hachem referred the claimant for a psychiatric evaluation and told him to come back in a month. Meanwhile, he gave the claimant a note to stay out of work from that point until June 26, 2010, to give him time to use the event monitor. On June 26, 2010 the clamant returned to Dr. El-Hachem and reported he had not been taking the Diovan. The claimant said he was still feeling anxious and was directed to return to the cardiologist to review the event monitor. The claimant returned to Dr. Atef on July 8, 2010 and reported being under emotional stress and anxiety. He told the doctor that he had not taken the Diovan because increased anxiety was one of the

side effects. Dr. Atef noted that the event monitor had shown “intermittent recurrence of atrial flutter with rapid ventricular response,” which events had been short-lived. Findings, ¶ 62. Dr. Atef told the claimant that an ablation procedure would eliminate the arrhythmia, but since the claimant was unwilling to have the procedure, the doctor increased the dosage of the beta-blocker. As the claimant was due to have a psychiatric examination, Dr. Atef extended the claimant’s medical leave another 30 days.

The claimant began treating with a family therapist and clinical social worker, Michele Chenevert, on July 9, 2010. Ms. Chenevert practiced under a psychiatrist, Mahmoud Okasha, M.D. At the initial session the claimant indicated that someone or something had “destroyed [his] career” and also referred to “trauma from being terminated from FedEx.” Findings, ¶ 65. Ms. Chenevert’s notes indicated he reported that life had been “pretty good until last September” but that he now described being depressed, overwhelmed, stressed out and anxious. Findings, ¶ 66. On July 16, 2010 the claimant embarked on a course of weekly therapy sessions with Ms. Chenevert, and monthly meetings with Dr. Okasha for medication management. These sessions focused on the grievances the claimant had concerning his lost job with FedEx and his anxiety. On September 2, 2010, Dr. Okasha wrote a letter regarding the claimant’s condition,

> *It is my professional opinion that the stress of Mr. Hart’s job at FedEx was a significant factor in the development of post traumatic stress disorder as well as his cardiac arrhythmia. The consequences of being disabled from his employment and the fear of future cardiac episodes have resulted in symptoms that fulfill the criteria for post traumatic stress disorder. Mr. Hart experienced an event that involved serious injury and a threat to his physical integrity. His response involved intense fear, helplessness, and horror. He suffers from recurrent and intrusive distressing recollections and dreams of the event.*

Findings, ¶ 70.

Around the time of the one year anniversary of the 2009 cardiac event the claimant reported being increasingly anxious and not wanting to leave his home. The claimant painted his father's house which appeared to lift his spirits, but in November 2010 the claimant had a bout of palpitations after an interaction with FedEx. The claimant was rebuffed in his effort to return to work there and was advised there was no job there to return to. The claimant then filed for social security disability, which he was approved for in the spring of 2011. During the winter the claimant reported having trouble sleeping because his mind was racing and he was worrying about his arrhythmia recurring; as well as being under financial stress. From April 2011 on the claimant was being seen at Comprehensive Psychiatric Care on a once-a-month basis. Once again around the anniversary of his injury the claimant reported deterioration in his condition, and that autumn he reported having had "flashbacks" of being in the ambulance two years earlier. At the following visit, in November, the claimant admitted a year earlier he had stopped taking the medication Dr. Okasha had been prescribing. His mood improved when he starting taking the medication again. On March 26, 2012, Dr. Okasha wrote another letter regarding the claimant's psychiatric condition, concluding the claimant suffered from symptoms of Post Traumatic Stress Disorder including reoccurrences, avoidance, and hyperarousal. Dr. Okasha reiterated these opinions at a July 30, 2012 deposition, and further opined the claimant suffered from Generalized Anxiety Disorder.

The respondents had the claimant examined by their expert witness, Donald R. Grayson, MD, a psychiatrist in Harford. After the examination Dr. Grayson prepared a 23 page report and diagnosed the claimant with (1) Post Traumatic Stress Disorder (309.81); (2) Major Depressive Disorder – single episode, without psychosis, moderately

severe (296.22); (3) Panic Disorder with agoraphobia (300.21); and (4) Hypochondriasis (300.7). On the question of causation, Dr. Grayson stated: "In my opinion, Mr. Hart's job at FedEx caused his current emotional symptom picture and aggravated his cardiac problems – hypertension and cardiac arrhythmias." Findings, ¶ 84. Dr. Grayson found the claimant had reached maximum medical improvement and that while the claimant could not work in a stressful job at FedEx, that could precipitate emotional or cardiac decompensation, he had a work capacity in a less stressful, more supportive environment. The commissioner noted the claimant had not sought alternative employment to his post at FedEx since September 15, 2009.

Based on these factual findings the trial commissioner concluded the claimant had some underlying cardiac arrhythmia, but that it was unnoticed and did not interfere with his work or recreational activities. On September 15, 2009 the respondent employer subjected the claimant to workload demands that were unmanageable and forced him to work at an unsustainable pace. As a result of the workload imposed by the employer on September 15, 2009, the claimant became dehydrated while working his route. This dehydration resulted in hypokalemia (a low potassium level) which made the claimant more susceptible to certain forms of cardiac arrhythmia. This physical stress, when coupled with the serious mental stress of trying to complete the route that day, served to elevate his heart rate. As a result of the increased demands on his heart resulting from the physical and emotional stress on September 15, 2009, the claimant suffered a supraventricular tachycardic event that sent his heart beat racing to well in excess of 200 beats per minute and required emergency transport and hospitalization. This constituted a physical injury to, and impairment of, the claimant's heart as a result of the September

15, 2009 incident. That incident required the claimant to start treating with cardiologists and the work stress of that incident was a substantial factor in the claimant's need for this treatment.

The trial commissioner cited Dr. Grayson's opinion as the claimant suffering PTSD and its causation as being due to the September 15, 2009 incident, noting that the medical reports of Dr. Atef found the claimant was suffering from anxiety shortly after that incident. The commissioner noted the respondents argued the claimant's anxiety was due to financial concerns, but determined that the claimant was taken to the hospital on September 15, 2009 for a very real, physical injury to his heart, and that the physical injury to the claimant's heart on September 15, 2009 was a substantial contributing factor to the claimant's development of PTSD. The commissioner determined that subsequent to August 7, 2010 the claimant had a work capacity and the claimant had failed to seek alternative employment, so he had no entitlement to temporary partial disability benefits. As the claimant sustained a compensable cardiac injury and compensable PTSD, the commissioner ordered the respondents to pay the claimant temporary total disability benefits for the period prior to August 7, 2010.

The respondents filed a Motion to Correct. The respondents sought to add findings that the claimant's heart problem predated the September 15, 2009 incident and was therefore noncompensable. The respondents also sought to find that the claimant's psychic ailments were caused by his financial duress, and were noncompensable. The respondents finally sought to find the claimant was not totally disabled after a short initial period following his September 16, 2009 hospitalization, owing to his ability to workout at a gym. In the alternative, they sought to correct the calculation of disability in the

Finding and Award to conform to the evidence relied on by the trial commissioner. The trial commissioner denied all of the corrections other than to clarify the period of total disability for the claimant was a total of 46 weeks and four days. The respondents have now pursued this appeal. The gravamen of their appeal is that the evidence presented at the formal hearing does not support the trial commissioner's conclusion that the claimant's medical condition was caused by the September 15, 2009 incident at work.

We note the standard of deference we are obliged to apply to a trial commissioner's findings and legal conclusions is well-settled. "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 also note that in cases wherein causation of an injury is contested the trial commissioner's " . . . findings of basic facts *and* his finding as to whether those facts support an inference that the plaintiff's injury arose from his employment are subject to a highly deferential standard of review." Blakeslee v. Platt Bros. & Co., 279 Conn. 239, 253-254 (2006). (Emphasis in the original.)

The respondents cite Ryker v. Bethany, 97 Conn. App. 304 (2006) for the proposition that the claimant in this matter did not establish that his cardiac injury arose out of the employment. We find that Ryker stands for the proposition that it is the trial commissioner's determination as to whether the claimant has established a nexus of proximate cause between his or her medical condition and an incident which occurred at work. Id., 308-309. We recently have viewed the standard of proximate cause necessary to establish that a claimant's ailment is due to a compensable injury in Hadden v. Capitol Region Education Council, 5843 CRB-1-13-5 (May 20, 2014), *appeal pending*, AC 36913.

> We have recently considered the issue of proximate causation of a claimant's injury in the wake of the Supreme Court's decision in Sapko v. State, 305 Conn. 360 (2012). In Madden v. Danbury Hospital, 5745 CRB-7-12-4 (April 22, 2013) we cited Sapko, supra, as reiterating the long-standing "substantial factor" test for compensability. The Sapko decision clarified prior precedent from Birnie v. Electric Boat Corp., 288 Conn. 392, 412-13 (2008).
> ....in reaching our conclusion in *Birnie*, we undertook an in-depth examination of the contributing and substantial factor standards to facilitate a comparison of the two tests. It was in this context that we observed that the substantial factor test requires that the employment contribute to the injury ''in more than a de minimis way.'' Id., 413. The ''more than . . . de minimis'' language is preceded, however, by statements explaining that ''the substantial factor standard is met if the employment *materially or essentially contributes* to bring about an injury''; (emphasis in original) id., 412; which, by contrast, ''does *not* connote that the employment must be the *major* contributing factor in bringing about the injury . . . nor that the employment must be the *sole* contributing factor in development of an injury.'' (Citation omitted; emphasis in original.) Id.

In Hadden we were faced with a situation where a claimant who had pre-existing noncompensable Multiple Sclerosis asserted her present disability was due to a workplace injury. We affirmed the trial commissioner's determination that her injury

was compensable, although the respondent argued that there was conflicting medical evidence on the issue of causation.

> As we pointed out in O'Connor v. Med-Center Home Healthcare, Inc., 4954 CRB-5-05-6 (July 17, 2006), "[t]here are few principles of jurisprudence more fundamental than the principle that a trier of fact must be the one party responsible for finding the truth amidst conflicting claims and evidence." See also Strong v. UTC/Pratt & Whitney, 4563 CRB-1-02-8 (August 25, 2003), "[i]f on review this board is able to ascertain a reasonable diagnostic method behind the challenged medical opinion, we must honor the trier's discretion to credit that opinion above a conflicting diagnosis." The trial commissioner could reasonably find the treating physicians more persuasive than the respondents' expert. In a "dueling expert" case that is his prerogative. Dellacamera v. Waterbury, 4966 CRB-5-05-6 (June 29, 2006), n.1.

Hadden, supra.

The respondents argue that there was an insufficient quantum of expert opinion to link the claimant's cardiac episode to his employment. Specifically, they point to an opinion by Dr. Tally that suggested that the underlying cause for the claimant's atrial fibrillation was unknown, and that the claimant could have just happened to have a tachycardial event on September 15, 2009. They also point to Dr. Zweibel's testimony at his deposition, where he declined to state to a reasonable medical probability that the claimant's employment was the cause for this event; although he had previously opined the claimant's cardiac event was precipitated by work related stress. As the respondents view the record, this evidence should have been credited by the trial commissioner and the claim should be dismissed for want of probative medical opinions supporting the claimant.

We disagree. We note first that both Dr. Tally and Dr. Zweibel had expressed other opinions which the trial commissioner found were supportive of the claimant's

argument that his cardiac condition on September 15, 2009 was caused by work-related stress. See Findings, ¶¶ 41, 42 and 50 and Conclusion, ¶ K. The trial commissioner was able to rely on those opinions he found persuasive. "We have frequently held a trial commissioner may adopt part of an expert's testimony while discounting other parts of the same expert's testimony. See for example, Lopez v. Lowe's Home Improvement Center, 4922 CRB-6-05-3 (March 29, 2006) and Nasinka v. Ansonia Copper & Brass, 13 Conn. Workers' Comp. Rev. Op. 332, 335-36, 1592 CRB-5-92-12 (April 27, 1995)." O'Connor, supra.

Moreover, the claimant's treating physician, Dr. El-Hachem, clearly aligned the claimant's employment as a triggering event in the claimant's cardiac condition. See Findings, ¶¶ 56 and 57. The fact that the claimant became dehydrated due to his workload on September 15, 2009, thus leading to hypoklemia, played a role in Dr. El-Hachem's opinion and was documented in the medical reports of the Backus Hospital emergency room the day of the incident. We note that Dr. Atef, who treated the claimant after this incident, specifically directed the claimant to avoid dehydration. Findings, ¶ 37. It is matter of common knowledge that someone who works on a hot day and cannot obtain hydration will become dehydrated. The medical evidence herein linked this dehydration to the claimant's cardiac episode. In reviewing medical evidence a trial commissioner must evaluate this evidence in its totality in determining whether or not to find it reliable. See Marandino v. Prometheus Pharmacy, 294 Conn. 564, 595 (2010) and O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 816 (1999). In addition "it is proper to consider medical evidence *along with all other evidence* to determine whether an injury is related to the employment," Marandino, supra, 595. (Emphasis in original.)

The testimony of the claimant as to his physical condition and relentless workload on September 15, 2009 was consistent with the medical opinions linking his employment to the injury.

We note that we have been faced with a number of claims over the years where a claimant has argued that a cardiac injury was precipitated by workplace stress. We have upheld the decisions by trial commissioners in Dauti v. Lighting Services, Inc., 5874 CRB-5-13-8 (September 5, 2014), *appeal pending*, AC 37186 and Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008), who concluded the evidence in those cases was unpersuasive that the claimant's employment caused the injury in question. In the present case, the trial commissioner was persuaded by the claimant's evidence, and therefore we find this case virtually indistinguishable from Hummel v. Marten Transport, Ltd., 4667 CRB-5-03-5 (May 3, 2004), *appeal dismissed for lack of final judgment*, 90 Conn. App. 9 (2005), *cert. granted*, 275 Conn. 913 (2005), *aff'd*, 282 Conn. 477 (2007). In Hummel, the decedent worked as a truck driver and based on the record presented to the trial commissioner, had worked an excessive number of hours in the week prior to his demise, was forced to adopt unhealthy nutrition choices, and was under a great deal of stress from his employer. "It was therefore reasonable for the trial commissioner to attribute the work stress, along with the lifestyle choices Mr. Hummel made to do that work as being a substantial factor in his resulting death. Therefore, it was not unreasonable for the trial commissioner to find the injury compensable." Id. In the present case, the claimant was also a truck driver and was subjected to demands from his employer which he found himself physically unable to achieve, and which caused him

not to obtain sustenance during the work day. We therefore find the claimant's non-fatal injury in the present case similar to the compensable fatal cardiac injury in Hummel.[2]

We now turn to the claimant's assertion that his PTSD is a compensable injury under our Act as it was the sequalae of a physical injury. The trial commissioner adopted this position in the Finding and Award and the respondents challenge this conclusion. The respondents assert that the source of the claimant's psychic injuries were due to the claimant's fear he would be terminated from his job and such injuries are not compensable under out Act, pursuant to § 31-275(16)(B)(iii) C.G.S. The claimant however argues that the trial commissioner properly applied the precedent in Gartrell v. Dept. of Correction, 259 Conn. 29 (2002) which determined that pursuant to § 31-275 (16)(B)(ii)(I) C.G.S.[3] a mental injury which was caused by a physical injury was

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[2] The respondents point out there is evidence on the record that the claimant was suffering some form of cardiac ailment prior to September 15, 2009. The trial commissioner acknowledged this, however, in Conclusion, ¶ A, but noted in Conclusion, ¶ B, that prior to the compensable incident of that date this situation was essentially asymptomatic. We note in Blakeslee v. Platt Bros. & Co., 279 Conn. 239 (2006) the Supreme Court reiterated that an employer takes an employee as he finds him or her, *citing* Gartrell v. Dept. of Correction, 259 Conn. 29 (2002).

> It long has been a fundamental tenet of workers' compensation law . . . that an employer takes the employee in the state of health in which it finds the employee. (Internal quotation marks omitted.) Id., 40. Thus, an injury received in the course of the employment does not cease to be one arising out of the employment merely because some infirmity due to disease has originally set in action the final and proximate cause of the injury. The employer of labor takes his workman as he finds him and compensation does not depend upon his freedom from liability to injury through a constitutional weakness or latent tendency. Whatever pre-disposing physical condition may exist, if the employment is the immediate occasion of the injury, it arises out of the employment because it develops within it.

Id., 245-46. (Internal quotation marks omitted.)

See also Hadden v. Capitol Region Education Council, 5843 CRB-1-13-5 (May 20, 2014), *appeal pending*, AC 36913. We believe there was sufficient evidence on the record that the claimant's work activities of September 15, 2009 triggered a cardiac episode to find compensability.

[3] This statute reads as follows:

compensable under Chapter 568. We must review the record to ascertain if the trial commissioner had a proper basis to find the claimant's psychic injuries compensable.

The trial commissioner pointed to opinions rendered by the claimant's treating psychiatrist, Dr. Okasha and the respondents' expert witness, Dr. Grayson. Dr. Okaska clearly opined the claimant's September 15, 2009 physical injury was a substantial factor in his subsequent psychic injury. Findings, ¶ 70. Dr. Grayson also linked the claimant's present mental state to his employment at FedEx. Findings, ¶ 84. In his report, Dr. Grayson clearly linked the claimant's physical injury of September 15, 2009 with his current condition.

> Ultimately, in September 2009, on a day when he was greatly stressed, in an attempt to meet steep delivery time expectations, he ended up having an episode of atrial flutter and atrial fibrillation with hypertension. He was hospitalized and stabilized within 24 hours. Since then, he has been terrified that he will die from a heart attack.

Claimant's Exhibit 6, p. 21.

The trial commissioner clearly acknowledged in Conclusions, ¶¶ P and Q, that the claimant's current mental state was impacted to some extent by the loss of his job at FedEx. However, the trial commissioner had probative evidence which he credited that linked the claimant's anxiety to his compensable physical injury. The claimant did not need to prove that his physical injury was the sole cause of his current mental ailments, only that they were a substantial factor. This determination can be reached by reviewing "the entire substance of the expert's testimony." O'Reilly, supra, 817. Both Dr. Okaska

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(B) "Personal injury" or "injury" shall not be construed to include. . . .

(ii) A mental or emotional impairment, unless such impairment (I) arises from a physical injury or occupational disease, ...

and Dr. Grayson identified the physical injury the claimant sustained at work as a cause of his PTSD. We believe this meets the standard of Dixon v. United Illuminating Co., 57 Conn. App. 51 (2000) that the claimant's employment was a "substantial contributing factor" to the medical condition; especially as pursuant to Torres v. New England Masonry Company, 5289 CRB-5-07-10 (January 6, 2009), this panel must provide "every reasonable presumption" supportive of the Finding and Award.

The respondents also appeal the trial commissioner's determination of the claimant's period of disability. The respondents point to the claimant being a physical fitness enthusiast and argue that his ability to engage in workouts at a gym is conclusive evidence of a work capacity. While certainly this was probative evidence the trial commissioner considered; see Findings, ¶¶ 48 and 58; the trial commissioner found Dr. Atef's opinion as to the duration of the claimant's disability from work to be more persuasive and adopted this opinion in his conclusions. See Conclusion, ¶ S. When the factual findings of a trial commissioner as to a claimant's disability are based on an expert opinion the commissioner finds reliable, we must defer to this evaluation. See Shevlin v. SNET, 5824 CRB-3-13-3 (March 3, 2014).[4]

At its crux this case hinges on whether the claimant proved the injury he sustained on September 15, 2009 was the proximate cause of his subsequent cardiac and psychic ailments. The standard to evaluate this question was most recently applied by the Appellate Court in Turrell v. Dept. of Mental Health & Addiction Services, 144 Conn. App. 834 (2013). In Turrell, the claimant appealed from the denial of benefits for back

[4] At oral argument before this tribunal counsel for the respondents made reference to the fact that there has been no adjudication of permanent partial disability benefits and suggested the claimant's injuries were not permanent. We find this irrelevant to whether the claimant has proven his case that he sustained a compensable injury and whether he was entitled to temporary total disability benefits.

surgery she claimed was due to a work related injury. She argued that she had proven her employment was the proximate cause of her aliments. The Appellate Court affirmed the denial.

> [Our Supreme Court] has defined proximate cause as [a]n actual cause that is a substantial factor in the resulting harm . . . . The question of proximate causation . . . belongs to the trier of fact because causation is essentially a factual issue. . . . It becomes a conclusion of law only when the mind of a fair and reasonable [person] could reach only one conclusion; if there is room for a reasonable disagreement the question is one to be determined by the trier as a matter of fact. (Citations omitted; internal quotation marks omitted.) *Sapko v. State*, 305 Conn. 360, 372–73, 44 A.3d 827 (2012). [W]hether a sufficient causal connection exists between the employment and a subsequent injury is . . . a question of fact for the commissioner.

Id., 845.

The claimant in the present case presented expert testimony regarding both his cardiac and psychic condition that would enable a reasonable fact finder to link those ailments to the working conditions the claimant was subjected to on September 15, 2009. As the Appellate Court pointed out in Estate of Haburey v. Winchester, 150 Conn. App. 699 (2014) the claimant did not need to establish this as a matter of "metaphysical certainty." Id., 716. He needed only to establish compensability as a matter of "reasonable probability." Id. The trial commissioner could rely on both lay testimony and expert testimony on the record to determine whether proximate cause was established. Marandino, supra. After reviewing the record, we are satisfied the trial commissioner could find that standard had been reached.[5]

[5] We finally note that the appellants believe that their Motion to Correct should be granted. Those corrections sought to interpose the respondents' conclusions as to the law and the facts presented. The trial commissioner was legally empowered to deny this motion. See Brockenberry v. Thomas Deegan d/b/a Tom's Scrap Metal, Inc., 5429 CRB-5-09-2 (January 22, 2010), *aff'd*, 126 Conn. App. 902 (2011) (Per Curiam); D'Amico v. State/Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn.

We affirm the Finding and Award.

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

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933 (2003); and Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006). We find that many of the corrections sought appear to be an effort to reargue the factual evidence already presented over an extensive formal hearing. For the reasons clearly stated in Fair v. People's Savings Bank, 207 Conn. 535 (1988), we are not persuaded by such arguments.