CASE NO. 5900 CRB-7-13-12 : COMPENSATION REVIEW BOARD
CLAIM NO. 700162787

TIMOTHY E. CONROY : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : NOVEMBER 24, 2014

CITY OF STAMFORD
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLANT

and

CIRMA
ADMINISTRATOR

APPEARANCES:

The claimant was represented by David J. Morrissey, Esq., Morrissey, Morrissey & Mooney, LLC, 203 Church Street, P.O. Box 31, Naugatuck, CT 06770.

The respondent was represented by Brenda C. D. Lewis, Esq., Williams Moran LLC, P.O. Box 550, Fairfield, CT 06824.

This Petition for Review from the November 15, 2013 Finding and Award by the Commissioner acting for the Seventh District was heard on June 20, 2014 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Stephen B. Delaney and Stephen M. Morelli.

# OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondent has petitioned for review from the November 15, 2013 Finding and Award by the Commissioner acting for the Seventh District. We find no error and accordingly affirm the decision of the trial commissioner.

The trial commissioner made the following findings which are pertinent to our review of this matter. The claimant testified that he was hired by the respondent municipality's fire department as an entry-level firefighter in 1979 after undergoing a physical examination. As of the date of the formal hearing, the claimant was employed as the department's Deputy Fire Chief. The claimant held an EMT certificate when he was hired by the fire department in 1979 because of his prior training as a physical education teacher; as of the date of the formal hearing, he had again been certified for three years.

The claimant testified that the fire department would conduct annual physicals in a "military induction type process" whereby a bus would show up with a doctor and a few nurses. Eventually, Concentra took over this activity and required the firefighters to fill out an extensive questionnaire regarding any physical problems. Prior to 2012, the claimant did not indicate on any questionnaires that he suffered from hypertension or high blood pressure; moreover, no doctor ever informed the claimant that he had high blood pressure or hypertension during the annual physicals. Joel M. Blumberg, M.D. was the claimant's primary care physician from 1973 until 2010, when Blumberg opened a concierge practice and the claimant changed his primary care provider. None of the

claimant's subsequent primary care providers ever expressed any concern about heart or hypertension issues.

The claimant testified that prior to January 30, 2008, he could recall only one occasion when he had an elevated blood pressure reading; the claimant had consumed four or five cups of coffee during the course of fighting a fire and was up all night after sustaining a fall at the fire.[1] Several weeks after this incident, the claimant presented to Blumberg on January 30, 2008; his blood pressure readings at that office visit were 140/94 and 148/96.[2] The claimant recalled that Blumberg told him he was "in pretty good shape" after a full physical and suggested the claimant either follow the DASH diet and lose weight or go on medication to control his blood pressure. May 23, 2013 Transcript, p. 30. Blumberg also instructed the claimant to purchase a blood pressure monitor and to schedule a follow-up appointment in six weeks. The claimant testified that once he had modified his diet and lost weight, his blood pressure came down to 120/80 "almost consistently." Id., p. 32. The claimant followed up with Blumberg on April 4, 2008; the doctor was pleased with the claimant's blood pressure readings and the fact that the claimant had lost weight. As of the date of the formal hearing, the claimant was continuing to monitor his blood pressure three to five times per week; he had

[1] Although the claimant could not remember the exact date of the fire, he testified that he consulted with a doctor at Concentra the morning after the fall and was advised to follow up with his own physician regarding his elevated blood pressure readings. May 23, 2013 Transcript, pp. 19-20.

[2] Martin Krauthamer, M.D., the respondents' expert, testified that according to the "JNC 7," blood pressure readings of less than 120/80 are considered normal, readings between 120-139/80-89 are considered pre-hypertensive, readings between 140-159/90-99 are considered "Stage 1" hypertension, and readings of 160/100 or above are considered "Stage 2" hypertension. Respondents' Exhibit 5, pp. 12-13. The JNC publications are compiled periodically by a panel of cardiologists and outline the recommendations of these cardiologists for the diagnosis and treatment of hypertension. As such, the JNC guidelines are "considered an authoritative source within the field of cardiology." Findings, ¶ 31.

regained some weight primarily because of inactivity after falling off a roof at home and injuring his back.

On January 6, 2012 at approximately 3:00 a.m., the claimant presented to the emergency room at Greenwich Hospital with a severe headache. The claimant was advised that he had an issue with high blood pressure and he remained overnight in the cardiac care unit where he was placed on a Beta blocker. His blood pressure was brought under control and he was prescribed Benacar, which he was still taking at the time of the formal hearing. The claimant indicated that subsequent to his visit with Blumberg in December 2009 and prior to January 2012, no doctor had expressed concern about his blood pressure or prescribed medication for it.

At his deposition, Blumberg testified that the claimant had presented to him on January 30, 2008 after having been told his blood pressure was slightly elevated sometime during the prior year. The claimant said that he had been told two weeks before that his blood pressure was 165/100 and he was requesting a review of his laboratory results. The claimant's blood pressure readings on January 30, 2008 were 140/94 on the left arm and 140/96 on the right arm, which readings the doctor considered mildly hypertensive.[3] The doctor indicated that the elevated readings taken two weeks before were hypertensive. The claimant's EKG was normal. The doctor testified that he informed the claimant of his findings and told him he could either: 1) try the DASH diet, lose weight, and monitor his blood pressure for the next two months; or 2) go on

[3] Blumberg testified that the standards in effect in 2008 classified normal blood pressure as 90 or below for the diastolic reading and 140 or below for the systolic reading.

medication. The claimant decided to try to implement the lifestyle changes rather than starting medication.

Blumberg also performed an echocardiogram on the claimant at Greenwich Hospital on March 21, 2008 which demonstrated a "mildly increased left atrial diameter, mild aortic root enlargement, a trace of mitral regurgitation, a slightly increased left ventricular diastolic diameter, and normal ejection fraction." Findings, ¶ 18; *see also* Respondent's Exhibit 6, Exhibit 1. Blumberg explained that the initials "HTN" in the "Indications" section of the report represent the reason for the test, not the diagnosis, and he conducted the echocardiogram in order to determine whether the claimant suffered from hypertension and, if so, whether his heart showed any damage from sustained hypertension. Blumberg opined that the echocardiogram "was not diagnostic of any sustained hypertension at that time." Respondent's Exhibit 6, p. 22.

The claimant returned to Blumberg in April 2008 and his blood pressure readings at that visit were still 140/80.[4] Blumberg advised the claimant to come back in four months to recheck. The claimant returned in December 2009; at that time his weight had dropped from 269 to 250 pounds and his blood pressure was 142/80. Blumberg ordered additional blood tests, and the results demonstrated that the claimant was "at the lowest risk of heart disease." Id., 26. Under cross-examination, Blumberg testified that the blood pressure readings taken by the claimant at home were probably more accurate than the readings taken at the doctor's office because the claimant was experienced at taking blood pressure readings and was likely more relaxed at home. Blumberg explained that

[4] The claimant told Blumberg that the blood pressure readings taken at home were running 125 to 132 over 65 to 80. Respondents' Exhibit 6, pp. 20-21.

when a patient exhibits consistently high blood pressure readings, a diagnosis of hypertension is warranted, but when the readings are variable, the patient is considered to have "labile hypertension." Id., 37. Blumberg testified that when the claimant returned for follow-up visits in April 2008 and December 2009, he was not hypertensive.

Martin Krauthamer, M.D., was retained as a respondent's examiner and issued a report dated January 28, 2013 based on a review of the medical records. At his deposition, Krauthamer opined that the claimant had begun exhibiting elevated blood pressure readings in July 2003. Krauthamer found it particularly significant that the claimant had exhibited elevated blood pressure even while under sedation during a colonoscopy. Krauthamer noted that Concentra examinations conducted in 2007 through 2012 reported elevated blood pressure readings, and testified that Blumberg "obviously made a diagnosis of concern about blood pressure, if not an actual diagnosis of hypertension in that he offered him some options." Respondent's Exhibit 5, p. 9. Krauthamer also stated that the claimant's blood pressure readings on January 30, 2008, along with the elevated readings taken two weeks previously, "[meet] the criteria for a diagnosis of hypertension even if Dr. Blumberg did not write one on the paper." Id., 10.

In addition, Krauthamer testified that Blumberg's reference to the claimant's "borderline hypertension," which occurred at Blumberg's deposition and does not appear in his January 30, 2008 office notes, is not an actual JNC 7 diagnosis.[5] Id., 11. Krauthamer opined that according to the JNC 7 standards in effect on January 30, 2008, the claimant would fit into the category of "Stage 1" hypertension. However,

[5] See footnote 2, supra.

Krauthamer also noted that the claimant "seemed to have a hypertensive response to situations," id., 18, by which he meant that in addition to having elevated blood pressures while at rest, the claimant also had elevated blood pressures "when he was seeking medical care for a problem." Id. Krauthamer indicated that he was never provided with documentation of the claimant's home blood pressure readings but recalled that those readings were normal.

Having heard the foregoing, the trial commissioner determined that Blumberg's deposition testimony was consistent with the claimant's testimony at trial that he was never diagnosed with hypertension by Blumberg. The trial commissioner concluded that Blumberg's testimony that the claimant was "borderline" hypertensive on January 30, 2008 was also consistent with the flexible treatment options the doctor offered to the claimant. The trier found that Blumberg's testimony reflected that he continued to treat the claimant for two years and never diagnosed hypertension or prescribed medication for same because he believed that the dietary restrictions being followed by the claimant were working and the normal blood pressure readings taken by the claimant at home more accurately reflected the claimant's blood pressure than the readings taken in Blumberg's office. The trial commissioner also noted that the phrase "'[b]orderline hypertension,' by its very name, implies that the claimant's condition has not yet risen to the level of hypertension," Conclusion, ¶ C, and found irrelevant the issue of whether the terminology used by Blumberg was consistent with JNC standards. Rather, the trial commissioner, citing Ciarlelli v. Hamden, 299 Conn. 265 (2010), identified as the proper

mode of inquiry the determination as to "when the claimant was told that he had a diagnosis of hypertension." Conclusion, ¶ D.

The trial commissioner acknowledged that the claimant was a certified EMT who "probably knew he was flirting with a diagnosis of hypertension in the years leading up to his diagnosis in 2012." Conclusion, ¶ E. However, the trier also indicated that she did "not equate the ability of an EMT to identify a high blood pressure reading with the ability of a doctor to definitively diagnose hypertension." Id. Relative to the testimony offered by Krauthamer, the trial commissioner recognized that, "Krauthamer would not have been so flexible and would have rendered a diagnosis of hypertension much sooner than Dr. Blumberg. Whether Dr. Blumberg was right or wrong, it would be fundamentally unfair to punish the claimant for any error in judgment of his treating physician." Id. The trial commissioner concluded that because the claimant was not formally diagnosed with hypertension until January 6, 2012 when he presented to Greenwich Hospital, the claimant was entitled to file his claim between January 6, 2012 and January 6, 2013 and the claimant's notice of claim for benefits pursuant to § 7-433c C.G.S. dated April 9, 2012 was therefore timely.[6]

[6] Section 7-433c(a) C.G.S. (Rev. to 2012) states, in pertinent part: "(a) Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid

The respondent appealed, contending that the trial commissioner's conclusion that the claimant filed a timely claim for benefits pursuant to § 7-433c C.G.S. was erroneous as a matter of law. The respondent further argues that the trial commissioner's failure to "look at the totality of the circumstances" resulted in an incorrect application of the law. Appellants' Brief, p. 3.

We note at the outset that the appellant did not file a Motion to Correct; as such, "we must accept the validity of the facts found by the trial commissioner and this board is limited to reviewing how the commissioner applied the law." Corcoran v. Amgraph Packaging, Inc., 4819 CRB-2-04-6, 4948 CRB-2-05-5 (July 26, 2006). Moreover, it is well settled that:

> … the role of this board on appeal is not to substitute its own findings for those of the trier of fact. Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 451 (2001). The trial commissioner's role as factfinder encompasses the authority to determine the credibility of the evidence, including the testimony of witnesses and the documents introduced into the record as exhibits. Burse v. American International Airways, Inc., 262 Conn. 31, 37 (2002); Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999). If there is evidence in the record to support the factual findings of the trial commissioner, the findings will be upheld on appeal. Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002); Phaiah v. Danielson Curtain (C.C. Industries),

---

under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems. The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 or the municipal or state retirement system under which he is covered, except as provided by this section, as a result of any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability. As used in this section, the term "municipal employer" shall have the same meaning and shall be defined as said term is defined in section 7-467."

> 4409 CRB-2-01-6 (June 7, 2002). This board may disturb only those findings that are found without evidence, and may also intervene where material facts that are admitted and undisputed have been omitted from the findings. Burse, supra; Duddy, supra. We will also overturn a trier's legal conclusions when they result from an incorrect application of the law to the subordinate facts, or where they are the product of an inference illegally or unreasonably drawn from the facts. Burse, supra; Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998).

McMahon v. Emsar, Inc., 5049 CRB-4-06-1 (January 16, 2007).

Returning to the matter at bar, the respondent has claimed as error the trier's conclusion that because the claimant was not formally diagnosed with hypertension until January 2012, the notice of claim dated April 9, 2012 was therefore timely. The respondent argues that because the claimant was offered the option of taking hypertension medication in January 2008, the proper application of the applicable law, as set forth in Ciarlelli v. Hamden, 299 Conn. 265 (2010), would have required finding that the one-year statute of limitations for claims pursuant to § 7-433c began to run on that date, and not in January 2012. The respondent points out that in Ciarlelli, the court set forth a "totality of the circumstances" test which allows a fact finder the discretion to determine an onset date for hypertension independent of "the semantics of the expert or his use of any particular term or phrase."[7] Struckman v. Burns, 205 Conn. 542, 555 (1987). The respondent avers that had the trial commissioner properly applied this test, taking into consideration both the words and actions of Blumberg, the claimant's notice

[7] In Ciarlelli v. Hamden, 299 Conn. 265 (2010), the court stated: "Of course, this standard is not so inflexible as to require a finding in all cases that the medical professional used the term 'hypertension' in communicating the diagnosis to the employee. For example, evidence that an employee was prescribed antihypertensive medication for the treatment of high blood pressure related to hypertension, and not some other illness, likely would support a finding that the employee formally had been diagnosed with hypertension and knew, or should have known, of that diagnosis." Id., fn. 18.

of claim would have been found untimely. The trial commissioner's conclusions therefore represent an incorrect application of law to the subordinate facts.

In addition, the respondent finds erroneous the trier's conclusion that Blumberg's diagnosis of "borderline hypertension" indicated that the claimant's condition had not yet risen to the level of hypertension. The respondent points out that Krauthamer testified that the term "borderline hypertension" is not a medically recognized term for the diagnosis of hypertension and that under the standards propagated by the JNC 7, the more accurate diagnostic category for the claimant was Stage 1 hypertension. The respondent contends that the record indicates that Blumberg offered medication as an option in January 2008, and had the claimant agreed to take the medication, the respondent would have been obligated to pay for it. [8] The respondent further points out that had the trier determined "the diagnosis of 'borderline hypertension' was synonymous with a diagnosis of hypertension, the facts of the instant case are similar to those [in] Tesla v. City of Bridgeport, 5460 CRB-4-09-5." Appellant's Brief, pp.8-9. In light of this precedent, the respondent contends that the trier's conclusions in this regard are inconsistent and therefore "constitute reversible error." Id.

In Ciarlelli, our Supreme Court reviewed the history of the § 7-433c C.G.S. claim brought by the Ciarlelli claimant and ultimately reversed the opinion of this board wherein we stated that "the one year limitation period applicable to such injuries started to run when the plaintiff knew or should have known that he had symptoms of hypertension." Id., 276. Noting the unique nature of § 7-433c C.G.S. claims as "special

[8] We assume that the claimant would also be required to satisfy the other elements of a prima facie claim.

compensation" or "an outright bonus," id., *quoting* O'Connor v. Waterbury, 286 Conn. 732, 752 (2008), the court acknowledged that "the Workers' Compensation Act is used as a 'procedural avenue' for the administration of benefits under § 7-433c" id., 277, *quoting* Genesky v. East Lyme, 275 Conn. 246, 252 (2005), but "the language of § 31-294c provides no guidance as to when the one year limitation begins to run on a claim brought pursuant to § 7-433c…." [9] Id., 279.

The court then examined in some detail the prior decisions of the Appellate Court in Pearce v. New Haven, 76 Conn. App. 441, *cert. denied*, 264 Conn. 913 (2003), and Arborio v. Windham Police Dept., 103 Conn. App. 172 (2007), pointing out, inter alia, that in this board's earlier review of those matters, we "applied a standard that essentially authorizes workers' compensation commissioners to accept a post hoc diagnosis of hypertension based on a claimant's symptoms and then impute knowledge of that diagnosis retroactively to the claimant."[10] Ciarlelli, supra, at 296. The court determined that "such a standard is inconsistent with the meaning of accidental injury and our case law applying that principle, which 'requires proof of an accidental injury *which can be definitely located both as to time and place*." (Emphasis in the original.) Id., *quoting*

[9] Section 31-294c C.G.S. (Rev. to 2012) states, in pertinent part: "(a) No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury…. 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…."

[10] The Supreme Court also examined, and ultimately upheld, this board's decision to "apply the [one-year] limitation period for accidental injury even though, as the plaintiff maintains, it reasonably may be argued that hypertension fits more readily within the conceptual framework of repetitive trauma." Ciarlelli v. Hamden, 299 Conn. 265, 288 (2010).

Stier v. Derby, 119 Conn. 44, 49 (1934). Rather, the court stated, "it stands to reason that a formal diagnosis of hypertension or heart disease, communicated to an employee by his or her physician, constitutes the 'injury' that triggers the running of the limitation period of § 31-294c." Id., 299.

The court also remarked that "[b]ecause a diagnosis of hypertension involves the sound exercise of medical judgment, it is particularly inappropriate to expect a patient to discern that he or she suffers from that condition in the absence of a diagnosis by a professional with the requisite medical training and expertise." Id., 300. The court therefore concluded that "the one year limitation period for claims under§ 7-433c begins to run only when an employee is informed by a medical professional that he or she has been diagnosed with hypertension." Id. Moreover,

> although the issue of when the limitation period of § 31-294c begins to run in any given case remains a question of fact for a workers' compensation commissioner, evidence that an employee merely knew of past elevated blood pressure readings, or was advised by his or her physician to make certain lifestyle changes in response thereto, is not sufficient to trigger the limitation period in the absence of evidence that the employee formally had been diagnosed with hypertension by a medical professional and advised of that diagnosis.

Id., 301.

Returning once again to the matter at bar, it is clear, in light of the foregoing discussion of relevant precedent, that the proper inquiry in this matter is an assessment of whether the trier's inferences regarding the timeliness of the claimant's notice of claim were reasonable when viewed through the prism of the actions taken by the claimant's treating physician. Our review of the instant record indicates that both the claimant and

Blumberg essentially testified to the same version of what happened at the claimant's office visit in January 2008; Blumberg found the claimant had elevated blood pressure readings and gave the claimant the option of either implementing dietary restrictions and attempting to lose weight, or going on medication. The claimant testified that Blumberg said, "I don't think at this point in time there's any need for medication," May 23, 2013 Transcript, p. 31, and Blumberg also told him, "you lose some weight, you said you go on this DASH diet, get a little more exercise, there's no problem." Id., 32.

The claimant also concurred with a passage from Blumberg's deposition testimony indicating that at the office visit of January 2008, Blumberg had informed the claimant that his blood pressure readings were borderline, not that he had borderline hypertension. The claimant testified that he proceeded to adopt the dietary restrictions and monitor his blood pressure at home; again, both the claimant and Blumberg agree that the claimant's blood pressure improved in that the home readings generally fell within normal ranges. The claimant testified that when the claimant returned to Blumberg in April 2008, Blumberg was pleased with the claimant's improvement, particularly his weight loss, and essentially told him to continue with his home care.[11] Id., 4.

Relative to Blumberg's deposition, the record reflects, and the trial commissioner so found, that his testimony was consistent with that offered by the claimant at trial regarding the course of treatment agreed upon at the office visits of January and April

[11] The claimant testified that none of the doctors who perform the annual physicals for the fire department had ever recommended he seek treatment for high blood pressure, and prior to the emergency room visit in January 2012, apart from the incident in 2008, no other doctor had ever informed him that he suffered from hypertension.

2008. As mentioned previously herein, Blumberg stated that the claimant's echocardiogram of March 2008 was not indicative of hypertension, and also discussed his belief that the blood pressure readings taken by the claimant at home more accurately reflected the status of the claimant's blood pressure than the readings taken in his office. Moreover, in addition to testifying that he told the claimant he was "on the borderline" of developing hypertension at the office visit of January 2008, id., 37, when the doctor was queried as to whether he would have told claimant he was systematically hypertensive at either the office visit of April 2008 or December 2009, the doctor replied "[n]o."[12] Id., 38.

In light of the foregoing, we find that the evidence submitted in this matter provides more than adequate support for the inferences drawn by the instant trial commissioner. "As 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). The instant record clearly demonstrates that prior to January 2012, neither Blumberg nor any other physician ever rendered to the claimant a formal diagnosis of hypertension as contemplated by Ciarlelli v. Hamden, 299 Conn. 265, 299 (2010). In fact, the record demonstrates that Blumberg flatly denied ever telling the

[12] Under cross-examination at his deposition, Michael Blumberg, M.D., testified as follows:
Q: So on 4/4/08, would you have told him [the claimant] he was systematically hypertensive?
A: No.
Q: On 12/14/09, would you have told Tim that he was hypertensive?
A: No.
Q: Systematically hypertensive?
A: No.
Respondent's Exhibit 6, p. 38.

claimant he was suffering from hypertension. As this board previously observed in Savo v. Bridgeport, 5451 CRB-4-09-4 (July 8, 2011):

> [A] trial commissioner's evaluation as to whether a § 7-433c C.G.S. claim was filed in a timely manner must now focus not on what the claimant should have known, but must now focus on what his or her treating physician actually said or did. A trial commissioner must now try and establish at what point a claimant's treating physician actually diagnosed hypertension, or in the alternative, when a claimant received a prescription for medicine to treat hypertension or some other treatment for hypertension.

Thus, in light of Blumberg's demonstrated refusal to diagnose the instant claimant with hypertension, we are inclined to agree with the trier's observation previously mentioned herein that while there is little doubt that "Krauthamer would not have been so flexible and would have rendered a diagnosis of hypertension much sooner than Dr. Blumberg …it would be fundamentally unfair to punish the claimant for any error in judgment of his treating physician." Conclusion, ¶ E.

It is also clear that the facts of this matter are easily distinguished from the facts in Tesla v. Bridgeport, 5460 CRB-4-09-5 (August 26, 2011), wherein this board affirmed the dismissal of a claim for § 7-433c C.G.S. benefits due to lack of jurisdiction. We recognize that the Tesla case does bear some factual similarity to the matter at bar in light of the evidence in that record indicating that the Tesla claimant's physician also initially suggested the claimant implement lifestyle changes rather than take medication. However, we find that matter can be easily distinguished from the case at bar in light of the Tesla physician's unambiguous testimony that he had informed the claimant he suffered from hypertension at office visits in January and April 2006, both of which visits

occurred more than one year before the claimant filed his notice of claim. As such, the respondent's assertions regarding the binding nature of Tesla to the instant matter are unavailing. We are similarly unpersuaded by the respondent's assertion that they would have been responsible for paying for blood pressure medication had Blumberg elected to prescribe it to the claimant in January 2008. In that regard, we would point out to the respondent the following observation by the court in Ciarlelli, supra: "Indeed, under § 7-433c, a claimant may recover benefits for hypertension only if he suffers from that condition; a claimant is not entitled to benefits merely because he exhibits symptoms consistent with hypertension, such as elevated blood pressure, from time to time." Ciarlelli v. Hamden, 299 Conn. 265, 299 (2010).

There is no error; the November 15, 2013 Finding and Award by the Commissioner acting for the Seventh District is accordingly affirmed.

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