CASE NO. 5906 CRB-4-14-1 : COMPENSATION REVIEW BOARD
CLAIM NO. 400087355

JAMES STAUROVSKY
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: JANUARY 30, 2015

CITY OF MILFORD – POLICE DEPARTMENT
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLANT

and

PMA MANAGEMENT CORP. OF NEW ENGLAND
ADMINISTRATOR

APPEARANCES:

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

The respondent was represented by Michael V. Vocalina, Esq., Cotter, Cotter & Mullins, LLC, 6515 Main Street, Suite 10, Trumbull, CT 06611.

This Petition for Review[1] from the January 6, 2014 Findings and Orders and the April 7, 2014 Amended Findings and Orders of the Commissioner acting for the Fourth District was heard September 26, 2014 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Michelle D. Truglia and Daniel E. Dilzer.

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

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The issue in this case is as to whether a claimant's right to obtain benefits under § 7-433c C.G.S. terminates on the date he or she leaves the employment of a police or fire department.[2] The claimant filed for heart and hypertension benefits a few weeks after leaving the employment of the respondent Milford Police Department. The trial commissioner concluded that he filed a timely claim and awarded the claimant benefits under § 7-433c C.G.S. The respondent has appealed this award, arguing the statute limits benefits to a claimant who sustained a disability while employed as a police officer or a firefighter. We find the trial commissioner appropriately applied the law as interpreted by recent appellate precedent. Therefore we affirm the Amended Findings and Orders herein.

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[2] This statute reads as follows:

Sec. 7-433c. Benefits for policemen or firemen disabled or dead as a result of hypertension or heart disease. (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 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.

The record herein is somewhat different than what we have addressed in previous appeals of § 7-433c C.G.S. awards. The trial commissioner in her original Findings and Orders, dated January 6, 2014, denied the claimant's bid for benefits. As the trial commissioner incorporated the factual findings in her Amended Findings and Orders we will review the facts found in the original Findings and Orders. The commissioner found the claimant was employed by the Milford Police Department from October 5, 1987 to February 17, 2012 when he retired under a years of service pension. The claimant's last day of work was February 2, 2012 and he utilized unused vacation time to extend his service until February 17, 2012. On February 13, 2012 he started a new job as a campus police officer for Sacred Heart University. On February 24, 2012 the claimant sustained a myocardial infarction while shoveling his driveway. He was transported to St. Vincent's Hospital and had a stent inserted, and later underwent bypass surgery on April 9, 2012. The angiogram performed the day of the myocardial infarction indicated the claimant had severe coronary artery disease that affected four major arteries. The claimant testified that during his career with the Milford Police Department he had never been told by a physician that he had heart disease or hypertension and was not aware he had heart disease in January of 2012.[3] He also testified that he had never been disabled from working during his career with the Milford police due to heart disease or hypertension.

The claimant's cardiologist testified via a deposition. Dr. Victor Mejia testified that the claimant's coronary artery disease was a chronic disease that developed over a period of years. The claimant suffered from heart disease not only on the date of his myocardial infarction but also on January 30, 2012, his claimed date of injury. Dr. Mejia

[3] The claimant asserted a January 30, 2012 date of injury in his Form 30C.

opined that it was reasonably medically probable that the percentage of the claimant's blockages had not changed dramatically after the date the claimant left his employment with the Milford police, as it was reasonable and probable the disease developed over a period of years. The claimant's heart disease was a substantial factor in his myocardial infarction, as was the stress of snow shoveling. Dr. Mejia was unaware of any symptom of coronary artery disease present in the claimant before February 24, 2012. Dr. Mejia opined, based on his diagnosis of the claimant, that the claimant qualified for a disability rating to his heart as of January 2012; but had no evidence that the claimant's heart functioning was impaired at all in January 2012.

The claimant testified that he had concerns as to possibly having coronary artery disease in 2003 as it runs in his family. After discussion with a primary care doctor the claimant was examined by Dr. Clifford Kramer, a cardiologist, on July 28, 2003. Dr. Kramer reported recommending a diet and exercise program for the claimant, finding his lipid profile acceptable, and directed that the claimant undergo a stress test. The claimant underwent a stress test on August 19, 2003 that Dr. Kramer read as "clinically and electrocardiographically negative." Findings, ¶ 12.

Based on these facts the trial commissioner concluded in the Findings and Orders issued January 6, 2014 that the claimant was credible and persuasive. She found he was neither diagnosed or treated for coronary artery disease until February 24, 2012, therefore the notice of claim for §7-433c C.G.S. was filed in a timely manner.[4] The commissioner concluded Dr. Mejia was credible and persuasive except for his opinion that the claimant qualified for a disability rating for his heart in January 2012. The commissioner found

[4] The claimant filed his Form 30C on March 19, 2012.

this opinion speculative at best. In the January Findings and Orders, in Conclusion, ¶ E, the trial commissioner concluded that in order to receive benefits under § 7-433c C.G.S. the claimant's heart condition and the resulting disability had to be suffered while he was a member of the Milford Police Department. She concluded that while the claimant's disease was present while he was a member of the Milford police, he did not sustain any disability from that condition until he left their employ. Since he had not been disabled while employed by the Milford police, the commissioner concluded he did not meet the statutory requirements for an award under § 7-433c C.G.S.

Both parties filed post-judgment motions subsequent to the January 6, 2014 Findings and Orders. The claimant filed a Motion for Reconsideration on January 15, 2014 asserting that the trial commissioner had improperly applied the law in the present case, and that pursuant to Arborio v. Windham Police Department, 103 Conn. App. 172 (2007) that the claimant need not sustain a disability while a police officer or fire fighter to have a viable claim for § 7-433c C.G.S. benefits; rather that the claimant need only sustain an injury and file a claim within one year of that event. The respondent filed an objection to the Motion for Reconsideration, but on April 7, 2014 the trial commissioner issued Amended Findings and Orders incorporating the claimant's bid for relief. In particular the trial commissioner removed Conclusion, ¶ E from the prior Findings and Orders and replaced that conclusion with the following conclusions:

> G. The Claimant suffered a condition or impairment of health due to heart disease on January 30, 2012.[5]
>
> H. The Claimant's longstanding heart disease was a significant contributing factor in causing his heart attack.

[5] See footnote 3.

I. Despite the fact that the Claimant was not disabled from his work as a police officer with the City of Milford due to his coronary artery disease (or due to the February 24, 2012 myocardial infarction) in January 2012, he had developed a condition during his tenure as a police officer with the City of Milford that could spawn a claim for monetary benefits in the future.

J. While proof of a disability is a prerequisite to the actual collection of benefits, one need not be disabled before being required to notify one's employer of an accidental injury and to file a claim within one year of that injury.

K. The Claimant is entitled to all benefits under C.G.S. Section 7-433c, subject to the lawful limitations of C.G.S. Section 7-433b.

The respondent filed a Motion to Correct seeking findings that the claimant had been advised in 2003 as to coronary artery disease and had been directed to make lifestyle changes. The Motion to Correct also sought to add a conclusion that since the claimant had a statutory obligation to file a § 7-433c C.G.S. claim in 2003 that the present claim was jurisdictionally untimely and should be dismissed. The trial commissioner denied this motion in its entirety and the respondent thus commenced the present appeal.[6]

The respondent raises a number of issues on appeal: a) whether the claim herein met the statutory criteria to award benefits under § 7-433c C.G.S.? b) Whether the claim was timely under the term of § 7-433c C.G.S.? and c) was the Motion for Reconsideration properly considered by the trial commissioner? We have reviewed each issue and we are not persuaded that the trial commissioner committed error. On appeal, we generally extend deference to the decisions made by the trial commissioner. "As with

[6] The claimant had also originally taken an appeal from the Findings and Orders but that appeal was withdrawn prior to the hearing before the Compensation Review Board.

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." Daniels v. Alander, 268 Conn. 320, 330 (2004). Nonetheless, while we must provide deference to the decision of a trial commissioner, we may reverse such a decision if the commissioner did not properly apply the law or reached a decision unsupported by the evidence on the record. Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

We find that essentially this case turns on how the courts have interpreted the heart and hypertension statute. Without undertaking an extensive review of the precedential history of appellate decisions over the past decades, it is fair to say that there have been shifting standards in place as to what facts a claimant needed to prove in order to establish a timely claim under the statute. The trial commissioner's original Findings and Orders were challenged by the claimant as not properly applying the current status of the law. As the claimant viewed the situation, the Appellate Court's decision in, Arborio, supra, changed the standard for eligibility and the trial commissioner incorrectly applied an outdated interpretation of the law. When presented with a Motion for Reconsideration the trial commissioner concurred in this view and amended the Findings and Orders. We must determine if this was a reasonable interpretation of the law.

We note that the respondent has alleged the trial commissioner erred in even considering the Motion for Reconsideration. The respondent argues that since such a Motion is not enumerated within our regulations or within Chapter 568 that consideration of this motion was inconsistent with the principle that the Workers' Compensation Commission is a tribunal of limited jurisdiction and is strictly limited in how it may

address disputes. The respondent cites Jones v. Town of Redding, 5223 CRB-7-07-4 (October 15, 2008), *aff'd*, 296 Conn. 352 (2010) for this position, arguing it stands for the position that a Finding cannot be reopened. We are not persuaded, in part because we found in Jones the dispute centered upon whether the respondents were prevented from contesting the issue of subject matter jurisdiction by "fraud, accident, mistake, surprise or improper management of the opposite party." Id. In the present matter both parties litigated the issue of jurisdiction and the claimant believed the trial commissioner relied on an erroneous legal standard. Prior to bringing this to our attention, by way of an appeal to the Compensation Review Board, the claimant chose to file a post-judgment motion to bring this to the trial commissioner's attention. We also note that pursuant to § 31-298 C.G.S., a trial commissioner is empowered with great latitude to conduct a hearing 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."[7] The respondent was given an opportunity to object to the Motion for Reconsideration, so therefore we do not find their rights to due process were prejudiced. In light of our statutory obligation to

[7] This statute reads as follows:

Sec. 31-298. Conduct of hearings. Both parties may appear at any hearing, either in person or by attorney or other accredited representative, and no formal pleadings shall be required, beyond any informal notices that the commission approves. In 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. No fees shall be charged to either party by the commissioner in connection with any hearing or other procedure, but the commissioner shall furnish at cost (1) certified copies of any testimony, award or other matter which may be of record in his office, and (2) duplicates of audio cassette recordings of any formal hearings. Witnesses subpoenaed by the commissioner shall be allowed the fees and traveling expenses that are allowed in civil actions, to be paid by the party in whose interest the witnesses are subpoenaed. When liability or extent of disability is contested by formal hearing before the commissioner, the claimant shall be entitled, if he prevails on final judgment, to payment for oral testimony or deposition testimony rendered on his behalf by a competent physician, surgeon or other medical provider, including the stenographic and videotape recording costs thereof, in connection with the claim, the commissioner to determine the reasonableness of such charges.

address the substantive rights of the parties in a disputed claim, we find no error from the trial commissioner's consideration of the Motion for Reconsideration.

The central issue raised by the respondent in this appeal is essentially that the trial commissioner's original Findings and Orders correctly interpreted the law and the Amended Findings and Orders incorrectly interpreted the law. As the respondent views the law the claimant's reliance on Arborio, supra, is unwarranted as there is binding precedent on this issue which is on point and supports the trial commissioner's original position. They cite Gorman v. Waterbury, 4 Conn. App. 226 (1985) as standing for the proposition that unless a claimant is disabled with a cardiac illness or hypertension while employed as a police officer or fire fighter they lack standing to receive an award under § 7-433c C.G.S. Since the claimant was already retired from the Milford police department at the time he filed his claim, and since he had sustained no disability while employed, they believe there is no jurisdiction to award the claimant benefits.

Our research indicates that Gorman has not been repudiated by our Appellate or Supreme Court; but a close reading of the facts in that case suggests that Arborio and the contemporary touchstone case on the heart and hypertension law, Ciarlelli v. Hamden, 299 Conn. 265 (2010), that these cases have more weight and have limited the precedent in Gorman. In Gorman the claimant had been employed as a police officer for many years and suffered from a hypertensive condition from 1967 until his death on September 7, 1972. The claimant retired as a police officer on October 30, 1971 for unrelated reasons and the hypertension had no disabling impact on his ability to perform his job. The surviving spouse sought § 7-433c C.G.S. benefits after her husband's death. Id., 230. The Appellate Court ruled this claim was not valid as "[a] fair reading of the statute,

however, reveals that both the condition of hypertension or heart disease *and* the death or disability resulting from such a condition must be suffered while the individual was on or off duty as a regular member of a police or fire department." Id., 231-232. (Emphasis in original.). The opinion further noted that "[u]nlike a police officer on active status, the plaintiff's husband could not have been injured in the line of duty because he was retired." Id. Since the claimant did not die or suffer any disability from his heart disease while employed as a police officer, there was no statutory basis to award benefits under § 7-433c C.G.S. Id., 233.

On factual grounds, we note that had the scenario in Gorman presented itself today, it most likely would have led to a dismissal of the claim, but for totally different reasons based on the precedent in Arborio and Ciarlelli. Since the claimant in Gorman appeared to have had scienter of his hypertensive condition for well over a year prior to his retirement, and failed to put the respondent on notice within the one year period under § 31-294c(a) C.G.S. he would be seeking benefits under § 7-433c C.G.S., any claim for benefits subsequent to retirement would have been time barred.[8] See Arborio, supra, 188, and Ciarlelli, supra, 294.

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[8] This statute reads as follows:

Sec. 31-294c. Notice of claim for compensation. Notice contesting liability. Exception for dependents of certain deceased employees. (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, provided, if death has resulted within two years from the date of the accident or first manifestation of a symptom of the occupational disease, a dependent or dependents, or the legal representative of the deceased employee, may make claim for compensation within the two-year period or within one year from the date of death, whichever is later. 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. An employee of the state shall send a copy of the notice to the Commissioner of Administrative Services. As used in this section, "manifestation of a symptom" means manifestation to an

The primary reason that the Appellate Court upheld dismissal of the claim in Gorman, and that the respondent seeks to overturn the award in this case, is that the claimant did not sustain any disability while employed. See Appellant's Brief, p. 4. The claimant in this case successfully convinced the trial commissioner that subsequent to Arborio a claimant no longer needed to sustain a disability due to heart disease or hypertension in order to present a valid claim for § 7-433c C.G.S. benefits. This interpretation of law is consistent with the current appellate precedent governing § 7-433c C.G.S.

In Arborio the Appellate Court specifically determined that a claimant who sustained an injury from heart disease or hypertension but had not sustained a disability from this injury was obligated to file a timely notice of claim. "We affirm our holding in *Pearce* [76 Conn. App. 441 (2003] and do not agree with the plaintiff's statement that '[p]roof of a *disability* is a jurisdictional requirement [to filing a claim].' (Emphasis in original.)" Id., 177. "Certainly, proof of a disability is a prerequisite to the actual collection of benefits, but one need not be disabled before being required to notify one's employer of an accidental injury and to file a claim within one year of that injury." Id. In Arborio the Appellate Court further noted that this required a formal notice that the claimant would seek benefits in the future from a presently non-disabling cardiac injury.

> However, pursuant to § 31-294c(a), the employee not only must notify his employer of the accident, but he also must file a claim for benefits within one year of the date of the accident. Failure to file such a claim results in a jurisdictional bar, unless the failure to file a claim within one year of the date of the accident is saved pursuant to one of the provisions found in § 31-294c(c).

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employee claiming compensation, or to some other person standing in such relation to him that the knowledge of the person would be imputed to him, in a manner that is or should be recognized by him as symptomatic of the occupational disease for which compensation is claimed.

Id., 178-179.

When the Supreme Court issued their opinion in Ciarlelli, supra, they reiterated this position. Citing Arborio, the Supreme Court specifically quoted the passages in that opinion we previously referenced Ciarlelli, supra, 294. The decision further focused on what, in the absence of a disability, constituted the "injury" that triggered a time limitation to seek benefits. "Because General Statutes § 7-433c (a) provides for an award of benefits to an otherwise eligible claimant who 'suffers . . . any condition or impairment of health caused by hypertension or heart disease resulting in his death or his . . . disability,' 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., 298-299.

Therefore, the Appellate Court and the Supreme Court in the past decade have interpreted § 7-433c C.G.S. in a fashion where the presence of "any condition or impairment of health caused by hypertension or heart disease", id., 298, created the triggering point to file a claim for benefits while the claimant must await "his death or his temporary or permanent, total or partial disability", id., fn2, resulting from that injury so as to collect benefits. To the extent Gorman stands for a different proposition, the decisions in Arborio and Ciarlelli stand for the position it is no longer the controlling precedent.

Looking at the facts herein the trial commissioner concluded that the claimant's cardiologist rendered a reliable and credible opinion that the claimant had heart disease on January 30, 2012, while he was still employed by the Milford Police Department. See Findings, ¶ 9(b) and Conclusions, ¶¶ B, E and G. These conclusions were consistent with

the evidence presented on the record. See March 9, 2012 and January 20, 2013 letters by Dr. Mejia, Claimant's Exhibit D and Dr. Mejia's deposition testimony. Claimant's Exhibit G, pp. 8-10. At his deposition Dr. Mejia opined the claimant had heart disease on January 20, 2012, id., and reiterated that while it did not lead to disabling consequences until later that it had been developing for an indefinite period of many years prior to that date. Id., pp. 17-18. We therefore conclude that the claimant presented probative evidence the trial commissioner could rely on that he had a "condition or impairment of health caused by hypertension or heart disease", Ciarlelli, supra, 298, while employed by the Milford Police Department and filed his claim for § 7-433c C.G.S. benefits within one year of that injury. The Supreme Court decision in Ciarlelli stands for the position this constitutes an appropriate claim for such benefits.[9]

The precedent in Ciarlelli is also dispositive of the respondent's argument that the claim herein was filed in an untimely fashion. The respondent argues at length that the claimant was notified that he had heart disease by his primary care physician in 2003 and this knowledge put the claimant on notice to file a claim for § 7-433c C.G.S. benefits at this time. The respondent also argues that they sought corrections to the Findings to establish this fact and the trial commissioner erred by denying these corrections. Appellant's Brief, pp. 5-7. We are not persuaded because we conclude the trial

[9] We note that there is a substantial amount of dicta in Gorman v. Waterbury, 4 Conn. App. 226 (1985) that a claim submitted "years after employment as a police officer had terminated" would seriously prejudice the municipal employer and was an excessive expansion of the "bonus statute" for police officers and fire fighters. Id., 232. Certainly this opinion evinces a strong public policy against providing claimants limitless time periods in which to file a claim. In Ciarlelli v. Hamden, 299 Conn. 265 (2010) the Supreme Court held that an "injury" must occur in order to trigger the one year time period under § 31-294c(a) C.G.S. to file a claim for benefits. Id., 299. We can reconcile the holdings of Gorman and Ciarlelli quite simply. A claimant must sustain an "injury" due to his or her heart disease or hypertension while employed as a police officer or fire fighter and file his or her claim within one year of sustaining that injury, regardless if they continue to be employed by a police or fire department.

commissioner was not persuaded this constituted a "diagnosis" of heart disease, nor did the lifestyle advice proffered amount to the prescription of medicine or treatment to address heart disease. As the Supreme Court held in Ciarlelli,

> In light of the foregoing, we conclude 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. In many respects, this simply represents a return to the standard that the board applied prior to *Pearce*, which, in our view, more faithfully adhered to the statutory definition of accidental injury in view of the fact that, as a general matter, a formal diagnosis of hypertension can be definitely located in time and place. Thus, 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., 300-301.

A review of Findings, ¶¶ 10-13 leads one to the conclusion that the test in Ciarlelli as to either communicating a diagnosis of heart disease or commencing treatment for such an ailment had not occurred. The claimant testified he had not been diagnosed with heart disease nor prescribed any medication and he was found to be a credible witness. The medical evidence also was that the claimant's lipid profile was acceptable and that he successfully passed a stress test. In reviewing our precedent subsequent to Ciarelli as to the timeliness of § 7-433c C.G.S. claims, see Tesla v. Bridgeport, 5460 CRB-4-09-5 (August 26, 2011), Rodriguez v. Bridgeport, 5577 CRB-4-10-7 (July 27, 2011) and Savo v. Bridgeport, 5451 CRB-4-09-4 (July 8, 2011), we are

satisfied that the trial commissioner applied the correct standard in determining the claimant's obligation to file a claim for benefits did not accrue in 2003.[10]

The evidence presented by the claimant in this case was that while he was employed as a police officer he sustained an injury within the terms of the statute, and that this was not an injury sustained after his retirement from the police. He filed his claim for benefits within one year of that injury. In light of precedent since Gorman, we cannot now conclude that an otherwise viable and timely claim for § 7-433c C.G.S. benefits is barred by the intervening retirement of the claimant.

Therefore, we affirm the Amended Findings and Orders.

Commissioners Michelle D. Truglia and Daniel E. Dilzer concur in this opinion.

[10] We affirm the denial of the respondent's Motion to Correct. The trial commissioner is not obligated to adopt the legal opinions and factual conclusions of a litigant. Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006) and D'Amico v. Dept. of Correction, 73 Conn. App. 718 (2002). A trial commissioner may also conclude the evidence he or she chose not to cite in his or her Findings was not deemed probative. Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008).