

CASE NO. 5918 CRB-7-14-3
CLAIM NO. 700152445

: COMPENSATION REVIEW BOARD

PETER J. ZEZIMA
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION
COMMISSION

v.

: MAY 12, 2015

CITY OF STAMFORD
BOARD OF EDUCATION
EMPLOYER

and

PMA MANAGEMENT
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Mark F. Katz, Esq., 196 North Street, Stamford, CT 06901.

The respondents were represented by Scott Wilson Williams, Esq., Williams Moran, LLC, PO Box 550, Fairfield, CT 06824.

This Petition for Review¹ from the February 10, 2014 Finding and Dismissal of the Commissioner acting for the Seventh District was heard December 19, 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 We note that a postponement was granted during the pendency of this appeal.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has appealed from a Finding and Dismissal which determined that his current disability and need for medical treatment were not due to a previous compensable injury. The claimant argues that the decision was against the weight of the medical evidence and should be reversed on appeal. We conclude the trial commission could have reasonably reached the decision that she reached from the evidence on the record. Therefore, we affirm the Finding and Dismissal.

The commissioner found the following facts at the conclusion of the formal hearing. The claimant sustained a compensable injury to his left second finger on February 11, 2009 when a door closed on his finger. The claimant was also involved in a motor vehicle accident on January 13, 2009 which caused a contusion to his left hand and injury to his second left digit. An x-ray of the claimant's hand after that incident revealed degenerative changes at the second metacarpophalangeal joint. Subsequent to the February 11, 2009 incident the claimant sought treatment with Dr. Larry Moy of Concentra Medical Center. The doctor noted a contusion and degenerative joint disease, including soft tissue swelling and severe degenerative arthritis of the left index finger. Dr. Moy noted no prior significant injury to the claimant's finger, placed the finger in a splint, prescribed physical therapy and returned the claimant to work.

The claimant was examined on March 5, 2009 by an orthopedic hand surgeon, Dr. Haik Kavookjian. He was diagnosed with a left finger contusion with aggravation of degenerative arthritis, provided a splint and cleared to work full duty. The claimant was then examined by another orthopedic surgeon, Dr. Kevin Plancher, on four occasions

between March 5, 2009 and June 25, 2009. Dr. Plancher opined that the claimant's injury to his metacarpophalangeal joint occurred as a result of an assault at work which led to the claimant's hand being slammed into a door. The claimant was examined by his primary care physician, Dr. Michael Fusco on July 20, 2009 who reported the claimant had not had any prior trauma to his left hand and that his injury was a crush injury sustained at work. Dr. Fusco referred the claimant to Dr. John Dowdle, an orthopedic surgeon. Dr. Dowdle reported that the claimant suffered from advanced left index finger metacarpalphalangeal joint arthritis as a result of a work injury. Dr. Dowdle performed surgery on the claimant's left index finger in September of 2009.

The claimant was examined by the respondents' examiner, Dr. Robert Tross. Dr. Tross noted that Dr. Fusco's notes indicated that the claimant had been involved in a motor vehicle accident two weeks prior to the work accident. Dr. Tross concluded the claimant's pre-existing arthritis was significant enough for him to seek medical treatment for his finger prior to the February 11, 2009 incident and this pre-existing degenerative arthritis was the primary reason for the claimant's need for surgical intervention. Dr. Tross opined that absent the February 11, 2009 date of injury the claimant would have required surgical invention on his index finger. Dr. Tross opined the claimant had a sedentary work capacity.

A February 7, 2010 report by Dr. Plancher noted that he was unaware of the claimant's January 13, 2009 motor vehicle accident and had not reviewed x-rays taken the day of the incident. Dr. Dowdle, conversely, reiterated on February 8, 2010 that the claimant's need for surgery was due to the work injury. Dr. Fusco noted on July 20, 2010 that the claimant had been under his care for many years and his health had been

declining since the February 2009 work injury. Dr. Fusco noted that claimant was unable to tolerate many pain medications, particularly Vicodin and Percocet, and therefore should remain out of work.

On April 12, 2001 the claimant presented for a Commissioner's examination by Dr. Thomas Rago, an orthopedic hand surgeon. Dr. Rago noted the claimant sustained a work-related injury in 2009 which he believed aggravated a pre-existing condition of osteoarthritis. He believed that based on the patient's description he was asymptomatic prior to that event and the pain and swelling that created the need for surgery was the result of the work related injury. On May 25, 2011 Dr. Dowdle recommended the claimant undergo a neurological examination and placed the claimant out of work for the remainder of the school year.

The issue of a June 2, 2011 report from Dr. Fusco was considered by the commissioner. She noted the report said the claimant never complained of carpal tunnel syndrome prior to his work injury and concurred with Dr. Dowdle's assessment of the cause of the surgery. However, Dr. Fusco testified at his deposition that claimant had asked him to write a letter and the claimant had drafted the June 2, 2011 letter. He said he had thought the claimant was providing accurate information at that time. He further testified that he found the claimant's finger swollen as of the January 13, 2009 visit and had ordered x-rays responsive to the swelling. Therefore the statement in the letter that the claimant had experienced no trauma prior to the work incident was not true.

The claimant however testified at his deposition he never had problems with his left index finger prior to the February 2009 work incident and no doctors had looked at it. At the formal hearing the claimant testified that he sprained his thumb and wrist in the

January 2009 motor vehicle accident and the only reason he mentioned it to Dr. Fusco was because his hand was in a wrap. He said he was told by Dr. Fusco it was no big deal to get an x-ray and he said that he was not in any pain prior to the February 11, 2009 work related injury.

The commissioner also considered Dr. Rago's deposition testimony. He testified he was not aware of the claimant's motor vehicle accident and had based his opinion on the history that the claimant provided to him. He further testified that the condition of the claimant's finger joint was "a very, very badly damaged joint from arthritis" but could not say specifically whether it was related to the school incident or the car incident. Findings, ¶ 36. He did say that the claimant's account of the weight of the door causing the injury was reasonable, but also said had the claimant stayed at the same level of symptoms between the motor vehicle accident and the work accident that there would be no causal relationship between the work incident and the claimant's condition.

Based on this record the trial commissioner concluded that while the respondents had accepted the February 11, 2009 left second finger injury as compensable, the claimant's testimony was not credible. She found the claimant misrepresented his medical history to treating physicians and offered testimony inconsistent with medical evidence. She therefore discounted the opinions offered by Dr. Moy, Dr. Kavookjian, Dr. Plancher and Dr. Dowdle since they were not advised of the motor vehicle accident. She further found Dr. Fusco's opinion not to be credible as he had provided an opinion based on the claimant's information and not based on medical records. She further found the opinion of the commissioner's examiner, Dr. Rago, not to be persuasive as he lacked a complete medical history when he offered his opinion, and his deposition testimony

was inconclusive. She did find Dr. Tross' opinions credible and persuasive that the claimant's need for surgery was not related to his February 11, 2009 work injury; as he had a complete medical history when offering his opinion. Therefore, the trial commissioner found the totality of the evidence did not create a causal relationship between the claimant's compensable injury and his need for surgery, and she ordered the claim denied.

The claimant filed a Motion to Correct seeking corrections consistent with finding the claimant's work related injury were the proximate cause of his need for surgery. The trial commissioner denied this motion in its entirety. The claimant has appealed arguing that the medical evidence clearly established that the work related injury, which he describes as a crush injury of his knuckle, was the primary cause of his need for surgery, and that the trial commissioner's decision must be reversed.

On appeal, we generally extend deference to the decisions made by the 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." Daniels v. Alander, 268 Conn. 320, 330 (2004). The Compensation Review Board cannot retry the facts of the case and may only overturn the findings of the trial commissioner if they are without evidentiary support, contrary to the law, or based on unreasonable or impermissible factual inferences. Kish v. Nursing and Home Care, Inc., 248 Conn. 379 (1999) and Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). In addition, the burden of proof in a workers' compensation claim for benefits rests with the claimant. Dengler v. Special Attention Health Services, 62 Conn. App. 440 (2001). We further 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.)

We note many parallels between the present case and another recent case we decided, Camp v. Lupin Pharmaceuticals, Inc., 5936 CRB-6-14-05 (April 24, 2015). In Camp the claimant argued that as the respondents had accepted that she sustained some injury from an incident while in their employ that they had therefore accepted the injuries she asserted were the sequelae of that incident. The trial commissioner was not persuaded by her evidence and denied her claim for further benefits. We affirmed that decision on appeal. “The primary focus of this case lay not in whether or not the claimant was involved in an incident while working where snow fell on her off a restaurant roof; rather it was whether the impact of that incident had any material effect which caused or exacerbated the various ailments the claimant has associated with that incident.” *Id.* In Camp, the trial commissioner did not find the claimant’s testimony credible and persuasive and therefore discounted medical opinions reliant on her narrative. The trial commissioner reached a similar decision in this case. We cannot distinguish this case from Camp either on the law or on the facts.

The claimant argues that he offered probative evidence that the injury he sustained at work subsequent to his motor vehicle accident played a significant role in his need for finger surgery and the previous incident was not a material factor. As the claimant views the situation the commissioner should have adopted this opinion and

awarded benefits. The trial commissioner, however, found the opinion of Dr. Robert Tross persuasive that the primary reason for surgical intervention was preexisting degenerative arthritis and that he was not persuaded the work-related injury was a significant cause in the need for treatment. See Conclusion, ¶ E. It is black letter law that, “it is the trial commissioner’s function to assess the weight and credibility of medical reports and testimony. . . .” O’Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818 (1999). If the trial commissioner found Dr. Tross’ opinion more persuasive than the opinions offered by the claimant’s witnesses she was entitled to rely on this opinion. See Dellacamera v. Waterbury, 4966 CRB-5-05-6 (June 29, 2006).²

Essentially the question of whether a nexus of proximate cause exists between a compensable injury and a subsequent medical condition is, and always has been, an issue of fact for the trial commissioner to resolve, “[t]he 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, 373 (2012). In many ways this case is the mirror image of Hadden v. Capitol Region Education Council, 5843 CRB-1-13-5 (May 20, 2014), *appeal pending*, AC 36913. In Hadden, the respondents argued the claimant’s medical condition was due to preexisting ailments, but the trial commissioner accepted the claimant’s argument a compensable injury accelerated the deterioration of her condition. We affirmed the trial commissioner’s factual determination. In the

² The trial commissioner chose not to rely on the opinions of the commissioner’s examiner, Dr. Rago. As the trial commissioner outlined with specificity what she believed to be the limitations of this evidence, see Conclusions, ¶¶ F & G, we must respect her determination.

present case the trial commissioner concluded the work-related injury did not materially accelerate the need for surgery. Since this conclusion was based on a foundation of probative evidence the commissioner found reliable, we must defer to this conclusion.³

The trial commissioner was not persuaded by the claimant's testimony or his evidence and was presented with an alternative theory of causation by the respondents' expert witness. We must respect her decision to dismiss the claim for further medical treatment.

We affirm the Finding and Dismissal.

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

³ The claimant also argues that it was error to deny his Motion to Correct. 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. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003); and Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006). The claimant did not persuade the trial commissioner that this evidence was probative or relevant, and the commissioner is not bound to accept the view of the case presented by a litigant.