CASE NO. 5923 CRB-5-14-3 : COMPENSATION REVIEW BOARD
CLAIM NO. 500159452

ROBERT BEDARD : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : APRIL 24, 2015

TOWN OF SOUTHBURY
EMPLOYER

and

TRIDENT INSURANCE SERVICES
OF NEW ENGLAND
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES: The claimant was represented by Ross T. Lessack, Esq., The Dodd Law Firm, LLC, 1781 Highland Avenue, Suite 105, Cheshire, CT 06410.

The respondents were represented by Andrew J. Hern, Esq., Law Offices of Andrew J. Hern, 221 Main Street, Hartford, CT 06106.

This Petition for Review from the March 10, 2014 Findings and Orders by the Commissioner acting for the Fifth District was heard on September 26, 2014 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Michelle D. Truglia and Daniel E. Dilzer.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have petitioned for review from the March 10, 2014 Findings and Orders by the Commissioner acting for the Fifth District. We find no error and accordingly affirm the findings of the trial commissioner but remand this matter for additional proceedings consistent with this opinion.[1]

The trial commissioner took administrative notice of a Form 30C dated July 15, 2013 and received by the Workers' Compensation Commission on July 17, 2013 in which the claimant alleged that on April 22, 2013, he sustained injuries to his right shoulder; left hip, leg and foot; low back; and pelvis.[2] The trial commissioner also took administrative notice of a Form 43 dated September 6, 2013 and received by the Workers' Compensation Commission on September 10, 2013 wherein Argonaut Insurance acknowledged that the claimant had sustained injuries on April 22, 2013 but denied that the claimant injured his low back or buttocks on that date.[3]

The claimant testified that he has been an active member of the Southbury volunteer fire department since approximately 1977; the legal name of the fire department is "Southbury Volunteer Firemen's Association ["Association"]. He is currently a firefighter, but was chief of the Association from 1998 to 2001. After

[1] We note that two motions for extension of time were granted during the pendency of this appeal.

[2] "A form 30C is the document prescribed by the workers' compensation commission to be used when filing a notice of claim pursuant to the Workers' Compensation Act, General Statutes § 31-275 et seq." Mehan v. Stamford, 127 Conn. App. 619, 622 n.4, *cert. denied*, 301 Conn. 911 (2011).

[3] "A form 43 is a disclaimer that notifies a claimant who seeks workers' compensation benefits that the employer intends to contest liability to pay compensation. If an employer fails timely to file a form 43, a claimant may file a motion to preclude the employer from contesting the compensability of his claim." Mehan v. Stamford, 127 Conn. App. 619, 623 n.6, *cert. denied*, 301 Conn. 911 (2011).

sustaining an injury on April 22, 2013 while fighting a fire, the claimant prepared a Form 30C at home on July 15, 2013 and then brought a copy to Joan Haman, the executive assistant to the fire chief. While the claimant waited, Haman completed the paperwork necessary for sending a certified copy of the Form 30C to the Workers' Compensation Commission.

The claimant testified that the Association's office is located at 461 Main Street in Southbury, and the building is owned by the Town of Southbury. The total budget for the Association is approximately $375,000.00, of which the Town of Southbury contributes $300,000.00. Haman, who reports to the fire chief and president of the Association, is paid by the Association directly. The claimant indicated that when he was chief of the Association, he was responsible for reporting work-related injuries and filling out paperwork. His assistant would then take the paperwork to the town hall and present it to them. The claimant believed that the Form 30C could be hand-delivered, and testified that as far as he knew, the Association was his employer.

The claimant also testified that on July 15, 2013, he e-mailed a copy of the Form 30C to Ed Edelson, the first selectman for the Town of Southbury. In addition, on the same day that the claimant brought his paperwork to Haman, he tried to make an appointment with Edelson because he felt he was not making any progress with the respondent insurer relative to obtaining medical treatment. Edelson's assistant told the claimant that Edelson was out of town but she would let him know.

Joyce Girgasky, assistant treasurer for the Town of Southbury, also testified. Girgasky stated that she has worked for the town for twenty-seven (27) years and in

addition to reconciling the town's books, she currently handles all of the town's insurances. She testified that she never received a Form 30C regarding the claimant's injury of April 22, 2013 and never sent a Form 30C to the Workers' Compensation Commission on the claimant's behalf. Girgasky stated that Haman works for the Association and is neither employed nor paid by the town. Girgasky testified that Haman's duties did include bringing paperwork to Girgasky when a firefighter was injured so Girgasky could file the forms with the workers' compensation insurer. However, Girgasky stated that Haman did not bring her a copy of the claimant's Form 30C and if she had, Girgasky would have immediately forwarded it to the insurance company. Girgasky testified that Haman had brought her Forms 30C before on behalf of other injured firefighters.

In addition to the foregoing, the trial commissioner also found that on October 11, 2013, the claimant filed a Motion to Preclude dated October 10, 2013 with the Workers' Compensation Commission. See Commissioner's Exhibit 1. The certified mail card and receipt attached to the Motion to Preclude were completed by Joan Haman.

Following the presentation of the evidence, the trial commissioner concluded that by tendering a Form 30C to Joan Haman, the claimant had provided adequate notice to the employer that he was making a claim for workers' compensation benefits. Noting that the claimant had signed the Form 30C on July 15, 2013 and a copy was received by the Workers' Compensation Commission on July 17, 2013, the trier determined that Haman must have received the form from the claimant on either July 15 or July 16, 2013. Given that the respondents failed to file a Form 43 or otherwise deny the claim within

twenty-eight (28) days, the trial commissioner, pursuant to the provisions of § 31-294c(b) C.G.S., granted the claimant's Motion to Preclude.[4]

The respondents filed a Motion to Correct which was denied in its entirety, and this appeal followed. On appeal, respondents contend that the trial commissioner erroneously concluded that the claimant's tender of a Form 30C to Joan Haman constituted adequate notice to the employer given that the record contained no evidence that Haman was an agent of the Town of Southbury. The respondents also argue that the trier's conclusion that the twenty-eight day period to file a disclaimer commenced on either July 15 or July 16, 2013 constitutes reversible error because the town never

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[4] Section § 31-294c(b) C.G.S. (Rev. to 2013) states: "Whenever liability to pay compensation is contested by the employer, he shall file with the commissioner, on or before the twenty-eighth day after he has received a written notice of claim, a notice in accord with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested. The employer shall send a copy of the notice to the employee in accordance with section 31-321. If the employer or his legal representative fails to file the notice contesting liability on or before the twenty-eighth day after he has received the written notice of claim, the employer shall commence payment of compensation for such injury or death on or before the twenty-eighth day after he has received the written notice of claim, but the employer may contest the employee's right to receive compensation on any grounds or the extent of his disability within one year from the receipt of the written notice of claim, provided the employer shall not be required to commence payment of compensation when the written notice of claim has not been properly served in accordance with section 31-321 or when the written notice of claim fails to include a warning that (1) the employer, if he has commenced payment for the alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim, shall be precluded from contesting liability unless a notice contesting liability is filed within one year from the receipt of the written notice of claim, and (2) the employer shall be conclusively presumed to have accepted the compensability of the alleged injury or death unless the employer either files a notice contesting liability on or before the twenty-eighth day after receiving a written notice of claim or commences payment for the alleged injury or death on or before such twenty-eighth day. An employer shall be entitled, if he prevails, to reimbursement from the claimant of any compensation paid by the employer on and after the date the commissioner receives written notice from the employer or his legal representative, in accordance with the form prescribed by the chairman of the Workers' Compensation Commission, stating that the right to compensation is contested. Notwithstanding the provisions of this subsection, an employer who fails to contest liability for an alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim and who fails to commence payment for the alleged injury or death on or before such twenty-eighth day, shall be conclusively presumed to have accepted the compensability of the alleged injury or death."

received adequate notice of the claim pursuant to § 31-321 C.G.S.[5] As such, the respondents claim as error the trial commissioner's decision to grant the Motion to Preclude.

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). Thus, "it is … immaterial that the facts permit the drawing of diverse inferences. The [commissioner] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair, supra, 540 (1988), quoting Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

Section § 31-294c(b) C.G.S. provides that any employer who fails to either contest liability or commence payment for an alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim shall be conclusively

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[5] Section § 31-321 C.G.S. (Rev. to 2013) states: "Unless otherwise specifically provided, or unless the circumstances of the case or the rules of the commission direct otherwise, any notice required under this chapter to be served upon an employer, employee or commissioner shall be by written or printed notice, service personally or by registered or certified mail addressed to the person upon whom it is to be served at the person's last-known residence or place of business. Notices on behalf of a minor shall be given by or to such minor's parent or guardian or, if there is no parent or guardian, then by or to such minor."

presumed to have accepted the compensability of the alleged injury or death.[6] As such, it is clear that the consequences of failing to file a disclaimer, or filing a disclaimer which is subsequently deemed fatally defective, are significant. Nevertheless, while there is no question that the preclusion statute imposes a significant penalty upon employers who do not abide by the terms of § 31-294c(b) C.G.S., it is equally clear that our Supreme Court supports its application where appropriate despite the severity of the measure. In Harpaz v. Laidlaw Transit, Inc., 286 Conn. 102 (2008), the court "conclude[d] that, under § 31-294c (b), if an employer neither timely pays nor timely contests liability, the conclusive presumption of compensability attaches and the employer is barred from contesting the employee's right to receive compensation on any ground or the extent of the employee's disability. *Such a penalty is harsh, but it reflects a just and rational result.*" (Emphasis added.) Id., at 130.

In Callender v. Reflexite Corp., 137 Conn. App. 324 (2012), *cert. granted*, 307 Conn. 915 (2012), *appeal withdrawn*, S.C. 19040 (2013), our Appellate Court set forth the following two-part inquiry which a trial commissioner must follow when deciding a Motion to Preclude:

> First, he must determine whether the employee's notice of claim is adequate on its face…. Second, he must decide whether the employer failed to comply with § 31-294c either by filing a notice to contest the claim or by commencing payment on that claim within twenty-eight days of the notice of claim…. If the notice of claim is adequate but the employer fails to comply with the statute, then the motion to preclude must be granted.

Id., at 338. (Internal citations omitted.)

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[6] See footnote 4, supra.

In addition, once a motion to preclude has been granted, "the employer is precluded from contesting either the compensability of its employee's claimed injury or the extent of the employee's resulting disability." Id., 334.

Returning to the matter at bar, as mentioned previously herein, the respondents contend that the claimant's failure to properly serve the employer with a copy of his Form 30C rendered the notice of claim fatally deficient. When determining whether it is appropriate to apply the preclusive effects of § 31-294c(b) C.G.S., it may also be necessary to determine whether the notice was "sufficient to allow the employer to make a timely investigation of the claim." Pereira v. State, 228 Conn. 535, 542-43 n.8 (1994). See also, Chase v. State, 45 Conn. App. 499, 508 (1997). However, in the instant matter, there is no dispute regarding the sufficiency of the information contained on the Form 30C itself; rather, the dispute centers on the circumstances surrounding its delivery to the "employer."

The respondents assert that the claimant's personal delivery of the Form 30C to Joan Haman did not constitute adequate service because the record is devoid of evidence that Haman was an agent of the Town of Southbury. "In order to conclude that service to the Town was adequately made through Joan Haman, there must first be a finding that Joan Haman is an agent of the Town of Southbury duly authorized to accept service or holding a position in the Town responsible for the receipt of such notice." Appellants' Brief, p. 4. The appellants also argue that because service to Haman was improper, the town was never obligated to file a disclaimer within the statutory twenty-eight days and the "presumption of preclusion" never attached. As such, the trier's decision to grant the

Motion to Preclude constituted error as it arose from the improper application of the facts to the law. We are not persuaded by the appellants' arguments.

Section 31-294c(a) C.G.S. specifically contemplates that a"[n]otice 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 … and the name and address of the employee and of the person in whose interest compensation is claimed…."[7] (Emphasis added.) The written instructions appearing on the Form 30C developed by the Workers' Compensation Commission state that "[t]his notice must be served upon the Commissioner *and* Employer by personal presentation or by registered or certified mail." It is now axiomatic that in order to invoke the jurisdiction of the Workers' Compensation Commission, a claimant is expected to provide both the employer and the Commission with a copy of the notice of claim.

In the instant matter, the respondents contend that the trier could not have found that Joan Haman was an authorized agent of the town because the evidence identified Haman as an employee of the Association and not the town. January 6, 2014 Transcript, pp. 9, 23. That argument might carry greater weight but for the claimant's own testimony regarding the past pattern and practice of the Association and the town and Joyce Girgasky's testimony relative to her acceptance of Form 30C's from Haman.

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[7] Section 31-294c (a) C.G.S. states, in pertinent part, that: "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 … and the name and address of the employee and of the person in whose interest compensation is claimed…."

For instance, the claimant testified that when he served as the fire chief, he was responsible for reporting work-related injuries and filling out paperwork. As part of that process, he would complete the paperwork and would then give it to his assistant for personal delivery to the town hall. Id., 9. The claimant also testified that he was unaware of the Association having a formal procedure for filing a notice of claim for a work-related injury but that there is a letter in the by-laws which "says the chief is responsible for filling out any paperwork." Id. In addition, the claimant testified that the informational packet attached to the Form 30C stated that it could be hand-delivered to the employer, and that as far as he knew, the Association was his employer. Id., 14. The record also contains testimony offered by Joyce Girgasky to the effect that Haman had brought Girgasky a notice of claim for an injured fire fighter as recently as two months prior to the formal hearing, and that on occasion Girgasky would also receive notices of claim via certified mail. Id., 24.

This board is of course well-acquainted with the provisions of § 7-314a(a) C.G.S., which state:

> Except as provided in subsections (e) and (f) of this section, active members of volunteer fire departments and active members of organizations certified as a volunteer ambulance service in accordance with section 19a-180 shall be construed to be employees of the municipality for the benefit of which volunteer fire services or such ambulance services are rendered while in training or engaged in volunteer fire duty or such ambulance service and shall be subject to the jurisdiction of the Workers' Compensation Commission and shall be compensated in accordance with the provisions of chapter 568 for death, disability or injury incurred while in training for or engaged in volunteer fire duty or such ambulance service.

Section 7-314a(a) C.G.S.

We also concede, as the respondents point out, that this matter may be distinguished from Mehan v. Stamford, 127 Conn. App. 619 (2011), *cert. denied*, 301 Conn. 911 (2011), wherein our Appellate Court noted that the Mehan trial commissioner actually found that the assistant fire chief, who assisted the claimant in completing the Form 30C and took possession of the form but failed to deliver it to the town's human resource department, "was an agent of the defendant with authority to act on the defendant's behalf in the processing of workers' compensation claims."[8] Id., 628. Such a declarative finding is indeed lacking in the present matter. However, the testimony proffered by the claimant and others arguably provides support for the inference drawn by the trial commissioner that someone in Haman's position, the executive assistant to the fire chief, was cloaked with the authority to accept a Form 30C on behalf of the town. Indeed, the trier concluded that, "[b]y tendering a Form 30C to Joan Haman, the Claimant provided adequate notice to the employer that a claim was being made." Conclusion, ¶ A. The trial commissioner could not have concluded as he did without drawing the inference as to Haman's authority.

Moreover, we note that in Mehan, the court remarked that "[h]istorically, the defendant accepted Forms 30C for processing from the human resources department, the town clerk's office and the law department, thus establishing flexibility in the defendant's service procedures." Mehan, supra, 624. We think the Mehan court's reference to the procedures employed by the respondent employer in accepting Forms 30C has relevance

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[8] It should also be noted that Mehan can also be distinguished on another basis, in that the Mehan claimant was not a volunteer fire fighter, but, rather, a paid member of the respondent municipality's fire department.

to the matter on review. Thus, in the absence of a clear directive from either the Association or the respondent municipality regarding the proper procedure for filing notices of claim, and the apparent willingness of the respondent municipality to accept Forms 30C through a variety of channels, we find that the respondent employer demonstrated a certain "pattern and practice" in the processing and acceptance of Forms 30C. The vagaries in that process on the part of the respondent municipality should not operate to penalize the instant claimant.

Finally, the Mehan court observed that "[w]hen the plaintiff handed his Form 30C to Brown, Brown was an administrative agent of the defendant with *apparent* authority to act on the defendant's behalf when dealing with the processing of workers' compensation claims." (Emphasis added.) Id., 624-625. Given that the record also provides for the reasonable inference that Joan Haman possessed the *apparent* authority to process workers' compensation claims, we hereby affirm the findings of the trial commissioner with respect to the adequacy of service of the Form 30C.

We note that the record contains testimony from claimant's counsel at trial indicating that the respondents accepted a shoulder injury arising from the subject Form 30C for which they paid medical expenses and indemnity. January 6, 2014 Transcript, p. 4. Moreover, in his brief to this board, the claimant refers to a medical report from Concentra Medical Center dated April 30, 2013 reflecting an injury date of April 22, 2013. Appellee's Brief, p. 6; see also Claimant's Exhibit A. As mentioned previously herein, the Callender court stated that a trial commissioner must engage in a two-part inquiry when deciding whether to grant a Motion to Preclude: the trier must

first determine whether the claimant's notice of claim was "adequate on its face." Callender, supra, 338. Second, the trier must determine whether the employer complied with the provisions of § 31-294c(b) C.G.S. "either by filing a notice to contest the claim *or* by commencing payment on the claim within twenty-eight days of the notice of claim." (Emphasis added.) Id. Given that the litigants do not appear to have addressed the second prong of the Callender inquiry in the proceedings below, we hereby remand this matter for additional proceedings to determine the legal significance of the respondents' actions regarding the accepted shoulder injury when evaluated through the prism of the second prong of the Callender inquiry. "No case under this Act should be finally determined when the … court is of the opinion that, through inadvertence, or otherwise, the facts have not been sufficiently found to render a just judgment." Cormican v. McMahon, 102 Conn. 234, 238 (1925).

As mentioned previously herein, the respondents also filed a Motion to Correct which was denied in its entirety. Our review of the proposed corrections indicates that the respondents are merely reiterating the arguments made at trial which ultimately proved unavailing. As this board has previously observed, when "a Motion to Correct involves requested factual findings which were disputed by the parties, which involved the credibility of the evidence, or which would not affect the outcome of the case, we would not find any error in the denial of such a Motion to Correct." Robare v. Robert Baker Companies, 4328 CRB-1-00-12 (January 2, 2002).

There is no error; the March 10, 2014 Findings and Orders by the Commissioner acting for the Fifth District are accordingly affirmed, but the matter is remanded for additional proceedings consistent with this opinion.

Commissioners Michelle D. Truglia and Daniel E. Dilzer concur.