CASE NO. 5936 CRB-6-14-5 : COMPENSATION REVIEW BOARD
CLAIM NO. 601058836

DOREEN CAMP
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: APRIL 24, 2015

LUPIN PHARMACEUTICALS, INC.
EMPLOYER

and

VALLEY FORGE INSURANCE COMPANY
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Michael Cahill, Esq., and Chet Jackson, Esq., The Law Offices of Michael W. Cahill, LLC, 43 Trumbull Street, New Haven, CT 06511.

The respondents were represented by Giovanna T. Giardina, Esq., Law Office of Cynthia A. Jaworski, 175 Capital Boulevard, Suite 400, Rocky Hill, CT 06067.

This Petition for Review[1] from the April 2, 2014 Finding and Dismissal of the Commissioner acting for the Sixth District was heard November 21, 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 motion for extension of time was granted during the pendency of this appeal.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. One of the tenets of workers' compensation law is that in order to be awarded benefits a claimant must prove not merely that an incident occurred in the course of one's employment, but also prove that the incident resulted in an identifiable injury. In the present case the claimant argues that it was undisputable that she was hit by snow falling off a drive-thru restaurant awning on January 5, 2010 while she was working and therefore she should be awarded benefits. The trial commissioner, however, found the medical evidence linking the claimant's injuries to this incident was not persuasive and denied her claim for medical benefits relating to that incident. The claimant has appealed, but we find the trial commissioner could reasonably find from the record that the claimant's medical condition was attributable to prior injuries. We affirm the Finding and Dismissal.

The trial commissioner found the following facts at the conclusion of the formal hearing which are pertinent to our consideration of this appeal. The claimant testified to having sustained a number of significant injuries prior to the January 5, 2010 incident including motor vehicle accidents in 1994 and 2004; a 1990 injury of her neck and back, and a 2002 slip and fall accident where she injured her ankle. The 2004 injury required a cervical fusion surgery at C 5/6 and C 6/7 levels. She had recovered from this injury when she began working for Healthtronics in January 2008. At that time she still felt she needed to be cautious and because she had pain in her neck she took medications and had physical therapy from time to time. She was involved in a motor vehicle accident on March 30, 2009 but did not file a claim because she was not injured. She said that prior to the January 5, 2010 accident she felt well and was handling a huge territory for her

employer. She began working for Lupin Pharmaceuticals, Inc. ("Lupin") in September or October of 2009 and she said she would easily work 60-80 hours per week. In the six months prior to that January 5, 2010 incident she had some physical therapy, steroid injections into her back and trigger point injections to loosen up the tightness from driving.

The claimant said that the incident on January 5, 2010 occurred at a McDonald's restaurant at about 1:00 pm as she was returning from a business appointment. She said she ordered at the drive-thru window and had her hand on the car door and remembered something hitting it and jumping. She said ice and snow hit her on her head, neck and shoulders and it ended up in her lap. She also said she was hit a second time with snow and ice when her head was down a bit. She testified the second round of snow was significant and her coat was slightly wet. She reported the incident to the restaurant manager and continued on to her next call. She first felt sore a day or two after the incident and she said the soreness progressively turned into pain. She attributed head, neck, shoulder and back injuries to the incident and indirectly, due to a withdrawal of medication, a tear of her hip. She said that when the respondents ceased her Oxycontin and Xanax prescriptions she injured her hip when slamming her car's brakes in a traffic incident, and she associated that injury to her being in withdrawal.

Subsequent to the 2010 injury the claimant underwent a two-level fusion surgery in August 2011 with Dr. Joseph Aferzon and Dr. Jeffrey Bash. Dr. Aferzon had been a commissioner's examiner in this case. After the surgery the claimant thought that she would be pain free and regain feeling in her hands and arms, and that she would return to work shortly afterwards. However, after the surgery things got worse and she did not

have feeling in her ears, her vocal cords were "a mess" and she did not regain feeling or strength in her arms. She also said she remained in pain. This condition limited various daily activities. She no longer cooks as she has a hard time holding cooking utensils and she sleeps in a recliner instead of a bed so she can be at the proper angle.

The claimant also testified as to her 2004 motor vehicle accident which occurred when she was employed by Abbott Laboratories. In that incident she was hit from behind by a tractor trailer and sustained injuries to her right hip, back, neck, and one of her shoulders. This incident prompted a cervical fusion in 2007 and a subsequent need for physical therapy.

The trial commissioner considered the evidence as to the claimant's medical treatment. Shortly after the incident the claimant treated with Dr. Alfredo Axtmayer who noted on January 25, 2010 that the claimant said she was reaching out of her window and twisted a little bit in the car when the snow and ice hit her. The report of Dr. Anthony Lendino indicated that on February 3, 2010 the claimant said she was going through the drive-thru window and a large block of ice hit her on the head. The report of the Spine and Pain Institute dated February 1, 2010 noted that the claimant said she was leaning out of the window when she was hit by snow, but the trial commissioner noted the claimant testified at the formal hearing that she was not leaning out of the window. The commissioner also noted that the January 30, 2010 report of Dr. James Sabshin and the commissioner's examination of Dr. Aferzon, performed on February 4, 2011, also reference that the claimant said that her head was leaning out of the car when she was hit by ice and snow; and the claimant's testimony at the formal hearing was inconsistent with this narrative. The trial commissioner also noted the claimant had treated at the Spine

and Pain Institute on August 3, 2009, reported increased hip pain at that time and considered surgery. The claimant denied any recollection of that visit at the formal hearing.

The most recent commissioner's examination performed on the claimant and the respondents' medical examination were also considered by the trial commissioner. On February 27, 2012, Dr. Gerald Becker examined the claimant for the respondents. He made reference to her 2004 injury and opined that her ongoing treatment was due to her original accident and was in no way related to the January 2010 incident. Dr. Karnasiewicz's July 11, 2012 Commissioner's examination concluded that the claimant had pseudoarthitis prior to January 5, 2010 and the incident of that date did not cause the pseudoarthitis. Dr. Karnasiewicz's understanding of the 2010 incident was that a chunk of ice fell from the roof and struck the claimant on her head, neck and arm. Based on that understanding he found the January 5, 2010 incident a substantial contributing factor to the claimant's subsequent neck complaints, but noted that opinion was reliant on the accuracy of her narrative of the mechanism of injury.

The commissioner also reviewed the videotape which showed the McDonald's drive-thru lane at the time of the incident. This video showed a minimal amount of snow falling from the roof onto the claimant's vehicle.

Based on this factual record the trial commissioner concluded the claimant sustained significant injuries from her 2004 motor vehicle accident and while she testified she had recovered from those injuries by 2008 she continued to treat for those injuries until the January 2010 incident. Therefore, the trial commissioner concluded that the claimant's testimony as to recovering from a prior injury was not credible. As a result,

the commissioner concluded it was not credible that the claimant's hip injury occurred as a result of having a withdrawal problem from medications. The trial commissioner found Dr. Becker's opinions to be credible and persuasive. He found the opinions of the various treating physicians not to be persuasive as they relied on erroneous information as to what happened at the drive-thru window. The trial commissioner concluded the video evidence as to the incident did not show the claimant sustaining an injury consistent with her testimony, and the claimant's testimony on that point was not credible. He found the claimant failed to meet her burden of proof she sustained any injury on January 5, 2010.

The claimant filed a Motion to Correct seeking 42 separate corrections consistent with finding that she sustained a compensable injury on January 5, 2010 which was the substantial factor behind her present medical condition. The trial commissioner denied this motion in its entirety. The claimant also filed a Motion to Submit Additional Evidence. The trial commissioner did not rule on this motion. The claimant has, subsequent to the denial of her Motion to Correct, pursued the present appeal. The gravamen of her appeal is that the respondents' disclaimer allegedly conceded a compensable injury occurred on January 5, 2010 and the trial commissioner was therefore bound to award the claimant benefits for that event. As the claimant views the situation, she was denied "due process" by this decision. The claimant also claims the trial commissioner erred in Conclusion, ¶ G, by discounting the opinions of her treating physicians because they relied on what the trial commissioner found was an erroneous narrative of the incident. The claimant also argues it was error not to grant the Motion

for Additional Evidence. After considering these arguments, we find none are persuasive.

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.)

The claimant argues that she was denied due process as she believes the disclaimer filed by the respondents accepted the compensability of the injury. As the claimant views this situation, the trial commissioner should have been barred from considering any evidence or arguments contesting her claim that she was injured while working on January 5, 2010. As a result she believes Conclusion, ¶ H, in the Finding and

Dismissal, is unsustainable and this mandates reversal on appeal. For a number of reasons we are not persuaded the trial commissioner erred.

We look at the facts and documentation on the record to reach this determination. The claimant argues that the disclaimer filed by the respondents accepted the existence of a compensable injury and therefore they effectively were precluded from contesting liability. Our review of the actual document is that a reasonable person could determine the respondents had not made such a concession of liability. More importantly, we find from the record that the claimant never sought a ruling from the trial commissioner on the issue of preclusion, and indeed, was put on notice at the formal hearing that the respondents were contesting compensability. The claimant made no objection at that time to consideration of that issue, and therefore, we deem any "due process" argument on this issue was essentially waived by the claimant at that time.

The initial Form 43 in this case was received by the Commission on April 5, 2010. At that time the claimant had yet to file a Form 30C initiating the claim so this was a "pre-emptive disclaimer" similar to the disclaimers we deemed effective in Negron v. CVS Caremark Corporation, 5870 CRB-4-13-8 (July 17, 2014), *appeal pending,* AC 37062, and Lamar v. Boehringer Ingelheim Corp., 5588 CRB-7-10-9 (August 25, 2011), *aff'd*, 138 Conn. App. 826 (2012), *cert denied*, 307 Conn. 943 (2013). The disclaimer in this case stated the respondents were "contesting that the current need for medical treatment to the left arm and cervical spine is causally related to the 1/5/10 date of loss" and "[q]uestion of pre-existing conditions as to the cause of her current need for treatment." The four corners of the document do not state the respondents were acknowledging the claimant sustained an injury requiring medical treatment on January

5, 2010. Instead the respondents appear to be leaving the claimant to her proof that *any* of her medical conditions related to that event and not her prior noncompensable injuries. The disclaimer herein was **not** a "general denial" as proscribed by Menzies v. Fisher, 165 Conn. 338 (1973) as it adequately advised the claimant of what the respondent was contesting and the rationale for the contest. See Lamar, supra, 138 Conn. App. 826, 835 (2012).[2]

In any event, had the claimant reasonably believed that the disclaimer amounted to an admission of compensability, we believe it was incumbent upon her to raise this issue with the trial commissioner at the point when it became evident the respondents were contesting compensability. The claimant essentially seeks preclusion, and at no point did she file a Motion to Preclude. As we pointed out in Haines v. Turbine Technologies, Inc., 5932 CRB-6-14-4 (March 9, 2015) "[i]t is black letter law that a party may not raise an issue on appeal to the Compensation Review Board that was not adjudicated by the trial commissioner. See Cable v. Bic Corp., 79 Conn. App. 178, 184 (2003) and Smith v. Connecticut Light & Power Co., 73 Conn. App. 619, 627-628 (2002). Peerless did not bring the issue of preclusion to the attention of the trial commissioner prior to the closure of the record. Since Peerless never sought a factual finding on this issue prior to taking an appeal, it cannot obtain appellate relief."

The hearing transcript in this case documents that the trial commissioner placed the issue of compensability squarely before the parties at the opening of the formal

[2] In Lamar v. Boehringer Ingelheim Corp., 138 Conn. App. 826 (2012), the Appellate Court outlined the requisite standard of proof for a claimant in proceedings before this Commission. "In order to recover pursuant to this act, a plaintiff must prove that the claimed injury is connected causally to the employment by demonstrating that the injury (1) arose out of the employment and (2) occurred in the course of the employment.'' Id., 832.

hearing and counsel for the claimant voiced no objection to consideration of that issue and failed to make any representation that the respondents had previously accepted the claim.

> **Trial Commissioner**: Thank you. We're here pursuant to a notice of hearing issued on March 15, 2013 and the issues listed before me are *compensability*, medical bills and medical treatment, is that accurate or are we only doing compensability today? (Emphasis added.)
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> **Attorney Cahill:** That's accurate.
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> **Trial Commissioner:** Okay so all three issues then.
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> **Attorney Giardina:** Yes your Honor I think that's fair.

April 2, 2013 Transcript, p. 3.

We acknowledge procedural due process is a requirement of adjudicative administrative hearings. See Balkus v. Terry Steam Turbine Co., 167 Conn. 170, 177 (1974) and Testone v. C.R. Gibson Co., 5045 CRB-5-06-1 (May 30, 2007), *aff'd*, 114 Conn. App. 210, 217-218 (2009), *cert. denied*, 292 Conn. 914 (2009). However, in the present case, similar to the situation in Stiber v. Marks Total Security, 5479 CRB-4-09-7 (July 8, 2010) "[i]n the present case the respondents failed to object at the formal hearing to the statements presented by claimant's counsel. Our decision in Paige v. Hartford Insurance Co., 4594 CRB-2-02-12 (January 9, 2004) suggests there has been no error, as we upheld the trial commissioner when 'in this case the claimant never raised an objection regarding the hearsay nature of the evidence.'" Id. The claimant in this case never objected to the trial commissioner characterizing compensability as being a contested issue. We find this matter similar to another case where an appellant argued on appeal a "due process" issue was present, DeLeon v. Walgreens, 5568 CRB-4-10-6 (May

13, 2011). The claimant in DeLeon failed to object to a witness at a hearing as being biased, and then argued her due process rights were violated by reliance on that witness's opinion. We rejected that argument.

> The respondents argue that the circumstance herein is akin to the approach we rejected in Yelunin v. Royal Ride Transportation, 5274 CRB-1-07-9 (September 5, 2008), *aff'd on alternate grounds*, 121 Conn. App. 144 (2010), "[w]e have made it clear that we will not permit parties to anticipate a favorable decision, reserving a right to impeach it or set it aside if it happens to be against them, for a cause which was well known to them before or during the trial." Id. In the present instance, we believe had the claimant intended to assert a due process violation by virtue of Dr. Borden's participation, she needed to have placed this concern squarely before the trial commissioner prior to the conclusion of the formal hearing. There is little appellate precedent wherein such a factual question can be addressed on appeal after the decision is rendered

Id.[3]

Therefore, we find the claimant never reasonably presented any objection to the consideration of the issue of compensability and cannot on appeal, argue for the first time that it was improper for the trial commissioner to rule on the issue. Yelunin, supra. We find no due process issue present herein and thus move on to the other issues under appeal.

Our reasoning as to the issue over the disclaimer is generally applicable to the argument that the claimant raises over the use of the surveillance video in this case. The claimant argues in her brief that the trial commissioner improperly relied on the video for various findings which she believes should have been corrected. Claimant's Brief, pp. 20-22. Her Motion to Submit Additional Evidence seeks primarily to present rebuttal testimony to counter the video. The claimant raised no objection to the admission of this

[3] The claimant's Proposed Finding of Fact dated February 7, 2014 contain no reference to the respondents' disclaimer and alleged acceptance of the claimant's injury.

video when the respondents introduced it into evidence. December 11, 2013 Transcript, p. 3. The claimant then did not object to the record closing as of that date. Id. Had the claimant believed additional evidence was necessary, it was incumbent on her to alert the trial commissioner to this fact prior to the closing of the record. We also believe the claimant was on fair notice the respondents were questioning the narrative as to the January 5, 2010 incident and the mechanism of that event as related to her injuries. See November 13, 2013 Transcript, pp. 23-36. Our standard for admitting additional evidence is generally limited to evidence which could not have been procured at the original hearing or evidence which would not have been reasonably foreseeable to present at the hearing. Serrano v. Bridgeport Towers Apt., LLC, 5572 CRB-4-10-7 (September 29, 2011). The situation in this case does not reach that threshold.[4]

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[4] In Serrano v. Bridgeport Towers Apt., LLC., 5572 CRB-4-10-7 (September 29, 2011) we cited Gibson v. State/Department of Developmental Services-North Region, 5422 CRB-2-09-2 (January 13, 2010), regarding the prerequisites required to admit such evidence.

> "The Appellate Court outlined the standard for review under Admin. Reg. § 31-301-9 when a party seeks to present previously unconsidered evidence directly to this panel. In Mankus v. Mankus, 107 Conn. App. 585 (2008) the court set out the following requirement.
> Thus, in order to request the board to review additional evidence, the movant must include in the motion 1) the nature of the evidence, (2) the basis of the claim that the evidence is material and (3) the reason why it was not presented to the commissioner. Id., at 596.
> In Mankus, the Appellate Court concluded that claimant failed to provide a sufficient explanation as to why the evidence should be admitted post-hearing. We followed a similar line of reasoning in Diaz v. Jaime Pineda a/k/a d/b/a J.P. Landscaping Company, 5244 CRB-7-07-7 (July 8, 2008). In Diaz we outlined the following requirement to consider evidence not presented at the formal hearing. A party who wishes to submit additional evidence to this board must prove that they had good reasons not to present such evidence at the formal hearing Carney-Bastrzycki v. Hospital for Special Care, 4722 CRB-6-03-9 (September 3, 2004). The respondent Second Injury Fund (The "Fund") points out that in Smith v. UTC/Pratt & Whitney, 3134 CRB 3-95-6 (June 4, 1996) we held the moving party in such a motion must establish the evidence could not have been obtained at the time of the original hearing. Gibson, supra, *citing* Grant v. Siemens Westinghouse Power Co., 5292 CRB-4-07-11 (October 28, 2008)."

We do not believe the claimant has substantiated a meritorious claim to admit additional evidence in this case.

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. The claimant's argument that the trial commissioner should have considered the medical evidence in a vacuum without considering her testimony or the video of the incident is unsupported by our precedent. This is inconsistent with the claimant's burden of persuasion, see Lamar, supra, at 832 and Lentini v. Connecticut College, 4933 CRB-2-05-4 (May 15, 2006). It also is inconsistent with the claimant's need to establish proximate cause between the incident the claimant was involved in and his or her injuries. See Hadden v. Capitol Region Education Council, 5843 CRB-1-13-5 (May 20, 2014), *appeal pending*, AC 36913.

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

Hadden, supra.

The Finding and Dismissal cites the medical opinion of Dr. Becker as credible and persuasive, references the commissioner's examination of Dr. Karnasiewicz, but reaches no conclusion as to its reliability, and concluded the medical opinions of the claimant's treating physicians were unreliable as they were reliant on the claimant's narrative as to the impact of the January 5, 2010 incident. The claimant argues that the trial commissioner drew unreasonable inferences from the evidence and should have credited the opinions on causation offered by the claimant's treaters and the commissioner's examiner. She cites State v. Dollinger, 20 Conn. App. 530 (1990) for the proposition that the claimant's narrative should be given no weight in evaluating medical testimony. That case involved the evidentiary standard to support a sexual assault prosecution, and has no relevance to the jurisprudence of a contested claim under Chapter 568. 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). A claimant's credibility also bears heavily on whether medical testimony reliant on his or her narrative is to be given weight by the trial commissioner. When a trial commissioner does not find the claimant credible, the commissioner is entitled to conclude any medical evidence which relied on the claimant's statements was also unreliable. See Abbotts v. Pace Motor Lines, Inc., 4974 CRB-4-05-7 (July 28, 2006), *aff'd*, 106 Conn. App. 436 (2008), *cert. denied*, 287 Conn. 910 (2008); Baker v. HUG Excavating, Inc., 5443 CRB-7-09-3 (March 5, 2010) and Do v. Danaher Tool Group, 5029 CRB-6-05-12 (November 28, 2006).[5]

[5] Even if the claimant's expert testimony was uncontroverted, we would affirm a Finding & Dismissal if the trial commissioner did not find the claimant's narrative of injury credible. See Sosa v. Benchmark

In the present case, Dr. Becker unequivocally opined in his February 27, 2012 letter that after examining the claimant her current need for medical treatment was related "in no way whatsoever to the incident of January 2010." Findings, ¶ 3. The trial commissioner observed the claimant testify and determined her narrative as to the January 5, 2010 incident was not credible. We cannot reverse a credibility determination regarding live testimony on appeal. Barbee v. Sysco Food Services, 5892 CRB-8-13-11 (October 16, 2014), *appeal pending* AC 37326, citing Burton v. Mottolese, 267 Conn. 1, 40 (2003). The trial commissioner in this case concluded that the claimant's treating physicians relied on the claimant's narrative and were therefore unreliable. Based on the precedent in Abbotts, supra, he was entitled to reach that conclusion. He was also entitled to rely on the opinion of Dr. Becker if he found it more persuasive than the other evidence presented. Dellacamera v. Waterbury, 4966 CRB-5-05-6 (June 29, 2006).[6] [7]

The claimant also argues that the trial commissioner improperly relied on unreasonable inferences from the surveillance video of the January 5, 2010 incident to find her testimony not credible. As we noted previously, the claimant did not object to the introduction of this evidence to the record, or seek a continuance to present any

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Assisted Living, 5592 CRB-3-10-9 (August 17, 2011) and Ialacci v. Hartford Medical Group, 5306 CRB-1-07-12 (December 2, 2008).

[6] The trial commissioner did not specifically explain in his conclusions why he did not rely on the opinion of Dr. Karnasiewicz, the commissioner's examiner. Generally, a trial commissioner should specifically explain why he or she does not rely on the commissioner's examiner in the text of the Finding. See Madden v. Danbury Hospital, 5745 CRB-7-12-4 (April 22, 2013). However, similar to the situation in Madden, supra, we can infer the commissioner's reasoning herein from the other findings he reached; i.e. Findings, ¶ 5 and Conclusions, ¶¶ F & G. Therefore, there is no error.

[7] In her brief, the claimant suggests she was denied due process as she was not availed of a chance to cross-examine the various medical witnesses. Claimant's Brief, pp. 17-18. This argument is devoid of merit. The record does not indicate the claimant sought to depose any of these witnesses prior to the record having closed. The trial commissioner could rely on their reports "as-is" in reaching a decision. Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007).

rebuttal testimony. December 11, 2013 Transcript, p. 3. Our precedent as we restated in Barbee, supra, is that a trial commissioner is extended great latitude to ascertain whether a claimant's narrative is consistent with video evidence presented to the tribunal. See also Nisbet v. Xerox Corporation, 5867 CRB-7-13-7 (July 17, 2014) and Savageau v. Stop & Shop Companies, Inc., 5808 CRB-3-12-12 (November 7, 2013). If the commissioner concluded after viewing the video of snow falling onto the claimant's car on January 5, 2010 that the nature of the incident was inconsistent with the claimant's narrative of injury we cannot retry that determination on appeal.

Therefore, the trial commissioner could reasonably determine based on the evidence presented that the claimant did not establish a nexus of proximate cause between the January 5, 2010 incident and the claimant's current medical condition. See Turrell v. State/DMHAS, 5640 CRB-8-11-3 (March 21, 2012), *aff'd*, 144 Conn. App. 834 (2013), *cert. denied*, 310 Conn. 930 (2013). In Turrell, the claimant appealed from the denial of benefits for back surgery she claimed was due to a work related injury. She argued that she had proven her employment was the proximate cause of her ailments, and the trial commissioner had erred in attributing her need for surgery to a pre-existing degenerative disease. The Appellate Court affirmed the denial.

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

Id., 845.

We believe a reasonable person could attribute the claimant's medical condition to injuries she sustained prior to January 5, 2010 and determine that the injury she sustained on that day had no material impact on her subsequent condition.[8] As the claimant had the burden of persuasion under Chapter 568 that her medical condition was the result of a compensable injury and did not carry this burden, we must affirm the Finding and Dismissal.

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

[8] The claimant also argues that it was error to deny her 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.