

CASE NO. 5939 CRB-4-14-5  
CLAIM NO. 400090362

: COMPENSATION REVIEW BOARD

JOHN TARANTINO  
CLAIMANT-APPELLEE

: WORKERS' COMPENSATION  
COMMISSION

v.

: MAY 12, 2015

SEARS ROEBUCK & CO.  
EMPLOYER

and

SEDGWICK  
INSURER  
RESPONDENTS-APPELLANTS

**RULING ON AMENDED RESPONDENT-APPELLANT'S MOTION FOR  
ARTICULATION AND MOTION TO CORRECT TO ADD AN "ORDER" PAGE  
FOR CRB**

JOHN A. MASTROPIETRO, CHAIRMAN. On April 23, 2015 the respondents filed an Amended Motion for Articulation and Motion to Correct of our April 13, 2015 opinion pursuant to Practice Book Section 71-5. The gravamen of the respondents' motion is that our opinion did not properly apply § 31-308(a) C.G.S. in determining the claimant's entitlement to temporary partial disability benefits for the period subsequent to his termination from work. For the following reasons we deny this motion.

We believe, notwithstanding the opinion of the respondents, that our April 13, 2015 opinion was unambiguous. We made clear that there was no basis to award the claimant temporary total disability benefits for the period immediately after his termination and remanded the matter for further proceedings to ascertain what benefits the claimant was entitled to.

The precedent in DiNuzzo v. Dan Perkins Chevrolet Geo, Inc., 294 Conn. 132 (2009) stands for the proposition that all awards under

Chapter 568 must be based on a foundation of reliable evidence, and not rely on what could be characterized as a fictional narrative. Therefore, we herein vacate the provisions of Order, ¶ 4, of the Finding and Award awarding the claimant temporary total disability benefits for the period from December 14, 2012 through May 6, 2013. We remand this matter for further proceedings as to the compensation due the claimant for this time period. In all other respects we affirm the Finding and Award.

Tarantino v. Sears Roebuck & Co., 5939 CRB-4-14-5 (April 13, 2015).

The respondents seek essentially to have this appellate body rule on the claimant's entitlement to benefits during the period subsequent to December 14, 2012. This request would cause this tribunal to intrude on the fact finding province of the trial commissioner. We note that our precedent stands to the proposition that trial commissioners must make a factual determination as to whether a claimant meets the eligibility requirements to receive § 31-308(a) C.G.S. benefits. See Morales v. Bridgeport, 5551 CRB-4-10-5 (April 18, 2011). "In Fountain v. Coca Cola Bottling Company, 5328 CRB-1-08-3 (February 18, 2009) we pointed out '[w]hether a claimant has satisfied the statutory criteria for § 31-308(a) wage differential benefits is a *factual determination* for the trial commissioner. Wright v. Institute of Professional Practice, 13 Conn. Workers' Comp. Rev. Op. 262, 1790 CRB-3-93-8 (April 18, 1995)." (Emphasis added.) Id. This includes cases where the claimant was terminated by the respondent. "Where a claimant is terminated for cause, the trier has the *discretion* to consider such a dismissal from employment tantamount to a refusal to perform a suitable light duty position for the purposes of § 31-308(a). If not for his own actions, the claimant in this case would have been able to earn the same salary he was earning before his injury, and would not have been entitled to temporary partial disability benefits." Levey v. Farrel Corp., 3649 CRB-4-97-7 (July 30, 1998). (Emphasis added.)

The respondents will have the opportunity to raise the issues delineated in this motion when further proceedings are held before the trial commissioner consistent with our remand.<sup>1</sup>

The Motion is therefore denied.

Commissioners Stephen B. Delaney and Michelle D. Truglia concur.

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<sup>1</sup> We are particularly perplexed as to the legal theory under which we, as an appellate tribunal, are being asked to render a decision as to the fair market barter value of goods and services the claimant received from his father in law (see Request, ¶ 3) in the absence of evidence on this issue having been presented to the finder of fact prior to the Finding and Award being issued. See Chung v. TTM Technologies, Inc., 5675 CRB-2-11-8 (August 23, 2011).