CASE NO. 5868 CRB-8-13-8 : COMPENSATION REVIEW BOARD
CLAIM NOS. 800157309 & 800122288

WENDELL BOND
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: APRIL 21, 2016

LEE MANUFACTURING, INC.
EMPLOYER

PEERLESS INSURANCE CO.
INSURER
RESPONDENTS-APPELLEES

and

HEALTHCARE SERVICE GROUP, INC.
EMPLOYER

ZURICH INSURANCE
INSURER
RESPONDENTS-APPELLEES

and

HASBASIT ABT, INC.
EMPLOYER

TRAVELERS
INSURER
RESPONDENTS-APPELLEES

and

MONROE GROUP
EMPLOYER

FIREMAN'S FUND INSURANCE CO.
INSURER
RESPONDENTS-APPELLEES

and

JACKSON CORRUGATED
EMPLOYER

PEERLESS INSURANCE
INSURER
RESPONDENTS-APPELLEES
and

LEE MANUFACTURING
EMPLOYER
and

FUTURE COMP
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant filed the appeal on his own behalf.

The respondents Lee Manufacturing and Peerless Insurance were represented by Marie Gallo-Hall, Esq., Montstream & May, LLP, 655 Winding Brook Drive, Glastonbury, CT 06033-6087.

The respondents Healthcare Service Group, Inc., and Zurich Insurance were represented by Michael Burton, Esq., Sharp & Shields, 500 Enterprise Drive, Suite 4A, Rocky Hill, CT 06067 did not file a brief or appear at oral argument.

The respondents Habasit ABT, Inc., and Travelers were represented by Timothy Zych, Esq., Law Offices of Cynthia Garraty, One Hamden Center, 2319 Whitney Avenue, Suite 4C, Hamden, CT 06518 did not file a brief or appear at oral argument.

The respondents Monroe Group and the Fireman's Fund were represented by Robert J. Enright, Esq., McGann, Bartlett & Brown, LLC, 111 Founders Plaza, Suite 1201, East Hartford, CT 06108 did not file a brief or appear at oral argument.

The respondents Lee Manufacturing and Future Comp were represented by Svetlana Steele-Baird, Esq., Behman Hambelton, LLP, 10 Alexander Drive, Wallingford, CT 06492.

The respondents Jackson Corrugated and Peerless Insurance were represented by Marian Yun, Esq., Meehan, Turret & Rosenbaum, 108 Leigus Road, First Floor, Wallingford, CT 06492 did not file a brief or appear at oral argument.

This Petition for Review[1] from the July 11, 2013 Finding and Dismissal Re: 31-315 Motion of Amado J. Vargas the Commissioner acting for the Eighth District was heard January 22, 2016 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Ernie R. Walker and Nancy E. Salerno.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant had appealed from a Finding and Dismissal by the trial commissioner, Amado J. Vargas, which denied the claimant's bid to reopen a stipulation that settled a number of his pending claims for Chapter 568 benefits. The claimant argued that this original stipulation was executed when he was not feeling well and his attorney did not properly explain the impact of this agreement prior to its execution. The trial commissioner did not find this argument persuasive and denied the claimant's bid to reopen the stipulation. The claimant has appealed from this denial. However, the respondents have filed a Motion to Dismiss this appeal, arguing it was statutorily untimely and we lack jurisdiction to consider the appeal. We find this Motion meritorious, and dismiss the claimant's appeal.

Commissioner Vargas reached the following findings in the Finding and Dismissal. He found that the claimant on April 13, 2012 had agreed to settle his claims for injuries which had occurred on a number of separate dates; which were October 14, 1999, February 24, 2006, August 2, 2006, March 5, 2007, June 1, 2007 and August 17,

[1] Postponements and extensions of time were granted during the pendency of this appeal.

2007 ("2012 Stipulation"). The claimant's back injury of May 21, 2008 was expressly left open. Commissioner Vargas found that the commissioner who had presided over the 2012 Stipulation, Commissioner Daniel E. Dilzer, fully canvassed the claimant as to the ramifications of the stipulation. Commissioner Vargas further found the claimant's attorney at that time, Peter Appleton, fully informed the claimant as to the ramifications of a settlement. The commissioner further found Attorney Appleton did a good job and used his best efforts to represent the claimant. The claimant reviewed and signed the "Stipulation and What it Means" form and he received and signed the $27,000 stipulation.

The trial commissioner noted that the claimant sought to reopen the 2012 Stipulation arguing that the three stated grounds to reopen a stipulation under § 31-315 C.G.S. applied to this situation.[2] The commissioner also noted the claimant said he was confused and light-headed at the time of the hearing which approved the 2012 Stipulation and this was compounded by some medicine he was taking.

Based on this record Commissioner Vargas concluded evidence was insufficient to support the Motion to Reopen. He did not accept the claimant's position as to the motion and specifically noted "[t]he Claimant is a very intelligent individual and he has been quite active and engaged in the handling of his claims." Findings, ¶ 13. Therefore, on July 11, 2013 the trial commissioner denied and dismissed the claimant's § 31-315

[2] The Appellate Court discussed the necessary requirements to reopen a stipulation in some detail in the case of O'Neil v. Honeywell, Inc., 66 Conn. App. 332, 337-38 (2001). "Section 31-315 allows the commission to modify an award in three situations. First, modification is permitted where the incapacity of an injured employee has increased, decreased or ceased, or . . . the measure of dependence on account of which the compensation is paid has changed. . . . Second, the award may be modified when changed conditions of fact have arisen which necessitate a change of [the award]. . . . Third, [t]he commissioner shall also have the same power to open and modify an award as any court of the state has to open and modify a judgment of such court."

C.G.S. motion. The claimant did not file a Motion to Correct. Instead, on August 1, 2013 he filed a Petition for Review to this tribunal appealing the Finding and Dismissal.

We note that the respondents Lee Manufacturing and Peerless Insurance have raised a challenge as to the jurisdiction of our tribunal to act on this appeal via a Motion to Dismiss. This Motion asserts the appeal herein was not filed within the statutory twenty day period from a trial commissioner's decision and therefore we lack jurisdiction. We must resolve this question prior to taking any action of the merits of an appeal. We have had opportunities in recent years to deal with the argument that an appeal has been filed in an untimely manner. In Brown v. Lawrence & Memorial Hospital, 5853 CRB-2-13-5 (April 21, 2014) the claimant offered an explanation for her late filing of an appeal but we concluded that we were not in a position to consider her appeal, as "[o]ur courts have determined that the failure of a party to file a timely appeal deprives the board of jurisdiction over the appeal. See Stec v. Raymark Industries, Inc., 299 Conn. 346 (2010)." Id. The claimant was obligated if he was dissatisfied or confused with this ruling to either appeal to this tribunal within twenty days, or file an appropriate motion to the trial commissioner seeking a correction or clarification within that period (see Garvey v. Atlas Scenic Studios, Inc., 5493 CRB-4-09-9 (February 14, 2012)), or his appellate rights would be extinguished pursuant to § 31-301(a) C.G.S. The claimant took neither action within that twenty day window. As the claimant herein was aggrieved by the July 11, 2013 decision of the trial commissioner and took no responsive action within twenty days, we lack subject matter jurisdiction to consider the appeal.

Even were we to have had jurisdiction to consider the claimant's appellate arguments, we would find them essentially an effort to retry the factual findings of

Commissioner Vargas on appeal. Our precedent in Macon v. Colt's Manufacturing, 5505 CRB-1-09-10 (September 27, 2010) is dispositive of these issues. Our standard of review is limited to addressing findings of fact that are "clearly erroneous." Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007). The trial commissioner in this matter, similar to the trial commissioner in Macon, reached findings of fact which were consistent with the testimony and evidence that he found credible and probative, but were unsupportive of the relief the claimant sought. In neither Macon nor the present case was a Motion to Correct filed challenging the factual findings of the trial commissioner. Therefore, as we pointed out in Stevens v. Raymark Industries, Inc., 5215 CRB-4-07-4 (March 26, 2008) when this occurs "we must accept the validity of the facts found by the trial commissioner, and that this board is limited to reviewing how the commissioner applied the law. See Admin. Reg. § 31-301-4." Id. The trial commissioner in the present case could reasonably determine based on the facts that he found that the standards required under § 31-315 C.G.S. to set aside a prior stipulation had not been met by the claimant, and could have reasonably denied this relief.[3]

The issues raised by the claimant in oral argument before our tribunal are essentially issues of fact which were considered by the trial commissioner at the formal hearing, or which could have been raised at the time of that hearing. We cannot retry the case on appeal and we find the trial commissioner had a reasonable basis in the record supporting his decision.

[3] The claimant has also sought via a Motion to Introduce Additional Evidence to bring evidence that he says prior counsel did not present to the trial commissioner directly to our tribunal's attention. Since we find this appeal was jurisdictionally invalid we need not directly address this issue; but note that pursuant to precedent such as Diaz v. Pineda, 117 Conn. App. 619 (2009) the moving party has the burden of persuasion on such issues.

Additionally, since the untimely appeal deprives us of jurisdiction in this case, we dismiss the appeal.

Commissioners Ernie R. Walker and Nancy E. Salerno concur in this opinion.