

CASE NOS. 5989 CRB-7-15-2
5862 CRB-7-13-7

: COMPENSATION REVIEW BOARD

CLAIM NOS. 700142173
700165848

MICHAEL RISEN
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION
COMMISSION

v.

: JUNE 13, 2016

JWA CORPORATION
EMPLOYER

and

CHEROKEE INSURANCE/
LIBERTY BELL INSURANCE
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant filed the appeal on his own behalf but did not appear at oral argument.

The respondents were represented by Matthew Necci, Esq., Halloran and Sage, One Goodwin Square, 225 Asylum Street, Hartford, CT 06103.

These Petitions for Review are from the following; the June 27, 2013 Finding and Award and November 12, 2013 Finding and Dismissal of Commissioner Daniel E. Dilzer acting for the Third District (Case No. 5862 CRB-7-13-7), and the January 28, 2015 Finding and Decision of Charles F. Senich the Commissioner acting for the Fourth District (Case No. 5989 CRB-7-15-2). These appeals were heard January 22, 2016 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Ernie R. Walker and Stephen M. Morelli.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The underlying factual circumstances from which these claims arise are a compensable injury sustained on or about November 24, 2005. On that date the claimant, while in the course of his employment, sustained injuries to his neck, back, right eye, right shoulder, mouth and teeth. The claimant initially appealed from the June 27, 2013 Finding and Award of Commissioner Daniel E. Dilzer acting on behalf of the Third District.¹ Thereafter, the claimant, who in proceedings below and before this board appeared without legal representation, litigated additional issues which were the subject of Commissioner Dilzer's November 12, 2013 Finding and Dismissal and Commissioner Charles Senich's January 28, 2015 Finding and Decision.²

Oral argument for these matters was originally scheduled for January 24, 2014. At the request of the claimant-appellant, the matter was postponed. Thereafter, oral argument was scheduled for April 25, 2014 and again the matter was postponed at the request of the claimant-appellant. Likewise, oral argument was scheduled for November 21, 2014 and postponed at the request of the claimant-appellant.

Finally, oral argument was scheduled for January 22, 2016. The claimant was advised that the matter would not be subject to rescheduling and alerted to the possibility

¹ On July 3, 2013, Commissioner Scott Barton ordered the reinstatement of benefits that were the subject of a Form 36 filed February 13, 2013. The Form 36 was administratively approved. Thereafter an informal hearing was scheduled for May 1, 2013. The claimant failed to attend that hearing. Commissioner Barton ruled that the Form 36 filed February 13, 2013 was to remain approved without prejudice. The claimant was then to appear at a formal hearing and if he chose, provide a defense to the Form 36. Ultimately, consideration of the Form 36 was an issue considered in Commissioner Dilzer's November 12, 2013 Finding and Dismissal.

² The claimant-appellant throughout this appeal and in the proceedings below was without legal representation and appears pro se. Additionally, extensions of time were granted to the claimant-appellant during the pendency of these appeals and oral argument was postponed on more than one occasion.

that the matter could be subject to a dismissal with prejudice. Additional communications were received from the claimant which, in pertinent part, indicated that appearing in person before the board was problematic for the claimant. A letter was sent to the claimant advising that the board would attempt to accommodate the claimant and permit the claimant to participate in oral argument by telephone. At the time of oral argument, January 22, 2016, the claimant did not participate in proceedings before the board by telephone.

As to the prosecution of the appeals, on July 8, 2013 the claimant filed a letter which he asked be considered as his reasons for appeal. That letter identified the issue for review as “What is the correct weekly compensation due to me, the claimant?”³

Although the claimant appealed from the November 12, 2013 Finding and Dismissal of Commissioner Dilzer the papers submitted in furtherance of the prosecution of his appeal failed to identify the legal issues with any degree of specificity. The only issue raised by the claimant with any specificity relates to the June 27, 2013 Finding and Award. In his Finding the trial Commissioner determined that the weekly compensation rate for the claimant was \$418.44.

In proceedings before Commissioner Dilzer the claimant argued that his compensation rate was incorrectly calculated and rather than the \$418.44 determined by the commissioner, the compensation rate should have been set as \$538.89.

Commissioner Dilzer utilized the compensation rate tables published by the Workers' Compensation Commission. The claimant's average weekly wage was \$718.33 and his

³ “I don't dispute the calculation of the weekly benefit table, which states clearly ‘[b]ased on 75% of **after-tax** average weekly wage. I don't dispute that my average weekly wage is \$718.53. I don't dispute that according to Section 31-310(b) of the Connecticut General Statutes, that after-tax, my average weekly wage would be \$418.44.” However the claimant argues “[i]t is a known fact that worker's (sic) compensation benefits are not taxed.” See claimant-appellant's letter received July 8, 2013.

tax filing status was single with one exemption. The trier cited § 31-310(b)⁴ C.G.S. and concluded that the average weekly wage and compensation rate determination was consistent with the law. We find no error.

In Commissioner Dilzer's November 12, 2013 Finding and Dismissal he considered the claimant's claim for; temporary total/partial disability (and if found eligible for what period) cost-of-living adjustments, and the alleged denial of medical benefits. The trier also considered the respondents claim of an overpayment, and their Form 36 filed February 13, 2013.

Following formal proceedings, the trial commissioner approved the Form 36 filed February 13, 2013 by the respondent. The trier found that the claimant failed to demonstrate that he was not at maximum medical improvement on that date, nor did the claimant carry his burden of persuasion as to his claims for total disability, temporary partial disability or entitlement to a COLA pursuant to § 31-310. Additionally the trial commissioner held that the respondents overpaid the claimant and that the respondents had not denied medical treatment to the claimant.

In a letter dated November 26, 2013 and filed December 2, 2013 the claimant appears to challenge the Commissioner Dilzer's determination as to the claimant's credibility. However, the claimant-appellant has not provided any analysis from which

⁴ Section 31-310(b) C.G.S. provides:

"Each August fifteenth, the chairman of the Workers' Compensation Commission, in consultation with the advisory board, shall publish tables of the average weekly wage and seventy-five per cent of the average weekly wage after being reduced by any deduction for federal or state taxes, or both, and for the federal Insurance Contributions Act, to be effective the following October first, except that not later than June thirtieth, the chairman, in consultation with the advisory board, shall publish tables of the average weekly wage and seventy-five per cent of the average weekly wage after being reduced by any deduction for federal or state taxes, or both, and for the federal Insurance Contributions Act, to be effective during the period July 1, 1993, to October 1, 1993. Such tables shall be conclusive for the purpose of determining seventy-five per cent of the average weekly earnings of an injured employee after such earnings have been reduced by any deduction for federal or state taxes, or both, and for the federal Insurance Contributions Act made from such employee's total wages received during the period of calculation of the employee's average weekly wage for purposes of sections 31-306, 31-307 and 31-308." (Emphasis ours.)

we can deduce the basis of his argument. Further on review of such matters our courts have held, “[T]he commissioner is the sole arbiter of the weight of the evidence and the credibility of witnesses.... Neither the review board nor this court has the power to retry facts....” Turrell v. Dept. of Mental Health & Addiction Services, 144 Conn. App. 834, 841 (2013). We will not tamper with such credibility determinations unless we are firmly convinced that such determinations result from an abuse of the trier’s discretion. *Id.*

Further, as noted above, the claimant did not appear at oral argument or utilize the telephone accommodation offered by the board. We therefore dismiss the claimant’s appeal of the November 12, 2013 Finding and Dismissal.⁵

The claimant also took an appeal from the January 28, 2015 Finding and Decision of Commissioner Charles Senich. The claimant appeared before Commissioner Senich seeking continued medical treatment pursuant to § 31-294d C.G.S., and temporary total disability pursuant to § 31-307 C.G.S. for the period from June 2010 forward. In his Finding and Decision, Commissioner Senich found that the respondents had authorized medical treatment with Drs. Robert Dawe and/or Michael Saffir. The trier also dismissed the claim for temporary total disability benefits noting the claimant did not offer any medical reports supporting his claim of total disability.⁶

The claimant’s appeal from the January 28, 2015 Finding and Decision of Commissioner Senich failed to identify with any specificity the legal grounds for the appeal. It is not for this Board to speculate as to the issues the appellant would have us review. We understand that the claimant is not a legal professional and while the

⁵ The trier found that the claimant was overpaid in the amount of \$16,273.42.

⁶ Commissioner Senich also recognized that the appealed Finding and Dismissal of November 12, 2013 remains the law of the case. See Findings, ¶ E, January 28, 2015 Finding and Decision.

standards for compliance with rules of legal process may be relaxed for such litigants it is not totally abandoned. As our Appellate Court recently stated;

[I]t is the established policy of the Connecticut courts to be solicitous of [self-represented] litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the [self-represented] party ... we are also aware that [a]lthough we allow [self-represented] litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law.” (Internal quotation marks omitted.) *Tonghini v. Tonghini*, 152 Conn.App. 231, 240, 98 A.3d 93 (2014).

Darin v. Cais, 161 Conn. App. 475, 481 (2015). See also; Ostrowski v. Guida-Siebert Dairy Co., 5374 CRB-6-08-9 (April 28, 2010).

The only fully framed appellate issue raised by the claimant is that pertaining to the computation of the claimant’s compensation rate. That issue was discussed and considered herein and no error was found. Casting the filings of the claimant in the other appeals in the most favorable light, we understand that the claimant disagrees with the conclusions reached in Commissioner Dilzer’s November 12, 2013 Finding and Dismissal, and Commissioner Senich’s January 28, 2015 Finding and Decision but without any analysis we cannot divine a basis for legal error.

We therefore affirm the trial commissioners’ conclusions in the afore-mentioned appeals.

Commissioners Ernie R. Walker and Stephen M. Morelli concur.