CASE NO. 5991 CRB-1-15-2 CLAIM NO. 100146504	: COMPENSATION REVIEW BOARD
EDIL R. RAMSAHAI CLAIMANT-APPELLEE	: WORKERS' COMPENSATION COMMISSION
v.	: JANUARY 26, 2016
COCA COLA BOTTLING COMPANY EMPLOYER	
and	
SEDGWICK CMS, INC. ADMINISTRATOR RESPONDENTS-APPELLANTS	

APPEARANCES:

The claimant was represented by Mark D. Leighton, Esq., Leighton, Katz & Drapeau, 20 East Main Street, Rockville, CT 06066.

The respondents were represented by Robert K. Jahn, Esq., Morrison Mahoney, LLP, One Constitution Plaza, Hartford, CT 06103-4500.

This Petition for Review from the January 13, 2015 Finding and Award of Ernie R. Walker the Commissioner acting for the Second District was heard September 25, 2015 before a Compensation Review Board panel consisting of Commissioners Randy L Cohen, Stephen M. Morelli and Daniel E. Dilzer.

OPINION

RANDY L. COHEN, COMMISSIONER. The respondents in this case have appealed from a Finding and Award issued to the claimant. The respondents argue that the evidence does not support the relief awarded to the claimant for the claimant's seronegative polyarthropathy/polyarthritis. They also argue that the Finding and Award found the claimant's alleged depression compensable in the absence of any medical evidence supportive of this element of the claim. Finally, the respondents argue that the trial commissioner should not have awarded the claimant interest under § 31-300 C.G.S. as this matter had not been properly noticed and had not been litigated. After review we find the trial commissioner had more than a sufficient quantum of probative evidence to support an award of temporary total disability benefits to the claimant for seronegative polyarthropathy/polyarthritis. We do not find that the issue of the claimant's depression was sufficiently addressed in the evidence to support a finding on that issue, and direct that this be stricken from the Finding and Award. On the issue of interest due to the claimant we concur with the respondents that this issue was not properly noticed during the proceedings; and consistent with our precedent in Ghazal v. Cumberland Farms, 5397 CRB-8-08-11 (November 17, 2009), we remand this issue for a new hearing.

The trial commissioner, Ernie R. Walker, found the following facts at the conclusion of an extensive formal hearing. The parties stipulated that the claimant has a compensable injury to his left hip, lower back, groin, and clavicle as a result of a slip and fall that the claimant sustained at work on June 10, 2003. A voluntary agreement for this injury was approved in November 2003 and the claimant has received hip surgery as a result of that injury. The trial commissioner noted "that the record is replete with

documentation showing the claimant with a pre-existing inflammatory/polyarthropathy/polyarthritis of the left hip." Findings, ¶ 3. The commissioner also noted that the claimant had a voluntary agreement approved in 2009 for his left lower extremity which found a 37% loss of use, and that the claimant was paid 57.35 weeks of benefits with an MMI date of September 26, 2008. The commissioner took administrative notice of all prior filings and awards in this matter.

The claimant testified at length at the hearing via an interpreter as to his biography, education, work history and medical condition. He said he was born in Puerto Rico and later moved to Brooklyn, NY and then to Holyoke, MA. He graduated from Holyoke High School and later attended Springfield Tech Community College and also Holyoke Community College ("HCC"). For several months in 2008 the claimant attempted to find work and applied for a number of jobs; but he was unsuccessful. During this period he applied for job retraining with the Connecticut Workers' Compensation Division of Workers' Rehabilitation. The claimant was advised at that time to take English classes. Working through the Division of Workers' Rehabilitation in conjunction with the Massachusetts Rehabilitation Commission, the claimant was enrolled at HCC in 2008. The claimant was enrolled in the ESL program at HCC, and started in an X-ray technician program, but found that difficult and started taking photography classes. While at HCC it was determined the claimant had a learning disability. As a result, the claimant enrolled in the STRIVE program, a federally funded program for students with disabilities, which entitled him to assistance.

An Accommodation Agreement was part of the STRIVE program. The claimant had a team of note takers and tutors supporting his studies. He had assistance with

homework and was allowed extra time to take tests, and to take tests multiple times before he passed.

The claimant testified as to being treated by physicians at the New England Orthopedic Surgeons: Kimat Khatak, M.D. his primary care physician, Northampton Internal Medicine Associates, Neurology Associates Of Western Massachusetts; Ann L. Parke, M.D., UConn Health Center; Martin Cherniack, M.D., UConn Medical Group; Courtland G. Lewis, Orthopedic Associates of Hartford; Rebecca Gonzalez-Flores, PhD, and others. He testified that he had a condition called Seronegative Polyarthropathy (arthritic condition) and he was in pain as a result of his claimed workers' compensation injuries. He said he did not have any feeling in his ankle or heel of his right foot, continues to have pain in his hip, and the pain in his back ranges in intensity. He described it as a 5 to 6 on a pain scale of 1 to 10. The claimant takes Methotrexate, Enbrel, Folic Acid and Transfer Facto to control his symptoms.

The trial commissioner reviewed the claimant's medical evidence. Highlights of this evidence included **Claimant's Exhibit F,** which included a whole body scan performed on September 8, 2003 which was suggestive of a traumatic injury superimposed on arthritis, as well as also discussion of a diagnosis of an immune disorder/connective tissue disease with significant myalgias and stiffness within the joints. This exhibit also included opinions from Dr. Teresa Klich-Nowak that stated the claimant's compensable injury was causally related to his seronegative spondyloarthropathy. In **Claimant's Exhibit H** Ann L. Parke, M.D. of the University of Connecticut Health Center School of Medicine, rheumatic disease, stated in a July 1, 2005 report that Mr. Ramsahai suffers from an inflammatory polyarthritis disease which

is an inflammatory polyarthritis that does have destructive, erosive inflammatory arthritis consistent with an inflammatory disease process. The doctor goes on to state that it is her opinion based on a reasonable medical probability that the injury that Mr. Ramsahai sustained on June 10, 2003 was sufficient to be a substantial factor contributing to the development of an inflammatory polyarthritis in this patient. In **Claimant's Exhibit I ,** Martin Cherniack, M.D. of the UConn Medical Group states that it is his belief as well as that of Dr. Parke's that Mr. Edil Ramsahai's work trauma was a significant contributing factor, but not the sole cause of Mr. Ramsahai's underlying disorder of polyarthropathy severe poly spondyloarthropathy. The opinions of Drs. Parke and Cherniack were supported by the opinions cited by Dr. Mark Ruderman' s IME report, cited as **Claimant's Exhibit BB.**

The trial commissioner also noted evidence as to the claimant's learning disabilities and work capacity. He cited a report by Dr. Rebecca Gonzalez-Flores, Ph.D. dated January 16, 2012 which stated that Mr. Edil Ramsahai has a diagnosis of reading disorder and written expression disorder; that his reading skills in Spanish are severely delayed in functioning comparable to students in the 5th grade, and he has limitations with writing and speaking. Mr. Michael C. Dorval of CRC, Certified Rehab Counselor, in his report of April 4, 2012 stated that in his vocational opinion, the claimant's job tenure in a regular and sustainable employment is viewed as doubtful by most employers, and his opinion was the claimant was marginally employable at a minimum wage job. At his August 9, 2013 deposition Mr. Dorval said that while the claimant graduated from high school, his testing indicated the claimant performed at a low to middle elementary school

level, and in his vocational opinion the claimant was precluded from regular and sustained employment on either a full time or part time basis.

The respondents presented evidence which the trial commissioner reviewed, in particular the deposition of their vocational expert, Renee Jubrey, dated February 6, 2014, in which she stated in her opinion that vocationally Mr. Ramsahai would not be prevented from obtaining unskilled labor. The commissioner noted that among the observations of Ms. Jubrey's report was the claimant continuously appeared to have interference in his thoughts and his thought processes were interrupted by his injury and symptoms. Ms. Jubrey also noted to the extent the claimant had a work capacity it required his symptoms to be properly suppressed and that Dr. Cherniack had noted the claimant was totally disabled when having a flare and his symptoms are aggravated. She noted at a deposition that one of the potential job opportunities she identified for the claimant, ticket seller, involved rapid hand activity and on the day the claimant was examined by Dr. Cherniack, he could not perform such a job. The commissioner also reviewed the Independent Medical Exam of Dr. Micha Abeles of November 11, 2013.

Based on this evidence the trial commissioner concluded the claimant's testimony was credible and persuasive. He found the opinions as expressed in the medical reports of Dr. Klich-Nowak, Dr. Martin Cherniack, Dr. Ann Parke, Dr. Kimat Khatak, and Dr. Mark Ruderman to be credible and persuasive. He further found the records show that the claimant suffers from underlying polyarthritic condition (seronegative polyarthropathy), and support the position that the claimant's compensable injuries to his low back, groin, left hip, clavicle, left ankle, and right hand are superimposed upon the claimant's polyarthritic conditions. As a result the trial commissioner concluded the

claimant's injury of June 10, 2003 has aggravated in a material and substantial fashion the claimant's underlying polyarthritis condition such that it has made that condition substantially worse. The commissioner further found the claimant's injuries and other conditions as a whole constitute a situation where this claimant is vocationally disabled.

The trial commissioner reached the conclusions he reached as to the claimant's vocational disability as he found the witnesses who testified as to the claimant's learning disabilities to be credible and persuasive. The commissioner concluded these disabilities grossly limit the claimant's cognitive abilities. He found the program the claimant participated in at HCC was not similar to the demands of a competitive workplace. He found vocational expert Michael Dorval's opinion that the claimant would not be a "reliable dependable employee at all" due to the claimant's advancing polyarthritis symptoms in the small joints of his hands and upper extremities condition persuasive, as well as his opinion that Mr. Ramsahai is not employable as of July 9, 2013, and at least one year prior to be credible and persuasive. Findings, ¶ P. He also determined "the credible substance of Renee Jubrey's report and testimony does not contradict, to a significant degree, the opinions of Mr. Dorval." Findings, ¶ Q. He further found the opinion of Dr. Cherniack that he claimant was essentially unemployable credible and persuasive.

Finally, the trial commissioner concluded the claimant sustained a material and substantial increase in seronegative polyarthropathy symptoms in January 2011 and his condition became materially and substantially worse. He concluded the claimant showed a change of circumstances rendering him vocationally temporarily totally disabled and unable to obtain employment, and the totality of circumstances of his work-related

injuries and compensable aggravation of his polyarthritis conditions caused the claimant to be unemployable since January 11, 2011. As a result the trial commissioner ordered the payment of temporary total disability benefits from January 11, 2011 to the present and ongoing, along with statutory interest at the rate of 10% a year pursuant to C.G.S. § 31-300 and § 37-3a.[1] [2]

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[1] Section 31-300 C.G.S. reads as follows;

"Sec. 31-300. Award as judgment. Interest. Attorney's fee. Procedure on discontinuance or reduction. As soon as may be after the conclusion of any hearing, but no later than one hundred twenty days after such conclusion, the commissioner shall send to each party a written copy of the commissioner's findings and award. The commissioner shall, as part of the written award, inform the employee or the employee's dependent, as the case may be, of any rights the individual may have to an annual cost-of-living adjustment or to participate in a rehabilitation program administered by the Department of Rehabilitation Services under the provisions of this chapter. The commissioner shall retain the original findings and award in said commissioner's office. If no appeal from the decision is taken by either party within twenty days thereafter, such award shall be final and may be enforced in the same manner as a judgment of the Superior Court. The court may issue execution upon any uncontested or final award of a commissioner in the same manner as in cases of judgments rendered in the Superior Court; and, upon the filing of an application to the court for an execution, the commissioner in whose office the award is on file shall, upon the request of the clerk of said court, send to the clerk a certified copy of such findings and award. In cases where, through the fault or neglect of the employer or insurer, adjustments of compensation have been unduly delayed, or where through such fault or neglect, payments have been unduly delayed, the commissioner may include in the award interest at the rate prescribed in section 37-3a and a reasonable attorney's fee in the case of undue delay in adjustments of compensation and may include in the award in the case of undue delay in payments of compensation, interest at twelve per cent per annum and a reasonable attorney's fee. Payments not commenced within thirty-five days after the filing of a written notice of claim shall be presumed to be unduly delayed unless a notice to contest the claim is filed in accordance with section 31-297. In cases where there has been delay in either adjustment or payment, which delay has not been due to the fault or neglect of the employer or insurer, whether such delay was caused by appeals or otherwise, the commissioner may allow interest at such rate, not to exceed the rate prescribed in section 37-3a, as may be fair and reasonable, taking into account whatever advantage the employer or insurer, as the case may be, may have had from the use of the money, the burden of showing that the rate in such case should be less than the rate prescribed in section 37-3a to be upon the employer or insurer. In cases where the claimant prevails and the commissioner finds that the employer or insurer has unreasonably contested liability, the commissioner may allow to the claimant a reasonable attorney's fee. No employer or insurer shall discontinue or reduce payment on account of total or partial incapacity under any such award, if it is claimed by or on behalf of the injured person that such person's incapacity still continues, unless such employer or insurer notifies the commissioner and the employee of such proposed discontinuance or reduction in the manner prescribed in section 31-296 and the commissioner specifically approves such discontinuance or reduction in writing. The commissioner shall render the decision within fourteen days of receipt of such notice and shall forward to all parties to the claim a copy of the decision not later than seven days after the decision has been rendered. If the decision of the commissioner finds for the employer or insurer, the injured person shall return any wrongful payments received from the day designated by the commissioner as the effective date for the discontinuance or reduction of benefits. Any employee whose benefits for total incapacity are discontinued under the provisions of this section and who is entitled to receive benefits for partial incapacity as a result of an award, shall receive those benefits commencing the day following the designated effective date for the discontinuance of benefits for total incapacity. In any case where the commissioner finds that the employer or insurer has discontinued or reduced any such

The respondents filed a Motion to Correct. The Motion sought to deny the claimant's bid for benefits on the grounds his evidence should not have been relied upon by the trial commissioner, and the opinions of the respondents' medical expert were reliable. The Motion also sought to remove the finding the claimant suffered from depression, as the respondents claimed the issue had not been claimed for adjudication and there had not been valid medical evidence presented on this issue. The respondents also sought to remove the finding that Ms. Jubrey agreed with the claimant's vocational expert on important points, and replace this with a finding that her opinions contravening Mr. Dorval's opinions were credible. The trial commissioner denied this motion in its entirety and the respondents commenced this appeal.

The respondents' appeal raises three issues. First, they argue that the interest award to the claimant was improper as the issue was not adjudicated before the trial commissioner, and must be overturned. They further argue that the trial commissioner improperly found that the commissioner's findings regarding injuries to various body parts of the claimant, and the finding the claimant suffered from depression due to a

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payment without having given such notice and without the commissioner having approved such discontinuance or reduction in writing, the commissioner shall allow the claimant a reasonable attorney's fee together with interest at the rate prescribed in section 37-3a on the discontinued or reduced payments."

[2] Section 37-3 C.G.S. reads as follows;

"Sec. 37-3a. Rate recoverable as damages. Rate on debt arising out of hospital services. (a) Except as provided in sections 37-3b, 37-3c and 52-192a, interest at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions or arbitration proceedings under chapter 909, including actions to recover money loaned at a greater rate, as damages for the detention of money after it becomes payable. Judgment may be given for the recovery of taxes assessed and paid upon the loan, and the insurance upon the estate mortgaged to secure the loan, whenever the borrower has agreed in writing to pay such taxes or insurance or both. Whenever the maker of any contract is a resident of another state or the mortgage security is located in another state, any obligee or holder of such contract, residing in this state, may lawfully recover any agreed rate of interest or damages on such contract until it is fully performed, not exceeding the legal rate of interest in the state where such contract purports to have been made or such mortgage security is located.

(b) In the case of a debt arising out of services provided at a hospital, prejudgment and postjudgment interest shall be no more than five per cent per year. The awarding of interest in such cases is discretionary."

compensable injury, were beyond the scope of what was to be adjudicated and these elements of relief were not supported by evidence. Finally, the respondents argue that the finding that their vocational expert agreed with the claimant's expert was not supported by the evidence and should be stricken.

We note 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). "This presumption, however, can be challenged by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

We look first to the claim that the trial commissioner inappropriately awarded benefits to the claimant for ailments which were not adjudicated and for which the evidence presented did not support an award. The respondents argue that competent evidence was not presented as to the compensability of other body parts besides the claimant's hip, and that the trial commissioner failed to credit their expert witness, Dr. Abeles, who opined against the finding the claimant suffered seronegative

spondylarthopathy. Appellant's Brief, pp. 5-6. We are not persuaded by this argument. We note that the trial commissioner *sua sponte* on September 29, 2014 directed the parties to address the compensability of the claimant's polyarthritic condition and reopened the record on this issue. Therefore this issue was placed fairly before the litigants and they had the opportunity to argue as to whether the evidence supported an award on this basis.

Moreover, we believe that the totality of the evidence cited by the trial commissioner in this matter establishes the requisite nexus between the compensable injury the claimant sustained and the various orthopedic injuries due to seronegative polyarthropathy cited by the trial commissioner. Having reviewed similar cases regarding the sequalae of orthopedic injury such as Nelson v. Revera, Inc., 5977 CRB-5-15-1 (September 21, 2015) and Hadden v. Capitol Region Education Council, 5843 CRB-1-13-5 (May 20, 2014), *appeal pending,* AC 36913, we are satisfied sufficient probative evidence supports an award for the other body parts the claimant asserts have been injured due to seronegative polyarthropathy, especially as 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.)[3]

[3] While the respondents argue it was error for the trial commissioner not to rule on whether their expert, Dr. Abeles, was a credible and persuasive witness, we may reasonably infer from the Finding and Award that the trial commissioner found Dr. Abeles less persuasive than the claimant's expert. See Madden v. Danbury Hospital, 5745 CRB-7-12-4 (April 22, 2013). In addition, the trial commissioner denied a Motion to Correct which sought to interpose Dr. Abeles's opinion over that of the claimant's witnesses, and by rejecting this Motion we can infer the commissioner ruled on the relative probative value of this expert's testimony. 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).

We find the award of benefits to the claimant for depression less well substantiated than the claim for orthopedic injuries. The medical reports of Dr. Klich-Nowak, Dr. Martin Cherniack, Dr. Ann Parke, Dr. Kimat Chatak, and Dr. Mark Ruderman support the claim for orthopedic injuries. See, in particular, Findings, ¶¶ 32, 34. However, the depression claim is supported primarily by the testimony of a rheumatologist, Dr. Klich-Nowak. See Findings, ¶¶14, 32f. Dr. Klich-Nowak's reports commencing in early 2009 cite "reactive depression" based on a narrative provided by the claimant at his examinations. These reports do not cite a diagnosis of clinical depression provided by any behavioral health professional, however. On April 4, 2012 Dr. Klich-Nowak's report suggested the claimant "may benefit from regular psychologist help regarding his learning disabilities, depression, a lot of stress related to his illness and ongoing inability to return to work force." Claimant's Exhibit F. However, the trial commissioner did not cite any reports subsequent to that date indicating the claimant treated with a psychologist or another behavioral health professional; only counselors related to the claimant's academic program at HCC. Dr. Cherniack noted "severe depression" in his July 9, 2013 medical report as a condition the claimant had occasionally suffered from during his illness. Claimant's Exhibit I. However, the claimant testified at the formal hearing that he had not treated for depression or anxiety since 2004 or 2005, and while he was open to counseling, he did not presently have a doctor. October 17, 2013 Transcript p. 37.

The evidence found probative and persuasive by the trial commissioner could support a referral for the claimant to obtain treatment from a psychologist. However, we do not believe that it conclusively determines the claimant presently suffers from

compensable depression, based on the standards delineated in Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142, 151 (1972). Nor does the record clearly indicate that this relief was an inevitable result of the evidence adduced at the hearing, unlike DiDonato v. Greenwich/Board of Education, 5431 CRB-7-09-2 (May 18, 2010). The issue of whether the claimant sustained injury or disability from psychiatric injuries was also not clearly raised by the parties in their opening statements at the formal hearing or in the hearing notices. As a result, we believe the precedent in Ghazal, supra, is on point. In Ghazal we found the trial commissioner had ordered relief on an issue that had arisen during the proceedings and had not been fully litigated. We vacated that element of relief and remanded the issue for further proceedings. On the issue of the claimant's alleged depression, we vacate that element of relief and remand this issue for further proceedings so that the respondents may offer a defense should they choose to do so.

We also find Ghazal on point as to our consideration in regard to awarding interest to the claimant. The issue as to whether the claimant should receive interest on his award was never raised by claimant's counsel at the formal hearing; nor was it raised *sua sponte* by the trial commissioner. The initial point in which the issue of awarding the claimant interest was raised was by claimant's counsel in their Proposed Findings and Award dated April 30, 2014. At that point the record in this hearing had closed and neither party had submitted evidence, argument or legal authority as to whether it was appropriate to award interest in this matter. The hearing notices sent to the litigants in this matter also were bereft of any reference to the issue of awarding the claimant interest. The circumstances herein are akin to Ghazal as an issue was raised in the proceeding too late to permit the opposing party an opportunity to litigate the issue.

The claimant asserts that an award of interest in this matter is appropriate insofar as to awarding interest pursuant to § 31-300 C.G.S. and § 37-3a C.G.S. He asserts the trial commissioner was not acting to sanction the respondents for fault or delay; and that the interest award was solely a "use of money" award. The claimant cites our opinion in Melendez v. Valley Metallurgical, 4178 CRB-2-00-1 (May 1, 2001), *appeal dismissed*, A.C. 23921 (May 14, 2003), *cert. denied*, 266 Conn. 904 (2003) as authority for his position that interest on a § 31-307 C.G.S. award does not require a finding of fault. We concur with the claimant that the trial commissioner did not need to solicit legal argument or evidence to justify a finding of fault or neglect (see McFarland v. Dept. of Development Services, 115 Conn. App. 306 (2009)) in order to award interest under § 31-300 C.G.S. and § 37-3a C.G.S. However, we have not been presented with an argument that as a matter of law the trial commissioner was compelled to award interest, unlike cases dealing with permanent partial disability awards such as Abrahamson v. State/Dept. of Public Works, 5280 CRB-2-07-10 (February 26, 2009) and Hernandez v. American Truck Rental, 5083 CRB-7-06-4 (April 19, 2007). Therefore, we believe the respondents should have had an opportunity to be heard on whether they had any legal or factual defense to an award of statutory interest on the § 31-307 C.G.S. award. We vacate the award of interest in this matter and remand the issue for further proceedings.

Finally we turn to the respondents' argument that the Finding and Award inaccurately stated that the respondents' vocational expert agreed on important points with the claimant's vocational expert. We find this argument unpersuasive and unsupported by the record. First, had the trial commissioner accorded Ms. Jubrey's testimony no weight at all the Finding and Award can be adequately supported by the

testimony of Mr. Dorval, whom the trial commissioner found credible and persuasive. In addition, the commissioner found "**the credible substance** of Renee Jubrey's report and testimony does not contradict, to a significant degree, the opinions of Mr. Dorval." Conclusion, ¶ Q; (Emphasis added). We can easily infer that to the extent Ms. Jubrey offered inconsistent testimony and opinions to that of Mr. Dorval, the trial commissioner did not find those opinions credible. A trial commissioner may find a witness credible and persuasive on one issue and discount their testimony on another issue. "We have held that it is within the discretion of the trial commissioner to accept some, but not all, of a physician's opinion." Lopez v. Lowe's Home Improvement Center, 4922 CRB-6-05-3 (March 29, 2006). It appears the trial commissioner reached this determination as to Ms. Jubrey's opinions and he had the right under our precedent to reach this determination.

Accordingly, we affirm the Finding and Award except as to the determination that: a) that the claimant suffered from depression as a compensable injury; and b) that the claimant should receive interest pursuant to § 31-300 C.G.S. and § 37-3a C.G.S. on his § 31-307 C.G.S. award. These matters are remanded for further proceedings.

Commissioners Stephen M. Morelli and Daniel E. Dilzer concur in this opinion.