CASE NO. 5993 CRB-1-15-2 : COMPENSATION REVIEW BOARD
CLAIM NO. 100157034

RAY FIELDS
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: JANUARY 15, 2016

550 STEWART ACQUISITIONS CORPORATION, ET AL
EMPLOYER
NO RECORD OF INSURANCE

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

At the trial level the claimant was represented by Kevin Creed, Esq., The Creed Law Firm, LLC, 99 North Street, Bristol, CT 06010. Claimant filed an appeal on his own behalf. Claimant did not attend oral argument but participated in the proceeding telephonically.

No appearance was made at the trial level or at oral argument for or on behalf of 550 Stewart Acquisitions Corporation.

The respondent-appellee Second Injury Fund was represented by Lawrence G. Widem, Esq., Assistant Attorney General, Office of the Attorney General, 55 Elm Street, Hartford, CT 06141-0120.

This Petition for Review from the January 26, 2015 Finding and Dismissal of Christine L. Engel the Commissioner acting for the First District was heard September 25, 2015 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Randy L. Cohen and Stephen M. Morelli.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant in this matter has appealed from a Finding and Dismissal of his claim for benefits. He argues that the trial commissioner erred in dismissing his claim as he believes he established that he sustained a workplace injury on February 21, 2005. After reviewing the evidence produced by the claimant the trial commissioner was not persuaded that an employer-employee relationship existed between the claimant and the respondent 550 Stewart Acquisitions Corporation, LLC. It is black letter law that an employer-employee relationship must exist before this Commission has the statutory jurisdiction to award benefits. Our review of the record confirms that the trial commissioner had a reasonable basis to find a lack of jurisdiction in this matter. Accordingly, we affirm the Finding and Dismissal.

Commissioner Christine L. Engel reached the following findings of fact at the conclusion of the formal hearing in this matter. The claimant, Ray Fields, a/k/a Erwin R. Fields, testified he was employed by 550 Stewart Acquisitions Corporation, LLC ("Stewart") as a structural engineer on February 21, 2005. He said he had answered a newspaper advertisement and was interviewed by Charles Mooney at the jobsite in South Windsor and was hired on or about February 1, 2005. The claimant said Stewart's business was renovating hotels and that his duties for the firm involved overseeing other personnel and rectifying problems, particularly structural problems. He said he was paid $11.00 per hour for a 12 hour day and expected a bonus at the completion of the project. The claimant further testified that he had not received a W-2 form from Stewart and he had not listed this firm as an employer on his income tax return that he filed that year.

The claimant testified as to the circumstances of his injury on February 21, 2005. He testified that while at the worksite he was struck by a motor vehicle and injured in this manner. "I was in the parking lot finishing up an examination of product that needed to be done and where it needed to be placed, speaking to two individuals that had become my employees/helpers, and all of a sudden this car jumped into gear and hit me." Findings, ¶ 9.

The Claimant testified he was pinned between the car which had struck him and a tow truck. He further testified, "[i]t hit me, and then it hit me twice and I was pinned between the cars." Findings, ¶ 10. The claimant said that he was driven to Manchester Memorial Hospital by Mr. Mooney as the ambulance did not arrive in a timely fashion. The claimant was later transported for treatment to Hartford Hospital. The claimant testified at the formal hearing to sustaining a variety of injuries to numerous body parts from this collision, Findings, ¶ 12, but the admission reports for Manchester Memorial Hospital and Hartford Hospital document only that the claimant sustained crush injuries to his right leg. Findings, ¶¶ 13, 14. The claimant was treatment for an extensive laceration and for "[o]pen fracture of the right lower extremity involving the fibula." Findings, ¶ 15.

The medical reports of both Manchester Memorial Hospital and Hartford Hospital listed "Springfield Water" as the claimant's employer. The claimant treated at Hartford Hospital for six days and was released in good condition. The claimant was treated for follow up care after the initial hospitalization in March and April 2005 by Dr. Mark Decker of Ellington Family Practice, his primary care doctor. In 2006 the claimant relocated to California and received treatment for his prior leg trauma at South Valley

Health Center, Palmdale, CA and Valley Care/Olive View, UCLA Medical Center in Sylmar, CA. He also treated at Antelope Valley Hospital in Westminster, California, in March of 2006 for abdominal pain with nausea and vomiting. The claimant later relocated to other states and presented medical reports from St. Charles Medical Center in Bend, Oregon, referencing his 2005 Connecticut injuries.

The commissioner also noted that evidence was presented by an investigator for the Second Injury Fund. James Pepe searched for evidence of 550 Stewart Acquisition Corporation in 2008.[1] The search was unable to locate any of the officers of the corporation. The report contained the following information.

> The claimant's deposition testimony suggests that he was working on a project at the Bradley Hotel on South Center Street in Windsor Locks. No property was found for the Bradley Hotel or Stewart Acquisition Corp in Windsor Locks. The property located at 383 South Center Street, Windsor Locks is owned by Beverly Hills Suites, LLC.

Respondent's Exhibit 1; Findings, ¶ 29.

Based on these factual findings the trial commissioner concluded the claimant did not sustain a compensable injury to his right leg on February 21, 2005, arising out of and in the course of his employment with 550 Stewart Acquisitions Corporation. The trial commissioner further concluded that the claimant's testimony regarding his relationship with 550 Stewart Acquisitions Corporation was <u>not</u> sufficient to support an employer/employee relationship. Accordingly, on January 26, 2015 Commissioner Engel dismissed the claim for benefits.

[1] The Second Injury Fund appeared in this action as Stewart was found to be an uninsured party for workers' compensation.

On February 20, 2015 via facsimile transmission the Commission received claimant's Petition for Review. Reasons for Appeal and a Motion to Correct dated February 19, 2015 were filed via facsimile transmission on February 23, 2015 by the claimant. The Motion to Correct sought to add findings supportive of compensability, including a finding that the claimant had been paid one check from the respondent Stewart drawn on Bank of America. The Motion to Correct also stated the claimant did not believe his attorney presented all the evidence required to prevail in a complex matter such as this case. The trial commissioner denied the Motion in its entirety and the claimant has pursued this appeal.

We note that the respondent Second Injury Fund has 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.[2] 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

[2] The relevant statute (§ 31-301(a) C.G.S.) reads as follows.
"Sec. 31-301. Appeals to the Compensation Review Board. Payment of award during pendency of appeal. (a) At any time within twenty days after entry of an award by the commissioner, after a decision of the commissioner upon a motion or after an order by the commissioner according to the provisions of section 31-299b, either party may appeal therefrom to the Compensation Review Board by filing in the office of the commissioner from which the award or the decision on a motion originated an appeal petition and five copies thereof. The commissioner within three days thereafter shall mail the petition and three copies thereof to the chief of the Compensation Review Board and a copy thereof to the adverse party or parties. If a party files a motion subsequent to the finding and award, order or decision, the twenty-day period for filing an appeal of an award or an order by the commissioner shall commence on the date of the decision on such motion."

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 January 26, 2015 decision of the trial commission and took no responsive action within twenty days, we lack subject matter jurisdiction to consider the appeal.

While we believe the procedural deficiencies in the claimant's appeal were sufficiently material as to warrant a dismissal, were we to have considered the merits of the claimant's appeal we would have affirmed the trial commissioner's decision. Our review herein is governed by the precedent in Castro v. Viera, 207 Conn. 420 (1988). The claimant in that case argued that the respondent-employer's failure to contest the claim should cause the trial commissioner to find jurisdiction. Our Supreme Court ruled to the contrary.

> The burden in a workers' compensation claim rests upon the claimant to prove that he is an "employee" under the act and thus is entitled to invoke the act. Bourgeois v. Cacciapuoti, 138 Conn. 317, 321, 84 A.2d 122 (1951); Morganelli v. Derby, 105 Conn. 545, 551, 135 A. 911 (1927). This relationship is threshold because it is settled law that the "commissioner's jurisdiction is `confined by the Act and limited by its provisions.'" Gagnon v. United Aircraft Corporation, 159 Conn. 302, 305, 268 A.2d 660 (1970). Long ago, we said that the jurisdiction of the commissioners "is confined by the Act and limited by its provisions. Unless the Act gives the Commissioner the right to take jurisdiction over a claim,

> it cannot be conferred upon [the commissioner] by the parties either by agreement, waiver or conduct.

Id., 426.

The Supreme Court in Castro rejected the claimant's argument that a successful Motion to Preclude could establish jurisdiction. Instead, the Supreme Court held, "[t]he burden of adducing evidence to enable the commissioner to conclude that there was subject matter jurisdiction to bring this claim within the act was on the plaintiffs." Id., 434. "[W]e note that the determination of whether an employment relationship existed at the time of the injury is largely a factual question to be resolved by the commissioner. Merlin v. Labor Ford of America, Inc., 3920 CRB-4-98-10 (December 22, 1999), *aff'd*, 62 Conn. App. 906 (2001)(per curiam), *cert. denied*, 256 Conn. 922 (2001)"; Bugryn v. State/Department of Correction, 4888 CRB-8-04-11 (October 24, 2005), *aff'd*, 97 Conn. App. 324 (2006), *cert. denied*, 280 Conn. 929 (2006); Bonner v. Liberty Home Care Agency, 4945 CRB-6-05-5 (May 12, 2006).

In this case, we must review the evidence before the trial commissioner to ascertain if it was a reasonable conclusion that the claimant had failed to sustain his burden of proving he was an employee of the respondent-employer. The trial commissioner found the claimant provided no documentation of his employee status. The record did not include any documentation such as an employment contract, an employee handbook, a W-2 form, a 1099 form, nor any pay stubs or cancelled checks from Stewart. The claimant also did not present any testimony or affidavits from a supervisor or a co-worker describing his status with Stewart on the day he was injured, nor any memos, emails or text messages demonstrating Stewart had the right to control his activities. The sole evidence the claimant presented to the trial commissioner on his

employment status with Stewart was his own uncorroborated testimony. July 9, 2014 Transcript, pp. 34-37.

We note similarity herein with our decision in Reeve v. Eleven Ives Street, LLC, 5146 CRB-7-06-10 (November 5, 2007) where a trial commissioner was not persuaded the injured claimant had an employee-employer relationship with the respondent in the absence of any documentation, and we affirmed the dismissal of that claim as it relied on uncorroborated testimony that the finder of fact found unpersuasive. Even if the trial commissioner found the claimant's narrative of injury persuasive, she would have had to also find he was acting as an employee on February 21, 2005 to award benefits under our Act. The evidence on the record does not compel that finding as a matter of law; as based on the facts on the record it could be equally reasonable to determine the claimant was acting as an independent contractor on the date of the injury, see Schleidt v. Eldredge Carpentry, LLC et al., 5373 CRB-8-08-8 (July 14, 2009) and Maskowsky v. Fed Ex Ground, 5200 CRB-3-07-2 (July 28, 2008). The burden of proof is on a claimant to establish an employer-employee relationship. Bugryn v. State, 97 Conn. App. 324, 331-332 (2006). We may not, as an appellate panel, retry such a factual finding on appeal. Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988).

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 and reconsidered by her in responding to the Motion to Correct. We cannot retry the case on appeal and we find the trial commissioner had a reasonable basis in the record supporting her decision.

However, since the untimely appeal deprives us of jurisdiction in this case, we dismiss the appeal.[3] [4]

Commissioners Randy L. Cohen and Stephen M. Morelli concur in this opinion.

[3] The claimant asserts error from the trial commissioner's denial of its Motion to Correct. Since the Motion to Correct essentially sought to interpose the claimant's conclusions as to the facts presented, we find no error. See Liano v.Bridgeport, 4934 CRB-4-05-4 (April 13, 2006) and D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003).

[4] The claimant has asserted that his counsel at the formal hearing did an inadequate job of presenting his case. The claimant has not presented any precedent wherein we can reverse or vacate a trial commissioner's finding for that reason. As our review of the record and transcript documents that the claimant received procedural due process, Balkus v. Terry Steam Turbine Co., 167 Conn. 170, 177 (1974), we are not persuaded this averment presents reversible error.