

CASE NO. 6010 CRB-4-15-4
CLAIM NO. 400005567

: COMPENSATION REVIEW BOARD

CARL J. LIANO
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION
COMMISSION

v.

: APRIL 22, 2016

CITY OF BRIDGEPORT
EMPLOYER
SELF-INSURED

and

PMA INSURANCE COMPANY
ADMINISTRATOR
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant filed the appeal on his own behalf.

The respondents were represented by Marie Gallo-Hall, Esq., Montstream & May, LLP, PO Box 1087, Glastonbury, CT 06033-6087.

This Petition for Review¹ from the April 23, 2015 Finding and Dismissal of Michelle D. Truglia the Commissioner acting for the Seventh District was heard December 18, 2015 before a Compensation Review Board panel consisting of Commissioners Stephen M. Morelli, Ernie R. Walker and Christine L. Engel.

¹ Extensions of time were granted during the pendency of this appeal.

OPINION

STEPHEN M. MORELLI, COMMISSIONER. The claimant has appealed from an April 23, 2015 Finding and Dismissal wherein the trial commissioner, Michelle D. Truglia, concluded that the claimant was not entitled to temporary total disability benefits during the period from October 26, 2004 to October 30, 2014. The claimant asserts that this decision contravenes legal precedent and is unsupported by the evidence on the record. We have examined the legal issues raised by the claimant and the precedent interpreting § 7-433c C.G.S. We are satisfied the trial commissioner properly applied the law in this case. As to the substantive merits of the claim for temporary total disability benefits, we are satisfied that the trial commissioner's conclusions are supported by evidence on the record she found probative and persuasive. We find no error and affirm the Finding and Dismissal.

The trial commissioner reached the following factual findings at the conclusion of the formal hearing. She took administrative notice of all prior proceedings in this claim, including a prior Finding and Dismissal dated April 6, 2005 involving a claim for temporary total disability for an earlier time period. She took administrative notice of § 7-433c C.G.S. and its amendments subsequent to its 1971 passage. She noted the respondents stipulated the claimant was entitled to and receiving benefits under this Act. She also noted the claimant was declared to be at maximum medical improvement on January 17, 1996 and had been paid for a 58% permanent partial disability of the heart.

The trial commissioner restated the testimony of the claimant at the formal hearing. He said he retired from the respondent's police force in 1983 when he was 37 years old. Since that time, the claimant never sought any sort of vocational retraining or

employment, despite at least two job offers being made to him. He has attended numerous Workers' Compensation hearings on his own behalf and served as the president of the Municipal Police and Fire Heart and Hypertension Association from 1990 to 1994. In addition, the claimant has assisted other policemen with their heart/hypertension claims and has appeared before the Freedom of Information tribunal in 2012, 2013 and 2014. He also testified that he is able to take care of his activities of daily living and, in addition, he reads the newspaper every day and drives without restriction. He goes out to dinner with his wife and visits with friends and family and recently went on a Caribbean cruise. He also attends his grandchildren's recitals and soccer games. The claimant acknowledged that he testified at his May 15, 2014 deposition that his daily routine hasn't really changed in the past 10 years. The trial commissioner also noted that the claimant had received seven years of benefits under § 31-308a C.G.S. without performing work searches.

The claimant's medical history was reviewed by the trial commissioner. He had an angioplasty and catherization performed on February 17, 2005 which included placement of a stent to address his coronary artery disease. On June 8, 2010 he had a nuclear cardiology evaluation to rule out ischemia. Shortly thereafter, on June 17, 2010 the claimant underwent a cardiac catherization and angioplasty. The claimant's treating cardiologist, Dr. Stephen Marshalko, evaluated the claimant on June 25, 2010 and identified that his blood pressure was 128/75. Dr. Marshalko asked the claimant at that time to increase his physical activities. On September 23, 2010 Dr. Marshalko's report noted that the claimant's ejection fraction had improved from 51% to 60% since June. On March 9, 2011 the claimant presented for a routine checkup with Dr. Marshalko, who

noted his recent stress tests “now shows complete resolution of the previously noted anterior anterolateral ischemia. Perfusion imaging is now normal post stenting performed last June. Left ventricular function is low normal with an ejection fraction of 51%.” Findings, ¶ 18. Dr. Marshalko’s March 14, 2012 examination concluded “Carl is doing well, though his stress levels continue to increase. He is having no chest pain, lightheadedness, shortness of breath or dyspnea, no fevers, chills or cough. The claimant has no syncope (fainting) or headaches. He has no abdominal complaints, no urinary complaints and no falls. The claimant’s blood pressure is 130/70; his heart rate is 70; his HEENT exam is normal; his lungs are clear, his heart shows regular rate and rhythm” Findings, ¶ 20.

The commissioner also reviewed the medical records of Dr. Myl Rama, who was a treating physician for the claimant for internal medicine. On January 7, 2013 Dr. Rama concluded the claimant was totally disabled due to his level of medication, which included 50 mg of Metoprolol two times a day along with Avapro 300 mg daily, along with 20 mg of Zocor for high cholesterol, Humalog 75/25, 30 units SC bid and Metformin 850 mg three times a day. Dr. Rama noted the claimant has migraine headaches and vasospasm angina [Vaso Spastic Angina] when he experiences emotional stress and is under treatment with Zoloft 100 mg po daily and also takes Cardizem 60 mg three times a day. A March 13, 2013 visit with Dr. Rama reported no new physical ailments but noted the claimant “has been under increasing stress due to his court litigations involving his disability/Medicare claims. Findings, ¶ 23. On March 18, 2013, the claimant underwent an echocardiogram at the Cardiology Diagnostic Center in

Bridgeport, Connecticut. Dr. Michael Logue performed the evaluation and concluded the claimant's condition was essentially unchanged from 2010.

On May 21, 2014, the deposition of Dr. Rama was taken by the respondents. Dr. Rama states that he has been treating the claimant since 1983 for labile (fluctuating) hypertension. When he first saw the claimant, he had already been diagnosed with heart disease and Dr. Rama noted he has consistently advised the claimant to lose weight and avoid stress in order to control his blood pressure. Dr. Rama described the insertion of stents into the claimant as having been successful. He testified to the variety of non-cardiac ailments the claimant suffers from and the medications required to address these ailments. Dr. Rama testified that the claimant's work "capacity is partially impaired, not because of heart and hypertension because of his emotional status. He's very emotionally labile. When he gets angry, he gets chest pain angina and he has to use more nitroglycerin to relieve the chest pain." Findings, ¶ 38. Dr. Rama agrees with the claimant's cardiologist, Dr. Marshalko, that the claimant is doing relatively well from a cardiac standpoint. In Dr. Rama's opinion, the claimant could work in a low stress occupation.

The trial commissioner also considered the report and deposition of the respondents' medical examiner, Dr. Martin Krauthamer. Dr. Krauthamer, a cardiologist, examined the claimant on July 11, 2014 and opined the claimant's cardiac condition appeared to be stable. Dr. Krauthamer noted the claimant was a knowledgeable individual and in his opinion, from a cardiovascular point of view, the claimant was employable in a low-level sedentary occupation. "He clearly could not be a police officer in any way. The major obstacle to his employment would be his emotional status."

Findings, ¶ 29. At his deposition Dr. Krauthamer indicated there were no signs of congestive heart failure and the claimant's heart tones were normal. He also noted there were no murmurs in the claimant's heart, suggesting that there were no problems with his heart valves. In addition his cardiogram of July 11, 2014 was normal with no signs of a heart attack and a sinus rhythm of 71. Dr. Krauthamer diagnosed the claimant with arteriosclerotic coronary artery disease with normal heart and muscle function; he had a normal left ventricular function and left anterior descending function. Dr. Krauthamer testified that he feels the claimant is capable of a sedentary occupation because his heart muscle is normal, he had several angioplasties so the blood vessels are open and coronary circulation is quite good. He further noted that both of the claimant's treating physicians ascribed the claimant's impairments to conditions other than heart and hypertension conditions.

Based on these subordinate facts the trial commissioner concluded that the claimant's treating physicians and the respondents' medical examiner agree that the claimant's cardiac status is stable and well-controlled, Conclusion, ¶ C, and therefore, the weight of the medical evidence is that the claimant may have other medical conditions precluding him from employment, but he is not temporarily totally disabled on account of his well-controlled heart or hypertension condition and he has a light or sedentary work capacity from a cardiac standpoint. Conclusion, ¶ D. Consequently the trial commissioner found the claimant had a light duty work capacity and had not been temporarily totally disabled due to his heart and hypertension condition between October 26, 2004 and October 30, 2014. Conclusions, ¶¶ E, F. As a result the trial commissioner dismissed the claimant's bid for temporary total disability benefits from October 26, 2004

to October 30, 2014. She further found the claimant's § 7-433c C.G.S. claim was lawfully administered through Chapter 568.²

The claimant filed a Motion to Correct this Finding and Dismissal. The gravamen of this Motion was his assertion that he was, as a beneficiary of § 7-433c C.G.S. benefits, not subject to the provisions of Chapter 568. The claimant asserted that this was because had the commissioner properly applied the version of the heart and hypertension law in effect in the late 1970's, she would have found there was no need to prove a continued disability from a cardiac ailment to award benefits. In the claimant's view, once he was disabled from being a police officer he need not provide any further proof of disability to receive benefits. The claimant also took issue with the trial commissioner's characterization of the medical evidence presented at the hearing. The trial commissioner denied this motion in its entirety and the claimant then commenced the instant appeal.

In his appeal the claimant restates the issues he presented in his Motion to Correct. He places great emphasis on a Second Circuit Court of Appeals federal decision, Green v. Commissioner of Internal Revenue, 60 F3rd 142 (1995), ("Green") which he argues supports his interpretation of § 7-433c C.G.S. He has also filed a Motion to Submit Additional Evidence, which included various Public Acts, documents as to the Tax Court decision which was the basis of the aforementioned Green Second Circuit decision, and a union contract with the City of Bridgeport. The respondents objected to this Motion, but we have overruled their objection as we deem these documents refer to legal arguments and are not factual evidence.

² The trial commissioner concluded in Conclusion, ¶ A that while § 7-433c "was not a workers' compensation statute per se, the legislature expressly provided that Conn. Gen. Stat. Sec. 7-433c be administered under the provisions of Chapter 568 of the Connecticut General Statutes (Connecticut Workers' Compensation Act). See Attachment "A" – Conn. Gen. Stat. Sec. 7-433c (Rev. 10/1/79; See Attachment "B" – Conn. Gen. Stat. Sec. 7-433c (Rev. 07/01/13)."

We note the standard of deference we are obliged to apply to a trial commissioner's findings and legal conclusions on appeal 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). The claimant focuses his appeal on his belief the trial commissioner did not properly apply the law in force at the time he was injured. Upon reviewing relevant precedent we do not agree.

The claimant argues that when he was originally deemed to qualify for § 7-433c C.G.S. benefits over 30 years ago, the law in force did not require a claimant to prove continued entitlement to temporary total disability benefits. However, we find the facts and legal argument presented herein indistinguishable from an Appellate Court case that evaluated the standard for § 7-433c C.G.S. benefits at that time, Revoir v. New Britain, 2 Conn. App. 255 (1984). In Revoir the claimant sustained a heart attack on October 10,

1980 and retired from the fire department in January 1981. *Id.*, 257.³ The commissioner awarded the claimant benefits “equal to those of Chapter 568” and the claimant appealed arguing § 7-433c C.G.S. provided for permanent disability benefits. *Id.* Applying § 7-433c C.G.S. as it stood at that time, the Appellate Court rejected that argument. They found “the statute clearly provides that benefits for compensation and medical care shall be payable ‘in the same amount and the same manner as that provided under chapter 568....’ Therefore, once it is established that a claimant qualifies under § 7-433c, chapter 568 then controls the amount of benefits to which he is entitled.” *Id.* 259. The Appellate Court then reiterated “we find that it is clear that such claimant is not entitled to permanent disability benefits because of his inability to work specifically as a fire fighter or policeman.” *Id.*, 260.

The claimant in the present case argues that since § 7-433c C.G.S. is “bonus legislation” beyond the eligibility limitation of Chapter 568 it should be afforded an expansive application. The Appellate Court considered and rejected that argument in Revoir noting that the “bonus” in the heart and hypertension law went to removing the claimant’s burden of proof as to initial causation, not to expanding the level of benefits. “We cannot accept the plaintiff’s claim that § 7-433c additionally provides, as a bonus for firemen and policemen, that the claimant’s incapacity to work as a fireman or policeman in and of itself establishes a statutory right to permanent disability benefits.” *Id.*, 260.

³ Our review of this file indicates the claimant herein sustained his original injury on September 19, 1979 and retired May 16, 1983, therefore the heart and hypertension statute in effect for Revoir v. New Britain, 2 Conn. App. 255 (1984) would govern the facts of this case.

Moreover, we find that the issue raised by the claimant in this appeal was previously litigated earlier in this very claim, rejected by this tribunal, and our decision was affirmed by the Appellate Court. In Liano v. Bridgeport, 3447 CRB-4-96-10 (January 6, 1998), the claimant argued under § 7-433c C.G.S. he was entitled to continued temporary total disability benefits. We held:

Section 31-307 provides benefits when a compensable injury results in a claimant's 'total incapacity to work.' Section 7-433c 'did not create a *permanent* total disability benefit.' Mascata v. Stamford, 5 Conn. Workers' Comp. Rev. Op. 144, 146, 377 CRD-7-85 (July 22, 1988) (emphasis added); see also Herwerth v City of Groton, Case No. 3105 CRB-2-95-6 (Dec. 24, 1996), *aff'd*, 45 Conn. App. 922 (1997). A claimant who receives benefits pursuant to § 7-433c must satisfy the requirements of § 31-307 in order to receive temporary total disability benefits. Mascata, *supra*.

The claimant appealed our decision. It was affirmed by the Appellate Court, *per curiam*, 51 Conn. App. 905 (1999). We may now treat this decision as the "law of the case" in accordance with the precedent in Waterbury Hotel Equity, LLC v. Waterbury, 85 Conn. App. 480 (2004).

Nonetheless, were a decision reached by a tribunal of superior jurisdiction to have directly undermined the statutory interpretation we have applied in this case, we would need to revisit this issue at this juncture. The claimant asserts that the Second Circuit Green decision did just that. We have carefully reviewed that decision and do not concur with the claimant's understanding of that opinion. Green addressed solely the issue of whether earnings received from a § 7-433c C.G.S. award were taxable gross income under the Internal Revenue Code. Since the presumption of compensability for any heart related disability allowed for § 7-433c C.G.S. awards which were *not* restricted solely to a work related disability, the Second Circuit affirmed a Tax Court decision that such

awards were part of a taxpayers' taxable gross income. *Id.*, 143. The Second Circuit decision did not reference Revoir, *supra*, or *any* Connecticut appellate precedent regarding the manner § 7-433c C.G.S. benefits were to be administered. Since the Green decision addressed only a claimant's obligations under the Internal Revenue Code, we decline the claimant's entreaty to apply it to issues not addressed within the four corners of this opinion.⁴ In addition, we note that in the 21 years since Green was decided, it has not been cited once as authority by any Connecticut court, nor has it been cited in a federal court as authority concerning § 7-433c C.G.S. Since Green did not address the issue presented herein, we do not find this precedent governs our application of § 7-433c C.G.S.

There is no dispute that if the claimant was disabled from any suitable employment as a result of heart disease or hypertension that he would be entitled to an award for temporary total disability. Conversely if the claimant had a work capacity notwithstanding his heart disease, or if he were disabled for reasons unrelated to the statutorily compensable injury under § 7-433c C.G.S., he would not be entitled to temporary total disability benefits. The trial commissioner concluded the evidence on the record did not support the claimant's bid for benefits. We must determine if this was a

⁴ The claimant has expounded at length before our tribunal as to testimony presented at the Tax Court hearing by former Commission Chairman John Arcudi as to the alleged standards to award § 7-433c C.G.S. benefits. The Second Circuit decision in Green v. Commissioner of Internal Revenue, 60 F3rd 142 (1995) contains no reference whatsoever to former Chairman Arcudi's statements, and we cannot conclude that this testimony had any probative weight on the Second Circuit's decision. We also note that to the extent this testimony conflicted with Connecticut Supreme Court and Appellate Court precedent on the statutory interpretation of § 7-433c C.G.S. that it has no force and effect. We reach this decision in part as the plaintiff's brief in Green sought only an adjudication that the claimant's income from § 7-433c C.G.S. awards were tax exempt, and did not ask the Second Circuit to rule on any issue pertaining to eligibility or administration of awards under Connecticut's heart and hypertension law. We will not presume the Second Circuit granted a form of relief to the litigants in Green that they did not present for adjudication.

reasonable conclusion, or if the trial commissioner's discretion was an abuse of her discretion.

In reviewing the Findings, we note that the three medical witnesses who were relied upon by the trial commissioner (Dr. Krauthamer, Dr. Marshalko and Dr. Rama) all indicated that the claimant's cardiac condition was essentially stable and well managed by his medications. We also note that the evidence cited by the trial commissioner consisting of opinions from these three physicians supported her conclusion that the claimant's cardiac condition did not prevent him from having a work capacity at some level. The trial commissioner concluded that to the extent the claimant's work capacity was impaired, it was due to medical conditions outside the scope of his compensable heart condition. Recently in Kladanjcic v. Woodlake at Tolland, 5995 CRB-1-15-3 (March 2, 2016) we pointed out that it is the trial commissioner's job to ascertain from the evidence whether medical treatment in a contested case is due to a compensable injury or some noncompensable ailment. A similar inquiry is required when a claimant seeks disability benefits. The trial commissioner must ascertain if the claimant's disability is the result of a compensable injury.

The trial commissioner in the present case determined that whatever disability the claimant presently has from work was not due to his compensable cardiac condition. It is black letter law that "[w]hen the board reviews a commissioner's determination of causation, it may not substitute its own findings for those of the commissioner A commissioner's conclusion regarding causation is conclusive, provided it is supported by competent evidence and is otherwise consistent with the law." Dengler v. Special

Attention Health Services, 62 Conn. App. 440, 451 (2001) (Internal citations omitted.)

We note that the claimant previously sought temporary total disability benefits for his § 7-433c C.G.S. claim for an earlier time period and was denied benefits. We affirmed that denial on appeal. Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006). Had the claimant's condition deteriorated since that time, he may have presented a persuasive case for § 31-307 benefits. Schenkel v. Richard Chevrolet, Inc., 5302 CRB-8-07-12 (November 21, 2008), *aff'd*, 123 Conn. App. 55 (2010). The evidence credited by the trial commissioner, however, suggested the claimant's cardiac condition was stable and had not deteriorated. It is the trial commissioner's responsibility "to assess the weight and credibility of medical reports and testimony. . . ." O'Reilly v. General Dynamics Corp., 52 Conn. App. 813 (1999). We must defer to her evaluation of the evidence in this case. In addition, we point out as per our precedent in Burns v. Southbury, 5608 CRB-5-10-11 (November 2, 2011), that the respondents do not have the burden of disproving the link between a compensable injury and a subsequent ailment. It was always the claimant's burden in this case to establish entitlement to temporary total disability benefits and the evidence he presented proved unpersuasive to the trial commissioner. We conclude the trial commissioner's determination on this issue was a reasonable exercise of her discretion.

Therefore, we are satisfied the trial commissioner has reached a reasonable determination consistent with the applicable law and the evidence presented on the record.⁵

⁵ We uphold the trial commissioner's denial of the claimant's Motion to Correct. This motion sought to interpose the claimant's conclusions as to the law and the facts presented. Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006) and D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002).

The Finding and Dismissal is affirmed.

Commissioners Ernie R. Walker and Christine L. Engel concur in this opinion.