CASE NO. 6040 CRB-1-15-10 : COMPENSATION REVIEW BOARD
CLAIM NO. 100144570

RENE T. NIELSEN
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: JULY 21, 2016

MNS THERRIEN CONSTRUCTION COMPANY
EMPLOYER

and

LIBERTY LIFE INSURANCE
a/k/a LIBERTY LIFE ASSURANCE COMPANY OF BOSTON
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant appeared without legal representation at oral argument. At the trial level the claimant was represented by Jeffrey D. Cedarfield, Esq., Law Offices of Jeffrey D. Cedarfield, 124 Jefferson Street, Hartford, CT 06106.

The respondents were represented by Marian Yun, Esq., Law Offices of Meehan, Turret & Rosenbaum, 108 Leigus Road, First Floor, Wallingford, CT 06492.

This Petition for Review from the September 2, 2015 Finding and Dismissal of Christine L. Engel, the Commissioner acting for the First District, was heard March 18, 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, Rene Nielsen, has appealed from a September 2, 2015 Finding and Dismissal reached by Commissioner Christine L. Engel who determined the claimant had not established that the December 26, 2012 Full & Final Stipulation in this matter should be set aside due to an alleged mutual mistake. The claimant argues that this stipulation, which called for monthly annuity payments, should be converted to a lump sum payment to enable him to purchase a condominium. He also argues that at the time he executed the stipulation he was unaware that he would not be able to convert this award into a lump sum in the event it became necessary. The respondents argue that this is not the type of "mutual mistake" for which § 31-315 C.G.S.[1] permits a trial commissioner to open a stipulation and provide relief. We conclude that this was a factual issue for the trial commissioner to resolve. As we believe the trial commissioner properly applied the law in this matter, we may not offer the claimant relief on appeal. We affirm the Finding and Dismissal.

The trial commissioner found the following facts at the conclusion of the formal hearing. She found Mr. Nielsen had executed a Stipulation for Indemnity Benefits on

[1] This statute reads as follows:
"Sec. 31-315. Modification of award or voluntary agreement. Any award of, or voluntary agreement concerning, compensation made under the provisions of this chapter or any transfer of liability for a claim to the Second Injury Fund under the provisions of section 31-349 shall be subject to modification in accordance with the procedure for original determinations, upon the request of either party or, in the case of a transfer under section 31-349, upon request of the custodian of the Second Injury Fund, whenever it appears to the compensation commissioner, after notice and hearing thereon, that the incapacity of an injured employee has increased, decreased or ceased, or that the measure of dependence on account of which the compensation is paid has changed, or that changed conditions of fact have arisen which necessitate a change of such agreement, award or transfer in order properly to carry out the spirit of this chapter. The 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. The compensation commissioner shall retain jurisdiction over claims for compensation, awards and voluntary agreements, for any proper action thereon, during the whole compensation period applicable to the injury in question."

December 26, 2012. Commissioner Stephen Delaney approved the Full & Final Stipulation during an informal hearing with the claimant, his attorney, Katherine Sendy, and the attorney for the Respondent NGM Insurance, Keith E. Marquis. Commissioner Delaney canvassed the claimant about the Full and Final Stipulation, following the customary procedure and completing the prescribed forms for such approvals. The Full & Final Stipulation was for $225,000.00, out of which $125,000.00 was paid with an annuity purchased by NGM and administered by Liberty Life Assurance Company of Boston. ("Liberty") $100,000.00 was paid to the claimant by the respondent. The annuity guaranteed periodic payments to the claimant in the amount of $646.55 per month for 240 months, beginning on January 29, 2012 and ending December 29, 2032. The full value of the annuity was $155,172.00.

Commissioner Engel noted the claimant had added a handwritten addendum to the Stipulation that stated that in the event the claimant died before the annuity was paid in full any balance owed would be paid to the claimant's children, in equal shares. She also noted that after attorney's fees the claimant received a net amount of $52,750.00 in cash at the time the Stipulation was executed, excluding the annuity. She also noted on May 7, 2013, the claimant executed, and acknowledged, a SCHEDULE OF BENEFITS, which included the following terms.

> Rene Nielsen acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by him or by any payee; nor shall Rene Nielsen or any payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise. (Claimant's Exhibit B, emphasis added)

Findings, ¶ 7.

The claimant testified that when he executed the Full & Final Stipulation he believed, despite the monthly payment schedule, he could obtain a lump sum distribution from the annuity if he needed the funds. The claimant testified he is dyslexic and needs verbal communications.

> I'm dyslexic. I don't read and I don't write very well. That's why my handwriting looks like that. The judge knew that – or the Commissioner. Everybody knew that. My way of communicating is vocally –verbally, I mean, and I asked what I thought was the right questions and I got the answer. (Formal Hearing of April 23, 2015)

Findings, ¶ 10.

He further testified that nothing was ever explained to him. When asked to review the Full and Final Stipulation document during the formal hearing, the claimant admitted he had signed it; however, he said the document did not look familiar to him.

> The claimant testified, I said it to my attorney. I said it to National Grange, that the only reason I'm settling this case is because I'm in trouble with my house and I need the money to save my house and – but because of the issues with the bank and the collapse with Countrywide and Bank of America, we didn't have anything to go on. No one could tell me who owned my house, for one, who held the mortgage. (Formal hearing of April 23, 2015.)

Findings, ¶ 20.

Although the claimant implied he was motivated by a desire to "'…save my house,' the Claimant testified he had not been forced by any party to stipulate his indemnity claim." Findings, ¶ 16. The trial commissioner noted that the terms of § 31-315 C.G.S. required a showing of fraud, duress, accident or mutual mistake to open a stipulation and noted the claimant was not arguing there had been fraud or accident, only that there had been a mutual mistake because he did not have access to the annuity funds as he thought he had agreed to. Commissioner Engel noted, however, no competent

evidence was presented at the formal hearing that the respondents intended the claimant to have access to the annuity funds through any means other than the monthly payments.

The commissioner noted the claimant testified he contacted Liberty to ask for a lump sum distribution and was told he could not withdraw money from the annuity. The claimant also contacted a firm named Wentworth who informed him that it could not cash out an annuity in this state and were it to do so, proposed onerous terms to the claimant. The claimant's attorney argued that § 52-225i C.G.S.[2] enabled the commissioner to allow the claimant to assign his right to receive payments under the annuity if she finds that such a transfer is in the claimant's best interest, taking into account the welfare and support of the payee's dependents. Claimant's counsel also argued that allowing the claimant to modify the stipulation retroactively to the date of its execution to allow him to liquidate the annuity would not require exercising jurisdiction over Liberty.

The claimant testified as to his financial circumstances, monthly expenses and monthly cash flow. He testified to receiving income from the annuity, Social Security disability and from his spouse. He also testified he has abandoned his house with the mortgage and lives in a rented residence in another town. He said his intention were the

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[2] This statute reads as follows:
"Sec. 52-225i. Transfer of structured settlement payment rights: Approval. No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that:
(1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
(2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and
(3) The transfer does not contravene any applicable statute or the order of any court or other government authority."

annuity to be liquidated was to purchase a condominium for his family with funds from the annuity; thereby saving $1,600.00 per month.

Based on these subordinate facts the trial commissioner concluded the Workers' Compensation Commission did not have jurisdiction over Liberty Life Assurance Company and cannot order it to re-calculate the annuity and pay a lump sum early distribution to the claimant; and that any effort to modify the terms of the annuity would impact the rights of Liberty. Commissioner Engel also concluded it is not in the claimant's best interest to order a transfer of the monthly annuity payments to a company such as Wentworth in return for a lump sum; nor was it in the claimant's best interest to order the annuity holder, Liberty, to distribute the annuity funds in a lump sum payment. Therefore, she denied the claimant's motion to open the stipulation.

The claimant did not file a Motion to Correct but did commence a timely appeal.[3] His argument is based on two points. He argues that since his attorney did not properly explain the terms of the stipulation documents that this situation raises to the level of "mutual mistake" which warrants opening the stipulation. He also challenges the conclusion of the trial commissioner that a lump sum distribution of the annuity would not be in his best interest; reiterating the points he made at the formal hearing as to his plan to buy a condominium with the proceeds. The respondents have questioned the jurisdiction this commission has over Liberty, who was neither a respondent nor a workers' compensation insurer in this matter. They also argue the trial commissioner

[3] Respondents have suggested in their brief that the claimant's appeal is jurisdictionally deficient as the claimant did not file timely Reasons for Appeal or a timely brief. The claimant is a self-represented party and the initial Petition for Review was filed within the statutory time limit to file an appeal. The claimant also presented his Reasons for Appeal and brief well in advance of the hearing on this appeal. For the reasons stated in Vitoria v. Professional Employment & Temps, 5217 CRB-2-07-4 (April 4, 2008) we believe this appeal was commenced and prosecuted in a jurisdictionally proper manner.

reached appropriate conclusions as to the merits of the claimant's bid to open the stipulation and seek a lump sum award. We find the respondents' position more persuasive.

On appeal, we generally extend deference to the decisions made by the trial commissioner. "As 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." Daniels v. Alander, 268 Conn. 320, 330 (2004). The Compensation Review Board cannot retry the facts of the case and may only overturn the findings of the trial commissioner if they are without evidentiary support, contrary to the law, or based on unreasonable or impermissible factual inferences. Kish v. Nursing and Home Care, Inc., 248 Conn. 379 (1999) and Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Nonetheless, while we must provide deference to the decision of a trial commissioner, we may reverse such a decision if the commissioner did not properly apply the law or reached a decision unsupported by the evidence on the record. Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

At the outset, we believe we must address the trial commissioner's conclusion that she lacked jurisdiction to resolve a dispute between the claimant and Liberty. As we have frequently noted "[o]nce a determination is reached that we lack subject matter jurisdiction no further inquiry is warranted." Mankus v. Robert Mankus, 4958 CRB-1-05-6 (August 22, 2006), *aff'd*, 107 Conn. 585 (2008), *cert. denied*, 288 Conn. 904 (2008). We note that the trial commissioner cited no specific statutory authority or common law precedent for her conclusion. We also note that while the respondents cited § 52-225i

C.G.S. in their brief they did not elaborate on this matter and did not cite precedent governing the jurisdiction of this Commission over such a dispute. Accordingly, we have conducted our own inquiry as we must ascertain if a trial commissioner properly applied the law in their Findings. Christensen, supra.

In the present matter Liberty was the third party administrator of a stipulated award to the claimant. Liberty was not an employer or a workers' compensation insurer within the scope of § 31-284 C.G.S. and had no initial duty to compensate the claimant for his compensable injuries. See § 31-342 C.G.S., which outlines that "employers" and "insurers" are liable for payment of awards under Chapter 568.[4] While the precedent does not directly address this specific dispute we find the principles delineated in Stickney v. Sunlight Construction, Inc., 248 Conn. 754 (1999) are relevant to our inquiry. In Stickney, the Supreme Court determined that we act within a confined realm of jurisdiction and lack equitable powers to adjudicate disputes outside the purview of Chapter 568. Id., 762-768. Stickney, supra, further stated that in disputes between insurers involving issues remote to an award of benefits to the claimant, jurisdiction was proper only in forums outside the Workers' Compensation Commission. Id., 768-769. We note that in Gill v. Brescome Barton, Inc., 317 Conn. 33 (2015), the Supreme Court held Stickney did not apply when the dispute at hand impacted an award directly to a claimant. Id., 40. However, given that Liberty in this scenario had no initial privity with the claimant or the employer and did not act as a Workers' Compensation insurer, and

[4] This statute reads as follows:
"Sec. 31-342. Award; enforcement. In any such hearing, the commissioner having jurisdiction may make his award directly against such employer, insurer or both, except that, when there is doubt as to the respective liability of two or more insurers, he shall make his award directly against such insurers; and such awards shall be enforceable against the insurer in all respects as provided by law for enforcing awards against an employer, and the proceedings on hearing, finding, award, appeal and execution shall be in all respects similar to that provided by law as between employer and employee."

was merely an assignee after the stipulation of NGM's contractual liability to the claimant, we are not persuaded that the trial commissioner's legal conclusion as to jurisdiction is "clearly erroneous." Kennedy v. State/Department of Correction, 5238 CRB-1-07-6 (June 26, 2008).[5]

Even had the trial commissioner erred in finding that she lacked jurisdiction to consider this matter, we would still affirm the Finding and Dismissal. We have reviewed precedent applying § 31-315 C.G.S. and believe that it is a factual determination within the commissioner's discretion as to whether a stipulation should be opened. We look to Rodriguez v. State, 76 Conn. App. 614 (2003) as setting the precedent for consideration of such claims. In Rodriguez the claimant sought to open a stipulation, arguing his attorney had not procured an appropriate result as a result of improperly including a prior claim in the settlement. The trial commissioner and this tribunal agreed with this reasoning. The Appellate Court, however, noted that the claimant had executed the stipulation documents and had been canvassed by the trial commissioner prior to having the settlement approved. While the claimant argued that "mutual mistake" voided the agreement, id., 624, the Appellate Court pointed out this concept involved "a result that neither intended." Id., 625. The Appellate Court concluded the record did not demonstrate any common or mutual mistake regarding the stipulation. Id., 626. Since a unilateral mistake did not provide grounds to open a stipulated agreement the Appellate Court ordered the trial commissioner's decision to open the stipulation reversed. We followed similar reasoning in our decisions in Krol v. A.V. Tuchy, Inc., 5562 CRB-4-10-

[5] We note that the May 7, 2013 SCHEDULE OF BENEFITS cited by the trial commissioner in Findings, ¶ 7 was executed by the claimant subsequent to approval of the Stipulation and presumably was not subject to Commission approval in any manner.

6 (June 1, 2011), *aff'd,* 135 Conn. App. 854 (2012), *cert. denied*, 305 Conn. 923 (2012) and Macon v. Colt's Manufacturing, 5505 CRB-1-09-10 (September 27, 2010), *appeal dismissed*, A.C. 32785 (December 13, 2010). We note that in Macon we rejected the claimant's argument, similar to the one presented in this case, that the alleged tactical errors of counsel warranted opening a stipulated award. The record herein does not demonstrate that as a matter of law the trial commissioner was obligated to find that the stipulation should be opened as a result of mutual mistake.

The respondents also argue that the claimant failed to follow the statutory mechanism under § 52-225i C.G.S. to warrant the transfer or liquidation of a structured settlement. We note that a party who is seeking a statutory remedy should endeavor to adhere to its procedural requirements. Even if we were to waive strict compliance with the terms of the statute, we cannot conclude that the factual determination reached by the trial commissioner on the central question was in error. We may not retry on appeal a case where the facts are contested Fair, supra, and the record herein does not demonstrate that as a matter of law the trial commissioner was obligated to find that liquidating the claimant's annuity was more beneficial to him than preserving his right to future monthly income. We must defer to the trial commissioner's factual determination in such matters.

Therefore, we affirm the Finding and Dismissal.

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