CASE NO. 6072 CRB-3-16-1 : COMPENSATION REVIEW BOARD
CLAIM NO. 300092431

ANGELA DIAZ
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: DECEMBER 22, 2016

STATE OF CONNECTICUT/
DEPARTMENT OF SOCIAL
SERVICES SOUTH CENTRAL REGION
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLEE

and

GALLAGHER BASSETT SERVICES
ADMINISTRATOR

and

MERIDIAN RESOURCE COMPANY, LLC
INTERESTED PARTY

APPEARANCES:

The claimant was represented by Richard L. Jacobs, Esq., and Steven D. Jacobs, Esq., Jacobs & Jacobs, LLC, 700 State Street, Third Floor, New Haven, CT 06511.

The respondent State of Connecticut was represented by Lisa Guttenberg Weiss, Esq., Assistant Attorney General, Office of the Attorney General, 55 Elm Street, Hartford, CT 06141-0120.

The respondent Meridian Resource Co., LLC was represented by Gregory Lisowski, Esq., Pomeranz, Drayton & Stabnick, 95 Glastonbury Boulevard, Suite 216, Glastonbury, CT 06033 at the trial proceedings. They did not participate in the appeal process.

This Petition for Review[1] from the January 5, 2016 Finding and Dismissal of Jack R. Goldberg, the Commissioner acting for the Third District, was heard August 26, 2016

[1] We note that extensions of time were granted during the pendency of this appeal.

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 has appealed from a January 5, 2016 Finding and Dismissal decided by Commissioner Jack R. Goldberg. The commissioner concluded that the claimant's current medical condition, need for surgery and level of disability were not the result of an accepted December 9, 2010 injury. The claimant argues that the trial commissioner failed to credit what she considers to be uncontested expert testimony supporting her claim, and this constitutes reversible error. We are not persuaded by this argument and find that the trial commissioner's decision is supported by probative evidence that he found persuasive and credible, and a determination by the commissioner that the claimant's expert witnesses were not persuasive. Accordingly, we affirm the Finding and Dismissal.

Commissioner Goldberg reached the following factual findings relevant to our consideration of this matter at the conclusion of a formal hearing that commenced October 23, 2014 with the record closing on November 9, 2015. At the commencement of the hearing Commissioner Goldberg announced that the issues to be determined were compensability, total disability benefits, a Form 36, a Form 43, a Motion to Preclude and the reimbursement of a medical provider lien were the claimant's surgery to be deemed compensable. Findings, ¶ 1, October 23, 2014 Transcript, pp. 3-4. The parties agreed those were the issues under discussion. Id. The claimant testified that she worked for the respondent in their New Haven office from October 1986 through December 9, 2010 as an eligibility service specialist. She was responsible for customer contact and

determining a client's eligibility for cash, food stamps and medical benefits. Evidence was presented that the claimant's work on the intake line led to complaints in 2005 of right shoulder pain, right arm pain and tingling in her fingers and hands which she attributed to poor ergonomics at work and repetitive computer use. Evidence was also presented that the claimant was involved in two noncompensable motor vehicle accidents, one accident in 1990 that led to no lost time at work and a second accident on October 20, 2008 which exacerbated her preexisting cervical and lumbar spine pain and led to her missing work until March 1, 2009.

The claimant presented medical evidence from her treating chiropractor, Dr. Craig O'Connell. He had prepared a statement on January 6, 2009 stating that the claimant had a history of cervical disc herniations and although she had been offered the option of cervical surgery by Dr. Michael Opalak, she had advised him she would not undertake the surgery after conferring with Dr. O'Connell as to possible complications. The claimant said that Dr. O'Connell had sought an ergonomically correct work station for her and that due to her height of 5'11" she was under strain from the existing workplace design. She said that her employer had only provided a broken chair and an inappropriate document holder which did not address her issues. The claimant's first report of injury on December 9, 2010 associated her cervical and lumbar discomfort to lack of proper ergonomics. On January 5, 2011 Dr. O'Connell opined that the improper work station aggravated the claimant's pre-existing spinal problem. On April 1, 2011 Dr. O'Connell disabled the claimant from work due to the ergonomic situation at her work station.

The commissioner noted the claimant had treated with Dr. Opalak commencing on December 11, 2008, having been referred to the claimant by her primary care

physician, Dr. Sudipta Dey. Dr. Opalak noted the claimant's recent accident had worsened her lumbar symptoms and increased her neck discomfort. On January 5, 2009 Dr. Opalak reviewed films and determined she had some element of disc disease at the lower three levels of her lumbar spine, adding much of her condition related to her cervical complaints. He recommended conservative measures and epidural injections before considering surgery. On January 11, 2011 Dr. Opalak said the claimant returned after not being seen by him in two years in worse condition. Noting the serious nature of her condition he said that for safety sake, fearing she would sustain a devastating trauma, she should have a cervical discectomy. He indicated however that the claimant said she was afraid of surgery. On May 24, 2011 the claimant consulted Dr. Khalid Abbed for a second opinion. He recommended cervical decompression surgery. Dr. Abbed recommended cervical surgery again on August 3, 2011 but agreed to hold off for six months and reassess at the claimant's request. On December 20, 2011 Dr. Abbed agreed to wait for approval to perform surgery until after a workers' compensation hearing was scheduled.

The parties presented and the Commission approved two voluntary agreements on September 26, 2011 for the December 9, 2010 claim; one of which was a jurisdictional agreement for lumbar and cervical neuropathy which named Dr. O'Connell and Dr. Opalak as treating physicians; the other which awarded the claimant a 30% permanent partial disability for aggravation of her cervical myelopathy at work, as per Dr. Opalak's disability rating. On March 26, 2012 another voluntary agreement was approved for the December 9, 2010 claim; awarding the claimant benefits for a 5% permanent partial disability of her lumbar myelopathy as per Dr. Opalak's rating. During early 2012 the

claimant sought and received approval to change treating physicians as she had a difference of opinion with Dr. Opalak as to the need for cervical surgery. Commissioner Barton appointed Dr. Abbed as the new authorized treater and noted that were the claimant to seek surgery she could choose to put it through her group health carrier as the respondent was contesting the need for surgery.

On October 19, 2012 Dr. Jarob Mushaweh performed a respondent's medical examination of the claimant. While he testified that surgery at the C5-C6 level was reasonable and surgery at the C6-C7 level was a judgment call, he did not find a causal link between the claimant's ergonomic issues at work and her need for surgery. Dr. Abbed eventually performed cervical surgery on the claimant on March 23, 2013 and in a January 8, 2015 letter to counsel stated that although he could not say failure to use an ergonomic work station caused the claimant's cervical spine condition, that it probably aggravated a pre-existing condition. The claimant also had surgery performed on her thumbs by Dr. Mark Melendez on January 17, 2014 subsequent to an opinion by Dr. John Reilly that she had trigger finger. Dr. Reilly opined in an October 7, 2014 letter to counsel that it was likely the bilateral trigger fingers were related to the condition of the claimant's neck or back.

The commissioner considered the testimony of Dr. Dey and Dr. O'Connell. Dr. Dey began treating the claimant in 2002 and was aware of her 1990 motor vehicle accident. He said that in 2003 the claimant exhibited symptoms of cervical myelopathy. He further stated that he was not trained on the issue of ergonomic work stations causing neck or back problems and relied on Dr. O'Connell's opinion as to causation. Dr. Dey opined in a March 6, 2013 report that it was his professional opinion that the claimant's

permanent disability contributed to her work related injury of cervical myelopathy and lumbar myelopathy. Dr. O'Connell testified that the claimant began treating with him in 2006 and he had seen her more than 200 times since. He also testified that he had 30 or 40 patients at the same office of the respondent and that they had all exhibited similar ergonomic problems. He testified that a person who sits in an inappropriate manner for eight hours a day will have a repetitive injury from the cumulative effect, and that the claimant's neck was compromised from having to use a telephone without a headset, which led to a pinched nerve. Dr. O' Connell also noted that in 2008 he had advised the claimant to be aware of bowel or bladder dysfunction and to notify him or Dr. Opalak immediately, but that the claimant had conveyed these issues to Dr. Dey and not Dr. Opalak. The claimant also testified that when she had to sit in an uncomfortable chair in court for a two week trial in 2013 that it exacerbated her neck and back condition.

Substantial and conflicting testimony was presented on the issue of the respondent's efforts to accommodate the claimant's ergonomic concerns. The claimant had filed a request on September 4, 2009 seeking workplace accommodations pursuant to the Americans with Disabilities Act, seeking to be taken off the intake line and to obtain a new work station. Ray Primini of the state Department of Administrative Services testified he evaluated the claimant's work station on December 31, 2009 and recommended that she receive a new high backed chair with arms and lumbar support. He also rearranged the claimant's desk and recommended a new document holder be provided. The claimant testified that when the new chair was delivered it was broken and another chair was obtained from another district office. She also testified she was not advised the document holder could be adjusted. The person responsible for purchasing

the chair, Haysteen Nickelson, testified the claimant signed for the chair when it was delivered, the chair was not broken, and it had not been substituted with another chair. The claimant said that she had signed a blank piece of paper to make it appear she had approved delivery of the chair, and the respondent had filled in the purchase order later.

Commissioner Goldberg also noted various statements that Commissioners Barton and Engel had made at prior informal hearings. He also noted the lien presented by Meridian Health Care for $61,046.21, which included $9,135.50 for Dr. O'Connell's treatment.

Based on these subordinate facts Commissioner Goldberg concluded that the claimant sustained spinal injuries in separate non-work related motor vehicle accidents in 1990 and 2008. The trial commissioner found the testimony of Mr. Primini and Ms. Nickelson to be credible and persuasive; but did not find the claimant was credible. He found Dr. Opalak's opinion that the claimant needed cervical fusion surgery in 2008 to be credible and persuasive and noted that both Dr. Opalak and Dr. Abbed had recommended this surgery before the claimant filed a claim asserting a work injury. The commissioner found Dr. Dey's opinion that the claimant exhibited signs of cervical myelopathy in 2003 credible, but discounted his opinion asserting a link between this condition and workplace ergonomics as the commissioner deemed it based in speculation or conjecture. The commissioner found Dr. Abbed's opinion as to the claimant's need for cervical surgery credible and persuasive but did not credit his opinion as to the claimant's work aggravating a preexisting condition. The commissioner did not find the opinions offered by Dr. O'Connell or Dr. Reilly to be persuasive. He did find Dr. Mushaweh's testimony credible and persuasive that the recommended cervical surgery was reasonable but not

attributable to the lack of an ergonomic work station. The commissioner found the claimant was presented with an ergonomic work station and a new, unbroken chair. Commissioner Goldberg also concluded that claimant did not establish that aggravation of her cervical and lumbar spine injuries was a substantial contributing factor to her need for surgery and did not sustain her burden of proof that the surgery was compensable. The commissioner found the prior voluntary agreements did not bar the respondent from contesting the compensability of surgery, citing Mancini v. Masonicare, 5729 CRB-2-12-2 (January 29, 2013). As a result he dismissed the claimant's claim for medical benefits and indemnity benefits.

The claimant subsequently filed a Motion to Correct. This motion sought to substitute findings supportive of compensability for the findings reached by Commissioner Goldberg. The trial commissioner denied this Motion in its entirety and the claimant has pursued this appeal. The gravamen of her appeal is that the trial commissioner abused his discretion in discounting the opinions of Dr. Dey, whom the claimant believes offered unrebutted testimony. The claimant cites Bode v. Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672 (2011) for the position that this constitutes reversible error. The claimant has also filed a Motion to Submit Additional Evidence in order to submit additional evidence on the issue of the ergonomic conditions of her workplace. The respondent has objected to this motion.

We will address this motion prior to addressing the merits of the claimant's appeal. The claimant argues that additional evidence is warranted on the issue of the ergonomic chair provided to her because contradictory evidence was presented by Ms. Haysteen at the June 29, 2015 hearing which she wishes to challenge. We note that the

claimant did not object to this witness's testimony at that hearing or advise the trial commissioner at the conclusion of her testimony that rebuttal evidence would be proffered to refute her narrative and documentation. Instead counsel for the claimant agreed with the trial commissioner the record was complete and the parties would proceed to brief the case. June 29, 2015 Transcript, pp. 24-25. We also note that the issue of the ergonomic work station had been raised in a number of expert reports previously entered as evidence in this matter and hence, we do not find precedent such as Ghazal v. Cumberland Farms, 5397 CRB-8-08-11 (November 17, 2009) on point. The respondent has objected to the admission of additional evidence, asserting that pursuant to Diaz v. Jaime Pineda, a/k/a Jamie Pineda d/b/a J. P. Landscaping Company, 117 Conn. App. 619 (2009) the claimant lacks sufficient justification for the admission of this material. We concur in this assessment and sustain the respondent's objection.

In Baker v. HUG Excavating, Inc., 5443 CRB-7-09-3 (March 5, 2010) we considered a similar request and denied the claimant's motion.

> As the Appellate Court pointed out in Mankus v. Mankus, 107 Conn. App. 585 (2008), when a litigant seeks pursuant to Admin. Reg. § 31-301-9 to present previously unconsidered evidence directly to this panel the moving party must establish good cause. Thus, in order to request the board to review additional evidence, the movant must include in the motion 1) the nature of the evidence, (2) the basis of the claim that the evidence is material and (3) the reason why it was not presented to the commissioner.

Id., 596.

As we have reviewed the transcript of the formal hearing and found no discussion to the effect that the evidence the claimant presented at that time was incomplete, we believe admission of this evidence at this juncture would be "an effort to try the case in an inappropriate piecemeal fashion. Schreiber v. Town & Country Auto Service, 4239

CRB-3-00-5 (June 15, 2001)." Grant v. Siemens Westinghouse Power Co., 5292 CRB-4-07-11 (October 28, 2008). We therefore deny the Motion to Submit Additional Evidence.

We now turn to the merits of the appeal. 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).

The claimant argues that this is not a "dueling expert" case akin to Dellacamera v. Waterbury, 4966 CRB-5-05-6 (June 29, 2006) where this tribunal is obligated to affirm the trial commissioner's determination as to which expert witness to believe. Instead, the claimant argues that the evidence presented by her primary care physician, Dr. Dey, was not contradicted and should have been credited by the trial commissioner. The claimant argues that pursuant to Bode v. Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672 (2011) the trial commissioner was obligated to adopt Dr. Dey's opinion and find that she was totally disabled as a result of her compensable injury. We

have reviewed our precedent interpreting Bode and it does not stand for the proposition presented by the claimant. In particular we find our decisions in Olwell v. State/Dept. of Developmental Services, 5731 CRB-7-12-2 (February 14, 2013) and Pupuri v. Benny's Home Service, LLC, 5697 CRB-2-11-11 (November 5, 2012) address somewhat similar interpretations of Bode offered by claimants, which this tribunal rejected.

In Pupuri, supra, the claimant alleged that his injuries were the result of an incident lifting rocks at a quarry. The trial commissioner did not find his testimony credible and denied the claim. On appeal, he argued that because he submitted a substantial amount of uncontroverted documentary evidence supportive of his claim that the Bode precedent indicated that his testimony should have been credited by the trier of fact. We disagreed.

> We find Bode factually distinguishable and therefore are not persuaded by this argument. The dispute in Bode did not deal with the compensability of the claim as that issue had been resolved through a voluntary agreement. The Bode opinion essentially concluded the trier of fact had failed to properly weigh evidence as to the claimant's entitlement to benefits under the Osterlund v. State, 135 Conn. 498 (1949) standard of temporary total disability. Id., at 679-684. The Appellate Court also determined that a trier of fact was not entitled to the same level of deference in evaluating the credibility of documentary evidence as he or she would be accorded in evaluating the credibility of live witness testimony. Id., at 685-686. The Appellate Court concluded the trial commissioner in Bode failed to properly credit undisputed documentary evidence and awarded the claimant temporary total disability benefits. Id., at 689.

Pupuri, supra.

We further noted in Pupuri that in Bode, supra, the decision of the trial commissioner to deny the claimant an award for psychiatric injuries was affirmed because "[t]he Appellate Court affirmed the decision of the trial commissioner who found

the claimant failed in his burden to prove that those injuries were caused by the accepted compensable injury. Id., at 689-691." Id. In the present case, as in Pupuri, the burden of proof in a workers' compensation claim for benefits rests with the claimant. Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440 (2001). Both in Pupuri and in the present case the trial commissioner concluded the claimant failed to satisfy this burden.

We find Olwell, supra, also involved similar issues. In Olwell the trial commissioner concurred with the claimant's position that she was totally disabled, but did not award her any benefits as the commissioner was not persuaded the claimant's compensable injury was the cause of this disability. The claimant appealed arguing this decision was against the weight of the evidence. We affirmed the trial commissioner citing Bode as authority.

> We do note that in two recent Appellate Court cases, O'Connor v. Med-Center Home Health Care Inc., 140 Conn. App. 542 (2013) and Bode v. Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672 (2011) found claimants had proven they were totally disabled from their compensable injuries. In neither case however does it appear the respondents argued that there was an alternative basis for the claimant's disability. Indeed, in O'Connor the Appellate Court specifically distinguished Dengler from the issues considered in their opinion.
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> At issue in *Dengler* was not merely whether the plaintiff was totally disabled, but whether the subsequent injury to her leg, for which causation had not been established, was a cause of her total disability. The analysis in *Dengler* involved a combined question of causation and whether the plaintiff was totally disabled and the court held only that direct medical evidence is required where the claim involves any dispute over causation. Accordingly, we conclude that *Dengler* is inapposite to the present case. O'Connor, supra, 552.
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> The O'Connor opinion engaged in an extensive review of the decision in Bode, supra. The Appellate Court found Bode stood for

> a standard that "the evaluation of whether a claimant is totally disabled is a holistic determination of work capacity, rather than a medical determination." Id, at 554. As the trial commissioner in Bode focused solely on the claimant's lack of a medical opinion of total disability, and failed to consider his vocational evidence supportive of a finding of no work capacity, the decision of the trial commissioner was overturned by the Appellate Court. Bode, supra, 687.
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> The present circumstances are far more akin to Dengler than to O'Connor or Bode. The central dispute is not about whether the claimant is now totally disabled. The issue before the trial commissioner was whether this disability was the result of the compensable injury the claimant sustained. The trial commissioner found evidence in the record which she found persuasive that the claimant's present disability was due to factors other than the compensable injury. We must ascertain if this conclusion is supported by this evidence.

Olwell, supra.

It is black letter law that even when it is acknowledged that a claimant has sustained a compensable injury the claimant must prove that their compensable ailment was a substantial factor in their current disability. Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008); Weir v. Transportation North Haven, 5226 CRB-1-07-5 (April 16, 2008); and Lamontagne v. F & F Concrete Corporation, 5198 CRB-4-07-2 (February 25, 2008). It is also black letter law that when a trial commissioner finds a claimant's testimony less than credible, a trial commissioner is under no obligation to adopt medical opinions reliant on a claimant's narrative. Do v. Danaher Tool Group, 5029 CRB-6-05-12 (November 28, 2006). The trial commissioner determined that Dr. Dey was not a reliable witness and his opinions were rooted in speculation and conjecture, citing Vallier v. Cushman & Wakefield, 5822 CRB-1-13-2 (February 21, 2014). We must determine if this was a reasonable determination, bearing in mind 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.)

We have reviewed Claimant's Exhibit W, which is a transcript of Dr. Dey's March 15, 2015 deposition, to see if it is consistent with Commissioner Goldberg's factual findings and conclusions. We note that the witness had difficulty delineating his rationale for finding the claimant totally disabled as "[t]he reason for [the] opinion is that I can't tell you because I am not medical disability examiner, the 30 percent impairment has been established before." Claimant's Exhibit W, p. 8. The witness noted the claimant had a "[c]ervical disc herniation with probable cervical myelopathy" in 2003. Id., p. 18. He noted the claimant's neck pain got worse in December of 2008. Id., p. 19. He confirmed the claimant was unwilling to undergo surgery at that time. Id., p. 20. Dr. Dey noted that in drafting letters on behalf of the claimant he relied on medical reports and opinions provided by her chiropractor. Id., pp. 31-32. The witness said he was not an expert on ergonomic work stations. Id., p. 32. When asked if the prior motor vehicle accidents the claimant had sustained could have required her to undergo surgery in the absence of workplace exposure he said "[t]here's a big "if" in there." Id., p. 33. He agreed with counsel that his theory of workplace causation of the claimant's condition was based on the chiropractor's theory of causation "to some degree." Id., p. 34.

After reviewing the totality of Dr. Dey's testimony we are satisfied that a reasonable fact finder could have reached a conclusion that it was insufficiently reliable to support the claimant's position.[2] We also find evidence in the record supporting the

[2] As was pointed out in Zezima v. Stamford, 5918 CRB-7-14-3 (May 12, 2015) a trial commissioner is under no obligation to find a claimant's expert witnesses persuasive and reliable. While the claimant

trial commissioner's conclusion that Dr. Dey's opinions were substantially influenced and derivative of the opinions of Dr. O'Connell, which the commissioner found unpersuasive in Conclusion, ¶ i. We note that Dr. O'Connell offered live testimony before the trial commissioner and the commissioner's assessment of the persuasive value of this witness is essentially inviolate on appeal. See Burton v Mottolese, 267 Conn. 1, 40 (2003) and Tarantino v. Sears Roebuck & Co., 5939 CRB-4-14-5 (April 13, 2015). It is long standing precedent that, "it is the trial commissioner's function to assess the weight and credibility of medical reports and testimony. . . ." O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818 (1999) and Commissioner Goldberg could have reasonably discounted the opinions of Dr. Dey and Dr. O'Connell. We reach this conclusion in part that while the claimant argues Dr. Dey's opinions were "uncontroverted" both Dr. Abbed and Dr. Mushaweh offered opinions which differed in some respects from his conclusions, and the trial commissioner found Dr. Mushaweh in particular credible and persuasive on the issue of workplace causation. See Conclusion, ¶ g.[3]

Dr. Mushaweh examined the claimant on October 19, 2012. After the examination he issued a report (Respondent's Exhibit 20) wherein he attributed the claimant's need for cervical spine surgery to her preexisting condition and not to the lack

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argues on appeal that the trial commissioner failed to consider relevant testimony of her treaters, we conclude the commissioner considered all this evidence and found it less persuasive than the evidence presented by the respondent.

[3] We have reviewed Claimant's Exhibits V and Z which are medical reports and notes provided by Dr. Abbed. We find that this evidence is supportive of Conclusions, ¶ l and ¶ m in the Finding and Dismissal. The trial commissioner appropriately noted that the surgeon who performed surgery on the claimant was less certain as to workplace causation for the claimant's injuries than the claimant's primary care physician or chiropractor. The trial commissioner could reasonably place greater weight on the opinion of the surgeon as to the issue of causation than on a primary care physician. See Burns v. Southbury, 5608 CRB-5-10-11 (November 2, 2011). In addition, we note that on May 24, 2011 Dr. Abbed said the claimant denied bowel or bladder dysfunction, which is at odds with Dr. Dey's reports.

of proper ergonomics at work. Dr. Mushaweh found workplace ergonomics did not contribute to the development of cervical spondylosis. Dr. Mushaweh also found "no plausible clinical explanation" that would link the claimant's complaints of incontinence to her cervical or lumbar spine issues. Id. Dr. Mushaweh was subsequently deposed on February 20, 2014. Dr. Mushaweh testified that "I didn't see the connection between the claim and the need for surgery." Respondent's Exhibit 19, p. 12. The witness ascribed the claimant's spine condition to degenerative wear and tear. Id., p. 14. He said that the claimant's workplace ergonomics did not cause sufficient symptoms to warrant surgery, id., p. 15, and did not increase her pathology to cause her to develop cervical myelopathy. Id. Dr. Mushaweh reiterated his position in his 2012 report on causation, "I thought that was - - I was unequivocal about it, the need for her surgical procedure is causally related to her preexisting condition rather than the failure to provide her with proper ergonomic at work." Id., p. 23. While he believed ergonomic issues may have aggravated the claimant's pain, he clarified "[t]hat 'aggravation,' in this instance, as I testified earlier, is qualified as temporary aggravation of the cervical pain, but it did not cross the threshold of tipping her condition over so she would require surgical intervention." Id., pp. 24-25. The witness consistently testified that there was no connection between work and the need for surgery and further testified he did not ascribe a permanency rating for the claimant's injury because he believed her condition was noncompensable. Id., p. 30.

The trial commissioner found Dr. Mushaweh more credible and persuasive on the issue of causation of the claimant's ailments than the claimant's treating physicians. The claimant's evidence therefore was not uncontroverted and indeed was found less persuasive than the evidence presented by the respondent. We therefore also find that the

trial commissioner could deny the claimant's Motion to Correct. A trial commissioner is not obligated to adopt a litigant's view of the evidence presented on the record. 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); D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003); and Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006).[4] While the claimant presented evidence supportive of workplace causation, the circumstances herein are similar to other cases when evidence presented at the formal hearing suggested an alternative cause for an injury other than a work-related incident. See Burns v. Southbury, 5608 CRB-5-10-11 (November 2, 2011), Torres v. New England Masonry Company, 5289 CRB-5-07-10 (January 6, 2009) and Do, supra.

It was the claimant's burden to persuade the trial commissioner that her workplace conditions were a substantial contributing factor in her need for surgery and resultant medical conditions. We believe that on the record herein a reasonable fact finder could be left unpersuaded.

We affirm the Finding and Dismissal.

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

[4] The issue of whether the respondent reasonably contested this claim was considered in the Finding and Dismissal but as the claimant did not brief this issue we need not address this in this appeal. We also deem the issue as to whether the claimant's bilateral trigger finger condition was compensable to be derivative of the dispute as to the claimant's neck condition. As we find the trial commissioner had probative evidence supportive of his conclusion on that issue we believe it is dispositive of the trigger finger issue as well.