CASE NO. 6071 CRB-5-16-1 : COMPENSATION REVIEW BOARD
CLAIM NO. 500149240

FEDOR SHULTS
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: JANUARY 13, 2017

D.J. HALL ROOFING, LLC
EMPLOYER

and

MEADOWBROOK INSURANCE GROUP
INSURER
RESPONDENTS-APPELLANTS

and

STAR INSURANCE COMPANY/
ESIS NORTHEAST WC CLAIMS
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by John R. Logan, Esq., and Shawn P. Ingraham, Esq., Logan & Mencuccini, LLP, PO Box 946, Torrington, CT 06790.

The respondents D.J. Hall Roofing, LLC and Star Insurance Company/ESIS Northeast WC Claims were represented by William C. Brown, Esq., and Laurie M. Lavoie, Esq., McGann, Bartlett & Brown, LLC, 111 Founders Plaza, Suite 1201, East Hartford, CT 06108.

The respondents D.J. Hall Roofing, LLC and Meadowbrook Insurance Group were represented by Bridget M. Ciarlo, Esq., Montstream & May, LLP, PO Box 1087, Glastonbury, CT 06033-6087.

This Petition for Review[1] from the February 2, 2016 Finding and Award of Thomas J. Mullins, the Commissioner acting for the Fifth District, was heard

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

August 26, 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. This case involves a dispute as to whether the trial commissioner must ascertain a date of injury for a repetitive trauma injury. The trial commissioner herein, Thomas Mullins, concluded that the claimant sustained a compensable repetitive trauma injury as a result of his work as a roofer. In the Finding and Award dated February 2, 2016 Commissioner Mullins reached no determination as to the claimant's date of injury. The respondent-appellant, Meadowbrook Insurance, ("Meadowbrook") has appealed arguing that they are prejudiced by this decision. Meadowbrook attempted to conduct discovery to ascertain additional evidence as to the claimant's last date of injurious exposure but the trial commissioner denied these motions on the grounds the record was closed. Meadowbrook argues that they were prevented from establishing that another carrier was the responsible party under § 31-299b C.G.S.[2] for this claim and as the trial commissioner did not

[2] This statute reads as follows:
Sec. 31-299b. Initial liability of last employer. Reimbursement. "If an employee suffers an injury or disease for which compensation is found by the commissioner to be payable according to the provisions of this chapter, the employer who last employed the claimant prior to the filing of the claim, or the employer's insurer, shall be initially liable for the payment of such compensation. The commissioner shall, within a reasonable period of time after issuing an award, on the basis of the record of the hearing, determine whether prior employers, or their insurers, are liable for a portion of such compensation and the extent of their liability. If prior employers are found to be so liable, the commissioner shall order such employers or their insurers to reimburse the initially liable employer or insurer according to the proportion of their liability. Reimbursement shall be made within ten days of the commissioner's order with interest, from the date of the initial payment, at twelve per cent per annum. If no appeal from the commissioner's order is taken by any employer or insurer within twenty days, the order shall be final and may be enforced in the same manner as a judgment of the Superior Court. For purposes of this section, the Second Injury Fund shall not be deemed an employer or an insurer and shall be exempt from any liability. The amount of any compensation for which the Second Injury Fund would be liable except for the exemption provided under

establish a date of injury, that this omission constitutes reversible error. We find this argument persuasive. We therefore remand this decision for further proceedings to ascertain the claimant's last date of injurious exposure to repetitive trauma, and to ascertain the identity of the insurance carrier obligated to administer this claim.

The following facts are relevant to our discussion of this appeal. The commissioner found the claimant had sustained an injury on September 26, 2009 while in the employ of the employer-respondent D.J. Hall Roofing ("Hall"). The claimant was treated for multiple injuries and reached maximum medical improvement approximately one year following completion of treatment. His authorized treating physician for all of his injuries was Dr. Cameron Brown. On February 17, 2010, Dr. Brown assessed the claimant's specific disability at 16% with regard to the claimant's lower back. Later, on September 16, 2010, Dr. Brown assigned specific disability ratings to claimant's neck, left shoulder, ribs, and thoracic spine which are not matters presently under dispute. On May 10, 2010, a Respondent's Medical Examination (RME) (respondent, ESIS Northeast WC Claims/ACE USA, hereinafter "ESIS") regarding claimant's lower back was performed by Dr. William Druckemiller. Dr. Druckemiller assigned a 5% specific disability rating to claimant's lower back attributable to the September 26, 2009 work incident.

Subsequent to the RME the claimant and ESIS agreed to a compromise of 11% permanent partial disability to the lower back via a voluntary agreement. The claimant

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this section shall be reallocated among any other employers, or their insurers, who are liable for such compensation according to a ratio, the numerator of which is the percentage of the total compensation for which an employer, or its insurer, is liable and the denominator of which is the total percentage of liability of all employers, or their insurers, excluding the percentage that would have been attributable to the Second Injury Fund, for such compensation."

returned to work for Hall and was working in a full duty capacity by September 2010. Nonetheless, on or about September 24, 2010, the claimant returned to Dr. Brown, and the claimant informed him at the examination of a twisting accident and the sudden onset of back pain. The claimant returned to what he described as "heavy work" for Hall, and his tasks included ripping, rolling, and shoveling roof shingles, though he no longer scaled ladders carrying bundles of shingles. He continued to complain of back pain. The claimant continued to work for Hall from 2010 through 2013 and testified that his pain worsened from his continual performance of heavy work. Dr. Brown's October 25, 2013 report concluded the claimant's repetitive job was the cause of his lower back problems, *not* the initial September 26, 2009 injury. Dr. Brown's October 25, 2013 report did not reference the September 24, 2010 twisting complaint as cause of claimant's need for medical treatment, lost time, or increased permanency, subsequent to having determined the claimant to have reached maximum medical improvement on September 16, 2010. Dr. Brown increased claimant's permanent partial disability to 20% of the lower back on October 25, 2013. He attributed said increase to the claimant's continued work and "repetitive job" activities.

In January 2013, the respondent's medical examiner on behalf of ESIS, Dr. Druckemiller, conducted a second RME of the claimant and opined claimant's back pain was primarily caused by claimant's continuing heavy occupation. He increased claimant's permanency following his second examination of the claimant to 15% of the lower back. Meadowbrook also had an expert witness examine the claimant. Their witness, Dr. Glenn Taylor, examined the claimant once. Although Dr. Taylor acknowledged that claimant's continuing work for Hall exacerbated the claimant's lower

back condition, he opined that the claimant's back pain was due to pre-existing annular tears.

Prior to the issuance of the Finding and Award on February 2, 2016 counsel for Meadowbrook noticed the deposition of Dr. Brown. Counsel for ESIS moved in December 2015 to quash the deposition claiming that as of July 29, 2015 the record of the hearing had closed. Commissioner Mullins granted the Motion to Quash. Meadowbrook filed a Petition for Review on January 19, 2016 to this tribunal as to the denial of their deposition. On the same date Meadowbrook filed a motion with the trial commissioner to keep the record in this proceeding open so as to enable them to cite in another insurance carrier, Travelers, whom they believed were the responsible party for this claim. Commissioner Mullins did not act on this Motion but proceeded to issue the Finding and Award. In the Finding and Award he concluded the claimant sustained a compensable injury as a result of his repetitive and continuing heavy occupation. Commissioner Mullins also reached this conclusion as to the medical evidence presented.

> "D. The undersigned finds the opinions of Claimant's doctor, Dr. Cameron Brown, *specifically* Dr. Brown's October 25, 2013, medical report, ***and*** Respondent's Medical Examiner for ESIS, Dr. William Druckemiller, ***more*** credible than the opinion of Respondent's Medical Examiner for Meadowbrook, Dr. Glenn Taylor."

As a result, Commissioner Mullins ordered Meadowbrook to accept the compensability of the claimant's lower back injury, pay a 9% increase in permanent partial disability award due to the claimant for his back, and to pay the claimant's medical expenses. Subsequent to the Finding and Award being issued Meadowbrook filed a Motion to Correct and a Motion for Articulation. The Motion to Correct essentially sought to replace the commissioner's findings with findings supportive of

finding the claimant failed to prove he sustained a compensable repetitive trauma injury. The trial commissioner denied this motion in its entirety. The trial commissioner also denied the Motion for Articulation, which sought to have the trial commissioner identify the evidence on the record supportive of ordering Meadowbrook to pay benefits to the claimant. Meadowbrook filed a Petition for Review from the Finding and Award, and has advanced this pending appeal.

The appellant, Meadowbrook, has presented numerous claims of error on appeal. They argue that there is a jurisdictional problem with ordering Meadowbrook to accept compensability of the claimant's injury. They note that there was no evidence presented as to whether Meadowbrook was the responsible carrier on the risk at the time of the claimant's repetitive trauma back injury and there was no finding reached by the trial commissioner as to the claimant's specific period of repetitive trauma. The appellant also contests the factual finding that the claimant sustained a repetitive trauma injury. Finally, Meadowbrook argues that it was error for the trial commissioner to deny its discovery motion and its effort to cite in Travelers in the absence of holding an evidentiary hearing on these matters.

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).

We note that in order for a trial commissioner to award a claimant benefits, it is a condition precedent to ensure that this Commission has jurisdiction over the injury that the claimant sustained. In order to award benefits to a claimant they must sustain what the General Assembly has defined as a "personal injury." See § 31-275(1)(16) C.G.S.[3] In cases such as Goulbourne v. State/Department of Correction, 5192 CRB-1-07-1 (January 17, 2008) we have pointed out that our precedent has established a "last date of exposure" standard for determining the "date of injury"[4] for claims involving repetitive trauma.

> In our recent decision in Chappell v. Pfizer, Inc., 5139 CRB-2-06-10 (November 19, 2007), we noted that there is a lacuna in the law as to the time limitations for filing repetitive trauma claims. "[W]e note that there is not a separate statutory timeline for 'repetitive trauma.' The case of Discuillo v. Stone & Webster, 242 Conn. 570 (1997) noted that § 31-294c C.G.S. provided limitation periods only for accidental injuries and occupational diseases, id., 574-75, and the Supreme Court determined that the plaintiff's claim had to fall within one of the two categories under § 31-294c C.G.S." Id. The Supreme Court considered this situation in depth in its opinion

[3] This statute reads as follows:
(16) (A) "'Personal injury' or "injury" includes, in addition to accidental injury that may be definitely located as to the time when and the place where the accident occurred, an injury to an employee that is causally connected with the employee's employment and is the direct result of repetitive trauma or repetitive acts incident to such employment, and occupational disease."

[4] As we explained in some detail in Dahle v. Stop & Shop, 6035 CRB-6-15-10 (August 8, 2016), the right of a claimant to recover under Chapter 568 is governed by the statutes in force on the date the claimant sustained their compensable injury.

> in Russell v. Mystic Seaport Museum, Inc., 252 Conn. 596 (2000). In Russell the Supreme Court pointed out that § 31-275(16)(A) C.G.S. clearly provides for compensating workers who suffer "repetitive trauma or repetitive acts incident to such employment . . . ." id., 606, but "[t]he act is silent as to the notice requirements for the third type of personal injury defined by § 31-275(16)(A), namely, repetitive trauma injuries." Id., 608. Citing Discuillo, supra, the Court in Russell restated the principle "the process of injury from a repetitive trauma is ongoing until [the last date of exposure]." Id., 613.
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> The Discuillo case also dealt with the issue of "last day of exposure," concluding "the last date of exposure to the relevant trauma is a logical choice" for determining when the time limitations to file a claim commence Id., 581, n.11. The Supreme Court also made clear that last date of employment did not necessarily equate to the last day of exposure.[4] In that specific case it did not matter, as "the plaintiff never returned to work after his heart attack . . . the date of his heart attack is also the date of his last exposure to the relevant stresses." Id., 583. Mr. Discuillo's position that he did not have scienter until years later did not save an untimely claim for repetitive trauma.

Goulbourne, supra.

In Goulbourne we further pointed out that the Supreme Court had rejected a "last date of employment" standard or a "last day of exposure" standard for determining when the date of injury for a repetitive trauma claim had occurred, citing Knapp v. New London, 44 Conn. App. 465 (1997) and Borent v. State, 33 Conn. App. 495 (1994). See also Strajkowski v. Pratt & Whitney, 5251 CRB-1-07-7 (August 27, 2008). In that case, we affirmed a trial commissioner's dismissal of a claim for untimely filing under § 31-294c C.G.S. even though the Form 30C had been filed within one year of the claimant's last day of work. The trial commissioner credited evidence that the claimant's work had not exposed him to the trauma that created his injury within the last year of his

employment, and therefore the notice of claim was more than one year after his last day of exposure.[5]

We note that in Sweet v. Coca Cola Bottling Company, 5262 CRB-1-07-8 (August 27, 2008) the trial commissioner's finding seemed equivocal as to whether the claimant sustained a repetitive trauma injury or a single traumatic injury, but we held that from a jurisdictional point of view this was irrelevant on a substantive basis as the claimant's Form 30C had been filed immediately after the date associated with either theory of injury. In the present case we note that the claimant sustained an initial traumatic injury in 2009 for which the respondents accepted compensability[6] and then sustained an additional injury, found to be repetitive by the trial commissioner, at some unspecified date prior to Dr. Brown's 2013 medical report which the commissioner relied upon. Unlike Sweet, we cannot find that it is immaterial whether the injury in the present case that occasioned the increase in the claimant's disability was a single traumatic injury or a repetitive trauma as we are not dealing with the jurisdictional question posed by § 31-294c C.G.S. as to filing an initial claim for benefits, but rather the legal liability for the injury pursuant to § 31-299b C.G.S.

Therefore, we believe it was error under the facts presented in this case for the trial commissioner not to have reached a conclusion as to the claimant's last date of

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[5] Conversely, when the claimant proved that he continued to be exposed to injurious trauma until his last day of employment in Palmieri v. Simkins Industries, Inc., 5694 CRB-3-11-11 (October 10, 2012), we affirmed a finding that the last day of his employment was the date of injury.

[6] Since the initial injury was accepted by the parties via a voluntary agreement and no motion to dismiss was ever filed which contested jurisdiction as to the second injury after the claimant filed a Form 30C on October 29, 2013 asserting a repetitive trauma injury, we presume that the respondents have acknowledged the Commission has jurisdiction over the injury. To the extent Meadowbrook raises jurisdictional issues (see Respondents' Brief, pp. 15-20) they can more accurately be considered arguments asserting error as to the conduct of the formal hearing.

injurious exposure. We believe the matter must be remanded for further proceedings on that issue.

The claimant and the respondent ESIS argue that the plain language of § 31-299b C.G.S. places responsibility to manage the claim for an injury on the "last employer" and that as Hall was the claimant's only employer during all periods relevant to this discussion that the appellant's statutory argument is unfounded. They note that § 31-287 C.G.S.[7] presumes an identity of interest between the employer and its insurer. They also cite Stickney v. Sunlight Construction, Inc., 248 Conn. 754 (1999) for the proposition that disputes between insurance carriers as to coverage are more properly addressed in another forum rather than the Workers' Compensation Commission. Therefore, they believe that Meadowbrook's appeal raises issues which do not impact the validity of the Finding and Award. We are not persuaded by this argument.

In December 2016 the Supreme Court in Graham v. Olson Wood Associates, 323 Conn 720 (2016) restated the statutory scheme under § 31-299b C.G.S. as applied to an occupational disease claim. While this is a claim for repetitive trauma injuries we find the analysis in Justice Robinson's opinion relevant herein.

> A brief review of the act's apportionment scheme illuminates the process by which the commission adjudicates occupational disease

[7] This statute reads as follows:
Sec. 31-287. Provisions required in liability insurance policies. "No policy of insurance against liability under this chapter, except as provided in section 31-284, shall be made unless the same covers the entire liability of the employer thereunder and contains an agreement by the insurer that, as between the employee and the insurer, notice or knowledge of the occurrence of injury by the insured shall be deemed notice or knowledge by the insurer, that jurisdiction of the insured for the purposes of this chapter shall be jurisdiction of the insurer and the insurer shall in all things be bound by and subject to the findings, awards and judgments rendered against such insured; and also that, if the insured becomes insolvent or is discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is due and unpaid or if an execution upon a judgment for compensation is returned unsatisfied, an injured employee or other person entitled to compensation under the provisions of this chapter may enforce his claim to compensation against the insurer to the same extent that the insured could have enforced his claim against such insurer had he paid compensation."

> claims involving multiple employers or insurers, such as those pending on its asbestos docket. ‘‘[T]he last insurer on a risk for which other insurers also bear some liability is deemed initially liable for payment to the injured employee, with the right to recover proportional reimbursement from the other insurers. See General Statutes § 31-299b.’’ *Franklin* v. *Superior Casting*, 302 Conn. 219, 221–22, 24 A.3d 1233 (2011). ‘‘Section 31-299b mandates that the last insurer on the risk . . . pay the claimant. There is no common-law joint and several liability among . . . insurers that would allow the claimant to choose from which insurer he will recover.’’ Id., 232–33; see also *Hatt* v. *Burlington Coat Factory*, 263 Conn. 279, 312–13, 819 A.2d 260 (2003) (§ 31-299b applies only ‘‘to single instances of occupational diseases and repetitive trauma, and not to the consequences of separate injuries on separate occasions’’). If the association stands in the shoes of the last insurer on the risk, it is responsible for that insurer’s liability under § 31-299b, but may seek apportionment from the other employers or their insurers.17 *Franklin* v. *Superior Casting*, supra, 232–33. Finally, § 31-299b sets forth a three step process under which: ‘‘(1) an award of compensation is made to the claimant; (2) the current employer or employer’s insurer ‘shall be initially liable for the payment of such compensation’; and (3) the commissioner, ‘within a reasonable period of time after issuing an award, on the basis of the record,’ must make two determinations: (a) the identification of prior employers or insurers that are liable for a portion of the claimant’s compensation; and (b) the extent of their liability. General Statutes § 31-299b.’’ *Ferraro* v. *Ridgefield European Motors, Inc.*, 313 Conn. 735, 748, 99 A.3d 1114 (2014); see also id., 750 (‘‘[a]llowing an agreement between insurers to constrain a commissioner’s authority to make findings following a hearing on an apportionment claim would be inconsistent with our jurisprudence addressing a commissioner’s authority to render a decision in the area of compensation claims’’); *Levarge* v. *General Dynamics Corp.*, 282 Conn. 386, 391–92, 920 A.2d 996 (2007) (apportionment under § 31-299b is not ministerial act, but requires independent analysis of employment and medical evidence).

Graham, supra, 732-733.

We note that § 31-299b C.G.S. is written in disjunctive fashion where a trial commissioner must determine the identity of either “the employer who last employed the claimant prior to the filing of the claim, ***or*** the employer’s insurer, shall be initially liable

for the payment of such compensation." (Emphasis added) We also note, that although the trial commissioner did not reference this in the findings, that the claimant filed a second Form 30C in 2013 referencing the injuries cited in Dr. Brown's report. Finally, we note that the trial commissioner himself chose to identify Meadowbrook as an insurer and as a responsible party to pay the claim. The Finding and Award, however, references no findings as to the time period in which Meadowbrook was the responsible insurer for this claim. As is well established, a trial commissioner cannot order relief in the absence of probative evidence. See DiNuzzo v. Dan Perkins Chevrolet Geo, Inc., 294 Conn. 132 (2009). In the present matter we cannot ascertain what evidence supports the trial commissioner's conclusion as to Meadowbrook's liability. See Aylward v. Bristol/Board of Education, 5756 CRB-6-12-5 (May 15, 2013), aff'd, 153 Conn. App. 913 (2014)(Per Curiam) and Bazelais v. Honey Hill Care Center, 5011 CRB-7-05-10 (October 25, 2006). We note that in Aylward we determined "[w]e are unable to ascertain from the Finding and Award/Dismissal what probative evidence supported the trial commissioner's determination as to the apportionment of the permanent partial disability award." Id. Therefore, in that case we ordered the issue remanded for further proceedings.

Were this merely a dispute as to insurance coverage for the employer during a certain time period the reliance on Stickney, supra, expounded by ESIS and the claimant might be more persuasive. However, given that this dispute is intertwined with the absence of any finding as to the date of injury we find our analysis in cases such as DiBello v. Barnes Page Wire Products, 3970 CRB-7-99-2 (March 2, 2000), *aff'd*, 67 Conn. App. 361 (2001), *cert. granted*, 260 Conn. 915 (2002), *appeal withdrawn* (2002) and Coley v. Camden Associates, Inc., 3432 CRB-2-96-9 (April 6, 1998) is more

relevant. See also Graham, supra, noting that apportionment under § 31-299b C.G.S. is not a ministerial act. We note that the Supreme Court, in Stickney, supra, suggested that under a different fact pattern "a common-law issue properly could be determined by the commission when incidentally necessary to the resolution of a claim arising under the act." The Stickney opinion also pointed out that such incidental reliance on other laws had been upheld by the Supreme Court in Hunnihan v. Mattatuck Mfg. Co., 243 Conn. 438 (1997). Id., 763-768, fn.5 and 6. Therefore, "it is well-settled that a workers' compensation commissioner has the authority to determine whether a contract for insurance coverage is in effect at the time of an injury. O'Connell v. Indian Neck General Store, 6 Conn. Workers' Comp. Rev. Op. 42, 44, 530 CRD-3-86 (October 6, 1988), *citing* Rossini v. Morganti, 127 Conn. 706 (1940); Piscitello v. Boscarello, 113 Conn. 128 (1931)." Coley, supra, and as the commissioner did not reach a factual finding on either the appropriate dates of coverage or the claimant's date of injury, we believe that these questions must be addressed by the trial commissioner.[8]

Meadowbrook also challenges the substantive findings of Commissioner Mullins as to the claimant sustaining a repetitive trauma injury that increased his level of disability. They cite DiNuzzo, supra, for the proposition that the evidence on the record did not establish a nexus of proximate cause between the claimant's employment and injury. The claimant argues that the medical witnesses relied upon by the trial

[8] We note that the respondent-insurer in Lee v. Empire Construction Special Projects, LLC, 5751 CRB-2-12-5 (August 8, 2013) argued that pursuant to Stickney v. Sunlight Construction, Inc., 248 Conn. 754 (1999) that the dispute in that matter was an insurance coverage dispute beyond the scope of Chapter 568. We did not agree, and relied upon the precedent in DiBello v. Barnes Page Wire Products, 3970 CRB-7-99-2 (March 2, 2000), *aff'd*, 67 Conn. App. 361 (2001) to address the substantive issues raised in that appeal.

commissioner presented sufficient support for the Finding and Award. We concur with the claimant.

The trial commissioner cited the opinions of Dr. Druckemiller and Dr. Brown in support of his conclusion that the claimant had sustained an additional repetitive trauma injury as a result of his employment. We have reviewed the medical reports referenced in Findings, ¶¶ 12-15. These reports support the commissioner's conclusion. In particular we note that Dr. Brown's October 25, 2013 report related the claimant's increased impairment as "entirely related to his repetitive job." Claimant's Exhibit A. We note that in cases wherein causation of an injury is contested 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.) Dr. Brown's report clearly and unequivocally links the claimant's employment to his injury, thus meeting the "proximate cause" standard delineated in Sapko v. State, 305 Conn. 360 (2012). Given the "totality of the evidence" standard for compensability promulgated in Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010), and the deference we must extend to a trier of fact in evaluating medical evidence, O'Reilly v. General Dynamics Corp., 52 Conn. App. 813 (1999), we affirm the trial commissioner's decision on this issue.

Meadowbrook also asserts that the trial commissioner erred by granting ESIS's Motion to Quash Deposition and by not granting its request to keep the record open to cite in an appropriate carrier. We have traditionally granted a great deal of deference to trial commissioners in ruling as to the appropriate scope of discovery. Valiante v. Burns

Construction Company, 5393 CRB-4-08-11 (October 15, 2009). We also note that various counsel discussed at some length at the July 29, 2015 formal hearing the discovery delays in this matter, occasioned by Meadowbrook's decision to retain new counsel, along with various impediments in scheduling Dr. Brown's deposition. It appears Commissioner Mullins determined that he would rule on the record extant as of that date. July 29, 2015 Transcript, pp. 18-20. However, as we previously noted, the conclusions of the trial commissioner as to Meadowbrook's liability are not supported by findings identified on the record. As we are remanding this matter for further proceedings to ascertain the basis for the relief ordered herein, the trial commissioner can determine if he is in need of any additional evidence to complete the record, and, if so, may order whatever additional discovery which he believes would provide an adequate record to support his conclusions.[9] As a result, we defer to the trial commissioner to address these concerns on remand.

"No case under this Act should be finally determined when the . . . court is of the opinion that, through inadvertence, or otherwise, the facts have not been sufficiently found to render a just judgment." Cormican v. McMahon, 102 Conn. 234, 238 (1925). We find that this scenario is presented in the present case. Therefore, we remand this matter for further proceedings to a) ascertain the date of injury for the claimant's repetitive trauma injury; and b) reach factual findings as to what insurance carrier was responsible under § 31-299b C.G.S. to administer the claim.

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

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[9] We believe our recent decision in Quinones v. R W Thompson Company, Inc., 5953 CRB-6-14-7 (July 29, 2015), appeal pending, AC 38256, may shed some light on how to proceed subsequent to the remand of this matter, of course the obvious factual distinctions that we are **not** seeking to have a different commissioner rule on this matter nor believe a *de novo* proceeding is necessary.