CASE NO. 6122 CRB-6-16-8 : COMPENSATION REVIEW BOARD
CLAIM NO. 601080090

MELISSA OUELLETTE
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: JULY 7, 2017

LANE BRYANT, INC.
EMPLOYER

and

SEDGWICK CMS, INCORPORATED
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Kevin M. Blake, Esq., Jonathan Perkins Injury Lawyers, 965 Fairfield Avenue, Bridgeport, CT 06605.

The respondents were represented by Jason T. LaMark, Esq., Adelson, Testan, Brundo, & Jimenez, 2080 Silas Deane Highway, Rocky Hill, CT 06067.

This Petition for Review from the July 25, 2016 Finding and Dismissal of Daniel E. Dilzer, the Commissioner acting for the Sixth District, was heard January 27, 2017 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Christine L. Engel and Peter C. Mlynarczyk.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has appealed from a July 25, 2016 Finding and Dismissal in which the trial commissioner determined that the injury sustained by the claimant in the parking lot outside her employer was not a compensable injury within the scope of § 31-275(1) C.G.S.[1] The claimant argues that her injury was sustained while she was doing something incidental to her employment, i.e., walking to her car at the conclusion of her shift at work, and our precedent has found such injuries to be compensable. The respondents argue that it was the duty of the trial commissioner to determine if the claimant's injury was incidental to her employment, and the trier reached a factual determination adverse to the claimant. While we acknowledge that we have frequently affirmed decisions by trial commissioners concluding that injuries which are sustained appurtenant to parking lots provided to employees are compensable, see Meeker v. Knights of Columbus, 5115 CRB-3-06-7 (July 3, 2007), in the present case, the trial commissioner did not rule in the claimant's favor. Given the deference we must extend to a trial commissioner as an appellate panel, we believe we must affirm the trial commissioner's determination in this case that the claimant's injuries were not compensable. We affirm the Finding and Dismissal.

The trial commissioner reached the following factual findings in the Finding and Dismissal, based on facts stipulated to by the parties. He found the claimant was employed by Lane Bryant at its 315 West Main Street, Avon, Connecticut store location

[1] Section 31-275(1) C.G.S. (Rev. to 2015) states, in pertinent part: "'Arising out of and in the course of his employment' means an accidental injury happening to an employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee's duty in the business or affairs of the employer upon the employer's premises, or while engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer…."

and had worked for them since October 2013. On February 5, 2016, the claimant completed her work shift for the employer at the respondent's Avon store location, "clocked out" of work and, after exiting the respondent's store, slipped and fell on the sidewalk in the front parking lot where she had parked her personal automobile. The sidewalk and parking lot where the claimant had parked her car is not owned or maintained by the respondent but, along with many other stores at the strip mall, the parking lot and sidewalk where the claimant parked were situated on the same parcel of property as the store where the claimant worked. The parking area was a common lot utilized by customers and employees of Lane Bryant as well as all the other businesses located in the strip mall where the respondent employer's store is located. The respondents did not dispute the claimant's account that she had sustained a fall after she completed her work shift on February 5, 2016 in the area outside the employer's place of business. The claimant stated she sustained injuries to her left knee as a result of her fall.

Based on this factual record, the trial commissioner concluded that the fall sustained by the claimant on February 5, 2016 was not in the course and scope of her employment in that it was outside her normal work hours and did not occur in an area owned or maintained by the respondent employer. Therefore, he denied the claim. The claimant filed a Motion to Correct seeking findings that she was in the scope of her employment at the time of her injury because she was advised to park in the lot where she had been injured. The trial commissioner denied this motion in its entirety and the claimant has pursued this appeal. She argues that she was in a place where she might have reasonably been at the time of her injury and although she was "off the clock" and no longer on her employer's premises, the mall parking lot where she was hurt was

essentially an extension of this premises and, at the time of her injury, she had not commenced her commute home.

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) (internal quotation marks omitted), *quoting* Burton v. Mottolese, 267 Conn. 1, 54 (2003). 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 & Home Care, Inc., 248 Conn. 379, 384 (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 trial commissioner in the present case determined that the claimant's injury was not compensable as it occurred outside of her normal work hours and was not sustained in an area owned or maintained by the respondents. We note that in DeForest v. Yale New Haven Hospital, 6075 CRB-3-16-2 (April 6, 2017), we affirmed the decision of the trial commissioner to award benefits to a claimant who was injured during an unpaid lunch hour and on a public street not controlled by her employer. We found that cases such as Meeker, supra, Cimmino v. Hospital of St. Raphael, 4230 CRB-3-00-5

(September 13, 2001), and Russo v. Stop & Shop Co., 4002 CRB-6-99-3 (March 22, 2000), supported the trial commissioner's decision. In all those cases, the claimant was injured while outside the respondent's premises while going to or from a parked car. We also note that in DeForest, supra, the trial commissioner determined that the claimant's action of going to her car in the garage during her lunch break was "incidental to her employment" consistent with the standards outlined in Brown v. United Technologies Corp., 112 Conn. App. 492, 498 (2009). In the present case, the trial commissioner did not reach that determination. Since the claimant's activities at the time of her injury had to be "incidental to her employment" to be compensable, see Mazzone v. Connecticut Transit Co., 240 Conn. 788 (1997), this was a critical point.

We note the very close congruence between the facts of this case and Russo, supra. In Russo, the claimant was injured, similar to the claimant in this case, after her hours of employment had ended and, although she was outside the premises of her employer, she was in a common parking lot utilized by many businesses at a mall. The trial commissioner in Russo focused on the nature of the claimant's activities at the time of her injury rather than the ownership of the property where she was injured. The trial commissioner determined, under the circumstances of that case, that the claimant had established that her use of the parking facility created a "mutual benefit" for both her and her employer. The absence of such an affirmative finding of "mutual benefit" in this case distinguishes this case from Russo.

The respondents point out that we affirmed a trial commissioner's conclusion in Cunningham v. Saint Raphael Healthcare System, 5809 CRB-3-12-12 (December 31, 2013), *appeal dismissed*, AC 36453 (September 16, 2014), that an injury which occurred

adjacent to an employer's premises while the claimant "off the clock" was not compensable. The claimant in Cunningham was injured on a public sidewalk and did not persuade the trial commissioner that her activities at the time of her injury benefited her employer in any manner. The commissioner in that case found that the claimant's activities at the time of her injury were for personal comfort and the employer was not receiving a mutual benefit. In the present case, the trial commissioner reached no conclusion as to whether the respondent employer was receiving a mutual benefit from the claimant's activities at the time of her injury, but we must infer that he was not persuaded by the claimant's evidence that it was. As our Appellate Court held in Brown, supra, citing Spatafore v. Yale University, 239 Conn. 408 (1996):

> In Spatafore, our Supreme Court stated: "A finding of a fact of this character [whether the injury arose out of the employment] is the finding of a primary fact.... This ordinarily and in this case presents a question for the determination of the commissioner and we have no intention of usurping his function.... This rule leads to the conclusion that unless the case lies clearly on the one side or the other the question whether an employee has so departed from his employment that his injury did not arise out of it is one of fact.... The [board] is, therefore, bound by the findings of fact made by the commissioner, unless additions, corrections or modifications of findings of fact are made...." (Internal quotation marks omitted.)

Brown, supra, 499, *quoting* Spatafore, supra, 419–20.

In the present case, we do not find that the factual record as stipulated to by the parties made the circumstances of the claimant's injury so clearly compensable that the trial commissioner was compelled as a matter of law to find the claimant's injury was incidental to her employment. The trial commissioner did not find the claimant's use of the parking lot constituted a mutual benefit for both the claimant and the employer such

that he could award benefits. Given the deference we must extend to the trial commissioner, we affirm the Finding and Dismissal.[2]

Commissioners Christine L. Engel and Peter C. Mlynarczyk concur in this opinion.

[2] 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. 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).

CERTIFICATION

THIS IS TO CERTIFY THAT a copy of the foregoing was mailed this 7th day of July 2017 to the following parties:

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