CASE NO. 6133 CRB-8-16-8 : COMPENSATION REVIEW BOARD
CLAIM NO. 800189486

ALLEN BAKER : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : AUGUST 9, 2017

MOYLAN PROPERTY SERVICES
NO RECORD OF INSURANCE
EMPLOYER

and

SECOND INJURY FUND
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Timothy M. Schafer, Esq., Schafer & Schafer, L.L.P., 98 East Avenue, Norwalk, CT 06851.

Respondent Matthew Moylan d/b/a Moylan Property Services was represented by John A. Bond, Jr., Esq., Devlin, Peters & Tarpey, L.L.C., 11 South Road, P.O. Box 400, Somers, CT 06071.

Respondent Second Injury Fund was represented by Lawrence G. Widem, Esq., Assistant Attorney General, Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120.

This Petition for Review from the August 16, 2016 Finding and Dismissal by Peter C. Mlynarczyk, the Commissioner acting for the Eighth District, was heard on March 24, 2017 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Christine L. Engel and Daniel E. Dilzer.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has petitioned for review from the August 16, 2016 Finding and Dismissal by Peter C. Mlynarczyk, the Commissioner acting for the Eighth District. We find no error and accordingly affirm the decision of the trial commissioner.[1]

In his Finding and Dismissal, the trial commissioner identified the following issues for determination: (1) whether an employer-employee relationship existed between the claimant and Moylan Property Services on January 23, 2015; (2) whether Moylan Property Services was an uninsured employer; (3) whether the claimant was concurrently employed; (4) if the claimant's injuries were compensable, a determination of the claimant's average weekly wage and compensation rate; (5) if the claimant was concurrently employed, the apportionment of the concurrent employment.

The commissioner made the following factual findings which are pertinent to our analysis of this appeal. The parties stipulate that the claimant was injured on property located at 325 Clark Hill Road in South Glastonbury, CT, when a tree fell on him. The parties also stipulate that there was no workers' compensation insurance policy in force at the time of the injury. At trial, the claimant, who was employed full-time as a firefighter, testified that he met Matthew Moylan at his fire department where Moylan was a volunteer. Moylan approached the claimant about a tree-cutting job and offered to pay the claimant twelve or thirteen dollars ($12.00 or $13.00) per hour. Moylan told the claimant that the job would start whenever they arrived at the work site and would end whenever they finished for the day. The claimant indicated that he knew Moylan owned

[1] We note that three Motions for Extension of Time were granted during the pendency of this appeal.

a business that included property service and maintenance, and his understanding was that Moylan was offering him a job with his company. He began working for Moylan on or about January 17, 2015.

The claimant testified that he did not bid on the work or have any input regarding the rate of pay. The claimant did not own a company that cut down trees or provided other services; nor did he have any input regarding the equipment required or the number of individuals needed to perform the work. On the first day that he went to the job site, only he and Moylan were present; on the second day, he saw Chris Bores and several other men. To the best of the claimant's knowledge, they all worked for Moylan. At the work site, there were four chainsaws, wedges, oil and gas in Moylan's truck. To the best of the claimant's knowledge, Moylan had provided the tools and the claimant did not bring any of his own tools. He did not recall that any safety equipment was present at the work site, and he was not offered any by Moylan. The claimant indicated that Moylan explained to him what needed to be accomplished, such as which trees needed to be cut and in what order, and which saws to use. No one else at the work site gave the claimant any direction.

The claimant testified that he only worked at the job site for two days because he was injured on the second day. Moylan paid the claimant for eight hours of work for the first day, taking him to an ATM and paying him in cash. The claimant has not received a Form 1099 or any other tax paperwork; nor is there a written employment agreement or any other document which would demonstrate that on the date of injury, the claimant was employed by Moylan Property Services. The claimant stated that he did not have the right to come and go as he pleased and, although there were no set hours, he could not

choose to start work at 10:00 a.m., for example. Moylan told him what time to report to work and decided when the lunch break would occur. The claimant indicated that although he was not sure how long the tree-cutting job would take, he did not expect to do any other jobs for Moylan Property Services. On the day he was injured, the claimant was cutting down a tree when it unexpectedly fell on him. He was flown to the hospital via Lifestar and ultimately diagnosed with a broken right arm, right wrist and right tibia as well as a crushed foot.[2] He testified that he did not have any prior experience cutting down trees, although he did have some prior experience using a chainsaw to trim tree limbs.

Christopher Bores also testified at trial, indicating that he is a volunteer firefighter at the same stationhouse as Moylan and has known him for approximately five years. He knows the claimant is a career firefighter, but he was not acquainted with the property owner, Donald Vaccaro. Bores has his own business called "Bores Property Services" which performs landscaping, snow plowing and lawn maintenance. Although Bores had never cleared a property for his own company, he previously worked for a tree service in Massachusetts where he was taught how to safely clear properties. Bores indicated that Moylan approached him one day at the firehouse and said he was looking for help on a job clearing about seven acres of land. Moylan offered to pay fifteen dollars ($15.00) per hour and it was Bores' understanding that Moylan would tell him when and where to start. When Moylan offered him the chance to work on the job, Bores was aware that Moylan had a business similar to his which performed landscaping and property services. Bores indicated he was at the job site on the date of injury along with Moylan, Brad

[2] The claimant indicated he is right-hand dominant.

Hoffman and Josh DeVoe. Although Hoffman and DeVoe were employees of Bores Property, Moylan paid them for the work they performed at the job site.[3] When Bores arrived at the job site, he found chainsaws, a mini-excavator and a Bobcat. Moylan provided the chainsaws, fuel, oil and extra chains. The fuel for the heavy equipment was trucked in every day, but he does not know who paid for that. After being on the job site for two days, it was apparent to Bores that the equipment on hand was not sufficient to accomplish the job so Bores suggested to Moylan that they obtain a larger piece of equipment.[4] Moylan did not have general liability insurance, so Bores rented it through his own company, and Moylan paid the bill for the rental.

Bores testified that Moylan instructed him what to do while at the job site and it was his understanding that when he worked on the job, he was employed by Moylan. On the first day, Moylan walked the perimeter of the property with Bores and explained that the job entailed cutting and removing the trees and stumps. Moylan described the scope of the job but not the mechanics of how to cut down a tree or clear the land. Bores testified that he did not have any input into how many people would be required to do the job or how long it might take. Some days, Moylan would decide who would work where, and other days, Bores would. Bores had more experience than Moylan and tried to give him some input so the job would be done safely.

Work stopped at the job site after the claimant was injured on January 23, 2015, but Bores returned after Moylan asked him to provide a quote to the homeowner to pile up the trees that were lying on the ground and remove the stumps. He provided the quote

[3] Bores testified that when he paid his employees for work performed for Bores Property Services, he gave them a weekly paycheck and withheld taxes.
[4] Bores also testified that it was his decision, and not Moylan's, to rent the additional equipment.

through his own business. Prior to the date of injury, he was aware that Vaccaro was the property owner although he did not know him personally. When he performed the clean-up work, his only contact with Vaccaro was one e-mail and a sixty-second phone conversation.

Bores testified that the work schedule was flexible and he could have worked at the site even when Moylan was not present. There was no penalty for not showing up. Bores brought his own personal safety equipment to the site, such as work boots, safety glasses and hearing protection. Upon Bores' recommendation, safety vests, hard hats and radios were provided to the other workers. Bores kept track of his own hours and reported them to Moylan, and Moylan paid him in cash. At one point, Bores accompanied Moylan to the bank where Moylan cashed a check and paid him for one day's work and for the equipment rental.

Moylan also testified at trial. He indicated that his primary employer was Donald Vaccaro, the homeowner at 325 Clark Hill Road in South Glastonbury, Connecticut, and he is employed by Vaccaro as a "gofer." His duties include taking care of repairs around the house, mowing the lawn, and running assorted errands along with performing snow removal and basic landscaping. The tree-clearing project at issue in this case was not a normal part of his responsibilities, and he had never performed a similar service for anyone else. Moylan does not own or have an ownership interest in any corporation or limited liability company. The services he provides, such as landscaping or lawn mowing, are carried out in his capacity as an individual. Most of his clients are relatives or friends of the family. He does not market his services or advertise, although he does

have business cards. He does not own any commercial logging equipment; rather, he owns two chainsaws, a utility trailer and a dump trailer.

Moylan testified that he first became aware of the tree-cutting project when Vaccaro informed him that he had purchased property from a neighbor and would like it cleared. Vaccaro did not give Moylan any specifics as to how he wanted it done but instructed Moylan to find additional help and said that he was willing to pay fifteen dollars ($15.00) per hour per person. Bores knew about the job and asked if Moylan needed any help, and he said yes. The claimant had also heard about the job and asked Moylan if Vaccaro needed any help as the claimant could use some extra money. Moylan knew Bores' employees by reputation and was also aware that the claimant was familiar with the use of circular saws and chainsaws because of his fire department training and because the claimant maintained the firehouse equipment, including the saws.

Moylan stated that he had described the job to the others as follows: "My boss needs this land cleared, he is willing to pay fifteen bucks an hour if you would like to go work for him."[5] February 4, 2016 Transcript, p. 83. The others knew they could come to work "whenever." Id. Moylan indicated that he hired the men on behalf of Vaccaro, and he was the only one with direct access to Vaccaro. Vaccaro told Moylan where to clear the trees and Moylan explained the scope of the job to the other workers. In addition, when Moylan described the job to the men, he specifically told them Vaccaro would be paying them. The hours for each worker, including the claimant, were submitted to

[5] Moylan testified that he was also paid fifteen dollars ($15.00) per hour to work at the tree-cutting site and made no additional profit on the job.

Vaccaro, who would write a check for the total, which Moylan would then either cash or deposit and pay the workers. Moylan did not use any of his personal funds to pay the workers. There was no penalty if anyone failed to show up, and the men could work on the weekend in addition to during the week if they chose. The site could be active even if Moylan was not there. He indicated it was not his responsibility to supervise the workers; everyone knew what they were doing and what needed to be done. No one was required to remain on the job until it was finished. The workers either drove themselves to the site or car-pooled.

Moylan testified that he owned two of the chainsaws on the site and Vaccaro owned the other two. Vaccaro also owned the mini-excavator. The workers brought their own safety equipment, such as boots, gloves and glasses, and one of the men brought his own saw. The larger excavator was obtained after Bores pointed out that they needed bigger equipment and Moylan and Bores "mutually decided" to rent the large excavator. Findings, ¶ 5.ii. Bores rented the equipment, although the rental required Vaccaro's authorization as he was the one who ultimately paid for it.

Moylan testified that he drove the claimant to the job site on the first day. The second day that the claimant worked, which was also the day he was injured, the claimant drove himself to the site. The claimant used one of Vaccaro's saws, and over the two days that the claimant worked at the site, he cut down more than one hundred (100) trees. The claimant never met or spoke with Vaccaro directly; all communication was conducted through Moylan. As was the case with the other workers, Moylan submitted the claimant's hours to Vaccaro, who wrote a check to Moylan which he cashed and disbursed payment to the claimant.

Based on the foregoing, the trial commissioner concluded that Moylan "provided credible and persuasive testimony" that at all times herein, he was acting on behalf of Vaccaro relative to the work being sought and the pay being offered. Conclusion, ¶ A. Other than describing the scope of the tree-clearing, Moylan did not specifically instruct the workers as to how the tree-clearing was to be accomplished. The claimant possessed the skill and ability to cut trees without additional guidance, and was able to come and go at the job site whenever his other commitments allowed him to do so. The claimant was paid for his services by Vaccaro, with Moylan acting as a "conduit" for Vaccaro. Conclusion, ¶ E. Moylan provided the two chainsaws at the site, while the other equipment was provided by Vaccaro or rented at his expense. Although Moylan drove the claimant to the jobsite on the first day, the claimant provided his own transportation on the second day.

The trier also concluded that Moylan's involvement was limited to conveying Vaccaro's wishes regarding the work required and disbursing Vaccaro's funds as payment for services rendered. As such, no employer-employee relationship ever existed between Moylan and the claimant and the claimant's role in the tree-clearing project was that of an independent contractor. The trial commissioner therefore dismissed the claim due to a lack of subject matter jurisdiction.

The claimant filed a Motion to Correct which was denied in its entirety, and this appeal followed.[6] On appeal, the claimant contends that the trial commissioner failed to apply the correct legal standard for determining independent contractor status. The

[6] We note that the trial commissioner referred to Matthew Moylan as Matthew "Boylan" in his August 16, 2016 Finding and Dismissal. We deem this harmless scrivener's error. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 729 (2002), *cert. denied*, 262 Conn. 933 (2003).

claimant argues that the trier "has committed clear error in that he failed to follow and apply the controlling law to the subordinate facts in determining whether a person is an employee or independent contractor, thus resulting in an illogical and unreasonable conclusion which must now be overturned." Appellant's Brief, p. 2. We are not so persuaded.

We begin our analysis with a recitation of the standard of review we are obliged to apply to a trial commissioner's findings and legal conclusions.

> … the role of this board on appeal is not to substitute its own findings for those of the trier of fact. Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 451 (2001). The trial commissioner's role as factfinder encompasses the authority to determine the credibility of the evidence, including the testimony of witnesses and the documents introduced into the record as exhibits. Burse v. American International Airways, Inc., 262 Conn. 31, 37 (2002); Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999). If there is evidence in the record to support the factual findings of the trial commissioner, the findings will be upheld on appeal. Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002); Phaiah v. Danielson Curtain (C.C. Industries), 4409 CRB-2-01-6 (June 7, 2002). This board may disturb only those findings that are found without evidence, and may also intervene where material facts that are admitted and undisputed have been omitted from the findings. Burse, supra; Duddy, supra. We will also overturn a trier's legal conclusions when they result from an incorrect application of the law to the subordinate facts, or where they are the product of an inference illegally or unreasonably drawn from the facts. Burse, supra; Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998).

McMahon v. Emsar, Inc., 5049 CRB-4-06-1 (January 16, 2007).

Turning to the matter at bar, it is axiomatic that "[t]he burden in a workers' compensation claim rests upon the claimant to prove that he is an 'employee' under the [Workers' Compensation Act] and thus is entitled to invoke the act." Castro v. Viera,

207 Conn. 420, 426 (1988). In Hanson v. Transportation General, Inc., 245 Conn. 613 (1998), our Supreme Court, in articulating the distinction between an employee and an independent contractor, stated that the "ultimate test" for determining whether a worker is an employee as defined by the Workers' Compensation Act "is the right of general control of the means and methods used by the person whose status is involved." Id., at 617, *quoting* Ross v. Post Publishing Co., 129 Conn. 564, 567 (1943). This board has previously observed that the Hanson court established a "totality of the evidence" test which obligates a trial commissioner to "weigh *all* the factors relevant to employment status prior to reaching a decision. This decision will be driven by the specific facts of each case presented." (Emphasis in the original.) Maskowsky v. Fed Ex Ground, 5200 CRB-3-07-2 (July 28, 2008); see also, Hanson, supra, at 624.

Moreover, "[i]t is not the fact of actual interference with the control, but the right to interfere, that makes the difference between an independent contractor and a servant or agent." (Internal quotation marks omitted.) Tianti v. William Raveis Real Estate, Inc., 231 Conn. 690, 697 (1995). "As a general principle, a hiring entity retains control over only the results of an independent contractor's work, while an employer's will governs the employee 'regarding both the fruits of [their] labor and the mode and manner in which [their] services are performed.'" Lema v. Eoanou, 5056 CRB-4-06-2 (January 29, 2007), *quoting* Morrissey v. Lannon-Norton Associates, 3085 CRB-4-95-6 (December 23, 1996).

In the present matter, the claimant contends that the trial commissioner failed to apply the correct legal standard for determining whether a worker is an independent contractor or employee. In support of his argument, the claimant points out that he was

paid on an hourly basis and Moylan provided the tools used at the job site. In addition, Moylan had the right of general control of the work, and testimony "confirms that Mr. Moylan was the only one on the job able to make any actual decisions regarding the manner in which the job progressed, or the tools ultimately needed for the work." Appellant's Brief, p. 6. The claimant also argues that the commissioner's "conclusion that the respondent was a conduit between the homeowner and the claimant is illogical and unreasonable." Id., 7. Rather, the record indicates that Vaccaro paid Moylan for the services provided by Moylan's company and Moylan in turn paid his crew. As such:

> The Trial Commissioner's conclusion that Mr. Moylan's conveyance to his crew of the scope of the work, and then payment to his crew from the funds he collected from his patron somehow relieves him of his position as an employer is unreasonable, and a misapplication of the legal standards articulated in the past by this Board and by our courts.

Id., 8.

We note at the outset that the trial commissioner did make several findings which appear to address the nature of the business relationship between Moylan and Vaccaro. See Conclusions, ¶¶ A, K. Although the evidentiary record clearly indicates that Vaccaro was the owner of the subject property and the party ultimately responsible for financing the tree-clearing project, the issue of whether Vaccaro was operating in the guise of a principal employer pursuant to § 31-291 C.G.S., and the extent to which Moylan may have been acting as Vaccaro's agent, were never before the commissioner and were not litigated by the parties.[7] As such, the trier's findings in this regard go beyond the scope

[7] Section 31-291 C.G.S. states, in pertinent part: "When any principal employer procures any work to be done wholly or in part for him by a contractor, or through him by a subcontractor, and the work so procured to be done is a part or process in the trade or business of such principal employer, and is performed in, on or about premises under his control, such principal employer shall be liable to pay all compensation under

of the noticed issues in this matter and must be vacated.[8] "Even in a relatively relaxed forum such as this Commission, fairness and due process require that parties know when they are supposed to appear before a commissioner, and the scope of the controversy to be addressed." Mosman v. Sikorsky Aircraft Corp., 4180 CRB-4-00-1 (March 1, 2001).

Having vacated the findings addressing Moylan's business relationship with Vaccaro, we must now examine the balance of commissioner's findings vis-à-vis the Hanson "right of general control" standard as discussed previously herein. In Rodriguez v. E.D. Construction, Inc., 126 Conn. App. 717 (2011), *cert. denied*, 301 Conn. 904 (2011), our Appellate Court discussed some of the factors which should be evaluated by a trier when assessing whether an employer-employee relationship exists.

> Many factors are ordinarily present for consideration, no one of which is, by itself, necessarily conclusive. While the method of paying by the hour or day rather than by a fixed sum is characteristic of the relationship of employer and employee, it is not decisive…. Nor is it decisive that the injured party uses his own tools and equipment.... The retention of the right to discharge, upon which the finding is silent, is a strong, but again not a controlling, indication that the relationship is one of employment." Other persuasive factors that a person is holding oneself out to be an independent contractor include the issuance of 1099 federal tax forms; … and engaging independently in business with third parties and doing business apart from the putative employer under a different name. (Internal citations omitted.)

Id., 610-611.

---

this chapter to the same extent as if the work were done without the intervention of such contractor or subcontractor…."

[8] Similarly, in Conclusion, ¶ J, the commissioner found that Moylan "did not have the training, education or experience to operate a commercial land clearing company or lead a crew in a clear-cutting a seven-acre parcel of unimproved land. Christopher Bores did possess such training and experience, certainly more than Mr. Moylan." We find this Conclusion superfluous, in that the qualifications of neither Moylan nor Bores are relevant to whether an employer-employee relationship existed between Moylan and the claimant.

In the present matter, there is no dispute that the claimant agreed to be paid by the hour for his services and did not receive a Form 1099 or any other tax paperwork relative to the services he provided. Given that the record indicates the claimant was paid in cash, it may be reasonably inferred that the trial commissioner did not find the method of payment dispositive on the issue of the claimant's employment status. However, the evidentiary record does provide a basis for the trier's conclusions that the claimant and the other workers at the job site retained a great deal of flexibility to work at the job site when their schedules permitted. Thus, although the claimant denied that he had the "right to come and go as he pleased on the property," Findings, ¶ 1.r, it may be inferred that the trier simply found more credible the testimony of Bores and Moylan on this issue, both of whom indicated that the workers were free to access the site even in Moylan's absence. Findings, ¶¶ 4.v, 5.aa. Such credibility determinations are "uniquely and exclusively the province of the trial commissioner," Smith v. Salamander Designs, Ltd, 5205 CRB-1-07-3 (March 13, 2008), and are not generally subject to reversal on review.

The testimony of the parties is likewise inconsistent regarding the degree of specificity to which Moylan articulated how the tree-clearing was to be accomplished. The claimant testified that Moylan instructed him as to "what trees needed to be cut first and what direction to go in, and what saws to use." February 4, 2016 Transcript, p. 11. However, although Bores did indicate that Moylan told him what to do when he (Bores) was at the job site, id., 37, he also stated that on the first day that he visited the property, "Moylan described the scope of the job, but not specifically the mechanics of cutting a tree and clearing the land." Findings, ¶ 4.s.

In addition, we note that the testimony of the parties is consistent that the claimant was working autonomously at the time he sustained his injury.[9] Again, it may be reasonably inferred that the commissioner made a determination relative to the credibility of the witnesses regarding the issue of Moylan's "right of general control" over the workers, ultimately concluding that the claimant had retained sufficient autonomy such that he could be deemed an independent contractor. There is certainly little question that "the level of supervision over the claimant in this case was far less intrusive than contested cases where we have found an employee-employer relationship was present." Veilleux v. Dehm Drywall, LLC**,** 6057 CRB-8-15-12 (September 26, 2016). See Covey v. Home Medical Associates, LLC, 5770 CRB-4-12-7 (July 25, 2013); Reid v. Sheri A. Speer d/b/a Speer Enterprises, LLC, 5818 CRB-2-13-1 (January 28, 2014), *appeal pending*, AC36663 (2014).

We recognize that the evidentiary record is somewhat murky relative to the claimant's qualifications for independent contractor status as a tree-cutter in light of his testimony that prior to agreeing to participate in the venture, he had some experience using a chainsaw but no experience cutting down trees, particularly to the extent required to accomplish the job at hand. February 4, 2016 Transcript, pp. 29-30. We also note that the evidence is undisputed that the claimant did not use his own tools at the job site (apart from some safety equipment). Nevertheless, the claimant also testified that he did not anticipate doing any more work for Moylan, which suggests that the claimant had been

[9] In Jordan v. Reindeau & Sons Logging, LLC, 5388 CRB-2-08-10 (December 18, 2009) and Veilleux v. Dehm Drywall, LLC, 6057 CRB-8-15-12 (September 26, 2016), this board upheld the commissioner's finding that the claimant was an independent contractor on the basis, *inter alia*, that the claimant did not have taxes withheld from his pay and was working autonomously while using his own equipment when injured.

hired as an independent contractor to work only on the one tree-clearing project. The evidentiary record also provides a basis for the reasonable inference that if Moylan so desired, he could have terminated without liability any of the workers at any time had their efforts proved unsatisfactory. However, given the nature of the undertaking and, in particular, the method of payment, it is clear that Moylan would have retained this right regardless of whether the workers were deemed employees or independent contractors.

There is no question that the record in the present matter presented the trial commissioner with conflicting "indicia" relative to the claimant's employment status. Nevertheless, this board has frequently remarked that "[e]mployment status is patently a factual issue, and is subject to a significant level of deference on review." Hanson v. Transportation General, Inc., 16 Conn. Workers' Comp. Rev. Op. 57, 3001 CRB-3-95-2 (October 18, 1996), *aff'd*, 45 Conn. App. 441 (1997), *aff'd*, 245 Conn. 613 (1998). As such, in order to overturn the findings of the trial commissioner, "[t]he question for this court ... is not whether it would have made the findings the trial court did, but whether in view of the evidence and pleadings in the whole record it is left with the definite and firm conviction that a mistake has been committed." (Citations omitted; internal quotation marks omitted.) Nationwide Mutual Ins. Co. v. Allen, 83 Conn. App. 526, 533–34 (2004), *quoting* MJM Landscaping, Inc. v. Lorant, 268 Conn. 429, 436–37 (2004).

Having reviewed the findings of the commissioner in their entirety, we are satisfied that he appropriately exercised his prerogative to accord the various indicia of employment the evidentiary weight he deemed suitable, and the evidentiary record provides a sufficient basis for his findings. "[I]t is likewise … that the facts permit the drawing of diverse inferences. The [commissioner] alone is charged with the duty of

initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair v. People's Savings Bank, 207 Conn. 535, 540 (1988), quoting Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935). Moreover, this board has previously observed that "if the trial commissioner may give greater weight to facts which support employment status, it is self-evident he may also choose to give greater weight to factors supportive of independent contractor status if he is persuaded by the evidence on the record." Schleidt v. Eldredge Carpentry, LLC, 5373 CRB-8-08-8 (July 14, 2009). We therefore decline to overturn his decision.

There is no error; the Finding and Dismissal is accordingly affirmed.

Commissioners Christine L. Engel and Daniel E. Dilzer concur.