CASE NO. 6152 CRB-4-16-11 : COMPENSATION REVIEW BOARD
CLAIM NO. 400091255

GUSTAVO DAVILA : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : NOVEMBER 28, 2017

MIMI DRAGONE, INC.
DRAGONE & SONS, L.L.C.
NO RECORD OF INSURANCE
EMPLOYERS
RESPONDENTS-APPELLEES

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

The claimant was represented by John J. Morgan, Esq., Barr & Morgan, 22 Fifth Street, Stamford, CT 06905.

Respondent Second Injury Fund was represented by Joy L. Avallone, Esq., Assistant Attorney General, Office of the Attorney General, 55 Elm Street, Hartford, CT 06141-0120.

Respondent Mimi Dragone, Inc., was represented by Jeremy C. Virgil, Esq., Zeldes, Needle & Cooper, P.C., 1000 Lafayette Boulevard, P.O. Box 1740, Bridgeport, CT 06601-1740, at the trial level.

Respondents Carman Dragone, Dragone & Sons, L.L.C., and 1802-1812 Main Street were unrepresented parties at the trial level. Thomas Dragone, 16 Par Lane, Trumbull, CT 06611, appeared at the trial level as an unrepresented party.

This Petition for Review from the November 8, 2016 "Ruling on Respondents' Respective Motions To Dismiss For Lack Of Timely Notice Under The Provisions Of Conn. Gen. Stat. Sec. 31-294c" of Michelle D. Truglia, the Commissioner acting for the Fourth District, was heard April 21, 2017 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Christine L. Engel and Daniel E. Dilzer.[1]

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. It is an essential element of a claim for benefits under Chapter 568 that the claimant provide notice to the respondent in accordance with General Statutes § 31-294c (a) in order to engage the jurisdiction of the Workers' Compensation Commission ["Commission"] to award benefits.[2] The trial commissioner, Michelle D. Truglia, determined that the claimant in this matter failed to provide notice to his actual employer within one year of the date of injury. As a result, she granted a motion to dismiss the claim. We have reviewed the circumstances herein and conclude the claimant failed to persuade the trial commissioner that his actual

[1] We note that a Motion for Extension of Time was granted during the pendency of this appeal.

[2] General Statutes § 31-294c (a) states: "No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury, provided, if death has resulted within two years from the date of the accident or first manifestation of a symptom of the occupational disease, a dependent or dependents, or the legal representative of the deceased employee, may make claim for compensation within the two-year period or within one year from the date of death, whichever is later. Notice of a claim for compensation may be given to the employer or any commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident, or the date of the first manifestation of a symptom of the occupational disease and the nature of the disease, as the case may be, and the name and address of the employee and of the person in whose interest compensation is claimed. An employee of the state shall send a copy of the notice to the Commissioner of Administrative Services. As used in this section, "manifestation of a symptom" means manifestation to an employee claiming compensation, or to some other person standing in such relation to him that the knowledge of the person would be imputed to him, in a manner that is or should be recognized by him as symptomatic of the occupational disease for which compensation is claimed."

employer received either actual or constructive notice that he was seeking Chapter 568 benefits for this injury. Therefore, we affirm the decision of the trial commissioner.

The commissioner reached the following factual findings and conclusions in her "Ruling on Respondents' Respective Motions to Dismiss for Lack of Timely Notice Under the Provisions of Conn. Gen. Stat. Sec. 31-294c" ("Ruling") dated November 8, 2016. The trial commissioner noted that the claimant cited an alleged date of injury of March 18, 2013 and had been represented at all times by legal counsel. The Second Injury Fund ["fund"] had appeared as a derivative obligor of the unrepresented respondents, Thomas Dragone and Dragone and Sons, L.L.C., pursuant to General Statutes § 31-355 (b).[3]

The fund pointed out that the claimant initially filed his Form 30C against "Mimi Dragone, Inc., D/B/A Dragone's Upholstery Sh" [sic] of 1812 Main St., Bridgeport, CT 06604, which was not the business address for this firm. The fund further noted that "Thomas Dragone," 16 Par Lane, Trumbull, CT 06611 was later added as a respondent-employer in his individual capacity on the July 7, 2015 hearing notice, more than two years after the claimant's claimed date of injury. "Dragone, L.L.C.," 16 Par Lane, Trumbull, CT, and "1802-1812 Main Street," 16 Par Lane, Trumbull, CT, were first added to a hearing notice on September 18, 2015. The fund further noted that there was no discussion regarding the additional alleged respondent-employer, "Dragone and Sons, L.L.C.," 16 Par Lane, Trumbull, CT, until the November 5, 2015 formal hearing.

[3] General Statutes § 31-355 (b) states in relevant part: "When an award of compensation has been made under the provisions of this chapter against an employer who failed, neglected, refused or is unable to pay any type of benefit coming due as a consequence of such award or any adjustment in compensation required by this chapter, and whose insurer failed, neglected, refused or is unable to pay the compensation, such compensation shall be paid from the Second Injury Fund. The commissioner, on a finding of failure or inability to pay compensation, shall give notice to the Treasurer of the award, directing the Treasurer to make payment from the fund…."

This discussion led to the addition of "Dragone and Sons, L.L.C.," as a party respondent on the December 16, 2015 hearing notice, almost three years after the claimant's alleged date of injury. The Secretary of the State website lists "Thomas Dragone" as the sole principal of "Dragone and Sons, L.L.C."[4]

A full trial was held on the merits of the claimant's claim that he sustained a compensable injury pursuant to our statutes. We need not address the merits of the case on appeal given that:

> Just before the record closed on October 20, 2016, Thomas Dragone, an unrepresented respondent, voiced an objection to any judgment being rendered against him on the grounds that he did not receive timely notice of the claimant's workers' compensation claim as required by the provisions of Conn. Gen. Stat. Sec. 31-294c. Specifically, Mr. Dragone argues that he was not contacted about the existence of the claimant's claim until over two years post-injury.

Findings, ¶ 4.

The trial commissioner reviewed the claimant's testimony concerning his relationship with the Dragones. The claimant testified that he was contacted by Thomas Dragone to work at the property located at 1802 to 1812 Main Street in Bridgeport, Connecticut, where the claimant claimed to have been injured. He "testified that at the time of his injury he was solely employed by 'Mr. Thomas.'" Findings, ¶ 10.c. The claimant presented, as Claimant's Exhibit A, a check dated March 8, 2013, signed by Thomas Dragone and given to the claimant by Dragone for work on his property. The check was drawn on "Dragone LLC" and had Dragone's home address as the firm's place

[4] "Dragone Classic Motorcars, Inc." with a business address of 1795-1797 Main Street, Bridgeport, Connecticut 06604, was also subsequently added as a respondent on an April 17, 2015 hearing notice. This entity was later removed as a real party in interest by agreement of the parties.

of business and Dragone's e-mail address on the check. [5] Although the claimant argued that there was a tremendous amount of confusion with regard to which Dragone family member or entity employed the claimant on his date of injury, the trial commissioner did not accept that argument.

The commissioner noted that, notwithstanding the claimant's ongoing contacts with Thomas Dragone, the claimant offered no evidence that he ever made an attempt to depose him within the one-year period following the filing of his Form 30C in order to determine the correct entity to bring the action against. No Form 30C was filed against Thomas Dragone individually or Dragone and Sons, L.L.C., within one year of the date of injury. The commissioner also noted that although a hearing was held within one year of the date of injury, that hearing was held with the wrong respondent. In addition, the commissioner noted there was no evidence that either Thomas Dragone individually or Dragone and Sons, L.L.C., paid any of the claimant's medical bills within one year of his date of injury.

The trial commissioner reached a number of legal conclusions in her ruling based on these facts. She found, pursuant to Del Toro v. Stamford, 270 Conn. 532 (2004), that whether a claim was properly initiated is a jurisdictional question. She found that despite the claimant having received a check from Thomas Dragone dated ten days before the date of injury, the claimant served a different business entity with a notice of claim, and neither Thomas Dragone individually nor Thomas Dragone and Sons, L.L.C., were notified of the claimant's workers' compensation claim until 2015, more than two years after the claimant's alleged date of injury. Whether Thomas Dragone had actual

[5] The record indicates that "Dragone LLC" proved to be a nonexistent entity, and was apparently a misnomer for a different business owned by Thomas Dragone.

knowledge of the claimant's injury was immaterial, given that "[*t*]*he operative issue is whether or not Thomas Dragone had knowledge of the filing of the claimant's workers' compensation claim*....." (Emphasis in original.) Conclusion, ¶ F. The commissioner reached two additional conclusions:

> G. The present case does not involve a "misnomer," which is distinguishable from the present case in which the claimant has misconstrued the identity of the defendant and has therefore named and served the wrong party. Burch, v. A-1 Home Services, et.al., Case No. 5905 CRB-3-13-12 (02/18/14). Accordingly, Thomas Dragone and Dragone and Sons, L.L.C. had no actual notice of the institution of the claimant's Workers' Compensation action until the Fall of 2015; no way of knowing that they were proper defendants in the action and were, therefore, deprived of the ability to mount a credible defense to compensability, contemporaneous with the March 18, 2013 date of injury.
>
> H. Failure to notify Thomas Dragone and/or Dragone and Sons, L.L.C. is neither a "defect" nor an "inaccuracy," which implies a "misnomer" in the Form 30C. This is an absolute failure of any timely notice to Thomas Dragone and/or Dragone and Sons, L.L.C., which failure deprives the Commission of subject matter jurisdiction over the claim.

November 8, 2016 Commissioner's "Ruling on Respondents' Respective Motions To Dismiss For Lack Of Timely Notice Under The Provisions Of Conn. Gen. Stat. Sec. 31-294c."

Commissioner Truglia therefore granted the Motion to Dismiss presented by Thomas Dragone. The claimant also presented a Motion to Correct, which was denied in its entirety, and a Motion for Articulation. Commissioner Truglia responded to the Motion for Articulation by essentially restating Conclusion, ¶¶ G and H, of her decision. The claimant has taken this appeal. His primary arguments are: (a) the notice was sufficient because the error in identifying the actual employer was a mere misnomer and precedent as set forth in cases such as Burch, supra, makes the notice valid; and (b) the terms of the notice statute are such that serving a notice on the Commission is sufficient

even if the actual employer does not receive notice. The claimant also argues in the alternative that the exception to the notice statute as outlined under General Statutes § 31-294c (c) is satisfied in this case given that a hearing was held within one year of the notice of claim.[6] The fund, on the other hand, argues that because no valid claim was ever presented to the Commission, cases such as Chambers v. Electric Boat Corp., 283 Conn. 840 (2007), render the claim invalid, and the commissioner properly determined jurisdiction was lacking.

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), *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

[6] General Statutes § 31-294c (c) states: "Failure to provide a notice of claim under subsection (a) of this section shall not bar maintenance of the proceedings if there has been a hearing or a written request for a hearing or an assignment for a hearing within a one-year period from the date of the accident or within a three-year period from the first manifestation of a symptom of the occupational disease, as the case may be, or if a voluntary agreement has been submitted within the applicable period, or if within the applicable period an employee has been furnished, for the injury with respect to which compensation is claimed, with medical or surgical care as provided in section 31-294d. No defect or inaccuracy of notice of claim shall bar maintenance of proceedings unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice. Upon satisfactory showing of ignorance and prejudice, the employer shall receive allowance to the extent of the prejudice."

record. Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

We start our inquiry by addressing the claimant's argument that service of a Form 30C on the Commission within one year of the date of injury creates jurisdiction under Chapter 568, notwithstanding whether the correct respondent received notice of claim. Although the claimant seeks to parse statutory language to support this position, the fundamental principles of due process render this argument inherently untenable. As we pointed out in Roussel v. Village Gate of Farmington, 4918 CRB-6-05-2 (February 28, 2006):

> In 1950, Supreme Court Justice Robert Jackson wrote, "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

Id., *quoting* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).

A notice which fails to properly identify the actual employer, so that it can present a defense, clearly fails to meet the standard delineated in Mullane, supra. We acknowledge that many firms are essentially affiliates or alter egos of another entity and difficulties may ensue in properly identifying the real party in interest. However, Burch, supra, as well as cases such as Diaz v. Capital Improvements and Management, LLC, 5616 CRB-1-11-1 (January 12, 2012); Caus v. Paul Hug d/b/a HUG Construction Company, Hug Contracting Company, Crown Asphalt Paving, LLC, P. HUG Contracting, LLC, 5392 CRB-4-08-11 (January 22, 2010); and Antos v. Jaroslaw Korwek d/b/a Jerry's Home Improvement, 5225 CRB-7-07-5 (April 4, 2008), address circumstances in which the actual employer utilized a variety of trade names and we

allowed the claimant to proceed against the real party in interest. In all those cases, the real party in interest received timely notice. We are now asked to extend that principle to a situation in which the purported actual employer did not receive notice within the statutory time period. As we have frequently pointed out, our interpretation of statutes is governed by General Statutes § 1-2z.[7] In First Union National Bank v. Hi Ho Mall Shopping Ventures, Inc., 273 Conn. 287 (2005), our Supreme Court stated that "this court will not interpret statutes in such a way that would lead to a 'bizarre or absurd result.'" Id., 294.

There is long-standing precedent regarding the requirement of a claimant, when initiating a claim for benefits, to place the actual employer on notice. See Kuehl v. Z-Loda Systems Engineering, Inc., 265 Conn. 525 (2003) and Tardy v. Abington Constructors, Inc., 71 Conn. App. 140 (2002). In Tardy, the Appellate Court noted that defects in a notice for claim may be deemed immaterial so long as the notice "puts the *employer* on notice to make a timely investigation." (Emphasis added.) Id., 150. In Kuehl, the Supreme Court held that "the written notice required under General Statutes § 31-294c (a) nevertheless must 'reasonably inform the *employer* that the employee [or dependent] is claiming or proposes to claim compensation under the [Workers' Compensation] Act….'" (Emphasis added.) Id., 534, *quoting* Rehtarchik v. Hoyt-Messinger Corp., 118 Conn. 315, 317 (1934.) In the absence of written notice to the employer in Kuehl demonstrating that the claimant was seeking benefits, the

[7] General Statutes § 1-2z states: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

Commission lacked jurisdiction to award benefits, notwithstanding the claimant's argument that constructive notice could be determined from the facts of the case.

We note that both Kuehl and Tardy predate the enactment of General Statutes § 1-2z, and further note that Hummel v. Marten Transport, Ltd., 282 Conn. 477 (2007), stands for the proposition that the "plain meaning" statute was not intended to overrule prior precedent interpreting statutes. Id., 498-499. In addition, our Appellate Court recently held that "[i]n order to satisfy the notice of claim requirement set forth in § 31-294c (a), an employee must affirmatively provide some form of *written* notice that informs his or her employer of his or her actual intent to pursue a workers' compensation claim." (Emphasis in the original.) Izikson v. Protein Science Corp., 156 Conn. App. 700, 710 (2015). Finally, we note that as an appellate panel, "we must resolve statutory ambiguities or lacunae in a manner that will further the remedial purpose of the act." Mello v. Big Y Foods, Inc., 265 Conn. 21, 26 (2003), *quoting* Driscoll v. General Nutrition Corp., 252 Conn. 215, 221 (2000).

Although the claimant contends that the statute is written in the disjunctive in order to permit the filing of a notice of claim with a commissioner to suffice for not filing a notice against the employer, we note there is no provision in the statute wherein the burden shifts to the Commission to ascertain the proper party to defend the claim. For example, if a claimant injured while in the employ of the Hartford Steam Boiler Company were to identify as his or her employer in the Form 30C a totally unrelated business entity with a similar name such as Hartford Insurance, we would find no statutory obligation on the part of this Commission to investigate this discrepancy. It is

the obligation of a claimant to initiate a claim in a manner which confers jurisdiction over the injury.

We reach this conclusion in part due to the provisions of General Statutes § 31-294c (b).[8] The entire mechanism of preclusion, as set forth in cases such as Donahue v. Veridiem, Inc., 291 Conn. 537 (2009), Harpaz v. Laidlaw Transit, Inc., 286 Conn. 102 (2008), and Menzies v. Fisher, 165 Conn. 338 (1973), presumes the correct respondent has been identified in a claim for Chapter 568 benefits so as to allow it to investigate the claim and ascertain whether it is liable for the benefits the claimant is seeking. Allowing a claimant to serve an amorphous notice of claim on the Commission without notifying the actual employer of a pending claim for benefits would lead to bizarre or absurd results which are statutorily impermissible, particularly as the plain

[8] General Statutes § 31-294c (b) states: "Whenever liability to pay compensation is contested by the employer, he shall file with the commissioner, on or before the twenty-eighth day after he has received a written notice of claim, a notice in accord with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested. The employer shall send a copy of the notice to the employee in accordance with section 31-321. If the employer or his legal representative fails to file the notice contesting liability on or before the twenty-eighth day after he has received the written notice of claim, the employer shall commence payment of compensation for such injury or death on or before the twenty-eighth day after he has received the written notice of claim, but the employer may contest the employee's right to receive compensation on any grounds or the extent of his disability within one year from the receipt of the written notice of claim, provided the employer shall not be required to commence payment of compensation when the written notice of claim has not been properly served in accordance with section 31-321 or when the written notice of claim fails to include a warning that (1) the employer, if he has commenced payment for the alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim, shall be precluded from contesting liability unless a notice contesting liability is filed within one year from the receipt of the written notice of claim, and (2) the employer shall be conclusively presumed to have accepted the compensability of the alleged injury or death unless the employer either files a notice contesting liability on or before the twenty-eighth day after receiving a written notice of claim or commences payment for the alleged injury or death on or before such twenty-eighth day. An employer shall be entitled, if he prevails, to reimbursement from the claimant of any compensation paid by the employer on and after the date the commissioner receives written notice from the employer or his legal representative, in accordance with the form prescribed by the chairman of the Workers' Compensation Commission, stating that the right to compensation is contested. Notwithstanding the provisions of this subsection, an employer who fails to contest liability for an alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim and who fails to commence payment for the alleged injury or death on or before such twenty-eighth day, shall be conclusively presumed to have accepted the compensability of the alleged injury or death."

meaning of the notice statute clearly requires the claimant to identify the employer in the initial claim for benefits.[9] We therefore reject the claimant's argument that General Statutes § 31-294c (a) is drafted in the alternative such that a deficient notice served on the Commission, but not on the employer, constitutes adequate notice to confer jurisdiction under our statutes.[10]

We now turn to the argument that the trial commissioner erred in determining that Thomas Dragone did not receive notice within one year of the date of the claimant's injury alerting him that the claimant was seeking benefits for an alleged March 18, 2013 injury. The claimant acknowledges that he did not name either Thomas Dragone individually or Dragone and Sons, L.L.C., as respondents in his initial notice of claim. The claimant also did not amend this notice within the one-year period from the date of filing to add either Thomas Dragone or the limited liability company as parties; nor was either party sent a hearing notice within that time period. The record does demonstrate that Mimi Dragone, Inc., filed a Form 43 contesting liability for this claim on August 22, 2013 and specifically denied that the claimant was an employee of that firm. As a result, as of August 22, 2013, Mimi Dragone, Inc., and its principals clearly had notice of the claim, and the firm had interposed a jurisdictional defense to liability in accordance with Del Toro, supra, and Castro v. Viera, 207 Conn. 420 (1988).

---

[9] A situation in which a claimant properly identified the employer but, due to circumstances beyond the claimant's control, notice was not received by the respondent occurred in Morgan v. Hot Tomato's, Inc. DIP, 4377 CRB-3-01-3 (January 30, 2002). We found that under those circumstances, jurisdiction existed to grant preclusion. We believe the more reasonable interpretation of General Statutes § 31-294c (a), as opposed to the claimant's interpretation, is that when a notice has been served on a commissioner and a properly named employer has not acknowledged it has been given notice, the Commission retains jurisdiction to award benefits.

[10] We note that in a related matter concerning a notice of claim in which a claimant failed to properly describe the injuries within the four corners of a Form 30C, we found that preclusion could be sought only on the basis of the injuries described within the notice. Bradford v. Griffin Health Services Corp., 5878 CRB-4-13-9 (March 23, 2017), *appeal pending*, A.C. 40330 (2017).

We hold that whether Thomas Dragone, in his personal capacity, or Dragone and Sons, L.L.C., had actual notice of the claimant's claim for benefits within one year of the filing of the claim is a factual determination. The trial commissioner determined this issue in a manner adverse to the claimant and, given that there is evidence in the record to support this conclusion, it cannot be disturbed on appeal. Fair, supra.

However, it is also readily apparent from the record that Thomas Dragone was the de facto or de jure principal behind a plethora of various corporations and limited liability companies. Morever, as evidenced by the checking account identifying a nonexistent limited liability company used to pay the claimant, there appears to have been a tremendous amount of confusion regarding the firms with which Thomas Dragone was associated. The claimant clearly was not paid by Mimi Dragone, Inc., or otherwise hired by that firm, and we share the trial commissioner's consternation that the claimant did not properly serve his actual employer with a notice of claim at the outset. Given the situation, the trial commissioner correctly identified the appropriate standard of review in Conclusion, ¶ F, of her decision.

In a circumstance such as that presented in the instant matter, in which the actual employer was not named in the Form 30C, we believe it is the obligation of the claimant to demonstrate to the satisfaction of the trial commissioner that the employer had actual knowledge within one year of the date of injury that a claim for benefits had been filed. This holding is consistent with the "totality of the circumstances" determination similar to that performed by the trial commissioner in Hodges v. Federal Express Corporation, 5717 CRB-7-12-1 (January 4, 2013), *appeal withdrawn*, A.C. 35342 (2013). In Hodges, although a Form 30C had not been filed by the claimant within one year of his injury, his

counsel's correspondence to the employer was deemed to suffice as a functional equivalent so as to put the respondent on notice. In cases such as Hodges and Hayden-LeBlanc v. New London Broadcasting, 12 Conn. Workers' Comp. Rev. Op. 3, 1373 CRD-2-92-1 (January 5, 1994), we have deferred to the trial commissioner's resolution of the factual question of whether the respondent had notice.

In the present matter, it was the obligation of the claimant to present persuasive evidence that, as of the date the Form 30C was filed, Thomas Dragone had a sufficient interest in the ownership or management of Mimi Dragone, Inc., so as to impute constructive notice to him regarding the filing of this claim. No evidence or exhibits pertaining to the corporate ownership or management of Mimi Dragone, Inc., were presented at the September 20, 2016 formal hearing. We also note that in Findings, ¶ 4, of the Ruling, the trial commissioner cited testimony from Thomas Dragone at the September 20, 2016 formal hearing indicating that he had never been notified that the claimant was seeking benefits for an injury within the one-year period for commencing a claim. See also Conclusion, ¶ E.

Subsequent to the Ruling, the claimant filed a Motion to Correct which included new Conclusions (see proposed Conclusion, ¶¶ F and G) indicating that Thomas Dragone had constructive notice of the claim for benefits filed by the claimant. The commissioner denied the Motion to Correct. We must therefore infer, consistent with 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), that the trial commissioner did not find probative or credible the evidence presented by the claimant in support of these corrections. We may also infer that the trial commissioner found Thomas Dragone's

testimony on this issue credible. On appeal, our inquiry is limited to ascertaining if a decision was arbitrary or capricious based on the standards delineated by In re Shaquanna M., 61 Conn. App. 592 (2001). After reviewing the record presented at the formal hearing in the present matter, we are not persuaded that the conclusion was arbitrary or capricious, and it therefore must stand on appeal.[11] The claimant simply failed in his burden of persuasion on this issue.

As we do not find, after reviewing the record, that the Ruling is contrary to law or based on unreasonable or impermissible factual inferences, we affirm the trial commissioner.

Commissioners Christine L. Engel and Daniel E. Dilzer concur in this opinion.

[11] Relative to the claimant's argument that he met one of the enumerated exceptions to written notice under General Statutes § 31-294c (c), we note that in Izikson v. Protein Science Corporation, 5814 CRB-8-12-12 (November 15, 2013), *aff'd,* 156 Conn. App. 700 (2015), this board held that when a claimant asserts that he or she has perfected a notice of claim by virtue of one of the statutory exceptions to filing a formal notice of claim, it is the claimant's burden to prove that exception. We do not find the trial commissioner's decision that the claimant herein failed to do so clearly erroneous.

CERTIFICATION

THIS IS TO CERTIFY THAT a copy of the foregoing was mailed this 28th day of November 2017 to the following parties:

GUSTAVO DAVILA
126 Bruck Side Ave.
Bridgeport, CT 06606

JOHN J. MORGAN, ESQ. 7011 2970 0000 6088 7763
Barr & Morgan
22 Fifth Street
Stamford, CT 06905

DRAGONE & SONS, L.L.C.
c/o Thomas Dragone
16 Par Lane
Trumbull, CT 06611

JOY L. AVALLONE, ESQ., AAG 7011 2970 0000 6088 7770
Office of the Attorney General
55 Elm Street
Hartford, CT 06141-0120

JEREMY C. VIRGIL, ESQ. 7011 2970 0000 6088 7787
Zeldes, Needle & Cooper, P.C.
1000 Lafayette Boulevard
P.O. Box 1740
Bridgeport, CT 06601-1740

Jackie E. Sellars
Administrative Hearings Specialist
Compensation Review Board
Workers' Compensation Commission