CASE NO. 6165 CRB-1-16-12 : COMPENSATION REVIEW BOARD
CLAIM NO. 100191796

THOMAS J. BROCUGLIO, SR. : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : DECEMBER 21, 2017

THOMPSONVILLE FIRE DISTRICT #2
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLANT

APPEARANCES:

The claimant was represented by Eric W. Chester, Esq., Ferguson, Doyle & Chester, P.C., 35 Marshall Road, Rocky Hill, CT 06067-1400.

The respondent was represented by Joseph W. McQuade, Esq., Kainen, Escalera & McHale, P.C., 21 Oak Street, Suite 601, Hartford, CT 06106.

This Petition for Review from the May 27, 2016 Finding and Award of Christine L. Engel, the Commissioner acting for the First District, was heard June 30, 2017, before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Daniel E. Dilzer and Randy L. Cohen. [1]

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

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondent has appealed from a Finding and Award granted to the claimant awarding him benefits pursuant to General Statutes § 7-433c (a).[2] The gravamen of the appeal is that the trial commissioner erred in determining that this claim was timely pursuant to the provisions of General Statutes § 31-294c (a).[3] The respondent believes that the claimant's prior episode of pericarditis

[2] General Statutes § 7-433c (a) states: "Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems. The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 or the municipal or state retirement system under which he is covered, except as provided by this section, as a result of any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability. As used in this section, 'municipal employer' has the same meaning as provided in section 7-467."

[3] 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 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. An employee of a municipality shall send a copy of the notice to the town clerk of the municipality in which he or she is employed. As used in this section, 'manifestation of a symptom' means manifestation to an employee claiming compensation, or to some other person standing in such

mandated that he seek heart and hypertension benefits at that time and his failure to do so renders the current claim, based on a contemporary mitral valve ailment, jurisdictionally invalid. The claimant argues that the Finding and Award is based on probative medical evidence and is in accord with precedent established by Holston v. New Haven Police Dept., 5940 CRB-3-14-5 (May 27, 2015), *aff'd*, 323 Conn. 607 (2016). We find the claimant's position more persuasive and consistent with precedent and therefore affirm the Finding and Award.

The trial commissioner reached the following factual findings in her Finding and Award. She found the claimant had been employed by the respondent, Thompsonville Fire District #2 ["Thompsonville"], since September 3, 1987, and the claimant testified that he had passed a pre-employment physical. The claimant alleges he sustained an injury to his heart on or about June 19, 2013. He said that at that time, "he felt weak, tired, [and] out of breath, had difficulty breathing, and had a hard time walking up stairs." Findings, ¶ 8. He consulted his primary care physician, Melissa A. Hession, M.D., in response to these issues. Dr. Hession issued a report dated March 11, 2014, summarizing the episode as follows:

> On June 11, 2013 he presented to my office with a lingering cough and a new heart murmur on exam. He was sent for an echocardiogram on June 19, 2013 which revealed severe mitral regurgitation with a flail posterior mitral valve leaflet. He subsequently underwent emergency surgery to repair the damaged heart valve.[4]

Findings, ¶ 10.

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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."

[4] We note that the medical report quoted in this finding was never entered into evidence. However, in light of the fact that the information presented merely constitutes a recitation of the claimant's medical history, and neither party moved to correct the findings on this issue, we do not find the inclusion of this information rises to the level of reversible error.

The trial commissioner found that on July 3, 2013, the claimant underwent heart surgery performed by William Martinez, M.D., which involved replacement of the mitral valve and a coronary bypass. He was discharged from St. Francis Hospital and Medical Center on July 15, 2013, and received post-surgical care at the Hospital for Special Care until July 31, 2013. He subsequently treated with John I. Baron, M.D., F.A.C.C., for post-surgical complications and was deemed totally disabled by Dr. Baron until April 21, 2014. The claimant testified that he did not return to work until late June or early July 2014 because Thompsonville required him to be cleared by its own physician before returning to his former position. During that period, he was on paid administrative leave; however, although he had been deemed medically disabled by Dr. Baron, the claimant used up his accumulated sick and vacation time and received short-term disability benefits. The claimant also drew from the general "sick bank" to which firefighters contributed.

The claimant's Forms 30C were considered by the trial commissioner. The claimant drafted and signed a Form 30C on July 29, 2013. It was filed in the First District Workers' Compensation Office on August 6, 2013 via certified mail. The claimant prepared another Form 30C, also dated July 29, 2013, and hand-delivered this document to his employer by giving it to his Fire Chief, Francis Alaimo, on September 10, 2013. Although the initial Form 30C was not acknowledged as having been received by the respondent, the second Form 30C shows a "Received" stamp dated September 10, 2013. Respondent's Exhibit 6. The initial Form 43 disclaiming liability for this claim was filed by the respondent and received by the Workers' Compensation Commission ["Commission"] on September 17, 2013. The trial commissioner noted that

this was filed within twenty-eight days of the date that the respondent received the claimant's Form 30C.

The claimant testified at the formal hearing regarding his medical history. He indicated that he had been diagnosed with "constrictive pericarditis" in November 2000 for which he had treated with James B. Kirchhoffer, M.D., a cardiologist. The claimant testified that he had been out of work for a few weeks but was eventually released to return to full duty. He used his sick time to cover the period he was out of work for this ailment. He was later examined by another cardiologist, Dr. Baron, on September 10, 2001. Although the claimant testified that he believed he had filed a compensation claim for this ailment with the Fire Chief at that time, he did not have a copy of the Form 30C and had not filed a hearing request with the Commission. The trial commissioner noted that the Commission had no record that a claim for this ailment had been filed. The acting Fire Chief for Thompsonville also testified that there was no record that the claimant had filed a claim for pericarditis. The trial commissioner also noted that the Commission records showed the claimant had filed claims for a knee injury in 1999 and a back injury in 2008. In addition, the claimant had filed a claim for hypertension in 2007, which the respondent had contested, and no hearings were held on the claim.

The record contained evidence presented by the commissioner's examiner, Kevin J. Tally, M.D., F.A.C.C., who examined the claimant on January 21, 2015. Dr. Tally summarized the claimant's cardiac history as follows:

1. Distant history of pericarditis: with one recurrence, healed and of historical interest only as of 2013.
2. Acute posterior leaflet mitral valve prolapse with resultant pulmonary edema status post mitral valve replacement with

bioprosthesis June 3, 2013, currently with normal valve function.[5]

3. Nonischemic cardiomyopathy post open heart surgery, LVEF of 45%, currently out of CHF and appears to be euvolemic.
4. Postoperative atrial fibrillation, resolved.
5. Postpericardiotomy syndrome, resolved.
6. Sternal wound pain, chronic.
7. Coronary artery disease with spurious finding of 50% LAD lesion bypassed at the time of mitral valve surgery.

Findings, ¶ 51; Claimant's Exhibit A.

Dr. Tally opined that "[t]he cause of this gentleman's mitral valve deterioration is presumably on the basis of an inherent weakness in the mitral valve. It is somewhat spontaneous and unpredictable." Findings, ¶ 52; Claimant's Exhibit A. He further opined that "[t]he distant history of pericarditis is most likely from a viral illness of some sort. This pericarditis represents a completely separate episode of heart disease." Id. Dr. Tally attributed the postoperative complications suffered by the claimant to the mitral valve deterioration and the required replacement of the valve. He reiterated that the mitral valve deterioration was unrelated to the claimant's prior cardiac issues, and the claimant had suffered a completely different type of heart disease in 2013. Dr. Tally assigned a twenty-nine (29) percent permanent partial disability rating to the claimant's heart ailment.

The commissioner noted the claimant's argument that the respondent should be precluded from defending the claim due to an alleged untimely disclaimer. She also noted the respondent's argument that the claimant could only seek benefits under General Statutes § 7-433c for either hypertension or heart disease. In addition, the respondent contends that the claimant's filing of a claim for his 2013 mitral valve ailments was

[5] We note that in her findings, the trial commissioner found that the date of the surgery was July 3, 2013. Findings, ¶ 51. 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).

time-barred because the claimant had already suffered from a distinct heart disease, his pericarditis, for which he did not properly file a claim within one year of November 2000.

Based on this record, the trial commissioner concluded that the claimant's testimony relative to his medical conditions was credible and persuasive, but his testimony regarding the filing of a Form 30C for his earlier pericarditis was not credible or persuasive. She concluded that the claimant did not effect service of his Form 30C in this claim until September 10, 2013, and the respondent's Form 43 was thus timely. She found Dr. Tally's report, subsequent to his commissioner's examination, persuasive, and adopted Dr. Tally's opinions, particularly his opinion that pericarditis, mitral valve replacement, and coronary artery disease are separate and distinct conditions. As a result, she found that the claimant had sustained a compensable injury within the scope of General Statutes § 7-433c on June 19, 2013, and directed the respondent to pay attendant benefits for this injury.

The respondent filed a Motion to Correct seeking to declare the claim time-barred. This motion was denied in its entirety. The respondent also filed a Motion for Articulation seeking to have the trial commissioner explain her reasoning behind the Finding and Award. The trial commissioner issued an articulation in which she relied on McNerney v. New Haven, 15 Conn. Workers' Comp. Rev. Op. 330, 2098 CRB-3-94-7 (June 25, 1996), for her determination that because Dr. Tally had deemed the claimant's mitral valve ailment a new injury, unrelated to the claimant's previous and resolved pericarditis, the claimant could file a claim pursuant to General Statutes § 7-433c claim

for a new injury.[6] The respondent has taken this appeal. The gravamen of this appeal is that McNerney is no longer good law subsequent to our Supreme Court's decision in Ciarlelli v. Hamden, 299 Conn. 265 (2010). We are not so persuaded.

The standard of deference we are obliged to apply to a trial commissioner's findings and legal conclusions is well-settled. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s 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." Burton v. Mottolese, 267 Conn. 1, 54 (2003). "This presumption, however, can be challenged by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

Prior to considering the merits of the respondent's appeal, we must address the Motion to Dismiss filed by the claimant. The claimant asserts that because the trial commissioner denied the respondent's Motion to Correct on June 24, 2016, and the Petition for Review was not filed by the respondent until December 23, 2016, this tribunal lacks jurisdiction pursuant to General Statutes § 31-301 (a).[7] The respondent has

[6] We note that in McNerney v. New Haven, 15 Conn. Workers' Comp. Rev. Op. 330, 2098 CRB-3-94-7 (June 25, 1996), the claimant suffered from hypertension from 1975 to 1981, did not file a claim, had cured his hypertension, and was non-hypertensive until 1991, when he asserted he sustained a new injury and filed a claim under § 7-433c C.G.S. We affirmed the trial commissioner's decision that in 1991, the claimant had sustained a new injury and his claim was jurisdictionally valid.

[7] General Statutes § 31-301 (a) states: "At any time within twenty days after entry of an award by the commissioner, after a decision of the commissioner upon a motion or after an order by the commissioner

objected to this motion, asserting that it did not receive the trial commissioner's decision until December 13, 2016, and the appeal was commenced within the statutory twenty-day appeal period. Based on precedent as set forth in Kudlacz v. Lindberg Heat Treating Co., 250 Conn. 581 (1999), we are persuaded that this appeal was commenced within the proper statutory period to confer jurisdiction on this tribunal and we may therefore address the merits of the appeal.

Essentially, the argument presented by the respondent suggests that because General Statutes § 7-433c is "bonus legislation," police officers or fire fighters may seek relief under this statute only once during their working careers, and should the opportunity present itself and the employee neglect to file a claim, the employee is not permitted to seek any future relief. We have reviewed the cases cited by the respondent and do not find support for this statutory interpretation. While the respondent argues that Ciarlelli overruled McNerney "by implication," we do not find the facts or legal issues involved in Ciarlelli applicable to the issues dealt with in McNerney.

In Ciarlelli, the claimant experienced an extensive period of elevated blood pressure readings between 2000 and 2003 and eventually filed a claim under General Statutes § 7-433c in 2004. The respondents contested the claim as untimely, and the trial commissioner was persuaded by their arguments. We affirmed that decision in Ciarlelli v. Hamden, 5098 CRB-3-06-6 (April 1, 2008), *rev'd*, 299 Conn. 265 (2010), substantially in reliance on Pearce v. New Haven, 76 Conn. App. 441, *cert. denied*, 264 Conn. 913

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according to the provisions of section 31-299b, either party may appeal therefrom to the Compensation Review Board by filing in the office of the commissioner from which the award or the decision on a motion originated an appeal petition and five copies thereof. The commissioner within three days thereafter shall mail the petition and three copies thereof to the chief of the Compensation Review Board and a copy thereof to the adverse party or parties. If a party files a motion subsequent to the finding and award, order or decision, the twenty-day period for filing an appeal of an award or an order by the commissioner shall commence on the date of the decision on such motion."

(2003). The Supreme Court reversed this tribunal and determined that we had misapplied Pearce. See Ciarlelli v. Hamden, 299 Conn. 265, 296-298 (2010). In so doing, the Supreme Court promulgated a new standard for determining when a claimant needs to file a General Statutes § 7-433c claim subsequent to sustaining cardiac injury. "In light of the foregoing, we conclude that the one year limitation period for claims under § 7-433c begins to run only when an employee is informed by a medical professional that he or she has been diagnosed with hypertension." Id., 300.

As such, we do not find Ciarlelli applicable to either the instant fact pattern or the legal issues relative to whether a claimant who did not file a claim for an unrelated cardiac illness can file a General Statutes § 7-433c claim for his current ailment.[8] At oral argument, counsel for the respondent cited Malchik v. Division of Criminal Justice, 266 Conn. 728 (2003), as authority for reversing the trial commissioner. Similar to the respondent's reliance on Ciarlelli, supra, we find this argument inapposite. While Ciarlelli extensively discussed Malchik, the court's analysis was limited to examining Malchik relative to the claimant's legal theory that an occupational disease or repetitive trauma filing deadline should be applied to General Statutes § 7-433c claims. See Ciarelli, supra, 280-285. Although the claimant in the present matter filed his claim for benefits while still employed by the respondent, the claimant in Malchik did not sustain his cardiac injury or file

[8] Even were we to concur with the respondent and conclude that under the facts in McNerney v. New Haven, 15 Conn. Workers' Comp. Rev. Op. 330, 2098 CRB-3-94-7 (June 25, 1996), Ciarlelli v. Hamden, 299 Conn. 265 (2010), would deem a prior incident of diagnosed hypertension for which no claim was filed within one year as sufficient to bar any future claim under § 7-433c C.G.S. for hypertension, we find that Ciarlelli is silent relative to the jurisdictional issues involved in two unrelated heart diseases.

his claim until after he had left public service. The Supreme Court ruled that the claim in Malchik was untimely, for reasons restated recently in the Appellate Court's decision in Staurovsky v. Milford Police Dept., 164 Conn. App. 182 (2016):

> Gorman [v. Waterbury, 4 Conn. App. 226 (1985)] thus instructs that proof of heart disease or hypertension during a claimant's period of employment as a police officer or firefighter alone is insufficient to satisfy the statutory criteria of § 7-433c. Rather, to qualify for benefits pursuant to § 7-433c, the claimant must establish the existence of a "condition or impairment of health caused by hypertension or heart disease" during that time period, which results in the claimant's death or disability, as the plain language of § 7-433c requires.

Id., 200-201.

Therefore, we do not find that Ciarlelli or Malchik support reversing the trial commissioner's decision. On the other hand, we find that the Supreme Court's decision in Holston, supra, supports the result in this case and is in accordance with McNerney, supra, as relied on by the trial commissioner. In Holston, the respondents appealed, arguing that the trial commissioner should have been barred from granting the claimant a General Statutes § 7-433c award for heart disease subsequent to the claimant having been diagnosed with hypertension. The respondents also contended that the claimant had failed to file a notice of claim for hypertension within the statutory one-year claim period. The Supreme Court concluded that the defendant's appeal involved an issue of statutory construction. It resolved this issue in the following manner:

> Furthermore, the use of the disjunctive term "or" in § 7-433c indicates that the legislature intended for hypertension and heart disease to be treated as two separate diseases for the purposes of

> § 7-433c. Accordingly, we conclude that the plain language of the statute demonstrates that the failure to file a timely claim for benefits related to hypertension does not bar a later timely claim for heart disease.
> Moreover, the medical evidence in the present case supports the board's conclusion that the plaintiff's hypertension and heart disease were separate medical conditions.

Id., 616.

In the present matter, the trial commissioner determined that the claimant's mitral valve ailment was separate from and unrelated to the claimant's prior hypertension and pericarditis. The basis for this determination was the medical opinion of Dr. Tally, which the commissioner found persuasive and credible. As the Appellate Court pointed out in Gillis v. White Oak Corp., 49 Conn. App. 630 (1998), "when a commissioner orders a medical examination, there is usually an expectation among the parties that said examination will provide strong guidance to the commissioner." Id., 636-37, *quoting* Iannotti v. Amphenol/Spectra-Strip, 13 Conn. Workers' Comp. Rev. Op. 319, 321, 1829 CRB-3-93-9 (April 25, 1995), *aff'd*, 40 Conn. App. 918 (1996)(per curiam). We note that the respondent did not avail itself of the opportunity to depose Dr. Tally prior to the formal hearing, have the claimant examined by its own medical expert, or have its own expert witness conduct a records review and submit his or her medical opinion. Consequently, Dr. Tally's opinion was effectively undisputed. In Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007), this board stated that "[h]aving forsaken their opportunity to challenge this evidence, as a result the respondents must accept the testimony 'as is,' as well as the permissible inferences which the trial commissioner drew from it." Id., n.3.

Dr. Tally's report of January 21, 2015 describes the claimant as having "a distant history of pericarditis dating prior to 2013" which "had been quiescent up until his surgery." Claimant's Exhibit A, p. 2. The examiner deemed the pericarditis "healed and of historical interest only as of 2013." Id., 3. His analysis regarding causation of this ailment was that "[t]he distant history of pericarditis is most likely from a viral illness of some sort." Id. He assigned a zero percent disability rating to this illness for the claimant as of 2015. On the other hand, Dr. Tally determined that the cause of the claimant's mitral value deterioration was due to inherent weakness in the mitral valve. He ascribed the claimant's entire disability rating to issues subsequent to the claimant's pericarditis. The witness clearly opined that "[t]his pericarditis represents a completely separate episode of heart disease." Id.

In its appeal, the respondent argues that the claimant's 2013 heart disease was not a "new injury"; however, the trial commissioner found otherwise. Appellant's Brief, pp. 17-18. This claim of error essentially requires this panel to retry the facts of the case. When a trial commissioner finds a medical expert credible and persuasive and reaches a decision in accordance with the expert's opinion, we will not revisit that decision on appeal. See Buonafede v. UTC/Pratt & Whitney, 5499 CRB-8-09-9 (September 1, 2010). The trial commissioner's determination that the claimant sustained a new and different heart disease in 2013 is consistent with evidence in the record she deemed probative.

Moreover, we note that this board has issued a number of opinions involving General Statutes § 7-433c in which the etiology of cardiac injury was a contested matter between the parties, and our precedent clearly establishes that "heart disease" is not a single immutable concept to which all parties can readily agree. In this case, the

claimant's compensable 2013 injury was the result of a degenerative process to his mitral valve. However, in Brooks v. West Hartford, 4907 CRB-6-05-1 (January 24, 2006), we determined that even though the proximate cause of the claimant's death was cardiac arrest, it was caused by sarcoidosis, an inflammatory ailment similar to cancer which was not specific or isolated to the heart. Given that the trial commissioner relied on expert opinion that sarcoidosis was not a "heart disease," we affirmed the dismissal of the General Statutes § 7-433c claim. We stated, "[w]e recognize that there is an element of 'line-drawing' that must take place in defining heart disease." Id. We note that in the present case, Dr. Tally opined that the claimant's pericarditis was likely caused by a viral illness, which form of causation therefore differed from the cause of the claimant's mitral valve issues.

We also note that the respondents advanced similar arguments in O'Brien v. Stamford Fire Department, 5945 CRB-7-14-7 (September 11, 2015), and Vitti v. Milford, 6066 CRB-4-15-12 (April 21, 2017). In O'Brien, the respondents cited Brooks, supra, "for the proposition that a trial commissioner may reasonably determine an injury to a claimant's heart need not constitute 'heart disease' within the meaning of § 7-433c C.G.S." O'Brien, supra. In Vitti, the respondents asserted that the claimant's Giant Cell Myocarditis was similar to the sarcoidosis suffered by the claimant in Brooks, supra, and therefore was not "heart disease" within the scope of General Statutes § 7-433c. We note that in all these cases, we pointed out that it is the role of the trial commissioner to determine whether an ailment is or is not "heart disease." We extend this reasoning to the role of a trial commissioner in determining whether a "new" heart disease is similar to or different from a prior heart disease. If the new heart disease can be distinguished from

the prior disease, then the holding of Holston, supra, renders the subsequent claim jurisdictionally valid.

Holston, supra, and McNerney, supra, are unsupportive of the respondent's argument that claimants may file only one General Statutes § 7-433c claim during their working careers and are barred from future relief if they fail to avail themselves of that remedy at an earlier juncture. Claimants may file claims for both hypertension and heart disease, and in this case, the claimant did file a timely claim for his 2013 mitral valve injuries. The undisputed medical evidence supports the trial commissioner's determination that this was a new injury for the claimant. Therefore, we find the trial commissioner's conclusion that the claimant's General Statutes § 7-433c claim was filed in a jurisdictionally timely manner supported by the law and the facts.

We affirm the Finding and Award.

Commissioners Daniel E. Dilzer and Randy L. Cohen concur in this opinion.