CASE NO. 6120 CRB-8-16-7 : COMPENSATION REVIEW BOARD
CLAIM NO. 600012412

DANTE J. DeLORETO : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : SEPTEMBER 19, 2018

UNION CITY STEEL, INC.
EMPLOYER

and

WAUSAU /LIBERTY MUTUAL INSURANCE
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant appeared as a self-represented party.[1]

The respondents were represented by Nancy Rosenbaum, Esq., Meehan, Roberts, Turret & Rosenbaum, 108 Leigus Road, 1st Floor, Wallingford, CT 06492.

This Petition for Review from the July 6, 2016 Finding and Denial of David W. Schoolcraft, the Commissioner acting for the Eighth District, was heard March 23, 2018 before a Compensation Review Board panel consisting of Commissioners Scott A. Barton, Jodi Murray Gregg and Stephen M. Morelli.[2]

[1] Attorney Richard Stabnick represented the claimant at the time of the 1995 formal hearing and for some time thereafter. Attorney Brian Prindle represented the claimant at the time of his settlement in 2000. In the interim, the claimant was briefly represented by Attorney Anita Varunes for some periods and also represented himself. Attorney Michael Peck filed an appearance on behalf of the claimant in February 2014 and attended an informal hearing on February 25, 2014. At some point thereafter, Attorney Peck's representation of the claimant ended.

[2] We note that a motion for extension of time and a motion for a continuance were granted during the pendency of this appeal. We also note that because the claimant inadvertently did not receive proper notice of oral argument scheduled on September 29, 2017, oral argument in this matter was rescheduled for March 23, 2018.

OPINION

SCOTT A. BARTON, COMMISSIONER: The claimant has appealed from a Finding and Denial issued by Commissioner David W. Schoolcraft concluding that the claimant had not satisfied the standards delineated under General Statutes § 31-315 for opening a full and final stipulation previously approved on November 29, 2000 by Commissioner Stephen B. Delaney. [3] The claimant has appealed, asserting that Commissioner Schoolcraft's decision was in error and sufficient grounds were presented to set aside the prior agreement. Upon review, we conclude that Commissioner Schoolcraft reached a reasonable decision based on the record in this case and we are not persuaded that legal error occurred. Accordingly, we affirm the Finding and Denial.

In addition to his Finding and Denial, the trial commissioner issued a Memorandum of Law [hereinafter "memorandum"] explaining his legal reasoning in this matter. The memorandum includes a concise procedural and factual history regarding the basis of this dispute, and we therefore quote from it in this opinion.

> This formal hearing involves a motion under Section 31-315, in which the claimant seeks to open a full-and-final stipulated settlement entered into on November 29, 2000. The claimant, Dante DeLoreto, was an iron worker in the employ of the respondent employer when he sustained injuries as a result of a work accident in September 1994. He filed a Form 30C claiming

[3] General Statutes § 31-315 states: "Any award of, or voluntary agreement concerning, compensation made under the provisions of this chapter or any transfer of liability for a claim to the Second Injury Fund under the provisions of section 31-349 shall be subject to modification in accordance with the procedure for original determinations, upon the request of either party or, in the case of a transfer under section 31-349, upon request of the custodian of the Second Injury Fund, whenever it appears to the compensation commissioner, after notice and hearing thereon, that the incapacity of an injured employee has increased, decreased or ceased, or that the measure of dependence on account of which the compensation is paid has changed, or that changed conditions of fact have arisen which necessitate a change of such agreement, award or transfer in order properly to carry out the spirit of this chapter. The commissioner shall also have the same power to open and modify an award as any court of the state has to open and modify a judgment of such court. The compensation commissioner shall retain jurisdiction over claims for compensation, awards and voluntary agreements, for any proper action thereon, during the whole compensation period applicable to the injury in question."

> injury to his "right wrist, left leg, thigh and back," but at the outset the need for treatment of his back condition dominated the claim. His work accident, and the connection of his back condition to such accident, was initially contested by the respondents. However, after the taking of testimony at a formal hearing in March of 1995, the respondents accepted the compensability of the accident and issued a voluntary agreement for injury to the lumbar spine. He was ultimately paid a 10% permanent partial disability of his back.
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> By early 1998, the claimant was seeking authorization for treatment to his right wrist and claiming the problem was a result of the 1994 work accident. The respondents denied the causal connection between any right wrist treatment and the 1994 work accident. At some undetermined point prior to settling his claim in November of 2000, the claimant apparently developed problems with his right knee. While there is no record of any substantive discussions about the right knee at any of the various informal hearings held over the six-plus years that his claim was open, the full-and-final stipulated settlement agreement that was approved in November 2000 included reference to the right knee, as well as the wrist, and noted that claims as to both were contested by the respondent. On November 29, 2000, the claimant, who was represented by counsel, was canvassed by Commissioner Stephen Delaney and requested approval of a settlement of $45,000. The settlement was approved.
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> In early 2012, the claimant requested a hearing to seek compensation for injuries to his right wrist and right knee. A series of informal hearings was held during which the claimant sought to undo the 2000 stipulation. He ultimately filed a motion to open and the case was ultimately sent to the undersigned for a formal hearing, which took place on December 8, 2015….

July 16, 2016 Memorandum, § I.

In his Finding and Denial, the trial commissioner noted that the claimant was fully canvassed by Commissioner Delaney in 2000, see Findings, ¶ 27, and the stipulation documents included a denial of liability by the respondents for the claimant's right knee, right wrist and forearm injuries. See Findings, ¶ 23. The trial commissioner also noted

that the stipulation included explicit legal terminology indicating it was to be a full and final settlement of all claims against the respondents.

> The stipulation provided that in exchange for payment of $45,000 the claimant would give up all his rights under the workers' compensation act. The stipulation signed by the claimant contained the following pertinent paragraphs:
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> > "8. It is further agreed by and between the parties that this Stipulation was not induced or entered into by fraud, accident, mistake or duress and that none of the parties shall have any further claims under the Connecticut Workers' Compensation Act ... It is further agreed by and between the parties that the respondents do not bear the burden of ascertaining the impact and/or ramifications, if any, of this stipulation on any other benefits or claim for benefits or benefits to which this claimant, or anyone claiming on their behalf, are entitled or may in the future be entitled, including but not limited to any claim for long-term disability benefits, Social Security benefits, Medicare Benefits, retirement benefits or tax consequences of this stipulation.
> >
> > 9. It is understood and agreed that before the claimant-employee signed this Stipulation he read same or same was explained to him and he understands that it is a full and final settlement, and that he will not and can not in the future, make any claim for any condition, known or unknown at this time, or which may develop and be claimed to be connected with the aforesaid incident."

July 6, 2016 Finding and Denial, Findings, ¶ 24.

In 2012, the claimant decided to seek compensation for his right-wrist and right-knee injuries and filed a hearing request with the Workers' Compensation Commission arguing that "the final settlement was not correctly calculated." Findings, ¶ 29. After a series of delays which occurred due to the claimant's decision to change counsel, a formal hearing was held on December 8, 2015. The claimant argued the

matter as a self-represented party, and the commissioner noted that the claimant did not present any witnesses. The primary concern advanced by the claimant was that he believed that his right knee had deteriorated since the stipulation and his orthopedist would not treat him without authorization from a commissioner. He also alleged that: (1) the original formal hearing in 1995 had not been a "fair trial," December 8, 2015 Transcript, p. 64; (2) his attorney at that time did not present witnesses who would have testified regarding the accident; and (3) the witnesses who did testify were management employees who did not offer truthful testimony. See Findings, ¶ 40.

In addition, the claimant testified that the various attorneys who had represented him, including Attorneys Stabnick, Varunes and Prindle, "refused to present any commissioner with certain unidentified medical records pertaining to his right knee problems, thus causing Commissioner Delaney to undervalue the claim." Findings, ¶ 43; see also December 8, 2015 Transcript, pp. 33-34, 47. Commissioner Schoolcraft noted, however, that the claimant did not identify the medical evidence which should have been presented by counsel. The claimant deemed the 2000 stipulation a "fraudulent contract," December 8, 2015 Transcript, p. 43, and contended that "the wrist is misrepresented and there's no representation about the knee and it's not fair and equitable…." Id, 44. He also claimed that he had been "tricked" into signing the agreement. Id., 16. Although he admitted that he knew he was settling his case when he was canvassed by Commissioner Delaney, he contended that other iron workers with similar injuries had received settlements ten or twelve times larger.

Based on this evidence, the trial commissioner reached sixteen conclusions. The conclusions most relevant to our consideration are as follows:

I. The 1995 formal hearing resulted in the voluntary acceptance of his claim and compensation for his back injury, the injury for which he was seeking compensation at the time. If the claimant's right knee was a matter that was ripe for litigation at that time, the claimant could have proceeded on that issue at that time, the respondent's concession of the back claim notwithstanding. There is no evidence to support the allegation that failure to take the 1995 formal hearing to a finding prejudiced the claimant in any way, let alone deprived him of due process.

J. In the complete absence of any medical documentation regarding his right knee condition, I have no basis to conclude that any of the claimant's attorneys withheld material evidence regarding his knee condition from the Commission prior to the settlement of his claim in 2000. Even if that had occurred, however, it would not justify opening the stipulation because such withholding could not have induced the claimant to sign the stipulation agreement in 2000, and the claimant could have insisted that the right knee be litigated before settling his claim.

K. The respondent made no misrepresentation of fact to induce the claimant to sign the stipulation and thereafter ask the Commissioner to approve it. There is also no evidence to suggest the respondent withheld any material information from Commissioner Delaney to induce him to approve the settlement. The claimant was not tricked into signing the stipulation and was well aware of the material provisions of that agreement. He was fully aware that he was closing his entire case on a full-and-final basis, including his contested hand and knee claims.

L. If the claimant was unaware at the time of signing that the language in the stipulation said he was alleging a 3% impairment of his right hand, I find no logical basis to conclude that knowing of that assertion would have impacted his decision to sign the stipulation. Further, given that the hand was contested and there were no higher ratings, the presence of that language would not have affected the value of the case nor had any impact on Commissioner Delaney's decision to approve the settlement.

M. That other iron workers may have told the claimant they received significantly more in compensation for similar work injuries is unproven. Even if it could be shown that other workers did, in fact, recover the significantly greater sums alleged by the claimant, that evidence would provide me no basis to open the stipulation because the reasonableness of the $45,000 settlement

figure can only be determined in the context of the specifics of the claimant's case.

N. On the evidence presented, I find no basis to conclude that the settlement figure of $45,000 – the Commissioner's figure – failed to include consideration for the wrist/hand and right knee claims. Moreover, to the extent the claimant alleges insufficient consideration was given to his knee condition back in 2000, I find no basis to believe the knee condition *as it was in 2000* – even if it had been accepted as compensable – would have added significantly to the settlement value. The fact that the knee may have deteriorated over time, and now require treatment the claimant may not have anticipated, does not make approval of the $45,000 stipulation back in 2000 unreasonable. (Emphasis in the original.)

O. For purposes of this motion, I accept the allegation that the claimant's right knee condition has deteriorated significantly since 2000 and requires medical care and attention. However, the compensability of the knee injury was disputed at the time of settlement, and the intention of the parties was to close out any and all future liability relative to not just the accepted back claim, but the contested wrist and knee claims, as well. I find no evidence that possible future degeneration of the right knee was a risk that could not have been anticipated by the claimant at the time of the 2000 settlement.

P. I find no evidence of an increased impairment or changed condition of fact that would warrant opening the 2000 full-and-final settlement under the provisions of Section 31-315. I also find no evidence of fraud, accident or mistake of fact that would support opening the stipulation.

July 16, 2016 Finding and Denial.

Based on the foregoing, the trial commissioner denied the motion to open the stipulation pursuant to General Statutes § 31-315. In his memorandum, the trial commissioner cited Marone v. Waterbury, 244 Conn. 1 (1998), as legal authority which sets forth the requirements for opening a stipulation under Chapter 568, and explained that the Marone standard had not been met by the claimant. The claimant filed a timely petition for review of the Finding and Denial. He also filed a motion to correct merely

asserting that the decision was not correct and he wanted this tribunal to correct it. The trial commissioner denied that motion.

In his reasons for appeal, the claimant argues that: (1) he should have been allowed to obtain a commissioner's examination of his knee; (2) the hearing did not allow him to advance a "fraud claim" predicated on the fact that one of the attorneys previously involved in the case, Richard Stabnick, did not attend the hearing; and (3) a "default judgment" should have entered against the respondents. See August 5, 2016 "Motion; Reason of Appeal." The respondents argue that the trial commissioner afforded the claimant a full and fair hearing and the claimant simply did not present a persuasive argument that the prior stipulation should be opened.

Turning to the merits of the claimant's appeal, we note at the outset that our standard of appellate review is limited and deferential to the fact-finding prerogative of the trial commissioner. In addition, given that the appellant filed a less-than-specific motion to correct the factual findings in this case, we are hampered in ascertaining the precise manner in which the trial commissioner is alleged to have erred. [4] We further note that "[t]he 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

[4] The claimant has brought this appeal as a self represented party, and it is well-settled that this tribunal generally extends a certain amount of leeway to self-represented parties relative to the manner in which they may prosecute an appeal. We note that on September 14, 2017, the respondents filed a motion to dismiss asserting procedural deficiencies with the appeal, but given that the claimant subsequently filed a brief on February 22, 2018, we deem any deficiency cured, deny the motion to dismiss, and rule on the merits herein. See Vitoria v. Professional Employment & Temps, 5217 CRB-2-07-4 (April 4, 2008).

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), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). "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).

We have reviewed the claimant's brief and his oral argument before this tribunal. At oral argument, the claimant focused on his condition at the time of the 2000 stipulation hearing, arguing that at that time, he was confused relative to the issues to be addressed and the terms of the stipulation he was to execute. He claimed that he was under some form of duress and he was also on medication which may have impaired his judgment. He further contended that before the hearing in front of Commissioner Delaney, the relationship between him and his former counsel had deteriorated, and witnesses who should have appeared at the hearing did not appear. See December 8, 2015 Transcript, pp. 35-37. As a result, he does not believe that Commissioner Schoolcraft reached the correct decision in the Finding and Denial.

Having reviewed the Finding and Denial and the memorandum prepared by the trial commissioner, we believe that the commissioner conducted a thorough hearing and fully considered the issues presented by the claimant in this appeal. These issues essentially concern questions of fact which may not be revisited on appeal unless the trial commissioner has reached a conclusion which is not supported by evidence on the record. In the present matter, the commissioner's conclusions were supported by the evidence.

"As the finder of fact, the trier has the sole authority to decide what evidence is reliable and what is not...." Byrd v. Bechtel/Fusco, 4765 CRB-2-03-12 (December 17, 2004). When appearing before a trial commissioner, the burden of persuasion rests with the claimant. See Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440 (2001); Lentini v. Connecticut College, 4933 CRB-2-05-4 (May 15, 2006). The trial commissioner's conclusion that the claimant did not meet this burden was neither arbitrary nor capricious.

As this board pointed out in Macon v. Colt's Manufacturing, 5505 CRB-1-09-10 (September 27, 2010), *appeal dismissed,* A.C. 32785 (December 13, 2010), when a party seeks to open a stipulation, the trial commissioner must determine if the circumstances satisfy the standard articulated in Marone, supra; otherwise, the commissioner lacks the power to open the stipulation. The Marone standard limits the commissioner's power to open a stipulation to "cases of accident; … to mistakes of fact; … and to fraud; … but not mistakes of law." (Citations omitted.) Id., 17. In the present matter, the trial commissioner did not believe that the evidence presented by the claimant met this standard; as such, he could reasonably issue a Finding and Denial.

There is no error; the July 6, 2016 Finding and Denial of David W. Schoolcraft, the Commissioner acting for the Eighth District, is accordingly affirmed.

Commissioners Jodi Murray Gregg and Stephen M. Morelli concur in this opinion.