CASE NO. 6153 CRB-4-16-11 : COMPENSATION REVIEW BOARD
CLAIM NO. 400099525

SUZANNE DIAS : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : FEBRUARY 15, 2018

WEBSTER FINANCIAL CORPORATION/
WEBSTER BANK N.A.
EMPLOYER

and

LIBERTY MUTUAL INSURANCE GROUP
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Joseph O. Cogguillo III, Esq., and Robert McCarthy, Esq., Carter Mario Injury Lawyers, 158 Cherry Street, Milford, CT 06460.

The respondents were represented by Christopher J. Powderly, Esq., Law Offices of Meehan, Turret & Rosenbaum, 108 Leigus Road, 1st Floor, Wallingford, CT 06492.

This Petition for Review from the October 25, 2016 Finding and Award of Michelle D. Truglia, the Commissioner acting for the Seventh District, was heard September 29, 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]

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

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have appealed from a Finding and Award issued to the claimant concluding that she was injured in the course of her employment in a motor vehicle accident that occurred as she traveled from the Shelton branch of Webster Bank [hereinafter "Webster"] to its Ansonia branch. The respondents argue that the claimant should have been deemed to have been on an unpaid lunch break at the time of her injury and, pursuant to Spatafore v. Yale University, 239 Conn. 408 (1996), her injuries are not compensable. We find this argument unpersuasive given that the trial commissioner found that the claimant was acting at Webster's directive when she traveled between her employer's job sites. Pursuant to precedent as set forth in Labadie v. Norwalk Rehabilitation Services, Inc., 274 Conn. 219 (2005) and Kish v. Nursing & Home Care, Inc., 248 Conn. 379 (1999), when a worker is directed to travel by his or her employer between work sites, injuries sustained in the journey arise out of the employment and are compensable. We affirm the Finding and Award.

The trial commissioner reached the following factual findings at the conclusion of the formal hearing. She found the claimant was employed as a "floating" Customer Service Representative who had a "home office" at the Ansonia branch but was required to travel to various Webster branches as needed.[2] Findings, ¶ 2. On July 6, 2015, the claimant reported to the Bridgeport Avenue branch in Shelton and expected to be there the entire day. That morning, one of the claimant's supervisors, Liliane Yarborough,

[2] The claimant testified that she was normally given a new schedule every two weeks. March 21, 2016 Transcript, pp. 10-11.

directed her to "cash out" her drawer, take an early lunch, and travel to the Ansonia branch to replace a sick co-worker.

The claimant testified that she "cashed out" at approximately 11:30 a.m. and understood that she had to be at the Ansonia branch by 12:00 noon. She would have taken her lunch break with Hillary, a friend at the Shelton branch, at the local Duchess restaurant; however, she had to decline the lunch date with Hillary because she was being dispatched to the Ansonia branch. In order to save time, the claimant utilized the "drive thru" window for lunch at a McDonald's restaurant near the Ansonia branch. While in line at McDonald's, the claimant's car was hit by another vehicle and the claimant sustained injuries to her left hand, arm and shoulder. A police report indicated this incident occurred at 11:50 a.m.

Two internal Webster policy statements were introduced as evidence. The respondents introduced the "Meal Break Policy" as support for their position that the claimant was on an unpaid lunch break when she was injured. The trial commissioner cited the following provisions of the policy:

> Employees who are scheduled to work six (6) or more hours in the day will be provided a 30 minute unpaid meal break. Employees generally shall be scheduled to take their thirty (30) minute meal break after the first two hours of work [and] before the last two hours of work, and reasonably close to typical mealtimes.
>
> *During unpaid meal breaks employees are free to leave the workplace and shall be completely relieved of any and all duties…. All employees and managers are expected to comply with this policy at all times….* [Emphasis added.]

Findings, ¶ 7.

The trial commissioner also cited Webster's "Personal Travel for Business" policy in her findings. This document was presented as evidence by the claimant. This policy stated as follows:

> All business travel during the day is fully reimbursable… All time spent by non-exempt employees during the workday traveling from worksite to worksite or worksite to training is considered time worked and should be paid accordingly. *Travel time means that time during which an employee is required or permitted to travel for purposes incidental to a performance of his employment*…. [Emphasis added.]

Findings, ¶ 9.

Two witnesses who supervised the claimant testified at the formal hearing. Yarborough, the claimant's supervisor at the Shelton branch, testified that she had no recollection of her role in the claimant's reassignment on July 6, 2015. The claimant's supervisor at the Ansonia branch, Ann Billotti, confirmed the claimant's testimony that the claimant was a "floating" employee, subject to report to any of Webster's sixteen banking centers between Westport and Seymour. Billotti further testified that she instructed the claimant to leave the Shelton branch and drive to the Ansonia branch on July 6, 2015, but she did not recall giving the claimant a specific time to be at the Ansonia branch. In addition, she testified that the claimant was "on the clock" when she left the Shelton branch for the Ansonia branch and, accordingly, the claimant was entitled to get paid for her mileage in addition to her travel time from Shelton to Ansonia. Billotti also testified that the claimant's lunch period would not have been shortened because she did not go to lunch by a certain time.

Based on this record, the trial commissioner concluded that the claimant's testimony regarding the events of July 5, 2015 was "credible and uncontroverted." Conclusion, ¶ C. The claimant was a "floating" employee whose job duties involved travel between branches, and the commissioner cited Billotti's testimony that the claimant was "on the clock" for this travel. In light of the fact that the claimant "was using her unpaid lunch break to also facilitate her paid 'floating' responsibilities, the claimant's work-related motor vehicle accident occurred while she was engaged in activities benefitting both herself and her employer." Conclusion, ¶ D. See also Spatafore, supra. The trial commissioner found the claimant's actions in traveling between branches benefitted her employer and therefore her injury was compensable. Given that "[t]he claimant's injuries occurred within her period of employment with the respondent, at a place she might reasonably be and while she was reasonably fulfilling the duties of her employment, or doing something incidental to it," the trial commissioner concluded that "the claimant's injuries of July 6, 2015 arose out of and in the course of her employment." Conclusion, ¶ F.

The respondents filed a Motion to Correct. The motion sought to introduce findings that the claimant was not obligated to report to the Ansonia branch at a specific time and that she was on an unpaid lunch break which was not benefitting her employer when she was injured. The trial commissioner denied this motion in its entirety and the respondents commenced this appeal. The gravamen of the appeal is that the respondents believe the claimant was "off the

clock" at the time she sustained her injuries and that such injuries, pursuant to Spatafore, supra, are not compensable.

We note that 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).

The respondents argue that our Supreme Court's analysis in Spatafore, supra, was not properly applied by the trial commissioner. They also argue that the commissioner failed to give proper weight to the Webster Meal Break Policy, which they contend controls this scenario and would have caused the claimant to be "off the clock" when she was injured. Finally, they argue the trial commissioner erroneously relied on what they believe was the "subjective" opinion of the claimant that she was expected to report immediately to the Ansonia branch to provide relief. We find none of these arguments persuasive.

In a recent case concerning an injury sustained while a claimant was walking between a workplace and a parking facility, this tribunal had an opportunity to review the Spatafore holding at some length. See DeForest v. Yale New Haven Hospital, 6075 CRB-3-16-2 (April 6, 2017). In DeForest, we noted that the Appellate Court, in Brown v. United Technologies Corp., 112 Conn. App. 492 (2009), had relied on Spatafore and made clear that whether a claimant's actions are incidental to employment, thereby rendering the injuries compensable, is quintessentially a factual determination.

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

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

In the present matter, the trial commissioner, based on the facts in the record, found that the claimant's injury arose out of her employment. We note that the facts herein are not congruent with the facts in Spatafore. In that case, the claimant was injured while traveling to a union meeting. The Supreme Court concluded there was nothing in the record to suggest that the respondent had gained a mutual benefit from the claimant's travel. Id., 426-427. In the present case, it is clear from the testimony in the record that Webster stood to gain a benefit from the claimant's journey on July 6, 2015, because her actions addressed the personnel needs at the Ansonia branch. Moreover, the

record demonstrates that as a "floating" employee, the claimant could reasonably be expected to travel between job sites as a condition of her employment.

For that reason, we place little weight on the question of whether the claimant was "on the clock" or should have "clocked out" at the time she was injured. The trial commissioner accepted the testimony of the claimant and of Billotti that the claimant was acting at the respondents' direction in travelling from Shelton to Ansonia and the journey was intended to advance the respondents' interests. As this board pointed out in King v. State/Department of Correction, 5339 CRB-8-08-4 (March 20, 2009), even when an employee is "off the clock," if he or she is injured during a journey undertaken at the respondent's direction which benefits the respondent, that injury arises out of the employment and is compensable.

In King, supra, the claimant was injured returning his state-owned car to his home garage at the end of his paid shift, which was a contractual obligation for parole officers subject to emergency calls. We noted that "it is clear under the facts in this case that the claimant was, while not receiving pay at the time, furthering the interests of his employer at the time he was injured by virtue of returning his state-owned car to the place where he was to garage it." Id. The trial commissioner in King found that the test stated in Labadie, supra, applied and that the claimant met all four of the possible grounds of compensability:

> (1) [i]f the work requires the employee to travel on the highways; (2) where the employer contracts to furnish or does furnish transportation to and from work; (3) where, by the terms of his employment, the employee is subject to emergency calls and (4) where the employee is injured while using the highway in doing something incidental to his regular employment, for the joint benefit of himself and his employer, with the knowledge and approval of the employer. (Citation omitted.)

Labadie, 229, *quoting* Dombach v. Olkon Corp., 163 Conn. 216, 222 (1972).

Although the claimant in the present matter was injured while driving her own vehicle, we note that she was employed as a "floating" employee who was instructed to travel to the Ansonia branch to respond to an unanticipated personnel shortfall. Moreover, she was unambiguously undertaking this journey with Webster's knowledge and approval and for Webster's benefit. A fact-finder could determine that three of the four prongs of the test in Labadie, supra, had been met, and the claimant needed to prove only one exception had been established in order to render her injury compensable.

Webster argues that the claimant should have "clocked out" first, eaten her lunch, and then proceeded to Ansonia, and her failure to do so renders this incident non-compensable. We note that the claimant apparently believed she was obligated to travel immediately to Ansonia. Given that the trial commissioner concluded that the claimant was a credible witness, we are not in a position to reverse this finding on appeal. Moreover, we find this argument relies upon a distinction without a difference. At whatever time during the business day the claimant travelled from Shelton to Ansonia, she would have been exposed to the hazards of road travel, the trip would have been undertaken at Webster's direction and for its benefit, and any injury sustained during this journey would have been compensable unless the claimant substantially deviated from the standard route of travel.[3] See Stakonis v. United Advertising Corporation, 110 Conn. 384, 389 (1930) (injuries incurred while employee is following specific instructions of employer are in the course of employment). Whether the claimant acted with alacrity or

[3] The record in this matter indicates that the McDonald's restaurant where the claimant sustained injuries while in a "drive thru" lane was proximate to her destination at Webster's Ansonia branch. As such, even if the respondents had raised a "substantial deviation" argument, it is unlikely that it would have been successful. See McMorris v. New Haven Police Dept., 156 Conn. App. 822, 832 (2015).

in a more lethargic manner in meeting her employer's demands has no bearing on whether the injuries sustained during the trip between work sites was compensable.[4]

In any event, the trial commissioner found credible the claimant's testimony that she was expected to travel immediately to the Ansonia branch. In addition, evidence in the form of Webster's "Personal Travel for Business" policy was presented which supports the claimant's position that travel between branches was incidental to her employment. The respondents' position on appeal essentially would require this tribunal to find, notwithstanding the factual findings reached by the trial commissioner, that Webster derived no benefit from the claimant following its instructions and travelling from Shelton to Ansonia.[5] Such a conclusion would vitiate logic and is inconsistent with precedent.

We therefore affirm the Finding and Award.

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

[4] There is no dispute that the claimant in this case was injured at a time of day when she would ordinarily be working for the respondent, unlike the claimant in Drown v. Rochette Quality Home Improvement, L.L.C., 5369 CRB 8-08-8 (June 29, 2009). The claimant was "at a place the employee may reasonably be" at the time of her injury. Brown v. United Technologies Corp., 112 Conn. App. 492, 500 (2009).

[5] We uphold the trial commissioner's denial of the respondents' Motion to Correct. This motion sought to interpose the respondents' conclusions as to the law and the facts presented. The trial commissioner was legally empowered to deny this motion. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003); 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); and Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006).

CERTIFICATION

THIS IS TO CERTIFY THAT a copy of the foregoing was mailed this 15th day of February 2018 to the following parties:

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