CASE NO. 6164 CRB-4-16-12 : COMPENSATION REVIEW BOARD
CLAIM NO. 400090476

MELISSA J. MELILLO : WORKERS' COMPENSATION
a/k/a MELISSA J. LONGO COMMISSION
CLAIMANT-APPELLANT

v. : SEPTEMBER 13, 2018

CITY OF DERBY
EMPLOYER
SELF-INSURED

and

WORKERS' COMPENSATION TRUST
ADMINISTRATOR
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Paul S. Ranando, Esq., Law Office of Paul S. Ranando, 195 South Main Street, Cheshire, CT 06410.

The respondent was represented by Thomas Galvin Cotter, Esq., of counsel, Welch, Teodosio & Stanek, L.L.C., 375 Bridgeport Avenue, Shelton, CT 06484.

This Petition for Review from the December 19, 2016 Finding by Michelle D. Truglia, the Commissioner acting for the Fourth District, was heard on January 26, 2018 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Scott A. Barton and Jodi Murray Gregg.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has petitioned for review from the December 19, 2016 Finding by Michelle D. Truglia, the Commissioner acting for the Fourth District. We find error and accordingly affirm in part, reverse in part, and remand this matter for additional proceedings consistent with this Opinion.[1]

In her Finding, the trial commissioner identified the following issues for determination: (1) the claimant's date of maximum medical improvement; (2) the claimant's current permanent partial disability rating; (3) the claimant's entitlement to out-of-pocket expenses; and (4) the claimant's entitlement to damages pursuant to General Statutes § 31-288 for undue delay in the payment of permanent partial disability benefits. [2]

The commissioner made the following factual findings which are pertinent to our analysis of this appeal. On January 7, 2013, the claimant was employed as a schoolteacher in the Derby public school system when she slipped and fell on ice. She testified that she struck her head, shoulder and back when she fell to the ground. Following this incident, the claimant began to experience sharp, shooting pain in her back and down her legs. She came under the care of Kenneth M. Kramer, M.D., and then John M. Beiner, M.D., who performed a discectomy at the L4-5 level on January 31, 2014. The commissioner took administrative notice of an October 20, 2014 Voluntary

[1] We note that two motions for extension of time and a motion for a continuance were granted during the pendency of this appeal.

[2] General Statutes § 31-288 (b) (1) states: "Whenever through the fault or neglect of an employer or insurer, the adjustment or payment of compensation due under this chapter is unduly delayed, such employer or insurer may be assessed by the commissioner hearing the claim a civil penalty of not more than one thousand dollars for each such case of delay, to be paid to the claimant."

Agreement indicating that the respondent had accepted a "[l]ow back HNP l4-5" injury and designating Dr. Beiner as the treating physician.

Prior to the incident of January 7, 2013, the claimant received treatment for two other injuries to her low back. On September 30, 2000, the claimant was involved in a motor vehicle accident, after which she treated with Bruce H. Moeckel, M.D., for an injury to the low back. The claimant brought a lawsuit as a result of that accident and settled the claim. Included in the settlement was compensation for an 8 (eight) percent permanent partial disability rating to the low back. On November 8, 2011, some twenty-six months prior to the January 7, 2013 incident, the claimant underwent an anterior discectomy and interbody fusion surgery at the L5-S1 level with James J. Yue, M.D., because of increasing discomfort and low back pain. The claimant never received a permanent partial disability rating following this surgery, and no evidence was entered into the record suggesting that the surgery was required because of third-party litigation or a work-related injury.

The claimant testified that just before she was injured in the January 7, 2013 incident, she had been able to return to work full-time as a first-grade schoolteacher and was no longer experiencing pain in her low back. She indicated that following her surgery with Dr. Beiner, she was out of work between January and April 2014, after which she was able to return to her regular full-time employment.

On June 5, 2014, the claimant underwent a respondent's medical examination with Michael E. Karnasiewicz, M.D., A.B.N.S. Dr. Karnasiewicz opined that the claimant had reached maximum medical improvement and assigned a permanent partial disability rating of 10 (ten) to 15 (fifteen) percent of the lumbar spine. Claimant's

Exhibit A. On February 17, 2015, Dr. Beiner assigned the claimant a permanent partial disability rating of 15 (fifteen) percent of the low back.[3] Id.

In March 2015, the claimant moved to Florida and began treating with a pain management doctor who was able to wean her off of Oxycodone and morphine and replace those medications with Suboxone, Baclofen and Diclofenac.[4] The claimant also treated with Charles V. Toman, M.D., an orthopedist.

The claimant is seeking reimbursement for travel and other out-of-pocket expenses associated with two trips to Connecticut. In June 2015, the claimant returned to Connecticut to see Dr. Beiner, incurring round-trip airfare and mileage expenses. The claimant also flew to Connecticut the night before the June 2, 2016 formal hearing, incurring expenses for round-trip airfare, car rental, mileage and lodgings. The claimant testified that when she saw Dr. Beiner on February 17, 2015, he assigned her a 15 (fifteen) percent permanent partial disability rating. At trial, she agreed with respondents' counsel that "there really was no reason to visit Dr. Beiner in June 2015" given that she had already received a permanency rating from Dr. Beiner and had moved to Florida where she had obtained new treating physicians. Findings, ¶ 13.

The claimant testified that on or about March 20, 2015, she experienced a lifting incident at home which resulted in acute low-back pain and a visit to a Florida emergency room. The claimant indicated that she went to the emergency room in severe pain despite having already taken pain medication that day, and reported that her pain level was

[3] Findings, ¶ 9, states that Dr. Beiner assigned a permanency rating on February 20, 2015. Our review of the record indicates that Dr. Beiner actually assigned the rating on February 17, 2015. 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).

[4] At trial, the claimant testified that the name of her pain management doctor in Florida was "Dr. Rosenblatt." However, none of his records appear to have been submitted into the record. See June 2, 2016 Transcript, pp. 27, 34.

approximately eight out of ten on a scale of one to ten. The claimant also testified that a few weeks after the lifting incident, she "went back to baseline" and her pain continued to be approximately three out of ten on a scale of one to ten. Findings, ¶ 17. She further indicated that as of the date of the June 2, 2016 formal hearing, her pain level was about the same as it had been when she was rated by Dr. Beiner on February 17, 2015.

At his deposition, Dr. Beiner testified that he performed a discectomy at the L4-5 level on January 31, 2014. At that time, he was aware that the claimant had undergone a prior anterior lumbar interbody fusion at L5-S1 with Dr. Yue in 2011. Dr. Beiner indicated that he saw the claimant on February 17, 2015 for the purpose of assigning a 15 (fifteen) percent permanent partial disability rating pursuant to the sixth edition of the AMA guidelines. Dr. Beiner stated that his rating did not include any permanency attributable to the prior fusion performed by Dr. Yue at L5-S1. Dr. Beiner also indicated that he was aware the claimant had received a prior permanent partial disability rating of 8 (eight) percent for her low spine from Dr. Moeckel, and stated that his 15 (fifteen) percent rating was not in addition to Dr. Moeckel's prior rating of 8 (eight) percent. Dr. Beiner testified that he maintained the permanency rating of 15 (fifteen) percent at the claimant's office visit of June 30, 2015, despite the March 2015 lifting incident in Florida.

Based on the foregoing, the trial commissioner noted that the respondent "takes the claimant as he finds her on her date of injury which, in this particular case, involves a prior motor vehicle accident in 2000 and an anterior discectomy and interbody fusion surgery at the L5/S1 level." Conclusion, ¶ A. The commissioner also pointed out that the Workers' Compensation Act entitles the respondent to take a credit for prior "paid or

payable" permanency benefits.[5] As such, the commissioner concluded that the respondents were entitled to take a credit for the prior 8 (eight) percent rating to the claimant's low back assigned by Dr. Moeckel.

The commissioner found the permanency ratings assigned by Drs. Beiner and Karnasiewicz credible, noting that both doctors were aware of the claimant's medical history when they assigned their ratings. Given that Dr. Beiner specifically stated that his rating was not in addition to Dr. Moeckel's prior rating, the commissioner concluded that the 15 (fifteen) percent rating assigned by Dr. Beiner included the prior 8 (eight) percent rating assigned by Dr. Moeckel.[6] The commissioner also determined that the date of the claimant's maximum medical improvement was February 17, 2015.

The trial commissioner concluded that the claimant was not entitled to reimbursement for out-of-pocket expenses for her trip to see Dr. Beiner in June 2015 or

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[5] General Statutes § 31-349 (a) states: "The fact that an employee has suffered a previous disability, shall not preclude him from compensation for a second injury, nor preclude compensation for death resulting from the second injury. If an employee having a previous disability incurs a second disability from a second injury resulting in a permanent disability caused by both the previous disability and the second injury which is materially and substantially greater than the disability that would have resulted from the second injury alone, he shall receive compensation for (1) the entire amount of disability, including total disability, less any compensation payable or paid with respect to the previous disability, and (2) necessary medical care, as provided in this chapter, notwithstanding the fact that part of the disability was due to a previous disability. For purposes of this subsection, 'compensation payable or paid with respect to the previous disability' includes compensation payable or paid pursuant to the provisions of this chapter, as well as any other compensation payable or paid in connection with the previous disability, regardless of the source of such compensation."

[6] The trial commissioner also concluded that "[a]ny permanency attributable to Dr. Yue's surgery is subsumed into Dr. Beiner's 15% permanent partial disability rating rendered in 2015." Conclusion, ¶ E. We note that at trial, the parties did briefly discuss the issue of what, if any, permanency could theoretically be attributed to Dr. Yue's surgery, at which time counsel for the claimant indicated that because the fusion was not associated with an injury which was either work- or accident-related, Dr. Yue was never requested to assign a permanency rating. See June 2, 2016 Transcript, pp. 4-6. However, given that both Drs. Beiner and Karnasiewicz indicated that they were aware of the prior fusion and explicitly stated that their permanency ratings were separate and distinct from any permanency which could theoretically be attributed to the fusion surgery, we strike this conclusion on the grounds that it went beyond the scope of the evidentiary record. See Claimant's Exhibit A (June 5, 2014 Respondent's Medical Examination of Michael E. Karnasiewicz, M.D.) wherein Dr. Karnasiewicz stated that his permanency rating was "solely for the L4-5 surgery," and Claimant's Exhibit D, wherein Dr. Beiner stated that his permanency rating "doesn't include any permanency from any other physician or any other part of the body." Id., 12.

for her attendance at the formal hearing of June 2, 2016. With regard to the reimbursement sought for the office visit with Dr. Beiner, the commissioner found that the claimant had: (1) already been rated on February 17, 2015; (2) permanently relocated to Florida in March 2015; and (3) obtained Florida doctors to manage her medical needs. Relative to the claimant's attendance at the formal hearing, the commissioner found that because neither "liability" nor "extent of disability" were the subject of the hearing, the claimant did not satisfy the eligibility requirements for reimbursement pursuant to General Statutes § 31-312 (b).[7] Finally, the trial commissioner concluded that there was no basis for an award of sanctions pursuant to General Statutes § 31-288 (a) (1).

The claimant filed a motion to correct, which was denied in its entirety, and the claimant has filed this appeal. On appeal, the claimant contends that the trial commissioner erred in concluding that: (1) the respondents were entitled to a credit for the prior 8 (eight) percent permanent partial disability award paid in association with the automobile accident of September 30, 2000; (2) any permanency attributable to Dr. Yue's surgery was "subsumed" into Dr. Beiner's 15 (fifteen) percent permanent partial disability; (3) the claimant is not entitled to statutory interest on the 7 (seven) percent permanent partial disability award that was paid late or the 8 (eight) percent permanent partial disability award that remains unpaid; and (4) the claimant is not entitled to reimbursement for the travel or litigation expenses associated with her office visit with

[7] General Statutes § 31-312 (b) states in relevant part: "When liability or extent of disability is contested by formal hearing before the commissioner, the claimant shall be entitled, if he prevails on final judgment, to payment for services rendered him by a competent physician or surgeon for examination, x-ray, medical tests and testimony in connection with the claim, the commissioner to determine the reasonableness of the charges, and he shall be entitled to receive payment of one-fifth of the weekly compensation, as computed in accordance with section 31-310, for each day, or part thereof, that he is in attendance at the formal hearing if he is not then receiving compensation."

Dr. Beiner on June 30, 2015, or her attendance at the formal hearing held on June 2, 2016.

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

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

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

In the present matter, the claimant's first claim of error challenges the trial commissioner's conclusion that the respondents were entitled to a permanent partial disability credit in the amount of 8 (eight) percent for permanency benefits paid in association with the claimant's motor vehicle accident on September 30, 2000. The claimant argues that "[t]he evidence of Dr. Beiner and Dr. Karnasiewicz establishes clearly that the claimant has suffered a fifteen (15%) per cent disability of the lumbar spine solely because of her work injury to the L4-5 disc." Appellant's Brief, p. 9. As

such, the claimant contends that there is no evidence that Dr. Moeckel's prior rating of 8 (eight) percent should be included in the ratings provided by Drs. Beiner and Karnasiewicz. We are not so persuaded.

As previously mentioned herein, our analysis of this matter is governed by the provisions of General Statutes § 31-349 (a), which provisions provide the parameters for calculating the amount of permanent partial disability benefits due and owing for a second discrete injury to the same body part. The statute states, in pertinent part:

> If an employee having a previous disability incurs a second disability from a second injury resulting in a permanent disability caused by both the previous disability and the second injury which is materially and substantially greater than the disability that would have resulted from the second injury alone, he shall receive compensation for (1) the entire amount of disability, including total disability, less any compensation payable or paid with respect to the previous disability, and (2) necessary medical care, as provided in this chapter, notwithstanding the fact that part of the disability was due to a previous disability.

In Weber v. Electric Boat, 4086 CRB-2-99-7 (November 13, 2000), this board remarked that "whether [a] previous injury has combined with a subsequent injury to cause a materially and substantially greater disability than would have occurred due to the second injury alone, remains within the jurisdictional purview of the trial commissioner."[8] We have also observed that "the presence of a pre-existing permanent impairment does not inevitably lead to a finding that the condition has caused a material

[8] We note that Weber v. Electric Boat, 4086 CRB-2-99-7 (November 13, 2000), involved a challenge to this board's subject matter jurisdiction relative to the scope of the findings of a medical panel appointed to assist in evaluating the eligibility of certain cases for transfer to the Second Injury Fund. While we recognize that the issue of fund transfer is no longer operative, we would reiterate our recent observation that "although the legislature in 1995 chose to amend the statute and close the fund to claims for injuries occurring on or after July 1, 1995, the legislature never adopted new provisions intended to replace General Statutes § 31-349 in addressing subsequent injuries sustained by claimants. In fact, the amended statute specifically states that '[a]ll claims shall remain the responsibility of the employer or its insurer under the provisions of this section.'" Peralta-Gonzalez v. First Student, 6160 CRB-7-16-12 (November 16, 2017), *quoting* General Statutes § 31-349 (a).

increase in subsequent disability." Johnson v. East Haven Hay & Grain Supply, Inc., 4075 CRB-3-99-7 (August 10, 2000).

In the matter at bar, the medical opinion rendered by Dr. Beiner indicates that when he assigned his 15 (fifteen) percent disability rating, he was fully aware of the claimant's medical history relative to her lumbar spine, including the prior disability for which the claimant had received an 8 (eight) percent disability rating from Dr. Moeckel. We recognize that the doctor testified that his rating was "specifically" intended for the January 7, 2013 injury and subsequent surgery at the L4-5 level, Claimant's Exhibit D, p. 11, and his rating did not "include any permanency from any other physician or any other part of the body." Claimant's Exhibit D, p. 12.

However, we also note that Dr. Beiner specifically stated that his 15 (fifteen) percent rating was *not* in addition to the previous 8 (eight) percent assigned by Dr. Moeckel. Dr. Beiner remarked that he did not "consider a previous physician's rating as valid, especially in this case, what appears to have been from a simple sprain which would carry a zero impairment, so I don't consider it an addition to [sic] because I don't agree with the prior rating."[9] Id. In addition, in his report of June 30, 2015, Dr. Beiner stated, "I cannot comment on the previous permanency awarded to the patient by a different physician for a different injury." Claimant's Exhibit A. Moreover, although Dr. Karnasiewicz, in his report of June 5, 2014, attributed his disability rating of 10 (ten) to 15 (fifteen) percent "solely" to the surgery at L4-5. Claimant's Exhibit A, he also observed that "the claimant had an abnormality of the L4-5 disc in the past, [which] abnormality is probably not clinically significant." Claimant's Exhibit A.

[9] Dr. Beiner also testified that Dr. Moeckel's diagnosis of a lumbar strain was a "[s]elf-limited soft tissue injury" which was "a separate diagnosis" from an injury to the disc at L4-5. Claimant's Exhibit D, p. 26.

Thus, despite both doctors' use of language purporting to limit their respective disability ratings to the claimant's January 7, 2013 injury, we note that Dr. Beiner also specifically stated that the claimant had not sustained a total disability rating of 23 (twenty-three) percent. Similarly, our review of Dr. Karnasiewicz' reports does not lend itself to the reasonable inference that Dr. Karnasiewicz believed the claimant had sustained a 23 (twenty-three) percent permanent partial disability. In fact, both doctors' opinions essentially discount the contribution of the claimant's prior disability to the claimant's current disability. Therefore, despite the fact that the medical evidence presented in this matter is somewhat ambiguous, we find no basis for reversing the trial commissioner's decision to apply the § 31-349 (a) credit for Dr. Moeckel's previous 8 (eight) percent disability rating to the claimant's current disability award of 15 (fifteen) percent. "To the extent the [parties] submitted expert testimony which was inaccurate, confusing or vague, equity does not serve to protect their interests. One can only expect the trier of fact to render a decision based on what evidence actually says, not what it should have said." Ben-Eli v. Lowe's Home Improvement Center, 5006 CRB-3-05-10 (November 16, 2006).

The claimant also contends that in accordance with the provisions of General Statutes § 31-295 (c), she is currently owed interest on the 7 (seven) percent of the permanency award which was allegedly paid late as well as the unpaid permanency of 8 (eight) percent. Our review of the record indicates that respondents' counsel, at trial, conceded that the payment of the 7 (seven) percent permanency was not paid until February, 2016, but contended that Dr. Beiner "failed to cooperate" and the respondent municipality should not be penalized for that failure. June 2, 2016 Transcript, pp. 9-10.

In light of our findings herein, we find no error in the commissioner's decision to deny the award of interest relative to the additional 8 (eight) percent permanency sought by the claimant. However, we remand this matter for an evidentiary hearing on the issue of whether the claimant is entitled to interest on the late payment of the 7 (seven) percent permanency award. See Flamenco v. Independent Refuse Service, Inc., 130 Conn. App. 280 (2011).

The claimant has also challenged the trial commissioner's decision denying reimbursement for travel expenses and litigation costs associated with her attendance at the formal hearing held on June 2, 2016. Our inquiry into this claim of error is governed by the provisions of General Statutes § 31-312 (b), which state, in relevant part:

> When liability or extent of disability is contested by formal hearing before the commissioner, the claimant shall be entitled, if he prevails on final judgment, to payment for services rendered him by a competent physician or surgeon for examination, x-ray, medical tests and testimony in connection with the claim, the commissioner to determine the reasonableness of the charges, and he shall be entitled to receive payment of one-fifth of the weekly compensation, as computed in accordance with section 31-310, for each day, or part thereof, that he is in attendance at the formal hearing if he is not then receiving compensation.

In the matter at bar, the trial commissioner concluded that the claimant was not entitled to reimbursement for these costs because "neither 'liability' nor the 'extent of disability' was the subject of the formal hearing … [and] the respondents had already accepted liability by virtue of a Voluntary Agreement issued two years prior." Conclusion, ¶ H. However, our review of the evidentiary record indicates that although liability was not in dispute at the time of the June 2, 2016 formal hearing, the notice for that hearing did include permanent partial disability as one of the issues for discussion. In addition, as the claimant points out, the respondents, in their proposed findings of

September 12, 2016, stated that "[t]he respondents should pay an additional 3% of 11.22 weeks or permanency to the claimant based upon Dr. Karnasiewicz's rating with a date of maximum medical improvement of July 31, 2015." September 12, 2016 Respondent City of Derby Board of Education Proposed Finding and Dismissal, ¶ G.

We are somewhat perplexed by this proposed conclusion, given that it appears to suggest that the respondents were willing to pay the claimant additional permanency prior to resolving the issue of the permanency credit at trial. However, on the other hand, this proposed conclusion suggests that the respondents were in fact advocating that the credit for prior permanency should be taken against the permanency rating of 10 (ten) percent assigned by Dr. Karnasiewicz rather than the 15 (fifteen) percent assigned by Dr. Beiner. As such, it could be argued that the extent of the claimant's disability was in fact a potential issue for resolution at the June 2, 2016 formal hearing, and the trial commissioner's decision to deny the claimant reimbursement for the statutorily enumerated costs associated with her attendance at this hearing therefore constituted error.

The claimant also contends that the trial commissioner erred in denying reimbursement for the office visit with Dr. Beiner on June 30, 2015. Reimbursement for medical treatment is governed by the provisions of § 31-312 (a), which require respondents to compensate claimants who receive "required" medical care for the costs associated with lost time from work, including travel time, and to either furnish transportation to the medical provider or reimburse the claimant for the costs associated

with traveling to the medical provider.[10] In Evenson v. Stamford, 5541 CRB-7-10-4 (March 31, 2011), this board observed "that § 31-312 C.G.S. does not stand in a vacuum," id., and must be read together with the provisions of General Statutes § 31-294d (a) (1), which set forth the statutory obligation of respondents to provide injured claimants 'reasonable or necessary' medical care for their compensable injuries.[11] As such, when a trial commissioner is attempting to determine whether a claimant is owed compensation pursuant to § 31-312 (a), the commissioner must examine whether: (1) the claimant actually received medical care as a result of the trip; (2) the medical care rendered was "reasonable or necessary"; and (3) "the manner in which the claimant traveled to the medical care was 'reasonable or necessary.'" Id.

In the present matter, as previously discussed herein, the trial commissioner justified her denial of the claimant's reimbursement for the out-of-pocket expenses

[10] General Statutes § 31-312 (a) states: "An employee receiving medical attention under the provisions of this chapter and required to be absent from work for medical treatment, examination, laboratory tests, x-rays or other diagnostic procedures, and not otherwise receiving or eligible to receive weekly compensation, shall be compensated for the time lost from the job for required medical treatment and tests at the rate of such employee's average earnings, but not less than at the minimum wage established by law, provided the amount payable in any one week shall not exceed the employee's weekly compensation rate. Time lost from the job shall include necessary travel time from the plant to the place of treatment, the time for the treatment and any other time that is necessary for the treatment, examination or laboratory test. The employer shall furnish or pay for the transportation of the employee by ambulance or taxi where transportation is medically required from the point of departure for treatment and return. In all other cases, the employer shall furnish the employee transportation or reimbursement for the cost of transportation actually used, at a rate equal to the federal mileage reimbursement rate for use of a privately owned automobile set forth in 41 CFR Part 301-10.303, as from time to time amended, for a private motor vehicle or the cost incurred for public transportation, from the employee's point of departure, whether from the employee's home or place of employment, and return, if the employee is required to travel beyond a one-fare limit on an available common carrier from the point of departure to the place of treatment, examination or laboratory test. Where the medical attention or treatment is provided at a time other than during the employee's regular working hours and the employee is not otherwise receiving or eligible to receive weekly compensation, the employee shall be compensated for the time involved for the medical treatment as though it were time lost from the job at the rate of the employee's average hourly earnings and shall be paid for the cost of necessary transportation as provided in this subsection."

[11] General Statutes § 31-294d (a) (1) states in relevant part: "The employer, as soon as the employer has knowledge of an injury, shall provide a competent physician or surgeon to attend the injured employee and, in addition, shall furnish any medical and surgical aid or hospital and nursing service, including medical rehabilitation services and prescription drugs, as the physician or surgeon deems reasonable or necessary…."

associated with the June 2015 office visit on the grounds that Dr. Beiner had already rated the claimant in February 2015, the claimant had permanently relocated to Florida in March 2015, and the claimant had obtained Florida doctors to manage her medical needs. See Conclusion, ¶ G.

Our review of the record indicates that at trial, the claimant testified that after moving to Florida in March 2015, she began treating with Dr. Toman, an orthopedist, and Dr. Rosenblatt for pain management. Ultimately, the claimant discovered that Dr. Toman was not a spine doctor and she only saw him on two occasions; nevertheless, when Dr. Toman's records were introduced at trial, claimant's counsel referred to him as an "authorized treater," and the records indicate that the second office visit had occurred as recently as February 15, 2016.[12] June 2, 2016 Transcript, pp. 16-17; see also Claimant's Exhibit B. We note that the claimant testified that she returned to Dr. Beiner in June 2015 because she thought she "had to," and Dr. Beiner never informed her that he had assigned a permanency rating at the office visit of February 17, 2015. June 2, 2016 Transcript, pp. 48, 71. The claimant's testimony also strongly suggests that she never saw Dr. Beiner's June 2015 permanency report prior to the formal hearing of June 2, 2016. Id., 48-49.

Nevertheless, despite the nature of the claimant's testimony, it may be reasonably inferred that the trial commissioner was simply not persuaded, given the totality of the circumstances, that the June 2015 office visit with Dr. Beiner constituted necessary or reasonable medical care. Such a determination is well within the discretion of the

[12] Although the claimant points out that the respondents paid for the June 2015 medical visit with Dr. Beiner, we would note that it is certainly not customary for respondents to permit a claimant to retain two authorized physicians within the same specialty for any length of time.

commissioner and cannot be reversed on appeal if there is evidence in the record to support it. Duddy, supra; Phaiah, supra. "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." Burton v. Mottolese, 267 Conn. 1, 54 (2003). We therefore find no basis for reversing the decision of the trial commissioner denying the claimant reimbursement for attendance at the June 30, 2015 office visit with Dr. Beiner.

There is error; the December 19, 2016 Finding by Michelle D. Truglia, the Commissioner acting for the Fourth District, is accordingly affirmed in part, reversed in part, and remanded for additional proceedings consistent with this Opinion.[13]

Commissioners Scott A. Barton and Jodi Murray Gregg concur in this Opinion.

[13] The claimant also contends that the trial commissioner erroneously denied her motion to correct. Insofar as the commissioner's denial of the proposed corrections was inconsistent with the board's analysis as presented herein, we find the denial also constituted error. However, we find no error in the commissioner's denial of proposed corrections which merely reiterated arguments made at trial that ultimately proved unavailing. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003).