CASE NO. 6175 CRB-3-17-1 : COMPENSATION REVIEW BOARD
CLAIM NO. 300110035

PETER SULLIVAN : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : AUGUST 7, 2018

TOWN OF CLINTON
EMPLOYER

and

CONNECTICUT INTERLOCAL RISK MANAGEMENT AGENCY
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant appeared at oral argument as a self-represented party. At proceedings below, the claimant was represented by Edward T. Dodd, Jr., Esq., The Dodd Law Firm, L.L.C., 1781 Highland Avenue, Suite 105, Cheshire, CT 06410.

The respondents were represented by Colette S. Griffin, Esq., Howd & Ludorf, L.L.C., 65 Wethersfield Avenue, Hartford, CT 06114.

This Petition for Review from the January 3, 2017 Corrected Finding and Dismissal by Jack R. Goldberg, the Commissioner acting for the Third District, was heard on November 17, 2017 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Christine L. Engel and Daniel E. Dilzer.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has petitioned for review from the January 3, 2017 Corrected Finding and Dismissal by Jack R. Goldberg, the Commissioner acting for the Third District. We find no error and accordingly affirm the decision of the trial commissioner.[1]

In his Corrected Finding and Dismissal, the trial commissioner, having identified as the issues for determination the compensability of a claimed July 2, 2015 back injury and the claimant's eligibility for temporary total disability benefits, made the following factual findings which are pertinent to our analysis of this appeal. The claimant testified that on July 2, 2015, while employed as a town maintainer for the respondent employer, he was riding a commercial riding lawn mower in a field when he hit a one-foot by one-foot hole with the front of the mower. The claimant said that the mower had no suspension and the front went up into the air and slammed back down. The claimant, who immediately felt a sharp pain in his back, tried to lean forward, and then got off the machine and rolled to the ground. On July 16, 2015, the claimant filed a Form 30C which alleged injuries to his neck and back but did not describe how the injuries occurred. The respondents filed a Form 43 denying responsibility on August 3, 2015.

The claimant testified that on the afternoon of the day of this incident, his supervisor, Peter Neff, came to the Middlesex clinic.[2] He did not remember if he spoke with Neff. The claimant also testified that on March 11, 2005, he had sustained a prior compensable back injury in a motor vehicle accident while working for the town.

[1] We note that a motion for a continuance was granted during the pendency of this appeal.
[2] Peter Neff is the Director of the Public Works for the Town of Clinton.

Stephan C. Lange, M.D., performed a respondents' medical examination on January 28, 2015 and opined that the claimant was not a candidate for surgery relative to the 2005 injury and would need to stop smoking before undergoing surgery in the future.[3]

The claimant indicated that since the incident on July 2, 2015, his back pain has worsened severely and, on occasion, confines him to bed or the couch all day. It takes approximately two hours after taking medication before he is able to move. He no longer lifts or carries anything, is unable to mow his lawn and, except for a walk or a drive to get out of the house, does not do anything else. The claimant testified that the town paid his full salary until November 2015 and he was then compensated for his sick, vacation, and personal time, which expired in January 2016.

On February 24, 2015, prior to the July 2, 2015 incident, the claimant came under the care of John G. Strugar, M.D., a neurosurgeon. The doctor testified that at that time, the claimant had a disc injury at L5-S1 which might require surgery. Dr. Strugar also saw the claimant following the July 2, 2015 incident and the claimant was clearly worse than he had been six months earlier, in that the claimant was totally disabled whereas six months earlier, he had a work capacity. The doctor testified that on October 1, 2015, he discussed surgery with the claimant. He explained that because the claimant already had a positive discogram in February 2015, the L5-S1 disc was more compromised after the July 2, 2015 incident. Dr. Strugar considered the surgery to be reasonable.

On September 28, 2015, Patrick R. Duffy, M.D., performed a Commissioner's Medical Examination. Dr. Duffy found "abnormal pain behavior and significant

[3] On February 22, 2017, the commissioner acting for the Third District office of the Workers' Compensation Commission issued a Finding & Dismissal concluding that the March 11, 2005 injury was not a substantial factor in the claimant's current lumbar symptoms or need for back surgery. This Finding & Dismissal was not appealed.

symptom enhancement," Respondents' Exhibit 3, p. 9, and stated that he was unable to recommend surgery. The commissioner issued a follow-up letter and Dr. Duffy, in his reply correspondence, opined that the claimant did have a work capacity but it would be difficult to provide specific detailed capabilities given the claimant's presentation at the examination.

At his deposition, Dr. Strugar testified that the claimant was unhappy about the findings in both Dr. Lange's respondents' medical examination and Dr. Duffy's commissioner's examination. He indicated that he still believed surgery was reasonable because the claimant's condition was incapacitating and continued to cause pain, suffering, disability, and the loss of wages. Dr. Strugar opined that the claimant's condition was "fixable," predicting that there was an eighty (80) percent chance that the claimant would return to full-time work after the surgery. Respondents' Exhibit 20, p. 23. Dr. Strugar also testified that he did not consider the claimant's smoking habit a "major impediment" to performing surgery, as it is possible to mitigate the effects of smoking so that a fusion would be successful. Findings, ¶ 15; see Respondents' Exhibit 20, pp. 23-25.

In addition, Dr. Strugar opined that following the July 2, 2015 incident, the claimant did not return to the way he had felt during the office visit with Dr. Strugar in February 2015. In light of the fact that alternative measures had been unsuccessful, the options were to perform the surgery or do nothing. Moreover, although the assessments of both Drs. Duffy and Lange were reasonable, neither of them had explained how they would successfully treat the claimant's problems. Dr. Strugar further testified that although malingering and secondary gain "always exists" in these types of situations, he

stated that he "wants to believe his patients when they say they are in pain, and doesn't feel capable of making an objective and true assessment when somebody is frankly malingering." Findings, ¶ 17; see Respondents' Exhibit 20, p. 61. He conceded that apart from the subjective complaints of the claimant, no other objective findings substantiated a change in the claimant's low back condition following the July 2, 2015 incident.

On February 26, 2016, Dr. Lange performed a second respondents' medical examination. He reported that during the history-taking, the claimant exhibited "quick, spontaneous and unimpeded movements with his neck and back" while sitting and twisting and did not appear to be in any distress. Respondents' Exhibit 5, p. 2. During the formal evaluation, however, the claimant demonstrated "some limitation of range of motion with extension, flexion and rotation of his neck, with complaints of neck and shoulder pain." Id. The doctor noted that the claimant's neurological exam was normal and opined that he had a work capacity with no restrictions. The doctor also indicated that the objective findings had not changed since the initial evaluation in 2015. The doctor diagnosed the claimant with a strain which was possibly related to the July 2015 incident but opined that the incident did not precipitate the need for lumbar surgery.

At his deposition, Dr. Lange testified that the claimant had reported his pain level as ten out of ten, although during the history-taking portion of the examination, the claimant did not appear to be in any distress. However, when told the formal examination would begin, the claimant began to exhibit limitations in his spinal movements. The doctor opined that there should be evidence of nerve compression to account for the claimant's complaints of radiating pain, but there was none. He also

testified that the claimant's complaints should, but did not, demonstrate "significant low-back pain with a straight-leg maneuver, along with leg pain." Respondents' Exhibit 19, p. 18. Moreover, although the claimant complained of weakness and sensory deficits, Dr. Lange found neither, and indicated that no objective tests corroborated that the claimant had experienced a "significant event on July 2, 2015." Id., 19. The doctor stated that he agreed with the provisions of the Workers' Compensation Commission medical protocols recommending that smokers not undergo fusion surgery.

Dr. Lange, after remarking that a commissioner's evaluation "is even more important than a formal evaluation or even a regular evaluation," also noted that in Dr. Duffy's September 28, 2015 commissioner's evaluation report, Dr. Duffy did not mention that the claimant had sustained a new injury in July 2015. Id., 20. Dr. Lange stated that he "would have expected, if there was a significant disabling pain such that this patient claimed, that it should have come out on this evaluation." Id., 20-21. He also indicated that he did not disagree with Dr. Duffy's comment that the claimant exhibited abnormal pain behavior and significant symptom enhancement. He testified that he continues to recommend against the lumbar spine surgery and believes that the claimant has a work capacity and is capable of resuming his regular activities.

Peter Neff, the claimant's supervisor, testified that he was away on vacation in Maine on July 2, 2015 and could not have visited the claimant at the Middlesex clinic on that date.

Having heard the foregoing, the trial commissioner concluded that the claimant was not credible, and Dr. Lange's testimony was more persuasive than that of Dr. Strugar. He also found the testimony of Drs. Lange, Duffy and Strugar persuasive on

the issue that no objective studies corroborated the claimant's pain symptoms after the July 2, 2015 incident. In addition, he found Dr. Duffy's testimony persuasive on the issue that the claimant had presented with abnormal pain behavior and significant symptom magnification and surgery was not indicated. The commissioner found Neff credible regarding his inability to have seen the claimant at the Middlesex clinic following the incident of July 2, 2015 because he was away on vacation. The commissioner determined that the claimant had a work capacity following the July 2015 incident and dismissed the claim for compensability.

The claimant has appealed the commissioner's decision on multiple grounds, arguing, *inter alia*, that the trial commissioner erred by: (1) concluding that the claimant's injury of July 2, 2015 constituted a "new injury," rather than an aggravation of an already existing compensable injury; (2) failing to grant the claimant's request for a functional capacity examination; (3) relying upon the testimony of Dr. Lange and Peter Neff; (4) concluding, based upon the testimony of Dr. Strugar, that the claimant had a sedentary work capacity; (5) discounting the positive results of the discogram performed by Martin P. Hasenfeld, M.D., in May 2014 and Dr. Strugar's testimony indicating that the claimant already had a compromised disc at the L5-S1 level; (6) allowing into the record testimony regarding two additional claimed prior work injuries which allegedly occurred in October 2011 and May 2014.

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).

Turning to the matter at bar, we note at the outset that the respondents have filed a motion to dismiss the appeal. The respondents contend that because the Finding and Dismissal was issued on December 27, 2016, the appeal documents, pursuant to the provisions of General Statutes § 31- 301(a) and Admin. Reg. § 31-301-1, were due on or before January 16, 2017.[4] Given that the documents were not filed until January 23,

[4] General Statutes § 31-301(a) states in relevant part: "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 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.… 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."

Admin. Reg. § 31-301-1 states in relevant part: "An appeal from an award, a finding and award, or a decision of the commissioner upon a motion shall be made to the Compensation Review Board by filing in the office of the commissioner form which such award or such decision on a motion originated an appeal petition and five copies thereof. Such appeal shall be filed within twenty days after the entry of such award or decision and shall be in substantial conformity with the forms approved by said board…."

2017, the appeal was untimely and should be dismissed as a matter of law. We are not so persuaded.

There is no question that "[b]oth this board and the Connecticut appellate courts have repeatedly held that the appealing party must file its appeal within the prescribed time period in order for this board to have subject matter jurisdiction over the appeal." Ellis v. State/Department of Developmental Services, 5242 CRB-5-07-7 (July 8, 2008). However, the record in the present matter reflects that although the trial commissioner did issue an initial Finding and Dismissal on December 27, 2016, this Finding was legally deficient and necessitated that a Corrected Finding and Dismissal be issued on January 3, 2017.[5]

Our review of the record indicates that the claimant's Petition for Review was filed on January 23, 2017, which, according to our calculations, was the final date of the twenty-day statutory time limitation. Given that it is highly unlikely, under these particular circumstances, that we would refuse to extend the appeal filing deadline to a party represented by counsel, we have no intention of depriving an unrepresented party of such an extension. This is particularly so in light of the deference customarily afforded to unrepresented claimants by this board. "[I]t is the policy of Connecticut courts and this board to accommodate pro se claimants as much as possible by liberally construing procedural rules where doing so does not interfere with the rights of other parties." Walter v. Bridgeport, 5092 CRB-4-06-5 (May 16, 2007), *citing* Ferrin v. Glen Orne

[5] Our review of the December 27, 2016 Finding and Dismissal reflects that the Order which was appended to the Finding was unrelated to the claim at bar.

Leasing/Webster Trucking, 4802 CRB-8-04-4 (March 28, 2005). The respondents' motion to dismiss is therefore denied.

Turning to the merits of the appeal, we begin with the claimant's contention that the trial commissioner erroneously concluded that the claimant's injury of July 2, 2015 constituted a new injury, rather than an aggravation of an already existing compensable injury. In support of this claim of error, the claimant points to this tribunal's reasoning in Martinez v. Gordon Rubber & Packaging Co., 3348 CRB-4-96-6 (May 4, 1998), wherein this board observed:

> We have long held that the question of whether an injury is a recurrence of a prior injury pursuant to § 31-307b or a new injury is a factual determination for the trial commissioner…. In close cases where the facts could support either conclusion, this Board will defer to the commissioner's finding on that issue.

Id.

In Martinez, this board found meritorious the respondents' contention that no medical evidence had been presented in support of the trial commissioner's conclusion that the claimant had sustained a new injury rather than a recurrence of the initial injury. The matter was remanded for additional evidentiary proceedings. In the instant appeal, the claimant contends that the record contains "overwhelming evidence that the July 2, 2015 incident constituted an aggravation of an already existing and compensable injury." Appellant's Brief, p. 2.

We note that the claimant did not file a motion to correct and is therefore prevented, as a matter of law, from challenging the factual findings of the trial

commissioner.[6] In such a situation, this tribunal "must accept the validity of the facts found by the trial commissioner and [we are] limited to reviewing how the commissioner applied the law." Corcoran v. Amgraph Packaging, Inc., 4819 CRB-2-04-6, 4948 CRB-2-05-5 (July 26, 2006). However, even had a motion to correct been filed, we would not sustain this claim of error because the commissioner's findings do not suggest that the claimant sustained *either* a new injury *or* an aggravation of an existing injury on July 2, 2015. Rather, the findings reflect the trial commissioner's conclusion that the alleged incident of July 2, 2015 did not constitute a compensable event in any form or fashion.[7]

We note that the commissioner's findings in this regard are amply supported by the evidentiary record. For instance, although Dr. Duffy recounted the claimant's narrative concerning the July 2, 2015 incident in his September 28, 2015 commissioner's examination report, he ultimately concluded that the cervical and lumbar strain sustained by the claimant on March 11, 2005 was a substantial contributing factor to the claimant's lumbar symptoms at the time of his evaluation. Respondents' Exhibit 3, p. 9. Dr. Duffy also pointed out that both Dr. Lange, in his Respondents' Medical Examination of January 28, 2015, and Dr. Strugar, in his evaluation of February 24, 2015, had diagnosed

[6] Admin. Reg. § 31-301-4 states: "If the appellant desires to have the finding of the commissioner corrected he must, within two weeks after such finding has been filed, unless the time is extended for cause by the commissioner, file with the commissioner his motion for the correction of the finding and with it such portions of the evidence as he deems relevant and material to the corrections asked for, certified by the stenographer who took it, but if the appellant claims that substantially all the evidence is relevant and material to the corrections sought, he may file all of it so certified, indicating in his motion so far as possible the portion applicable to each correction sought. The commissioner shall forthwith, upon the filing of the motion and of the transcript of the evidence, give notice to the adverse party or parties."

[7] As discussed previously herein, the trial commissioner noted Dr. Lange's observation that Dr. Duffy, in his commissioner's examination report of September 28, 2015, did not indicate that a "new" injury had occurred in July 2015. Respondents' Exhibit 19, p. 20. It may be reasonably inferred that the trial commissioner interpreted Dr. Lange's reference to Dr. Duffy's failure to mention a "new" injury as simply another way of saying that Dr. Lange did not believe that a significant injury had occurred at all.

the claimant with a degenerative herniated disc at the L5-S1 level prior to the incident of July 2, 2015.[8] See Respondents' Exhibit 6, p. 7; Respondents' Exhibit 20, pp. 10-11.

Finally, we note that a radiographic study of the claimant's lumbar spine taken on July 2, 2015 revealed, *inter alia*, a "[m]ild broad-based disc bulge and posterior calcified disc osteophyte with minimal central canal and bilateral subarticular narrowing" at L5-S1 and "mild degenerative disc disease" overall. Respondents' Exhibit 7. In addition, an MRI taken on October 19, 2015 demonstrated "mild disc space narrowing with a mild central disc bulge" at L5-S1 and indicated that this "small central disc bulge" was unchanged when compared with an MRI taken on August 5, 2008. Respondents' Exhibit 8. Thus, in light of the totality of the evidentiary record, we find no merit in the claimant's contention that the commissioner was compelled to find that the incident of July 2, 2015 constituted either a new injury or an aggravation of an existing injury.

The claimant also contends that the commissioner erred in failing to order a Functional Capacity Evaluation to determine work capacity. We note that the issues for discussion which were identified at the commencement of formal proceedings were "compensability and total incapacity benefits." March 9, 2016 Transcript, p. 3. However, the issue of the claimant's work capacity was raised by the parties at that time and it was agreed that the presiding commissioner would send correspondence to Dr. Duffy, the physician who had performed a Commissioner's Examination on September 28, 2015, inquiring about the claimant's work capacity. Dr. Duffy's reply correspondence of March 22, 2016 was subsequently introduced at the formal hearing of

[8] In his Respondents' Medical Report of January 28, 2015, Dr. Lange also opined that the claimant's "outside activities from work" were not a "significant contributor to his back pain beyond the work-related event of 2005 which appears to have precipitated the onset of back pain." Respondents' Exhibit 6, p. 7.

June 27, 2016, and the parties noted that Dr. Duffy had opined that the claimant "does have at least a light duty work capacity," Claimant's Exhibit C, but also recommended that "a more detailed assessment would be obtained with a Functional Capacity Evaluation." Id. Respondents' counsel objected to the authorization of the evaluation pending the conclusion of the formal proceedings and, in response, the trial commissioner stated, "I'm not going to require the functional capacity evaluation right now. That's something that can be dealt with once the formal decision is held and it might flow naturally out of that formal decision." June 27, 2016 Transcript, p. 5.

As it happens, the issue of whether to authorize a functional capacity evaluation was indeed resolved by the trial commissioner's January 3, 2017 Corrected Finding and Dismissal concluding that the July 2, 2015 incident was not compensable. Having failed to find the incident compensable, the trial commissioner could not then expect the respondents to pay the costs associated with such an evaluation for a claim for which they bore no liability. We therefore find no merit in the claimant's contention that the trial commissioner erred in refusing to authorize the functional capacity evaluation.

The claimant also argues that the commissioner erroneously relied on Dr. Lange's deposition testimony. Specifically, the claimant takes exception to the following testimonial excerpts: (1) Dr. Lange's observation that a commissioner's evaluation "is even more important than a formal evaluation or even a regular evaluation." Respondents' Exhibit 19, p. 20; (2) Dr. Lange's reference to Dr. Duffy's September 28, 2015 commissioner's examination report and its lack of reference to any "significant disabling pain" stemming from the "new" injury of July 2015. Id.; (3) Dr. Lange's agreement with Dr. Duffy's comment that "[t]he patient has an abnormal pain behavior

and significant symptom enhancement." Id., 21, *quoting* Respondents' Exhibit 3, p. 9; and (4) Dr. Lange's statement that there were no objective findings which would "corroborate" the July 2, 2015 incident, id., 24, particularly in light of Dr. Lange's agreement with claimant's counsel's query that that "[t]here doesn't have to be a structural change shown on an MRI for a person to have worsening symptoms after an event such as [the claimant] described happened on July 2, 2015…."[9] Id., 28.

We recognize that these testamentary excerpts were not helpful to the claimant's case, while Dr. Strugar's testimony was far more favorable to the claimant. However, it is axiomatic that it lies well within the discretion of a fact-finder to determine which medical expert he or she finds more persuasive. "It is the quintessential function of the finder of fact to reject or accept evidence and to believe or disbelieve any expert testimony…. The trier may accept or reject, in whole or in part, the testimony of an expert." (Internal citations omitted.) Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999).

The claimant also takes exception to the trial commissioner's credibility findings with regard to Peter Neff, pointing out that the claimant's testimony regarding Neff's appearance at Middlesex Hospital following the July 2, 2015 incident was "an error in recollection, not an intentional misstatement," Appellant's Brief, p. 4, and Neff should have been called as a "hostile witness" because of prior workplace difficulties between

[9] As discussed previously herein, radiographic studies of the claimant's lumbar spine taken after the July 2, 2015 incident did not demonstrate that the claimant had sustained an additional injury to his lumbar spine. See Respondents' Exhibit 7; Respondents' Exhibit 8.

him and the claimant.[10] Nevertheless, our review of the record indicates that Neff was subjected to both direct examination and cross-examination at trial, and the commissioner therefore had a sound basis to formulate a reasoned opinion as to Neff's credibility. See March 9, 2016 Transcript, pp. 51-57. As such, we are unable to sustain this claim of error.

The claimant also challenges the trial commissioner's finding of a work capacity following the July 2, 2015 incident, pointing out that "Dr. Strugar did not testify definitively that the Claimant had a sedentary work capacity."[11] Appellant's Brief, p. 4. We agree; our review of the record indicates that at his deposition, Dr. Strugar was, in fact, quite ambivalent, initially stating that he thought the claimant "would probably be able to work in a sedentary work capacity for maybe a few hours a day in terms of his position. I don't know if he could get through an eight-hour day; but maybe four hours, he might be able to do that in a sedentary work capacity." Respondents' Exhibit 20, p. 41. However, when pressed on the issue, Dr. Strugar replied:

> some of this is trial and error, like you said. But, you know, when I last saw him back in April, the man wasn't able to sit still in a chair for no [sic] more than three minutes. So, I mean, he was either standing or sitting, he was moving around. So he really is quite uncomfortable and, I mean, I would strongly doubt that he could do … sedentary work to any efficiency.

Id., 42.

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[10] We note that at his deposition of February 24, 2016, the claimant, when queried as to whether he had experienced any prior difficulties with Peter Neff, replied, "I think pretty much everyone in my department has." Respondents' Exhibit 15, p. 26.

[11] In his brief, the claimant indicated that he disagreed with the respondents' proposed findings on the issue of work capacity following the July 2, 2015 incident. Given that the proper focus of appellate review should be on actual, rather than proposed, findings, we will direct our comments to Conclusion, ¶ h, of the January 3, 2017 Corrected Finding and Dismissal, wherein the trial commissioner concluded that the claimant did have a work capacity following this incident.

However, we note that Dr. Lange, in his respondents' medical examination of February 26, 2016, indicated that the claimant did have a work capacity, and he reiterated that opinion at his deposition on June 21, 2016, opining that the claimant "was capable of resuming his regular activities." Respondents' Exhibit 19, p. 24. Moreover, Dr. Duffy, in his reply correspondence of March 22, 2016, stated, "I believe [the claimant] does have at least a light duty work capacity." Claimant's Exhibit C. As such, given that the evidentiary record contains more than adequate support for the trial commissioner's conclusions regarding the existence of a work capacity following the July 2, 2015 incident, we are unable to sustain this claim of error.

The claimant also contends that the trial commissioner "erred in not considering the positive results of a discogram performed by Dr. Martin Hasenfeld in May 2014," which study revealed "that the Claimant already had an incompetent disc at … L5-S1." Appellant's Brief, p. 4. We are somewhat perplexed by this allegation of error, as the claimant does not articulate the precise nature of the inference he believes should have been drawn by the trial commissioner relative to the results of the discogram. It may be reasonably inferred that the claimant believes the positive discogram supports his contention that the incident of July 2, 2015 constituted an aggravation of a pre-existing injury.

However, the commissioner also may have reasonably inferred that because the claimant's lumbar spine was already significantly compromised before the July 2, 2015 incident, the incident was not a substantial contributing factor to his lumbar symptoms following that incident. Such an inference is not subject to review on appeal, provided that a sound basis for the inference can be found in the evidentiary record. "It is …

immaterial that the facts permit the drawing of diverse inferences. The [commissioner] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair v. People's Savings Bank, 207 Conn. 535, 540 (1988), *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

Finally, the claimant argues that the trial commissioner erroneously allowed into the record testimony regarding two prior unwitnessed workplace injuries allegedly sustained by the claimant. The claimant points out that the prior claims are irrelevant to the case at bar, the claims were never investigated by the respondents, and the claimant returned to full duty after both of these incidents. Our review of the record reflects that the testimony regarding these prior incidents was elicited from the claimant during cross-examination over the repeated objections of his attorney. See March 9, 2016 Transcript, pp. 36-41. Although the claimant believes this testimony may have damaged his credibility, such an objection does not, in and of itself, provide a basis for concluding that the trial commissioner erroneously allowed the testimony.

It is well-settled that credibility determinations are "uniquely and exclusively the province of the trial commissioner," Smith v. Salamander Designs, Ltd, 5205 CRB-1-07-3 (March 13, 2008), and are not generally subject to reversal on review. In addition, the degree of latitude generally afforded workers' compensation commissioners in assessing the relative merit of evidentiary submissions is articulated by the provisions of General Statutes § 31-298:

> In all cases and hearings under the provisions of this chapter, the commissioner shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common

> law or statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of this chapter.

There is no error; the January 3, 2017 Corrected Finding and Dismissal by Jack R. Goldberg, the Commissioner acting for the Third District, is accordingly affirmed.

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