

CASE NO. 6191 CRB-2-17-4
CLAIM NOS. 500113053, 601015066,
800171859

: COMPENSATION REVIEW BOARD

RICHARD GUSTAFSON
CLAIMANT-APPELLEE

: WORKERS' COMPENSATION
COMMISSION

v.

: APRIL 13, 2018

SNET/SOUTHERN NEW ENGLAND
TELECOMMUNICATIONS
EMPLOYER

and

AT&T, INC.
EMPLOYER

and

SEDGWICK C.M.S., INC.
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by John B. Myer, Esq., and Nathaniel D. Walden, Esq., The Nicholas Law Firm, L.L.C., 373 Prospect Street, Torrington, CT 06790.

The respondents were represented by Jason M. Dodge, Esq., Strunk, Dodge, Aiken, Zovas, L.L.C., 200 Corporate Place, Suite 100, Rocky Hill, CT 06067.

This Petition for Review from the April 7, 2017 Finding and Award by Thomas J. Mullins, the Commissioner acting for the Fifth District, was heard on October 27, 2017 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Daniel E. Dilzer and Stephen M. Morelli.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have petitioned for review from the April 7, 2017 Finding and Award by Thomas J. Mullins, the Commissioner acting for the Fifth District. We find no reversible error and accordingly affirm the decision of the trial commissioner.¹

In his Finding and Award, the trial commissioner, having identified as the issue for determination 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 he is fifty-seven (57) years old and has a high school education; he also received some vocational training. The claimant has been employed by Southern New England Telecommunications Company [hereinafter "SNET"] and/or AT&T since the 1990s. He started at the company as an installation technician, until he was injured on the job in 1998. The 1998 injury, which was accepted by the respondents, eventually required a herniated cage implant fusion at the L5-S1 level in 1999. The claimant testified that following the 1998 injury and 1999 surgery, he returned to employment with AT&T on modified duty as a central office attendant. From 2002 through 2010, he worked for AT&T in customer service and sales.

On December 10, 2010, the claimant again sustained work-related injuries when he slipped on a wet floor at work. This claim, which was also accepted by the respondents, resulted in cervical disk herniations and aggravated his previously-repaired

¹ The internal records of the Workers' Compensation Commission indicate that SNET was self-insured for two of the claimant's dates of injury (November 4, 1997 and February 1, 1998) but was covered by third-party insurance as of the December 10, 2010 date of injury. We have therefore designated Sedgwick C.M.S., Inc., an insurer as that designation reflects its current status.

back injury. Imaging taken after the 2010 accident demonstrated “grade 1 anterolisthesis [at L5-S1]” and “[bilateral] facet arthropathy resulting in moderate to severe bilateral foraminal stenoses....” Claimant’s Exhibit E (March 2, 2011 report of Connecticut Valley Radiology, P.C.). The claimant also sustained a shoulder impingement in the 2010 fall. Following this incident, the claimant underwent additional physical therapy and pain management and was prescribed a TENS unit. In April 2013, Frank U. Hermantin, M.D., the Commissioner’s Examiner, assigned the claimant a 37 (thirty-seven) percent permanent partial disability to his lumbar spine and a fourteen (14) percent permanent partial disability to his cervical spine.

The claimant testified that severe repercussions resulted from these work-related injuries. He experiences pain in his lower back on a regular basis, typically at a level of seven or eight out of ten without medication. This pain also radiates to his lower left extremity. Daniel C. George, M.D., the claimant’s treating physician, noted that the claimant walks with a cane, and Jarob N. Mushaweh, M.D., opined that the claimant walks with an antalgic gait (Claimant’s Exhibit B). The claimant testified that his left foot frequently goes numb, he has difficulties with his balance, and he experiences spasms that feel like a knife in his back and occur “[o]ften, sometimes daily.” May 5, 2016 Transcript, p. 40. The claimant testified that he also suffers from neck spasms and has a restricted range of motion in his cervical spine. Dr. George noted that pain radiates into the claimant’s left arm and shoulder, which causes numbness in the left hand. The claimant reported that he drops things because of the numbness. In addition, the claimant testified that he experiences pain and restricted motion in his left shoulder as a result of the compensable injury of 2010.

The claimant reported that his physical capacities are limited because of his compensable injuries. He can only walk a couple hundred steps before he has problems, he can stand for only a few minutes, and sitting and using a computer become difficult after half an hour. He can only drive for fifteen or twenty minutes before problems arise, and he has a handicapped placard. He requires help from his adult sons to do basic chores around the home; he utilizes a shower chair and has trouble tying his own shoelaces. He experiences mostly “bad” days; his pain is distracting and makes it difficult to concentrate. May 5, 2016 Transcript, p. 61. A minor activity during one day can have a consequential impact on his pain levels the next day, “and he experiences draining discomfort.” Findings, ¶ 12.

The claimant’s authorized orthopedic treating physician and surgeon, Dr. George, has kept the claimant out of work on the basis of temporary total disability since the 2010 injury. Dr. George, who has treated the claimant’s lumbar and cervical spine injuries since 1998, has had the most significant treating relationship with the claimant and has a strong understanding of his patient’s capacities and abilities. He has opined on many occasions that the claimant is incapable of working and would be unlikely to return to any form of employment. The claimant testified that he did return to work following a traumatic injury with the same employer and worked through the pain even though his activities were modified. He also indicated that he was awarded Social Security Disability in September 2013.

Albert J. Sabella, MS, QRC, LRC, a “duly qualified” vocational rehabilitation counselor, Findings, ¶ 18, opined, after evaluating the claimant’s vocational capacities,

that he was “unemployable for any practical vocational purpose.” Claimant’s Exhibit M, p. 7. Mr. Sabella’s findings were consistent with the opinion of Dr. George.

On the basis of the foregoing, the trial commissioner determined that the claimant had sustained compensable injuries arising out of and in the course of his employment with SNET and AT&T. He also found the testimony of the claimant, Dr. George and Albert Sabella to be credible, persuasive and convincing, and found credible the testimony of Erin S. Bailey, CRC, ABVE-F, who authored the September 11, 2015 Employability Evaluation & Wage Earning Capacity Determination Report (Respondents’ Exhibit 6). He concluded that the claimant was totally disabled as a result of his compensable injuries and will require additional medical care for the injuries to his lumbar spine, cervical spine and left shoulder. As such, he ordered the respondents to pay all related medical and pharmaceutical bills as well as any workers’ compensation benefits to which the claimant may be entitled.

The respondents filed a Motion for Articulation, which was denied, and a Motion to Correct, which was also denied in its entirety, and this appeal followed. On appeal, the respondents contend that the trial commissioner erred in: (1) failing to apply the “test” for assessing a claimant’s eligibility for temporary total disability benefits after receiving permanent partial disability benefits as set forth in Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010), (2) failing to consider material and relevant facts such as the September 11, 2015 Employability Evaluation & Wage Earning Capacity Determination Report authored by Erin S. Bailey, CRC, ABVE-F (Respondents’ Exhibit 6), the November 16, 2015 Independent Medical Re-Examination of Gerald J. Becker, M.D. (Respondents’ Exhibit 7), and the May 7, 2015 Functional Capacity Evaluation

performed by Kathleen Gannon (Claimant's Exhibit J); (3) failing to determine the type, commencement date, compensation rate and attributable date of injury for any workers' compensation benefits due and owing to the claimant; (4) failing to grant the respondents' Motion to Correct; (5) failing to grant the respondents' Motion for Articulation; and (6) addressing the issue of medical treatment and bills in his Finding and Award after the parties had agreed to limit the scope of the hearing to a determination of the claimant's eligibility for temporary total benefits.²

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

² We note that the transcript of the formal proceedings held on May 5, 2016, does reflect that the parties, by agreement, limited the scope of the hearing to the claimant's eligibility for temporary total disability benefits. Transcript, p. 4. As such, the references to "settlement discussion" and "medical treatment" in the Finding and Award are deemed "harmless scrivener's error." D'Amico v. Dept. of Correction, 73 Conn. App. 718, 729 (2002), *cert. denied*, 262 Conn. 933 (2003). With specific regard to the issue of medical treatment, we note that in his Finding and Award, the trial commissioner indicated that "all related medical, pharmaceutical and all other related bills" were to be paid "to the claimant." April 7, 2017 Finding and Award, Orders, ¶ 1. Given that it is usual and customary that such medical bills are paid directly to the providers of the medical services, we also deem the notation that they should be paid to the claimant "harmless scrivener's error." *Id.* Moreover, in light of the fact that it is "standard operating procedure" that such bills, if they existed, would be paid by the respondents, we find this language superfluous rather than erroneous.

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, the respondents, in their first claim of error, contend that the Finding and Award is legally "deficient" because the trial commissioner concluded that the claimant was entitled to temporary total disability benefits, despite having reached maximum medical improvement and received a permanent partial disability award, without applying the analysis articulated by our Supreme Court in Marandino, supra. Appellants' Brief, p. 11. "The respondents assert that since there was no proof that the claimant's present disability is distinct from and due to a condition that is not a normal and immediate incident of the loss for which he received permanent partial disability under § 31-308(b) the claimant cannot now receive total disability benefits." Id., 15.

In Marandino, our Supreme Court was called upon to determine whether a claimant who had reached maximum medical improvement and received a permanency award for an injury to her arm was eligible for additional temporary total disability benefits. The claimant argued that because:

the workers' compensation statutory scheme does not contain a strict progression and ... the remedial nature of the statutory scheme militates against strict construction of the act ... it is within the discretion of the commissioner to award total incapacity benefits ... even after the claimant enters into a voluntary agreement to receive permanent partial disability without the claimant formally filing a motion to open the award.

Id., 574.

The court, having indicated that it agreed with this argument, went on to note the distinction between the “two unique categories of benefits – those designed to compensate for loss of earning capacity and those awarded to compensate for the loss, or loss of use, of a body part.” Id., 577, citing Rayhall v. Akim. Co., 263 Conn. 328, 349-51 (2003). The court pointed out that:

[i]n the eighty-seven years since the decision in Costello v. Seamless Rubber Co., [99 Conn. 545 (1923)], the legislature has not amended the statute for total incapacity benefits to preclude a claimant from recovering incapacity benefits for a subsequent disability if it is distinct from and due to a condition that is not a normal and immediate incident of the loss for which the claimant received disability benefits for loss of use.

Id., 582.

The court noted that the record contained medical evidence indicating that the claimant was suffering from complete regional pain syndrome and reflex sympathetic dystrophy as well as a vocational assessment concluding that it was not feasible for the claimant to pursue any type of employment given “her lack of physical ability in her right arm, her absence from the workforce for approximately three years, her chronic pain in her master arm and the fact that she was still receiving medical treatment.”³ Id., 584. As such, the Supreme Court affirmed the Appellate Court’s decision that the claimant was entitled to temporary total incapacity benefits, remarking:

Although the commissioner did not explicitly find that the pain and ongoing medical issues that the plaintiff was enduring were not a normal incident of the partial loss of use of the right arm, it is implicit that the partial loss of use of the arm does not necessarily

³ Albert J. Sabella, MS, QRC, LRC, the vocational expert in the present matter, was also the author of this opinion in Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010).

or even usually involve the complications from which the plaintiff suffered.

Id.

Returning to the matter at bar, we note at the outset that the provisions of Admin.

Reg. § 31-301-3 govern what should be included in a commissioner's finding.

The finding of the commissioner should contain only the ultimate relevant and material facts essential to the case in hand and found by him, together with a statement of his conclusions and the claims of law made by the parties. It should not contain excerpts from evidence or merely evidential facts, nor the reasons for his conclusions. The opinions, beliefs, reasons and argument of the commissioner should be expressed in the memorandum of decision, if any be filed, so far as they may be helpful in the decision of the case.

In light of these statutory requirements, then, the proper inquiry is whether the Finding and Award of the trial commissioner included sufficient factual findings to support his conclusions. Our review of the Finding and Award in the present matter indicates that the trial commissioner made a number of factual findings which directly address the issue of the "severe repercussions from [the claimant's] work-related injuries." Findings, ¶ 6. For instance, the claimant testified that his lower back pain, on a scale of one to ten, is typically at seven or eight, with or without medication, and radiates "[a]ll through my lower left side, up on the sides in the back, the muscles, the major core muscles in my back." May 5, 2016 Transcript, p. 38. He also testified that he frequently experiences numbness in his lower left foot, uses a cane "pretty much always" because of poor balance, and experiences back spasms that feel like "somebody's got a knife in my back" which can occur daily and last for several hours. Id., 39-40.

In addition, the claimant indicated that he experiences neck spasms which can also occur daily and last for several hours. Id., 45. He reported feeling that the range of

motion in his neck is “very much” restricted, id., 43, and his neck pain radiates into his left arm and shoulder and causes numbness in his left hand. Id., 44. The claimant testified that he also injured his left shoulder in the accident in 2010, id., 46, currently experiences pain in the shoulder “at a five, six” level, and the range of motion in his shoulder is restricted. Id., 47-48.

The trier’s factual findings also reflect the claimant’s testimony regarding the limitations on his physical capacities because of his compensable injuries. The claimant indicated that he can only walk “a couple hundred steps” before his leg starts to “clump up,” and he is only able to stand for a few minutes before he has a problem. Id., 53. He also testified that sitting is difficult “unless [he’s] in a reclined position,” id., and working at a computer would become difficult after “half an hour, maybe, at most.” Id., 54. He indicated that he is comfortable driving for only fifteen to twenty minutes, relies on his sons “to help [him] out quite a bit” with household chores, id., 58, and has difficulties with bathing and dressing. The claimant stated that he has “some good and bad days. Most of them are bad, though.” Id., 61. In addition, he indicated that his constant pain impairs his ability to concentrate, and any exertion, such as that required in attending the formal hearing, “will have an effect on me for probably a couple of days... I will be exhausted. I’ll probably be prone to more back spasms and a lot of discomfort trying to sleep.” Id.

The trial commissioner’s findings also reflect the expert opinion offered by the claimant’s treating physician, Dr. George. In approximately forty office notes issued during the period of January 5, 2011 through April 22, 2015 (when Dr. George left the practice of New Milford Orthopedic Associates, P.C.), he reiterated that the claimant

remained totally disabled from work. Claimant's Exhibit A. In addition, on September 9, 2014, the doctor remarked that the claimant "apparently has an upcoming functional capacity evaluation. I think this is going to be very difficult for him to perform, but if he goes ahead and tries that, I would be glad to review the results of that." Id. On July 23, 2013, Dr. George completed a Physical Residual Functional Capacity Questionnaire which documents many of the restrictions and limitations attested to by the claimant. Id. Finally, we note that in a report dated September 14, 2011, Dr. George stated the following:

Given the patient has been out of work for 10 months and he has significant problems in multiple areas and a history of previous surgery it is my judgment it is likely that he is going to be unable to return to gainful employment and will have a permanent disability and inability to return to work.

Id.

Lastly, the trial commissioner's findings reflect the opinion of Albert Sabella, who performed a Vocational Assessment and Employability Evaluation of the claimant.

In his report dated December 26, 2013, Sabella stated:

The salient and prevailing issue with regard to Mr. Gustafson's employability is his chronic pain and the debilitating effect it has on his physical abilities and ability for sustainable work activity. He is susceptible to exacerbations and episodes of severe pain requiring narcotic medication and periods of recumbent rest during the day. To the extent that his chronic pain affects his physical abilities, he will have difficulty adhering to a set schedule and maintaining employability tenants. Also, Mr. Gustafson would not pass a drug screen, which is required by many employers. Though he is taking a prescribed narcotic, nonetheless this will be an issue for many employers and employment options.

Claimant's Exhibit M, p. 7.

In the same report, Sabella indicated that the claimant's "employment barriers would include: significant physical limitations, exacerbations of chronic severe pain, lack of competitive employment computer ability, as well as age combined with prolonged absence from the workforce." Id. In an updated Vocational Evaluation and Employability Assessment dated June 30, 2016, Sabella, having reviewed additional office notes from Dr. George, noted that the doctor had recommended an MRI of the cervical spine but had left the practice before this procedure was done. Sabella also referenced, inter alia, Dr. Becker's Independent Medical Re-Examination dated November 16, 2015, Dr. Mushaweh's report of December 9, 2015, and the Functional Capacity Evaluation performed by Kathleen Gannon at REACT Physical Therapy on May 7, 2015. Sabella opined:

[b]ased on my review of the above medical information and the Functional Capacity Evaluation my opinions as put forth in my 12/26/13 report do not change. In my opinion, Mr. Gustafson remains with chronic pain that has a debilitating effect on his physical abilities and ability for any sustainable work activity.... Additionally, he has other employment barriers that add to and amplify the salient repercussion of his chronic pain.... However, my opinion has changed with regard to transferable skills. His most recent employment with SNET/AT&T was as a Customer Service Representative and I opined that he would have transferable skills to such a Sedentary position. I completed an Internet labor market survey and as a result my opinion has changed. He does not have skills transferable to such a position in today's job market.... Therefore, in my opinion, he is an Unskilled worker with no useful, marketable vocational ability.

Claimant's Exhibit V, pp. 3-4.

The foregoing summary suggests, contrary to the contention of the respondents, that the Finding and Award in this matter contains a fair number of factual findings which accurately reflect the evidentiary record and, taken in their entirety, provide a more

than adequate basis for the reasonable inference that the claimant was temporarily totally disabled. As such, we find that the Finding and Award in the present matter comported with the provisions of Admin. Reg. 31-301-3. Moreover, the findings provide a more than sufficient basis for the reasonable inference that the ongoing difficulties experienced by the claimant since the injury of 2010 satisfied the Marandino “test” in that they constitute a disability which “is distinct from and due to a condition that is not a normal and immediate incident of the loss for which the claimant received disability benefits for loss of use.” Marandino, supra, 582. As our Supreme Court remarked in Cable v. Bic Corp., 270 Conn. 433 (2004), relative to an inquiry as to whether the trial commissioner had properly applied the burden-shifting analysis as set forth in Ford v. Blue Cross & Blue Shield of Connecticut, Inc., 216 Conn. 40 (1990), “[t]he Ford analysis is a legal standard; it is not a material fact nor is its recitation necessary to the commissioner’s factual determination.” Id., 441. We therefore agree with the claimant that it is “implicit in [the commissioner’s] decision ... that the [Marandino] test had been met or did not apply to the facts of the case....” Appellee’s Brief, p. 12.

In addition, we note that in the course of reviewing prior cases involving a claimant’s eligibility for temporary total disability benefits following the receipt of permanent partial disability benefits, the Marandino court also referenced Osterlund v. State, 135 Conn. 498 (1949), wherein a claimant who had previously been paid temporary partial and temporary total disability benefits was deemed eligible for additional temporary total disability benefits because he had demonstrated that he was unemployable. The Osterlund court stated as follows:

A finding that an employee is able to work at some gainful occupation within his reasonable capacities is not in all cases conclusive that he is not totally incapacitated. If, though he can do such work, his physical condition due to his injury is such that he cannot in the exercise of reasonable diligence find an employer who will employ him, he is just as much totally incapacitated as though he could not work at all.

Id., 506-507.

This precept was reiterated in a case of more recent vintage. In Bode v.

Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672 (2011), our

Appellate Court stated:

Whether a claimant is realistically employable requires an analysis of the effects of the compensable injury upon the claimant, in combination with his pre-existing talents, deficiencies, education and intelligence levels, vocational background, age, and any other factors which might prove relevant. This of course is the analysis that commissioners regularly undertake in total disability claims.... A commissioner always must examine the impact of the compensable injury upon the particular claimant before him.

Id., *quoting* R. Carter et al., 19 Connecticut Practice Series: Workers' Compensation Law (2008 Ed.) § 8:40, p. 301.

In light of the foregoing commentary, it may be reasonably inferred that the expert testimony of Dr. George and Albert Sabella, combined with the lengthy testimony proffered by the claimant and found credible by the commissioner, also provided a more than adequate basis for the commissioner to award the claimant temporary total disability benefits pursuant to Osterlund, *supra*, and Bode, *supra*. We therefore affirm the trial commissioner's findings with respect to the claimant's eligibility for temporary total disability benefits.

The respondents have also claimed as error the commissioner's failure to address "material and relevant facts" such as the May 7, 2015 Functional Capacity Evaluation

performed by Kathleen Gannon (Claimant’s Exhibit J), the September 11, 2015 Employability Evaluation & Wage Earning Capacity Determination Report authored by Erin S. Bailey, CRC, ABVE-F (Respondents’ Exhibit 6), and the November 16, 2015 Independent Medical Examination of Gerald J. Becker, M.D. (Respondents’ Exhibit 7). Again, as the respondents themselves point out, the provisions of Admin. Reg. § 31-301-3 require that a Finding “should contain only the ultimate relevant and material facts essential to the case in hand and found by [the commissioner]....” A commissioner is not required to specifically cite to every evidentiary submission and indicate whether it has been found credible and/or persuasive. Moreover, it is axiomatic that “[i]t 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).

In the present matter, we note that the trial commissioner did list all of the exhibits, included the ones referenced by the respondents in their claim of error, in his Finding and Award. As such, it may be reasonably inferred that the trial commissioner simply found the expert opinion of Dr. George and Albert Sabella more persuasive than that of Dr. Becker, Erin Bailey, and Kathleen Gannon. Simply because “[t]he respondents believe the case they presented, which included medical reports and an opinion by an expert vocational witness, Erin Bailey, challenging the claimant’s position, should have carried the day....,” Appellee’s Brief, p. 19, the trial commissioner was under no compunction to agree, and neither is this tribunal. The weight and credibility to be accorded evidentiary submissions is exclusively the province of the trier, and such

determinations cannot be overturned on appeal. See O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818 (1999).

The respondents have also claimed as error the trial commissioner's failure to set forth with any specificity the details regarding the payments due and owing to the claimant. The respondents contend that "[t]he Finding in this case is vague regarding what, if any, benefits are owed by the respondents. There is no order informing the respondents as to what is owed, when it begins and what accident is liable for the benefits to be paid." Appellants' Brief, p. 20. While we acknowledge that the Finding and Award is bereft of this information, it may be reasonably inferred that the trier assumed that the parties, having been advised that the claimant has an ongoing eligibility for temporary total disability benefits, would be able to consult the record and decipher these details on their own. Moreover, we agree with the claimant that the "[r]espondents are being disingenuous when they state ... that the [trial] Commissioner failed to articulate in his Finding that the respondents actually owe total disability benefits to the claimant." Appellee's Brief, p. 20. Our review of the Finding and Award indicates that the commissioner, in Conclusion, ¶ G, stated that "that the Claimant is totally disabled due to his compensable injuries." It is obvious that a finding of total disability will require the payment of temporary total disability benefits, regardless of the legal theory under which the benefits have been awarded.

The respondents have also claimed as error the trial commissioner's denial of their Motion to Correct. Our review of the proposed corrections indicates that for the most part, the respondents are merely reiterating the arguments made at trial which ultimately proved unavailing. With regard to the proposed corrections relative to the

prior permanency and/or post-specific payments received by the claimant, we fail to discern the bearing these prior payments would have on the analysis of whether the claimant is currently temporarily totally disabled.⁴ In addition, we have discussed previously herein the respondents' claim of error concerning the trial commissioner's failure to discuss certain medical reports and the commissioner's order regarding medical payments.

With specific regard to the respondents' proposed correction concerning the commissioner's reference to the claimant's receipt of Social Security Disability benefits in Findings, ¶ 17, we note that the admissibility of the Social Security Disability award letter was discussed extensively at trial. Claimant's Exhibit O; May 5, 2016 Transcript, pp. 62-66. Our review of the record indicates that the trier, after hearing the arguments from both parties, stated, "I'll keep it in right now for purposes of identification, and I'll withhold my decision as to whether or not it will come in as full evidence." *Id.*, 65. Given that the claimant himself testified at trial that he was awarded Social Security Disability in 2013, *id.*, 16, and the finding in question merely states that "Administrative Law Judge Alger found Mr. Gustafson to be disabled per social security guidelines in September 2013," Findings, ¶ 17, we are not persuaded that the commissioner placed undue reliance upon an exhibit which may not have been properly admitted. We therefore find no error in the commissioner's denial of the respondents' Motion to Correct. As this board has previously observed, when "a Motion to Correct involves requested factual findings which were disputed by the parties, which involved the

⁴ Again, it is our expectation that the parties should be able to consult the record in this matter in order to determine the details of the temporary total disability benefits currently due and owing to the claimant.

credibility of the evidence, or which would not affect the outcome of the case, we would not find any error in the denial of such a Motion to Correct.” Robare v. Robert Baker Companies, 4328 CRB-1-00-12 (January 2, 2002).

Finally, the respondents have claimed as error the trial commissioner’s denial of their Motion for Articulation. Generally speaking, “it is well established that [a]n articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification. . . . [P]roper utilization of the motion for articulation serves to dispel any . . . ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal.” (Internal quotation marks omitted.) Breen v. Craig, 124 Conn. App. 147, 161 (2010). Having reviewed the commissioner’s findings and the evidentiary record in their entirety, however, we are not persuaded that the Finding and Award was ambiguous. Rather, it may be reasonably inferred that in the trial commissioner’s estimation, the claimant’s testimony and the expert medical opinion deemed credible in this matter “spoke for themselves” in establishing the claimant’s current entitlement to temporary total disability benefits. As such, we find no error in the commissioner’s denial of the respondents’ Motion for Articulation.

There is no reversible error; the April 7, 2017 Finding and Award by Thomas J. Mullins, the Commissioner acting for the Fifth District, is accordingly affirmed.

Commissioners Daniel E. Dilzer and Stephen M. Morelli concur in this Opinion.