CASE NO. 6196 CRB-6-17-5 : COMPENSATION REVIEW BOARD
CLAIM NO. 601077987

CHARLENE SMITH : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : MAY 30, 2018

STATE OF CONNECTICUT
DEPARTMENT OF MOTOR VEHICLES
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLEE

and

GALLAGHER BASSETT SERVICES, INC.
ADMINISTRATOR

APPEARANCES:

The claimant appeared at oral argument as a self-represented party. At the trial level, the claimant was represented by William J. Sweeney, Jr., Esq., Law Offices of William J. Sweeney, Jr., L.L.C., One Liberty Square, New Britain, CT 06051.

The respondent was represented by Francis C. Vignati, Jr., Esq., Assistant Attorney General, Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120.

This Petition for Review from the May 8, 2017 Finding & Dismissal of Nancy E. Salerno, the Commissioner acting for the Sixth District, was heard November 17, 2017 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Christine L. Engel and Ernie R. Walker.[1]

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

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. It is well-settled in workers' compensation law that the claimant bears the burden of persuasion in a contested hearing before our commissioners. In the present matter, the claimant filed a claim seeking benefits for injuries she alleges she sustained as the result of a collision at her office between her and a co-worker. The trial commissioner was not persuaded that the claimant sustained the claimed injuries as the result of a workplace collision and dismissed the claim. The claimant has appealed this dismissal, arguing that the respondent's witnesses did not present truthful testimony at the hearing. We find that the claimant is essentially requesting that this panel retry the facts of the case. Given that such a request is beyond the purview of an appellate panel, we affirm the Finding & Dismissal.

The trial commissioner reached the following factual findings in her Finding & Dismissal. She noted that the issue to be determined at the formal hearing was whether the claimant's back, cervical, and left-arm injuries "arose out of and in the course of" her employment on June 18, 2015, as contemplated by the provisions of General Statutes § 31-275. The claimant and five other employees of the Department of Motor Vehicles [hereinafter "DMV"] testified at the hearing. The claimant said that while she was at work, she was bumped by a co-worker, Noemi Gonzalez, which collision caused her certain physical injuries. The claimant presented evidence that there had been a prior dispute between her and Gonzalez and there was animosity between them. The claimant argued that Gonzalez should not have been deemed a credible witness.

The respondent argued that as of the date the claimant allegedly sustained the workplace injury, the claimant had been involved in three prior motor vehicle accidents, and was still continuing to treat for injuries to her back on June 24, 2016. The respondent also noted that the claimant alleged that two prior altercations in the workplace had occurred: one in February 2015 involving a co-worker, Karen Yonika, and the previously-mentioned dispute with Gonzalez in April of 2015. The claimant alleges that Gonzalez intentionally bumped into her left shoulder during this dispute. Gonzalez denied that this incident occurred, and the respondent contends that it was not able to substantiate either allegation. Mary Santangelo, Division Manager at DMV, testified that she had to move the claimant's work station because she could not get along with her co-workers. With regard to the June 18, 2015 incident, Gonzalez denied it had occurred, and the respondent noted that none of the witnesses who testified saw any physical contact between the claimant and Gonzalez. The respondent sought to have the claim dismissed.

The trial commissioner reviewed the testimony presented at the hearing. The claimant testified regarding her prior motor vehicle accidents and the prior altercations with Yonika and Gonzalez. She said Yonika and Gonzalez were friends. The claimant also provided the following narrative regarding the events of June 18, 2015:

> On June 18, 2015 … at about 7:25 a.m. [the claimant] was making a copy of her time sheet and the copy machine closest to her was being occupied so she went to another copy machine and that one was also being used. The claimant then proceeded to the dealer on-line unit and used the copier there and while she was making a copy she was hit in the back by a co-worker named Noemi Gonzalez. Claimant stated, "I was hit in my back … it felt like a shoulder or elbow under my shoulder blade really hard so hard it stung me. I couldn't verbalize or move or anything so once I was able to get collected and stop seeing stars I looked to my left and

> saw Noemi Gonzalez in the back of the room by the window with her head down laughing…."
> Then the claimant turned to walk away from the copy machine and made a comment to another co-worker named Jonathan Roberts. Claimant testified that she believes Mr. Roberts saw the entire incident and noted that his work station is located directly behind the copy machine where this incident occurred. Claimant stated that following the incident with Ms. Gonzalez, she said to Mr. Roberts, "[you] know you seen her hit me."

Findings,¶ 3.e; October 24, 2016 Transcript, pp. 14-15, 25.

Following this incident, the claimant said she reported the event to Santangelo, as well as to the secretary for the DMV commissioner and the DMV Human Resource Administrator. The claimant said that she went to the copier where this incident allegedly occurred only once on the day of the incident. She testified that Santangelo cleared her to seek medical attention. The claimant was out of work until June 22, 2015. She also indicated that she filed a report about this incident with the Wethersfield Police Department and the police report was not accurate. See Respondent's Exhibit 2.

Santangelo also testified. She stated that she was aware the claimant had made a prior complaint against Yonika but was not aware of the prior complaint against Gonzalez in April of 2015. She noted that she had moved the claimant from department to department because there were conflicts wherever the claimant was working. Santangelo testified that on June 18, 2015, she had a clear unobstructed view of the copier, saw Gonzalez walk by the claimant at the copier, and did not see Gonzalez bump into or hit the claimant. Thereafter, Santangelo overheard part of a loud conversation between the claimant and a co-employee named Jonathan Roberts, and Santangelo asked Roberts what he and the claimant were discussing.

Santangelo testified that after the incident, the claimant arrived in her office holding the left side of her neck and saying she had been bumped on purpose by Gonzalez and needed to see a doctor. Santangelo indicated that she agreed to clear the claimant to see a doctor, but told the claimant she had not seen Gonzalez bump the claimant and would inform Human Resources about what she had observed at the copy machine that morning. On cross–examination, Santangelo said she did not know whether Gonzalez walked by the claimant more than once on June 18, 2015.

Gonzalez testified that prior to June 18, 2015, she filed a complaint regarding work that was being done incorrectly by staff in the microfilm department and met with the claimant so she could explain to the claimant the nature of the problem. She said she was aware of a prior incident between the claimant and Yonika but was not aware that the claimant had made a claim regarding Gonzalez in April of 2015. Gonzalez testified that although she did see the claimant at the copier on June 18, 2015, she "did not push, elbow, or touch the claimant as she walked by her and confirmed that she did not have any physical contact with the claimant that morning." Findings, ¶ 5.c.

Lori Gionfriddo and Jonathan Roberts also testified. Gionfriddo testified that she saw Gonzalez walk by the claimant at the copier on June 18, 2015, but stated that she did not see Gonzalez hit or strike the claimant. Roberts indicated "that although he could not see the space between Ms. Gonzalez and the claimant as Ms. Gonzalez walked by, he had a clear line of vision to the June 18, 2015 incident." Findings, ¶ 7.a. Roberts testified that he saw the claimant at the copier making copies, and he also saw Gonzalez walk by the claimant with no physical contact and continue to the end of the aisle. He then heard the claimant say, "[n]ext time you bump into me I'm going to bump you back."

Findings, ¶ 7.b; December 6, 2016 Transcript, p.15. Roberts testified that he said to the claimant, "Charlene stop it nobody bumped into you, she clearly walked right by you…" Id. Roberts further testified that the claimant continued to insist that Roberts had seen Gonzalez bump into the claimant. He said Santangelo asked him to send her an e-mail outlining his narrative of the event, which he did. See Respondent's Exhibit 3.

Based on this record, the trial commissioner found credible and persuasive the testimony of the claimant that she was involved in three unrelated motor vehicle accidents involving her neck and back prior to the June 18, 2015 incident and was still treating on June 24, 2016 for back symptoms. However, the commissioner also concluded that the other witnesses had presented credible and persuasive testimony, in particular noting Roberts' testimony indicating that he did not observe any physical contact between the claimant and Gonzalez when Gonzalez walked by the claimant on June 18, 2015. Therefore, based on the totality of the evidence submitted, the commissioner did not find that the claimant had sustained her burden that her back, cervical and left-arm injuries "arose out of and in the course of" her employment on June 18, 2015, as contemplated by the provisions of General Statutes § 31-275.

The claimant did not file a motion to correct. Instead, she filed a Petition for Review and subsequently filed Reasons for Appeal. She also indicated that she would like to add additional evidence to the record. The respondent has objected to the addition of any additional evidence.[2] The gravamen of the appeal is that the trial commissioner

[2] On June 23, 2018, the claimant requested a second extension of time to file her Reasons of Appeal, indicating that she had requested additional documents "from parties associated to this claim" but had not yet received the documents. On July 31, 2018, the claimant hand-delivered a package of documents entitled "Appeal," and on September 6, 2018, the respondent filed a Request to Exclude Additional Evidence. The respondent did not raise this issue at oral argument. It is of course well-settled that, absent the granting of a motion to submit additional evidence, this tribunal is not empowered to consider

erred in finding the testimony of the other DMV witnesses credible because the claimant believes they did not present truthful testimony. The respondent argues that issues relative to witness credibility are exclusively the province of the fact-finder in contested hearings, and the claimant is essentially seeking to retry the case on appeal.

We note that the standard of deference we are obliged to apply to a trial commissioner's findings and legal conclusions is well-settled. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). "This presumption, however, can be challenged by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

As this board has pointed out on previous occasions, "[t]here are few principles of jurisprudence more fundamental than the principle that a trier of fact must be the one party responsible for finding the truth amidst conflicting claims and evidence."

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submissions which were not part of the formal record. Krajewski v. Atlantic Machine Tool Works, Inc., a/k/a Atlantic Aerospace Textron, 4500 CRB-6-02-3 (March 7, 2003), *citing* Drew v. Sears, Roebuck & Co., 4400 CRB-7-01-5 (May 2, 2002), *appeal dismissed*, A.C. 23094 (August 21, 2002). However, in light of the customary degree of latitude generally afforded self-represented litigants, and our ultimate decision on the merits in this matter, we deem this issue abandoned on appeal. Walter v. Bridgeport, 5092 CRB-4-06-5 (May 16, 2007).

O'Connor v. Med-Center Home Healthcare, Inc., 4954 CRB-5-05-6 (July 17, 2006). Moreover, in Torres v. New England Masonry Company, 5289 CRB-5-07-10 (January 6, 2009), we stated that "[t]he burden of proof in a workers' compensation claim for benefits rests with the claimant." Id. See also Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440 (2001); Lentini v. Connecticut College, 4933 CRB-2-05-4 (May 15, 2006).

We have reviewed the record in this matter, and note that although the claimant presented a medical report at the formal hearing from her initial visit to the Wethersfield Office/Hartford HealthCare Medical Group on June 18, 2015, this report did not offer an opinion regarding the causation of the claimant's injury other than to simply recite the claimant's own narrative. See Claimant's Exhibit D. The record is bereft of an opinion by any physician linking the claimant's present medical condition to the events alleged to have occurred on June 18, 2015. While some injuries may be proven solely by lay testimony, we believe the injuries alleged by the claimant in this matter would require probative medical evidence in order to establish that they are compensable. See Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142 (1972); Jodlowski v. Stanley Works, 5627 CRB-6-11-2 (March 13, 2012).

We reach this conclusion in part because the claimant testified to having suffered a number of traumatic non-compensable injuries prior to the events which precipitated this claim. See October 24, 2016 Transcript, pp. 20-22. Unlike the claim in Jodlowski, supra, this is not a situation in which "no other possible cause for the claimant's hernia … was presented to the tribunal." Id. Instead, this matter is indistinguishable from Do v. Danaher Tool Group, 5029 CRB-6-05-12 (November 28, 2006), in which the respondents

presented evidence of the claimant's prior motor vehicle accident.[3] If the trial commissioner was not convinced that whatever had occurred in the workplace was responsible for the claimant's injuries, she could reasonably infer that the claimant's ailments were the result of the prior non-compensable injuries sustained by the claimant.

In any event, the trial commissioner found credible and persuasive the testimony of the respondent's witnesses who rebutted the claimant's narrative. As our Appellate Court pointed out in Baron v. Genlyte Thomas Group, LLC, 132 Conn. App. 794 (2012), "[t]he commissioner, as finder of fact, is the sole arbiter of credibility...." Id., 804. In addition, in Burton, supra, the Supreme Court indicated that this decision may not be revisited on appeal:

> Credibility must be assessed ... not by reading the cold printed record, but by observing firsthand the witness' conduct, demeanor and attitude.... An appellate court must defer to the trier of fact's assessment of credibility because [i]t is the [fact finder] ... [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences therefrom.... As a practical matter, it is inappropriate to assess credibility without having watched a witness testify, because demeanor, conduct and other factors are not fully reflected in the cold, printed record. (Internal quotation marks omitted.)

Burton, supra, 40, *quoting* Briggs v. McWeeny, 260 Conn. 296, 327 (2002).

This tribunal is not empowered to reverse a trial commissioner's conclusions regarding the credibility of witnesses. As we have previously stated, "[i]f the trier is not persuaded by the claimant's evidence, there is nothing that this board can do to override

[3] In Do v. Danaher Tool Group, 5029 CRB-6-05-12 (November 28, 2006), the claimant argued that because her testimony and her medical evidence were not contradicted by the respondents, the trial commissioner had erroneously dismissed the claim. We affirmed the trial commissioner, concluding that the record provided a reasonable basis for the commissioner to find the claimant's evidence unpersuasive. We note that in the present matter, the claimant did not offer a causation opinion from a medical expert, and the respondent presented witnesses contesting the claimant's claim that she had been injured in a collision with a co-worker.

that decision on appeal." Wierzbicki v. Federal Reserve Bank of Boston, 4147 CRB-1-99-11 (December 19, 2000), *appeal dismissed*, A.C. 21533 (June 14, 2001).

There is no error; the May 8, 2017 Finding & Dismissal of Nancy E. Salerno, the Commissioner acting for the Sixth District, is accordingly affirmed.

Commissioners Christine L. Engel and Ernie R. Walker concur in this opinion.

CERTIFICATION

THIS IS TO CERTIFY THAT a copy of the foregoing was mailed this 30th day of May 2018 to the following parties:

CHARLENE S. SMITH — 7011 2970 0000 6088 8655
243 Lawlor Street, Unit 3C
New Britain, CT 06051

WILLIAM J. SWEENEY, JR., ESQ. — 7011 2970 0000 6088 8622
Law Offices of William J. Sweeney, Jr., L.L.C.
One Liberty Square
New Britain, CT 06051

STATE OF CONNECTICUT
DEPARTMENT OF MOTOR VEHICLES
60 State Street
Wethersfield, CT 06161

FRANCIS C. VIGNATI, JR., ESQ. — 7011 2970 0000 6088 8679
Assistant Attorney General
Office of the Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

_____
Jackie E. Sellars
Administrative Hearings Specialist
Compensation Review Board
Workers' Compensation Commission