CASE NO. 6200 CRB-4-17-6 CLAIM NO. 400080920	: COMPENSATION REVIEW BOARD
VICTORIA LONGO CLAIMANT-APPELLANT	: WORKERS' COMPENSATION COMMISSION
v.	: JUNE 15, 2018

NATIONAL EXPRESS/DURHAM
SCHOOL SERVICES
EMPLOYER

and

SEDGWICK CMS, INC.
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Kevin M. Blake, Esq., Jonathan Perkins Injury Lawyers, 965 Fairfield Avenue, Bridgeport, CT 06605.

The respondents were represented by John P. Majewski, Esq., Tinley, Renehan & Dost, L.L.P., 60 North Main Street, Second Floor, Waterbury, CT 06702.

This Petition for Review from the June 14, 2017 Finding and Dismissal of Jodi Murray Gregg, the Commissioner acting for the Fourth District, was heard December 15, 2017 before a Compensation Review Board panel consisting of the 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 June 14, 2017 Finding and Dismissal by Jodi Murray Gregg, Commissioner for the Fourth District, who concluded that the claimant's lumbar spine injuries were not the result of a compensable motor vehicle accident. The claimant has appealed, arguing that the weight of the evidence presented at the formal hearing supports her argument that her lumbar spine injuries were work-related. The respondents contend that it is the role of the trial commissioner to weigh the evidence and the trial commissioner in this case resolved the issue in a manner adverse to the claimant. We find that this dispute is essentially about the weight to be accorded factual evidence, which is beyond the purview of an appellate panel. As a result, we affirm the Finding and Dismissal.

The trial commissioner reached the following factual findings at the conclusion of the formal hearing in this matter. She found that the claimant was involved in a compensable motor vehicle accident on March 18, 2010, while employed as a school bus driver. At the time of the incident, the claimant signed a release form for the Milford Fire Department declining treatment and said she would go to the hospital on her own. The form indicated that she was complaining of neck, right shoulder/elbow and abdominal pain. Findings, ¶ 2; Claimant's Exhibit A.

The claimant was taken to Milford Hospital by her supervisor, and a diagnostic imaging report of the same date indicated that the claimant presented with neck, shoulder

and back pain.[1] Findings, ¶ 5; Claimant's Exhibit C. She was diagnosed with a cervical strain and referred to an orthopedic physician. On April 5, 2010, the claimant was evaluated by Aaron Schachter, M.D., an orthopedic surgeon. The doctor noted that the claimant had presented with neck pain as a result of a motor vehicle accident, diagnosed the claimant with a cervical strain, and referred her to physical therapy. See Respondents' Exhibit 1. The claimant was instructed to follow up in six weeks. She continued to treat with Dr. Schachter and underwent several months of physical therapy for her cervical spine through August 2010.

On June 4, 2012, the claimant returned to Dr. Schachter with complaints of low back pain and leg symptoms. The doctor noted that he could not ascertain the basis of her symptoms or the causal relationship to the original date of injury. Id. On December 18, 2014, the claimant presented for an evaluation with Michael E. Karnasiewicz, M.D., A.B.N.S., a neurosurgeon. Dr. Karnasiewicz reported that the claimant had reached maximum medical improvement with regard to her cervical spine; however, he referred her for a brief course of physical therapy. See Claimant's Exhibit D. On November 18, 2015, Dr. Karnasiewicz referred the claimant to Alisa H. Darling, M.D., A.B.P.M.R., a physiatrist, for pain in her cervical spine. On January 19, 2016, the claimant presented to Dr. Darling with cervical and back pain. Dr. Darling recommended another course of physical therapy for the cervical spine and trigger point injections. The claimant continued conservative treatment for her cervical spine with Dr. Darling through April 16, 2016.

[1] The Finding and Dismissal incorrectly identified the date of this report as "March 18, 2017." 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).

On May 9, 2016, Dr. Karnasiewicz recommended a cervical fusion. The respondent-employer authorized the surgery and it was performed shortly thereafter. Subsequent to the surgery, on June 7, 2016, Dr. Darling opined that within a reasonable degree of medical probability, the claimant's lumbar pain was related to the March 18, 2010 incident. Id. The claimant testified that she has been treating for her neck and back since the date of injury.

At the respondents' request, Mark D. Lorenze, M.D., an orthopedic surgeon, performed a medical review of the claimant's medical records. At his deposition, Dr. Lorenze testified that the claimant's lumbar spine injury was not related to the March 18, 2010 incident. See Respondents' Exhibit 2, p. 5. The doctor based his opinion on the fact that the claimant did not have any significant complaints about the lumbar spine or any medical treatment to the lumbar spine for years after the date of injury.

Based on this record, the trial commissioner did not find either the claimant's testimony or her medical evidence persuasive; nor did the trier find Dr. Darling's report persuasive or credible. Instead, she found credible Dr. Lorenze's deposition testimony opining that the claimant's lumbar spine injury was not related to the March 18, 2010 work-related motor vehicle accident, which opinion was predicated on the claimant's lack of treatment to the lumbar spine for years after the original date of injury. The claimant filed a motion to correct, the gravamen of which was to contend that the trial commissioner should have found persuasive Dr. Darling's opinion regarding causation of the claimant's lumbar spine injury and, as such, concluded that the claimant's lumbar

spine injury was compensable. The trial commissioner denied this motion in its entirety and the claimant has pursued this 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).

In essence, the claimant's argument on appeal is that the weight of the evidence supports her position regarding the compensability of her lumbar spine injury. She notes that the trial commissioner failed to credit the opinions from Drs. Darling and Schachter, and contends that had the commissioner credited this evidence, it would have supported an award. We agree that had the commissioner found these opinions persuasive, it would have supported an award to the claimant. However, it is well-settled that the burden of persuasion in hearings before the Workers' Compensation Commission rests with the claimant. Lentini v. Connecticut College, 4933 CRB-2-05-4 (May 15, 2006). "All

judgments of evidentiary credibility are left solely to the trial commissioner, who is charged with deciding which of the documentary exhibits and witnesses are the most believable." Prescott v. Community Health Center, Inc., 4426 CRB 8-01-8 (August 23, 2002). See also Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999).

As previously noted herein, the trial commissioner found the medical opinion of Dr. Lorenze persuasive and credible. We have reviewed the transcript of his deposition taken on January 30, 2017 and note that the doctor unequivocally opined that the claimant's lumbar spine injury was not caused by the work-related motor vehicle accident. Respondents' Exhibit 2, p. 5. The doctor also testified that the lapse of time between that incident and the date when the claimant commenced treatment had led him to conclude the two matters were unrelated. Id. In addition, Dr. Lorenze opined that the claimant suffered from degenerative arthritis in her back. Id., 8-9. Given that Dr. Lorenze offered a probative opinion on the issue of causation, the trial commissioner was able to rely on this opinion and disregard the opinions which were supportive of the claimant's contentions. "If on review this board is able to ascertain a reasonable diagnostic method behind the challenged medical opinion, we must honor the trier's discretion to credit that opinion above a conflicting diagnosis." Strong v. UTC/Pratt & Whitney, 4563 CRB-1-02-8 (August 25, 2003).

It is axiomatic that the causation of a claimant's injury is always a question of fact for the trial commissioner. As this board has previously observed, "[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."

O'Connor v. Med-Center Home Healthcare, Inc., 4954 CRB-5-05-6 (July 17, 2006). The trial commissioner, having relied on the respondents' expert who opined that the incident of March 18, 2010 did not cause the claimant's lumbar spine issues, concluded that the claimant had failed to prove that a work-related incident caused her lumbar spine ailment. In a "dueling expert" case, reaching such a determination is the prerogative of the fact-finder. See Dellacamera v. Waterbury, 4966 CRB-5-05-6 (June 29, 2006), *appeal withdrawn*, A.C. 27853 (September 12, 2006).

Given that the trial commissioner relied on probative evidence in dismissing this claim, the June 14, 2017 Finding and Dismissal by Jodi Murray Gregg, Commissioner for the Fourth District, is accordingly affirmed.[2]

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

[2] We note that the claimant believes her motion to correct should have been granted. Given that the proposed corrections sought to interpose the claimant's conclusions as to the law and the facts presented, it was well within the trial commissioner's discretion to deny this motion. See D'Amico, supra, 728; Brockenberry v. Thomas Deegan d/b/a Tom's Scrap Metal, Inc., 5429 CRB-5-09-2 (January 22, 2010), *aff'd*, 126 Conn. App. 902 (2011) (per curiam); Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006). We also find that many of the proposed corrections appear to be an effort to reargue the factual evidence presented at the formal hearing. For the reasons clearly stated in Fair v. People's Savings Bank, 207 Conn. 535 (1988), the proposed corrections are not persuasive.

CERTIFICATION

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

VICTORIA LONGO
297 Old Amity Road
Woodbridge, CT 06525

KEVIN M. BLAKE, ESQ. 7011 2970 0000 6088 8709
Jonathan Perkins Injury Lawyers
965 Fairfield Ave.
Bridgeport, CT 06605

NATIONAL EXPRESS
345 Old Gate Lane
Milford, CT 06460

JOHN P. MAJEWSKI, ESQ. 7011 2970 0000 6088 8716
Tinley, Renehan & Dost, L.L.P.
60 North Main Street
Second Floor
Waterbury, CT 06702

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