CASE NO. 6201 CRB-1-17-7 : COMPENSATION REVIEW BOARD
CLAIM NO. 200189088

JOSE DeJESUS : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : NOVEMBER 8, 2018

R.P.M. ENTERPRISES, INC.
and/or ROBERT M. MARION, SR.
EMPLOYERS
NO RECORD OF INSURANCE
RESPONDENTS-APPELLANTS

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

The claimant was represented by Lori M. Comforti, Esq. Law Office of Lori M. Comforti, L.L.C., 108 Sachem Street, Norwich, CT 06360.

Respondents R.P.M. Enterprises, Inc. and/or Robert M. Marion, Sr., were represented by Robert M. Fitzgerald, Esq., 22 North Street, Willimantic, CT 06226.

Respondent Second Injury Fund was represented by Joy L. Avallone, 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 June 16, 2017 Finding Re: Subject Matter Jurisdiction of Ernie R. Walker, the Commissioner acting for the Second District, was heard April 27, 2018 before a Compensation Review Board panel consisting of Commissioners Scott A. Barton, Jodi Murray Gregg, and Stephen M. Morelli.[1] [2]

[1] We note that a motion for a continuance and two motions for extension of time were granted during the pendency of this appeal.
[2] As of the date this matter was heard by the Compensation Review Board, Commission Chairman Stephen M. Morelli had not yet been appointed to that position.

OPINION

SCOTT A. BARTON, COMMISSIONER: The respondents have appealed from the June 16, 2017 Finding Re: Subject Matter Jurisdiction [hereinafter "Finding"] by Commissioner Ernie R. Walker in which the commissioner concluded that the Workers' Compensation Commission [hereinafter "Commission"] had jurisdiction to award the claimant benefits for a December 9, 2013 injury. The claimant contends that he was injured at his place of employment and transported to the hospital by his supervisor, and an employer-employee relationship existed at the time of his injury. It is also the claimant's position that the statutory requirements for the medical care exception pursuant to General Statutes § 31-294c (c)[3] were satisfied and provide a jurisdictional basis for the award of benefits.

The respondent-employers dispute these claims, arguing that the claimant did not file his notice of claim ["form 30C"] until well after the one-year time limitation prescribed by General Statutes § 31-294c (a).[4] Robert Marion, Sr. [hereinafter "Marion,

[3] General Statutes § 31-294c (c) states: "Failure to provide a notice of claim under subsection (a) of this section shall not bar maintenance of the proceedings if there has been a hearing or a written request for a hearing or an assignment for a hearing within a one-year period from the date of the accident or within a three-year period from the first manifestation of a symptom of the occupational disease, as the case may be, or if a voluntary agreement has been submitted within the applicable period, or if within the applicable period an employee has been furnished, for the injury with respect to which compensation is claimed, with medical or surgical care as provided in section 31-294d. No defect or inaccuracy of notice of claim shall bar maintenance of proceedings unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice. Upon satisfactory showing of ignorance and prejudice, the employer shall receive allowance to the extent of the prejudice."

[4] General Statutes § 31-294c (a) states: "No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury, provided, if death has resulted within two years from the date of the accident or first manifestation of a symptom of the occupational disease, a dependent or dependents, or the legal representative of the deceased employee, may make claim for compensation within the two-year period or within one year from the date of death, whichever is later. Notice of claim for compensation may be given to the employer or any commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident, or the date of the first manifestation of a symptom of the occupational disease and the nature of the disease,

Sr.,"], the principal of R.P.M. Enterprises, Inc. [hereinafter "R.P.M."], also contends that the facts were insufficient to find him personally liable for an injury to one of his company's workers. In addition, the respondent-employers argue that the manner in which the trial commissioner conducted the hearing deprived them of sufficient notice to adequately defend against the various issues under consideration. The Second Injury Fund [hereinafter "Fund"], which appeared pursuant to General Statutes § 31-355, argues that the evidentiary record provided a sufficient basis for the trial commissioner's findings. [5] Having reviewed the evidentiary record, we believe the Finding is supported

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as the case may be, and the name and address of the employee and of the person in whose interest compensation is claimed. An employee of the state shall send a copy of the notice to the Commissioner of Administrative Services. An employee of a municipality shall send a copy of the notice to the town clerk of the municipality in which he or she is employed. An employer, other than the state or a municipality, may opt to post a copy of where notice of a claim for compensation shall be sent by an employee in the workplace location where other labor law posters required by the Labor Department are prominently displayed. In addition, an employer, opting to post where notice of a claim for compensation by an employee shall be sent, shall forward the address of where notice of a claim for compensation shall be sent to the Workers' Compensation Commission and the commission shall post such address on its Internet web site. An employer shall be responsible for verifying that information posted at a workplace location is consistent with the information posted on the commission's Internet web site. If an employee, other than an employee of the state or a municipality, opts to mail to his or her employer the written notice of a claim for compensation required under the provisions of this section, such written notice shall be sent by the employee to the employer by certified mail. As used in this section, 'manifestation of a symptom' means manifestation to an employee claiming compensation, or to some other person standing in such relation to him that the knowledge of the person would be imputed to him, in a manner that is or should be recognized by him as symptomatic of the occupational disease for which compensation is claimed."

[5] General Statutes § 31-355 states: "(a) The commissioner shall give notice to the Treasurer of all hearing of matters that may involve payment from the Second Injury Fund, and may make an award directing the Treasurer to make payment from the fund.

(b) When an award of compensation has been made under the provisions of this chapter against an employer who failed, neglected, refused or is unable to pay any type of benefit coming due as a consequence of such award or any adjustment in compensation required by this chapter, and whose insurer failed, neglected, refused or is unable to pay the compensation, such compensation shall be paid from the Second Injury Fund. The commissioner, on a finding of failure or inability to pay compensation, shall give notice to the Treasurer of the award, directing the Treasurer to make payment from the fund. Whenever liability to pay compensation is contested by the Treasurer, the Treasurer shall file with the commissioner, on or before the twenty-eighth day after the Treasurer has received an order of payment from the commissioner, a notice in accordance with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested. A copy of the notice shall be sent to the employee. The commissioner shall hold a hearing on such contested liability at the request of the Treasurer or the employee in accordance with the provisions of this chapter. If the Treasurer fails to file the notice contesting liability within the time prescribed in this section, the Treasurer shall be conclusively presumed to have accepted

by sufficient facts and properly applies the pertinent law. Therefore, we affirm the Finding.

At the conclusion of the formal hearing, the trial commissioner found the following facts which are relevant to our review of this appeal. The claimant testified that he was born in Puerto Rico and moved to the U.S. mainland as a child. Prior to working for the respondent-employers, he worked as a mechanic for his uncle and brother. He first became involved with R.P.M. when he went into the R.P.M. facility to obtain an axle for his car. He indicated that he told the manager, Russell Adams, how to remove an axle from another vehicle, and Adams told the claimant that if he ever needed a job, he would hire him.

Approximately one year later, the claimant was hired by Adams to work at R.P.M. Monday through Saturday between the hours of 8:00 a.m. and 4:00 p.m. The claimant was initially paid $60 to $75 per day and received a $600 Christmas bonus for many years. During the year prior to his injury, the claimant was paid $100 per weekday, and $50 for Saturdays. His job duties included removing parts from cars, changing oil and tires, fixing the loader, picking up cars, and traveling to properties owned by Marion, Sr., to shovel snow and work on the lawn. He testified that the tools he used at R.P.M. were tools owned by the junkyard. He also indicated that his work activities at R.P.M. were directed by Adams, Marion, Sr., and Robert Marion, Jr., [hereinafter "Marion, Jr.,"] and all three individuals had control over his work activities.

The claimant testified regarding the events of December 9, 2013. He said that his wife dropped him off at work and the weather was cold and snowy. He was directed to

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the compensability of such alleged injury or death from the Second Injury Fund and shall have no right thereafter to contest the employee's right to receive compensation on any grounds or contest the extent of the employee's disability."

remove parts from several cars and, once he was done, he went to sit by a wood stove. Marion, Jr., directed him to remove the converter on a car that was lying on its side propped up by a pipe. The car had been placed on its side by Adams and Marion, Jr. The claimant was kneeling on the ground facing the car and removing some bolts when the car fell onto his shoulders and the back of his head. He felt the car crushing him and his back cracking. The claimant testified that Adams and Marion, Jr., lifted the car off him but he could not feel his legs. He found his cell phone and left his wife a message. Afterwards, Marion, Sr., came around the corner and asked what had happened to the claimant, and the claimant told him a car had fallen on him. The claimant's coworkers went to locate some means to transport him from the accident site, found a wet old mattress, placed him on the mattress, and drove him to a local hospital. He said that Adams drove him to the hospital in a black van owned by Adams' wife, and although Marion, Jr., followed them to the hospital, neither he nor Adams went into the hospital with him. The claimant testified that the respondents paid him $500 per week subsequent to his injury.

Marion, Sr., testified he was the owner of R.P.M. from 1984 until at least November 2016. He indicated that he was not at the junkyard on December 9, 2013, and had no knowledge that the claimant had injured himself there that day. He also testified that he believed the business was closed on that date. He indicated that he paid the claimant $500 per week after the accident because he and the claimant were friends; he also purchased an electric wheelchair for the claimant and built a wheelchair ramp at the claimant's home.

Marion, Sr., indicated that the claimant's employment relationship with R.P.M. was that of an independent contractor, and he submitted into evidence independent contractor agreements. He paid the claimant cash "off the books" at the claimant's request. He also testified regarding the claimant's job duties, which included working on personal vehicles owned by Marion, Sr., and doing yard work at the homes of both Marion, Sr., and his mother. He said the claimant helped construct a building at the R.P.M. premises and described the specialty tools provided by R.P.M. for various tasks. Marion, Sr., further testified that was responsible for R.P.M.'s payroll and tax returns and he never procured workers' compensation insurance for R.P.M. He also made a number of assertions concerning the lack of control exercised by R.P.M. over the claimant's work activities.

The trial commissioner considered the timeliness of the claim pursuant to General Statutes § 31-294c, noting that forms 30C initiating the claim were filed more than one year after the date of injury, no hearing was requested during this time period, and the respondents did not provide a voluntary agreement.[6] In fact, Marion, Sr., testified that he did not learn the claimant was making a claim against R.P.M. until he received the notice of claim more than one year after the date of injury. The claimant, on the other hand, asserts that Marion, Sr., knew of the incident in which he was injured and proffered medical care. He contends that R.P.M.'s agent, Adams, transported him to the hospital on the day of the injury and Marion, Sr., provided funds to buy a wheelchair and construct a wheelchair ramp within one year of the accident. The commissioner also cited testimony from the claimant indicating that construction of the ramp actually occurred in February 2015, more than one year after the accident.

[6] The forms 30C were dated May 4, 2015, and September 10, 2015, respectively.

The trial commissioner reviewed the exhibits entered into evidence, including the checks issued by R.P.M., a transcript of the claimant's deposition, the independent contractor agreements, and medical records relating to the claimant's injuries. He also noted that Adams and Marion, Jr., were subpoenaed to appear at a formal hearing but the subpoenas were unable to be served on the witnesses.

Based on the foregoing, the trial commissioner concluded that the claimant's testimony was mostly credible and the testimony of Marion, Sr., was neither credible nor persuasive. The trial commissioner also found the claimant credible relative to the specific issue of whether the claimant, after the injury, was transported to the hospital by agents of R.P.M. The trial commissioner concluded that because the notice statute had been tolled and the claim was timely, the Commission had jurisdiction to award benefits. The trial commissioner also determined, based on the totality of the evidence, that the claimant was not an independent contractor because he was subject to the control and direction of R.P.M. and/or Marion, Sr. As such, the existence of an employer/employee relationship also afforded the Commission jurisdiction over the claimant's injury. Having resolved the issue of jurisdiction, the trial commissioner ordered additional proceedings to discuss issues pertaining to the merits of the underlying claim.

The respondent-employers did not file a motion to correct but did file a timely petition for review in which they raise a number of claims of error. They contend that the commissioner improperly decided to bifurcate the hearing and examine the issue of jurisdiction separately from issues pertaining to the award of benefits. Marion, Sr., also argues that the Fund is limited to seeking relief against him in Superior Court rather than at the Commission, and the facts did not warrant piercing the corporate veil. The

respondent-employers contend that the trial commissioner erroneously failed to conclude that the independent contractor agreements executed by the claimant were dispositive of the issue of whether an employee-employer relationship existed in this matter. They also claim as error the commissioner's conclusion that the respondent-employers furnished medical care to the claimant.

The claimant and the Fund argue that the manner in which the hearing was held was proper, and both R.P.M. and Marion, Sr., were on notice regarding the possible remedies under consideration. The claimant also argues that the probative evidence found credible by the commissioner provided an adequate basis for his jurisdictional findings. The Fund contends that because R.P.M. was an uninsured employer, the Fund was obligated to enter the case, and the evidentiary record also provided an adequate basis for the commissioner's conclusion that R.P.M. and Marion, Sr., were alter egos.

Our standard of appellate review is limited and deferential to the fact-finding prerogative of the trial commissioner. In addition, in the absence of a motion to correct, we are constrained in our ability to challenge factual findings. Stevens v. Raymark Industries, Inc., 5215 CRB-4-07-4 (March 26, 2008), *appeal dismissed*, A.C. 29795 (June 26, 2008). It is axiomatic that "[t]he 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 the present matter, it is necessary to first address the procedural and "standing" arguments raised by the respondent-employers prior to examining the merits of the underlying claim. They argue that it was improper to bifurcate the claim and hold a separate hearing on the issue of jurisdiction; they also contend that they never received notice regarding the type of relief which could potentially be ordered in this case. We are not persuaded by these arguments. It is well-settled that a trial commissioner must address issues of subject matter jurisdiction prior to considering the merits of a claim.[7] Moreover, "[t]he burden in a workers' compensation claim rests upon the claimant to prove that he is an 'employee' under the act and thus is entitled to invoke the act." Castro v. Viera, 207 Conn. 420, 426 (1988). In addition, "[o]nce a determination is reached that we lack subject matter jurisdiction no further inquiry is warranted." Mankus v. Mankus, 4958 CRB-1-05-6 (August 22, 2006), *aff'd*, 107 Conn. App. 585 (2008), *cert. denied*, 288 Conn. 904 (2008).

These precepts are equally applicable when a claimant must establish that the requirements for the "medical care exception" pursuant to General Statutes § 31-294c have been satisfied. See Henry v. Ansonia, 5832 CRB-4-13-4 (August 6, 2014); Miller v.

[7] At the formal hearing of April 12, 2016, counsel for respondent-employer R.P.M. specifically asked the trial commissioner to dismiss the claim for lack of subject matter jurisdiction. See Transcript, p. 11.

State/Judicial Branch, 5584 CRB-7-10-8 (November 28, 2011).[8] It is equally well-settled that a trial commissioner retains the discretion to decide when to bifurcate proceedings; as such, we do not find erroneous the commissioner's decision to bifurcate the jurisdictional issue in the present matter. See Martinez-McCord v. Judicial Branch, 5055 CRB-7-06-2 (February 1, 2007).

The respondent-employers also contend that the provisions of General Statutes § 31-355 (b) prohibit the Fund from appearing and litigating until after there has been a determination regarding liability, an award of benefits to the claimant, and nonpayment of that award. They further suggest that the Fund's remedies for an employer's failure to pay an award of benefits are limited to a collection action in Superior Court. The Fund argues that General Statutes § 31-355 (b) empowers it to litigate the merits of cases in which the employer is not insured for workers' compensation benefits. The Fund points to Muniz v. Allied Community Resources Inc., 108 Conn. App. 581 (2008), *cert. denied*, 289 Conn. 927 (2008), as an example of a claim in which it intervened to contest jurisdiction prior to an award of benefits. Id., 583, n.2.

We have reviewed our Supreme Court's reasoning in Dechio v. Raymark Industries, Inc., 299 Conn. 376 (2010), and believe this decision stands for the proposition that the Fund should litigate the issues involved in the underlying claim whenever its interests are implicated. We believe that Dechio is also dispositive of the

[8] The respondent-employers argue that any effort to ascertain whether jurisdiction lies because of the medical care exception would inevitably require litigating the facts pertaining to the claimant's narrative of how he was injured. We note that similar situations occurred in Pernacchio v. New Haven, 3911 CRB-3-98-10 (September 27, 1999), *aff'd*, 63 Conn. App. 570 (2001), and Hodges v. Federal Express Corporation, 5717 CRB-7-12-1 (January 4, 2013), *appeal withdrawn*, A.C. 35342 (February 14, 2013), and we affirmed those decisions. We are therefore not persuaded that the trial commissioner's decision regarding the medical care exception constituted error in the matter at bar.

respondent-employers' argument that the "plain meaning" of General Statutes § 31-355 (b) compels separate proceedings to address the Fund's interests.[9]

> We disagree with the fund's claim that the analysis of the legislative history of § 31-355 (b) in Matey v. Estate of Dember, [256 Conn. 456, 491-93 (2001)], is diminished in persuasive value by the subsequent enactment of General Statutes § 1-2z because "legislative history is no longer relevant in construing an unambiguous statute." Given our conclusion that the statutory scheme is ambiguous, the legislative history analysis set forth in Matey remains relevant to this inquiry. Moreover, even if we were to agree that § 31-355 (b) is unambiguous, the enactment of § 1-2z did not diminish Matey's precedential value. See Hummel v. Marten Transport, Ltd., 282 Conn. 477, 501, 923 A.2d 657 (2007) (concluding that enactment of § 1-2z was not meant to "overrule every other case in which our courts, prior to the passage of § 1-2z, had interpreted a statute in a manner inconsistent with the plain meaning rule, as that rule is articulated in § 1-2z"), superseded by statute on other grounds by Public Acts 2009, No. 09-178, § 1.

Id., 392, n.17.

We therefore find no error in the decision of the trial commissioner to allow the Fund to litigate its issues at the formal hearing.[10]

Marion, Sr., in reliance upon Balkus v. Terry Steam Turbine Co., 167 Conn. 170 (1974), also contends that he was deprived of due process because the trial commissioner ordered relief against him although he was not originally named as a party in the case. However, in Mosman v. Sikorsky Aircraft Corp., 4180 CRB-4-00-1 (March 1, 2001), this board pointed out that "we also recognize that a party may be apprised that a given claim is at issue by other means, such as the statements of the parties at trial, the evidence they have introduced, or the papers they have filed." Id. In

[9] In Dechio v. Raymark Industries, Inc., 299 Conn. 376 (2010), our Supreme Court rejected the Fund's claim that the "plain meaning" of General Statutes § 31-355 (b) afforded the Fund a separate appeal period or right of appeal to the Compensation Review Board.

[10] The respondent-employers offer no appellate precedent as authority for their position that the Fund is obligated to pursue reimbursement for an unpaid award of benefits in Superior Court.

the present case, we note that Marion, Sr., was in attendance at the initial session of the formal hearing on April 12, 2016, and his company had retained legal counsel for this hearing. At that formal hearing, counsel for the Fund specially moved to add Marion, Sr., to the case in his "individual, personal capacity." See April 12, 2016 Transcript, pp. 13-14. Counsel for R.P.M. offered no objection.

We further note that at the September 27, 2016 session of the formal hearing, the trial commissioner indicated on the record that hearing notices had been sent to Marion, Sr., in his personal capacity, the Fund had served Marion, Sr., with a subpoena, counsel for R.P.M. had withdrawn from the case, and Marion, Sr., (or someone else on his behalf) had sent a text message to the Commission acknowledging the scheduling of the hearing but stating that medical issues would preclude his attendance. See September 27, 2016 Transcript, pp. 4-8. Marion, Sr., attended and extensively testified at the November 22, 2016 hearing, at which the inquiry largely focused on the manner in which Marion, Sr., managed the finances of R.P.M. Under the totality of the circumstances, we are persuaded that Marion, Sr., had ample reason to believe he was potentially facing personal liability. The present matter is therefore consistent with Valiante v. Burns Construction Company, 5393 CRB-4-08-11(October 15, 2009), in which "[a]ny confusion as to the scope of the issues and the remedy under consideration by the tribunal was clearly resolved on the record prior to the conclusion of the formal hearing." Id. As a result, we do not find that the trial commissioner's decision to attribute personal liability to Marion, Sr., constituted a due process violation.

We now turn to the principal issue of the case, which is whether this Commission has jurisdiction over the claimant's injury. As such, it is necessary to first ascertain

whether the requirements for the "medical care exception" pursuant to General Statutes § 31-294c were satisfied. The trial commissioner concluded that the requirements for this exception had been met, and we must therefore determine if the evidence on the record supports this conclusion. As previously mentioned herein, the claimant testified in detail regarding the circumstances of the December 9, 2013 incident, which, according to the claimant, occurred at the R.P.M. facility when a car fell on him, crushing him. See April 12, 2016 Transcript, pp. 26-33. He testified that Marion, Sr., came over to the location where he had been injured and saw what had occurred, and coworkers extricated him from under the car. Id., 34. The claimant later testified that after he was removed from under the car, Adams drove him to a local hospital in a black van owned by Adam's wife. Id., 35-37. The claimant reiterated this testimony regarding the events of December 9, 2013, at the September 27, 2016 formal hearing. See Transcript, pp. 84-97.

The evidentiary record contains the December 9, 2013 medical records from Harrington Memorial Hospital in Southbridge, Massachusetts. The report of the emergency room registered nurse states, "[p]atients friend drove him to hospital he was unable to move…." Claimant's Exhibit A. The report by the emergency room physician states, "his friends put him in a van and drove him to the ED…."[11] Id. The commissioner specifically found credible the claimant's testimony that "the Respondent/Employer, R.P.M. Enterprises, Inc. and/or Robert Marion, Sr. through their/his agent, Mr. Russell Adams, provided transportation to [the claimant] on

[11] The respondent-employers have argued that R.P.M. was closed on the day of this incident and this circumstance therefore constitutes evidence that the claimant was injured elsewhere. Such determinations are factual in nature and, given that the trial commissioner found the claimant credible regarding his narrative of how the injury occurred, and did not find Marion, Sr., credible, we may not overturn these findings on appeal. This is particularly so given that the trial commissioner is responsible for resolving discrepancies in the evidence, see Williams v. Bantam Supply Co., Inc., 5132 CRB-5-06-9 (August 30, 2007), and the respondents did not file a motion to correct. See Stevens v. Raymark Industries, Inc., 5215 CRB-4-07-4 (March 26, 2008), *appeal dismissed*, A.C. 29795 (June 26, 2008).

December 9, 2013 to the hospital." Conclusion, ¶ C. Evidence on the record deemed reliable by the trial commissioner supported this conclusion.

It is the respondent-employers' position that merely transporting an employee to a hospital is an inadequate basis for establishing that the medical care exception has been satisfied, and they lacked actual knowledge of the nature of the injury. The evidence credited by the trial commissioner is utterly inconsistent with this position. We find the claim at bar is indistinguishable from Wetmore v. Paul Frosolone and Seasonal Services of Connecticut, L.L.C., 6176 CRB-5-17-2 (February 7, 2018), in which the claimant sustained severe traumatic injuries while using tools provided by his employer and his employer drove him to the local hospital. The respondents argued that the claimant had not established that the requirements for the medical care exception to the notice statute had been satisfied. This tribunal observed that:

> it should have been immediately apparent to the respondent that the claimant had sustained a serious work-related injury for which a claim for workers' compensation benefits was highly probable. The claimant had not sustained some form of idiopathic injury for which a claim under Chapter 568 was unlikely to be sought but, rather, had sustained a traumatic injury peculiar to the risks attendant in operating the respondent's lawn-mowing equipment.

Id.

In the present matter, the commissioner was persuaded that the claimant's injury occurred in the course of his employment, and an employee and/or agent of the respondent-employers transported the claimant to the hospital. Consistent with cases such as Wetmore, supra, and Spencer v. Manhattan Bagel Company, 5419 CRB-8-09-1 (January 22, 2010), we believe the evidentiary record provided an adequate basis for the commissioner's conclusion that the requirements for establishing the medical care

exception pursuant to General Statues § 31-294c (c) were satisfied and the commissioner's determination was consistent with precedent.

In addition to establishing jurisdiction by proving that he had satisfied the requirements for an exception to the notice statute, the claimant also needed to prove the existence of an employer-employee relationship in order to obtain benefits under Chapter 568. See Castro, supra; Bugryn v. State, 97 Conn. App. 324 (2006). The trial commissioner concluded that the claimant had established proof of such a relationship, see Conclusion, ¶¶ F-I, but the respondent-employers contend that this determination did not afford the proper evidentiary weight to the independent contractor agreements introduced into evidence. See Claimant's Exhibits E, N. They believe that the trial commissioner's determination is inconsistent with this board's analysis in Rodriguez v. ED Construction a/k/a E.D. Construction, Inc., 5316 CRB-7-08-1 (May 11, 2009), *aff'd*, 126 Conn. App. 717 (2011), *cert. denied*, 301 Conn. 904 (2011), in which the claimant executed an independent contractor agreement with the respondent employer and was denied Chapter 568 benefits after sustaining an injury. It is the respondent-employers' position that the trial commissioner in the present matter should have enforced the independent contractor agreements.

In Veilleux v. Dehm Drywall, LLC, 6057 CRB-8-15-12 (September 26, 2016), we examined in some detail our prior analysis in Rodriguez, supra, and the basis for the trial commissioner's conclusion that the independent contractor agreement was dispositive of the issue of jurisdiction.

> In Rodriguez the claimant was injured while working as a roofer. The respondent defended the claim on the grounds the claimant was an independent contractor and pointed to the claimant using his own tools at the job site, not having taxes withheld by the

> respondent, not being supervised by the respondent at the time of the injury, and engaging in his own business working for other firms…. The respondent introduced evidence of the claimant working for others as an independent contractor…. The trial commissioner concluded the claimant failed to prove there was an employer-employee relationship and this board affirmed that decision…. The Appellate Court affirmed this decision [remarking] "we cannot conclude that the commissioner incorrectly applied the right to control test when he determined that the plaintiff was not an employee of the defendant at the time of the accident."… This decision rested on the factors cited by the trial commissioner evidencing independent contractor status such as the claimant performing work for others, working in an autonomous manner, obtaining his own insurance, and receiving a 1099 form regarding tax liability…. (Internal citations omitted.)

Veilleux, supra.

In the instant claim, the factual determination regarding the claimant's employment status arrived at by the trial commissioner differed from that reached by the trial commissioner in Rodriguez, supra. It is black-letter law that "[e]mployment status is patently a factual issue … and is subject to a significant level of deference on review." (Internal citation omitted.) Hanson v. Transportation General, Inc., 16 Conn. Workers' Comp. Rev. Op. 57, 60, 3001 CRB-3-95-2 (October 18, 1996), *aff'd*, 45 Conn. App. 441 (1997), *aff'd*, 245 Conn. 613 (1998). As such, this tribunal must determine whether the testimony of the claimant, deemed credible by the trial commissioner, provided a sufficient basis for the trier's conclusion that the respondent-employers exercised a right of general control over the claimant's work activities. See Reid v. Sheri A. Speer d/b/a Speer Enterprises, LLC, 5818 CRB-2-13-1 (January 28, 2014), *appeal pending*, A.C. 36663 (February 14, 2014); Hanson, supra.

The claimant testified that he was paid cash by the respondents and could not leave the premises unless someone gave him a ride. See April 12, 2016 Transcript,

pp. 23-25. He was not given a Form 1099 at year's end, id., 25, and on the day of his injury, he was under Adams' direction regarding which tasks to perform. Id., 28. Adams and Marion, Jr., had set up the car on which the claimant was working on the date of injury. Id., 29. The claimant testified that he did not earn wages working for other employers during the period in which he worked for R.P.M. Id., 39. On cross-examination, the claimant clarified that he had not worked as a mechanic elsewhere but had earned money performing housework for an uncle. He also participated in unpaid volunteer activities at events at Gillette Stadium. September 27, 2016 Transcript, pp. 30-35. He further testified that he worked a set schedule at R.P.M., id., 50-51, and he would occasionally travel with Marion, Sr., or Adams to pick up cars or work at their homes. Id. He indicated that he was paid cash daily by either Marion, Sr., or Adams, id., 52, and he did not use his own tools when stripping cars at R.P.M. Id., 61-62. In addition, Marion, Sr., testified that he had spent "thousands of miles on the road" with the claimant while traveling to obtain junk cars for the facility. November 22, 2016 Transcript, p. 26.

The foregoing demonstrates that there were material differences between the testimony of the claimant in the present matter and that of the claimant in Rodriquez. For example, the claimant in Rodriguez was using his own tools when he was injured, had been working autonomously, and was paid for roofing jobs at other companies during the same time period he was working for the respondent. Our Supreme Court has previously observed that "[i]t is not the fact of actual interference with the control, but the right to interfere, that makes the difference between an independent contractor and a servant or agent." (Internal quotation marks omitted.) Tianti v. William Raveis Real Estate, Inc.,

231 Conn. 690, 697 (1995), *quoting* Latimer v. Administrator, 216 Conn. 237, 248 (1990). In this matter, the trial commissioner deemed the claimant more credible than the respondents' witness, Marion, Sr., with regard to the claimant's testimony that the respondent-employers controlled his activities. This testimony provided a sufficient basis for the trial commissioner to conclude that an employer-employee relationship existed, notwithstanding the provisions of the independent contractor agreements. Such a decision may not be reversed on appeal.

The final issue for our consideration, having affirmed the trial commissioner's determination that the commission has jurisdiction over the present matter, is whether the evidentiary record provided a sufficient basis for the trial commissioner to "pierce the corporate veil" and find Marion, Sr., responsible in an individual capacity. Marion, Sr., argues that the subordinate facts do not support the commissioner's finding of liability against him in his individual capacity. Although we concede that specific findings by the trial commissioner with regard to piercing the corporate veil would have been beneficial, we deem their absence harmless error, particularly as there was no motion to correct. See Stevens, supra; Peters v. Corporate Air, Inc., 14 Conn. Workers' Comp. Rev. Op. 91, 1679 CRB-5-93-3 (May 19, 1995). As such, we will review the appropriate legal standard to ascertain if the evidence in the record supports the commissioner's decision.

In Naples v. Keystone Building & Development Corp., 295 Conn. 214 (2010), our Supreme Court observed that "[c]ourts will … disregard the fiction of a separate legal entity to pierce the shield of immunity afforded by the corporate structure in a situation in which the corporate entity has been so controlled and dominated that justice requires liability to be imposed on the real actor…." Id., 231, *quoting* Angelo Tomasso Inc. v.

Armor Construction & Paving, Inc., 187 Conn 544, 552 (1982). "Whether the circumstances of a particular case justify the piercing of the corporate veil 'presents a question of fact.'" Id., 234, *quoting* Angelo Tomasso Inc., supra, 561.

In the present matter, the claimant testified that on occasion, Marion, Sr., would pay him in cash. See April 12, 2016 Transcript, p. 24. The claimant also testified that after he was injured and no longer employed, Marion, Sr., issued to the claimant's wife checks drawn on R.P.M. Id., 42-43. In addition, the claimant testified that he had worked on property owned by Marion, Sr., which testimony was corroborated by Marion, Sr. See November 22, 2016 Transcript, pp. 29-30. Marion, Sr., also testified that the claimant had worked on his mother's home. Id. In addition, Marion, Sr., testified that he is the owner of R.P.M., November 22, 2016 Transcript, p. 12, and R.P.M. does not have a separate bank account. Id., 58. Marion, Sr., paid the claimant for work performed on personal residences, id., 63; and used R.P.M. funds to pay for his own personal expenses. Id., 64. In addition, Marion, Sr., indicated that R.P.M. had no employees, and Adams, the firm's "conservator" when Marion was not on the premises, was also an independent contractor. Id., 15-16.

In light of this factual foundation, we conclude that the commissioner reasonably inferred that R.P.M. and Marion, Sr., were essentially alter egos and, as such, Marion, Sr., could not rely upon the protection of the corporate veil as a defense against liability. See Diaz v. Capital Improvements and Management, LLC, 5616 CRB-1-11-1 (January 12, 2012); Caus v. Paul Hug d/b/a HUG Construction Company, Hug Contracting Company, Crown Asphalt Paving, LLC, P. HUG Contracting, LLC, 5392

CRB-4-08-11 (January 22, 2010). Accordingly, we affirm the findings of the trial commissioner in this regard.

Having reviewed the evidentiary record and the appellants' arguments in this matter, we conclude that the commissioner's findings were more than adequately supported by the evidence and he properly applied the pertinent law. The June 16, 2017 Finding Re: Subject Matter Jurisdiction is accordingly affirmed.

Chairman Stephen M. Morelli and Commissioner Jodi Murray Gregg concur in this opinion.