CASE NO. 6215 CRB-7-17-8 : COMPENSATION REVIEW BOARD
CLAIM NOS. 700125070, 700125069,
700125068, 700123689 &
700013514.

GEORGE R. DICKERSON
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: SEPTEMBER 12, 2018

CITY OF STAMFORD
EMPLOYER

and

PMA MANAGEMENT
ADMINISTRATOR
RESPONDENTS-APPELLEES

APPEARANCES: The claimant was represented by Andrew J. Morrissey, Esq., Morrissey, Morrissey & Mooney, L.L.C., 203 Church Street, Naugatuck, CT 06770.

The respondents were represented by James D. Moran, Jr., Williams Moran, L.L.C., 2 Enterprise Drive, Suite 412, Shelton, CT 06484.

This Petition for Review[1] from the August 28, 2017 Amended Finding and Dismissal of Michelle D. Truglia, the Commissioner acting for the Seventh District, was heard February 23, 2018 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Scott A. Barton and Jodi Murray Gregg.

[1] We note that a motion for extension of time was granted during the pendency of this appeal.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN: The claimant has appealed from an Amended Finding and Dismissal which determined that based on the recent Supreme Court decision in Holston v. New Haven Police Dept., 323 Conn. 607 (2016), the claimant's General Statutes § 7-433c[2] claim was untimely as it was a new illness for which a timely claim under General Statutes § 31-294c[3] had not been filed. The

[2] General Statutes § 7-433c (a) states: "Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment or under such municipal or state retirement systems. The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 or the municipal or state retirement system under which he is covered, except as provided by this section, as a result of any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability. As used in this section, "municipal employer" has the same meaning as provided in section 7-467. (b) Notwithstanding the provisions of subsection (a) of this section, those persons who began employment on or after July 1, 1996, shall not be eligible for any benefits pursuant to this section., required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section."

[3] 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, 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. As used in this section, "manifestation of a symptom" means manifestation to an employee claiming compensation, or to some other person standing in such

claimant's appeal argues that his current ailment is merely a new manifestation of an existing cardiac ailment for which he had already filed a timely notice of claim and the precedent in Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010) and Hernandez v. Gerber Group, 222 Conn. 78 (1992) mean that the claimant did not need to file a new notice of claim. After reviewing the Holston decision, we conclude it was not intended to limit the right of a claimant who had perfected a claim for General Statutes § 7-433c benefits to obtain additional benefits for a future manifestation of a properly noticed claim. Therefore, we reverse the decision of the trial commissioner.

The trial commissioner, Michelle D. Truglia, reached the following findings of fact at the conclusion of the formal hearing. She noted that the parties stipulated to a number of facts and the sole issue presented for adjudication was the claimant's eligibility for General Statutes § 7-433c benefits as a result of a coronary artery disease or myocardial infarction pursuant to the Holston decision. The stipulated facts were:

a. The claimant was employed as a regular member of the Stamford Police Department from 1984 through 2004 when he retired.
b. On or about July 17, 2000 the claimant was diagnosed with hypertensive heart disease. He filed a claim for benefits pursuant to §7-433c which was acceptable as compensable by the respondent and he was awarded a 40% permanent partial disability for his hypertension by way of a Finding and Award issued on October 7, 2004; on or about September 4, 2014 the claimant suffered an inferior wall myocardial infarction as a result of his coronary artery disease. He had an emergency angioplasty with stent placement in his right coronary artery.
c. The parties agree the claimant's long-standing hypertension was a significant contributing factor in his development of coronary artery disease that ultimately resulted in his myocardial infarction.
d. The parties agree that he has a 14% permanent partial disability as a result of his heart disease.
e. The parties further agree that using the combines rating chart of the AMA Guidelines, Sixth Edition, the claimant's 40% rating for

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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."

hypertension, when combined with his 15% rating for heart disease, totals 48%.

f. No Form 30c was filed within one year of the September 4, 2014 inferior wall myocardial infarcation.

August 28, 2017 Amended Finding and Dismissal.

The trial commissioner determined that the claimant's date of hire made him eligible for General Statutes § 7-433c benefits. The commissioner also took administrative notice that there were no hearings in this matter during 2014; nor were there any hearing requests made or hearings held within one year of the claimant's September 4, 2014 cardiac event. She also noted that no evidence was entered to show that the respondents made any medical payments in connection with the September 4, 2014 cardiac event, within one year of the event.

Based on these facts, Commissioner Truglia concluded that the Supreme Court's Holston decision expressly held that the word "or" was a disjunctive term and the legislature intended to treat hypertension and heart disease as two separate diseases for the purpose of General Statutes § 7-433c, citing Holston, supra, 616. She determined that in accordance with Holston, the claimant's hypertension condition diagnosed on July 17, 2000 and the claimant's CAD diagnosed on September 4, 2014, are two separate diseases for the purposes of administrating the provisions of General Statutes § 7-433c. She concluded the claimant's "flow from" argument is not inconsistent with the obligation to initiate a separate claim for a CAD condition that developed over fourteen years after the underlying hypertension condition. Commissioner Truglia also concluded that the claimant did not file a Form 30C within one year of his CAD diagnosis and as there had been no hearing requests made or hearings held within that one year period. In addition, no evidence had been presented that the respondents made any medical payments related

to the claimant's September 4, 2014 cardiac event.[4] Therefore, the administrative exceptions to notice under General Statutes § 31-294c had not been met and accordingly, the trial commissioner dismissed the claim.

The claimant filed a motion to correct which sought to omit any reference to the Staurovsky v. City of Milford Police Dept., 164 Conn. App. 184 (2016) decision, which the claimant said had not been an issue for consideration at the formal hearing. The trial commissioner granted this motion and substituted an Amended Finding and Dismissal for the original decision. The claimant has pursued this appeal. His principal argument is that the Holston case was not properly applied by the trial commissioner and that it does not require the filing of a new notice of claim for what is a sequelae of the original compensable injury. Given the lengthy precedent that states that the heart and hypertension law is to be administrated in a manner consistent with Chapter 568 claims, we are persuaded by this argument and therefore we reverse the Amended Finding and Dismissal.

In our inquiry, we note that the parties submitted a joint stipulation of facts. The deference to the fact finding prerogative of the trial commissioner we ordinarily extend, outlined in cases such as Fair v. People's Savings Bank, 207 Conn. 535 (1988), is not present herein. However, we do not believe the stipulation herein was sufficiently definitive on the question of causation to enable the trial commissioner to reach a determination purely on a question of law. The stipulation herein, in stipulation C stated, "the claimant's long standing hypertension was **a** significant contributing factor in his development of coronary artery disease…" (emphasis added). This statement was not, as

[4] In the initial Finding and Dismissal, Commissioner Truglia made reference to the precedent in Staurovsky v. City of Milford Police Dept.,164 Conn. App. 184 (2016). Following a motion to correct, this reference was deleted in the Amended Finding and Dismissal.

we will explain, sufficiently definitive for the commissioner to reach a determination without engaging in an evaluation and weighing of the supportive evidence.

We commence by examining the facts of Holston. In that case the claimant sustained hypertension, did not file a claim for benefits, and later sustained heart disease. The claimant then filed for General Statutes § 7-433c benefits and the respondents argued that the claim was jurisdictionally barred as untimely. The trial commissioner did not accept that position and this board affirmed the claim as compensable, Holston v. New Haven, 5940 CRB-3-14-5 (May 27, 2015), as we determined the trial commissioner could determine the claimant's heart disease was a "separate malady" from the earlier hypertension that the claimant had not filed a timely claim for. We cited Mayer v. East Haven, 4620 CRB-3-03-2 (March 3, 2004), *appeal dismissed for lack of final judgment*, A.C. 25244 (September 15, 2005), *cert. denied*, 276 Conn. 918 (2005), for the proposition "[w]e read the statute to mean once the claimant passes the prerequisite initial test of showing a pre-employment physical examination without *any evidence* of *either* hypertension *or* heart disease, and is later diagnosed with *either* hypertension *or* heart disease, benefits for either shall be granted." (Emphasis in the original.) Holston, supra, n.4. The respondents appealed our decision and the Supreme Court considered the matter on appeal. In their decision, the Supreme Court noted that,

> § 7-433c (a) does not set forth a limitation period for filing a claim but provides for the administration of benefits in the same amount and the same manner as that provided under [the Workers' Compensation Act] if such death or disability was caused by a personal injury which arose out of and in the course of his employment, the one year limitation period of [General Statutes] § 31-294c (a) governs claims filed under § 7-433c. (Internal quotation marks omitted.)

Holston, supra, 615, *citing* Ciarlelli v. Hamden, 299 Conn. 265, 278 (2010).

While the respondents argued that the one year limitation for bringing a General Statutes § 7-433c claim ran when the claimant's earlier diagnosis of hypertension had occurred, the Supreme Court held "[t]he plain language of § 7-433c belies that claim." Id. They noted that the medical evidence in the case supported the conclusion that the claimant's hypertension and heart disease were separate medical conditions. Id., 616. Therefore, they concluded "that the plain language of the statute demonstrates that the failure to file a timely claim for benefits related to hypertension does not bar a later timely claim for heart disease. Id.

We have considered the issues in Holston in two recent Compensation Review Board opinions, McGinty v. Stamford Police Department, 6197 CRB-4-17-6 (July 17, 2018), *appeal pending*, A.C. 41943 (August 3, 2018) and Brocuglio v. Thompsonville Fire District #2, 6165 CRB-1-16-12 (December 21, 2017), *appeal pending*, A.C. 41237 (January 9, 2018). In Brocuglio, the claimant had sustained pericarditis, for which he did not properly file a claim within one year of its occurrence in November 2000, and then filed a claim for a mitral value ailment in 2013. The trial commissioner deemed the later ailment was compensable and the respondent appealed. We rejected its argument, which we summarized as follows:

> Essentially, the argument presented by the respondent suggests that because General Statutes § 7-433c is "bonus legislation," police officers or fire fighters may seek relief under this statute only once during their working careers, and should the opportunity present itself and the employee neglect to file a claim, the employee is not permitted to seek any future relief. We have reviewed the cases cited by the respondent and do not find support for this statutory interpretation.

Id.

We determined that the Holston decision was,

> unsupportive of the respondent's argument that claimants may file only one General Statutes § 7-433c claim during their working careers and are barred from future relief if they fail to avail themselves of that remedy at an earlier juncture. Claimants may file claims for both hypertension and heart disease, and in this case, the claimant did file a timely claim for his 2013 mitral valve injuries. The undisputed medical evidence supports the trial commissioner's determination that this was a new injury for the claimant.

Brocuglio, supra. The determination that the 2013 mitral value ailment was a "new injury" was a critical factor in finding the claim in Brocuglio compensable.

Our analysis in Brocuglio guided us in McGinty v. Stamford Police Department, 6197 CRB-4-17-6 (July 17, 2018). In McGinty, the respondents argued the claimant's coronary artery disease and hypertension was due to a systemic ailment and not a "heart disease" within the ambit of General Statutes § 7-433c. We rejected this argument as "[i]n Brocuglio, supra, we cited Holston v. New Haven, 5940 CRB-3-14-5 (May 27, 2015), *aff'd*, 323 Conn. 607 (2016), for the proposition that it is within the trial commissioner's discretion to distinguish between separate and distinct heart diseases." Id. Concluding the record in this matter provided an adequate basis for the trial commissioner's findings that the claimant suffered from heart disease in 2009 and this heart disease was separate and distinct from the prior peripheral artery disease he had experienced in 2007, we affirmed the award to the claimant.

The respondents herein argue that the principle of Holston and its progeny of cases is that General Statutes § 7-433c must be read in the disjunctive and that a new heart disease creates eligibility for a claimant to file a new claim for benefits. As the claimant in this instance never perfected a claim for his 2014 incident, he must now be

barred from relief. This reasoning, however, assumes that the 2014 incident was a "new disease" as was the case in Holston, Brocuglio and McGinty. The trial commissioner determined that it was in Conclusion, ¶¶ B and C, and specifically rejected the claimant's argument that the 2014 event could be deemed a "flow from" manifestation of the claimant's preexisting compensable injury. This was notwithstanding her factual finding in Findings, ¶ 3c, that the parties agreed that "the claimant's long-standing hypertension was a significant contributing factor in his development of coronary artery disease that ultimately resulted in his myocardial infarction." As the trial commissioner limited her consideration to the evidence presented in the joint stipulation of facts, she confirmed her determination to issues of law and undertook no independent inquiry as to whether the medical evidence proved or disproved the existence of a "new injury" in 2014.

As we previously noted, the stipulated facts presented did not present the claimant's previous hypertension as a sole contributing factor to the claimant's current cardiac ailment; conversely the stipulation offered no other suggested nexus of causation to the claimant's cardiac condition. We believe it was error to rule solely on the stipulated facts herein. We do not believe a cardiac event that occurred at a later date from an initial compensable injury *must*, as a matter of law, be deemed a "new injury. While Holston and its progeny of cases does require a trial commissioner to read General Statutes § 7-433c in a disjunctive manner, nothing in the Holston decision removes the fact finding obligation of a trial commissioner to ascertain whether what the claimant has sustained is a new "heart disease" in accordance with our precedent in Brooks v. West Hartford, 4907 CRB-6-05-1 (January 24, 2006), Brocuglio, supra, and McGinty, supra.

In the absence of a definitive factual agreement as to causation, the trial commissioner needed to perform an independent review of the evidence.

This conclusion is consistent with the Supreme Court's citation of the statute in Holston, supra, wherein they reiterated the long standing standard that General Statutes § 7-433c "provides for the administration of benefits in the same amount and the same manner as that provided under [the Workers' Compensation Act]. . . ." Id., 615. The claimant points out that should Holston be applied so as to require a future manifestation of a compensable injury to require a new notice of claim, this would be inconsistent with the way Chapter 568 claims have been handled since the inception of the Workers' Compensation Act. We are persuaded that Holston does not call for this approach, and find the claimant's reliance on Marandino, supra, and Hernandez, supra, persuasive and on point.

In Marandino, the claimant sustained an arm injury which she asserted was the cause, years later, of her subsequent knee injury. Id., 588. Her treating physician opined, *"[t]his is a direct result of her previous work-related trauma and as such is a continuation of her ongoing problems. This does not represent a new condition."* Id. (Emphasis in original.) *Citing* Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142, 152 (1972), the Supreme Court determined that the claimant presented sufficient evidence to find her arm injury was a sequelae to her prior compensable injury. Id., 591-592.

In the Supreme Court's Hernandez decision, the Second Injury Fund declined to accept liability for the claimant's later developing leg ailment linked to a compensable heart disease, even though the trial commissioner determined "the injury to, and resulting

disability of the claimant's right leg is so inextricably woven into the claimant's myocardial infarction that it cannot be said to be a separate injury and cannot be considered apart from the myocardial infarction." Id., 81. The court noted that in De la Pena v. Jackson Stone Co., 103 Conn. 93 (1925), a compensable personal injury was defined as including "the entire transaction to which the injury is traced, not only the operative causes but their effect on the body of the injured person." Id., 83. The court also noted that in Olmstead v. Lamphier, 93 Conn. 20, 22 (1918) it was found that "more than one injury may arise out of the same accident." Id., 84-85. Based on this precedent they concluded the preexisting condition was the start of a causal chain. "Hernandez had a heart condition that, in conjunction with his work assignment, led to a myocardial infarction, treatment of which led to a leg injury. As a factual matter, the requisite casual linkage therefore existed between preexisting disability and subsequent injury. . . ." Id., 86.

We can locate no precedent wherein a lapse of time between an original injury and a later manifestation of the same injury compels a claimant to file a new claim. We do note that if a claimant for whatever reason chooses to file a new claim subsequent to sustaining a compensable injury, the respondents are obligated to file a disclaimer or face preclusion, see Callender v. Reflexite Corp., 137 Conn. App. 324, 338-339 (2012). However, in that case it was the **claimant** asserting a new injury. In the present case, the claimant asserts he sustained a sequelae from a prior injury. We note that notwithstanding the potentially lengthy lapse of time between the original disabling injury and a survivorship claim under General Statutes § 31-306 the Supreme Court has specifically found a survivor need not file a separate claim for such benefits. See

McCullough v. Swan Engraving, Inc., 320 Conn. 299 (2016). In McCullough, the Supreme Court noted that we must acknowledge the remedial purpose of the Workers' Compensation Act and not limit benefits in the absence of a clear legislative directive to do so.

> By recognizing limitations not delineated by the legislature, the court risks denying the beneficent purposes of the act. See *Doe* v. *Stamford*, 241 Conn. 692, 698, 699 A.2d 52 (1997); *Misenti* v. *International Silver Co.*, 215 Conn. 206, 210, 575 A.2d 690 (1990). *Laliberte* v. *United Security, Inc.*, supra, 261 Conn. 181, 188 (2002).

Id., 311.

To read Holston to bar a General Statutes § 7-433c claimant from asserting his injury was a sequelae injury, and require him or her to file a new claim or forfeit access to benefits, would clearly engraft a limitation which cannot be expressly found within the plain language of the statute. The statute clearly requires that we treat claims brought under that act in the same manner as Chapter 568 claims. Consequently, the result herein would be inconsistent with the reasoning the *same jurists* who ruled on Holston, reached in McCullough.

Therefore, our precedent in Biehn v. Bridgeport, 5232 CRB-4-07-6 (September 11, 2008), *appeal withdrawn*, A.C. 30336 (March 9, 2011) and McNerney v. City of New Haven, 15 Conn. Workers' Comp. Rev. Op. 330, 2098 CRB-3-94-7 (June 25, 1996), governs how, in a situation such as this, a trial commissioner cannot rule on the issue presented herein without independent factual findings. The claimant in Biehn sought General Statutes § 7-433c benefits after sustaining hypertension after her pregnancy, but the trial commissioner concluded she had waited longer than the statutory notice period to file her claim. She argued that her hypertension had abated and she had sustained a

new injury and pursuant to McNerney her claim was timely. We noted that the trial commissioner in McNerney had concluded the claimant sustained a new injury and it was our longstanding principle that "the question of whether an injury is a recurrence or a new injury is a factual determination for the trial commissioner," Id., 332 *citing* Perry v. Union Lyceum Taxi Co., 13 Conn. Workers' Comp. Rev. Op. 16, 17, 1695 CRB-4-93-4 (November 3, 1994). Therefore we distinguished the two cases.[5] The claimant in Biehn had not, based on the evidence found credible by the commissioner, experienced a cessation in hypertension and had not perfected her claim within a year from the original injury. In the present case the claimant has perfected a claim for General Statutes§ 7-433c benefits, unlike McNerney, but claims he has experienced cessation of the ailment similar to McNerney. If one were to find the claimant's factual argument well founded, it would seem illogical to penalize a claimant who perfected his initial claim for heart and hypertension benefits in this instance. Our precedent has allowed claimants who have failed to perfect earlier claims, such as the claimants in Holston and Brocuglio, to file future claims. To bar relief under these circumstances would be the sort of "absurd result" disfavored by General Statutes § 1-2z.[6]

Indeed the "plain meaning" of General Statutes § 7-433c indicates that any limitation in benefit eligibility that is inconsistent with the eligibility standards under Chapter 568 is tenuous as it does not comport with the "the same amount and the same

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[5] See also Sullivan v. Clinton, 6175 CRB-3-17-1 (August 7, 2018), *citing* Martinez v. Gordon Rubber & Packaging Co., 3348 CRB-4-96-6 (May 4, 1998).

[6] General Statutes § 1-2z states: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

manner" language of the statute.[7] Were the claimant to have sustained the sequelae of a compensable injury under Chapter 568, he would not be expected to file a new notice of claim. We do not extend the holding of Holston to require a claimant proceeding under General Statutes § 7-433c to do what would not be required under Chapter 568. In matters where it is not definitive whether a claimant's cardiac ailment is the manifestation of a prior injury or a new injury, the trial commissioner must reach a factual determination on the issue prior to proceeding forward.

Therefore, we vacate the Amended Finding and Dismissal and remand this matter for further proceedings consistent with this opinion.

Commissioners Scott A. Barton and Jodi Murray Gregg concur in this opinion.

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[7] The respondents argue that as General Statutes § 7-433c is written in the disjunctive, "hypertension *or* heart disease" (emphasis added) that the statute mandates a new notice of claim must be filed for heart disease subsequent to the claimant filing a heart disease claim. Respondents' Brief, p. 5. We do not reach this conclusion because we do not conclude that as a matter of law that a claimant's subsequent cardiac aliment must be deemed a new disease requiring a new claim. This is a jurisdictional fact requiring an independent factual finding by the trial commissioner.

CERTIFICATION

THIS IS TO CERTIFY THAT a copy of the foregoing was mailed this 12th day of September, 2018.

GEORGE R. DICKERSON

ANDREW J. MORRISSEY, ESQ. 7011 2970 0000 6087 9812

CITY OF STAMFORD

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