

CASE NO. 6219 CRB-5-17-9
CLAIM NO. 300107962

: COMPENSATION REVIEW BOARD

ROBINSON NAVEO
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION
COMMISSION

v.

: AUGUST 30, 2018

MASTEC, INC.
EMPLOYER

and

ACE/INDEMNITY INSURANCE
COMPANY OF NORTH AMERICA
c/o ESIS NORTHEAST
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant appeared at oral argument before the board as a self-represented party.

The respondents were represented by Patrick Battersby, Jr., Esq., Montstream & May, L.L.P., P.O. Box 1087, Glastonbury, CT 06033-6087.

This Petition for Review from the September 1, 2017 Finding and Dismissal of Stephen M. Morelli, the Commissioner acting for the Fifth District, was heard March 23, 2018 before a Compensation Review Board panel consisting of Commissioners Jodi Murray Gregg, Charles F. Senich and Daniel E. Dilzer.

OPINION

JODI MURRAY GREGG, COMMISSIONER. The claimant appeals from the September 1, 2017 Finding and Dismissal of Commissioner Stephen M. Morelli, acting on behalf of the Fifth District. In that Finding and Dismissal, the trial commissioner considered whether the respondents should be assessed a penalty for late payment of an award by stipulation pursuant to General Statutes § 31-303. The trial commissioner denied and dismissed the claimant's request to impose the late payment penalty provision of General Statutes § 31-303.

The relevant facts in this matter are as follows. The claimant-appellant [hereinafter "claimant"] alleged a compensable injury while employed by the respondent, Mastec, Inc. Mastec, Inc., insured its workers' compensation insurance liability through its insurer, ESIS Northeast. The respondents-appellees [hereinafter "respondents"] entered into a full and final stipulation agreement with the claimant. The sum to be paid to the claimant for the resolution of the claim by stipulation was \$40,000.

On October 7, 2016, in the course of drafting the stipulation agreement, the respondents sent an e-mail to the claimant requesting his mailing address. By reply e-mail on that same date, the claimant responded to the respondents' request and provided an address of 8103 NW 75th Ave, Pompano Beach, FL 33321.

On November 7, 2016, Commissioner Scott Barton approved the executed full and final stipulation of the parties. The address listed for the claimant was the address provided by the claimant in his October 7, 2016 e-mail to the respondents, i. e., 8103 N.W. 75th Avenue, Pompano Beach, FL 33321.

On November 8, 2016, the respondents forwarded the full and final stipulation document and included a cover letter indicating, “[e]nclosed is the \$40,000.00 stipulation check.” Findings, ¶ 8; Respondents’ Exhibit 3. There then followed a series of e-mails between the claimant and counsel for the respondents for the period of November 14, 2016 through November 30, 2016. The e-mails reflect respondents counsel’s attempt to ascertain from the claimant whether the claimant received the stipulation documents and check, and the claimant’s alleged uncertainty as to whether the documents were delivered.¹

On November 30, 2016, the claimant sent an e-mail to the respondents indicating that his address was 8103 NW 75th Ave. Tamarac, FL 33321-4828. That address was virtually identical to the one provided by the claimant in his October 7, 2016 e-mail except that the name of the town provided was “Tamarac” as opposed to “Pompano Beach.”

¹ September 1, 2017 Finding and Dismissal provides:

10. “Respondent-employer’s attorney sent an email on November 14, 2016, to claimant stating, “My office confirmed with the postal service that my letter with the settlement check was delivered to you. Can you please confirm that you actually received the settlement check?”
11. Claimant responded via email, dated November 14, 2016, indicating that he had to check with his wife when he got home to see if she signed for anything. Respondent-employer’s attorney replied to claimant’s email, “Please let me know.”
12. Respondent-employer’s attorney again followed up with claimant via emails dated November 16, 2016, and November 17, 2016, to see if claimant had received the settlement check.
13. On November 17, 2016, claimant replied to the respondent-employer’s emails by stating, “I am sorry but I am working in Central Florida away from my house and my wife won’t be there until till Monday. I will let you know when I get back on Wednesday or Tuesday.”
14. On Tuesday, November 22, 2016, respondent-employer’s attorney sent an email to claimant again following up to see if claimant had received the settlement check.
15. Claimant did not respond to the November 22, 2016, email until November 30, 2016, at which time claimant sent an email stating, “Today have been 24 days since the 7, don’t forget.”
16. Claimant’s email of November 30, 2016, included an attachment which provided respondent-employer an address of 8103 NW 75th Avenue, Tamarac, FL 33321-4828.”

On December 1, 2016, respondents sent the stipulation documents and a check dated December 1, 2016 in the amount of \$40,000. The items were sent via FedEx Express to the claimant at the updated address. The claimant received and cashed the check dated December 1, 2016.

The issue presented for review is whether the trial commissioner erred in failing to conclude that the claimant was entitled to the late-penalty fee pursuant to General Statutes § 31-303. General Statutes § 31-303 states in relevant part:

Payments agreed to under a voluntary agreement shall commence on or before the twentieth day from the date of agreement.... Any employer who fails to pay within the prescribed time limitations of this section shall pay a penalty for each late payment, in the amount of twenty per cent of such payment, in addition to any other interest or penalty imposed pursuant to the provisions of this chapter.

The claimant argues that because the stipulation documents and check (i.e., payment), were not received until more than twenty (20) days after the November 7, 2016 approval by Commissioner Barton, he is entitled to the 20 (twenty) percent late-payment fee. At the formal hearing, the respondents put into evidence, inter alia: the November 8, 2016 certified letter and copy of the settlement check, Respondents' Exhibit 3; the certified mail receipt for the mailing of November 8, 2016 letter and copy of the settlement check, Respondents' Exhibit 4; and a United States Postal Service [hereinafter "U.S.P.S."] tracking sheet for the certified mailing of the November 8, 2016 letter and check, Respondents' Exhibit 5. The U.S.P.S. tracking sheet reflects that the items were received by the U.S.P.S. facility on November 8, 2016 and ultimately "Delivered, Left with Individual" on November 12, 2016 at 7:53 p.m. in Fort Lauderdale, FL 33321. Findings, ¶ 9; Respondents' Exhibit 5.

We note that the claimant appeared as a self-represented party in the proceedings before the trial commissioner. Likewise, the claimant filed this appeal and proceeded as a self-represented party. As this board has stated previously, “it is the policy of Connecticut courts and this board to accommodate pro se claimants as much as possible by liberally construing procedural rules where doing so does not interfere with the rights of other parties.” Dwyer v. Insperity Services, L.P., 6083 CRB-6-16-3 (March 23, 2017). See also Sellers v. Sellers Garage, Inc., 80 Conn. App. 15, 20 (2003), n.2; Harrison v. New Country Motor Cars of Greenwich, Inc., 5329 CRB-7-08-3 (December 1, 2009) and Walter v. Bridgeport, 5092 CRB-4-06-5 (May 16, 2007), *citing* Ferrin v. Glen Orne Leasing/Webster Trucking, 4802 CRB-8-04-4 (March 28, 2005).

The claimant filed a timely Petition for Review and a “free form” document that we have construed to be the claimant’s Reasons for Appeal. We can glean from the assertions in that document only that the claimant continues to maintain that the respondents did not comply with the time requirements in General Statutes § 31-303 and the trier erred in concluding that they did.

Before the payment of the additional interest provision is triggered in General Statutes § 31-303 C.G.S., the first prong of the statute must be met. That prong states, “[p]ayments agreed to under a voluntary agreement shall **commence** on or before the twentieth day from the date of agreement....” (Emphasis ours.) In the proceedings below, the trial commissioner was asked to determine if the respondents commenced payment before the twentieth day from November 7, 2016.

In this board’s consideration of Marchand v. The Phineas Corp., d/b/a Sunrise Group, 5687 CRB-2-11-10 (September 18, 2012) and Melillo v. Bayer Corp., 5490 CRB-

3-09-8 (September 15, 2010), we held that the respondents' initiation of payment within the statutory time frame did not trigger the penalty provision of General Statutes § 31-303. See Collier v. Logistec USA, Inc., 6059 CRB-4-15-12 (October 4, 2016), n.5. Thus, in the context of a pure legal question, the respondents' initiation of payment met the commencement requirement of the statute.

Having determined that the trial commissioner applied the correct legal standard, the only remaining question is whether the trial commissioner erred in his factual findings. "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). Additionally, this board does not engage in de novo review. See Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 196 (1999), *cert. denied*, 251 Conn. 929 (1999) and Story v. Woodbury, 159 Conn. App. 631, 636 (2015). The trial commissioner is the "sole arbiter of the weight of the evidence" proffered. Story, *supra*, 637.

We note that the claimant did not file a motion to correct. As noted previously herein we do accord some relief from a strict adherence to the technical aspects of appellate process for those who are self-represented. However, without filing a motion to correct, the claimant has failed to properly preserve a challenge to the facts found. Samaoya v. Gallagher, 102 Conn. App. 670, 675 (2007). Our review of this matter fails to find any of legal basis for overturning the trier's factual findings. The facts and the conclusions must stand.

We therefore affirm the September 1, 2017 Finding and Dismissal of the
Commissioner acting for the Fifth District.

Commissioners Charles F. Senich and Daniel E. Dilzer concur.