CASE NO. 6225 CRB-1-17-10 : COMPENSATION REVIEW BOARD
CLAIM NO. 100201800

SENADA BAJRAMOVIC : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : OCTOBER 1, 2018

FIRST STUDENT
EMPLOYER

and

GALLAGHER BASSETT SERVICES, INC.
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by S. Zaid Hassan, Esq., Law Office of Zaid Hassan, L.L.C., 11 Mountain Avenue, Suite #301, Bloomfield, CT 06002.

The respondents were represented by Kristin A. Bonneau, Esq., and Ryan Dacey, Esq., Mullen & McGourty, P.C., 2 Waterside Crossing, Suite 102A, Windsor, CT 06095.

This Petition for Review from the September 19, 2017 Finding and Dismissal by Daniel E. Dilzer, the Commissioner acting for the First District, was heard on March 23, 2018 before a Compensation Review Board panel consisting of Commissioners Scott A. Barton, Jodi Murray Gregg and Stephen M. Morelli.[1]

[1] As of the date this matter was heard by the Compensation Review Board, Commission Chairman Morelli had not yet been appointed to that position.

OPINION

SCOTT A. BARTON, COMMISSIONER. The claimant has petitioned for review from the September 19, 2017 Finding and Dismissal by Daniel E. Dilzer, the Commissioner acting for the First District. We find no error and accordingly affirm the decision of the trial commissioner.

In his Finding and Dismissal, the trial commissioner identified the following issues for determination: (1) whether the claimant was barred from recovering workers' compensation benefits for a claimed injury of September 1, 2011 due to her failure to file a timely notice of claim; and (2) whether the claimant sustained an injury arising out of and in the course of her employment on or about March 20, 2015.

The commissioner made the following factual findings which are pertinent to our analysis of this appeal. The claimant began working for the respondent employer as a driver in 2008 and, in 2009, assumed the additional duty of training other drivers. On March 20, 2015, the claimant, while operating a school bus with students on board, had stopped in the left-hand turning lane at a traffic light on Blue Hills Avenue in Hartford, Connecticut. As the bus began moving toward the intersection, the mirror of a box truck traveling in the next lane "slightly" hit the bus door and cross-over mirror on the right-hand side. Findings, ¶ 2; April 18, 2017 Transcript, p. 41. In the police report, the claimant indicated that the vehicle which struck the bus was at a stop when she approached the vehicle to its left while bringing her vehicle to a stop in the left-hand turning lane at the traffic light. She told the police that the other vehicle pulled in front of her from a complete stop and struck the right side of the bus.

The claimant told the police she was uninjured, and the police determined that neither the other driver nor the twenty-two children on the bus had been injured. According to the police report, the bus operated by the claimant sustained minor damage to the fifth panel above the side marker light, and the cross-over mirror had been displaced. See Respondents' Exhibit 9. Kizzy Johnson, a co-worker of the claimant, testified that she was present at the accident scene within ten minutes of receiving the report that it had occurred. Johnson, who observed the rear-view mirror hanging off the bus and a dent on the side of the bus, described the damage as "minor." April 18, 2017 Transcript, p. 30. The estimate to repair the bus was $43.72, and "the photographs taken of the bus following the accident show a trivial amount of cosmetic damage…." Findings, ¶ 6.

At trial, the claimant testified that following the contact between the two vehicles, she twisted "hard" when she turned to see if any of the students on the bus had been injured. Findings, ¶ 7; April 18, 2017 Transcript, p. 41. She indicated that on the day after the accident, she began to experience back pain; she worked for two weeks and then sought medical attention because she could no longer handle the pain. Johnson testified that she observed the claimant in apparent pain in April 2015 and was present when the claimant complained to a safety manager that her back was bothering her because of the bus accident.

On April 2, 2015, the claimant went to her primary care physician, Oksana B. Kloyzner, M.D., complaining of pain in the left-side rib area. The doctor's note of that date indicates that the claimant told the doctor she usually experiences that type of pain when she wears a tight bra; she did not report any history of trauma. On April 9, 2015,

the claimant returned to Dr. Kloyzner; that report states that the claimant "has a history of previous low back pain" and she "woke up with low back pain yesterday." Claimant's Exhibit H. The report also indicates that the claimant was "very dramatic" in describing her back pain and reported that pain was radiating down her right leg. Id. Dr. Kloyzner noted that the "[p]atient screams in pain during lumbar area palpitation. Straight leg raising test negative bilaterally. ***Patient does not indicate any pain in the palpitation of lumbar area, when distracted.***" (Emphasis added.) See Findings, ¶ 12, *quoting* Claimant's Exhibit H. The claimant was referred to physical therapy, from which she was released in June 2015; the physical therapy records admitted into evidence contain no reference to a work-related injury.

On August 18, 2015, the claimant sought chiropractic treatment from Guy Carbone, D.C. In his report of that date, Dr. Carbone indicated that the claimant had attributed her back pain to "a work related injury that took place approximately four months prior." Claimant's Exhibit E. Dr. Carbone saw the client for approximately six visits in August and, in his report of August 28, 2015, stated that the claimant was making slow progress in alleviating her pain.

On September 27, 2015, the claimant presented at the emergency room of Hartford Hospital complaining of lower back pain radiating down her leg which she attributed to the March 2015 work injury. She was administered medication and discharged with a diagnosis of sciatica and back pain. The claimant then returned to Dr. Carbone for several visits in October 2015; Dr. Carbone, in his reports dated October 5, 9 and 14, 2015, noted that the claimant had "[i]mproved subjective complaints." Id.

The claimant also commenced treatment with Howard Lantner, M.D., who, in his report of October 7, 2015, noted that the claimant had attributed her back pain to a bus accident while at work on May 1, 2015. See Claimant's Exhibit F. Dr. Lantner ordered an MRI of the claimant's lumbar spine, after which the claimant returned to Dr. Lantner on October 28, 2015. In his report of that date, Dr. Lantner noted that the MRI had demonstrated minimal degenerative disc disease at L4-5 and L5-S1 with a left-side disc protrusion at L4-5 and, to a lesser degree, at L5-S1. In light of the fact that the claimant felt that her pain was severe enough to warrant surgical intervention and, by her own account, she had failed to improve with conservative treatment, Dr. Lantner suggested that the claimant undergo a microdiscectomy at L4-5 and L5-S1. In his office note of November 11, 2015, Dr. Lantner opined that the claimant's March 20, 2015 work accident was a significant contributing factor in the escalation of her symptoms and her need for surgery. Id.

The claimant underwent a respondents' medical examination with Lawrence C. Schweitzer, M.D., on April 14, 2016. Dr. Schweitzer "opined that the incident of March 20, 2015 was 'trivial' and noted the claimant never even sought treatment for the 2011 injury." Findings, ¶ 20. Dr. Schweitzer, after reviewing the claimant's history and treatment records, concluded that it was "apparent" that the claimant's back condition was unrelated to either the September 1, 2011 or March 20, 2015 work incidents. Id.

On April 18, 2016, the claimant underwent a commissioner's examination with Stephan C. Lange, M.D. Dr. Lange, after reviewing the claimant's medical records and diagnostic test results and performing an examination, reported that he could not "find substantiation that the patient had any problem with her back that is referable to the

March 2015 event" and "the medical records do not support the patient's claim…." Respondents' Exhibit 6.

On the basis of the foregoing, the trial commissioner concluded that the claimant's allegation that she had sustained injury in the accident of March 20, 2015 was not credible, given that the bus she was operating on that date "sustained minor damage" and the contact between the bus and the truck driven by the tortfeasor was "trivial." Conclusion, ¶ B. The commissioner also found persuasive the opinions of Drs. Lange and Schweitzer concluding that the symptoms of and treatment to the claimant's lumbar spine could not be attributed to the March 20, 2015 accident. The trial commissioner therefore dismissed the claim. [2]

The claimant has appealed this decision, reiterating that the accident of March 20, 2015 "was the genesis of her back pain and eventual surgeries by Dr. Lantner." Appellant's Brief, p. 9. The claimant also points out that Dr. Schweitzer, at his deposition, conceded that it is possible for an individual to experience back pain without a traumatic event. See Respondents' Exhibit 3, pp. 56-57. The claimant disputes the commissioner's reliance on the respondents' medical examination and commissioner's examination in reaching his conclusions, arguing that both of these examinations were conducted after surgery had been performed by Dr. Lantner. In addition, the claimant challenges the commissioner's credibility findings, and contends that because she did not suffer from back pain requiring medical treatment until after the March 20, 2015 accident, "it is very possible or plausible that the 3/20/2015 incident during her workday

[2] The commissioner also dismissed the claim for the September 1, 2011 date of injury, which decision was not appealed. The commissioner found that the claimant had not reported the injury until August 24, 2015 and had conceded, through counsel, that the claim was time-barred. The claimant also testified that prior to March 20, 2015, she had not sustained any injury to her back requiring medical treatment.

was the substantial aggravating factor that required the medical help she needed." Appellant's Brief, p. 10. We find none of the claimant's arguments persuasive.

We begin our analysis with a recitation of the well-settled standard of review we are obliged to apply to a trial commissioner's findings and legal conclusions. "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). Thus, "it is … immaterial that the facts permit the drawing of diverse inferences. The [commissioner] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court."[3] Fair v. People's Savings Bank, 207 Conn. 535, 540 (1988), *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

The gravamen of the present appeal essentially involves a challenge to the trial commissioner's denial of compensability relative to a claimed back injury arising out of the March 20, 2015 bus accident. It is of course well-settled that "traditional concepts of proximate cause furnish the appropriate analysis for determining causation in workers'

[3] We note that the claimant did not file a motion to correct. We are therefore somewhat constrained in our ability to challenge the facts found by the commissioner, and our assessment is primarily confined to an analysis of "how the commissioner applied the law." Corcoran v. Amgraph Packaging, Inc., 4819 CRB-2-04-6, 4948 CRB-2-05-5 (July 26, 2006).

compensation cases," Dixon v. United Illuminating Co., 57 Conn. App. 51, 60 (2000), and "the test for determining whether particular conduct is a proximate cause of an injury [is] whether it was a substantial factor in producing the result." (Internal quotation marks omitted.) Paternostro v. Arborio Corp., 56 Conn. App. 215, 222 (1999), *cert. denied*, 252 Conn. 928 (2000), *quoting* Hines v. Davis, 53 Conn. App. 836, 839 (1999).

In order to establish the requisite causal connection between the employment and the injury, a claimant "must demonstrate that the claimed injury (1) arose out of the employment, and (2) in the course of the employment…." Sapko v. State, 305 Conn. 360, 371 (2012), *quoting* Daubert v. Naugatuck, 267 Conn. 583, 589 (2004). The claimant therefore "bears the burden of proof, not only with respect to whether an injury was causally connected to the workplace, but that such proof must be established by *competent evidence*." (Emphasis in the original.) Dengler v. Special Attention Health Services, Inc., 62 Conn. App 440, 447 (2001), *quoting* Keenan v. Union Camp Corp., 49 Conn. App. 280, 282 (1998).

In the present matter, we recognize that the claimant provided records from Dr. Lantner which appear to be supportive of her claim. However, we also note, and the commissioner so found, that the claimant did not begin treating with Dr. Lantner until October 2015, some six months after the alleged date of injury. It may be inferred that the commissioner found the contemporaneous reports of Dr. Kloyzner, which are devoid of any suggestion that the claimant had experienced an episode of back trauma, more persuasive. In addition, the evidentiary record indicates, and the commissioner so found, that neither Dr. Schweitzer nor Dr. Lange opined that the claimant's bus accident of March 20, 2015 was a substantial contributing factor to her back condition. See

Respondents' Exhibits 4, 5, 6. Such a determination was well within the commissioner's discretion, given that "[i]t is the quintessential function of the finder of fact to reject or accept evidence and to believe or disbelieve any expert testimony…. The trier may accept or reject, in whole or in part, the testimony of an expert." (Internal citations omitted.) Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999).

Moreover, we note that the trial commissioner concluded that the claimant was not a credible witness on her own behalf. It is axiomatic that such credibility findings are not generally subject to reversal on appeal. Rather,

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

(Citations omitted; internal quotation marks omitted.) Briggs v. McWeeny, 260 Conn. 296, 327 (2002).

In this regard, we also note that Dr. Lantner's report of November 11, 2015, indicates that the doctor prefaced his opinion regarding causation with the phrase "[b]ased on the history obtained…." Claimant's Exhibit F. It may be reasonably inferred that the commissioner, having not been persuaded that the claimant was a credible historian, chose to discount Dr. Lantner's opinion as to causation. Again, such a determination was well within the commissioner's discretion. This tribunal has previously observed that "[w]hen a trial commissioner does not find the claimant

credible, the commissioner is entitled to conclude any medical evidence which relied on the claimant's statements was also unreliable." Anderson v. Target Capital Partners, 5615 CRB-6-10-12 (January 3, 2012); see also Baker v. Hug Excavating, Inc., 5443 CRB-7-09-3 (March 5, 2010); Do v. Danaher Tool Group, 5029 CRB-6-05-12 (November 28, 2006); Abbotts v. Pace Motor Lines, Inc., 4974 CRB-4-05-7 (July 28, 2006), *aff'd*, 106 Conn. App. 436 (2008), *cert. denied*, 287 Conn. 910 (2008).

As such, while we recognize that the claimant would have preferred that the commissioner assign greater weight to the opinion of Dr. Lantner, it remains "the trial commissioner's function to assess the weight and credibility of medical reports and testimony...." O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818 (1999), *quoting* Gillis v. White Oak Corp., 49 Conn. App. 630, 637, *cert. denied*, 247 Conn. 919 (1998).

The claimant takes great exception to the fact that the March 20, 2015 bus accident has been described as "trivial." See Conclusion, ¶ B; Respondents' Exhibit 4. Although it is clear that the claimant does not share this assessment of the accident, it is equally clear that the trial commissioner's conclusions in this matter are firmly rooted in the evidentiary record and can in no way be attributed to a difference in semantics.

> Essentially, the appellant seeks to have this board independently assess the evidence presented and substitute our presumably more favorable conclusions for those reached by the trial commissioner. This we will not do. This board does not engage in de novo proceedings and will not substitute our factual findings for those of the trial commissioner.

Vonella v. Rainforest Café, 4788 CRB-6-04-2 (March 16, 2005). *See also* Fair, supra, 535; Papapietro v. Bristol, 4674 CRB-6-03-6 (May 3, 2004).

There is no error; the September 19, 2017 Finding and Dismissal by Daniel E. Dilzer, the Commissioner acting for the First District, is accordingly affirmed.

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