CASE NO. 6227 CRB-6-17-10 : COMPENSATION REVIEW BOARD
CLAIM NOS. 601065963 & 601065983

EVELYN BANKS : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : OCTOBER 3, 2018

HCR MANOR CARE, INC.
EMPLOYER

and

INSURANCE COMPANY STATE OF PENN
c/o BROADSPIRE, A CRAWFORD COMPANY
INSURER
RESPONDENTS-APPELLEES

APPEARANCES: The claimant was represented by her daughter and conservator, Cornita Macon. Also present and speaking on behalf of the claimant was her former husband, John Macon, Sr.

The respondents were represented by Erik S. Bartlett, Esq., McGann, Bartlett & Brown, L.L.C., 111 Founders Plaza, Suite 1201, East Hartford, CT 06108.

This Petition for Review from the September 19, 2017 Finding & Dismissal of Nancy E. Salerno, the Commissioner acting for the Sixth District, was heard June 29, 2018 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Scott A. Barton and Brenda D. Jannotta.

OPINION

STEPHEN M. MORELLI, CHAIRMAN. The claimant appeals from a Finding & Dismissal issued by Commissioner Nancy E. Salerno in which the trial commissioner dismissed a claim for benefits for injuries which the claimant contends were the result of her employment.

The issue presented for review is whether the trial commissioner erred in failing to conclude that the claimant's notice of claim [hereinafter "form 30C"] was timely filed pursuant to General Statutes § 31-294c.[1] The pertinent facts are as follows. The claimant was employed by the respondent employer as a certified nursing assistant until July 15, 2008, when she was terminated from her position. The claimant presently suffers from dementia, and her daughter, Cornita Macon, serves as her conservator. The claimant was self-represented by her conservator both in the proceedings before the trial commissioner and on appeal before this board. The claimant filed a form 30C on March 15, 2012 which reported the date of injury as November 4, 2011 and described the injury and how it happened as follows:

> Frontal Temporal Dementia. Job related Stress, overworked, Compassion for her residents, dedication for her job, medication, lack of sleep, and not being aware of those problems, and the mental impairment that was caused by the physical and chemical functioning of the brain that caused lack of logical judgment and reasoning.

On the form 30C, there is a box which a claimant may check if the claimant contends that the injury is related to occupational disease or repetitive trauma. The

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[1] As noted in the May 23, 2018 Ruling on Claimant's Motion to Submit Additional Evidence, n.5, the trial commissioner also considered the issue of whether the claimant was wrongfully terminated pursuant to General Statutes § 31-290a C.G.S. That appeal issue was considered and dismissed by the Appellate Court. See Banks v. Manor Care, Inc., A.C. 41003 (February 15, 2018).

claimant checked that box indicating that she was pursuing a claim under both theories. The trial commissioner concluded, inter alia:

> On March 15, 2012, a Form 30C-Notice of Claim was received for a November 4, 2011 head injury which is beyond three years from the claimant's last day of work at Manor Care, Inc. on July 15, 2008. Thus, in accordance with § 31-294c, the claimant's claim for a head injury was not filed timely.

September 19, 2017 Finding & Dismissal, Conclusion, ¶ D.

The Workers' Compensation Act is silent as to the precise period for calculating the statute of limitations for repetitive trauma claims. However, in Discuillo v. Stone & Webster, 242 Conn. 570 (1997), our Supreme Court held that for jurisdictional purposes, repetitive trauma claims fall into one of two categories, either accidental injury or occupational disease. The trial commissioner must determine whether the facts of a case more closely resemble accidental injury or occupational disease.

The statute of limitations for repetitive trauma claims is one (1) year from the last date of exposure to the repetitive incidents which are the proximate cause of the claimed injury. See Malchik v. Division of Criminal Justice, 266 Conn. 728 (2003). In the present matter, under a repetitive trauma theory, the last date by which the claimant could have been exposed to the offending repetitive trauma was July 15, 2008, the final day of her employment. The statute of limitations for bringing a claim would have expired one (1) year after July 15, 2008.

The statute of limitations for occupational disease is set out in General Statutes § 31-294c (a), which provides in pertinent part: "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….”[2]

The trial commissioner concluded that the claimant's claim did not satisfy the statute of limitations for occupational disease on the basis that the form 30C was filed on March 15, 2012, more than three (3) years after the claimant left her employment on July 15, 2008. In the absence of any other contention supporting jurisdiction, we might agree with the trier's conclusions regarding her application of the statute of limitations for occupational disease. However, we note that in Ricigliano v. Ideal Forging Corp., 280 Conn. 723 (2006), our Supreme Court held that the statute of limitations for occupational disease began to run "when the claimant first learned that there was a causal connection between his disease and his employment." Id., 745.

In the instant matter, the claimant contends that awareness of her Frontal Temporal Dementia diagnosis and its possible relationship to her employment did not occur until November 4, 2011. See Claimant's Exhibit D. Therefore, the claimant could not have brought a claim for occupational disease prior to that date. The form 30C was filed on March 12, 2012, within three years from the date that the claimant alleges she gained knowledge of the possible connection between her employment and her injury.

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[2] General Statutes § 31-294c (a) states in relevant part: "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…. 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."

Although this tribunal does not entertain formal pleadings, we must decide whether the claimant's notice of claim presents a colorable claim for occupational disease. In so doing, we must construe the jurisdictional facts stated by the claimant as true and "in their most favorable light…." See Conboy v. State, 292 Conn. 642, 651 (2009), *quoting* Filippi v. Sullivan, 273 Conn. 1, 8 (2005). Using that standard, we believe that the claimant should be given the opportunity to prove she suffered a compensable personal injury consistent with our Act's provisions for occupational disease.

We recognize that at first blush, our decision in this matter may seem inconsistent with the general principle that a litigant should not be afforded "multiple bites at the apple." We have often stated that "[a] party is not entitled to present his case in a piecemeal fashion, nor may he indulge in a second opportunity to prove his case if he initially fails to meet his burden of proof." Krajewski v. Atlantic Machine Tool Works, Inc., a/k/a Atlantic Aerospace Textron, 4500 CRB-6-02-3 (March 7, 2003), *citing* Schreiber v. Town & Country Auto Service, 4239 CRB-3-00-5 (June 15, 2001). See also Dwyer v. Insperity Services, L.P., 6083 CRB-6-16-3 (March 23, 2017).

What we determine in the present appeal, however, is not whether the claimant is entitled to benefits but, rather, whether she should be accorded the opportunity to demonstrate her eligibility for benefits pursuant to the occupational disease provisions of the Workers' Compensation Act. Our conclusion is buttressed by the long-held tenet that "[n]o case under this Act should be finally determined when the trial court, or this court, is of the opinion that, through inadvertence, or otherwise, the facts have not been

sufficiently found to render a just judgment." Cormican v. McMahon, 102 Conn. 234, 238 (1925).

In addition, as stated at the outset of this opinion, the claimant is self-represented by and through her conservator who is not a legal practitioner. We recognize that "[i]t is the established policy of the Connecticut courts to be solicitous of pro se litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the pro se party...." (Citation omitted; internal quotation marks omitted.) Sellers v. Sellers Garage, Inc., 80 Conn. App. 15, 19 (2003), n.2, *cert. denied*, 267 Conn. 904 (2003), *quoting* Strobel v. Strobel, 64 Conn. App. 614, 617-18, *cert. denied*, 258 Conn. 937 (2001).

We understand that the claimant's representation may have lacked a certain level of legal sophistication, and her claim may not have been articulated with the clarity and specificity ordinarily encountered in these matters. Nevertheless, it strikes us that if we were to deny the claimant the opportunity to litigate a claim for occupational disease, we would do so at the expense of due process.

We therefore reverse the Finding as to jurisdiction and order that the claimant be provided the opportunity to establish jurisdiction on the basis that her alleged personal injury falls within the Act's occupational disease provisions.

Commissioners Scott A. Barton and Brenda D. Jannotta concur in this Opinion.