CASE NO. 6216 CRB-8-17-8 CLAIM NO. 400086932	:	COMPENSATION REVIEW BOARD
RICHARD MALINOWSKI CLAIMANT-APPELLEE	:	WORKERS' COMPENSATION COMMISSION
v.	:	AUGUST 26, 2019

SIKORSKY AIRCRAFT CORPORATION
EMPLOYER

and

AIG CLAIMS, INC.
ADMINISTRATOR
RESPONDENTS-APPELLANTS

and

LIBERTY MUTUAL INSURANCE GROUP
INSURER
RESPONDENT-APPELLEE

APPEARANCES: The claimant was represented by Donna Civitello, Esq., Carter & Civitello, One Bradley Road, Suite 305, Woodbridge, CT 06525.

Respondents Sikorsky Aircraft Corporation and AIG Claims, Inc., were represented by Lucas D. Strunk, Esq., Strunk, Dodge, Aiken, Zovas, 200 Corporate Place, Suite 100, Rocky Hill, CT 06067.

At proceedings below, respondents Sikorsky Aircraft Corporation and Liberty Mutual Insurance Group were represented by Marian H. Yun, Esq., Meehan, Roberts, Turret & Rosenbaum, P.O. Box 5020, 108 Leigus Road, 1st Floor, Wallingford, CT 06492. Liberty Mutual Insurance Group did not appear at oral argument.

This Petition for Review from the June 5, 2017 Findings and Orders by Peter C. Mlynarczyk, the Commissioner acting for the Eighth District, was heard on October 26, 2018, before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Scott A. Barton and Jodi Murray Gregg.[1]

[1] We note that a motion for extension of time was granted during the pendency of this matter, which also resulted in a continuance.

OPINION

STEPHEN M. MORELLI, CHAIRMAN. The respondents have petitioned for review from the June 5, 2017 Findings and Orders (finding) by Peter C. Mlynarczyk, the Commissioner acting for the Eighth District (commissioner). We find no error and accordingly affirm the decision of the commissioner.

In his finding, the commissioner identified the following issues for determination: (1) whether repetitive trauma during the period between 1984 and January 19, 2012, was a substantial contributing factor to the claimant's need for a left total knee replacement; (2) whether the necessity for the claimant's left-knee replacement is solely attributable to an injury allegedly sustained on June 28, 1972, while the claimant was working for another employer; (3) whether the claimant's alleged left-knee injury of June 28, 1972, is compensable; (4) which party is responsible for payment of the medical bills associated with the left-knee replacement; and (5) which party is responsible for payment of the bills associated with the claimant's ongoing medical treatment.

The commissioner made the following findings which are pertinent to our review. The claimant testified that he injured his left knee in June or July of 1972 while working at Marino's Honda City, when the motorcycle he was driving out of a bay slipped on an oil patch; the claimant was forced to put his foot down, and twisted his knee.[2] The claimant remembers having the lateral meniscus of his left knee removed by Richard Campbell-Jacobs, M.D. He did not pay for the medical care rendered to his left knee during this period, and assumes that the care was paid for by his employer. He did not

[2] The only records which relate to the 1972 injury are an undated Notice of Injury, a hearing notice for a scarring evaluation on August 15, 1978, hearing notes from the scarring evaluation, and a discharge summary dated November 30, 1973, referencing a left meniscectomy performed on November 26, 1973.

lose time from work before the 1973 surgery, and could not remember if he was paid for his time away from work following the surgery. He might have been laid off and collecting unemployment benefits at that point.

The claimant recalled requesting a scarring award, and a hearing on that issue was held on August 15, 1978. The commissioner awarded him six weeks of benefits, but the claimant could not remember if he was ever paid. He also could not recall whether Campbell-Jacobs ever gave him a disability rating or if he was ever paid for a disability rating.

The claimant was hired by Sikorsky on February 28, 1984, and was still employed by Sikorsky when formal proceedings were held in this matter. The claimant indicated that during the period between the cessation of his employment at Marino's Honda City and January 2012, he did not sustain another left-knee injury or receive medical treatment for his left knee, other than for a laceration over the kneecap while working for Albrecht Steel. He testified that between 1973 and 2012, he experienced occasional soreness in his left knee after strenuous exercise, but never any swelling.

The claimant testified that, first in his capacity as a "Grinder B," and then as a "Grinder Specialist," he worked on a Springfield vertical grinder for twenty-eight years. The machines, which make large main rotor parts and transmission housings for helicopters, are the two largest grinders at Sikorsky. The tables are approximately five and one-half feet in diameter and have dual cutting heads on them. The oldest of the two machines is elevated by two steps, but the claimant indicated that he ran that machine for only about a year. The other machine, which was the one he ran the majority of the time, was elevated by six stairs to reach the platform and then the top of the work table was

elevated another foot and a half. Depending on the job and how long it took to run, he would possibly go up and down the stairs as many as eight times an hour. While running up and down the stairs, he would be carrying reference rings and gauges, which weighed approximately twenty-five pounds each. He would also carry the materials which were being ground if they weighed less than fifty pounds, and other parts if they were less than sixty pounds. If the parts were heavier, he would utilize a crane.

The claimant testified that the fixtures for grinding the transmission housings on the Blackhawk were the heaviest. The original fixture weighed approximately 1400 pounds; however, ten years ago, a new and lighter fixture weighing approximately 500 pounds was manufactured. The grinder operator was responsible for setting up every job, which included placing the fixture on the grinder. In order to set up the grinder, the claimant would have to get the fixture out of the "fixture crib," which was about 100 yards away from the grinder. If he was not able to find a tow motor operator to retrieve the fixture, he would need to do so with a pallet jack or floor jack. The claimant estimated that in his twenty-eight years at Sikorsky, he probably needed to retrieve the part weighing 1400 pounds approximately twenty to thirty times.[3]

The claimant also indicated that most of the heavy fixtures were stored directly across the aisle from the grinder. However, it was necessary that the operator position a pallet jack so that a crane could lift the fixture onto the grinder. Depending on the job, this process could occur two or three times a day. The claimant testified that setting up the machine could take as long as four hours, much of that time spent either bending over

[3] At a deposition held on June 15, 2012, the claimant testified that he was required to move the heavier fixtures perhaps thirty to forty times in his twenty-eight career with Sikorsky. See Respondents' Exhibit 1, p. 24. At the formal hearing of April 30, 2015, he testified that he moved the heavier fixtures approximately twenty to thirty times. See Transcript, p. 26.

or reaching out to the grinding table while standing on one leg. He was also required to push around carts with heavy parts on them on a regular basis.

The claimant testified that he did not notice any knee problems until January 2012, when he worked two twelve-hour shifts lifting parts and working on a gear grinder. By the third day, both of his knees had "blown up," and he went to see Ronald Paret, M.D., who drained the left knee. Respondents' Exhibit 1, p. 48. In March 2012, Paret recommended bilateral knee replacements, but the claimant kept working and hoped his knees would get better. On October 30, 2014, he underwent a right total knee replacement, and on February 19, 2015, he underwent a left total knee replacement.

Sebastian Marino also testified, indicating that the claimant had worked for him as a mechanic in his motorcycle shop. He did not recall the claimant ever having sustained a left-knee injury, and testified that he never paid any bills on behalf of the claimant. Marino denied ever receiving a bill for the claimant, or knowing anything about a hospitalization or injury, claiming that "[i]f somebody would have gotten hurt on the job, I definitely would have remembered." Respondents' Exhibit 4, p. 9.

Paret saw the claimant on February 8, 2012, and stated the following in his report of that date:

> IMPRESSION: This is a work injury. He previously does have substantial damage to the knee from a previous injury although he has bilateral knee arthritis. At this point the effusion is rather significant. I believe it was caused by his work-related efforts pushing very heavy racks of gears working 12 hours a day for several days in a row. He has moderately severe degenerative joint disease which has been aggravated now by his work-related injury.

Claimant's Exhibit A.

In correspondence dated December 16, 2012, Paret opined further on the issue of causation, stating that the claimant's open left-sided medial meniscectomy from 1973 and arthroscopic meniscectomy on the right side were both substantial contributing factors to the claimant's progressive arthritic changes in both knees. He also stated that the claimant's original workplace injury at Honda was aggravated by his employment with Sikorsky, and the claimant's activities such as pushing and pulling heavy pallets of engine and turbine parts were a substantial contributing factor to the aggravation of the claimant's preexisting left-knee condition from the injury at Honda.

Christopher J. Lena, M.D., evaluated the claimant at the request of the respondent employer and AIG Claims. He testified that a procedure such as the claimant's left-knee open meniscectomy leads to significant arthritis and total knee replacement given that the meniscus absorbs 70-80% of body weight when walking, and removal of the meniscus increases the load on the cartilage, which then wears away. His review of the claimant's X-rays and MRI confirmed the existence of advanced osteoarthritis, chronic ACL deficiency and joint effusion consistent with the prior injury and surgery, and he indicated that the existence of bone-on-bone medial compartments was also consistent with the prior injury and surgery. He opined that the claimant's injury at Honda was a substantial contributing factor to the claimant's left-knee condition, and the claimant needed a total knee replacement sooner because of it. Lena also testified that the claimant's activities at Sikorsky were a "contributing factor," but not a "substantial contributing factor." Respondents' Exhibit 2, pp. 16-17.

Based upon the foregoing, the commissioner concluded that the claimant's left-knee meniscectomy on November 26, 1973, was a substantial contributing factor in

the development of the claimant's arthritis. In addition, the commissioner determined that the claimant's repetitive work activities of climbing up and down stairs while carrying heavy parts and fixtures, setting up a grinder while reaching out and leaning on one foot, and the extensive pushing, pulling, reaching, and lifting of heavy parts, acted to substantially and permanently aggravate his underlying preexisting left-knee condition, resulting in the need for a total left-knee replacement on February 19, 2015.

The commissioner found credible and persuasive the claimant's testimony regarding his physical condition and work activities. He also found Paret's opinion more persuasive than Lena's, particularly with regard to the impact of the claimant's work activities at Sikorsky on his ultimate need for a left total knee replacement. In addition, the commissioner concluded that in light of the amount of time that had passed since the claimant's alleged June 28, 1972 left-knee injury at Honda and the lack of documentary evidence supporting the claim, neither the testimony of the claimant nor that of Marino was "at all" persuasive. Conclusion, ¶ F. The commissioner found that the claimant failed to prove that he made a timely claim for the alleged June 28, 1972 injury or that the Workers' Compensation Commission would have retained jurisdiction over the claim under any of the exceptions set forth in General Statutes § 31-294c (c).[4]

The commissioner denied and dismissed the claim for a June 28, 1972 injury against Marino's Honda City. He ordered Sikorsky Aircraft Corporation to accept the

[4] 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."

January 19, 2012 injury and left total knee replacement as compensable and reimburse the claimant for out-of-pocket expenses as detailed in Claimant's Exhibits G and H. He also concluded that Sikorsky was liable for the outstanding medical bills for the treatment of the claimant's left knee as outlined in Claimant's Exhibit G. In addition, the commissioner authorized Paret as the claimant's treating physician for the January 19, 2012 left-knee injury. The commissioner did not award indemnity benefits, noting that the issue was not noticed for the formal hearing. However, he did indicate that future hearings could be held to address the issue of indemnity benefits if the parties were unable to reach a resolution.

The respondents filed a motion to correct and a request for articulation, both of which were denied in their entirety, and this appeal followed. On appeal, the respondents contend that the commissioner erroneously concluded that the claimant's need for total left-knee replacement surgery was due to repetitive work activities which aggravated his underlying preexisting degenerative changes. They argue that the expert opinion upon which the commissioner relied was not based on the evidence, and the commissioner's conclusions were predicated on the fact that the claimant performed certain repetitive activities about which the claimant's medical expert did not comment. The respondents also maintain that the record is devoid of expert testimony which would serve to establish, within reasonable medical probability, the causal link between the claimant's work activities and his need for left-knee replacement surgery. Finally, the respondents assert that the commissioner's failure to grant their motion to correct and their motion for articulation constituted error.

We begin our analysis with a recitation of the well-settled standard of deference we are obliged to apply to a trial commissioner's findings and legal conclusions.

> … the role of this board on appeal is not to substitute its own findings for those of the trier of fact. Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 451 (2001). The trial commissioner's role as factfinder encompasses the authority to determine the credibility of the evidence, including the testimony of witnesses and the documents introduced into the record as exhibits. Burse v. American International Airways, Inc., 262 Conn. 31, 37 (2002); Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999). If there is evidence in the record to support the factual findings of the trial commissioner, the findings will be upheld on appeal. Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002); Phaiah v. Danielson Curtain (C.C. Industries), 4409 CRB-2-01-6 (June 7, 2002). This board may disturb only those findings that are found without evidence, and may also intervene where material facts that are admitted and undisputed have been omitted from the findings. Burse, supra; Duddy, supra. We will also overturn a trier's legal conclusions when they result from an incorrect application of the law to the subordinate facts, or where they are the product of an inference illegally or unreasonably drawn from the facts. Burse, supra; Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998).

McMahon v. Emsar, Inc., 5049 CRB-4-06-1 (January 16, 2007).

In the present matter, the respondents contend that in reaching his conclusions, the commissioner relied upon expert opinion which was not based on the evidence, and also identified as the basis for his conclusions repetitive activities performed by the claimant about which the medical expert had made no comment. The respondents argue that the claimant, in light of the full meniscectomy of his left knee in 1973 and the subsequent development of severe degenerative arthritis, suffered from "a significant preexisting condition and the question of whether it was materially and permanently aggravated is certainly beyond the common knowledge of the commissioner." Appellants' Brief, p. 11. The respondents point out that "when an injury is not 'a matter of common knowledge'

and 'when it is difficult to ascertain whether an injury arose out of the claimant's employment, the trial commissioner must use a medical opinion as the basis of a finding regarding causation.'" Id., 10, *quoting* Malsan v. Town of West Hartford, 4746 CRB-6-03-10 (September 27, 2004). See also Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142 (1972).

The respondents further contend that Paret's opinion "was not supported by the record and cannot be viewed as competent expert evidence used to uphold an award." Id., 14. They point out that although Paret opined that the claimant's "heavy pulling and pushing of pallets or engine and turbine parts weighing 800 to 1400 pounds [was] a significant contributing factor up to and including the issue of a torn anterior cruciate ligament and an attenuated posterior cruciate ligament," Claimant's Exhibit A [December 16, 2012 correspondence], the evidentiary record indicates that the claimant was only required to move the heavier fixtures somewhere between twenty and forty times during his twenty-eight career with Sikorsky.

The respondents note that the commissioner made a factual finding reflecting the number of times the claimant was required to move the heavier fixtures, and concede that the commissioner "appeared therefore to acknowledge the limited nature of the activity described by Dr. Paret as causative and also noted that the claimant did have mechanical assistance."[5] Appellants' Brief, p. 14. Nevertheless, the respondents maintain that the commissioner erroneously relied upon Paret's opinion because it does not provide a reasonable basis for concluding that activities performed relatively rarely by the claimant could be considered to have established within reasonable medical probability the causal relationship between the claimant's workplace activities and his need for knee

[5] See Findings, ¶ 1.r.

replacement surgery. As such, the commissioner's conclusion relative to the role played by the claimant's allegedly repetitive workplace activities cannot be sustained as a matter of law.

The respondents also note that the commissioner found relevant other repetitive activities performed by the claimant such as "running up and down stairs, positioning fixtures for a crane, bending over a table and '[pushing] around carts with heavy parts on a regular basis.'" Id., *quoting* Findings, ¶ 1.u. The respondents contend that Paret neither commented on these activities nor stated that the activities had aggravated the claimant's degenerative disease. Given, then, that the record is devoid of expert testimony which would establish that the various job functions noted by the commissioner served to "substantially and permanently" aggravate the claimant's underlying knee condition, the commissioner's conclusions relative to the role of these workplace activities in contributing to the claimant's underlying knee condition are without support. Conclusion, ¶ C.

Our review of the evidentiary record indicates that Paret addressed the causation of the claimant's left-knee replacement surgery on at least three different occasions. On February 8, 2012, which was his initial encounter with claimant relative to the knee injuries, Paret documented that the claimant had developed bilateral knee effusion caused by pushing racks of gears. The claimant had worked two twelve-hour shifts in January of 2012, after which his knees swelled, and Paret attributed the swelling to the claimant having pushed racks of gears for twelve hours for several days in a row. Paret also opined that the claimant's degenerative disease had been aggravated by the injury, but did

not specifically state that the swelling episode caused the need for the total knee replacement.

On February 15, 2012, Paret provided a report in which he opined that the claimant suffered from severe degenerative joint disease in his left knee, and noted that the "overwhelming issue is arthritis" due to the prior meniscectomy in 1973. Claimant's Exhibit A. On December 16, 2012, Paret sent correspondence to claimant's former counsel in response to the respondents' medical examination conducted by Lena. In this correspondence, Paret noted that the claimant "has been responsible as a machinist for pulling very heavy loads weighing up to 1400 pounds on pull carts with no mechanical assistance, sometimes for fairly long distances of almost 100 yards." Id. Paret also opined that the claimant's "original work injury from 1973 at Honda [was] actually aggravated by his working at Sikorsky Aircraft…." Id. Finally, in an office note dated February 6, 2015, Paret states that the surgical intervention being contemplated by the claimant, consisting of left total knee replacement, "obviously dates back to his 1972 open meniscectomy…." Id.

It is well-settled that when "it is difficult to ascertain whether or not the disease arose out of the employment, it is necessary to rely on expert medical opinion. Unless the medical testimony by itself established a causal relationship, or unless it establishes a causal relation when it is considered along with other evidence, the commissioner cannot conclude that the disease arose of the employment." Metall v. Aluminum Co. of America, 154 Conn. 48, 52 (1966), *citing* Madore v. New Departure Mfg. Co., 104 Conn. 709, 714 (1926). In Murchison, supra, our Supreme Court reversed the commissioner's finding of compensability in a claim in which the claimant alleged that certain changes in

her workplace activities had caused her to sustain multiple disc herniations but provided no expert opinion to that effect. The court concluded that "[i]n the absence of direct medical testimony, the commissioner resorted to speculation and surmise in concluding that the plaintiff's injury arose out of and in the course of her employment." Id., 152.

Similarly, in Dengler v. Special Attention Health Services, Inc.,62 Conn. App. 440 (2001), our Appellate Court affirmed this board's reversal of a finding of compensability in a matter in which the claimant alleged that an injury to her leg was caused by a prior compensable injury to her back. The claimant did not submit any expert medical evidence in support of her claim, and the court observed that "[g]iven the complex medical issue before him, the commissioner was not at liberty to reason that the plaintiff's leg injury resulted from her back injury simply because it occurred after her back injury." Id., 449.

In light of the court's analysis in Murchison, supra, and Dengler, supra, we readily concede that in the present matter, it was necessary for the commissioner to rely on expert opinion in order to reach the conclusion that the claimant's left-knee meniscectomy in 1973 was a substantial contributing factor in his development of arthritis.[6] Absent expert testimony explicating the link between the claimant's prior meniscectomy and the development of arthritis, "[i]t could not be said to have been a matter of common knowledge that the symptoms described by the plaintiff as having occurred while doing his customary work were related to the injury…." Garofola v. Yale & Towne Mfg. Co., 131 Conn. 572, 574 (1945).

[6] We note that the respondents' expert also testified that the claimant's knee surgery in 1973 was a substantial contributing factor to his arthritic knee condition. See Respondents' Exhibit 2, p. 20.

However, we are not persuaded that the same analysis necessarily applies to the commissioner's conclusions with regard to the role of the claimant's workplace activities "in substantially and permanently aggravating his underlying and preexisting left-knee condition, resulting in the need for a total left-knee replacement…." Conclusion, ¶ C. In Garofola, supra, our Supreme Court reversed a decision by our Appellate Court and affirmed a finding of compensability in a matter in which the claimant alleged that he had sustained a back sprain but provided no medical evidence, apart from some itemized medical bills, in support of his claim. The court, in affirming the compensability of the injury, stated that "there was not the … necessity for such testimony as to cause and effect, for it is in accord with ordinary human experience that such a sprain might well ensue in consequence of heavy work such as that in which the plaintiff was engaged." Id., 574.

Similarly, in Sprague v. Lindon Tree Service, Inc., 80 Conn. App. 670 (2003), our Appellate Court affirmed the commissioner's finding of compensability for a claimant who sustained a back injury while working as a "ground man" for a tree service. The claimant testified that his job duties entailed gathering brush, stacking wood, and operating a chain saw weighing between fifteen to twenty pounds for forty to forty-five hours a week. Although the Sprague claimant did provide expert evidence as to causation, the respondents contended that the injury failed to meet the requirements of General Statues § 31-275 (16) because the claimant failed to identify a specific time when and place where the injury occurred.[7] The respondents also contended that the

[7] General Statutes § 31-275 (16) (A) states: "'Personal injury' or 'injury' includes, in addition to accidental injury that may be definitely located as to the time when and the place where the accident occurred, an injury to an employee that is causally connected with the employee's employment and is the direct result of repetitive trauma or repetitive acts incident to such employment, and occupational disease."

medical evidence "merely was speculative" and, as such, did not provide a sufficient basis for the commissioner's inferences. Id., 676.

The court found neither of these arguments persuasive, noting that it was well within the commissioner's discretion to credit the claimant's testimony regarding the extent and frequency of his employment activities. The court remarked that workers' compensation claims:

> do not require such absolute certainty concerning the specific moment of injury. Our Supreme Court has stated that the proof of an accidental injury that can be definitely located both as to time and place "does not require that the time be fixed by a stopwatch or the place by a mathematical point."

Id., 675, *quoting* Stier v. Derby, 119 Conn. 44, 49-50 (1934).

With regard to the sufficiency of the medical evidence, the court was similarly unpersuaded by the respondents' arguments, stating:

> our Supreme Court has held that expert medical opinion is not necessary to show the causal connection between injury and work in cases in which the commissioner could have concluded that it was more likely that an injury occurred from the type of work in which the plaintiff was engaged than from some unknown cause.

Id., 676, *citing* Garofola, supra, 574.

The court also made the following observation:

> It is sufficiently within common knowledge and ordinary human experience that the lifting of heavy objects, such as wood and brush soaked with water, may cause lower back injury, including a ruptured disc, and therefore it was unnecessary for the commissioner to turn to expert testimony to find that such work was the cause of the plaintiff's injury.

Id.

Finally, in Lee v. Standard Oil of Connecticut, Inc., 5284 CRB-7-07-10 (February 25, 2009), this board affirmed a finding of compensability for a claimant who

alleged that he sustained a back injury as a result of his employment duties as an oil delivery person. The claimant testified that he was generally responsible for making forty to fifty residential heating oil deliveries a day, and those deliveries required him to maneuver a hose approximately 170 feet in length and five inches in diameter over various types of terrain in all kinds of weather. The claimant also indicated that climbing in and out of the truck's cab and "enduring the uneven, bumpy ride of the truck" were difficult for him. Id.

The respondents appealed the finding of compensability, contending that the finding lacked a basis in the evidentiary record because the claimant had failed to provide a medical report linking his employment activities to his injury. We affirmed, citing to Sprague, supra, and Garofola, supra. In addition, noting that the claimant had previously sustained a hernia for which the respondents had accepted liability, we stated the following:

> While the issue of the proximate cause of the claimant's hernia was not a matter before the trial commissioner or this board, it is within the ambit of common knowledge that a hernia is the result of muscle strain. The record here reflects that the tasks and the conditions under which the claimant performed his job could reasonably support an inference that the injuries sustained by the claimant as a result of his work were not limited to his hernia.

Id.

Our review of the evidentiary record in the present matter demonstrates that the findings made by the commissioner relative to the claimant's workplace activities were well-supported. The claimant testified at great length, both at trial and at deposition, regarding the long duration and strenuous nature of his employment activities. He explained the process for manually setting up the machines, which entailed climbing two

steps for one machine, on which the claimant worked for "maybe a year or so," and six or seven stairs for the other machine. April 30, 2019 Transcript, p. 22. The claimant indicated that depending on the job, he "could go up and down [the] stairs eight times in an hour" and, while so doing, he would be carrying reference rings weighing approximately twenty-five pounds in each hand up the stairs to the work table. Id., 23. He would also hand-carry to the table the gauges for measuring the parts which were being ground, and would hand-carry parts weighing less than fifty pounds down the stairs from the work table.

In addition, the base of the grinding machine, or fixture, needed to be changed for every job; the claimant testified that the heaviest fixture weighed approximately 1400 pounds, while a smaller fixture weighed 500 pounds. The fixtures had to be moved with either a "tow motor operator" or a pallet jack, and were operated by means of a hydraulic jack which the claimant pumped with his foot. Id., 25.

As noted previously herein, the claimant testified that he was required to move the heavier fixtures somewhere between twenty to forty times over a twenty-eight year span. However, all of the fixtures used on the grinder had to be brought from a "fixture crib" to the aisle so the crane could reach them. Id., 27. The claimant indicated that depending on the requirements of the particular job, he would have to change the fixtures two or three times a day, and the set-up for getting the fixtures onto the crane was entirely manual. Once the fixture had been placed onto the table, it would need to be set up for the grinding job, a process that could take as long as four hours. Performing some of the set-up tasks required the claimant to balance on one leg "because the table was higher

than the platform…."[8] Id., 28. Other set-up tasks required that the claimant actually climb inside the machine, during which time the claimant would either be bent over or climbing up onto boxes while holding on to the machine with one hand.

In addition to his set-up responsibilities, the claimant, after being transferred to the gear room in November 2011, was also required to push racks of gears, which he described as "a physically demanding job." Id., 31. The claimant testified that he had to push the racks from the gear room to the gear cell; the racks held eight ball gears of differing weights, with some weighing as much as 100 pounds. While working in the gear room, the claimant was also required to push a "blank checker," which is a tool used to measure gears; the claimant guessed that the blank checker weighed approximately 1000 pounds, and indicated that other people would help him push it from one area to another. Despite these activities, however, the claimant indicated that the physical exertion required by his job duties in the gear room was actually lighter than that which had been required in the machine shop, partly because the machines in the gear room were computerized.

As discussed previously herein, we concede that it was necessary for the commissioner to rely on expert testimony in concluding that the claimant's left-knee meniscectomy in 1973 was a substantial contributing factor to the development of his knee arthritis. The long-term effects of that surgery cannot be characterized as a matter of "common knowledge [or] ordinary human experience." Sprague, supra, 676. However, once the claimant's susceptibility to the development of arthritis was credibly

[8] At his deposition, the claimant testified: "You know, I don't know if the pain is from me bending it or using it or being hyper-extended because I'm leaning over a lot. Even now I'm leaning over to get parts, and the majority of the discomfort was on all of [the] Springfields where you have to lean over guards that were probably this height, from your [waist] down, and hold on to the sheet to indicate so your knees were hyper-extended back." Respondents' Exhibit 1, pp. 54-55.

established, this circumstance then implicated "a fundamental tenet of workers' compensation law, namely that an employer takes the employee in the state of health in which it finds the employee." Epps v. Beiersdorf, Inc., 41 Conn. App. 430, 435 (1996), *citing* Cashman v. McTernan School, Inc., 130 Conn. 401, 409 (1943). Once it had been established, through expert testimony, that the claimant's medical history rendered him susceptible to arthritis, it was then within the commissioner's discretion to infer that the claimant's work activities "acted in substantially and permanently aggravating his underlying and preexisting left-knee condition, resulting in the need for a total left-knee replacement on February 19, 2015." Conclusion, ¶ C.

It is axiomatic that a commissioner may "consider medical evidence *along with all other evidence* to determine whether an injury is related to the employment." (Emphasis in the original.) Marandino v. Prometheus Pharmacy, 294 Conn. 564, 595 (2010) *citing* Murchison, supra, 151. As such, in light of the claimant's extensive testimony, we are not persuaded that "the commissioner resorted to speculation and surmise" in reaching his conclusions relative to causal relationship between the claimant's work activities and his need for a total left-knee replacement. Murchison, supra, 152. This is particularly so given that the record contains no indication that any other activities on the part of the claimant might have contributed to the knee deterioration or that the claimant experienced any significant medical issues with his left knee prior to January 2012.[9] The commissioner could therefore have reasonably inferred "that it was much more likely that the [injury] occurred from the work in which the plaintiff was engaged, arising, as it did, during performance of the work, than that it

[9] At his deposition, the claimant testified that his hobbies were fishing and gardening. See Respondents' Exhibit 1, p. 56.

occurred from some unknown cause." Garofola v. Yale & Towne Mfg. Co., 131 Conn. 572, 574 (1945).

We also note that the medical record is not devoid of support for the commissioner's conclusions relative to the role played by the claimant's repetitive workplace activities. The medical evidence clearly indicates that both Lena and Paret agree that the claimant's prior injury of 1972 and meniscectomy of 1973 contributed to the deterioration of the claimant's left knee over time and his eventual need for a total knee replacement. We do not dispute that Paret's opinion does appear to be primarily based on his understanding that the claimant was responsible for pushing and pulling heavy fixtures.[10] However, we also note that Lena's deposition testimony relative to the role played by the claimant's work activities was somewhat ambiguous.

At his deposition, Lena testified that the claimant's employment was "a contributing factor, but I don't think it's a substantial contributing factor." Respondents' Exhibit 2, p. 21. He later stated: "Is there any contributing factor from his occupation? Absolutely. But it is certainly not the main or substantial contributing factor to it." Id., 25. When queried as to whether the claimant's predisposition accelerated the knee deterioration in light of his workplace activities, Lena replied: "It is possible especially if there is a significant exciting event." Id., 28. Then, when asked whether "being on your feet, walking and pushing and pulling heavy loads for a job for eight hours a day" played

[10] We note that in his correspondence of December 16, 2012, Paret, in discussing the claimant's right-knee injury of 1985 which also led to a meniscectomy and eventual total right-knee replacement, stated the following: "It is in my opinion illogical to opine that the 1985 injury at Sikorsky and subsequent pulling and pushing activities are a contributing factor to his right-sided knee issue but that the same pulling and pushing is not related to his left knee degenerative arthritis…." Claimant's Exhibit A. However, the respondents assert that although the claimant's right-knee injury was accepted as compensable, the employer never acknowledged that the injury was the result of repetitive trauma.

a role, he did not answer the question directly but, instead, stated that "I'm actually impressed that he made it as long as he did."[11] Id.

We are not persuaded by the excerpts from Lena's testimony in which he attempted to parse the phrases "contributing factor" and substantial contributing factor." It is axiomatic that:

> The question of proximate causation … belongs to the trier of fact because causation is essentially a factual issue…. It becomes a conclusion of law only when the mind of a fair and reasonable [person] could reach only one conclusion; if there is room for a reasonable disagreement the question is one to be determined by the trier as a matter of fact. (Citations omitted; internal quotation marks omitted.)

Sapko v. State, 305 Conn. 360, 373 (2012), *quoting* Stewart v. Federated Dept. Stores, Inc., 234 Conn. 597, 611 (1995).

Moreover, in Birnie v. Electric Boat Corp., 288 Conn. 392 (2008), our Supreme Court stated:

> the substantial factor standard is met if the employment "*materially or essentially contributes* to bring about an injury;" … [which] "however, does *not* connote that the employment must be the *major* contributing factor in bringing about the injury; … nor that the employment must be the *sole* contributing factor in development of an injury." (Citations omitted; emphasis in the original.)

Id., 412.

Given, then, that the determination as to what constitutes a "substantial contributing factor" is solely the province of the trial commissioner, we are not persuaded that the commissioner in the present matter was under any compunction to accept Lena's opinion regarding the issue of whether the claimant's workplace activities constituted a

[11] We do not find meritorious the respondents' contention that this comment by Lena allows for the inference that the claimant's employment activities played an insignificant role in the deterioration of the claimant's left knee.

"contributing," as opposed to a "substantial contributing," factor in the development of the claimant's arthritis and eventual need for knee replacement surgery. In fact, in light of our case law, it could be argued that Lena's opinion actually provided a basis, albeit limited, for the commissioner's conclusion that the claimant's repetitive workplace activities did play a role in the development of the claimant's arthritis and eventual need for knee replacement surgery. At any rate, we find that the relevant case law discussed herein supports the proposition that the commissioner in this matter retained the discretion to reach the conclusions he did regarding the role played by the claimant's repetitive workplace activities, despite some limitations in the medical evidence relative to that particular issue.

Finally, the respondents claim as error the commissioner's denial of their motion to correct and motion for articulation. With regard to the motion to correct, our review indicates that the respondents' proposed corrections merely reiterated arguments made at trial which ultimately proved unavailing. As such, we find no error in the trier's decision to deny the motion. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003).

With regard to the motion for articulation, the respondents requested that the commissioner clarify the inference drawn in Findings, ¶ 3, relative to the "Impression" section of Paret's February 8, 2012 office note wherein Paret discussed the effusion on the claimant's knee and diagnosed "moderately severe degenerative joint disease which has been aggravated now by his work-related injury." Claimant's Exhibit A. The respondents contend that although Paret appeared to link the claimant's knee swelling to his employment, he failed to comment on the "nature or extent of the aggravation caused

by such swelling…." Respondent Sikorsky's Motion to Correct and Request for Articulation, ¶ 4. As such, the respondents contend that an articulation "is necessary to clarify the commissioner's conclusion and to identify the work injury cited by the trier." Id.

We are not persuaded that the trier's denial of this request constituted error. We note at the outset that the paragraph in question appears in the commissioner's findings, and not in his conclusion. As such, it may be reasonably inferred that its purpose in the decision is to illustrate a portion of the evidentiary record found relevant by the commissioner. Moreover, in that same office note, Paret recommended that the claimant undergo an MRI and, in his follow-up report of February 15, 2012, indicated that the MRI ultimately revealed "tricompartmental DJD and ACL deficiency as well as a PCL deficiency and bilateral macerated meniscal tears. On review of the MRI, he really does have bone-on-bone." Claimant's Exhibit A. Paret also stated that the claimant had "hopefully [sustained] meniscal tears which would be more amenable to an arthroscopy as he is really not particularly anxious to have a knee replacement as we had already discussed." Id. It is clear that the finding in question merely reflects Paret's statements regarding causation as recited in his February 8, 2012 office note, which note is consistent with Paret's opinion on causation as expressed in his other office notes and correspondence. As such, we find no merit in the respondents' allegation that the commissioner's denial of their motion for articulation constituted error.

There is no error; the June 5, 2017 Findings and Orders by Peter C. Mlynarczyk, the Commissioner acting for the Eighth District, are accordingly affirmed.

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