

CASE NO. 6218 CRB-5-17-9  
CLAIM NO. 700158609

: COMPENSATION REVIEW BOARD

JOHN K. COUGHLIN  
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION  
COMMISSION

v.

: FEBRUARY 15, 2019

CITY OF STAMFORD FIRE DEPARTMENT  
EMPLOYER  
RESPONDENT-APPELLEE

and

PMA MANAGEMENT CORPORATION OF NEW ENGLAND  
THIRD-PARTY ADMINISTRATOR

APPEARANCES:

The claimant was represented by Andrew J. Morrissey, Esq., Morrissey, Morrissey & Mooney, L.L.C., 201 Church Street, P.O. Box 31, Naugatuck, CT 06770.

The respondent was represented by Scott Wilson Williams, Esq., Williams Law Firm, L.L.C., 2 Enterprise Drive, Suite 412, Shelton, CT 06484.

This Petition for Review from the September 7, 2017 Finding and Dismissal by Christine L. Engel, the Commissioner acting for the Seventh District, was heard on April 27, 2018 before a Compensation Review Board panel consisting of Commissioners Scott A. Barton, Daniel E. Dilzer, and Commission Chairman Stephen M. Morelli.<sup>1 2</sup>

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<sup>1</sup> We note that a motion for extension of time and a motion for continuance were granted during the pendency of this matter.

<sup>2</sup> At the time this matter was heard, Commission Chairman Stephen M. Morelli had not yet been appointed to that position.

## OPINION

SCOTT A. BARTON, COMMISSIONER. The claimant has petitioned for review from the September 7, 2017 Finding and Dismissal by Christine L. Engel, the Commissioner acting for the Seventh District. We find error and accordingly reverse the decision of the commissioner and remand this matter for additional proceedings consistent with this Opinion.

In her Finding and Dismissal (finding), the commissioner identified the following issue for determination: whether the claimant's coronary artery disease was compensable pursuant to General Statutes § 7-433c.<sup>3</sup> The commissioner made several factual findings based upon the parties' joint stipulation of facts. The claimant, a Stamford firefighter, claimed benefits for hypertension pursuant to § 7-433c alleging a date of injury of January 28, 2011. The claimant retired from the Stamford Fire Department on

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<sup>3</sup> General Statutes § 7-433c states: "(a) 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, 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 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."

April 5, 2013 based upon his years of service. In a Finding and Award dated March 22, 2016, Commissioner Jodi Murray Gregg found the claimant's hypertension compensable.

In addition to the joint stipulation of facts, the evidentiary record also contained a report dated May 21, 2016 by Donald M. Rocklin, M.D., in which the doctor assigned the claimant a 6 percent permanent partial disability rating to the heart for his hypertension. This disability rating was acknowledged in a Stipulated Finding and Award dated August 30, 2016. In his May 21, 2016 report, and in a supplementary report of June 29, 2016, Rocklin also indicated that the claimant suffered from coronary artery disease (CAD) and the hypertension was a significant factor in the development of his CAD. The CAD was not diagnosed until approximately three years after the claimant's retirement.

The commissioner found particularly relevant the following points raised in the parties' briefs. The claimant noted that Rocklin's opinion indicates that the claimant's accepted hypertension "is a significant causatory factor in the development of his coronary artery disease," Claimant's Exhibit D, and the claimant's CAD "flows from the hypertension." Findings, ¶ 7. The claimant's attorney also pointed to the provision of § 7-433c stating that the statute mandates coverage for "any condition or impairment of health caused by hypertension or heart disease." Appellant's Brief, p. 3. In addition, the claimant "dismissed any effect on this claim" by Holston v. New Haven, 323 Conn. 607 (2016), or Staurovsky v. Milford, 164 Conn. App. 182 (2016), *appeal dismissed*, 324 Conn. 693 (2017). Findings, ¶ 9.

For their part, the respondent contends that our Supreme Court's analysis in Holston is applicable to this claim because the claimant's CAD "constitutes a separate

distinct pathology for which no timely notice of claim was filed.”<sup>4</sup> Findings, ¶ 10. The respondent also points out that “[t]he Holston court has rejected the argument that a causal relationship between a timely filed claim for hypertension provides a safe haven for the development of subsequent heart pathologies.” Findings, ¶ 11, *quoting* Appellee’s Brief, p. 5. In addition, the respondent argues that the “[c]ausal relationship between the hypertension and the coronary artery disease is immaterial to the determination of the timeliness of the claim for the latter.” Findings, ¶ 12, *quoting* Appellee’s Brief, p. 6.

In addition to reviewing the analysis of our higher courts in Holston, *supra*, and Staurovsky, *supra*, the commissioner also examined our courts’ reasoning in Gorman v. Waterbury, 4 Conn. App. 226 (1985), and Felia v. Westport, 214 Conn. 181 (2000). On the basis of the evidence presented in this matter and her review of pertinent precedent, the commissioner concluded that the “chronology of events” was accurately described in the joint stipulation of facts and, as such, the claimant’s CAD “was neither diagnosed nor claimed under C.G.S. § 7-433c until after he had retired.” Conclusion, ¶¶ A, B. The commissioner determined that both Holston and Staurovsky were relevant to the instant claim, and concluded that in order for the claimant to be eligible for CAD benefits pursuant to § 7-433c, the “heart disease and the disability resulting from such a condition must be suffered while the individual was on or off duty as a regular member of a police or fire department.” Conclusion, ¶ D.

The commissioner also found Rocklin’s opinion, which indicated that the claimant’s heart disease developed while he was still employed, insufficient to render the

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<sup>4</sup> In its brief, the respondent states that “[b]ecause no separate Notice of Claim was filed for this separate and distinct coronary pathology, any claim for benefits resulting therefrom must be dismissed based upon the lack of timely notice.” Appellee’s Brief, p. 6.

claim compensable pursuant to the provisions of § 7-433c. Conclusion, ¶ E.

Accordingly, she dismissed the claim.

The claimant has appealed this ruling, contending:

(1) “Holston is inapposite and based on jurisdictional facts that are the virtual opposite of those in the current matter,” Appellant’s Brief, pp. 2-3;

(2) it is “impossible to disallow the benefits for CAD without violating the plain language of 7-433c,” *id.*, 3, which mandates coverage for “any condition ... caused by ... hypertension or heart disease,” *id.*, and states that such a claimant “shall” receive “compensation and medical care in the same amount and same manner as under Chapter 568...,” *id.*; and

(3) “Staurovsky is likewise inapposite as that case dealt with only the attempt to initiate a ‘new’ claim following [the claimant’s] retirement, where the claimant had suffered no ‘disability’ per 7-433c while still tenured as a police officer.” *Id.*

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), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). “This presumption, however, can be challenged

by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing.”

Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

We turn to the claimant’s first claim of error: his contention that the jurisdictional facts in Holston are inapposite to those in the matter at bar, and our Supreme Court’s analysis in Holston should be limited to that case given the unique set of facts it presented. In Holston, the claimant was diagnosed in 2009 with hypertension and with heart disease in 2011 after suffering a myocardial infarction requiring surgery. The evidence demonstrated that the claimant’s hypertension had been a significant contributing factor to the claimant’s heart disease, but there had also been additional contributing factors. The claimant subsequently filed a claim for § 7-433c benefits for both hypertension and heart disease, and the trial commissioner concluded that although the claim for hypertension was untimely, the claimant was eligible for § 7-433c benefits due to his heart disease. That decision was affirmed by this board and our Supreme Court, which noted that:

because § 7-433c is written in the disjunctive, we conclude that a plaintiff can file a claim for benefits related to either hypertension or heart disease. Furthermore, the use of the disjunctive term “or” in § 7-433c indicates that the legislature intended for hypertension and heart disease to be treated as two separate diseases for the purposes of § 7-433c. Accordingly, we conclude 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.<sup>5</sup>

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<sup>5</sup> In reaching its decision in Holston v. New Haven, 323 Conn. 607 (2016), the court also reviewed this board’s analysis in 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), wherein we affirmed the award of § 7-433c benefits to a claimant who had an unperfected hypertension claim and subsequently filed a notice of claim for § 7-433c benefits for heart disease. Noting that “[t]he claimant’s hypertension *may be* a separate injury from the later diagnosed heart disease,” (emphasis added), *id.*, we stated that § 7-433c “does not in itself create a bar for collecting benefits for one of the two ailments when

Id., 615-616.

However, in Holston, the respondents argued that the claimant's notice of claim for his heart disease was untimely because "if there is a causal relationship between one injury and another, they are considered to be one event for the purposes of compensation pursuant to the Workers Compensation Act." Id., 618, n.7. The respondents cited Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010), and Hernandez v. Gerber Group, 222 Conn. 78 (1992), in support of this argument.<sup>6</sup> In response, the court stated the following:

As we have explained previously in this opinion, § 7-433c is different from the Workers' Compensation Act because it does not require any proof of causation. Accordingly, we conclude that Marandino and Hernandez are inapplicable to our resolution of the plaintiff's claim under § 7-433c.

Holston, supra.

In the matter at bar, the respondent contends that in light of the court's determination that "the legislature intended for hypertension and heart disease to be treated as two separate diseases for the purposes of § 7-433c," id., 616, the fact that the

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a claimant has previously suffered from the other. Although related, hypertension and heart disease are separate maladies." Id.

<sup>6</sup> In Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010), our Supreme Court, noting that the claimant had presented qualified expert evidence demonstrating that the claimant's knee injury was causally related to a prior arm injury, affirmed the trial commissioner's reliance upon that evidence in awarding the claimant benefits for the knee injury. In Hernandez v. Gerber Group, 222 Conn. 78 (1992), the court affirmed the trial commissioner's decision to transfer to the Second Injury Fund liability for a permanent disability to the claimant's leg sustained while the claimant was undergoing a cardiac catheterization for a compensable injury to his heart. The court noted that in De la Pena v. Jackson Stone Co., 103 Conn. 93 (1925), it "had described a compensable personal injury 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.'" Hernandez, supra, 83, quoting De la Pena, supra, 100. The court therefore concluded that because "[t]he purpose of the Fund is to relieve employers from having to bear the cost of preexisting medical conditions ... [t]hat purpose would be thwarted if employers were required to bear the cost of causally related sequelae of preexisting medical conditions." Id., 87.

claimant did not file a separate notice of claim for his heart disease renders the claim untimely and the claimant ineligible for § 7-433c benefits.

However, the instant claimant contends that Holston can be distinguished from the matter at bar given that the hypertension claim in Holston was unperfected and untimely, whereas his hypertension claim was perfected, which constitutes “not only a factual difference, but a major and fundamental distinction of jurisdictional fact.” Appellant’s Brief, p. 4. As such, it is the claimant’s position that the court’s reasoning in Holston regarding the inapplicability of Marandino, *supra*, and Hernandez, *supra*, to that particular matter “provides nothing more than inapplicable dictum,” *id.*, and the Holston decision does not “hold that the ability to proceed under the same claim has been completely abrogated.” *Id.*, 7.

We note that this board recently had the opportunity to review a claim similar to the matter at bar. In Dickerson v. Stamford, 6215 CRB-7-17-8 (September 12, 2018), *appeal transferred*, S.C. 20244 (January 30, 2019), the trial commissioner denied § 7-433c benefits to a claimant who had an accepted claim for hypertension and subsequently suffered a myocardial infarction as a result of coronary artery disease. As is the case in the matter at bar, the parties stipulated that the claimant’s hypertension was a significant contributing factor to the development of coronary artery disease and the resulting myocardial infarction. As is also the case in the matter at bar, the claimant neglected to file a notice of claim (“Form 30C”) within one year of the myocardial infarction, and the trial commissioner dismissed the claim, concluding that “the claimant’s ‘flow from’ argument [was] not inconsistent with the obligation to initiate a



separate claim for a CAD condition that developed over fourteen years after the underlying hypertension condition.” Id.

In Dickerson, this board stated that “[w]e 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.’” (Emphasis in the original.) Id. In addition, noting the sizeable body of precedential case law demonstrating that benefits pursuant to § 7-433c claims are to be awarded “in the same amount and the same manner as that provided under chapter 568,” we observed that:

[w]ere 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.<sup>7</sup>

Id.

However, the finding in Dickerson indicated that the trial commissioner had reached her decision on the basis of a joint stipulation of facts rather than conducting an independent inquiry into whether the medical evidence demonstrated that the cardiac ailment constituted a “new injury.” Id. We therefore remanded the matter, holding that the trial commissioner was required to reach a factual determination on the issue of

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<sup>7</sup> For instance, in Felia v. Westport, 214 Conn. 181 (1990), our Supreme Court observed that “[o]n its face, the language ‘compensation in the same amount and the same manner’ suggests that, once 7-433c coverage is established, the measurement of the plaintiff’s benefits under this statute is identical to the benefits that may be awarded to a plaintiff under Chapter 568. We have regularly so held.” Id., 185. The instant claimant therefore contends that the dismissal of his heart disease claim on the basis of the court’s analysis in Holston is at odds with the plain language of the statute and places “the hypertensive or heart diseased police officer or firefighter who elects 7-433c in a far worse position than a similarly situated hypertensive or heart diseased Chapter 568 claimant.” Appellant’s Brief, p. 10.

whether the claimant’s cardiac condition was the manifestation of a prior injury or constituted a new injury.<sup>8</sup>

In the matter at bar, the claimant also contends that the commissioner erred in relying upon our Appellate Court’s analysis in Staurovsky v. Milford Police Dept., 164 Conn. App. 182 (2016), *appeal dismissed*, 324 Conn. 695 (2017), in reaching her decision to deny heart disease benefits. In Staurovsky, the claimant, a police officer, suffered a myocardial infarction while shoveling snow from his driveway one week after retiring under a “years of service” pension. The court determined that the “totality of the circumstances” in the claim did not support the conclusion that the claimant had ever received a diagnosis of hypertension or heart disease during the period of his employment.

The court also noted that in Gorman v. Waterbury, 4 Conn. App. 226 (1985), it had held that “[a] fair reading of the statute ... reveals that both the condition of hypertension or heart disease *and* the death or disability resulting from such a condition must be suffered while the individual was on or off duty as a regular member of a police or fire department.” (Emphasis in the original.) *Id.*, 231-232. As such, consistent with the court’s analysis in Gorman, our Appellate Court in Staurovsky reversed the decision of the commissioner to award benefits on the basis that “the existence of heart disease or hypertension alone does not satisfy the statutory requirements of § 7-433c.” Staurovsky, *supra*, 208.

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<sup>8</sup> In the matter at bar, as mentioned previously herein, the commissioner noted that in reports dated May 21, 2016 and June 29, 2016, Donald M. Rocklin, M.D., had opined that the claimant’s hypertension was a significant factor in the development of his coronary artery disease. Findings, ¶ 5; see also Claimant’s Exhibits B, D. We therefore find that the instant matter can be distinguished on this basis from Dickerson v. Stamford, 6215 CRB-7-17-8 (September 12, 2018), *appeal transferred*, S.C. 20244 (January 30, 2019).

In the matter at bar, the claimant recognizes that Staurovsky stands for the proposition that a “claimant must perfect his or her claim under §7-433c by not only establishing the existence of hypertension or heart disease, but also that the requisite ‘disability’ caused by that condition also ... occurred during their tenure as a police officer or firefighter.” Appellant’s Brief, p. 14. However, the instant claimant points out that he manifested both the disease of hypertension and a disability associated with the hypertension during the period of his employment. As such, his claim was perfected, and the factual circumstances in Staurovsky are inapposite. It is therefore his contention that the award of benefits on the basis of a sequela of his hypertension, i.e., his heart disease, is not only consistent with our Appellate Court’s reasoning in Staurovsky but also with our Supreme Court’s analysis in Marandino, *supra*, and Hernandez, *supra*.

There is no question that our Supreme Court, in affirming the commissioner’s decision to award § 7-433c benefits in Holston, held that for the purposes of filing an initial § 7-433c claim, hypertension and heart disease are to be recognized as two separate diseases. We also concede that, as the respondent points out, § 7-433c claims can be differentiated from claims brought pursuant to Chapter 568 not only on the basis of the lack of a causation requirement for § 7-433c claims but also because of the differential taxation treatment of the benefits and the inapplicability of certain Chapter 568 statutes pertaining, *inter alia*, to issues of transfer and apportionment. Moreover, we further acknowledge that in Carriero v. Naugatuck, 243 Conn. 747 (1998), our Supreme Court observed that “although [the Workers’ Compensation Act] is used ... as a procedural avenue for administration of the benefits under § 7-433c ... an award

under § 7-433c is not a workers' compensation award." (Citations omitted; internal quotation marks omitted.) *Id.*, 755.

Nevertheless, as previously discussed herein, the evidentiary record in this matter contains an unchallenged medical report from a qualified expert stating that the claimant's hypertension was a significant factor in the development of the claimant's coronary artery disease, thus providing the basis for the reasonable inference that the claimant's coronary artery disease was the sequela of an accepted workers' compensation claim. We further recognize that the factual circumstances in Holston, *supra*, are inconsistent with those in the instant matter, and the Holston court was not persuaded that the claimant was barred from pursuing a § 7-433c claim for his heart disease because the evidence demonstrated, and the commissioner so found, that the claimant's "hypertension was a significant factor in his heart disease and therefore, the two are causally connected." *Id.*, 616.

We also recognize that Holston can be distinguished from the instant matter on the basis that in Holston, the court's analysis was primarily concerned with the issue of the proper initiation of a claim, whereas the matter at bar implicates the issue of causation in addition to that of proper notice. We are simply not persuaded that the court's reasoning in Holston, which primarily focused on whether the claimant's initial notice of claim for his heart disease was timely, can be applied to a matter in which causation is also implicated. We are therefore inclined to agree with the claimant that "a mere footnote to an already inapplicable decision should not be read to essentially repeal one of the most basic tenets of the Act that has existed for one hundred years, i.e., that

injuries flowing from an accepted claim are likewise compensable.” Appellant’s Brief, p. 7.

There is error; the September 7, 2017 Finding and Dismissal by Christine L. Engel, the Commissioner acting for the Seventh District, is accordingly reversed and remanded for additional proceedings consistent with this Opinion.

Commissioner Daniel E. Dilzer and Commission Chairman Stephen M. Morelli concur in this Opinion.