CASE NO. 6247 CRB-7-18-2 : COMPENSATION REVIEW BOARD
CLAIM NO. 400098496

KATHLEEN M. BIGGS : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : APRIL 12, 2019

COMBINED INSURANCE COMPANY
OF AMERICA
EMPLOYER

and

ACE AMERICAN INSURANCE COMPANY
C/O ESIS
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Kevin M. Blake, Esq., Jonathan Perkins Injury Lawyers, 965 Fairfield Avenue, Bridgeport, CT 06605.

The respondents were represented by Lynn M. Raccio, Esq., Tentindo, Kendall, Canniff & Keefe, L.L.P., 510 Rutherford Avenue, Hood Business Park, Boston, MA 02129.

This Petition for Review from the February 5, 2018 Finding and Dismissal of Michelle D. Truglia, the Commissioner acting for the Fourth District, was heard September 28, 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 continuance was granted during the pendency of this appeal.

OPINION

STEPHEN M. MORELLI, CHAIRMAN. The claimant has appealed from a February 5, 2018 Finding and Dismissal (finding) by Commissioner Michelle D. Truglia (commissioner) in which the commissioner concluded that the claimant's injury was not compensable because the injury occurred at home and not during the course of employment. The claimant argues that she maintained a home office and her injury should therefore have been deemed compensable. In light of our review, inter alia, of our Appellate Court's analysis in Baron v. Genlyte Thomas Group, LLC, 132 Conn. App. 794, *cert. denied*, 303 Conn. 939 (2012), and the evidentiary record in this matter, we are not persuaded that the commissioner erred in concluding that the claimant's injury was not compensable. As such, we affirm the finding.

The commissioner reached the following factual findings at the conclusion of the formal hearing which are pertinent to our consideration of this appeal. She noted that although the claimant initially claimed two other dates of injury, the evidence and argument presented at trial focused solely on an injury sustained on March 4, 2015.[2] The parties agreed that the claimant was hired by Combined Insurance Company of America on September 1, 2014, and, as of March 4, 2015, "was paid strictly on commission with no base pay." Findings, ¶ 4. The claimant testified that Combined Insurance Company has a main office in Chicago, Illinois, and a branch office in Meriden, Connecticut.

The claimant also testified that she has lived at her present home in Milford, Connecticut, for twenty-four years. She indicated that she was a sales associate for the

[2] In her February 5, 2018 Finding and Dismissal, the commissioner dismissed claim number 400101252, bearing a date of injury of February 27, 2015, and claim number 400101251, bearing a date of injury of February 20, 2015, concluding that the two claims had been "abandoned." Conclusion, ¶ G.

respondent and has attended team meetings at the Meriden, Connecticut, office. She further testified that she and several other sales associates were required to attend mandatory morning meetings at various locations around the state at approximately 9 a.m. She has attended team meetings in Waterbury, Durham and Cheshire. Her immediate supervisor was Pamela Giannetti, but the claimant testified that did not know Giannetti's job title as of the date of her accident. Communications with Giannetti after the morning meetings were generally "accomplished through text messaging." Findings, ¶ 7.

The claimant testified regarding the meetings which the respondent required her to attend. She said that at those meetings, the sales associates would be provided with leads and referrals for new business. The claimant's job was to visit these leads, either at their homes or businesses, for the purpose of selling them new or additional "accident and sickness" insurance. Findings, ¶ 8. According to the claimant, all of the sales associates worked out of their homes and would meet in different locations to "catch up" as a team. Id. The territory manager, Heather Christianson, worked out of the Meriden office.

The claimant indicated that she worked out of her home in a sun porch where there was a desk, some file cabinets and a tote bag. She would carry the tote bag back and forth to her car with all of her job supplies which, by her own description, appeared to consist of a folder and a binder. Some weeks, she would work seven days. She also testified that she sold insurance policies by making appointments and going "door to door." Findings, ¶ 9. She would write thank-you notes at her desk at home for individuals to whom she had sold a policy. She would then take the thank-you notes to

the morning meetings, and Giannetti would bring the notes to the Meriden office for mailing to Chicago. The employer also sponsored drawings, and sales associates could earn points for different prizes. Id.

The claimant testified that on the morning of the alleged injury, she went to her desk to prepare for the day sometime after 6 a.m. She indicated that even though she had not made any sales the day before, she still needed to get her folders and clients in order. She stated that she generally would leave her house in Milford around 7 a.m. in order to arrive in Waterbury for a 9 a.m. meeting. She had three clients to visit that day, and it took her approximately a half hour to an hour to get ready before leaving for her morning meeting. The claimant testified that she put her folder and binder in her tote bag along with her iPad and started walking toward the car. The ground was icy and she slipped while getting into her car, falling onto her left hip. She then slipped a second time before being helped into her house by a neighbor. Her son took her to the hospital that morning, where she was diagnosed with a contusion and given painkillers and a cane. She followed up with Herbert I. Hermele, M.D., of Orthopedic Specialty Group, P.C.[3]

The claimant testified that she used her sun porch as a home office, and did not use the sun porch for any purpose other than as an office. She kept her computer and sales supplies on the sun porch and would sometimes meet with clients there. She also testified that she worked out of her home with her employer's knowledge. Nonetheless, she presented no documentation that she had declared the sun porch to be a home office when filing her taxes; she testified that because her salary was so low, she would not have been eligible to take the deduction for home office expenses. The commissioner

[3] The physician's first name was not found in the record and the claimant did not present any medical reports from this treater at the hearing.

noted that the hearing record had been kept open in order to give the claimant the opportunity to introduce into evidence official or certified copies of her 2014 and 2015 tax returns, but she did not avail herself of that opportunity.

Based on the foregoing, the commissioner concluded that the claimant was a traveling salesperson who did not have a "desk job." Conclusion, ¶ A. She concluded that the claimant used her sun porch for business at her own convenience, and "[t]here was no convincing evidence that she had a 'home office' at the behest of her employer or that her job required meeting clients at her home." Conclusion, ¶ B. The commissioner deemed the claimant's failure to produce "legitimate" federal tax returns "a glaring deficiency in her case" and a "pivotal fact on the issue of compensability." Conclusion, ¶ C. She determined that the claimant's work day actually commenced at 9 a.m., when the team meetings were convened, and the claimant's activities while in her driveway on the morning of March 4, 2015, therefore constituted "a preparatory act for work." Conclusion, ¶ F. Accordingly, the commissioner concluded that the claimant's injuries did not arise out of or in the course of her employment.[4]

The claimant filed a motion to correct seeking the addition of new findings in support of her argument that the March 4, 2015 injury was sustained while in the course of her employment and was therefore compensable. The commissioner denied this motion in its entirety, noting that the motion failed to "attach such portions of evidence necessary to challenge the Finding and Dismissal, nor does it cite to specific provisions in the Hearing Transcript in support of its requested corrections." February 21, 2018 Ruling

[4] General Statutes § 31-275 (1) states: '"Arising out of and in the course of his employment' means an accidental injury happening to an employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee's duty in the business or affairs of the employer upon the employer's premises, or while engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer…."

on Claimant's Motion to Correct of February 20, 2018.[5] The claimant has now pursued this appeal, contending that the evidence presented at trial provided a basis for the conclusion that she was operating a home office "for which she would be entitled to workers' compensation benefits for the injury that she sustained on March 4, 2015." Appellant's Brief, p. 3. The claimant also argues that this board's analysis in Tutunjian v. Burns, Brooks & McNeil, 5618 CRB-6-11-1 (March 21, 2012), supports the proposition that injuries sustained while operating a home office are compensable. The respondents argue that the facts of this case fall directly within a scenario deemed non-compensable by the General Assembly pursuant to General Statutes § 31-275 (1) (E).[6] They also point out that the claimant, at the time of her injury, was engaged in a preparatory act at her abode prior to commencing her workday, and had not been directed to do so by her employer. We find the respondents' interpretation of § 31-275 (1) (E) more persuasive.

The standard of deference we are obliged to apply to a commissioner's findings and legal conclusions on appeal is well-settled. "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,

[5] The commissioner denied the claimant's motion to correct for the same reasons previously cited in Ayna v. Graebel/CT Movers, Inc., 6214 CRB-7-17-8 (March 6, 2019). In Ayna, we affirmed the denial of the motion to correct when the claimant failed to cite to the evidence presented, and we find this reasoning appropriate in the instant matter as well. In any event, a commissioner is not obligated to accept the conclusions proffered by a litigant in a motion to correct. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003); Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006).

[6] General Statutes § 31-275 (1) (E) states: "A personal injury shall not be deemed to arise out of the employment if the injury is sustained: (i) At the employee's place of abode, and (ii) while the employee is engaged in a preliminary act or acts in preparation for work unless such act or acts are undertaken at the express direction or request of the employer…."

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).

At the outset, we note that a determination as to whether an injury was sustained in the course of employment is a fact-driven exercise. The claimant cites Tutunjian, supra, as an example of a claim in which the commissioner awarded benefits to a claimant for an injury sustained at home, and asserts that Tutunjian is factually similar to her own claim. We are not so persuaded, given that we find substantial factual distinctions between the two cases.

In Tutunjian, the commissioner found credible the claimant's narrative that he had been directed by his employer to work from home on days when weather conditions made commuting unsafe. The claimant also presented documentary evidence from the employer directing him to work from home on such days. The Tutunjian claimant was injured while mailing a letter for the employer, and the commissioner concluded that the injury was sustained "while the employee [was] engaged in the line of the employee's duty in the business" consistent with the provisions of § 31-275 (1). The commissioner applied the three-prong test discussed in Matteau v. Mohegan Sun Casino, 4998 CRB-2-05-9 (August 31, 2006), "in which a claimant must demonstrate 'a regular and substantial

quantity of work to be performed at home, the continuing presence of work equipment in the home, and special employment circumstances that make it necessary rather than personally convenient to work at home.'" Id., *quoting* Labadie v. Norwalk Rehabilitation Servs., 4254 CRB-7-00-6 (June 21, 2001). See also 3 A. Larson & L. Larson, Workmen's Compensation Law (2000), §§ 16.10 [2], pp. 16-27.

Unlike the Tutunjian claimant, the claimant in the present matter did not present any documentary evidence indicating that the respondent-employer had directed her to work from home. Moreover, the claimant's narrative did not reflect that there were any special employment circumstances in effect on the date of her injury obligating her to work out of her home; rather, it appears that the claimant found it personally convenient to handle certain job duties at home. As this board observed in Matteau, supra, unless an employee is specifically directed by the employer to work from home, our statutes generally place injuries occurring at an employee's home outside the ambit of Chapter 568.

Our Appellate Court's decision in Baron, supra, illustrates this precept. Although the claimant in the present matter contends that the test delineated in Baron would support compensability, we note that in that case, the court upheld a decision concluding that an injury sustained by a claimant traveling between what he claimed was a home office and a work assignment was not compensable. The Baron claimant was a traveling salesman, similar to the claimant in the instant appeal.[7] However, in Baron, the commissioner credited testimony that the respondents did not direct the claimant to set up

[7] We note that in both the matter at bar and Baron v. Genlyte Thomas Group, LLC, 132 Conn. App. 794, *cert. denied*, 303 Conn. 939 (2012), the claimant was not paid for any time spent working at home. We also note that in Baron, "reimbursement for outside salespeople was not permitted for their travels from home to their first sales call of the day or from the last sales call of the day to home. Rather, it was deemed nonreimbursable commuting travel." Id., 797.

a home office, and the commissioner concluded that it had been done for the claimant's convenience. Id., 802-03. In addition, as is also the case in the matter at bar, the Baron claimant did not claim his residence as a home office for tax purposes. Id., 803. We note that the Baron claimant argued that the commissioner should have credited evidence supportive of compensability, but our Appellate Court recited black letter law indicating that the commissioner "is the sole arbiter of credibility." Id., 804, *citing* Samaoya v. Gallagher, 102 Conn. App. 670, 673-674 (2007). In light of the close factual parallels between the two cases, we find nothing in the court's decision in Baron which would suggest that the commissioner's decision in the present matter was in error.

On the other hand, we find that Perun v. Danbury, 5651 CRB-7-11-5 (May 15, 2012), *aff'd*, 143 Conn. App. 313 (2013), is directly on point and supports the commissioner's decision. In Perun, the claimant, a police officer, sustained an injury when he fell in the driveway of his home prior to commencing his commute to the police station. The claimant asserted that General Statutes § 31-275 (1) (A) (i) applied to his injury and the "portal to portal" coverage extended by the General Assembly to police officers during their commute to work made the injury compensable. [8] The commissioner found the claimant's argument persuasive and deemed the injury compensable.

However, this tribunal reversed that decision, holding that the provisions of § 31-275 (1) (E) governed the injury because it had occurred at the claimant's abode while he was engaged in a preliminary act in preparation for work. In so doing, we determined that Public Act 95-262, which enacted § 31-275 (1) (E), did not contain a

[8] General Statutes § 31-275 (1) (A) (i) states: "For a police officer or firefighter, 'in the course of his employment' encompasses such individual's departure from such individual's place of abode to duty, such individual's duty, and the return to such individual's place of abode after duty…."

carve-out for police officers and, therefore, "[a]cts undertaken at one's abode in preparation for work are not compensable unless they are undertaken at the direction of the respondent." Id. We also distinguished Perun from Tutunjian, supra, on its facts, noting that in Perun, "there is no evidence the claimant was injured in any manner other than leaving his house to commute to the police station where he was expected to report for duty." Id. Our Appellate Court affirmed our decision, remarking that "[e]mployment ordinarily does not commence until the claimant has reached the employer's premises…." (Internal quotation marks omitted.) Perun v. Danbury, 143 Conn. App. 313, 316 (2013), *quoting* Labadie v. Norwalk Rehabilitation Services, Inc., 274 Conn. 219, 229 (2005).

As was the case in Perun, the commissioner in the present matter found that the claimant was injured in the course of carrying out activities in preparation for work and the claimant's work day did not commence until she arrived at the scheduled morning sales meeting. Given that we find the facts in this claim indistinguishable from Perun, supra, we are compelled to reach the same result.

The claimant also argues that she presented sufficient evidence to the commissioner on the basis of which the commissioner could have reasonably inferred that the claimant maintained a home office. We have reviewed the evidentiary record and conclude that in the absence of any documentary evidence from the employer, it was well within the commissioner's discretion to determine that the claimant's narrative, standing on its own, was insufficient to justify finding that the claimant maintained a home office. As an appellate panel, we are not empowered to reverse findings predicated on a commissioner's determination of the facts. See Fair, supra.

Finally, the claimant argues that in light of current business trends which place an increasing emphasis on the performance of job duties at home, the commissioner should have found her injury compensable. See Claimant's Brief, p. 6. This contention implicates policy considerations and is similar to the arguments raised in Matteau, supra, almost thirteen years ago. The General Assembly has not addressed the provisions of § 31-275 (1) (E) since Matteau, and it is well-settled that the jurisdiction of the Workers' Compensation Commission to award benefits is constrained by statute. See Hanson v. Transportation General, Inc., 245 Conn. 613, 618 (1998). Thus, in light of the "legislative acquiescence" on the part of the General Assembly, it may be reasonably inferred that the legislature intended that injuries such as those sustained by the instant claimant should not be deemed compensable, and this tribunal must act in a manner consistent with the legislature's intentions. Given, then, that the commissioner's conclusions are consistent with the evidentiary record, pertinent case law, and the applicable statutory provisions, we have no basis for reversing her decision.

There is no error; the February 5, 2018 Finding and Dismissal of Michelle D. Truglia, the Commissioner acting for the Seventh District, is accordingly affirmed.

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