CASE NO. 6262 CRB-1-18-4 : COMPENSATION REVIEW BOARD
CLAIM NO. 100205513

MARK SWAGGERTY : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : MARCH 15, 2019

CITY OF HARTFORD/DEPARTMENT
OF PUBLIC WORKS
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLEE

and

CONSTITUTION STATE SERVICES/
TRAVELERS PROPERTY & CASUALTY
THIRD-PARTY ADMINISTRATOR

APPEARANCES: The claimant was self-represented at formal proceedings below and during the course of this appeal.

The respondent was represented by Courtney C. Stabnick, Esq., and Douglas L. Drayton, Esq., Pomeranz, Drayton & Stabnick, L.L.C., 95 Glastonbury Boulevard, Suite 216, Glastonbury, CT 06033-4453.

This Petition for Review from the February 16, 2018 Finding and Award in Part/Dismissal in Part of Ernie R. Walker, the Commissioner acting for the First District, was heard 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.

OPINION

STEPHEN M. MORELLI, CHAIRMAN. The claimant has appealed from a Finding and Award in Part/Dismissal in Part (finding) by Ernie R. Walker (commissioner) concluding that the claimant was not entitled to additional indemnity benefits or medical treatment for a compensable injury sustained on November 24, 2014. Although the claimant's treating physician recommended that the claimant receive further treatment, the commissioner did not find this argument persuasive. The commissioner also noted that the claimant had already been paid permanent partial disability benefits for his back and cervical spine. The claimant has appealed from this decision. However, the respondent has filed a motion to dismiss the appeal, arguing that it was statutorily untimely and this board lacks jurisdiction to consider the appeal. We find the respondent's motion meritorious and therefore dismiss the claimant's appeal.

The commissioner reached the following factual findings at the conclusion of the formal hearing. The commissioner noted that the claimant was employed by the respondent-employer in its public works department on November 24, 2014, when the claimant slipped and fell while getting out of his truck and sustained injuries to his neck and back. The respondent accepted this claim. Subsequent to this incident, the claimant treated for his injuries with his authorized treating physician, John J. Mara, M.D., an orthopedic surgeon.

The claimant presented medical records from St. Francis Hospital in support of his position. The respondent presented into evidence copies of two voluntary agreements acknowledging permanency ratings for the claimant's back and cervical spine, a copy of a check reflecting the benefits paid pursuant to these agreements, and medical reports

from the respondent's medical examiner, Steven E. Selden, M.D., an orthopedic surgeon, and the commissioner's examiner, Stephan C. Lange, M.D., an orthopedic surgeon. The respondent argues that its exhibits provide a basis for its argument that the claimant has already received all of the medical treatment and indemnity benefits associated with the compensable injury.

Based on the evidence presented, the commissioner concluded that both Selden and Lange had opined that the claimant was at maximum medical improvement and entitled to a five percent permanent partial disability rating for his back and neck. See Respondent's Exhibit 1, p. 3; Respondent's Exhibit 2, p. 7. However, the commissioner found that this award had already been paid. The commissioner also found credible and persuasive the opinions of Selden and Lange indicating that the claimant did not require further medical treatment. The commissioner therefore denied the claim for additional benefits and medical treatment for the November 24, 2014 injury.

Within the twenty-day period subsequent to the issuance of the February 16, 2018 finding, the claimant did not file a motion to correct or any other form of post-judgment motion; nor did he file a petition for review in accordance with the provisions of General Statutes § 31-301(a) during that time period. [1] The claimant filed a petition for review on April 5, 2018, and the respondent filed a motion to dismiss on May 4, 2018.[2] The

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[1] General Statutes § 31-301 (a) states: "At any time within twenty days after entry of an award by the commissioner, after a decision of the commissioner upon a motion or after an order by the commissioner according to the provisions of section 31-299b, either party may appeal therefrom to the Compensation Review Board by filing in the office of the commissioner from which the award or the decision on a motion originated an appeal petition and five copies thereof. The commissioner within three days thereafter shall mail the petition and three copies thereof to the chief of the Compensation Review Board and a copy thereof to the adverse party or parties. If a party files a motion subsequent to the finding and award, order or decision, the twenty-day period for filing an appeal of an award or an order by the commissioner shall commence on the date of the decision on such motion."

[2] We note that in his Petition for Review filed on April 5, 2018, the claimant indicated that his appeal was being taken from a "ruling on motion." Given that the record does not contain any rulings against the

respondent contends that because this appeal was commenced in an untimely manner, we lack jurisdiction to rule on this appeal. We agree with the respondent.

We find the facts in this matter are indistinguishable from Sutherland Hofler v. State/Dept. of Developmental Services, 6173 CRB-5-17-1 (December 12, 2017), and we are therefore compelled to reach the same result. In Sutherland, this tribunal remarked that:

> consistent with Mankus v. Mankus, 4958 CRB-1-05-6 (August 22, 2006), *aff'd*, 107 Conn. App. 585 (2008), *cert. denied*, 288 Conn. 904 (2008), and Brockenberry v. Thomas Deegan d/b/a Tom's Scrap Metal, Inc., 5429 CRB-5-09-2 (January 22, 2010), *aff'd*, 126 Conn. App. 902 (2011) (per curiam) … "[o]nce a determination is reached that we lack subject matter jurisdiction no further inquiry is warranted." Mankus, supra. Our decision in Bond v. Lee Manufacturing, Inc., 5868 CRB-8-13-8 (April 21, 2016), also stands for the proposition that prior to taking any action on the merits of an appeal, we must resolve any questions pertaining to whether we have jurisdiction to consider the appeal. In Brown v. Lawrence & Memorial Hospital, 5853 CRB-2-13-5 (April 21, 2014), the claimant offered an explanation for her late filing of an appeal, but we concluded that we were not in a position to consider the matter because "[o]ur courts have determined that the failure of a party to file a timely appeal deprives the board of jurisdiction over the appeal." Id.

Id.; see also Stec v. Raymark Industries, Inc., 299 Conn. 346 (2010).

We also stated that:

> the claimant was obligated, if she was dissatisfied with or confused about the trial commissioner's Finding and Denial, to either appeal to this tribunal within twenty days, or file an appropriate motion with the trial commissioner seeking a correction or clarification within that period. See Garvey v. Atlas Scenic Studios, Inc., 5493 CRB-4-09-9 (February 14, 2012). Otherwise, her appellate rights would be extinguished pursuant to General Statutes § 31-301 (a). The claimant failed to take either action within that twenty-day window. Given that the claimant, although aggrieved by the December 14, 2016 decision of the trial commissioner, took

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claimant apart from the February 16, 2018 Finding and Award in Part/Dismissal in Part, our review of this matter is predicated on the basis that the claimant's appeal was taken from this decision.

> no responsive action within twenty days, we therefore lack subject matter jurisdiction to consider the appeal.

Id.

In the present matter, the claimant failed to exercise his right to respond to the finding within the jurisdictional time period. Having failed to exercise this right, we may not offer the claimant relief at this juncture. As we indicated in Sutherland Hofler, supra, when an aggrieved party fails to file a motion to correct (which occurred both in that case and in the present case), our ability to review the facts found by the commissioner is sharply limited even when we retain jurisdiction to do so.

> Even had we retained jurisdiction to consider the claimant's appellate arguments, we would deem these arguments an effort to retry the factual findings of the trial commissioner on appeal. Macon v. Colt's Manufacturing, 5505 CRB-1-09-10 (September 27, 2010), *appeal dismissed*, A.C. 32785 (December 13, 2010), is dispositive of that issue. Our standard of review is limited to addressing findings of fact that are "clearly erroneous." Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007). The trial commissioner in this matter, similar to the trial commissioner in Macon, reached findings of fact which were consistent with the testimony and evidence that he found credible and probative, but were unsupportive of the relief the claimant sought. In neither Macon nor the present case was a Motion to Correct filed challenging the factual findings of the trial commissioner. Therefore, as we pointed out in Stevens v. Raymark Industries, Inc., 5215 CRB-4-07-4 (March 26, 2008), *appeal dismissed*, A.C. 29795 (June [2]6, 2008), when this occurs, "we must accept the validity of the facts found by the trial commissioner, and ... this board is limited to reviewing how the commissioner applied the law." Id. See also Admin. Reg. § 31-301-4.

Id.; see also Samaoya v. Gallagher, 102 Conn. App. 670, 675 (2007).

After considering the documents filed by the claimant and the oral argument presented before this board, we conclude that the claimant believes that the commissioner's factual findings were erroneous. He argues that the respondent

improperly barred him from receiving treatment for his injury and the formal hearing was not held in a fair manner because it failed to protect his interests. He also argues that the trial commissioner should not have found credible the witnesses produced by the respondent.

It is of course well settled that a claimant has the burden of proof in proceedings before our commission in order to establish that he or she is entitled to relief. See Torres v. New England Masonry Company, 5289 CRB-5-07-10 (January 6, 2009). As such, it may therefore be reasonably inferred that in the matter at bar, the commissioner simply was not persuaded by the claimant's evidence. Of particular note is the fact that the commissioner specifically found the opinions of Selden and Lange, neither of whom recommended additional treatment, credible and persuasive. As an appellate body, we are bound by the commissioner's conclusions in this regard. In any event, we lack jurisdiction to take any action due to the untimely filing of the appeal.

There is no error; the February 16, 2018 Finding and Award in Part/Dismissal in Part of Ernie R. Walker, the Commissioner acting for the First District, is accordingly affirmed and the appeal is dismissed for lack of jurisdiction.

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