CASE NO. 6263 CRB-5-18-4 CLAIM NO. 601078764	:	COMPENSATION REVIEW BOARD
TERRY SHELESKY CLAIMANT-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
vs.	:	JULY 3, 2019

COMMUNITY SYSTEMS, INC.
EMPLOYER

and

WORKERS' COMPENSATION TRUST
INSURER
RESPONDENT-APPELLEE

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

The claimant was represented by Barry S. Moller, Esq., Cramer & Anderson L.L.P., 51 Main Street, New Milford, CT 06776.

Respondents Community Systems, Inc., and Workers' Compensation Trust were represented by Judith A. Murray, Esq., Letizia, Ambrose & Falls P.C., 667-669 State Street, Second Floor, New Haven, CT 06511.

Respondent Second Injury Fund was represented by Francis C. Vignati, Jr., Esq., Assistant Attorney General, Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120.

This Petition for Review from the March 29, 2018 Finding and Dismissal of Christine L. Engel, the Commissioner acting for the Fifth District, was heard November 30, 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 four motions for extension of time were granted during the pendency of this appeal.

OPINION

STEPHEN M. MORELLI, CHAIRMAN. The claimant in this matter has appealed from a Finding and Dismissal (finding) in which Commissioner Christine L. Engel (commissioner) determined that the claimant did not sustain a disabling injury while at work on September 2, 2015. The claimant argues that the commissioner failed to properly credit uncontroverted evidence which was supportive of the alleged disability and linked the claimant's condition to having been hit in the head with a bottle. She also argues that the commissioner's reliance on the opinion of the respondents' medical examiner constituted error because this witness relied upon hearsay evidence relative to matters unrelated to the injury. The respondents argue that the claimant's testimony was inconsistent and the commissioner could have reasonably found that the witnesses presented by the respondents were more persuasive than those presented by the claimant. Given that this board, as an appellate body, must defer to the fact finder when he or she evaluates contested evidence, we affirm the Finding and Dismissal.[2] See O'Connor v. Med-Center Home Healthcare, Inc., 4954 CRB-5-05-6 (July 17, 2006).

The commissioner reached eighty-nine separate findings of fact at the conclusion of the formal hearing. We summarize these findings, subsequent to the corrections granted by the commissioner, as follows. The claimant was employed as a job coach for developmentally disabled adults in September 2015. On September 2, 2015, she was directed to travel to the home of a client who was very agitated. She was in the process of addressing the situation when the client struck her in the head with a water bottle. The

[2] In O'Connor v. Med-Center Home Healthcare, Inc., 4954 CRB-5-05-6 (July 17, 2006), this board observed that "[t]here are few principles of jurisprudence more fundamental than the principle that a trier of fact must be the one party responsible for finding the truth amidst conflicting claims and evidence."

claimant stated that the impact shattered the bottle and presented the broken bottle as an exhibit at the formal hearing.

After the incident, the claimant said she felt ill and notified her employer. She finished her shift at 3:15 p.m. and went to Winsted Health Center shortly after 8 p.m., where she informed her medical providers that she was confused, experiencing head pain and dizziness, and having difficulty speaking. The commissioner noted that the Winsted Health Center records from that encounter reflect that the claimant's speech and gait were normal and no motor or sensory deficits were observed. The records did not document neck pain, loss of consciousness, numbness, nausea, vomiting, difficulty breathing or lacerations. They did note slight tenderness in the claimant's right parietal area. The portion of the report concerning the claimant's history contained a reference to anxiety.

The commissioner noted that on the following day, the claimant presented at Charlotte Hungerford Hospital complaining of an inability to concentrate and feeling disoriented. She underwent a CT scan of her brain which was negative. On the same day, the claimant also presented at Concentra. The Concentra physician who examined her did not observe any swelling of her head. Although the claimant reported experiencing lethargy, neck stiffness and leg pain, she was released back to work full-duty. The claimant returned to Concentra on September 8, 2015, complaining of difficulty in expressing her thoughts. She was referred to a neurologist and underwent an MRI of her brain on September 29, 2015, the results of which were completely normal. The claimant has not returned to work since the date of injury.

The commissioner noted that almost two years prior to the September 2, 2015 incident, the claimant had sought treatment for anxiety and depression. On December 3,

2013, the claimant underwent an examination with her primary care physician, D. James McKay, M.D. Questionnaire answers provided by the claimant to McKay indicate that she felt "down, depressed or hopeless" and was experiencing sleep issues. Respondents' Exhibit 5. She said she was speaking and moving slowly and these issues were impacting her work and home life as well as her ability to get along with others. She indicated that during the prior year, she had experienced fatigue, blurred vision, wheezing, nausea, and shortness of breath. At a January 22, 2014 examination, McKay diagnosed fatigue, shortness of breath, anxiety, and depression.

Subsequent to her examinations at Concentra in September 2015, on October 26, 2015, the claimant was examined by Alison L. Carlson, APRN, at St. Francis Hospital's neurology group. The claimant reported to Carlson that she was experiencing speech difficulties, memory loss and vision problems; however, the neurological exam was normal and did not explain the claimant's stated complaints. The claimant did not schedule a follow-up visit. Carlson did not offer an opinion regarding the claimant's work capacity or the causation of the claimant's ailments, but she did suggest that the claimant pursue speech therapy and attend an eye consultation.

On December 8, 2015, the claimant was examined by a neurologist, Behzad Habibi Khameneh, M.D., of Associated Neurologists, P.C. The claimant presented with anxiety and depression but advised Khameneh that her complaints relative to her speech, neck pain and dizziness were resolving. Khameneh recommended that the claimant seek counseling and consult a psychiatrist. The claimant declined medication. Khameneh did not offer an opinion regarding the claimant's work capacity or the causation of the claimant's ailments.

On December 23, 2015, the claimant was examined by another neurologist who practiced with Khameneh, Robert Bonwetsch, M.D. He noted that the claimant was stuttering and complaining of ringing in her ears. He recommended a psychiatric/ psychological consult and a neurobehavioral assessment. Bonwetsch examined the claimant again on April 1, 2016, and encouraged her to see a psychiatrist for her anxiety as well as an ENT specialist for her tinnitus. Subsequent to that office visit, on April 26, 2016, Bonwetsch wrote a letter to claimant's counsel opining that the claimant had sustained a concussion at work which had aggravated her anxiety.

The claimant was also examined by Neil F. Schiff, M.D., an ENT specialist, on February 2, 2016. He described the claimant's complaints as sensitivity to noise, tinnitus, sensorineural hearing loss and post-concussive syndrome. He offered the claimant information relative to the tinnitus and a management strategy for her noise sensitivity. He did not comment on the claimant's work capacity or the causation of the claimant's ailments. In addition, the claimant underwent a neuropsychological examination on March 21, 2016, performed by Jonathan C. Woodhouse, Psy.D., a neuropsychologist, who reported that although the claimant had put forth a suboptimal effort, he still found the results relative to objective measures of learning and delayed memory within normal limits. The doctor found that the claimant's level of anxiety was "clinically significant" but also noted that the claimant's "speech was fluent and was normal in rate, rhythm and prosody." Respondents' Exhibit 3, pp. 1, 2.

Patricia R. Heller, LMFT, the claimant's marriage and family therapist, also testified at the formal hearing. Heller said that the claimant had previously been in counseling with her due to a divorce, and she had resumed seeing her in 2016. Heller

testified that she had diagnosed the claimant with the "most benign diagnosis offered by the DSM-IV: Generalized Anxiety Disorder." Findings, ¶ 41, *citing* December 4, 2017 Transcript, p. 14. Heller issued two opinion letters regarding the claimant's condition, both dated February 28, 2016. In one of these letters, Heller stated, inter alia, that the claimant's "dearest wish is to be able to return to work. Here, while with effective treatment she may eventually be able to return to low income house painting, she will never be able to either deal with violent clients or drive cars or 20 foot trailers. These tasks will never be possible [f]or her." Claimant's Exhibit E. The other letter offered a different opinion, suggesting that the claimant's "dearest wish is to be able to return to work. I think that with proper treatment this is a reasonable expectation." Respondents' Exhibit 14.

The correspondence entered into the record as "Claimant's Exhibit E" also differed from correspondence entered as "Respondent's Exhibit 14" in that it indicated that the claimant was suffering from post-traumatic stress disorder (PTSD) incurred as a direct result of the head trauma sustained at work. The correspondence entered as "Respondents' Exhibit 14" did not include such an unequivocal representation relative to the notion that the claimant's head trauma had caused PTSD; however, both of the letters recommended that the claimant undergo a full neurological examination. The commissioner also noted that Heller, in addition to authoring both letters dated February 28, 2016, sent a separate letter to claimant's counsel which stated, "[p]lease feel free to edit it in any way you see fit." Respondents' Exhibit 15. The respondents entered into the record a copy of the response from claimant's counsel suggesting a change to Heller's correspondence. See Respondents' Exhibit 17.

At trial, Heller, in explaining her actions, testified that she "was ignorant about what would be required" in a workers' compensation medical report and had sought guidance from the claimant's attorney. December 4, 2017 Transcript, p. 59. She said that the claimant had not provided her with any records of the work injury and she had not reviewed the neurologist's report or the reports from the neurological testing. She also testified that she was unaware that the claimant had treated with McKay or that McKay had diagnosed the claimant with depression; she further indicated that she had not seen McKay's records. Id., 35.

In addition, Heller testified that the claimant had undergone significant personality and mood changes subsequent to the September 2015 incident, and indicated that she could only attribute those changes to brain damage. However, Heller also admitted that she had not previously dealt with a patient who had sustained a blow to the head. She did offer an opinion regarding the claimant's personality change, stating that "[i]n my opinion, my non-medical opinion, it was the blow to her head." Id., 64.

On July 22, 2016, the claimant was examined by Kenneth R. Cohen, M.D., a psychiatrist, who examined the claimant four times prior to mid-October 2016. Relying in part on a history obtained from Heller and the claimant, Cohen issued a report on August 12, 2016, in which he attributed causation for the claimant's medical condition to the work incident. The commissioner cited part of this report in her decision.

> Given my background working with medically ill patients, Ms. Shelesky presents in a similar fashion to someone with a history of head trauma…. While I agree with Ms. Heller that the patient likely suffers from post traumatic stress disorder, I suspect that her more significant cognitive and neurological symptoms are attributable to anxiety due to a medical condition (head trauma), cognitive disorder due to a medical condition (head trauma), and mood disorder due to a medical condition (head trauma).

Findings, ¶ 63, *quoting* Claimant's Exhibit F, p. 1.

Cohen concluded that the claimant was unable to work but "may improve over time." Claimant's Exhibit F, p. 2. He recommended medication and psychotherapy and, with a reasonable degree of medical certainty, attributed the claimant's condition to her head injury.

Kenneth M. Selig, M.D., J.D., performed a respondents' medical examination (RME) on December 1, 2016, and issued his report on January 2, 2017.[3] Selig indicated that he had examined medical records relative to the claimant's treatment prior to the September 2, 2015 incident, and those records indicated that the claimant was previously prescribed Effexor, Ritalin and Lexapro. Selig also noted that McKay's notes reflected that the claimant had been diagnosed with anxiety, depression and bruxism in 2013. Selig further noted that the claimant associated her hypothyroidism and weight gain with the work incident, but medical records suggested that these conditions pre-dated the September 2, 2015 incident. Selig found these records more significant than the claimant's subjective complaints because the records contained objective measurements.

Selig indicated that during his examination of the claimant, she stated that she felt her employment with the respondent employer was "special" because she was able to help clients find employment, and this role "gave [her] a true place in the world." Respondents' Exhibit 20, p. 3. She said she stopped working at that job because "a client hit me on the head with a water bottle and that changed my whole life." Id. She also associated her tinnitus with this incident.

[3] In her March 29, 2018 Finding and Dismissal, the commissioner indicated that this examination occurred on January 2, 2017. See Findings, ¶ 66. However, our review of the evidentiary record indicates that the examination occurred on December 1, 2016. See Respondents' Exhibit 20. We deem this harmless scrivener's error. See Hernandez v. American Truck Rental, 5083 CRB-7-06-4 (April 19, 2007).

Selig noted the claimant's mental status at the examination and described her demeanor as follows:

> She maintained poor eye contact. I did not consider her to be a good historian as she tended to blame others and tried to show me her best side. There were also elements of strategizing the evaluation as she wanted to make it clear that the event at issue in this case was a dramatic event because that completely changed in her life. Her speech was goal directed and organized. I did not detect significant anxiety. She was not shaking, sweating, or short of breath. There was no evidence of significant depression or cognitive problems.

Id., 4.

In summarizing his findings, Selig found the September 2, 2015 incident "difficult to understand" as there was no laceration or bump associated with the incident. Respondents' Exhibit 20, p. 7. He opined that a neurological evaluation suggested only a mild traumatic brain injury which would normally resolve within three to six months, but the claimant's chronic worsening symptoms were inconsistent with this diagnosis.

At the formal hearing held on December 4, 2017, Selig testified that he did not think the claimant had suffered a traumatic brain injury; nor did he find the physical injury sufficient to exacerbate her anxiety significantly. He concluded that the claimant had a work capacity without restrictions and her psychiatric issues were not substantially related to the workplace injury. Selig reiterated his findings in the RME, and indicated that he disagreed with the diagnosis of PTSD. Subsequent to the issuance of the RME report, on January 9, 2017, the respondents filed another form 36 seeking to discontinue benefits.

The claimant also testified regarding other employment she performed on evenings and weekends which involved landscaping and painting for an individual named

Al Lamere. An investigator for the Second Injury Fund produced evidence to the effect that this business did not have workers' compensation insurance. The claimant said she was paid in cash; she produced neither documentary evidence from the putative employer nor a corroborating witness.

Based on the foregoing evidentiary record, the commissioner concluded that the claimant's testimony regarding her September 2, 2015 injury was not entirely persuasive and the claimant was not totally disabled from this injury. Noting that the contemporaneous medical records did not corroborate the claimant's claim that she sustained a significant head injury, the commissioner approved the January 9, 2017 form 36 as of the date of receipt. She also discounted Heller's opinion, partly because the doctor had not taken a full medical history from the claimant and partly because Heller lacked the education or training to diagnose a traumatic brain injury.[4]

In addition, the commissioner concluded that Cohen's opinion was based on an incomplete review of the medical records and therefore was not persuasive. The commissioner determined that the medical evidence demonstrated that the claimant was diagnosed with depression and anxiety a year and half prior to the work incident and had been prescribed medication for these conditions. She found persuasive the opinion offered in Selig's RME report and his live testimony. She was not persuaded by the claimant's evidence relative to her alleged concurrent employment. Accordingly, she denied the claim for medical and indemnity benefits for the September 2, 2015 work injury.

[4] The commissioner also discussed the two separate letters authored by Heller on February 28, 2016, at some length. See Conclusion, ¶¶ O-R. However, in light of the commissioner's other stated reasons for discounting the testimony of this witness, we decline to dwell on this controversy.

The claimant filed a motion to correct seeking fifty-one separate corrections. The gravamen of this motion was that the commissioner should have discounted Selig's opinion, credited the opinions of Heller and the claimant's other treating physicians, and concluded that the claimant had sustained a compensable injury for which she should receive ongoing treatment and indemnity benefits. The commissioner granted three corrections which did not materially change the outcome of this decision, and the claimant has pursued this appeal, arguing that the finding was arbitrary and capricious and the commissioner overlooked credible medical evidence supporting the claim. The claimant seeks to vacate the decision and have the matter remanded for a *de novo* formal hearing.[5]

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, 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

[5] In prosecuting her appeal, the claimant did not brief the issue of concurrent employment. Given that the claimant is seeking a *de novo* hearing, we deem this issue superfluous to this board's consideration of this matter.

inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

It is of course axiomatic that within the workers' compensation forum, the claimant bears the burden of persuasion to prove that the employment was the proximate cause of the injury. See Sapko v. State 305 Conn. 360, 372 (2012), *quoting* DiNuzzo v. Dan Perkins Chevrolet Geo, Inc., 294 Conn. 132, 142 (2009); Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 447 (2001), *quoting* Keenan v. Union Camp Corp., 49 Conn. App. 280, 282 (1998). It is equally well-settled that "'[i]t is the trial commissioner's function to assess the weight and credibility of medical reports and testimony….'" O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818 (1999), *quoting* Gillis v. White Oak Corp., 49 Conn. App. 630, 637, *cert denied*, 247 Conn. 919 (1998). As such, when two medical experts offer conflicting testimony, this board is obligated to defer to the conclusions of the commissioner regarding which witness he or she finds most persuasive and credible. See Dellacamera v. Waterbury, 4966 CRB-5-05-6 (June 29, 2006), *appeal withdrawn*, A.C. 27853 (September 12, 2006).

In Jodlowski v. Stanley Works, 169 Conn. App. 103 (2016), our Appellate Court affirmed the prerogative of a commissioner to determine which evidentiary submissions he or she deems most probative and persuasive relative to the issues presented at the hearing. "The [commissioner] alone is charged with the duty of initially selecting the inference [that] seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." (Internal quotation marks omitted.) Id., 108-109, *quoting* Estate of Haburey v. Winchester, 150 Conn. App. 699, 714, *cert. denied*, 312 Conn. 922 (2014).

This board has also previously examined the standard for evaluating contested medical evidence. In Brooks v. West Hartford, 4907 CRB-6-05-1 (January 24, 2006), we stated:

> One of the primary tenets of our standard of appellate review is that the trial commissioner has the right and the duty to decide how much of the medical evidence presented to him is persuasive and reliable. Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002); Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998). A commissioner may choose to credit all, part or none of an expert's testimony. O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 819 (1999). On review, this board may not second-guess a commissioner's inferences of evidentiary credibility, and we may reverse factual findings only if they are unsupported by the evidence or if they fail to include undisputed material facts. Id.; Warren v. Federal Express Corp., 4163 CRB-2-99-12 (February 27, 2001).

Id.

In addition, in Lopez v. Lowe's Home Improvement Center, 4922 CRB-6-05-3 (March 29, 2006), this board noted that "it is within the discretion of the trial commissioner to accept some, but not all, of a physician's opinion." Id. We have also ruled against litigants who argued that we should "cherry pick" an expert opinion for the portions not adopted by the commissioner which would have supported the claimant's argument. See Williams v. Bantam Supply Co., Inc., 5132 CRB-5-06-9 (August 30, 2007).

In the present matter, the claimant cites three primary disputes with the finding:

- She argues that the trial commissioner erroneously concluded that she did not sustain a concussion or head injury in the September 2, 2015 incident.
- She argues that it was error for the trial commissioner not to credit the opinion of Patricia Heller, whom the claimant believes offered compelling testimony regarding her condition before and after the incident.

- She argues that Selig's opinion should have been deemed reliant upon highly prejudicial material unrelated to the claimant's medical condition and thereby discounted.

See Claimant's Brief, p. 10.

With regard to the claimant's first claim of error, the evidentiary record indicates that relative to the claimant's initial medical intervention following the September 2, 2015 incident, the claimant presented to Charlotte Hungerford Emergency and Medical Care at Winsted Health Center several hours after completing her shift for the day, rather than immediately after sustaining the blow to the head from the water bottle. The medical report from this visit states that she was admitted at 8:03 p.m. See Claimant's Exhibit H. The report further indicates that the claimant had suffered a "[m]inor closed head injury" with "[n]o loss of consciousness." Id. The claimant was released at 8:29 p.m., and her discharge instructions included the application of ice and the use of over the counter pain medications. Id.

The following day, the claimant presented at Charlotte Hungerford Hospital at 10:51 p.m., and the physical exam once again indicated "[n]o swelling of head" and the neurological assessment stated: "Mood/affect normal. Speech normal. No motor deficit. No sensory deficit." Claimant's Exhibit J; Respondents' Exhibit 2. The exam also noted "[n]o seizure, numbness, weakness or difficulty breathing." Id. The medical provider informed the claimant that there were "no focal findings and CT is negative" and the "symptoms should resolve over time…." Id. However, the doctor did note "Concussion" as a clinical impression.

In light of the foregoing medical evidence, the claimant contends that Conclusion, ¶ E, was erroneous in that the commissioner stated that the medical records "do not

corroborate any injury to the claimant's head." We agree that to the extent the term "concussion" did appear in the Charlotte Hungerford Hospital September 3, 2015 report, this conclusion was not an accurate statement. Nonetheless, it can be readily inferred that the commissioner had concluded that no objective test or observation corroborated the claimant's narrative. The medical records suggest that the claimant's medical providers did not observe a significant head injury, found no neurological evidence confirming that she had sustained a concussion, and discharged her anticipating that her injury would be short-lived and self-limiting.[6] Even if the commissioner had corrected Conclusion, ¶ E, to more faithfully reflect what the medical evidence stated, we are not persuaded that such a correction would have compelled a different result in this case. The commissioner was clearly more influenced by objective test results than the claimant's narrative and, as such, was entitled to give the objective evidence greater weight. See O'Reilly, supra.

We now turn to the commissioner's assessment of Heller's testimony. Our review of the evidentiary record indicates that the commissioner was afforded the opportunity to view the doctor's testimony at a formal hearing and did not find Heller a persuasive witness. It is well-settled that when a trier of fact observes the testimony of a witness and draws inferences therefrom, the trier's assessment of the value of such testimony is virtually inviolate on appeal. See Burton, supra, 40; see also Baron v. Genlyte Thomas Group, LLC, 132 Conn. App. 794, 804, *cert. denied*, 303 Conn. 939 (2012), *citing* Samaoya v. Gallagher, 102 Conn. App. 670, 673-74 (2007); Barbee v. Sysco Food Services, 5892 CRB-8-13-11 (October 16, 2014), *aff'd*, 161 Conn. App. 902 (2015) (per curiam).

[6] The CT scan taken at Charlotte Hungerford Hospital on September 3, 2015, demonstrated "[n]o evidence of intercranial hemorrhage, mass effect or calvarial fracture." Respondents' Exhibit 2.

In her decision, the commissioner proffered specific reasons for not crediting Heller's testimony. For instance, she did not believe that Heller had been given a complete medical history when she formed her opinions as to the cause of the claimant's symptoms.[7] Conclusion, ¶ G. In addition, the commissioner was not persuaded that Heller's education and training qualified her to diagnose a traumatic brain injury.[8] Conclusion, ¶ H. The commissioner also expressed concern regarding the fact that Heller had put forward two different opinions in her February 28, 2016 letters. Conclusion, ¶ Q. In light of these circumstances, we do not find that the commissioner erred in deeming Heller's medical opinion less persuasive than Selig's.[9]

Finally, we turn to the claim of error relative to the commissioner's reliance upon Selig's opinion. Our review of the record indicates that Selig offered live testimony before the commissioner which was ultimately found persuasive. We further note that the claimant had the opportunity to cross-examine Selig at length. See December 4, 2017 Transcript, pp. 115-129; pp. 135-138. In considering Selig's opinion that the September 2, 2015 incident did not materially impact the claimant's psychological condition, the commissioner was able to rely on precedent established in Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010), indicating that a trier of fact "is to consider medical evidence *along with all other evidence* to determine whether an injury

[7] The witness testified she had no medical training and had not reviewed the results of the neuropsychological examination. See December 4, 2017 Transcript, p. 41.

[8] In her motion to correct, the claimant sought corrections to the finding to delete Conclusion, ¶ G, and modify Conclusion, ¶ H. The commissioner denied these corrections and it can therefore be reasonably inferred that she was not persuaded by the evidence offered in their support. 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).

[9] Although Cohen and Bonwetsch could both be deemed to have possessed more suitable professional qualifications for diagnosing a traumatic brain injury than Heller, the commissioner also retained the discretion to discount their opinions. She specifically found Cohen's opinions unreliable for the reasons stated in Conclusion, ¶ I; we also note that the commissioner denied corrections sought by the claimant indicating that these witnesses offered persuasive opinions.

is related to the employment." (Emphasis in the original). Id., 595, *citing* Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142, 151 (1972).

In the present matter, the claimant argues that Selig relied excessively on legal filings which arose as a result of a volatile episode during a relationship with a boyfriend. However, our review of Selig's testimony at the formal hearing indicates that he largely focused on the claimant's medical condition, in part because the commissioner limited the scope of his testimony. See December 4, 2017 Transcript, p. 99. It may be reasonably inferred that to the extent Selig alluded to non-medical matters in his report, it was for the purpose of identifying an alternative rationale for the claimant's psychological state. If a claimant becomes ill prior to an incident at work, it is not unreasonable to inquire whether the claimant's condition is the result of this illness rather than the proximate result of the claimant's employment. In any event, the claimant was afforded the opportunity to challenge the foundation of Selig's opinion by way of cross-examination at the formal hearing, and the commissioner adopted Selig's opinions subsequent to that cross-examination having occurred.

With specific regard to that cross-examination, the claimant points to Selig's testimony indicating that the claimant could have demonstrated a negative result on an objective test such as a CAT scan or MRI and still have sustained a concussion. See id., 136. We would find this admission of greater significance had the witness not previously stated the same information on direct examination, id., 105, and then proceeded to offer additional explanations as to why he believed the claimant had not sustained a traumatic brain injury and why the September 2, 2015 incident was not a significant factor behind

the claimant's medical condition. Id., 111-114. Consequently, we are not persuaded that it was an error of law for the commissioner to find Selig's opinions reliable.

We note that there are many similarities between the factual circumstances of this claim and those surrounding the injury sustained by the claimant in Hadden v. Capitol Region Education Council, 5843 CRB-1-13-5 (May 20, 2014), *aff'd*, 164 Conn. App. 41 (2016). In both cases, the claimant sustained a workplace assault and her medical condition deteriorated subsequent to that event. In Hadden, however, the commissioner concluded that the claimant's treating physicians who opined that the assault exacerbated the claimant's preexisting multiple sclerosis were persuasive witnesses. In the present matter, the commissioner did not find the claimant's expert witnesses persuasive; nor did she conclude that the workplace incident was a significant contributing factor to the claimant's current medical condition.[10] We deferred to the commissioner's conclusions regarding which opinions he deemed reliable in Hadden, and we must defer to the determinations reached by the commissioner in this appeal.

There is no error; the March 29, 2018 Finding and Dismissal of Christine L. Engel, the Commissioner acting for the Fifth District, is accordingly affirmed.

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

[10] At oral argument, counsel for the claimant asserted that it was "illogical" for the commissioner to have concluded that "no injury" occurred in light of the evidence presented. We are not inclined to read the finding so broadly. The relief granted to the respondents was to grant their form 36 effective as of January 9, 2017. The commissioner evidently concluded that as of the date of Selig's examination, the claimant's condition was no longer related to the September 2, 2015 work incident.