CASE NO. 6266 CRB-5-18-4 : COMPENSATION REVIEW BOARD
CLAIM NO. 700177540

LEOPOLDO DOMINGUEZ-SANCHEZ : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : MARCH 28, 2019

TA CAISLEAN, INC. d/b/a TLC LAWN
AND LANDSCAPING SERVICE
EMPLOYER

and

TWIN CITY FIRE INSURANCE COMPANY
a/k/a THE HARTFORD
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 Olga E. Zargos-Traub, Esq., The Law Offices of David J. Mathis, 150 Cogswell Street, Second Floor, Hartford, CT 06105.

This Petition for Review from the March 20, 2018 Finding and Dismissal of Christine L. Engel, the Commissioner acting for the Fifth District, was heard on October 26, 2018 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Scott A. Barton and Jodi Murray Gregg.

OPINION

STEPHEN M. MORELLI, CHAIRMAN. The claimant has appealed from a Finding and Dismissal (finding) issued by Commissioner Christine L. Engel (commissioner) concluding that the claimant did not sustain a compensable back injury and was not entitled to medical treatment for his current back condition. The commissioner found that the claimant was not a persuasive witness and credited the testimony of other witnesses indicating that the claimant was already suffering from back problems due to soccer injuries which had occurred prior to the date when he claimed to have sustained an injury at work. As a result, the commissioner discounted medical opinions which were rendered in reliance upon the claimant's narrative.

The claimant contends that the commissioner reached conclusions inconsistent with the weight of the evidence, which evidence, according to the claimant, supported a finding of a compensable workplace injury. He points out that a proposed voluntary agreement purporting to accept this claim should have been given evidentiary weight by the commissioner. He also argues that the commissioner erred in relying upon a surveillance video that the claimant did not have an opportunity to view prior to the formal hearing. The respondents contend that these arguments are essentially an effort to retry the facts of the case on appeal. Upon review, we find the commissioner had a sufficient quantum of probative evidence to support her conclusions and could have reasonably found the claimant's testimony and evidence unpersuasive. Accordingly, we affirm the finding.

The commissioner reached the following factual findings at the conclusion of the formal hearing in this matter. The claimant testified that he had been employed by the

respondent-employer (identified in the finding as "Ta Caislean," "TLC Landscaping," and "TLC Landscaping Services") as a landscaper since 1999; on June 20, 2016, he filed a notice of claim ("form 30C") in which he alleged that he had sustained an injury to his low back while at work on May 18, 2016. On June 27, 2016, the respondents filed a "form 43" disclaiming the injury.

"On May 18, 2016, the claimant reported for work at about 7:30 a.m. He drove a company truck with co-workers and supplies to the first job site of the day, a private residence where Ta Caislean was planting flowers." Findings, ¶ 8. "The claimant testified that he began to feel pain in his lower back and buttocks at about 9:30 a.m. while he was bending over placing flowers on the ground in the order in which they were to be planted." Findings, ¶ 9. The claimant testified he was neither kneeling nor digging holes for the flowers but, rather, "was only bending over to place the flowers." Id. The claimant stated that one of his legs became numb, he felt strong pain, and he told his co-workers and his supervisor, Brydon Fajardo, the field manager, about his pain. He testified that Fajardo told him to keep working and perhaps the pain would go away; however, the pain did not stop, and later in the day, he left the job, drove a company truck back to the Ta Caislean yard, and went home.

The claimant testified that his wife then drove him to Stamford Hospital. The emergency department records from May 18, 2016, indicate that the claimant arrived at 9:15 p.m.[1] He was examined and interviewed by Sarah Feigenbaum, PA, among others. Feigenbaum's report of May 20, 2016 states:

[1] In Findings, ¶ 18, the commissioner stated that the claimant arrived at Stamford Hospital at 9:03 p.m. We deem this a harmless "scrivener's error." See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 729 (2002), *cert. denied*, 262 Conn. 933 (2003).

> Patient is a 39-year-old male with history of chronic pain, chronic left-sided leg numbness, history of herniated disc. He states that his symptoms have been going on for "a long time," but it worsened today after the last several days he has had to crouch down [at] work. He works as a landscaper and is physically active in his job and he denies any heavy lifting. He states that he has taken some ibuprofen earlier in the day but it didn't help with his symptoms. He states that he has been seeing a chiropractor for his low back pain and leg numbness and was told that he has a herniated disc; he denies getting any images on his back. This pain is not new, but feels like it got worse today.

Claimant's Exhibit G.

In her report of May 18, 2016, Feigenbaum had provided the following additional information pertaining to the claimant's medical history:

> Patient is a 39-year-old male with chronic low back pain, chronic intermittent left leg numbness, he states this isn't going on for "a long time" he is … being followed by a chiropractor. He feels that the pain is worse, after having to crouch down at his job. He denies any worsening of the numbness which is intermittent…. I used the language interpreter line to go through his entire history and disposition with him…. Patient is being seen by a chiropractor did refer him to a back specialist, I also recommended that he follow up as an outpatient with his primary care physician in the next 2-3 days, he may benefit from outpatient MRI. (Emphasis in the original.)

Findings, ¶ 20, *quoting* Claimant's Exhibit G.

The commissioner noted that the emergency department records indicate that the claimant was referred to Andrea F. Douglas, M.D., at the CT Spine Institute. However, the claimant did not see Douglas until June 7, 2016. The commissioner also noted that on May 20, 2016, the claimant was examined by a primary care physician, Luis Chapman, M.D., who reported, "39-year-old male, pt was seen at Stamford Hospital ER for lumbar radiculopathy. Pt has chronic left leg pain…. Pt was previously seen by a chiropractor." Claimant's Exhibit F. The claimant visited the emergency department at Stamford

Hospital for a second time on June 6, 2016. Anthony Giannuzzi, PA-C, ordered an MRI of the lumbar spine. The MRI report states, "[l]arge extruded disc fragment in the left L5/S1 lateral recess, impinging on the left S1 nerve root." Claimant's Exhibit K.

The claimant was examined by Douglas on June 7, 2016. Her report states:

> 39-year-old man, landscaper, who has had 3 weeks of low back pain and left lower extremity radiculopathy radiating from the back into the buttock, thigh and calf into the plantar surface of his foot. His imaging studies of the lumbar spine show evidence of a large left L5-S1 extruded disc herniation sitting in the lateral recess and causing compression of left S1-S2 and S3 nerve roots. Given the size of the disc herniation and his foot weakness, I've recommended to the patient that he consider neurosurgical intervention in the form of minimally invasive left L5-S1 laminectomy and microdiscectomy.

Claimant's Exhibit J.

On July 13, 2016, counsel for the claimant sent a letter to Douglas seeking her opinion as to whether the claimant's injuries could be linked to his employment. She responded as follows on October 25, 2016, stating that the claimant:

> reported that three weeks prior to the visit, he was bent over and felt sharp pain shooting from his low back into his left posterior thigh, calf and down into the plantar surface of his foot with associated numbness and tingling.
>
> ***
>
> It is more likely than not that his lumbar disc herniation and radiculopathy are a direct result of the type of work that the patient performs regularly, and the work-related incident that he described in mid May 2016 that caused the onset of his symptoms. His need for lumbar surgery is consequently also a result of his work and the incident.

Claimant's Exhibit H.

The commissioner noted that "[t]here was no mention in either Dr. Douglas' office note or letter of the claimant's statements at his ED visit of his history of back pain, left leg pain, herniated disc, and chiropractic treatment." Findings, ¶ 27. She also

found that there was inconsistent testimony from the claimant regarding his activities following the May 18, 2016 incident. The claimant testified that he "really never went back to work," July 24, 2017 Transcript, p. 59, but then said he "worked there for only two days, and then I went to -- and then I had to go again to the Emergency Room." Id., 61. Apart from the report for his follow-up appointment on May 20, 2016, the claimant did not submit any additional medical records documenting an emergency room visit on or about May 25, 2016. The claimant also testified that he had received some indemnity benefits from the respondent-insurer prior to June 2017, and believed the surgery with Douglas would be authorized, but he was told that his surgery had been suspended. A note from the respondent-insurer was faxed to Chapman and Douglas on July 13, 2016, revoking the authorization for surgery. Findings, ¶ 34, *citing* Respondents' Exhibit 2.

The commissioner found that the claimant's testimony was at odds with some of the medical records. He testified that "he had <u>never</u> told the Stamford Hospital emergency department staff that he had a history of low back pain, left leg pain, and chiropractic treatment. He testified he had <u>never</u> told the staff he was diagnosed with a herniated disc." (Emphasis in the original.) Findings, ¶ 41. The claimant specifically denied that he said anything to the hospital staff about treating with a chiropractor. "I never mentioned to him anything about chiropractic. It's all false." November 28, 2017 Transcript, p. 35. The claimant testified that he had played soccer for his entire life, but he had never injured his back while playing that sport. Findings, ¶ 45. He also agreed that he had not had any back problems prior to the May 18, 2016 incident and denied wearing any back support at any time. Findings, ¶ 47. He testified that he had not

worked since leaving the respondent-employer, but said he had helped a friend paint some shutters which had been laid on a table. Findings, ¶ 46.

The commissioner considered the medical examination performed by Lawrence C. Schweitzer, M.D., on behalf of the respondents. The claimant acknowledged being examined by Schweitzer in February 2017. Schweitzer's report of February 12, 2017, stated that "the claimant appeared forthright and cooperative and showed no signs of symptom magnification. His review of the MRI revealed a 'rather dramatic disc herniation/extrusion at L5-S1.'" Findings, ¶ 49, *quoting* Claimant's Exhibit M, p. 2. Schweitzer recommended surgery "sooner rather than later" and opined that the claimant was temporarily totally disabled at the time of the examination. Findings, ¶ 49, *quoting* Claimant's Exhibit M, p. 3.

However, in a report dated October 23, 2017, Schweitzer amended his original opinion after having the opportunity to review a surveillance video of the claimant. He noted that the video showed the claimant "walking, driving, getting in and out of a vehicle, and also, tellingly, bending to pick up shrubs in what appear to be 1-gallon containers. This involves his bending over nearly to the ground." Respondents' Exhibit 13, p. 1. Schweitzer further opined that the claimant's disc herniation "is amongst the largest of disc herniations I have ever seen." Id., 2. He stated that "some individuals (a small proportion) with large disc herniations will find their discs to undergo desiccation and spontaneous resorption." Id. He believed that the claimant could work as long as he avoided lifting over twenty-five pounds and repetitive bending, and he also stated that the claimant "could probably defer any surgical exercise, at least in the near term." Respondents' Exhibit 13.

The individual responsible for filming the surveillance video also testified at the formal hearing. Michael Christopher Hansen, field operations manager for The Robison Group, testified that he conducted surveillance of the claimant on April 25 and 26, 2017, and on May 23 and 24, 2017. He testified that he saw the claimant walking without any difficulty. "He also observed the claimant bending over to move potted plants and lifting them off of the ground at a Walmart store," Findings, ¶ 52; see November 28, 2017 Transcript, pp. 67,89,95, as well as observing the claimant "remove a cooler from his vehicle, dump the contents on the ground, and replace the cooler in the vehicle." Findings, ¶ 53; see November 28, 2017 Transcript, p. 92.

The claimant's supervisor, Brydon Fajardo, also testified, indicating that he had worked for the respondent-employer for twenty-five years. He testified that he had held

> many conversations with the claimant before May 18, 2016, in which the claimant complained about his back. He testified that the claimant had told him he hurt himself playing soccer and was treating with a chiropractor in Port Chester. He estimated that this had been going on for about five years prior to 2016.

Findings, ¶ 57; see November 28, 2017 Transcript, p. 106.

Fajardo also testified that he had seen the claimant wear a back brace at work, and the claimant told him he wore it because his back hurt. Fajardo testified that the claimant told him this on "many occasions." November 28, 2017 Transcript, p. 107. He also said the claimant had been taking Percocet for back pain. See November 28, 2017 Transcript, pp. 106-07. Fajardo testified that "on May 18, 2016, at about 3:00 p.m., the claimant told him he was leaving to see his doctor for more pain medication." Findings, ¶ 63, *citing* November 28, 2017 Transcript, p. 114. According to Fajardo, the claimant continued

working for the respondent-employer for about two weeks after May 18, 2016, performing his regular tasks.

Sean Keating, the owner of the respondent-employer, also testified. He stated that the claimant had complained to him about back pain for about four years before the work incident. He "testified the claimant had told him about a serious injury he suffered while playing soccer. The claimant's complaints of back pain increased thereafter." Findings, ¶ 68; see November 28, 2017 Transcript, p. 135. He also stated that the claimant continued working for the respondent-employer for two weeks after May 18, 2016, and provided time cards as evidence. The claimant performed all of his usual tasks and "led a crew that installed a split rail fence, including pounding the holes for the posts." Findings, ¶ 69; see November 28, 2017 Transcript, pp. 138-139. He also testified that "the claimant never told him he had injured his back at work." Findings, ¶ 71; see November 28, 2017 Transcript, p. 146.

Based on this record, the commissioner concluded that the claimant's testimony indicating that he had suffered a back injury on May 18, 2016, while working for the respondent-employer was not persuasive, and neither was his testimony relative to the information he had provided to his medical providers at the emergency department. The notes from those providers were deemed persuasive. The commissioner also found persuasive Fajardo's testimony indicating that the claimant had complained about back pain and wore a visible back brace prior to May 18, 2016. She found that the causation opinions of Douglas and Schweitzer were only as good as the information provided by the claimant relative to his medical history. She did find persuasive Schweitzer's October 23, 2017 addendum indicating, on the basis of his review of the surveillance

video evidence, that the clamant was not a surgical candidate. The commissioner denied the claim for benefits for the alleged May 18, 2016 work injury.

The claimant filed a motion to correct seeking a wholesale replacement of the factual findings with corrections indicating that the claimant was persuasive and the medical evidence supported the conclusion that the claimant's back injury was compensable. The commissioner denied this motion in its entirety and the claimant has pursued this appeal. The gravamen of the appeal is that the weight of the evidence supports a finding of compensability. Such a claim of error implicates the analysis of our Supreme Court in Fair v. People's Savings Bank, 207 Conn. 535 (1988), which stands for the proposition that this board, as an appellate body, is bound to uphold a commissioner's factual findings if they are grounded in probative evidence.

The claimant also raises two other issues regarding the manner in which the decision was reached which implicate the commissioner's legal interpretation of the evidence. He questions whether the commissioner afforded proper weight to a voluntary agreement between the parties which was never approved, and contends that the respondents are estopped by this document from contesting the causation of the claimant's back ailments or the necessity for further medical treatment. The claimant also alleges a violation of due process because the surveillance video presented by the respondents at the formal hearing was not made available to the claimant prior to the hearing.

Having reviewed the issues presented on appeal, we are not persuaded that the commissioner erred in her decision. With regard to the issue of the voluntary agreement, the claimant submitted into evidence a voluntary agreement dated July 17, 2016, which

had never been presented to the Workers' Compensation Commission for approval. See Claimant's Exhibit B. Prior to the date of this document, the respondents had already filed a form 43 contesting whether the claimant's injury had occurred in the course of his employment. See Findings, ¶ 3; Respondents' Exhibit 1.

In any event, even in cases in which claimants attempt to assert preclusion, respondents are permitted to contest the extent of disability and the nexus between employment and the need for medical treatment if they have proffered a voluntary agreement to the claimant within the one year "safe harbor" period under General Statutes § 31-294c (b).[2] See Grzeszczyk v. Stanley Works, 5975 CRB-6-14-12 (December 9, 2015), *appeal withdrawn*, A.C. 38743 (June 15, 2016). We also note that

[2] General Statutes § 31-294c (b) states: "(b) Whenever liability to pay compensation is contested by the employer, he shall file with the commissioner, on or before the twenty-eighth day after he has received a written notice of claim, a notice in accord with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested. The employer shall send a copy of the notice to the employee in accordance with section 31-321. If the employer or his legal representative fails to file the notice contesting liability on or before the twenty-eighth day after he has received the written notice of claim, the employer shall commence payment of compensation for such injury or death on or before the twenty-eighth day after he has received the written notice of claim, but the employer may contest the employee's right to receive compensation on any grounds or the extent of his disability within one year from the receipt of the written notice of claim, provided the employer shall not be required to commence payment of compensation when the written notice of claim has not been properly served in accordance with section 31-321 or when the written notice of claim fails to include a warning that (1) the employer, if he has commenced payment for the alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim, shall be precluded from contesting liability unless a notice contesting liability is filed within one year from the receipt of the written notice of claim, and (2) the employer shall be conclusively presumed to have accepted the compensability of the alleged injury or death unless the employer either files a notice contesting liability on or before the twenty-eighth day after receiving a written notice of claim or commences payment for the alleged injury or death on or before such twenty-eighth day. An employer shall be entitled, if he prevails, to reimbursement from the claimant of any compensation paid by the employer on and after the date the commissioner receives written notice from the employer or his legal representative, in accordance with the form prescribed by the chairman of the Workers' Compensation Commission, stating that the right to compensation is contested. Notwithstanding the provisions of this subsection, an employer who fails to contest liability for an alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim and who fails to commence payment for the alleged injury or death on or before such twenty-eighth day, shall be conclusively presumed to have accepted the compensability of the alleged injury or death. If an employer has opted to post an address of where notice of a claim for compensation by an employee shall be sent, as described in subsection (a) of this section, the twenty-eight-day period set forth in this subsection shall begin on the date when such employer receives written notice of a claim for compensation at such posted address."

in circumstances in which a voluntary agreement was agreed to by the parties but never approved by a commissioner, a party can subsequently decide to rescind its approval. See Snyder v. Gladeview HealthCare Center, 5735 CRB-8-12-2 (February 27, 2013), *aff'd*, 149 Conn. App. 725, *cert. denied*, 312 Conn. 918 (2014). It is axiomatic that the burden rests with a claimant to establish entitlement to benefits by presenting evidence which the commissioner deems persuasive. See Torres v. New England Masonry Company, 5289 CRB-5-07-10 (January 6, 2009); Hernandez v. American Truck Rental, 5083 CRB-7-06-4 (April 19, 2007). As such, we do not believe that the commissioner in the present matter erred by allowing the respondents to contest this claim.

We now turn to the claimant's contentions regarding the surveillance video. Claimant argues that "it is typical in this [area] of practice that the surveillance evidence is provided to the claimant for review." Claimant's Brief, p. 4. However, the standard for appellate review is not whether something is "typical." The pertinent inquiry is whether the commissioner erred in admitting the video into evidence and utilizing it as a basis for her decision. We are not persuaded that her decision to do so constituted error.

In Catale v. Physicians Health Services, 4495 CRB-4-02-2 (March 5, 2003), a video was entered into evidence without testimony regarding the date or location where it had been filmed. The claimant objected and, on appeal, this tribunal ruled that it was error to have admitted the video into evidence.

> At the December 4, 2001 formal hearing, no evidence or testimony was offered by the respondents to corroborate the accuracy of the dates and subject matter that the videotape purported to cover…. Given the heavy reliance on that videotape by Dr. Dugdale, whose opinion formed the basis of the trier's conclusion regarding total disability, it was crucial that the authenticity of the videotape be

> confirmed. In the absence of such verification, the video was improperly allowed into evidence.

Id.

However, in the present matter, the videographer responsible for filming the surveillance video appeared at the formal hearing. The videographer authenticated the video and offered testimony as to where and when it had been filmed. Counsel for the claimant had the opportunity to extensively cross-examine the witness. See November 28, 2017 Transcript, pp. 76-99. Therefore, the concerns which led this tribunal to conclude that the surveillance video in Catale was inadmissible are not present in the matter at bar.

We also find the circumstances in the instant matter indistinguishable from Nisbet v. Xerox Corporation, 5867 CRB-7-13-7 (July 17, 2014). In Nisbet, the claimant objected to the admission of a surveillance video and its presentation to a vocational witness. On appeal, she argued that it had been prejudicial to admit the evidence. We disagreed, noting that she had had the opportunity to cross-examine the witness and ascertain the basis for his reliance on the video, and therefore no due process issue was implicated.

> [W]e have generally extended a great deal of latitude to commissioners to determine in what manner surveillance videos should be considered at the formal hearing. See Bryant v. Pitney Bowes, Inc., 5723 CRB-7-12-1 (January 24, 2013); Montenegro v. Palmieri Food Products, 5701 CRB-3-11-11 (November 15, 2012); and Catale v. Physicians Health Services, 4495 CRB-4-02-2 (March 5, 2003). In Catale, supra, we cited § 31-298 C.G.S. for the proposition that a workers' compensation commissioner "shall not be bound by the ordinary common law statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties…."

Id., *citing* Kirsten v. B. F. Goodrich Sponge Products Co., 178 Conn. 401, 404-405 (1979).

In Nisbet, we concluded that:

> After reviewing the totality of the circumstances herein, we are satisfied that the admission of the surveillance videos was proper, as was the admission of reports and testimony by expert witnesses who had viewed the videos. [3]

Id.

As such, consistent with this board's analysis in Catale and Nisbet, we are not persuaded that the admission of the surveillance video into evidence or the commissioner's subsequent reliance on the video in reaching her conclusions constituted error.

We now turn to the merits of the claim. The commissioner determined that the claimant was not a persuasive witness relative to his testimony that he had sustained a work injury on May 18, 2016. However, she did find persuasive Fajardo's testimony indicating that the claimant had sustained a significant injury prior to that date. The commissioner also concluded that the medical records from Stamford Hospital, which referenced the claimant's prior injuries, were persuasive. Such factual findings are owed significant deference on appeal, see Fair, supra, although they "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."

[3] As discussed previously herein, Schweitzer issued an amended opinion subsequent to viewing the surveillance video; however, the claimant has not argued that he was prevented from taking the deposition of this witness subsequent to the issuance of the amended opinion. As a result, we believe that the commissioner retained the discretion to rely on this evidence "as is" and draw the inferences she deemed appropriate. See Allen v. Connecticut Transit, 6036 CRB-3-15-9 (June 9, 2016); Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007). We are also not persuaded that the claimant in the present matter was the victim of a "trial by ambush." See Ghazal v. Cumberland Farms, 5397 CRB-8-08-11 (November 17, 2009).

Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007). In addition, in instances when the causation of an injury is contested, "the commissioner's findings of basic facts *and* his finding as to whether those facts support an inference that the plaintiff's injury arose from his employment are subject to a highly deferential standard of review." (Emphasis in the original.) Blakeslee v. Platt Bros. & Co., 279 Conn. 239, 253-254 (2006) (Sullivan, C.J., joined by Zarella, J., dissenting.)

We find the circumstances in the present matter to be very similar to those in Pupuri v. Benny's Home Service, LLC, 5697 CRB-2-11-11 (November 5, 2012). In Pupuri, the claimant claimed that he sustained an injury while lifting rocks for a landscaping firm, but the commissioner credited medical evidence suggesting the claimant's ailment was not work-related and found more credible the testimony of some witnesses who questioned the claimant's narrative. This board observed that if a commissioner does not find the claimant's narrative of events credible, the entire claim can be deemed unmeritorious.

> We note that our precedent stands for the proposition that if a trial commissioner believes a claimant is not a credible witness, he may determine that any medical opinion which is reliant on the claimant's narrative is also unreliable. Abbotts v. Pace Motor Lines, Inc., 4974 CRB-4-05-7 (July 28, 2006), *aff'd*, 106 Conn. App. 436 (2008), *cert. denied*, 287 Conn. 910 (2008).

Id.

In Baron v. Genlyte Thomas Group, LLC, 132 Conn. App. 794 (2012), *cert. denied*, 303 Conn. 939 (2012), our Appellate Court restated the primacy of the commissioner in resolving issues of evidentiary credibility.

> The commissioner, as finder of fact, is the sole arbiter of credibility; Samaoya v. Gallagher, 102 Conn. App. 670, 673–74, 926 A.2d 1052 (2007); and it is within the discretion of the

> commissioner "to accept some, all or none of the plaintiff's testimony."

Id., 804, *quoting* Gibbons v. United Technologies Corp., 63 Conn. App. 482, 487, *cert. denied*, 257 Conn. 905 (2001).

In the matter at bar, the commissioner found that when the claimant arrived at the hospital on the day of the alleged work injury, he informed the emergency room staff that he had a long history of chronic pain related to a herniated disc. She also noted that the claimant discussed his extensive chiropractic treatment prior to that date. The commissioner credited the testimony of Fajardo, who testified that the claimant had been in pain for a number of years and had told him that he was injured playing soccer. Fajardo also testified that the claimant was already taking Percocet prior to the date of the alleged injury; did not corroborate the claimant's testimony indicating that he stopped work following the injury; and testified that the claimant had left early to obtain additional pain medication.

The claimant contends that Fajardo's testimony should be discounted because it is biased in favor of the respondents. We are not so persuaded. "There 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." O'Connor v. Med-Center Home Healthcare, Inc., 4954 CRB-5-05-6 (July 17, 2006). It was well within the commissioner's discretion to conclude that Fajardo's testimony was more credible than that of the claimant, particularly in light of the fact that Fajardo's testimony was more consistent with the medical evidence introduced at the hearing. It

was also the commissioner's prerogative to discount the medical evidence in support of the claim if she believed it was based upon an inaccurate foundation. [4] Abbotts, supra.

The evidence that the commissioner chose to credit in this hearing would reasonably support the inference that the claimant's injury did not occur on May 18, 2016, and therefore any medical treatment was not rendered for an injury sustained while in the course of employment.[5] We believe that the factual basis upon which the finding relies provides sufficient grounds for justifying the commissioner's decision.[6]

There is no error; the March 20, 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.

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[4] The commissioner specifically found that Andrea F. Douglas, M.D., did not receive a full medical history from the claimant. See Findings, ¶ 27.

[5] In light of the commissioner's findings in this matter, it may be reasonably inferred that she did not find the evidence cited in claimant's motion to correct probative or persuasive; as such, we affirm the commissioner's denial of this motion. See 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); Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008), *appeal withdrawn*, A.C. 30306 (September 29, 2009).

[6] At the formal hearing, the claimant sought sanctions for undue delay, and included the denial of these sanctions in his reasons for appeal. In light of the fact that the respondents in this matter prevailed on the substantive issues, we are not persuaded that the commissioner erred in declining to levy sanctions against them. See Montenegro v. Palmieri Food Products, 5701 CRB-3-11-11 (November 15, 2012).