CASE NO. 6271 CRB-7-18-5 : COMPENSATION REVIEW BOARD
CLAIM NO. 700118053

LOUIS MARTINOLI : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : APRIL 24, 2019

CITY OF STAMFORD POLICE DEPARTMENT
EMPLOYER
SELF-INSURED

and

PMA MANAGEMENT CORPORATION OF NEW ENGLAND
THIRD-PARTY ADMINISTRATOR
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Andrew J. Morrissey, Esq., Morrissey, Morrissey & Mooney, L.L.C., 203 Church Street, P.O. Box 31, Naugatuck, CT 06770, and Earl T. Ormond, Esq., Ormond Romano, L.L.C., 799 Silver Lane, Second Floor, Trumbull, CT 06611.

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

This Petition for Review from the May 4, 2018 Finding and Award by Brenda D. Jannotta, the Commissioner acting for the Seventh 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] On September 7, 2018, Commissioner Brenda D. Jannotta signed an "Amended Supplemental Finding & Award" dated August 3, 2018. However, the supplemental finding addressed administrative issues relative to the claimant's current disability rating and, as such, was not discussed either in the parties' briefs or at oral argument.

OPINION

STEPHEN M. MORELLI, CHAIRMAN. This appeal represents yet another iteration of the issues raised in Holston v. New Haven Police Dept., 323 Conn. 607 (2016). The claimant, a retired police officer, asserts that he sustained an injury that is the sequela of a cardiac condition previously deemed compensable while he was an active duty officer. The respondents argue that the injury is outside the scope of General Statutes § 7-433c because it did not manifest until after the claimant had retired and the claimant failed to file a separate notice of claim.[2] The respondents rely on Staurovsky v. Milford Police Dept., 164 Conn. App. 182 (2016), *appeal dismissed,* 324 Conn. 695 (2017), as a basis for dismissing a claim for a cardiac injury sustained by a retired police officer. The claimant, on the other hand, argues that this board's analysis in Dickerson v. Stamford, 6215 CRB-7-17-8 (September 12, 2018), *appeal transferred*, S.C. 20244 (January 30,

[2] General Statutes § 7-433c states: "(a) Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems. The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 or the municipal or state retirement system under which he is covered, except as provided by this section, as a result of any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability. As used in this section, 'municipal employer' has the same meaning as provided in section 7-467.

(b) Notwithstanding the provisions of subsection (a) of this section, those persons who began employment on or after July 1, 1996, shall not be eligible for any benefits pursuant to this section."

2019), governs the facts of this case and places the injury within the ambit of § 7-433c. In her Finding and Award (finding), the commissioner found the claimant's contentions more persuasive. We conclude that the claimant's position is more consistent with the manner in which this tribunal has applied the provisions of § 7-433c and we therefore affirm the finding.

The commissioner found that the claimant was a regular member of the paid police department of the city of Stamford and was eligible for benefits pursuant to the provisions of § 7-433c. She also incorporated into her finding the following stipulated facts:

> a) The Claimant has a compensable claim for Conn. Gen. Sec. 7-433c for the conditions of coronary artery disease, congestive heart failure, and hypertension, as reflected in the Finding and Award approved June 29, 1999, and Supplemental Finding and Award approved October 4, 1999.
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> b) The Claimant retired from the Stamford Police Department on October 15, 1999.
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> c) The Claimant developed atrial fibrillation (a-fib) in July 2015.
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> d) The compensable conditions in paragraph 3(a) are substantial contributing factors in causing the Claimant's a-fib in 2015.
>
> e) The a-fib is a substantial contributing factor in causing the Claimant's stroke in 2015.

Findings, ¶¶ 3.a.-3.e.

The claimant contended that neither Holston, supra, nor Staurovsky, supra, barred benefits in this instance. The respondents argued that the claims arising from the claimant's a-fib and stroke are time-barred because these conditions manifested after the claimant had retired as a police officer and the claimant did not file separate claims.

Based on the foregoing record, the commissioner concluded that the claim "for the conditions of coronary artery disease, congestive heart failure, and hypertension" was compensable pursuant to the provisions of § 7-433c. Conclusion, ¶ A. Noting that "[t]he plain language of … [§ 7-433c] provides coverage to the Claimant for 'any condition or impairment of health caused by hypertension or heart disease…,'" Conclusion, ¶ B, the commissioner determined that the claimant was eligible to pursue benefits for his current cardiac ailments for the following reasons:

> C. In this case, the "condition or impairment of health" caused by the hypertension or heart disease is the Claimant's a-fib and subsequent stroke. The compensable ailments are substantial contributing factors in causing these conditions or impairments of health in 2015 resulting in the Claimant's disability.
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> D. The Claimant has a timely and perfected claim for coronary artery disease, congestive heart failure, and hypertension and is properly pursuing additional benefits for the a-fib and stroke under this same claim rather than through the initiation of a new claim.
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> E. The requisite disability occurred while the Claimant was serving as a regular member of a paid police department. The Claimant is not seeking to establish a new claim and is therefore entitled to receive additional benefits for the a-fib and stroke since these conditions flowed from the heart disease and hypertension claim.

Conclusion, ¶¶ C-E.

The respondents did not file a motion to correct but did file a timely petition for review and reasons for appeal. The sole reason cited for the respondents' appeal was as follows: "The Trial Commissioner erred as a matter of law in determining that a heart disease which manifests for the first time after the claimant retired, and thus while the

claimant was no longer a uniformed police officer, is covered pursuant to C.G.S. §7-433c." May 18, 2018 [Respondents'] Reasons of Appeal.

It is well-settled that our standard of appellate review is limited and deferential to the fact-finding prerogative of the commissioner. In the present matter, the respondents have not filed a motion to correct, and it therefore may be reasonably inferred that the commissioner's factual findings are not in dispute. See Stevens v. Raymark Industries, Inc., 5215 CRB-4-07-4 (March 26, 2008), *appeal dismissed*, A.C. 29795 (June 26, 2008). As such, our role on review is to determine whether, as a matter of law, the commissioner was empowered to grant the claimant the relief he sought. "As 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).

As discussed previously herein, the respondents argue that even if the claimant was not required to file a separate notice of claim for an injury which was the sequela of an accepted claim, the relief sought is outside the scope of § 7-433c because the claimant's current condition(s) did not manifest until after the claimant was no longer a uniformed police officer. The respondents contend that our Appellate Court's analysis in Staurovsky, supra, clearly bars relief, given that in that case, a notice of claim filed by a retired police officer was deemed outside the scope of § 7-433c. For his part, the

claimant argues that Staurovsky is factually distinguishable and, therefore, inapplicable to the instant matter. In Staurovsky, the claimant's heart attack, and his subsequent notice of claim for § 7-433c benefits, did not occur until after he had retired. However, in the present case, the claimant already had a compensable claim which had been filed before his retirement from the police force, and his current cardiac condition was therefore a "flow through" injury. The commissioner accepted the claimant's view of the law, and we find that her conclusions in that regard were appropriate.[3]

The claimant also correctly points out that because the Staurovsky claimant had neither filed a claim for § 7-433c benefits nor exhibited any manifestation of cardiac distress before he retired, our Appellate Court, in reviewing Staurovsky, chose to apply its prior analysis in Gorman v. Waterbury, 4 Conn. App. 226 (1985). See Staurovsky, supra, 198-201. In Gorman, the court had held that eligibility for benefits under § 7-433c was limited solely to an injury which occurred while the claimant was an active member of a police or fire department. In the present matter, however, the claimant sustained a cardiac injury while he was still employed as an active member of the Stamford police, and the court's analysis in Gorman is therefore inapplicable. Based on the stipulated facts presented to the commissioner, the disability sustained at that time had already been

[3] The respondents contend that "[t]he Claimant-Appellee's atrial fibrillation is a new and separate pathology." Respondents' Brief, p. 5. That contention was not submitted to the commissioner in the stipulation of facts and, even if it had been, the commissioner would have been required to conduct an evaluation of medical evidence in order to reach such a finding. We note that at the October 2, 2017 hearing, counsel for the claimant discussed the claimant's cardiac ailments, stating that "[t]he claimant's physicians and respondent's medical examiner all agree with the medical connectivity of all of them." Transcript, p. 2. Respondents' counsel agreed with this statement. Id. Having brought this appeal solely on the basis of the commissioner's alleged misinterpretation of the law, the respondents are now barred from challenging the facts found by the commissioner, particularly in light of the fact that it is the appellant's burden to ensure this tribunal has an adequate record for review. See Cable v. Bic Corp., 270 Conn. 433, 442 (2004).

deemed compensable and was the proximate cause of the claimant's current cardiac ailments.

This circumstance places this claim squarely within the scope of this tribunal's analysis in Dickerson, supra. In that matter, we held that in § 7-433c cases, when a commissioner does not believe that the claimant has sustained a new and distinct injury, the claimant is not obligated to file a new notice of claim because Chapter 568 does not require new notices of claim for injuries which are the sequelae of compensable injuries. Our decision reflected the observation by the Holston court that "§ 7-433c (a) does not set forth a limitation period for filing a claim but provides for the administration of benefits in the same amount and the same manner as that provided under [the Workers' Compensation Act]…." (Internal quotation marks omitted.) Holston, supra, 615, *citing* Ciarlelli v. Hamden, 299 Conn. 265, 278 (2010). In the matter at bar, the commissioner determined that because the claimant's current cardiac condition constituted a "flow-through" injury, the claimant did not need to file a separate notice of claim.

The respondents challenge this reasoning, arguing that in footnote seven of Holston, our Supreme Court asserted that the two cases which generally govern the "flow through" status of subsequent injuries deemed sequelae, i.e., Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010), and Hernandez v. Gerber Group, 222 Conn. 78 (1992), were "inapplicable to our resolution of the plaintiff's claim under § 7-433c." Holston, 618, n.7. The respondents contend that this remark by the Holston court signified a rejection of the compensability of injuries deemed sequelae under this statute. We disagree. As this board noted in Dickerson, supra, such an inference "would clearly engraft a limitation which cannot be expressly found within the plain language of the

statute" and, therefore, would not comport with the manner in which our courts have been applying General Statutes § 1-2z.[4] Id. Moreover, it may reasonably be inferred that in Holston, the court rejected the respondents' claim that Marandino, supra, and Hernandez, supra, stand for the proposition that hypertension and other forms of heart disease must always be deemed to be the same ailment and the failure to file for one condition bars a future claim for the subsequent condition.[5] Such an inference is further bolstered by the following observation by the Holston court:

> When interpreting the statutory provisions at issue in the present case, we are mindful of the proposition that *all workers' compensation legislation, because of its remedial nature, should be broadly construed in favor of disabled employees*…. This proposition applies as well to the provisions of [§] 7-433c … because the measurement of the benefits to which a § 7-433c claimant is entitled is identical to the benefits that may be awarded to a [claimant] under … [the Workers' Compensation Act]….

(Citation omitted; emphasis added; internal quotation marks omitted.) Id., 613, *citing* Ciarlelli, supra, 277-78.

As this board noted in Dickerson, supra, any interpretation of the provisions of § 7-433c in a manner which does not allow for injuries deemed the sequelae of prior compensable injuries to be treated in the same manner as injuries sustained under

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[4] General Statutes § 1-2z states: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

[5] We note that in Dickerson v. Stamford, 6215 CRB-7-17-8 (September 12, 2018), *appeal transferred*, S.C. 20244 (January 30, 2019), we stated: "We do not believe a cardiac event that occurred at a later date from an initial compensable injury *must*, as a matter of law, be deemed a "new injury. While Holston and its progeny … [do] require a trial commissioner to read General Statutes § 7-433c in a disjunctive manner, nothing in the Holston decision removes the fact-finding obligation of a trial commissioner to ascertain whether what the claimant has sustained is a new 'heart disease' in accordance with our precedent in Brooks v. West Hartford, 4907 CRB-6-05-1 (January 24, 2006), Brocuglio [v. Thompsonville Fire District #2, 6165 CRB-1-16-12 (December 21, 2017), *appeal pending*, A.C. 41237 (January 9, 2018)], and McGinty [v. Stamford Police Department, 6197 CRB-4-17-6 (July 17, 2018), *appeal pending*, A.C. 41943 (August 3, 2018)]. In the absence of a definitive factual agreement as to causation, the trial commissioner needed to perform an independent review of the evidence." Id. In the instant matter, both parties made affirmative representations at the formal hearing that the claimant had not sustained a new injury. See October 2, 2017 Transcript, p. 2.

Chapter 568 would lead to a "variety of absurd results."[6] Id. The commissioner is obliged to determine whether an injury for which benefits are claimed pursuant to § 7-433c constitutes a new injury; in the matter at bar, both the claimant and the respondent agreed at the formal hearing that the conditions suffered by the claimant in 2015 were not "new injuries." In light of that factual foundation, we believe the commissioner properly applied the law and, therefore, her finding must be affirmed.

There is no error; the May 4, 2018 Finding and Award by Brenda D. Jannotta, the Commissioner acting for the Seventh District, is accordingly affirmed.

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

[6] The respondents have cited no case law suggesting that if a claimant sustains an injury, files a claim pursuant to Chapter 568, and then sustains a sequela of that injury after retirement, his or her retirement status would render the subsequent manifestation non-compensable.