CASE NO. 6278 CRB-8-18-5 : COMPENSATION REVIEW BOARD
CLAIM NO. 800193997

STEPHEN COLLIN : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : MAY 13, 2019

UNITED TECHNOLOGIES CORPORATION
EMPLOYER

and

AIG CLAIMS, INC.
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Kevin D. Scully, Esq., Kernan, Scully & McDonald L.L.P., 207 Bank Street, Fourth Floor, P.O. Box 2156, Waterbury, CT 06722.

The respondents were represented by James L. Pomeranz, Esq., Pomeranz, Drayton & Stabnick, L.L.C., 95 Glastonbury Boulevard, Suite 216, Glastonbury, CT 06033.

This Petition for Review from the May 8, 2018 Finding and Dismissal of Peter C. Mlynarczyk, the Commissioner acting for the Eighth 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.

OPINION

STEPHEN M. MORELLI, CHAIRMAN: The claimant has appealed from a May 8, 2018 Finding and Dismissal (finding) in which the commissioner rejected a claim that the claimant's left thumb and left shoulder injuries were caused by his job as a machine operator. The claimant argues that the evidence relied upon by the commissioner in his finding was unreliable, and it was error on the commissioner's part not to rely on the opinion of the claimant's treating physician. The respondents argue that this matter was essentially a "dueling expert" case and their expert offered reliable testimony. See Dellacamera v. Waterbury, 4966 CRB-5-05-6 (June 29, 2006), n.1, *appeal withdrawn*, A.C. 27853 (September 12, 2006). As such, they contend that the claimant is simply attempting to retry the facts of the case on appeal. We find the respondents' position more persuasive and therefore affirm the finding.

The commissioner reached the following factual findings which are pertinent to our consideration of this appeal. The claimant testified that he worked at UTC Aerospace Systems (UTC) in Cheshire for fifteen years and his current job title is Production Associate. For the past three or four years, one of the claimant's job duties was to work on a stop machine, which is involved in the production of missile guidance gyroscopes. The claimant offered the following testimony regarding what he believed was the mechanism behind his current medical condition:

> c. He first started experiencing pain in his thumb after having worked on the stop machine for only a couple of months. While working on the stop machine he uses both arms. With his right arm, he sets the stops. With his left arm he used to operate a "clicker." He used to have to click it back and forth, up and down with his thumb. He eventually began using his finger because the thumb started popping, making noise.

d. Back when production was busy (early 2016), in an eight-hour shift he might have to click 25 times per gyro multiplied by 20 gyros during that shift.

e. When working on the stop machine, he would be in a seated position with his arms around chest height. He would have to hold his arms up for about one minute at a time. When he began using his finger instead of his thumb, his elbow began hurting as well.

Findings, ¶¶ c-e; see October 5, 2017 Transcript, pp. 8-12.

The claimant also testified that he sustained injuries in a motor vehicle accident approximately twenty years earlier in which he injured his left shoulder. He testified that he did have surgery on the shoulder following the motor vehicle accident but he did not experience any shoulder pain after the accident until he started lifting his arm at his current job. After experiencing pain while working on the stop machine, the claimant began treating with Richard L. Manzo, M.D., who administered cortisone shots to the thumb and shoulder. The claimant did not return for additional treatment with Manzo because he could not afford to pay for the treatment on his own. The claimant testified that approximately five months before the October 5, 2017 formal hearing, the clicker on the stop machine was changed to a dial and his thumb had been much better since the change. In addition, his shoulder was still popping but it felt much better. The claimant indicated that when he raised his arm chest-high while using the stop machine, he was not lifting anything but, rather, was just holding his arm out at that height.

Two witnesses testified for the respondents. The claimant's supervisor at UTC, Harold Arrindell, testified regarding the claimant's working conditions. He said that the thumbwheel on the machine about which the claimant had complained did not require heavy pressure. It was similar to a light switch and no other employee had complained

about it. After the claimant lodged his complaints, a potentiometer was installed which made the required motions even easier than before. Arrindell indicated that working at the stop machine does not require the worker to be in any particular position, and the worker has the ability to move around into different positions for comfort. The arm movement required is still the same, and the worker still has to reach out to adjust the settings. Arrindell testified that the clicker (thumbwheel) complained about by the claimant is still on the machine but is no longer in use.

Daniel J. Mastella, M.D., also testified at the formal hearing. Mastella is board-certified in orthopedic surgery and holds an additional certificate qualifying him to perform hand surgery. He was asked by respondents' counsel to perform a records review of the claimant's case. Mastella was provided with the transcript of the claimant's deposition taken on June 26, 2017, and also reviewed the claimant's testimony from the October 5, 2017 formal hearing. In addition, he reviewed Manzo's treatment records and visited the work site, where he specifically inspected the stop machine.

Mastella testified that the claimant's workstation, which was similar in size to the witness box at trial, contained a table on which a gyroscope weighing approximately seventy-nine grams would be placed. The gyroscope was calibrated using the clicker. Mastella opined that, based on reasonable medical probability, the workplace activity performed by the claimant was not a substantial contributing factor to either his thumb or shoulder injury. Mastella diagnosed the claimant with basal joint arthritis of the thumb, a condition which is infrequently associated with trauma.

After hearing the evidence in this matter, the commissioner, having noted that the doctor had observed the physical requirements of the claimant's employment and

inspected the claimant's workstation prior to rendering an opinion, concluded that Mastella's opinion was credible and persuasive. The commissioner therefore denied and dismissed the claim for compensability for both the left thumb and left shoulder injuries. The claimant subsequently filed a motion to correct, which claimed as error the failure of the commissioner to cite in his finding Manzo's medical reports, which were supportive of compensability of the claimant's injuries. The motion also pointed out that Mastella was neither an engineer nor a machinist and alleged other deficiencies in the doctor's testimony which, according to the claimant, rendered his testimony unreliable.

The commissioner denied the motion in its entirety and the claimant has pursued this appeal. On appeal, he argues that the testimony of his treating physician should have been found credible on the issue of causation, while the respondents' expert was not a reliable witness and his testimony should not have been found credible.

The standard of deference we are obliged to apply to a trial 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

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

In the instant appeal, the claimant contends that the commissioner should have referenced Manzo's opinion in his conclusions. Although the claimant believes this omission constitutes reversible error, we are unaware of any pertinent case law which would support that theory. Had the respondents offered no evidence to contest Manzo's opinion, the commissioner's decision not to specifically discuss Manzo's opinion might have constituted error. See Bode v. Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672, *cert. denied*, 302 Conn. 942 (2011).

However, although the commissioner did not address Manzo's opinion in the text of the finding, the claimant brought the opinion to the commissioner's attention and sought to have it deemed reliable by way of the motion to correct. The commissioner denied this motion. It can therefore be reasonably inferred that the commissioner did not find Manzo's opinion persuasive. 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). As an appellate panel, we are bound by that determination, particularly in light of the fact that "[i]t is the trial commissioner's function to assess the weight and credibility of medical reports and testimony."[1] 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).

Moreover, given that the commissioner found Mastella's opinion persuasive and supportive of dismissing the claim, we find this matter resembles Madden v. Danbury

[1] It is of course axiomatic that "[a]s the finder of fact, the trier has the sole authority to decide what evidence is reliable and what is not…." Byrd v. Bechtel/Fusco, 4765 CRB-2-03-12 (December 17, 2004).

Hospital, 5745 CRB-7-12-4 (April 22, 2013). In Madden, the commissioner was presented with an opinion from a commissioner's examiner upon which she chose not to rely, and her finding provided no explanation for this decision. Although the appellants argued that the omission constituted reversible error, we were not persuaded, given that it could clearly be inferred from the text of the decision that the commissioner had found the opinion of the claimant's treating physician more credible and persuasive.[2] We stated that "[g]iven the totality of the evidence herein, we are satisfied that this omission constitutes harmless error." Id. See also Peters v. Corporate Air, Inc., 14 Conn. Workers' Comp. Rev. Op. 91, 1679 CRB-5-93-3 (May 19, 1995).

The claimant also contends that Mastella's opinion was unworthy of belief, and points out that the doctor was unaware of the actual ergonomics involved in operating the stop machine because the machine had been modified prior to the point in time when the doctor inspected the machine. In addition, the claimant also argues that Mastella should not have inspected the machine at all, because the inspection led the doctor to offer an opinion on engineering and/or machine operation which was outside his field of expertise.

We are not so persuaded. The evidentiary record indicates that Mastella had ample opportunity to review both the deposition testimony of the claimant relative to the manner in which he had been operating the machine, as well as Manzo's report, and could reasonably rely on this information in reaching his conclusions as to workplace

[2] In Cassella v. O & G Industries, 6017 CRB-4-15-5 (June 27, 2018), the claimant cited Bode v. Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672, *cert. denied*, 302 Conn. 942 (2011), as a basis for seeking a detailed explanation as to why the commissioner deemed certain opinions unreliable. In reviewing the appeal of the decision, we cited Biehn v. Bridgeport, 5232 CRB-4-07-6 (September 11, 2008), *appeal withdrawn*, A.C. 30336 (March 9, 2011), as illustrative of the concept that when a decision is unambiguous, such an explanation is unnecessary.

causation. See Respondents' Exhibit 2; Claimant's Exhibits A, B. Moreover, Mastella offered his opinion in the form of live testimony before the commissioner, and the claimant had the opportunity to cross-examine the doctor. See December 6, 2017 Transcript, pp. 13-23. As such, we conclude that Mastella had a reasonable basis for his opinion and the claimant had ample opportunity to challenge that opinion. More important, the commissioner had the opportunity to assess live testimony.

We are also not persuaded by the claimant's contention that viewing a workstation diminishes the probative value of a medical witness's opinion regarding causation of a contested injury. As this board has previously remarked, "[i]f on review this board is able to ascertain a reasonable diagnostic method behind the challenged medical opinion, we must honor the trier's discretion to credit that opinion above a conflicting diagnosis." Strong v. UTC/Pratt & Whitney, 4563 CRB-1-02-8 (August 25, 2003). As such, any alleged discrepancies in Mastella's opinion were properly left to the commissioner to resolve. See Williams v. Bantam Supply Co., Inc., 5132 CRB-5-06-9 (August 30, 2007); Goldberg v. Ames Department Stores, 4160 CRB-1-99-2 (December 19, 2000).

In any event, it is well-settled that within the workers' compensation forum, the claimant bears the burden of persuasion in establishing that his employment was the proximate cause of his injuries. See Sapko v. State, 305 Conn. 360, 372 (2012); Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 447 (2001). Given that the issue of proximate causation becomes a question of law "only when the mind of a fair and reasonable person could reach only one conclusion…," it may be reasonably inferred

that the commissioner in this matter simply found the claimant's evidence unpersuasive.[3] Sapko, supra, 373. We would also note that a commissioner is required to evaluate "the weight and credibility" of the medical evidence in its totality when making a determination as to its reliability. O'Reilly, supra; see also Marandino v. Prometheus Pharmacy, 294 Conn. 564, 594 (2010). In the present matter, we conclude that the commissioner reached a determination adverse to the claimant after such an evaluation.[4]

There is no error; the May 8, 2018 Finding and Dismissal of Peter C. Mlynarczyk, the Commissioner acting for the Eighth District, is accordingly affirmed.

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

[3] To that end, we note that even if the commissioner had found Mastella's opinion unreliable, such a finding would not have required him to rule in favor of the claimant on the issue of causation. As this board held in Toroveci v. Globe Tool & Metal Stamping Co., Inc., 5253 CRB 6-07-7 (July 22, 2008), when none of the witnesses at a hearing are worthy of belief, the commissioner should dismiss the claim.

[4] The claimant also argues that it was error for the commissioner to deny his motion to correct. We disagree; the commissioner was legally empowered to deny this motion and is not bound to accept the view of the case presented by a litigant. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003); 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); Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006).