

CASE NO. 6279 CRB-4-18-6 : COMPENSATION REVIEW BOARD  
CLAIM NO. 601034721

JAMES TANNER : WORKERS' COMPENSATION  
CLAIMANT-APPELLANT COMMISSION

v. : JUNE 13, 2019

MURACE PLUMBING COMPANY, INC.  
EMPLOYER

and

PEERLESS INSURANCE COMPANY  
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 Christopher J.  
Powderly, Esq., Law Offices of Meehan, Roberts, Turret &  
Rosenbaum, 108 Leigus Road, First Floor, Wallingford, CT  
06492.

This Petition for Review from the May 22, 2018 Finding  
and Dismissal of Jodi Murray Gregg, the Commissioner  
acting for the Fourth District, was heard December 21,  
2018, before a Compensation Review Board panel  
consisting of the Commission Chairman Stephen M.  
Morelli and Commissioners Scott A. Barton and Brenda D.  
Jannotta.<sup>1</sup>

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<sup>1</sup> We note that two motions for extension of time were granted during the pendency of this appeal.

## OPINION

STEPHEN M. MORELLI, CHAIRMAN. The claimant has appealed from the May 22, 2018 Finding and Dismissal (finding) of Commissioner Jodi M. Gregg (commissioner) acting on behalf of the Fourth District. The pertinent facts are as follows. The claimant sustained a left shoulder injury on July 29, 2002, for which the respondents accepted liability. The claimant underwent surgery to the left shoulder on May 20, 2003. Rolf H. Langeland, M.D., the claimant's treating physician, performed the surgery, which involved "subacromial decompression and debridement of partial thickness rotator cuff tear." Claimant's Exhibit A (October 25, 2004 Impairment Rating by Rolf H. Langeland, M.D.). During the claimant's recovery from that surgery, he developed tendonitis in his right shoulder; the claimant is right-hand dominant. Langeland was of the opinion that the right shoulder tendonitis was a consequence of over-use while the claimant was recovering from the left shoulder surgery.

In 2005, Langeland recommended right shoulder surgery. The claimant did not go forward with the right shoulder surgery due to ongoing issues with both his hands. In 2010, the claimant again experienced pain in his right shoulder, and in 2014, the claimant requested that the right shoulder surgery recommended in 2005 be authorized by the respondents. The respondents denied the request. Langeland opined that the claimant's need for right shoulder surgery in 2014 was causally related to the claimant's July 29, 2002, accepted injury. See Findings, ¶¶ 7, 8.

Commissioner's examinations were performed by Michael J. Kaplan, M.D., and Peter R. Barnett, M.D. Kaplan opined that the claimant's right shoulder complaints were not related to the accepted July 29, 2002 injury. See Findings, ¶¶ 9, 10; see also

Claimant's Exhibit E (October 2, 2014 Deposition of Michael J. Kaplan, M.D.). Rather, Kaplan opined that the claimant's right shoulder symptomatology was degenerative in nature. See Claimant's Exhibit D (Commissioner's Examination report dated April 10, 2014, pp. 2-3). Likewise, Barnett opined that the claimant's right shoulder issues were not related to the injury of July 29, 2002. See Findings, ¶ 12; see also Claimant's Exhibit F (July 6, 2017 Deposition Testimony of Peter R. Barnett, M.D. [May 2, 2016 Claimant's Exhibit B, p.5]).

The ultimate issue presented for review is whether the commissioner erred in failing to conclude that the claimant's need for surgery was causally related to the July 29, 2002 accepted injury. Whether the claimant's need for surgery to his right shoulder is causally related to the injury of July 29, 2002, is a question of fact for which the claimant carries the burden of proof. See Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010); DiNuzzo v. Dan Perkins Chevrolet Geo, Inc., 294 Conn. 132 (2009).

We note that conflicting medical opinions were entered into evidence. As discussed above, the opinion of the claimant's treating physician, Langeland, supported the causal relationship between the proposed right shoulder surgery and the accepted 2002 injury. The commissioner's examiners, Kaplan and Barnett, were of the opinion that the claimant's right shoulder issues were not causally related to the accepted injury.

The commissioner's role in this matter is to hear and decide the issues presented for resolution. See Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999); Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002). The commissioner must consider the evidence

and determine the weight and credibility the evidence should be accorded. See Ayna v. Graebel/CT Movers, Inc., 133 Conn. App. 65 (2012), *cert. denied*, 304 Conn. 905 (2012). In the present matter, the commissioner assigned greater weight and credibility to the opinions of Kaplan and Barnett.

When considering matters on appeal, this board does not engage in *de novo* review. The conclusions of the commissioner must stand unless found without evidence, based on unreasonable or impermissible factual inferences, or contrary to law. See Fair v. People's Savings Bank, 207 Conn. 535, 540 (1988); Sanchez v. Edson Manufacturing, 175 Conn. App. 105, 137 (2017). We are not persuaded that the triers's conclusions in this matter resulted from any of these proscriptions.

The gravamen of the claimant's appeal is that he would have preferred the commissioner to have assigned greater weight and credibility to the opinion of the claimant's treating physician and decided this matter in favor of the claimant. However, the claimant has not demonstrated that the commissioner committed any legal error.

The May 22, 2018 Finding and Dismissal of Commissioner Jodi M. Gregg, the Commissioner acting on behalf of the Fourth District, is accordingly affirmed.

Commissioners Scott A. Barton and Brenda D. Jannotta concur in this Opinion.