CASE NO. 6290 CRB-8-18-9 CLAIM NO. 800190886	:	COMPENSATION REVIEW BOARD
ARTHA M. SLADE CLAIMANT-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
v.	:	AUGUST 28, 2019

ACCURATE STAFFING, LLC
CROMWELL OPERATIONS, LLC
EMPLOYER

and

PENNSYLVANIA MANUFACTURERS INDEMNITY COMPANY (PMA)
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Scott A. Carta, Esq., Leighton, Katz & Drapeau, 20 East Main Street, Rockville, CT 06066.

Respondents were represented by Diane D. Duhamel, Esq., McGann, Bartlett & Brown, L.L.C., 111 Founders Plaza, Suite 1201, East Hartford, CT 06108.

This Petition for Review from the August 21, 2018 Finding and Order by David W. Schoolcraft, the Commissioner acting for the Eighth District, was heard March 29, 2019 before a Compensation Review Board panel consisting of Chairman Stephen M. Morelli, Commissioners Michelle D. Truglia and William J. Watson III.

OPINION

STEPHEN M. MORELLI, CHAIRMAN. The claimant in this matter has appealed from a Finding and Order (finding) in which Commissioner David W. Schoolcraft (commissioner), granted a motion to open an approved stipulation for the sole purpose of correcting the actual name of the employer. The claimant appeals on the basis that there was no mutual mistake of fact herein which would justify opening the stipulation. We conclude that this challenges the fact-finding role of the commissioner. Based on the evidence presented at the formal hearing the commissioner concluded that the mistake as to the name of the claimant's actual employer was mutual. As we do not find this conclusion "clearly erroneous," Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007), *quoting* Moutinho v. Planning & Zoning Commission, 278 Conn. 660, 665-666 (2006), we must affirm the Finding and Order.

The commissioner reached the following factual findings which are pertinent to our review. "On March 6, 2015, the claimant, Artha Slade, worked at a nursing/rehabilitation facility, located at 385 Main Street in Cromwell, called 'Autumn Lake Health Care at Cromwell' (hereinafter, Autumn Lake)," findings, ¶ 4, and sustained injuries in the course of her employment. Autumn Lake was not the corporate name of the owner or operator of the facility. Pennsylvania Manufacturers Indemnity Company (PMA), as of that date, maintained workers' compensation insurance coverage for a number of apparently related entities; specifically Cromwell Operations, LLC, at 385 Main Street, Cromwell, Connecticut and New Britain Operations, LLC, at 400 Brittany Farms Road, New Britain, Connecticut, both via policy number 2014000531442 and Accurate Staffing at 385 Main Street, Cromwell, Connecticut, via policy No.

2015000531442B. The records of the Secretary of the State indicate that Cromwell Operations, LLC and New Britain Operations, LLC are foreign limited liability companies with a common business address in New Jersey and a common managing member Aryeh Stern, a resident of Lakewood, New Jersey. These records indicate that Accurate Staffing, LLC, is a domestic, limited liability company with a business address in Brooklyn, New York; whose principals were Sam Stern and Brenton Eisenreich, both of Brooklyn, New York.

On April 1, 2015, the commission received a First Report of Injury for the claimant's injury which identified the claimant's employer as New Britain Operations, LLC, with a business address in Brooklyn, New York. PMA, as the identified insurance carrier, decided to accept this claim, but on July 30, 2015, PMA filed a form 36. That form 36 identified the employer as Accurate Staffing, LLC, with a Brooklyn, New York address. "In response to the filing of this Form 36, this commission opened a case file (Case No. 800190886) and gave that file the name 'Artha Slade v. Accurate Staffing, LLC.'" Findings, ¶ 9. Further correspondence between PMA and its counsel and other participants in the matter identified the employer as Accurate Staffing.

In Findings, ¶ 12, the commissioner found "[t]he parties ultimately agreed to enter into a full-and-final stipulation, settling the claimant's claim for $15,891.63. The stipulation document was drafted by the respondent. The caption of the document identified the employer as 'Accurate Staffing,' consistent with the case caption used by this commissioner since the case file was initially opened in response to the respondent's July 2015 Form 36. In the first paragraph of the stipulation, the employer is identified as 'Accurate Staffing.' Thereafter, the employer is not identified by name until the

signature page, where it is again identified as 'Accurate Staffing.' "In paragraph 10 of the stipulation, as signed by the claimant, the claimant asserted that she had read the stipulation, or had it read to her. In paragraph 11 of the stipulation, as signed by the claimant, she agreed the settlement was not being induced by fraud, accident, mistake or duress." Findings, ¶ 13. The stipulation was approved at a hearing held on September 23, 2016. At this hearing Commissioner Stephen Delaney canvassed the claimant. See Findings, ¶ 14. The claimant received payment of the stipulation proceeds in a timely manner.

Over a year later, the respondents moved to open the stipulation on October 16, 2017 (2017 Motion). The 2017 Motion averred that the Stipulation incorrectly identified the claimant's actual employer when, in fact, *"At the time of injury, the claimant was employed with New Britain Operations/Cromwell Operations, d/b/a Autumn Lake Health Care at Cromwell."* Findings, ¶ 16. (Emphasis in finding). The 2017 Motion attached various documents in support of this position, including a W-2 form, an employee ledger and a 52-week wage statement. See Exhibits 1a and 1b, 2017 Motion. The 2017 Motion also claimed that, "[a]ll nursing personnel are considered employees of Accurate Staffing, while non-nursing personnel are employees of New Britain Operations/Cromwell Operations, d/b/a Autumn Lake Health Care at Cromwell." The respondent asserted that its use of the name Accurate Staffing was the result of a mistaken belief that the claimant was a member of the nursing staff when, in fact, she "was employed as a recreational assistant and therefore not a nurse." Findings, ¶ 17.

The commissioner noted that this motion did not disclaim PMA's liability for the claim or seek reimbursement; it merely sought to substitute the name of the claimant's

employer. The claimant filed a timely objection to the 2017 Motion but then did not testify at the formal hearing held on June 12, 2018. "She did stipulate to the authenticity of the tax and earnings forms attached to respondent's motion." Findings, ¶ 19. The commissioner noted that the W-2 form submitted stated it was filed by Cromwell Operations, LLC, and the pay ledger stated it was from Autumn Lake Health Care at Cromwell. He found the claimant had not denied that she was actually employed by Cromwell Operations nor had she claimed Accurate Staffing was her actual employer. The commissioner noted the claimant had not alleged that she would not have entered into an agreement with Cromwell Operations nor had she sought to rescind her settlement. He also found that she had not claimed "she was misled into signing the stipulation by recitation of the name Accurate Staffing." Findings, ¶ 24. Based on this record, the commissioner reached the following conclusions:

> A. Given that the case was captioned on the Commission's docket as 'Artha Slade v. Accurate Staffing,' the use of that name in the caption of the stipulation document was proper, and the mere use of that name in the caption would be of no legal consequence. However, a recitation in the body of a stipulation can be said to have the effect of a finding of fact, once the stipulation is approved by a Commissioner. Accordingly, if the statement in paragraph 1 of the stipulation in this case – i.e., that Accurate Staffing was the claimant's employer at the time of injury – is incorrect it can, and should be corrected – provided, its correction will not alter the claimant's substantive right to compensation benefits under the act.
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> B. Cromwell Operations, LLC is a company involved in the operation of Autumn Lake Health Care at Cromwell, a nursing facility located at 385 Main Street in Cromwell, Connecticut. Some of the workers at that facility are employees of Cromwell Operations, LLC. On March 6, 2015, Cromwell Operations, LLC had its workers' compensation liability for employees at that location insured by PMA.
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> C. Accurate Staffing, LLC, is a separate company from Cromwell Operations, LLC. Accurate Staffing, LLC is the employer of some

specific cohort of employees within the overall workforce at the Autumn Lake Health Care facility in Cromwell. On March 6, 2015, Accurate Staffing, LLC also had its workers' compensation liability at that location insured by PMA.

D. Regardless of whether the claimant was employed by Cromwell or Accurate on the date of injury, when PMA settled the claimant's case it was acting on behalf of her actual employer, irrespective of how that employer was named in the stipulation. If the actual employer was misnamed in the document, the stipulation is no less binding. In this case, changing the name of the employer in the stipulation agreement will not alter or impair the claimant's entitlement to those benefits paid to her on account of her work injury and the ultimate settlement of her case.

E. In the absence of testimony by the claimant I must, and do, credit the IRS Form W2 by which Cromwell Operations, LLC identified itself as the claimant's employer in 2015. Given that Cromwell Operations, LLC took out workers' compensation insurance to cover its workers at the facility in question, and given its admission to the IRS that it was the claimant's employer, and given the lack of contrary testimony from the claimant, I am fully satisfied that: *At the time of her injury on March 6, 2015, the claimant was an employee of Cromwell Operations, LLC, the respondent-employer for purposes of the Workers' Compensation Act.*

G. The respondent's use of the name 'Accurate Staffing, LLC' in the stipulation papers it drafted and submitted for approval was a mistake of fact. On the evidence presented, I cannot reasonably conclude that when the claimant settled her case she knew that the identity of her employer had been misstated. The use of the name 'Accurate Staffing' on the stipulation papers that were signed and approved on September 23, 2016 was a mutual mistake of fact.

I. Notwithstanding the error in recitation, Cromwell Operations, LLC was a party to the stipulation in 2016; it was – and remains – bound by the provisions of that stipulation.

H. When Commissioner Delaney approved the stipulation in September 2016 he was unaware that the actual employer was Cromwell Operations, LLC.

(Emphasis in original.) Conclusions, ¶¶ A-H.

Therefore, the commissioner granted the motion to open on August 21, 2018, for the purpose of substituting Cromwell Operations, LLC, as the actual employer, while preserving all other terms of the stipulation. On September 7, 2018, the claimant, within the statutory time period permitted under General Statutes § 31-301(a), filed an appeal of the finding and order to open stipulation for agreement, appealing the commissioner's ruling. The document, which resembled a motion to correct, challenged certain factual findings reached by the commissioner, which asserted that she would not have executed an agreement that was "misleading and fraudulent in nature." She argued that the mistake as to the employer's identity was a unilateral mistake on the part of the respondent. She also argued her ability to understand what occurred at the September 23, 2016 hearing was impaired as the result of her injuries and that she was not sufficiently advised by her counsel at the time of the hearing. Finally, she argued that opening the stipulation to correct the name of the employer was a malicious effort to interfere with proceedings she had brought in other forums against her employer.[1]

Counsel for the claimant subsequently filed a brief arguing that the mistake of fact in this case was unilateral and the respondent had been apprised by the claimant in a January 7, 2016 informal hearing that her employer was not Accurate Staffing. As a result, he argues that our precedent bars opening a stipulation under these circumstances, *citing* Krol v. A.V. Tuchy, Inc., 135 Conn. App. 854, 860, *cert. denied*, 305 Conn. 923 (July 11, 2012). See Appellant's Brief dated January 21, 2019, p. 2. The respondents

[1] The commissioner did not rule on this pleading. To the extent we construe this pleading as a motion to correct, we may deem the failure to rule on the motion to be the functional equivalent of a denial. See Berry v. State/Dept. of Public Safety, 5162 CRB-3-06-11 (December 20, 2007), *citing* Spatafore v. Yale University, 14 Conn. Workers' Comp. Rev. Op. 310, 312, 2011 CRB-3-94-4 (September 14, 1995), *aff'd*, 239 Conn. 408 (1996).

argue that the commissioner's decision herein comports with General Statutes § 31-315[2] and should be affirmed, since the claimant failed to testify at the hearing to contest the evidence they presented in favor of their motion. We are persuaded by the respondents' argument.

We note that the standard of deference we are obliged to apply to a commissioner's findings and legal conclusions 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, supra. 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).

[2] General Statutes § 31-315 states: "Any award of, or voluntary agreement concerning, compensation made under the provisions of this chapter or any transfer of liability for a claim to the Second Injury Fund under the provisions of section 31-349 shall be subject to modification in accordance with the procedure for original determinations, upon the request of either party or, in the case of a transfer under section 31-349, upon request of the custodian of the Second Injury Fund, whenever it appears to the compensation commissioner, after notice and hearing thereon, that the incapacity of an injured employee has increased, decreased or ceased, or that the measure of dependence on account of which the compensation is paid has changed, or that changed conditions of fact have arisen which necessitate a change of such agreement, award or transfer in order properly to carry out the spirit of this chapter. The commissioner shall also have the same power to open and modify an award as any court of the state has to open and modify a judgment of such court. The compensation commissioner shall retain jurisdiction over claims for compensation, awards and voluntary agreements, for any proper action thereon, during the whole compensation period applicable to the injury in question."

In considering this appeal we note that the commissioner could only rule on the evidence presented for his consideration. The claimant filed an objection to the 2017 Motion, but chose not to testify at the June 12, 2018 formal hearing. Our review of her September 7, 2018 post-judgment motion indicates that although it resembled a motion to correct, it addressed a number of factual matters to which the claimant had neither testified to; nor submitted supporting documentary evidence. In particular, we note that while the claimant argues that granting this motion impaired a federal court action she was pursuing, she did not submit any pleadings from a federal court action to the commissioner's attention at the formal hearing. As this tribunal held in Vallier v. Cushman & Wakefield, 5822 CRB-1-13-2 (February 21, 2014), *citing* Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008), "a Motion to Correct is the proper vehicle for a party to have the trial commissioner reconsider his ultimate conclusions in light of the factual evidence provided." Id. If one does not provide such factual evidence to the commissioner at the time of the formal hearing, one cannot anticipate obtaining redress via a post-judgment motion.

We have consistently ruled against parties who have attempted to engage in piecemeal litigation. See Jodlowski v. Stanley Works, 5976 CRB-6-15-1 (August 12, 2015), *aff'd*, 169 Conn. App. 103 (2016); Gamez-Reyes v. Donald F. Biagi, Jr., 5552 CRB-7-10-5 (May 3, 2011), *aff'd*, remanded in part for articulation on issue of interpreter's fees, 136 Conn. App. 258 (2012), *cert. denied*, 306 Conn. 905 (2012), *aff'd*, re: interpreter's fees, 154 Conn. App. 905 (2014) and Gibson v. State/Dept. of Developmental Services - North Region, 5422 CRB-2-09-2 (January 13, 2010). In Gamez-Reyes, we pointed out that the Appellate Court held in McGuire v. McGuire, 102

Conn. App. 79 (2007), that "[w]e have made it clear that we will not permit parties to anticipate a favorable decision, reserving a right to impeach it or set it aside if it happens to be against them, for a cause which was well known to them before or during the trial." (Internal quotation marks omitted.) Id., 83, *quoting*, Wendt v. Wendt, 59 C.A. 656, 693, *cert. denied*, 255 Conn. 918, 763 (2000).

This creates a challenge for an appellate body considering an appeal. As our Supreme Court held in Cable v. Bic Corp., 270 Conn. 433 (2004), "[a]s is always the case, the appellants, here the defendants, bear the burden of providing a reviewing court with an adequate record for review." Id., 442. See also Haines v. Turbine Technologies, Inc., 5932 CRB-6-14-4 (March 9, 2015); which stands for the proposition that in considering an appeal, we cannot provide relief on grounds which the litigant did not seek at the formal hearing. Based on this precedent, all we can consider in this appeal is whether probative evidence and reasonable inferences from evidence presented on the record at the formal hearing support the commissioner's conclusions.

In his finding, the commissioner found that the respondents presented documentary evidence that the claimant's actual employer at the time of her injury was Cromwell Operations, LLC and not Accurate Staffing. We find the W-2 form particularly cogent to this inquiry. While the documents submitted from the claimant in this matter do provide representations that at the time they were generated, Accurate Staffing was the putative employer herein; they are not disputed by the respondents and do not offer persuasive evidence that the mistake herein was unilateral and not mutual. The commissioner noted that the claimant was fully canvassed by Commissioner Delaney at the September 23, 2016 hearing and raised no objection to executing the agreement

with Accurate Staffing as the employer's name. While the claimant argues that she was aware of the inaccuracy prior to the stipulation approval hearing, and brought it to the attention of respondents' counsel, we cannot find documentation in the record supporting this assertion. Therefore, we find that Conclusion, ¶ G, which finds that the mistake herein was a mutual mistake of fact, is a reasonable conclusion based on the record herein.

In Krol, supra, our Appellate Court defined "mutual mistake" for the purpose of opening a stipulation as "one that is common to both parties and effects a result that neither intended" and that whether a mistake is mutual "is a question of fact." (Citations omitted; internal quotation marks omitted.) Id., 860, *citing* Rodriguez v. State, 76 Conn. App. 614, 625 (2003). We believe that the commissioner could reasonably conclude that at the September 23, 2016 hearing, none of the participants were aware that the stipulation documents referenced an inaccurate employer name and that neither party intended to execute a stipulation binding on an organization that had not employed the claimant.[3] Based on the facts herein, the commissioner reasonably granted the 2017 Motion, opened the stipulation and substituted the name of the claimant's employer to conform to the identity of the real party in interest.[4]

[3] We may contrast this with Rodriguez v. State, 76 Conn. App. 614 (2003), where the court concluded the original agreement encompassed terms which were "precisely what the defendant sought to obtain." Id., 626, and held under those circumstances it was improper to grant a motion to open the stipulation.

[4] We also note that while the claimant in Krol v. A.V. Tuchy, Inc., 5562 CRB 4-10-6 (June 1, 2011), argued that there had been some form of misrepresentation as to the impact to federal court proceedings in the terms of the stipulation, we determined that a mistake as to how another tribunal would apply the law was outside the scope of General Statutes § 31-315. Our Appellate Court affirmed, noting that the claimant had been fully canvassed prior to executing the stipulation and it included no limitation on federal court actions. See Krol v. A.V. Tuchy, 135 Conn. 854, 862-863, *cert. denied*, 305 Conn. 923 (2012). As the Stipulation herein contains no reference to any pending or contemplated litigation in another forum we find the claimant's argument that the 2017 Motion was intended to impair such litigation unpersuasive.

There is no error; the August 21, 2018 Finding and Order of David W. Schoolcraft, the Commissioner acting for the Eighth District, is accordingly affirmed.

Commissioners Michelle D. Truglia and William J. Watson III concur in this Opinion.