

CASE NO. 6309 CRB-7-19-2 : COMPENSATION REVIEW BOARD
CLAIM NOS. 700177044 & 700100184

JEAN WILSON, DEPENDENT WIDOW : WORKERS' COMPENSATION
OF GARY J. WILSON, DECEASED COMMISSION
CLAIMANT-APPELLEE

v. : DECEMBER 13, 2019

CITY OF STAMFORD
EMPLOYER
SELF-INSURED

and

PMA MANAGEMENT CORPORATION
OF NEW ENGLAND
ADMINISTRATOR
RESPONDENTS-APPELLANTS

APPEARANCES:

The interests of the claimant was represented by Earl T. Ormond, Esq., Ormond Romano, L.L.C., 799 Silver Lane, Second Floor, Trumbull, CT 06611.

The interests of 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 January 24, 2019 Findings & Award by Brenda D. Jannotta, the Commissioner acting for the Seventh District, was heard June 21, 2019 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Peter C. Mlynarczyk and David W. Schoolcraft.

OPINION

STEPHEN M. MORELLI, CHAIRMAN. The respondents have appealed from the Findings & Award (finding) issued by Commissioner Brenda D. Jannotta (commissioner) which awarded dependent spouse benefits to the widow of Gary J. Wilson, a Stamford police officer who had been receiving benefits under General Statutes § 7-433c. In this appeal, the respondents reprise the arguments they previously raised in prior appeals of survivorship awards made to dependent spouses after the death of police officers who had been awarded heart and hypertension benefits, i.e., Costanzo v. Stamford, 6274 CRB-7-18-5 (May 3, 2019), *appeal pending*, A.C. 42968 (May 20, 2019) and Gentle v. Stamford, 6264 CRB-3-18-4 (May 30, 2019), *appeal pending*, A.C. 43055 (June 12, 2019). In both cases, the respondents argued that relief granted by the commissioner to the surviving spouse was barred by precedent in Holston v. New Haven Police Dept., 323 Conn. 607 (2016) and Staurovsky v. Milford Police Dept., 164 Conn. App. 182 (2016), *appeal dismissed, cert. improvidently granted*, 324 Conn. 693 (2017). We find this case is indistinguishable both on the facts and the law from Costanzo, supra, and Gentle, supra, and as we rejected the respondents' arguments in those cases *stare decisis* requires us to reject these arguments in this case as well. Accordingly, we affirm the finding.

The commissioner noted that the parties stipulated to facts at the formal hearing which were presented in Claimant's Exhibit A and the finding cites extensively from this stipulation, as follows:

- 1) The parties are subject to the provisions of C.G.S. §7-433c.

- 2) The decedent, Gary J. Wilson (“Claimant-Decedent”), was employed as a uniformed member of the Stamford Police Department on July 8, 1991.
- 3) The Claimant-Decedent married Jean M. Reichenbach (“Mrs. Wilson”) on January 6, 1979; (CL. Ex. “C”), and they remained married until the time of the Claimant-Decedent’s death.
- 4) The Claimant passed his pre-employment physical examination with no evidence of hypertension and/or heart disease.
- 5) The Claimant had heart disease with a date of injury of July 8, 1991 and was awarded a 20% impairment of the heart pursuant to a finding and award dated February 5, 1996.
- 6) The Claimant, on July 8, 1991 was entitled to the maximum compensation rate of \$719.00 per week.
- 7) In a July 15, 2000 Finding and Award, the Claimant-Decedent and the Respondents agreed to an increased 6.125% impairment secondary to myocardial infarction that occurred on or about April 11, 1996.
- 8) As a result of his heart condition, the Claimant retired from the Stamford Police Department on July 8, 1996.
- 9) On May 21, 2012, a Commissioner’s Examination was performed on the Claimant-Decedent by Dr. Donald Rocklin, who opined that the Claimant-Decedent has a 29% impairment of the whole person.
- 10) In an October 5, 2012 Finding and Award the parties agreed to the 29% and thus an increased impairment of 2.875% impairment based on a December 20, 2011 date of maximum medical impairment [SIC]; (CL. Ex. “B”).
- 11) The Claimant-Decedent died on March 25, 2016. The causes of death listed on the Claimant-Decedent’s death certificate were 1) Fatal Cardiac Dysrhythmia, 2) Acute Coronary Syndrome, and 3) Atherosclerotic Heart Disease; (CL. Ex. “D”).

- 12) On April 19, 2016, Mrs. Wilson filed a Notice of Claim (Form 30D) pursuant to C.G.S. §31-306 based on the death certificate and the listed causes of death contained therein.
- 13) On April 29, 2016, the Respondents contested the Claimant-Widow's claim based on "intervening causal factors, hence; absence of causation relationship to 7/8/91 claim"; (CL. Ex. "F").
- 14) Respondents' position is based on the opinion of Dr. Martin Krauthamer who reviewed all the medical records available; (Rsp. Ex. "1", "2" and "3").
- 15) In addition, Respondent's position is that, regardless of causation, the claim is barred because the death occurred when Mr. Wilson was retired and no longer a uniformed member of the Stamford Police Department.
- 16) The Claimant-Widow's claim is based on the opinions of Dr. Price; (CL. Ex. "G") who prepared the death certificate and Dr. Fogel who reviewed all the medical records available; (CL. Ex. "H").

Findings, ¶¶ B.1-16.

The commissioner reached the following conclusions after reviewing these stipulated facts.

- A. The Claimant-Decedent's date of hire made him eligible for General Statutes § 7-433c benefits.
- B. The Claimant-Decedent successfully passed a physical exam which failed to reveal any evidence of hypertension or heart disease upon entry.
- C. The Claimant-Decedent suffered compensable heart disease with a date of injury of July 8, 1991, that was approved and accepted while he was working as a regular member of a paid municipal police department before he retired.
- D. The Claimant-Decedent's death on March 25, 2016 occurred after his retirement on July 8, 1996.
- E. I find the opinion of Dr. Kevin D. Price, who lists the Claimant-Decedent's causes of death as indicated on the

death certificate to be 1) Fatal Cardiac Dysrhythmia, 2) Acute Coronary Syndrome, and 3) Atherosclerotic Heart Disease, to be persuasive and credible; (CL. Ex. “D” and “G”).

- F. I find the opinion of Dr. Mitchell A. Fogel, the Claimant’s expert, who opined that the causes of death listed on the death certificate to be accurate and stated that “Gary Wilson’s heart disease was a substantial factor in his death” to be persuasive and credible; (Cl. Ex. H and Rsp. Ex. “2”).
- G. I do not find persuasive the opinion of Dr. Martin J. Krauthamer, who opines that the Claimant-Decedent died of unknown cause, similar to many deaths”; (Rsp. Ex. “2”).
- H. I find sufficient persuasive and credible evidence to establish that the Claimant-Decedent’s underlying compensable heart disease that occurred while he was a police officer was a significant contributing factor or a proximate cause of his death.
- I. Ms. Jean Wilson, is the Dependent-Widow of Claimant-Decedent Gary Wilson and she filed a timely Notice of Claim on April 19, 2016, pursuant to §31-306; (Cl. Ex. “C” and “E”).
- J. Because the Claimant-Decedent’s death resulted from a manifestation of a properly perfected heart disease claim, the Claimant-Dependent widow’s claim related to this death meets the jurisdictional standards for a §7-433c claim and is compensable.
- K. The claim for compensability of the Claimant-Decedent’s death is accepted and the Claimant-Dependent-Widow’s claim for §31-306 benefits is approved.

Conclusion, ¶¶ A-K.

The respondents filed a motion to correct seeking to substitute Conclusion, ¶¶ E-H, as well as Conclusion, ¶¶ J-K, with conclusions finding that the claimant’s medical evidence was insufficient to establish causation of the decedent’s death as being due to the compensable heart ailment. Therefore, as the respondents viewed the record, an

award for survivorship benefits could not be sustained and the claimant's award should be denied. The commissioner denied this motion in its entirety. The respondents have pursued this appeal. The gravamen of their appeal is their belief that pursuant to Holston, supra, and Staurovsky, supra, our commission cannot award benefits to a dependent spouse when a recipient of a § 7-433c award dies after retirement. They also believe the factual evidence linking the decedent's death to his compensable injury was insufficient to support an award of benefits. We find neither argument persuasive.

The standard of deference we are obliged to apply to a 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).

We may dispense with the legal issues herein expeditiously. The respondents' argument is that Holston, supra, bars eligibility under § 7-433c for "flow-through" injuries such as a death resulting from a compensable heart condition. They also argue

that any claim for § 7-433c benefits pursued after a police officer or fire fighter has retired is barred pursuant to Staurovsky, supra. We fully addressed this argument in Gentle, and resolved it in a manner adverse to the respondents.

The essential question posed in this appeal is whether the precedent in Holston, supra, and Staurovsky, supra, bars survivorship claims under § 7-433c. The respondent argues that because death is a “new pathology” which was not covered under the pre-existing vested claim for heart and hypertension benefits, an award of benefits to the police officer’s widow is outside the ambit of the statute. . . . It rejects the position that flow-through injuries are within the scope of the heart and hypertension statute, and cites recent case law for the proposition that only police officers who are still employed by the city can avail themselves of § 7-433c benefits.

We rejected this position in Costanzo, supra, in which we specifically determined that flow-through injuries and conditions were a viable means to create eligibility for a survivorship claim. In that Opinion, we noted that in Dickerson v. Stamford, 6215 CRB-7-17-8 (September 12, 2018), *appeal transferred*, S.C. 20244 (January 30, 2019), and Coughlin v. Stamford, 6218 CRB-5-17-9 (February 15, 2019), *appeal [transferred*, S.C. 20319 (June 26, 2019)], we applied that rule to active and retired police officers and fire fighters. We also cited long-standing precedent in Bassett v. Stratford Lumber Co., 105 Conn. 297, 303-304 (1926), and Biederzycki v. Farrel Foundry & Machine Co., 103 Conn. 701, 704-705 (1926), for the proposition that survivorship claims are derivative of the decedent’s compensable injury and, as such, found the survivorship claim of the dependent widow in Costanzo compensable.

Gentle, supra.¹

Since we believe the finding is based on sound legal precedent, our inquiry must focus on whether there was a sufficient quantum of probative evidence presented on the

¹ As we noted in Costanzo v. Stamford, 6274 CRB-7-18-5 (May 3, 2019), *appeal pending*, A.C. 42968 (May 20, 2019), the derivative nature of a survivorship claim makes reliance on Staurovsky v. Milford Police Dept., 164 Conn. App. 182 (2016), *appeal dismissed, cert. improvidently granted*, 324 Conn. 693 (2017), untenable when, similar to the circumstances herein, the underlying claim under General Statutes § 7-433c was filed while the decedent was an actively employed police officer or fire fighter. See McCullough v. Swan Engraving, Inc., 320 Conn. 299 (2016).

record to sustain a conclusion that the compensable cardiac injury herein was a substantial factor in the decedent's demise. The claimant presented evidence from the decedent's treating physician, a death certificate, and an opinion from a Connecticut physician who performed a records review. The death certificate attributed the death to "fatal cardiac dysrhythmia," "acute coronary syndrome" and "atherosclerotic heart disease," while deeming prostate cancer a significant condition not resulting in death. Claimant's Exhibit D. The decedent's treating physician, Kevin Price, M.D., determined that the most likely cause of death were the factors listed on the death certificate and that it would be "unusual" for a patient to die suddenly from prostate cancer and this was "much less likely" to have caused the death. Claimant's Exhibit G. The claimant's records reviewer, Mitchell Fogel, M.D., also agreed the death certificate accurately described the factors leading to the decedent's demise. He further stated "[i]n my opinion, based on a reasonable degree of medical probability, Gary Wilson's heart disease was a substantial factor in his death." He discounted the role of prostate cancer in the death and specifically discounted the need for an autopsy in this case. Claimant's Exhibit H.

The claimant established to the commissioner's satisfaction that all three prongs of the test for survivorship benefits delineated in Tardy v. Abington Constructors, Inc., 71 Conn. App. 140 (2002), had been met, i.e. "(1) the employee died, (2) the claimant was a dependent under the act and (3) the decedent's death was causally related to the compensable injuries." *Id.*, 144. We believe the medical evidence presented was sufficient to meet the third prong of this test. It is black-letter law that our precedent is that a trial commissioner has the discretion to rely on a death certificate in ascertaining if

a death was due to a compensable injury. See Stevens v. Raymark Industries, Inc., 5215 CRB-4-07-4 (March 26, 2008), *appeal dismissed*, A.C. 29795 (June 26, 2008).

The respondents, relying on the opinion of their expert witness, argue that this reliance was unwarranted. We note that there is precedent where a trial commissioner *did not* rely on a death certificate to ascertain a cause of death. See Dsupin v. Wallingford, 5757 CRB-8-12-6 (November 1, 2013). Upon reviewing the facts in Dsupin, we find that this case stands for the ability of a commissioner to weigh all the evidence presented. The respondents in the present case simply did not present evidence that the trial commissioner chose to credit, and therefore, the commissioner could choose to rely on the claimant's evidence.

In Dsupin, the claimant argued that the death in question was due to preexisting compensable coronary disease, wherein the respondents presented extensive testimony from two different medical experts that the pulmonary embolus that caused the decedent's demise was caused by the decedent's lung cancer, not his pre-existing coronary artery disease. Since the commissioner credited the testimony of the respondent's expert witnesses as to the cause of death, we concluded in Dsupin that in a "dueling expert" case, the commissioner could reasonably deny the claim for benefits. See Dellacamera v. Waterbury, 4966 CRB-5-05-6 (June 29, 2006), n.1, *appeal withdrawn*, A.C. 27853 (September 12, 2006).

In the present case, the commissioner credited the claimant's experts and pursuant to the precedent in Dsupin, *supra*, we believe she had the right to do so. The respondents failed to avail themselves of their right to depose these witnesses and their written opinions could therefore be considered "as is." Berube v. Tim's Painting, 5068 CRB-3-

06-3 (March 13, 2007). In particular, we do not find it unreasonable for the commissioner to rely on these opinions over the opinion of Krauthamer, who suggested in his report, Respondents' Exhibit 2, that the cardiac death of a 62 year old man with long-standing heart issues should be considered essentially idiopathic. The respondents' medical evidence herein could reasonably have been found less persuasive by a trier of fact than the evidence presented by the respondents in Dsupin, supra.² On the other hand, the claimant's medical evidence was sufficient to persuade the commissioner and in accordance with the precedent in Dellacamera, supra, we do not find the result unreasonable.

The finding is fully consistent with recent legal precedent for the award of survivorship benefits to the dependent spouses of beneficiaries of § 7-433c benefits. We find sufficient probative medical opinions were presented to support the award. As a result, we affirm the Findings & Award.

Commissioners Peter C. Mlynarczyk and David W. Schoolcraft concur in this Opinion.

² Despite the respondents' suggestion that an autopsy was a prerequisite for obtaining survivorship benefits, see respondents' brief, p. 9, there is no precedent stating that this is a requirement in filing a claim for such benefits. Had the respondents wanted to challenge the adequacy of the foundation of Price's and Fogel's opinions in the absence of an autopsy, they should have deposed these experts or subpoenaed them to the hearing, see DiNuzzo v. Dan Perkins Chevrolet Geo, Inc., 294 Conn. 132, 144-148 (2009). Having failed to do so, the commissioner was permitted to place whatever weight she deemed appropriate upon their written opinions.