CASE NO. 6297 CRB-4-18-11 CLAIM NO. 400103994	:	COMPENSATION REVIEW BOARD
RYAN LEFEVRE CLAIMANT-APPELLEE	:	WORKERS' COMPENSATION COMMISSION
v.	:	JANUARY 17, 2020
TPC ASSOCIATES, INC. EMPLOYER		
and		
HARTFORD INSURANCE GROUP INSURER RESPONDENTS-APPELLANTS		

APPEARANCES:

The interests of the claimant were represented by Donna Civitello, Esq., Carter & Civitello, One Bradley Road, Suite 305, Woodbridge, CT 06525.

The interests of the respondents were represented by Lynn M. Raccio, Esq., Tentindo, Kendall, Canniff & Keefe, L.L.P., 510 Rutherford Avenue, Hood Business Park, Boston, MA 02129.

This Petition for Review from the October 25, 2018 Findings and Award by Randy L. Cohen, the Commissioner acting for the Fourth District, was heard August 30, 2019 before a Compensation Review Board panel consisting of Commissioners Peter C. Mlynarczyk, David W. Schoolcraft and Daniel E. Dilzer.[1]

[1] We note that a motion for extension of time and a motion for continuance were granted during the pendency of this appeal.

OPINION

PETER C. MLYNARCZYK, COMMISSIONER. The respondents have appealed from Findings and Award (finding) reached by Commissioner Randy L. Cohen (commissioner) which awarded the claimant indemnity benefits and medical treatment benefits related to an August 3, 2016 cardiopulmonary arrest he sustained on their premises. The respondents argue that the evidence presented by the claimant in support of his claim was inadequate to support a conclusion that the injury he sustained arose out of and occurred in the course of his employment. While they concede that they were precluded from contesting compensability of the claimant's injury, they argue the claimant failed to meet his burden of proof that he was entitled to benefits based on the record he presented. They also argue it was error for the commissioner to essentially adopt the proposed findings submitted by claimant's counsel. Upon review, we believe the commissioner could reasonably rule in the claimant's favor based on the record herein and the manner in which this finding was reached does not constitute reversible error. As a result, we affirm the finding.

This tribunal discussed some of the facts in this case in our prior decision regarding the motion to preclude granted to the claimant in this matter. See Lefevre v. TPC Associates, Inc., 6255 CRB-4-18-3 (March 26, 2019), *appeal withdrawn*, A.C. 42802 (April 22, 2019). After granting preclusion in this case, the commissioner held a formal hearing on September 12, 2018, to consider the evidence the claimant had supportive of being awarded benefits for his injury. After considering this evidence, the commissioner reached the following findings of fact relevant to our consideration of this appeal. She noted that on the date of the incident the claimant was employed by TPC and

at 2:57 p.m., he was recorded on a company surveillance camera for approximately one and a half minutes attempting to lift and move three large boxes in a warehouse. The video showed the claimant "bending over from the waist and having difficulty moving the boxes. He is also seen passing his hand over his chest and shaking and examining his left hand and fingers. He is seen resting for a few moments, and then is seen rapidly exiting the area under surveillance, without completing the task of moving the boxes." Findings, ¶ 4.

The commissioner noted that the Milford Fire Department incident report recorded that a dispatcher received a report of an unresponsive man at the TPC facility parking lot at 3:17 p.m. and 3:18 p.m. She also noted the EMS report records statements by persons at the scene that the claimant had been gone for about five minutes when his co-workers went to search for him and found him unresponsive in his car. These reports also said that as of the ambulance's arrival at 3:22 p.m., the claimant did not have a pulse, and that CPR had been in progress without success. Mrs. LeFevre testified at the hearing held on September 12, 2018, that she was told by the employer that the claimant was found in the company car that he used to carry out his inspection activities and not in his own car. She also testified that her husband's regular workday did not end at 3:00 p.m., but always continued for some hours afterwards.

The claimant's treating cardiologist, Ari T. Pollack, M.D., offered an opinion as to the causation of the cardiac arrest the claimant sustained. He reviewed the aforementioned surveillance videotape and issued a letter on February 8, 2017, included in Claimant's Exhibit J.

> Based on my review of his medical records, and the history I obtained from Mr. LeFevre's family, he had an undiagnosed cardiac condition prior to August 3, 2016, and likely had medically

> significant occlusion of his LAD [left anterior descending coronary artery].
>
> Mr. LeFevre's physical exertions in attempting to move three boxes at work between 2:57 and 2:59 PM on August 3, 2016 more likely than not constituted the precipitating factor of the cardiopulmonary arrest he suffered sometime between 2:57 PM and 3:18 PM on that day.
>
> I hold these opinions to a reasonable degree of medical certainty.

Findings, ¶ 12.

Mrs. LeFevre offered additional testimony as to her husband's activities in the weeks prior to his cardiac arrest. She said the claimant previously held sedentary desk jobs, but was forced to start working a more strenuous and physically demanding job as a technical inspector, and that he worked very long hours, that he sweated through up to five shirts per day. She also testified that he brought from home gallons of liquid to drink during each work day, and that he always came home from work exhausted. He found household tasks such as pushing a lawn mower or staining a deck impossible due to physical discomfort. She also said that while her husband had been short of breath on occasion prior to the incident at work, he had not complained of chest pain. She said his hypertension was well controlled by medication and that prior to August 3, 2016, her husband had never been diagnosed with any cardiac problem other than hypertension. She also testified that since that incident her husband is unable to speak, to feed himself, or to walk; that he cannot raise himself from a reclining position or sit without assistance; and that he must be transported by ambulance for all medical visits away from his skilled nursing facility.

Based on this evidence, the commissioner concluded that the videotape was reliable evidence and supported a conclusion when considered in conjunction with the

EMS reports that the claimant lost consciousness and became unresponsive sometime between 2:59 p.m. and 3:17 p.m., within eighteen minutes of his struggling to move the boxes in the warehouse. She found Pollack's opinion that the claimant likely had an undiagnosed left descending coronary artery occlusion prior to August 3, 2016, credible and supported by the medical records in evidence and by the history provided by Mrs. LeFevre, whom she deemed a credible witness. She also determined that Pollack's opinion that the claimant's physical exertions in attempting to move the boxes on August 3, 2016, more likely than not was the precipitating factor behind the cardiopulmonary arrest he suffered shortly thereafter to be credible and persuasive. Therefore, the commissioner determined the claimant was in the course of his employment when he sustained the cardiopulmonary arrest and his physical exertions in trying to move boxes at work acted upon his pre-existing cardiac disease to cause his cardiopulmonary arrest on that day and time. Noting medical records from his various providers, the commissioner found the claimant has been totally disabled since his cardiopulmonary arrest on August 3, 2016, and that his total disability is likely to continue for the foreseeable future and that the medical treatment for his injury has been reasonable and necessary. Accordingly, she ordered the respondents to pay benefits to the claimant for this injury.

The respondents filed a motion to correct seeking ten different corrections. The corrections would have resulted in a finding that the claimant was not in the course of his employment when he sustained his injury, that Pollack's causation opinion was not credible or persuasive and that the claimant was not entitled to benefits as a result of his injury. The commissioner granted only one correction which did not materially change

the finding. The respondents have pursued this appeal. They argue the claimant's evidence was insufficient to support an award of benefits. They also argue that it was error for the commissioner to adopt proposed findings submitted by claimant's counsel.[2] We find none of these arguments persuasive.

We begin our analysis of this matter with a recitation of the well-settled standard of review we are obliged to apply to a commissioner's findings and legal conclusions. "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). Thus, "it is immaterial that the facts permit the drawing of diverse inferences. The [commissioner] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair v. People's Savings Bank, 207 Conn. 535, 540 (1988), *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

The respondents argue that the evidence submitted supportive of this claim was insufficient to justify an award of benefits. They point to Pollack's causation opinion

[2] Initially, the respondents also argued that it was error for the commissioner not to grant a motion to stay consideration of this claim until this tribunal had ruled on an appeal of the motion to preclude, which the commissioner granted, but at oral argument before this tribunal counsel for the respondents stated that the controversy over the motion to stay was now moot.

letter, which they reject as being based on viewing a short videotape and having been "solicited for litigation purposes." Appellant's Brief, p. 10. They argue this letter was inconsistent with "contemporaneous medical records, findings and opinions of multiple cardiac consultants, diagnostic studies and testing. . . ." Id. This essentially constitutes an effort to reargue facts, however. The respondents cannot reasonably argue that Pollack, who was a treating physician and a cardiologist, was unfamiliar with the claimant's condition and therefore lacked the ability to opine substantively as to the causation of his injury. See Burns v. Southbury, 5608 CRB-5-10-11 (November 2, 2011). The respondents' citation of Ramsahai v. Coca-Cola Bottling Company, 5991 CRB-1-15-2 (January 26, 2016), is inapposite as in that case the commissioner relied on a treater who was not a behavioral health professional to determine the claimant suffered from depression. We believe that a commissioner can reasonably rely on the opinion of a cardiologist as to the causation of cardiac arrest.

The respondents also argue that the claimant's preexisting cardiac condition merely manifested itself contemporaneously during his period of employment and therefore they are not responsible to pay benefits for this injury. The respondents raised a similar argument as to the claimant's preexisting multiple sclerosis in Hadden v. Capitol Region Education Council, 5843 CRB-1-13-5 (May 20, 2014), *aff'd*, 164 Conn. App. 41 (2016). In Hadden, we cited an earlier Supreme Court case, Blakeslee v. Platt Bros. & Co., 279 Conn. 239 (2006), as to the law concerning a work injury sustained by a claimant who has a preexisting condition, *quoting* Gartrell v. Dept. of Correction, 259 Conn. 29 (2002), where the court stated as follows:

> It long has been a fundamental tenet of workers' compensation law . . . that an employer takes the employee in the state of health in

> which it finds the employee. (Internal quotation marks omitted.) Id., 40. Thus, an injury received in the course of the employment does not cease to be one arising out of the employment merely because some infirmity due to disease has originally set in action the final and proximate cause of the injury. The employer of labor takes his workman as he finds him and compensation does not depend upon his freedom from liability to injury through a constitutional weakness or latent tendency. Whatever predisposing physical condition may exist, if the employment is the immediate occasion of the injury, it arises out of the employment because it develops within it.

(Internal quotation marks omitted.) Blakeslee, supra, 245-46, *quoting* Savage v. St. Aeden's Church, 122 Conn. 343, 346-47 (1937).

We believe the commissioner could reasonably have relied upon the opinion of Pollack that the claimant's employment set in motion the proximate cause of this injury. See O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 816 (1999). We have noted that cardiac injury claims are governed by the standard delineated in McDonough v. Connecticut Bank & Trust Co., 204 Conn. 104 (1987). In McDonough, the following standard was enunciated by our Supreme Court.

> Heart stress cases differ only in degree from other compensation cases involving causation in myriad different fact patterns. Only the factual nuances and difficulties of expert medical testimony distinguish such cases. In order to recover, the claimant must prove causation by a reasonable medical probability.

Id., 118, *citing* Glenn v. Stop & Shop, Inc., 168 Conn. 413, 417 (1975).

As Pollack did opine to workplace causation to a "reasonable medical certainty," and the commissioner found this opinion persuasive, the standard under McDonough was satisfied in this case.[3] The commissioner is the ultimate judge of the qualitative value of

[3] We note that the respondents in Hart v. Federal Express Corporation, 5897 CRB-2-13-11 (November 12, 2014), *aff'd*, 321 Conn. 1 (2016), argued that the claimant's pre-existing heart condition should bar an award for a cardiac injury sustained while working for the employer, but we concluded that when a commissioner is persuaded that workplace stress triggers such an injury that the injury is compensable, citing the principles delineated in Blakeslee v. Platt Bros. & Co., 279 Conn. 239 (2006).

evidence, see Arnott v. Taft Restaurant Ventures, LLC, 4932 CRB-7-05-3 (March 1, 2006), and we will not revisit her determination to rely upon Pollack's opinion.[4]

We turn to the manner in which the commissioner presented her findings, where it is apparent that she adopted the proposed findings submitted by claimant's counsel on September 20, 2018. The respondents claim that this constitutes reversible error, *citing* Cortes v. Judicial Branch, 6195 CRB-2-17-5 (July 20, 2018), *appeal withdrawn*, A.C. 41961 (January 15, 2019) and Bernardo v. Capri Bakery, 4570 CRB-3-02-9 (February 10, 2004), as cases where this tribunal has criticized this practice when employed by trial commissioners. We are not persuaded that this situation, based on the facts herein, constitutes error. In Cortes, we remanded the matter for additional proceedings when we found "even were we to avert our attention from the verbatim recitation of one party's proposed findings, we would still be unable to perform effective appellate review of the Finding & Award given its vague and uncorroborated conclusions." Id. In the present matter, we find the commissioner's conclusions definitive and consistent with evidence on the record she credited. As a result, this case is consistent with Bernardo, supra, where we affirmed the commissioner's decision, as "there was evidence before the trial commissioner supporting his findings and the findings sufficiently articulate the basis for his conclusion." Id.

In any event, the commissioner was presented with a motion to correct where she was given the opportunity to "reconsider [her] ultimate conclusions in light of the factual

[4] The respondents argue that the commissioner did not conduct an "independent" review of the claimant's evidence prior to determining that he presented a *prima facia* case, in contravention of Donahue v. Veridiem, Inc., 291 Conn. 537, 553-555 (2009). Respondents' Brief, pp. 8, 11. We are not persuaded. If the commissioner was persuaded by the claimant's evidence, she had no obligation to order a Commissioner's examination. See Jodlowski v. Stanley Works, 5976 CRB-6-15-1 (August 12, 2015), *aff'd,* 169 Conn. App. 103, 111 (2016).

evidence provided." Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008), *appeal withdrawn*, A.C. 30306 (September 29, 2009). The commissioner did not summarily deny the motion to correct; rather she granted one correction which we may infer she believed caused the finding to conform to the evidence she deemed probative and reliable. See Rizzo v. Stanley Works/Hand Tools Division, 5106 CRB-6-06-6 (November 21, 2007). This suggests the commissioner duly considered the body of evidence and did not merely rubber stamp the claimant's conclusions. To the extent the respondents claim error by the commissioner's denial of the balance of the proposed corrections, we find that precedent in Bernardo, supra, stands against granting relief, as "[e]ssentially, the appellants ask us to adopt the factual findings they prefer to those that were adopted by the trial commissioner" and such relief would be inconsistent with Fair, supra.

As a result, we affirm the finding.

Commissioners David W. Schoolcraft and Daniel E. Dilzer concur in this opinion.