CASE NO. 6304 CRB-4-19-1 CLAIM NO. 400014083	:	COMPENSATION REVIEW BOARD
PHILIP F. MASCENDARO CLAIMANT-APPELLEE	:	WORKERS' COMPENSATION COMMISSION
v.	:	MARCH 13, 2020

TOWN OF FAIRFIELD
EMPLOYER
SELF-INSURED

and

PMA MANAGEMENT CORPORATION
OF NEW ENGLAND
THIRD-PARTY ADMINISTRATOR
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Andrew J. Morrissey, Esq., Morrissey, Morrissey & Mooney, L.L.C., 203 Church Street, P.O. Box 31, Naugatuck, CT 06770.

The respondents were represented by Richard L. Aiken, Jr., Esq., Strunk, Dodge, Aiken, Zovas, 200 Corporate Place, Suite 100, Rocky Hill, CT 06067.

This Petition for Review from the January 11, 2019 Findings by Randy L. Cohen, the Commissioner acting for the Fourth District, was heard October 25, 2019 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Peter C. Mlynarczyk and David W. Schoolcraft.[1]

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

OPINION

STEPHEN M. MORELLI, CHAIRMAN. The respondents have appealed from Findings (findings) issued by Commissioner Randy L. Cohen (commissioner) wherein she awarded benefits to the claimant pursuant to General Statutes § 7-433[2] for an intracerebral hemorrhage he sustained on February 13, 2016. The respondents, reprising arguments raised in many similar cases we have recently considered, argue that this relief is inconsistent with the 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). The claimant argues that this is a flow-through injury claim similar to the ones which we have been affirmed in cases such as Dickerson v. Stamford, 6215 CRB-7-17-8 (September 12, 2018), *aff'd*, 334 Conn. 870 (2020).[3] Our Supreme Court's decisions affirm the Compensation Review

[2] General Statutes § 7-433c states: "(a) Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems. The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 or the municipal or state retirement system under which he is covered, except as provided by this section, as a result of any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability. As used in this section, 'municipal employer' has the same meaning as provided in section 7-467."

[3] See also, Coughlin v. Stamford, 6218 CRB-5-17-9 (February 15, 2019), *aff'd*, 334 Conn. 857 (2020).

Board's previous rulings and therefore support the claimant's position and therefore we affirm the Findings.

The commissioner reached the following findings of fact which are pertinent to our consideration of this appeal. She noted that the claimant was a former Fairfield police officer who retired in 2010 and who during his career was awarded General Statutes § 7-433c benefits for hypertension on October 30, 1997, receiving a 7.5 percent permanent partial disability rating. On February 13, 2016, while attempting to exit his vehicle on a cold day, the claimant sustained an intracerebral hemorrhage. He was brought to Bridgeport Hospital and when he was discharged on February 22, 2016, the discharge diagnosis identified his ailment as, "Thalmatic hemorrhage: likely secondary to hypertensive crisis." Findings, ¶ 8, *quoting* Claimant's Exhibit D.

Subsequent to the incident, the claimant has sought temporary total disability benefits arguing that his compensable hypertension was a substantial contributing factor in the development of his intracerebral (thalmatic) hemorrhage. In the alternative, he sought an increase in his permanent partial disability rating to 32 percent for hypertension. The respondents, *citing* Holston, supra, and Staurovsky, supra, argued this ailment was a separate medical condition and therefore outside the scope of the existing compensable injury award. Therefore, they denied liability for temporary total disability benefits and further argued that the increase in permanency rating due to hypertension was only from 7.5 percent to 17 percent, an increase of 9.5 percent.

The claimant's medical expert, Donald Rocklin, M.D., opined that hypertension was a substantial factor in causing his intracerebral hemorrhage. Rocklin further testified that he concurs with the AMA Guidelines, that hypertension is a primary risk factor in

causing intracerebral hemorrhage. He testified that hypertension and intracerebral hemorrhage are separate and distinct medical diseases or pathologies. Rocklin assigned the claimant a 32 percent permanency rating for hypertension and opined that the claimant had been totally disabled from any work since the February 13, 2016 cerebral hemorrhage.

The respondents presented evidence from their expert witness, Martin Krauthamer, M.D. Krauthamer testified that hypertension may be a risk factor for intracerebral hemorrhage and other risk factors were family history, hyperlipidemia, gender, age, and obesity. Cold temperatures can also impact a patient's blood pressure. He testified that hypertension and intracerebral hemorrhage are two separate and distinct medical processes. Krauthamer also testified that he disagrees with Rocklin's opinion that the claimant's hypertension was a substantial factor in causing the claimant's intracerebral hemorrhage. He further opined the relationship between the claimant's hypertension and the intracerebral hemorrhage is minimal.

Based on these facts, the commissioner concluded that she found Rocklin's opinion that the claimant's hypertension was a substantial factor in causing the intracerebral hemorrhage credible and persuasive. She did not find the opinion of Krauthamer to be credible or persuasive. Since she also did not find the claimant advanced a "new" claim, therefore she rejected the respondents' reliance on Holston, supra, and Staurovsky, supra. Accordingly, she awarded the claimant temporary total disability benefits commencing February 13, 2016, and such other medical or indemnity benefits as the claimant could prove were associated with his hypertension or intracerebral hemorrhage.

The respondents filed a motion to correct seeking twenty-four different corrections to the findings. The commissioner granted fourteen corrections which expanded upon the testimony of the expert medical witnesses; particularly as to the point that hypertension and intracerebral hemorrhage were separate ailments and a patient who had one of these ailments need not necessarily sustain the other. The balance of the corrections, which sought to find the claimant's February 13, 2016 incident noncompensable, were denied. The respondents then pursued this appeal, reiterating their opinion that Holston, supra, and Staurovsky, supra, rendered this claim noncompensable.

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).

The respondents herein take the position that sequalae injuries are not compensable pursuant to § 7-433c, based on their interpretation of Holston, supra. We note that our Supreme Court has recently opined on this question in Dickerson, supra, and Coughlin, supra, and decisively resolved this question in favor of the position the trial commissioner reached in this case. We cite the holding of Dickerson:

> We first consider the defendant's claims that the plaintiff did not meet the jurisdictional prerequisites of § 7-433c because he was retired when he pursued his claim for heart disease and that the plaintiff failed to give timely, separate notice of his heart disease claim. In *Coughlin* v. *Stamford Fire Dept.*, 334 Conn. 857 (2020), which we also decide today, we held that, when a plaintiff has a compensable claim for hypertension under § 7-433c, the plaintiff may also be eligible for benefits for subsequent heart disease if, as required by the act, the plaintiff's heart disease is causally related to his hypertension. We adopt the reasoning and result of that decision herein and, therefore, conclude that the plaintiff met the jurisdictional prerequisites of § 7-433c. We hold that the plaintiff was not required to file a notice of new claim in order to pursue benefits for his heart disease.

Dickerson, supra, 876.

Therefore, the factual issue we must consider is whether the commissioner has sufficient evidence so as to find the claimant's intracerebral hemorrhage was a sequalae of his compensable hypertension. The respondents have focused on establishing that hypertension and intracerebral hemorrhages are separate ailments with differing etiologies. The commissioner accepted this position in granting the corrections she granted in the motion to correct. The commissioner did not accept the respondents' position that this barred awarding benefits for the intracranial hemorrhage as a sequalae of the hypertension. Upon reviewing the evidence, we believe the commissioner reached a reasonable decision.

We have reviewed Claimant's Exhibit I, which was Rocklin's deposition. When asked about the claimant's hemorrhage at this deposition, he testified that, "I think there's a clear-cut relationship between this type of stroke cerebral hemorrhage and hypertension" id., p. 26, and "I think this is a well-recognized phenomenon for a century." Id. Rocklin clearly offered an unequivocal causation opinion which the commissioner could have chosen to rely upon. Her decision to find Rocklin persuasive, and to find the respondents' expert Krauthamer unreliable, was clearly within her purview as a finder of fact. In any "dueling expert" case, the commissioner retains the prerogative to choose the opinion she deems more persuasive and weightier. See Dellacamera v. Waterbury, 4966 CRB-5-05-6 (June 29, 2006), *appeal withdrawn*, A.C. 27853 (September 12, 2006).

The respondents also argue that it was error for the commissioner to find that hypertension could cause a sequalae injury that involved a different etiology. They cite no precedent for this position, and we take notice that in two recent cases Arlio v. Trumbull, 6284 CRB-4-18-8 (July 25, 2019) *appeal pending*, A.C. 43269 (August 7, 2019), where the claimant asserted kidney disease was the sequalae of hypertension and DeLorge v. Norwich, 6286 CRB-2-18-8 (August 5, 2019), where the claimant asserted his compensable cardiac condition caused retinal headaches, we affirmed an award to the claimant based on a similar theory of recovery. In both cases we found, as we do in this case, that the link between the compensable injury and the claimant's current condition was established by probative medical evidence the trial commissioner found reliable. In so doing, we restate a principle of compensation law which has been in place for nearly a century. See De la Pena v. Jackson Stone Co, 103 Conn 93, 98 (1925). We also note that

our Supreme Court in both Dickerson, supra, and Coughlin, supra, found Felia v. Westport, 214 Conn. 181 (1990) on point that the causation standards of Chapter 568 claims apply to § 7-433 claims.

The other arguments presented by the respondents center upon the fact that at the time of the February 13, 2016 incident, the claimant had retired from the police force and was receiving a pension. They cite Staurovsky, supra, as authority against awarding benefits, arguing that in that case a § 7-433c claim filed after the claimant was retired was disallowed. They also raise a public policy argument against paying temporary total disability benefits to someone who is no longer in the workforce. We find neither argument persuasive.

The respondents in Coughlin also relied on the holding of Staurovsky to assert that once a claimant is retired and experiences any new episode of cardiac illness, they cannot obtain relief under § 7-433c. Our Supreme Court rejected that argument. The Coughlin opinion clearly limited Staurovsky to situations where a claimant "does not experience any condition or impairment of health related to hypertension or heart disease while employed as a firefighter or police officer." Id., 868. Since the commissioner found the claimant's current ailment was the sequela of the existing § 7-433c claim sustained while the claimant was actively employed, Staurovsky does not apply to this scenario.

The final argument presented is essentially a policy argument that it is inappropriate to award temporary total disability benefits to retired employees who are no longer in the workforce. Given our Supreme Court's ruling in Coughlin, we believe the

respondents' policy arguments as to the equity of paying compensation awards to retired employees must be directed to the General Assembly, not to our commission.

The commissioner was presented with probative evidence that she found reliable that although the claimant's intracerebral hemorrhage was a different ailment than his compensable hypertension, the claimant's compensable hypertension was a substantial contributing factor in causing the intracerebral hemorrhage. Our precedent in Dickerson, supra, and Coughlin, supra, as affirmed by our Supreme Court, established that flow-through injuries under § 7-433c are compensable and therefore the January 11, 2019 Findings by Randy L. Cohen, the Commissioner acting for the Fourth District, are affirmed.

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