CASE NO. 6313 CRB-4-19-3 CLAIM NOS. 700001525 & 700172790	:	COMPENSATION REVIEW BOARD
CHERYL PETRONE, ADMINISTRATRIX OF THE ESTATE OF MARLENE SAVIANO CLAIMANT-APPELLANT[1]	:	WORKERS' COMPENSATION COMMISSION
v.	:	FEBRUARY 27, 2020
TOWN OF RIDGEFIELD/ BOARD OF EDUCATION EMPLOYER RESPONDENT-APPELLEE		

APPEARANCES:

The claimant was represented by Patrick W. Frazier, Esq., 2830 Whitney Avenue, Upper 2nd, Hamden, CT 06518.

The respondent was represented by Henry J. Zaccardi, Esq., Shipman & Goodman, LLP, 1 Constitution Plaza, Hartford, CT 06103. *Attorney Zaccardi retired following oral argument and prior to the issuance of this Opinion. Attorney Christopher Neary, of Shipman & Goodman, LLP, filed a notice of appearance on January 16, 2020, appearing in lieu of Attorney Zaccardi.*

This Petition for Review from the February 19, 2019 Finding by Jodi Murray Gregg, 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] The case herein was captioned "The Estate of Marlene Saviano" as claimant at the trial level. We note that on August 31, 2016, the claimant filed a motion to substitute to name "Cheryl Petrone, Administratrix" as claimant. Consistent with precedent in Brennan v. Waterbury, 331 Conn. 672, 681-682 (2019), we find the estate's administratrix the real party in interest.

OPINION

PETER C. MLYNARCZYK, COMMISSIONER. The claimant has appealed from a Finding (finding) which determined that the estate of the decedent was not entitled to any payments of life insurance benefits upon her death. The claimant argues that the respondent had not complied with General Statutes § 31-284b (a)[2] because, although the town was obligated to continue the decedent's life insurance coverage while she collected compensation benefits, the life insurer from whom the town had purchased coverage declined to pay benefits upon her death because she was not a qualified insured. The respondent argues that by paying premiums for life insurance during the period that the decedent was alive and collecting workers' compensation benefits, it complied with the terms of the statute and its responsibilities were discharged upon her death. The commissioner, Jodi Murray Gregg (commissioner), accepted the respondent's interpretation of law and dismissed the claim. We conclude that this constitutes an erroneous interpretation of law and remand this matter for further proceedings.

The parties submitted stipulated facts to the commissioner so her decision turned exclusively on an interpretation of law. The facts stipulated to were as follows:

1. The deceased, Marlene Saviano, was an employee of the Ridgefield School District as a certified teacher on the date of injury, October 31, 1991.

[2] General Statutes § 31-284b states: "(a) In order to maintain, as nearly as possible, the income of employees who suffer employment-related injuries, any employer who provides accident and health insurance or life insurance coverage for any employee or makes payments or contributions at the regular hourly or weekly rate for full-time employees to an employee welfare plan, shall provide to the employee equivalent insurance coverage or welfare plan payments or contributions while the employee is eligible to receive or is receiving compensation pursuant to this chapter, or while the employee is receiving wages under a provision for sick leave payments for time lost due to an employment-related injury. As used in this section, "income" means all forms of remuneration to an individual from his employment, including wages, accident and health insurance coverage, life insurance coverage and employee welfare plan contributions and "employee welfare plan" means any plan established or maintained for employees or their families or dependents, or for both, for medical, surgical or hospital care benefits."

2. As a certified teacher, Mrs. Saviano was a member of the teachers' union bargaining unit.
3. As a member of the teachers' union bargaining unit, the terms and conditions of Ms. Saviano's employment were established through a collective bargaining agreement by the District and Teachers' union.
4. The collective bargaining agreement included negotiated fringe benefits.
5. One fringe benefit the union negotiated with the District was life insurance that was paid for by the District.
6. The District paid premiums for this life insurance for all members of the teachers' bargaining unit, including the decedent.
7. The District paid premiums on behalf of Mrs. Saviano through November, 2014.
8. Mrs. Saviano passed away on November 3, 2014.
9. On the date of injury, Mrs. Saviano as a full time teacher was within the class of employees the District was obligated to provide life insurance coverage for.
10. Cigna Group life insurance policy FLX-963147 was the agreement in effect for the Employer/Respondent at the time of the Mrs. Saviano's death.

Findings, ¶¶ 1-10.

Based on those stipulated facts, the commissioner concluded the decedent sustained a compensable injury in 1991while employed by the respondent and was receiving indemnity benefits from the date of her injury until her death on November 3, 2014. She cited § 31-284b (a) as governing this situation and found that the respondent paid all the life insurance premiums for the decedent until her death. The commissioner concluded that by paying life insurance premiums to the time of her death the employer had maintained her level of income during her lifetime. She further concluded that all of the town's obligations to the employee ended upon her death, and that "any issues regarding the terms and conditions of the life insurance policy and whether the insurer is obligated to pay a life insurance benefit to Mrs. Saviano's surviving dependents" is not

an issue over which this commission has jurisdiction. Conclusion, ¶ D. As a result, she dismissed the estate's claim.

The claimant filed a motion to correct (motion) seeking to substitute findings that the commission did have jurisdiction to adjudicate this dispute, and that the life insurance policy procured by the town did not comply with § 31-284 (b) due to its failure to pay at the time of the employee's death. The commissioner denied this motion in its entirety and the claimant has pursued this appeal, in which the estate reiterates the arguments presented in the motion.

While we agree with the commissioner's conclusion that this commission lacks jurisdiction to rule on whether the *life insurance company* acted properly in refusing to pay, the issue before us is whether the *employer* fulfilled its obligations under § 31-284b, a question that is squarely within our jurisdiction. Having reviewed the stipulated facts and relevant case law, we do not agree with the commissioner's conclusion that the town fulfilled its obligations under § 31-284b and, accordingly, the finding is reversed.

We note that the facts relevant to this appeal are essentially undisputed. In addition to the stipulated facts, there is no disagreement that the decedent was collecting total incapacity benefits up to the point of her death, and that the stated reason for the life insurer's refusal to pay on the policy was that the policy purchased by the town only covered active employees and the decedent, by virtue of being out of work on disability, was not an active employee. Claimant's Brief, p. 2.[3] Given that the facts are not in dispute, our focus is on whether the commissioner appropriately applied the law in concluding the respondent's actions satisfied its obligations under § 31-284b.

[3] The case has been submitted to us on these terms. We assume for purposes of this opinion that the grounds for CIGNA's denial are as stated above. We take no position on the validity of that denial.

On appeal, we generally extend deference to the decisions made by the trial commissioner. "As 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 trial court could have reasonably concluded as it did." Daniels v. Alander, 268 Conn. 320, 330 (2004). Nevertheless, while we must provide deference to the decision of a trial commissioner, we may reverse such a decision if the commissioner did not properly apply the law or reached a decision unsupported by the record. Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

At the outset, we wish to remark that the respondent in this matter has continuously endeavored both in its brief and at oral argument before this tribunal to frame this dispute as a contest between the claimant and the town's life insurance carrier, or in the alternative, a dispute as to how the decedent's union addressed issues in collective bargaining. We view these efforts as an attempt to circumvent the fundamental bargain the General Assembly established over a century ago in creating the workers' compensation system. The paradigm codified under Chapter 568 is that an employer owes benefits to injured workers and their dependents. An employer may not immunize itself from its statutory obligations by simply outsourcing them to an insurance carrier or a labor union. Such entities may serve as agents for the employer, but the ultimate responsibility for paying benefits to the employee rests at all times with the employer.

The town's principal argument is that the payout of life insurance proceeds is something that is designed to benefit someone other than the injured employee and that § 31-284b was only designed to benefit employees. In support of this the town cites

Vincent v. New Haven, 285 Conn. 778, 784 (2008). We do not find this argument persuasive.

In Vincent, the issue was whether the dependent spouse should be entitled to continued health insurance benefits under General Statutes § 31-306 because her husband had been receiving them during his lifetime, pursuant to General Statutes § 7-433c and § 31-284b. Our Supreme Court rejected the claimant's position. In doing so, it noted that § 31-306 clearly defines the benefits to which a survivor is entitled, and this does not include insurance. Id., 786. The claimant in that case had argued that the legislative policy behind § 31-284b should be imputed to § 31-306. In rejecting that suggestion, the court noted that § 31-284b only refers to providing the "employee" with equivalent insurance. Id., 790-791.

In the present case, the respondent-employer paid life insurance premiums for both active and inactive employees but the policy it purchased was one that would not pay death benefits for inactive employees such as the decedent. Consequently, during her lifetime, employees of the Town of Ridgefield who were not out of work due to a compensable injury received a benefit that the decedent did not receive; i.e., life insurance coverage paid for by the employer. As Vincent noted, the purpose of § 31-284b was "to maintain, as nearly as possible, the income of employees who suffer employment-related injuries." Id., 790. As the claimant frames the issue, had the decedent been aware her heirs were not going to receive the life insurance benefits, she would have been forced to use her own money to obtain such coverage; therefore effectively receiving less compensation than active employees received. We find this reasoning persuasive.

We do not believe Vincent applies to the situation presented here. That case involved a widow's claimed entitlement to insurance under § 31-306, and not § 31-284b, and it dealt with the obligations of an employer after an injured worker had died. The question before us is not what the town owed to some third party after the employee's death, but what it owed to its injured employee during her lifetime, i.e., life insurance coverage.

The respondent argues that "[t]he only obligation [it] had under § 31-284b was to maintain the life insurance coverage as it existed on the date of injury…." In support of this it cites O'Neill v. Danbury, 3510 CRB-7-97-1 (March 31, 1998). It then argues that by continuing to pay the premium on the same policy that covered the employee before her injury, it had done all it need do. Respondent's Brief, p. 13. While the town's concession that it was obligated to continue life insurance coverage is correct, the assertion that it satisfied that obligation by simply continuing to pay premiums on the original policy is not. We begin by noting that the issue before us in O'Neill, supra, was not whether the City was obligated to maintain insurance that would cover the disabled employee in the event of his death, but how the coverage amount should be calculated. In the present case, the issue is not the amount of coverage provided by the policy but the complete absence of coverage once the claimant became disabled.

The problem, we believe, is that the respondent is conflating the terms "policy" and "coverage." They are not the same, as this case clearly demonstrates. On the day of her work injury, the decedent had coverage that entitled her to payment of life insurance proceeds in the event of her death. After her injury, when she was disabled and no longer

an "active" employee, the policy the town had purchased was still in existence, but it no longer provided *her* any life insurance coverage.

In arguing that its continued payment of premiums to the life insurance company fulfilled its obligations, the respondent focuses exclusively on the stated goal of § 31-284b: "In order to maintain, as nearly as possible, the income of employees who suffer employment-related injuries …." We fail to see how paying the premium on a policy that by its very terms provided no coverage can be fairly said to have in any way preserved the decedent's income. Moreover, by focusing entirely on the legislative goal of § 31-284b, the respondent ignores the operative part of that statute, namely, the requirement that an employer "*shall provide to the employee equivalent insurance coverage . . . while the employee is eligible to receive or is receiving compensation pursuant to this Chapter . . . .*" (Emphasis ours.) General Statutes § 31-284b (a).

By referring to "equivalent insurance coverage" the statute clearly anticipates situations where disabled workers might no longer be eligible for coverage under existing policies. Indeed, subsection (b) expressly sets out the steps an employer may use to secure this "equivalent" coverage – steps that include the purchasing of a new insurance policy or, in the alternative, self-insuring the risk. In this case, the continued payment of premiums satisfied neither the letter nor the spirit of the statute. [4]

Our Supreme Court has clearly indicated that it "will not interpret [statutes in ways that lead to] a bizarre or absurd result." Vibert v. Board of Education, 260 Conn.

[4] Subsection (b) of General Statutes § 31-284b states: "An employer may provide such equivalent accident and health or life insurance coverage or welfare plan payments or contributions by: (1) Insuring his full liability under this section in any stock or mutual companies or associations that are or may be authorized to take such risks in this state; (2) creating an injured employee's plan as an extension of any existing plan for working employees; (3) self-insurance; or (4) by any combination of the methods provided in subdivisions (1) to (3), inclusive, of this subsection that he may choose."

167, 177, 793 A.2d 1076 (2002), *citing* Harris v. Zoning Commission, 259 Conn. 402, 436 (2002). See also, First Union National Bank v. Hi Ho Mall Shopping Ventures, Inc., 273 Conn. 287, 294 (2005); Coley v. Camden Associates, Inc., 243 Conn. 311 (1997). We believe that an interpretation of § 31-284b where a respondent would comply with the statute by paying for ineffectual insurance coverage would be an unreasonable construction yielding an absurd result that cannot stand.

The decedent was paid compensation benefits from the time she became disabled until her death. During that time, she was entitled to life insurance coverage at the town's expense. Once she ceased to be eligible under the existing policy, the town had a legal obligation to either purchase a new policy that would cover her, or to elect to self-insure that liability.

The fact that the town continued to pay insurance premiums to keep the decedent under its group life insurance policy after she became disabled suggests that it also believed she would be covered at the time of her death. While it may have acted in good faith, it was the town that purchased the policy in question, and it was the town which bore the burden of making sure the coverage complied with its legal obligations under § 31-284b. The risk of loss under circumstances where an employer makes insurance coverage decisions that prove ineffective cannot fall on the injured employee.[5] Such a result would be repugnant to the remedial purpose of Chapter 568. Therefore, we believe that the trial commissioner did not properly apply the law herein and we must set the finding aside.

[5] In Todd v. Malafronte, 3 Conn. App. 16 (1984), an employer acting in reliance on advice from an insurance broker not to procure workers compensation insurance was still liable to pay the claim. The employer then successfully sued the broker for negligence.

Having failed to secure other insurance, the town has become self-insured for the amount of the life insurance owed. The commissioner, however, made no findings as to the dollar amount owed under the policy.

This matter is therefore remanded to ascertain the amount of such an award.[6]

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

[6] The respondent has raised a jurisdictional issue via a motion to dismiss, asserting that the motion to correct filed by the claimant was one day late. We note that the respondent has not challenged the timeliness of the overall appeal, and that the underlying facts herein were essentially uncontested as a stipulation of facts was submitted to the commissioner. We also note that we are vacating this finding for errors of law. Accordingly, for the reasons stated in Vitoria v. Professional Employment & Temps, 5217 CRB-2-07-4 (April 4, 2008), we deny the motion.