CASE NO. 6318 CRB-4-19-4 : COMPENSATION REVIEW BOARD
CLAIM NO. 400051137

HOWARD AUSTIN, JR. : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : MAY 26, 2020

COIN DEPOT CORPORATION
EMPLOYER

and

CONNECTICUT INSURANCE GUARANTY ASSOCIATION
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Enrico Vaccaro, Esq., P.O. Box 120761, East Haven, CT 06512.

The respondents were represented by Joseph J. Passaretti, Jr., Esq., and Paul M. Shearer, Esq., Montstream Law Group, L.L.P., 655 Winding Brook Drive, P.O. Box 1087, Glastonbury, CT 06033.

This Petition for Review from the April 2, 2019 Findings and Order of Randy L. Cohen, Commissioner acting for the Fourth District, was heard on November 22, 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 claimant has petitioned for review from the April 2, 2019 Findings and Order (order) of Randy L. Cohen, Commissioner acting for the Fourth District (commissioner). We find no error and accordingly affirm the decision of the commissioner.[1]

The commissioner identified as the issue for determination whether the Connecticut Insurance Guaranty Association (CIGA) discharged its obligation to the claimant for cost-of-living adjustment (COLA) benefits in accordance with the provisions of General Statutes § 31-307a.[2] The following factual findings are pertinent to our review of this matter. The claimant sustained a work-related injury on November 19, 2001; a voluntary agreement approved on November 7, 2003, documented a 30 percent permanent partial disability of the cervical spine with a maximum medical improvement date of August 3, 2003. The named claimant on this document was "Howard Austin." Attorney Enrico Vaccaro has been the claimant's attorney since July 10, 2009.

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

[2] General Statutes § 31-307a states in relevant part: "(a) The weekly compensation rate of each employee entitled to receive compensation under section 31-307 as a result of an injury sustained on or after October 1, 1969, and before July 1, 1993, which totally disables the employee continuously or intermittently for any period extending to the following October first or thereafter, shall be adjusted annually as provided in this subsection as of the following October first, and each subsequent October first, to provide the injured employee with a cost-of-living adjustment in his or her weekly compensation rate as determined as of the date of the injury under section 31-309…. The cost-of-living increases provided under this subsection shall be paid by the employer without any order or award from the commissioner. The adjustments shall apply to each payment made in the next succeeding twelve-month period commencing with the October first next succeeding the date of the injury."

Marjorie Corbett has been the claims supervisor for this matter since 2013, when Kemper Services became insolvent. She testified that for more than two decades, she has been licensed to examine workers' compensation claims in several states, including Connecticut. She holds an SCLA (Senior Claims Law Associate) and an AIC (Associate in Claims). As of the date of the July 24, 2018 formal hearing, she had worked for CIGA for six years, and had previously worked for Zurich, The Hartford, EBI Companies, and Royal & SunAlliance. In July 2015, Corbett discovered that the claimant was entitled to a retroactive COLA and issued payment in the amount of $27,059.46 in August 2015.[3] She testified that she mailed a check payable to "Howard Austin" to Vaccaro's law offices as Vaccaro was the attorney of record for the claimant.

Corbett testified that she did not become aware that the claimant had not received this payment until more than two years later, in December 2017, when the claimant telephoned her to discuss how a COLA was calculated. After the claimant informed Corbett that he had never received the COLA check, she immediately began an investigation by ordering copies of the front and back of the original check, and then turned the matter over to the head of accounting, who opened an investigation with the

[3] Given that Marjorie Corbett testified that the claimant was due a "retro COLA," July 24, 2018 Transcript, p. 14, it would appear that the subject payment was issued pursuant to the provisions of General Statutes § 31-307a (c), which state in relevant part: "With respect to any employee receiving benefits on October 1, 1997, with respect to any such injury occurring on or after July 1, 1993, and before October 1, 1997, or with respect to any employee who was adjudicated to be totally incapacitated permanently subsequent to the date of his or her injury or is totally incapacitated permanently due to the fact that the employee has been totally incapacitated by such an injury for a period of five years or more, such benefit shall be recalculated to October 1, 1997, to the date of such adjudication or to the end of such five-year period, as the case may be, as if such benefits had been subject to recalculation annually under the provisions of this subsection. The difference between the amount of any benefits which would have been paid to such employee if such benefits had been subject to such recalculation and the actual amount of benefits paid during the period between such injury and such recalculation shall be paid to the dependent not later than December 1, 1997, or thirty days after such adjudication or the end of such period, as the case may be, in a lump-sum payment."

bank. The bank investigation resulted in a determination that the proper party had negotiated the check.

In December 2017, Corbett had a telephone conversation with Vaccaro, who admitted he had received the COLA check and given it to the claimant's father. Corbett immediately memorialized this conversation "in a letter indicating that Attorney Vaccaro had received the check, and that the claimant's father was also Attorney Vaccaro's client, and that Attorney Vaccaro had given the claimant's father the claimant's COLA check." Findings, ¶ 4.h. The claimant testified that the signature on the back of the COLA check belonged to his father, whose legal name was "Howard Austin Sr." The claimant indicated that his legal name is "Howard Austin Jr.," which is the name listed on his driver's license, birth certificate, and automobile registration.

The claimant contended that CIGA had not discharged its legal obligation pursuant to § 31-307a relative to the payment of the retroactive COLA benefits, and was seeking an order requiring the respondents to pay the claimant the sum of $27,059.46 as well as attorney's fees and costs pursuant to General Statutes § 31-300 for unreasonable contest.[4] The respondents argued that the claimant received payment when delivery of

[4] General Statutes § 31-300 states in relevant part: "In cases where, through the fault or neglect of the employer or insurer, adjustments of compensation have been unduly delayed, or where through such fault or neglect, payments have been unduly delayed, the commissioner may include in the award interest at the rate prescribed in section 37-3a and a reasonable attorney's fee in the case of undue delay in adjustments of compensation and may include in the award in the case of undue delay in payments of compensation, interest at twelve per cent per annum and a reasonable attorney's fee…. In cases where there has been delay in either adjustment or payment, which delay has not been due to the fault or neglect of the employer or insurer, whether such delay was caused by appeals or otherwise, the commissioner may allow interest at such rate, not to exceed the rate prescribed in section 37-3a, as may be fair and reasonable, taking into account whatever advantage the employer or insurer, as the case may be, may have had from the use of the money, the burden of showing that the rate in such case should be less than the rate prescribed in section 37-3a to be upon the employer or insurer. In cases where the claimant prevails and the commissioner finds that the employer or insurer has unreasonably contested liability, the commissioner may allow to the claimant a reasonable attorney's fee."

the check was made to Vaccaro, the claimant's duly authorized legal representative. The respondents therefore asserted that CIGA had "properly and completely discharged [its] obligations" pursuant to § 31-307a." Findings, ¶ 8. The parties stipulated to the fact that the claimant has been receiving regular weekly payments made payable to "Howard Austin" for more than five years.

Corbett further testified that since April 2013, the claimant's ongoing weekly workers' compensation benefits were in the form of checks made payable to "Howard Austin," and at no time did anyone alert her that the fact that the claimant's checks were being issued in this manner was a problem. Corbett indicated that the case was captioned as "Howard Austin" when CIGA received it from the bankruptcy liquidator, and CIGA is not allowed to change anything or disrupt the continuity of the payments. Corbett testified that the check for $27,059.46 was made payable to "Howard Austin," which was the same name that had been used on all his other checks. She also stated that "[i]t is general practice in her company, and an accepted practice in the insurance industry, that you would send a large COLA check like that to the claimant's attorney." Findings, ¶ 10.e.; see also July 24, 2018 Transcript, p. 18.

Commissioner Jodi Murray Gregg presided over a hearing in this matter on May 31, 2018, and was called to testify at the formal hearing of November 26, 2018. She stated that although she had not reviewed her notes from the May 2018 hearing, she had an "independent recollection of the events that transpired during that hearing, even though it was nearly six months prior."[5] Findings, ¶ 12. She recalled that the claimant

[5] Internal records for the Workers' Compensation Commission indicate that the May 31, 2018 hearing was a pre-formal.

was very angry and was directing his anger towards Vaccaro, and the commissioner witnessed a "heated exchange" between the claimant and Vaccaro which at one point prompted Vaccaro to rise to his feet. Findings, ¶ 12.b. Commissioner Gregg specifically remembered that the claimant was angry about a check which had been issued in his name that his father had either received or picked up from Vaccaro. Vaccaro, in addition to representing the claimant, also testified at the formal hearing on November 26, 2018. He stated that the claimant had "said a lot of things" at the May 2018 hearing but he had no basis to refute Commissioner Gregg's testimony regarding the events that had occurred or what was said at that hearing. November 26, 2018 Transcript, p. 46.

The commissioner noted that in addition to the voluntary agreement which was approved on November 7, 2003, the file contained several forms 36 and forms 43 which refer to the claimant as "Howard Austin." The file also contains two pieces of correspondence from the claimant's former attorney referring to the claimant as "Howard Austin."

Attorney Lawrence Morizio, who has practiced workers' compensation law in Connecticut for twenty-one years and been a board-certified Workers' Compensation Specialist since 2010, also testified at the November 26, 2018 hearing. He indicated that he has represented claimants throughout his career, and "it is custom and practice" in the workers' compensation system that large lump-sum payments due a claimant be sent to the claimant's legal counsel, even when regular weekly indemnity payments are being sent to the claimant at his or her home address. Findings, ¶ 16; see also November 26, 2018 Transcript, pp. 14-15.

Attorney David Morrissey, who has practiced workers' compensation law in Connecticut for thirty-nine years and been a board-certified Workers' Compensation Specialist since 2001, also testified at the November 26, 2018 formal hearing. Morrissey indicated that he has been the chair of the workers' compensation section of the Connecticut Bar Association, continues to serve on its executive committee, and is a Fellow of the National College of Workers' Compensation Attorneys. He also testified that it is the "custom and practice" in the workers' compensation system that large lump-sum payments be sent in care of a claimant's legal counsel, even when regular weekly indemnity payments are being sent to a claimant at his or her home address. Findings, ¶ 17; see also November 26, 2018 Transcript, pp. 38-39.

Based on the foregoing, the commissioner found fully credible and persuasive the testimony offered by Commissioner Gregg, Marjorie Corbett, and Attorneys Morizio and Morrissey. She concluded that in August 2015, CIGA issued a COLA benefits check in the amount of $27,059.46 made payable to the claimant and sent the check to Vaccaro, who received the check and gave it to the claimant's father. The commissioner further found that it was "customary and appropriate" for CIGA to have sent the check to Vaccaro, Conclusion, ¶ F, and CIGA's responsibilities pursuant to § 31-307a were satisfied when it "placed payment in the possession of the claimant's legal representative, and, when learning of a claimed irregularity, initiated an investigation and followed it through to its conclusion." Conclusion, ¶ G.

The commissioner specifically noted that she did not accept the claimant's contention that it was "unreasonable" for CIGA to have made the COLA check payable to "Howard Austin," given that CIGA had been issuing checks in that name since at least

2013, and at no time did anyone, including the claimant and his representative, request that the name on the checks be changed. Conclusion, ¶ H. The commissioner further noted that the file contained a jurisdictional voluntary agreement, as well as some other legal documents, listing the claimant's name as "Howard Austin."

The commissioner observed that "[t]he claimant has presented arguments in furtherance of his claims of violation of the Uniform Commercial Code, the law of negotiable instruments and commercial paper, and other arguments, incursions, allegations and remedies, both civil and criminal, all outside of the confines of Chapter 568 of the Connecticut General Statutes," Conclusion, ¶ I, concluding that such claims were "beyond the jurisdiction" of the tribunal. Id. In addition, she stated that although the Workers' Compensation Commission (commission) was "not in a position to determine what happened to the claimant's COLA check after it was received by the claimant's attorney," Conclusion, ¶ J, the commission was able to determine that CIGA had discharged its obligation to the claimant for COLA benefits in accordance with the provisions of § 31-307a. Having found that the claimant received payment of the COLA benefits when delivery of the check was made to his duly authorized legal representative, the commissioner denied and dismissed any claims against CIGA in association with the lump-sum payment of the retroactive COLA benefits.

The claimant filed a motion to correct, which was denied in its entirety on the basis that it was untimely filed, and this appeal followed. On appeal, the claimant identifies as error the commissioner's refusal to apply the provisions of article 3 of the Uniform Commercial Code (UCC) to the "undisputed" facts of this matter relative to

CIGA's issuance of the COLA benefits check.[6] Appellant's Brief, p. 6. The claimant also argues that the commissioner's denial of his motion to correct constituted an abuse of discretion. In addition, the claimant contends that the findings of the commissioner were erroneous in that they were unsupported by the evidence, failed to include undisputed facts, and were contrary to law. We find none of these claims of error persuasive.

The standard of review we are obliged to apply to a trial 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 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).

[6] The Uniform Commercial Code is codified at Title 42a of the Connecticut General Statutes. Article 3 is entitled "Negotiable Instruments."

We begin our analysis of this matter with the claim of error relative to the commissioner's dismissal of the claimant's arguments relative to whether CIGA had violated certain provisions of the UCC, and her conclusion that it was "beyond the jurisdiction of [the] tribunal to rule upon or to address such issues and claims." Conclusion, ¶ I. The claimant contends that the provisions of General Statutes § 31-298 afford a commissioner "**jurisdiction of all claims and questions … arising under the Act**," and given that "the claim in issue, clearly and incontrovertibly, arises under the Act … the trial commissioner clearly had jurisdiction to adjudicate it."[7] (Emphasis in the original.) Appellant's Brief, pp. 6, 7. The claimant points out that the underlying claim is predicated on § 31-307, which is part of the Workers' Compensation Act, and "directly mandates the payment of this benefits by an employer … '**without any award by the commissioner**.'" (Emphasis in the original.) Id.

The claimant further avers that our case law "is replete with instances too numerous to mention where reference to statutes and case law outside Chapter 568 must

[7] General Statutes § 31-278 states in relevant part: "Each commissioner shall, for the purposes of this chapter, have power to summon and examine under oath such witnesses, and may direct the production of, and examine or cause to be produced or examined, such books, records, vouchers, memoranda, documents, letters, contracts or other papers in relation to any matter at issue as he may find proper, and shall have the same powers in reference thereto as are vested in magistrates taking depositions and shall have the power to order depositions pursuant to section 52-148. He shall have power to certify to official acts and shall have all powers necessary to enable him to perform the duties imposed upon him by the provisions of this chapter. Each commissioner shall hear all claims and questions arising under this chapter in the district to which the commissioner is assigned and all such claims shall be filed in the district in which the claim arises, provided, if it is uncertain in which district a claim arises, or if a claim arises out of several injuries or occupational diseases which occurred in one or more districts, the commissioner to whom the first request for hearing is made shall hear and determine such claim to the same extent as if it arose solely within his own district…."

necessarily be relied on to resolve various 'claims and questions … arising under the Act.'"[8] Id., 8, *quoting* § 31-278. As such, the claimant contends that:

> It is, therefore, more than self-evident that the trial commissioner had both jurisdiction, the power, and the duty under the Act to apply provisions of law extraneous to the specific provisions of the Act necessary to adjudicate, in general, claims under it, and specifically, Title 42a and Article 3 of the General Statutes to the issue of whether the benefit provided for by General Statute Section 31-307a(c) of the Act had been satisfied when a check issued by the Respondent for this purpose was neither received or endorsed by the Claimant or his authorized representative.

Id.

We note, however, that in Stickney v. Sunlight Construction, Inc., 248 Conn. 754 (1999), our Supreme Court affirmed a decision by our Appellate Court holding that the commissioner did not have the jurisdiction to open and modify a voluntary agreement in order to substitute the insurer responsible for payments pursuant to the voluntary agreement.[9] In its analysis, the court recited the following well-settled precept:

> the jurisdiction of the [workers' compensation] commissioners is confined by the [a]ct and limited by its provisions. Unless the [a]ct gives the [c]ommissioner the right to take jurisdiction over a claim, it cannot be conferred upon [the commissioner] by the parties either by agreement, waiver or conduct.... A commissioner may exercise jurisdiction to hear a claim only under the precise circumstances and in the manner particularly prescribed by the

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[8] See, for instance, Hunnihan v. Mattatuck Mfg. Co., 243 Conn 438 (1997), in which our Supreme Court held that the commissioner had jurisdiction to determine whether a claim to be reimbursed by CIGA was a covered claim as contemplated by the provisions of General Statutes § 38a-838 (6) of the Connecticut Insurance Guaranty Act; also see Pascarelli v. Moliterno Stone Sales, 14 Conn. Workers' Comp. Rev. Op. 328, 2115 CRB-4-94-8 (September 15, 1995), *aff'd*, 44 Conn. App. 397 (1997), in which this board upheld the commissioner's discretion to deny a request for modification of benefits in light of an automatic bankruptcy stay pursuant to 11 U.S.C. § 362.

[9] In Stickney, the court noted that although a workers' compensation insurance carrier had issued a voluntary agreement to the claimant, it subsequently discovered that its policy with the employer had lapsed for non-payment of the premium prior to the date of injury. Another carrier was the actual insurer on the risk at the time of the claimant's injury, but it had failed to file proof of coverage with the Workers' Compensation Commission pursuant to the provisions of General Statutes 31-348.

> enabling legislation.... (Citations omitted; internal quotation marks omitted.)

Id., 761 *quoting* Discuillo v. Stone & Webster, 242 Conn. 570, 576 (1997).

The court then examined the provisions of § 31-278 relative to the commission's subject matter jurisdiction, stating that the commission's "jurisdiction is limited to adjudicating claims arising under the act, that is, claims by an injured employee seeking compensation from his employer for injuries arising out of and in the course of employment." Id., 762. Given that the dispute between the parties in Stickney involved "an insurance coverage issue, requiring the evaluation of insurance policies and the application of contract law," id., the court indicated that the issue for determination "was whether the motion to open … was beyond the jurisdictional bounds circumscribed by the explicit enabling legislation of the act." Id., 762-763. Ultimately, the court concluded that the commissioner, "[l]acking the requisite specific grant of authority under the provisions of the act … [had] no jurisdiction to open the voluntary agreement in this case." Id., 768.

The Stickney court remarked that in Hunnihan, supra, it had stated the following: "The subject matter jurisdiction of the commission in previous cases has encompassed the interpretation of statutory provisions codified outside the [act] when such interpretations have been *incidentally* necessary to the resolution of a case arising under that act." (Emphasis in the original.) Hunnihan, supra, 443 n.5. However, the court also pointed out that the guaranty act subject to interpretation in Hunnihan was specifically referenced in the Workers' Compensation Act and, as such, "the insertion in § 31-355 (e) delineating the association's obligations under the [act] reflects the legislature's intent for

the commission[er] to have jurisdiction to adjudicate claims against the association originating under that act."[10] Stickney, supra, 763-764, *quoting* Hunnihan, supra, 445. Thus, "[j]urisdiction existed in Hunnihan because, although the central question in that case required interpretation of provisions outside the act, the provision to be interpreted … explicitly was referenced and thereby incorporated into the commissioner's jurisdiction under the act." Stickney, supra, 764.

The foregoing analysis serves to illustrate that the subject matter jurisdiction of the commission may be somewhat more circumscribed than the claimant is suggesting. That being said, however, we are not persuaded that the commissioner in the present matter was even required to reach the issue of subject matter jurisdiction, the contentions of the claimant notwithstanding.

There is no question that the claimant introduced into these proceedings numerous alleged violations of article 3 of the UCC. The claimant points out that the COLA check, which constituted a "negotiable instrument," required the interpretation of the provisions of article 3 in order "to determine whether that instrument was properly negotiated, and whether the underlying obligation which it represented was discharged." Appellant's Brief, p. 8. The claimant contends that the "uncontroverted" evidence in this matter reflects that CIGA issued a check to "Howard Austin" which was intended to satisfy its § 31-307a COLA benefits obligation to "Howard Austin Jr.," the claimant never received this check, the endorsement on the back of the check was not the claimant's signature, he

[10] General Statutes § 31-355 (e) states: "Notwithstanding the provisions of subsections (a) to (d), inclusive, of this section, whenever the employer's insurer has been determined to be insolvent, as defined in section 38a-838, payments required under this section shall be the obligation of the Connecticut Insurance Guaranty Association pursuant to the provisions of sections 38a-836 to 38a-853, inclusive."

never authorized anyone else to endorse the check, and he ultimately never received the COLA benefits. Id., 9.

In addition, the claimant argues that the unauthorized endorsement "was **ineffective** to negotiate the check and satisfy the Respondent's obligations under both the instrument and General Statutes Section 31-307a(c)." (Emphasis in the original.) Id.

> Given that the signature on this check was not that of the claimant, and there was no evidence that he authorized anyone else to endorse it on his behalf, whoever endorsed this check without his authorization, clearly forged this intended payee's signature and this unauthorized, forged signature is completely ineffective to pass title to the instrument.

Id., 10.

The claimant avers that in light of the forged endorsement, the "drawer bank" could have been required to credit CIGA's bank account, had CIGA elected to pursue the matter. That bank, in turn, would have been "legally entitled to seek reimbursement from the depository bank," which would then "have a claim for restitution against the unauthorized signor of the instrument…." Id., 11.

This tribunal has no reason to challenge the accuracy of the claimant's recitation of the provisions contained in article 3 of the UCC. However, as the commissioner accurately pointed out in her findings, this commission is "not in a position to determine what happened to the claimant's COLA check after it was received by the claimant's attorney…." Conclusion, ¶ J. In light of the commissioner's inability to ascertain what actually happened to the check after it was delivered to claimant's counsel, she was likewise in no position to enter into a legal analysis of whether the negotiation of the check was consistent with the law of negotiable instruments.

Moreover, while it is entirely possible that this commission could theoretically be called upon to preside over a claim in which the interpretation of the UCC was "*incidentally* necessary to the resolution of [the] case," Hunnihan, supra, 443 n.5., the admittedly unusual factual pattern in this appeal does not present us with that situation. Rather, the role of the commissioner in the present matter was to determine whether the testamentary evidence demonstrated that CIGA had discharged its obligation to pay to the claimant his retroactive COLA benefits. In order to make that determination, it was therefore incumbent upon the commissioner to assess the credibility of the witnesses who had knowledge of the chain of custody of the COLA check, and that is the assessment which transpired over the course of three formal hearings.

As previously discussed herein, the record indicates that Corbett, the claims adjuster for CIGA, testified at length regarding her personal credentials, the history of the claim, the issuance of the COLA check, and her decision to commence an investigation when she became aware of the claimant's contention that he had never received the check. In addition, Corbett specifically testified regarding her recollection of a telephone call with Vaccaro in which Vaccaro informed her that he had received the check and given it to the claimant's father. Commissioner Gregg testified regarding the May 31, 2018 pre-formal hearing during which the claimant and Vaccaro had engaged in an argument concerning a check that had been issued to the claimant but obtained from Vaccaro by the claimant's father.

The record further reflects that the claimant testified that the endorsement on the COLA check was that of his father, but he offered no refutation of Corbett's testimony and claimed not to know what had happened to the check. Vaccaro testified that he

didn't "recall much of the [May 31, 2018] hearing," November 26, 2018 Transcript, p. 45, and he did not remember ever stating that he had given the check to the claimant's father. In addition, Morizio and Morrissey offered testimony regarding the policies of their respective practices relative to the receipt of lump-sum payments on behalf of their clients.[11]

The commissioner determined that the testimony offered by Commissioner Gregg and Corbett was more persuasive and credible than that offered by Vaccaro or the claimant relative to the issue properly before the commission; i.e., whether CIGA had fulfilled its obligation to the claimant pursuant to the provisions of § 31-307a. Such credibility determinations are "uniquely and exclusively the province of the trial commissioner," Smith v. Salamander Designs, Ltd, 5205 CRB-1-07-3 (March 13, 2008), and are not generally subject to reversal on review.

The commissioner ultimately concluded that by issuing the COLA payment in care of the claimant's attorney, and then launching an investigation when Corbett became aware of the claimant's contention that he had never received the check, CIGA had met its statutory obligations. We do not dispute that there remain a number of outstanding unresolved issues relative to what happened to the check after it was received by

[11] Although we do not routinely entertain "best practice" arguments in proceedings before this commission, our review of the evidentiary record indicates that counsel for the respondents requested permission to introduce the testimony of practicing workers' compensation attorneys after claimant's counsel appeared to challenge Corbett's testimony that it was a "general practice" to send large payments in care of a claimant's attorney of record. July 24, 2018 Transcript, p. 18. Moreover, while the decision to allow testimony consistent with this line of inquiry is somewhat unusual, we are not persuaded that an analysis of customary practice in the context of this particular appeal was "nebulous, speculative [or] whimsical." Appellant's Brief, p. 9.

claimant's counsel, but we are unequivocally persuaded that the resolution of those issues goes well beyond the proper scope of inquiry in this forum.

The claimant has also asserted that the commissioner's denial of his motion to correct constituted an abuse of discretion. The claimant points out that the commissioner denied his motion for an extension of time to file a motion to correct "without a hearing or for any articulated reason," Appellant's Brief, p. 12, and then denied his motion to correct on the basis that it was untimely filed. The claimant argues that the "commissioner clearly erred and abused her discretion in denying the Claimant's continuance request and his Motion to Correct in contravention of the remedial purposes of the Act and the policy of this Board to hear and review cases on their merits." Id., 13.

It is entirely possible that the claimant filed his request for an extension of time to file a motion to correct within two weeks of his receipt of the finding. However, that course of action was not in accordance with the provisions of Administrative Regulation § 31-301-4, which, in relevant part, prescribe the following:

> If the appellant desires to have the finding of the commissioner corrected he must, *within two weeks after such finding has been filed,* unless the time is extended for cause by the commissioner, file with the commissioner his motion for the correction of the finding and with it such portions of the evidence as he deems relevant and material to the corrections asked for…. (Emphasis added.)

Administrative Regulations § 31-301-4.

Our review of the finding in the present matter indicates that it was filed on April 2, 2019. As such, the motion to correct should have been filed on or before April 16, 2019 in order to be considered timely. The record indicates that the claimant's motion for an extension of time to file the motion to correct was not filed until April 24,

2020, eight days after the expiration of the statutory deadline for filing the motion to correct.[12] The motion to correct was not filed until May 13, 2019, twenty-seven days after the expiration of the statutory deadline and in the absence of an authorized extension of time. It is of course axiomatic that "[a]n abuse of discretion exists when a court could have chosen different alternatives but has decided the matter so arbitrarily as to vitiate logic, or has decided it based on improper or irrelevant factors." In re Shaquanna M., 61 Conn. App. 592, 603 (2001). However, given that both the motion to correct and the motion for an extension of time were both filed after the expiration of the statutory deadline imposed by the provisions of § 31-301-4, we are not persuaded that the commissioner's decision to deny the motion to correct in this case either "vitiated logic" or was "based on improper or irrelevant factors." Id.

Moreover, our review of this motion to correct indicates that the claimant was primarily engaged in reiterating arguments made at trial which ultimately proved unavailing. As this board has previously observed, when a motion to correct "involves requested factual findings which were disputed by the parties, which involved the credibility of the evidence, or which would not affect the outcome of the case, we would not find any error in the denial of such a Motion to Correct." Robare v. Robert Baker Companies, 4328 CRB-1-00-12 (January 2, 2002). We therefore affirm the commissioner's denial of the motion to correct.

[12] Moreover, as the respondents point out, the claimant, in his motion for an extension of time, "did not provide any 'cause' to show why an extension of time was prudent." Appellees' Brief, p. 7. Rather, the claimant simply indicated that the motion to correct was warranted "due to the myriad of errors in the Finding, Award, and Orders." April 24, 2019 Motion for Extension of Time.

As the foregoing analysis clearly demonstrates, the evidentiary record in this matter provided a more than adequate basis for the commissioner's findings. As such, this tribunal firmly rejects the claimant's contentions that the "commissioner blatantly failed to find facts which were material and undisputed, found multiple facts which formed the basis for her decision in the absence of admissible, relevant evidence, drew conclusions which were blatantly contrary to applicable law, and egregiously refused to apply controlling principles of law…." Appellant's Brief, p. 15.

There is no error; the April 2, 2019 Findings and Order of Randy L. Cohen, Commissioner acting for the Fourth District, are accordingly affirmed.

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