

CASE NO. 6321 CRB-4-19-4 : COMPENSATION REVIEW BOARD  
CLAIM NO. 400017112

JOSEPH R. KREVIS : WORKERS' COMPENSATION  
CLAIMANT-APPELLANT COMMISSION

v. : MAY 28, 2020

CITY OF BRIDGEPORT  
EMPLOYER  
SELF-INSURED

and

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

APPEARANCES: The claimant appeared at oral argument before the board as a self-represented party.

The respondents were represented by Joseph J. Passaretti, Jr., Esq., Montstream & May, L.L.P., 655 Winding Brook Drive, P.O. Box 1087, Glastonbury, CT 06033-6087.

This Petition for Review from the April 15, 2019 Finding and Denial by Jodi Murray Gregg, the Commissioner acting for the Fourth District, was heard December 20, 2019 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Peter C. Mlynarczyk and David W. Schoolcraft.<sup>1</sup>

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<sup>1</sup> We note that a motion for extension of time and a motion for continuance were granted during the pendency of this appeal.

## OPINION

STEPHEN M. MORELLI, CHAIRMAN. The claimant has appealed from a Finding and Denial (finding) issued by Commissioner Jodi Murray Gregg (commissioner) which determined that the claimant's pacemaker operation was not compensable pursuant to General Statutes § 7-433c.<sup>2</sup> The claimant argues that this decision was contrary to law and the evidence, which he believes established that this ailment was compensable and the treatment for the ailment should have been paid for under this statute. The respondents argue that the claimant's compensable hypertension is a distinct ailment from the condition that required him to obtain a pacemaker and the medical evidence credited by the commissioner was that the compensable hypertension was not a substantial factor behind the claimant's need for surgery. We are satisfied that

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<sup>2</sup> 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.

(b) Notwithstanding the provisions of subsection (a) of this section, those persons who began employment on or after July 1, 1996, shall not be eligible for any benefits pursuant to this section."

the commissioner's decision herein is consistent with the evidence and the law.

Therefore, we affirm the Finding and Denial.

The commissioner reached the following factual findings at the conclusion of the formal hearing. She noted that the claimant had a compensable § 7-433c claim for hypertension and had received a Finding and Award in 1989 for an 18.3 percent permanent partial disability rating for his heart. In 2006, a subsequent Finding and Award raised this disability level to 28.75 percent and in 2012, this disability level was raised in another Finding and Award to 35 percent. Now retired, the claimant sustained a complete heart block with unstable ventricular response on April 11, 2014. This incident caused a dual-chamber pacemaker to be implanted. After this procedure, the claimant's treating physician, Craig Werner, M.D., rated him on December 29, 2014, with a 30 percent impairment rating due to hypertension, a 30 percent impairment due to peripheral arterial disease, and a 5 percent whole person rating to the heart block. See Findings, ¶ 6, *citing* Claimant's Exhibit L. However, the commissioner cited Werner's July 18, 2015 report discounting the claimant's compensable injury as the cause of the 2014 procedure; "although Mr. Krevis has a history of long standing hypertension as well as peripheral arterial disease I do not believe that his hypertension or his peripheral arterial disease was a substantial contributing factor in his complete heart block." Findings, ¶ 7, *quoting* Claimant's Exhibit N.

The commissioner also considered evidence presented from the cardiologist who performed the 2014 implant surgery on the claimant, Joseph J. Tiano, M.D. Tiano opined on December 1, 2015, that in regard to the claimant's "AV conduction disease status post dual-chamber pacemaker, the likely etiology is underlying senile conduction disease

which is age appropriate given his age of 75. His underlying comorbidities of diabetes and hypertension are also contributing factors. I can't fully assess the exact percentage of HTN contributing to his conduction disease but could guess it contributed about 10%.” Findings, ¶ 8, *quoting* Claimant’s Exhibit M.

The respondents presented evidence from their expert witness Martin Krauthamer, M.D., which the commissioner considered. Krauthamer held a respondent’s examination on March 30, 2016 and after the examination opined that he did not feel that “the hypertension in any way contributed to his conduction system disease...accordingly, I do not feel that the hypertension was a significant contributing factor in his development of complete heart block and requiring a pacemaker.” Findings, ¶ 9, *quoting* Claimant’s Exhibit N. Krauthamer was deposed on July 5, 2016 and testified that that he is of the opinion that hypertension is not a significant or probable cause of heart block and that there is no interrelationship between hypertension and conduction system disease. Findings, ¶ 10, *citing* Claimant’s Exhibit A.<sup>3</sup> He said that the claimant’s long history of hypertension was not a significant factor in the development of his heart block. Findings, ¶ 11. He also testified as to the mechanism of a heart block, which included this testimony:

But when the connection is broken completely, then you have third degree block and the lower chambers do not get a signal. The most common cause is age in this fibrosis or infiltrative disease . . . degenerative diseases. . . . The other causes are relatively infrequent. . . .

Findings, ¶ 12.

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<sup>3</sup> The Finding said this deposition occurred on March 20, 2016. We deem this a harmless scrivener’s error. Hernandez v. American Truck Rental, 5083 CRB-7-06-4 (April 19, 2007).

Tiano was deposed on December 12, 2016 and testified as to implanting the claimant's pacemaker. He said that "hypertension causes coronary disease; and so, some of these fine smaller coronary arteries feed the levels of the wires, so hypertension is also common cause in degenerative coronary artery disease, which by default, could affect the conduction system." Findings, ¶¶ 13-14, *quoting* Claimant's Exhibit 24. He further said that "hypertension alone is a contributing factor and in combination with diabetes is even profoundly more a factor," and "if he had to guess he would say about ten percent." Findings, ¶ 15. He opined that hypertension contributed to coronary disease which lead to conduction disease or to fibrosis and scarring which could cause it. Findings, ¶ 16. Tiano testified that poorly controlled hypertension had more impact on a conduction system than well controlled hypertension. See Findings, ¶¶ 17-18. He also testified that the claimant's hypertension was well controlled at the three clinical visits he had conducted. See Findings, ¶ 19.

The commissioner noted that Krauthamer conducted a second respondent's examination of the claimant on March 12, 2018. He opined after this examination that "the Claimant's hypertension did not contribute to conduction system disease that led to the implantation of his pacemaker." Findings, ¶ 20. The doctor further noted that after review of the January 17, 2017 echocardiogram, "there was no sign of left ventricular hypertrophy which is an indication of the severity of the hypertension. It is highly unlikely that the hypertension was the cause of Mr. Krevis' heart block." *Id.* Krauthamer testified at the formal hearing on June 19, 2018, testified that he had implanted over 500 pacemakers in his career, and reiterated the causation opinions he presented in his reports and at his deposition. Findings, ¶¶ 21-22.

Based on those facts the commissioner concluded that while the claimant was entitled to benefits under § 7-433c for his hypertension condition and had a pacemaker installed that the reports and opinions of Werner and Krauthamer were credible and persuasive that the claimant's hypertension was not a substantial and contributing factor in the cause for his complete heart blockage and dual chamber pacemaker implantation caused by conduction disease. She found Tiano's opinions that hypertension was a substantial contributing factor to the need for a pacemaker not persuasive or credible. Accordingly, she denied the claim.

The claimant filed a motion to correct seeking to replace the findings with findings that Tiano was a persuasive witness and that the pacemaker implantation was caused by the compensable hypertension condition, thus making this condition compensable under § 7-433c. The commissioner denied this motion in its entirety and the claimant has pursued this appeal. The gravamen of his appeal is that it was error to not rely on Tiano's opinion, as he was the surgeon who performed the operation. He also questions the need to have to prove causation, arguing that he has a perfected § 7-433c claim and should not have to provide causation evidence for further treatment. He also describes Krauthamer as a nonpracticing physician whose testimony should have been totally disregarded by the commissioner. The respondents, on the other hand, argue the commissioner made a reasonable decision based on the record presented. We are persuaded by the respondents.

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 believe many of the legal issues raised in this case have been recently addressed by our Supreme Court in their decision in Coughlin v. Stamford Fire Dept., 334 Conn. 857 (2020). Similar to the claimant in this case, the claimant in Coughlin had a perfected claim for hypertension benefits while he was an active duty police officer, retired, and later developed another cardiac disease. He claimed that the subsequent ailment was compensable as a flow-through sequelae of his hypertension while the city contested any award of benefits to a retiree. The Coughlin opinion clearly established that a retiree may seek § 7-433c benefits for a sequela injury.

If the claim is found to be compensable, that claimant may also be eligible for benefits related to a subsequent condition—including related heart disease—as long as the causation requirements set forth in the act [Chapter 568] are met. *Cf. id.*; Hernandez v. Gerber Group, 222 Conn. 78, 86, 608 A.2d 87 (1992). Such a claimant may pursue claims for subsequent, related injuries, regardless of whether he or she is still employed; the act does not require that sequelae be causally related to the claimant’s employment directly, as long as a subsequent injury is causally related to a primary, compensable injury. *See, e.g., Marandino v.*

*Prometheus Pharmacy*, supra, 294 Conn. [564 (2010)] at 591–92; see also *Holston v. New Haven Police Dept.*, supra, 323 Conn. [607 (2016)] 617 (when requirements are met and compensable claim is established, § 7-443c creates rebuttable presumption that claimant’s employment caused primary injury).

Id., 866-867.

While the Coughlin opinion determined a cardiac disease which is the sequelae of a compensable hypertension claim can be compensable, it did not suspend the requirement of a claimant to establish causation of the alleged sequelae injury. Id., 865. Our Supreme Court affirmed this tribunal’s conclusion (Coughlin v. Stamford, 6218 CRB-5-17-9 (February 15, 2019), *aff’d*, 334 Conn. 857 (2020)), that the claimant had proven such a causal connection.

In the present case, it is undisputed that the plaintiff’s initial claim for hypertension met the five requirements of § 7-433c, was timely, and was compensable. As a result, the plaintiff may submit claims for subsequent injuries that flow from his primary claim for hypertension pursuant to the requirements of the act. In addition, the evidentiary record contains unchallenged medical reports from a qualified expert, Rocklin, concluding that the plaintiff’s hypertension was a significant factor in the development of his heart disease. Rocklin’s reports, which were credited by both the commissioner and the board, provide a reasonable basis for the board’s conclusion that the plaintiff’s heart disease was the sequela of his hypertension, which was the injury at issue in his primary claim.

Id, 869.

We believe the Coughlin decision is dispositive of the claimant’s assertion that he did not need to present causation evidence that his compensable hypertension was a substantial contributing factor in his need for a pacemaker.<sup>4</sup> The commissioner was not

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<sup>4</sup> While the claimant asserts error for the commissioner not to rely on a collective bargaining agreement as to the compensability of his claim, for the reasons stated in Chadbourne v. State/DMHAS, 6243 CRB-5-18-1 (January 8, 2019) and Morales v. Bridgeport, 5551 CRB-4-10-5 ( April 18, 2011), we do not find that decision erroneous.



persuaded by the evidence presented that his hypertension was a substantial factor. We will examine the evidence to ascertain if this conclusion was reasonable.

The claimant believes that the commissioner should have relied upon the evidence presented by Tiano since as the surgeon who performed the pacemaker surgery he believes Tiano had the best opportunity to render an opinion as to causation. The commissioner was not under an obligation to find Tiano the most persuasive or credible witness, however. The commissioner is the ultimate judge of the merits of conflicting medical opinions, and if we find her determination reasonable, we must affirm this decision on appeal. See O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818-819 (1999). Moreover, even if the commissioner were to have credited Tiano's reports that in and of itself would not have as a matter of law have caused the claimant to prevail. The claimant needed to establish that his prior compensable ailment was a substantial contributing factor causing the new ailment. In Claimant's Exhibit M, Tiano placed 10 percent of the weight of the need for the claimant's pacemaker surgery on his compensable hypertension. As we stated in Weir v. Transportation North Haven, 5226 CRB-1-07-5 (April 16, 2008), it is the responsibility of the trier of fact to determine how much weight a causation factor must have to be "substantial" and in that case we affirmed a trial commissioner who concluded that a 15 percent contribution to the need for surgery was not "substantial." Consequently, the commissioner was under no obligation to deem a 10 percent contribution to the need for surgery "substantial."<sup>5</sup>

In any event, the commissioner found Krauthamer and Werner as credible and persuasive witnesses and neither witness found the claimant's hypertension a substantial

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<sup>5</sup> The respondents also noted that Tiano testified that uncontrolled hypertension would have a greater impact on the heart and the need for surgery than controlled hypertension and that Tiano also testified that the claimant's hypertension was generally well controlled. See Claimant's Exhibit 24.

contributing factor in his need for pacemaker surgery. In particular we, note that Krauthamer provided live testimony before the commissioner at the June 19, 2018 formal hearing. We find that his testimony was unequivocal and consistent with the opinions he advanced in his medical reports and his deposition (Respondent's Exhibit 2 and Claimant's Exhibit A), where he ascribed age and degenerative factors as the primary cause behind the claimant's conduction disease and his need for a pacemaker. The claimant had an extensive opportunity to cross-examine the witness at the formal hearing and he argues that subsequent to his challenge as to his opinion and qualifications the commissioner should not have found Krauthamer credible. However, it is well-settled that when a trier of fact observes the testimony of a witness and draws inferences therefrom, the trier's assessment of the value of such testimony is virtually inviolate on appeal. See Burton, supra, 40; see also Baron v. Genlyte Thomas Group, LLC, 132 Conn. App. 794, 804, *cert. denied*, 303 Conn. 939 (2012), *citing* Samaoya v. Gallagher, 102 Conn. App. 670, 673-74 (2007); Barbee v. Sysco Food Services, 5892 CRB-8-13-11 (October 16, 2014), *aff'd*, 161 Conn. App. 902 (2015) (per curiam).

Notwithstanding the general rule giving a trial commissioner deference as to assessing the credibility of witnesses the claimant argues that Krauthamer's opinions should not be given any weight as he is now a retired physician and no longer actively practicing.<sup>6</sup> The claimant attempted at the June 19, 2018 formal hearing to argue Krauthamer was no longer licensed to practice medicine, *id.*, pp. 53-59, but Krauthamer testified that he still had a current license to practice medicine. *Id.*, p. 62. In any event,

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<sup>6</sup> We note that even were Krauthamer's opinions stricken from the record that the commissioner found Werner a credible and persuasive witness and he opined the claimant's hypertension was not a substantial contributing factor behind his need for surgery. See Claimant's Exhibit N. Therefore, the finding and denial can be sustained even were we to concur with the claimant that Krauthamer should have been found not to be credible.

had the claimant sought to exclude Krauthamer as a witness, claiming he was not competent to offer an expert opinion, he should have objected to his testimony and moved to exclude him as a witness prior to the conclusion of the formal hearing. See Deleon v. Walgreens, 5568 CRB-4-10-6 (May 13, 2011). Having failed to do so and having exercised his due process rights to challenge this witnesses' opinions, the claimant allowed the commissioner to assess these opinions as she saw fit. If the commissioner found Krauthamer more worthy of belief than Tiano, that was her prerogative. See Jodlowski v. Stanley Works, 169 Conn. App. 103, 108-109 (2016) and Dellacamera v. Waterbury, 4966 CRB-5-05-6 (June 29, 2006), *appeal withdrawn*, A.C. 27853 (September 12, 2006).

As we described herein, pursuant to the standard delineated in Coughlin, *supra*, the claimant had to persuade the trial commissioner that his compensable hypertension was a substantial contributing factor behind his recent pacemaker surgery. The commissioner was not persuaded and the evidence on the record demonstrates that this was a reasonable conclusion.<sup>7</sup> Accordingly, we affirm the April 15, 2019 Finding and Denial of Jodi Murray Gregg, the Commissioner acting on behalf of the Fourth District.

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

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<sup>7</sup> We find no error in the commissioner's denial of the claimant's motion to correct, finding he was essentially restating arguments which proved unavailing at the formal hearing. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003).