CASE NO. 6330 CRB-5-19-5 CLAIM NOS. 100001419, 100101812, 100193465, 100193936 & 800009868	:	COMPENSATION REVIEW BOARD
RAYMOND FRANKLIN CLAIMANT-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
v.	:	MARCH 19, 2020

UTC/PRATT & WHITNEY
EMPLOYER

and

ACE USA
LIBERTY MUTUAL INSURANCE
INSURERS
RESPONDENTS-APPELLEES

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

The claimant appeared at oral argument before the board as a self-represented party. At the trial level, the claimant was represented by Erskine McIntosh, Esq., 3129 Whitney Avenue, Second Floor, Hamden, CT 06518-2364.

Respondents UTC/Pratt & Whitney were represented by Eric Sussman, Esq., Day Pitney, L.L.P., City Place I, Hartford, CT 06103.

Respondents UTC/Pratt & Whitney and ACE USA were represented by Michael J. McAuliffe, Esq., Pomeranz, Drayton & Stabnick, L.L.C., 95 Glastonbury Boulevard, Glastonbury, CT 06033-4412.

Respondents UTC/Pratt & Whitney and Liberty Mutual Insurance were represented by Christopher J. Powderly, Esq., Law Offices of Meehan, Turret

& Rosenbaum, 108 Leigus Road, First Floor, Wallingford, CT 06492.

Respondent Second Injury Fund was represented by Donna Summers, Esq., Assistant Attorney General, Office of the Attorney General, 165 Capitol Avenue, Suite 4000, Hartford, CT 06106-1668.

This Petition for Review from the May 2, 2019 Finding and Decision by Charles F. Senich, the Commissioner acting for the Fifth District, was heard October 25, 2019 before a Compensation Review Board panel consisting of Commissioners Daniel E. Dilzer, William J. Watson III and Maureen E. Driscoll.

OPINION

DANIEL E. DILZER, COMMISSIONER. The claimant has appealed from a Finding and Decision (finding) issued on May 2, 2019 by Commissioner Charles Senich (commissioner) wherein the commissioner denied the claimant's request to open two full and final stipulations he had reached with his employer. The commissioner determined the stipulations were properly approved and denied the claimant's motion to open.[1] The claimant appealed this decision arguing that the finding was arbitrary, unreasonable or inconsistent with the law.

[1] General Statutes § 31-315 states: "Any award of, or voluntary agreement concerning, compensation made under the provisions of this chapter or any transfer of liability for a claim to the Second Injury Fund under the provisions of section 31-349 shall be subject to modification in accordance with the procedure for original determinations, upon the request of either party or, in the case of a transfer under section 31-349, upon request of the custodian of the Second Injury Fund, whenever it appears to the compensation commissioner, after notice and hearing thereon, that the incapacity of an injured employee has increased, decreased or ceased, or that the measure of dependence on account of which the compensation is paid has changed, or that changed conditions of fact have arisen which necessitate a change of such agreement, award or transfer in order properly to carry out the spirit of this chapter. The commissioner shall also have the same power to open and modify an award as any court of the state has to open and modify a judgment of such court. The compensation commissioner shall retain jurisdiction over claims for compensation, awards and voluntary agreements, for any proper action thereon, during the whole compensation period applicable to the injury in question."

After considering the claimant's argument on appeal, we determine that the question as to whether to open the stipulations was essentially a factual question. Further, the commissioner's determination was consistent with the evidence he credited. Accordingly, we affirm the finding.

The commissioner reached the following factual findings at the conclusion of a formal hearing that had commenced with then commissioner (now Commission Chairman) Stephen M. Morelli presiding. He found that the claimant had reached two full and final stipulations with the respondents; the first dated July 11, 1984, and the second dated September 1996. At the session of the formal hearing held on June 11, 2014, Commissioner Morelli advised the claimant that his burden at the hearing was to establish that the stipulations were entered into by duress, fraud or mutual mistake. When asked what his basis was for reopening the stipulation the claimant said, "[b]ecause I do feel that I didn't get justice for my back, I didn't get justice, and I believe there was fraud done to me." Findings, ¶ 7, *citing* June 11, 2014 Transcript, p. 83. When asked further as to the circumstances, the claimant told the commissioner he did not think he got enough money, and the commissioner said, "[t]hat's not grounds to open a Stipulation. But I also heard you say you believe there was fraud." Id., p. 84. When asked to describe the fraud the claimant said, "[b]ecause I feel I was supposed to get paid more and --" Id., p. 85.

The commissioner then reviewed the terms of the two stipulations. Both stipulations recited that the parties acknowledged that they were full and final settlements and they had not been entered into by fraud, accident, mistake or duress. The commissioner noted that the first stipulation was approved by the commission on July 16,

1984 and the second stipulation had been approved by the commission on September 10, 1996. Based upon the testimony and evidence presented at the hearing, Commissioner Senich reached the following conclusions:

> A. After a review of the exhibits and testimony in this matter, I do not find any evidence of fraud, mutual mistake, or duress as alleged by the claimant.
> B. There is no basis upon which to open the full and final stipulations in this matter marked Commissioner's Exhibit 1 and Commissioner's Exhibit 2.
> C. I do not find the testimony of the claimant fully credible and persuasive in this matter, especially regarding his alleged fraud.
> D. The claimant's motions to open the stipulations in this matter are DENIED and DISMISSED.

Conclusion, ¶¶ A-D.

The claimant filed a timely petition for review to appeal the finding, but did not file a motion to correct. He also did not file reasons for appeal. He has filed various letters in support of his appeal which we will deem the functional equivalent of a brief. The respondents have filed a motion to dismiss this appeal noting these procedural deficiencies, and assert they are prejudiced by the manner in which the claimant has prosecuted his appeal. Upon review, however, we deny this motion based on the precedent in Vitoria v. Professional Employment & Temps, 5217 CRB-2-07-4 (April 4, 2008), and will rule on this appeal on the merits.

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 further note that our review is limited as the claimant failed to file a motion to correct. In the absence of such a motion, we are constrained in our ability to examine the factual findings of the commissioner. See Stevens v. Raymark Industries, Inc., 5215 CRB-4-07-4 (March 26, 2008), *appeal dismissed*, A.C. 29795 (June 26, 2008); see also Admin. Reg. § 31-301-4.

Reviewing the written submissions from the claimant and his oral presentation to this tribunal, it appears the fulcrum of his dissatisfaction is that he believes that he sustained cancer in the workplace during the 1960s or early 1970s and did not receive proper compensation for this. However, we have reviewed the terms of the stipulations which he sought to open, which do not specifically reference cancer. The 1984 stipulation references a back injury the claimant claimed he sustained on or about March 17, 1981. The 1996 stipulation also referenced the March 17, 1981 back injury, as well as back injuries the claimant asserted he sustained on December 20, 1968 and February 22, 1988. We further note that the claimant was represented by legal counsel at the time both stipulations were reached. The sole issues Commissioner Senich considered at the October 10, 2018 session of the formal hearing was whether sufficient reason existed to

open the two stipulation. Counsel for the claimant concurred with proceeding in that manner. See October 10, 2018 Transcript, p. 5.

We have previously noted the burden the claimant has when seeking to open a stipulation. See DeLoreto v. Union City Steel, Inc., 6120 CRB-8-16-7 (September 19, 2018); Bond v. Lee Manufacturing, Inc., 5868 CRB-8-13-8 (April 21, 2016); and Macon v. Colt's Manufacturing, 5505 CRB-1-09-10 (September 27, 2010), *appeal dismissed*, A.C. 32785 (December 13, 2010). As we held in Macon, supra:

> The trial commissioner concluded the claimant failed to establish that the Stipulation was procured improperly or the result of mutual mistake. We most recently discussed the statutory requirements under § 31-315 C.G.S. to reopen a stipulation in Mohamed v. Domino's Pizza, 5352 CRB-6-08-6 (April 22, 2009). In Mohamed, we cited the Appellate Court holding in O'Neil v. Honeywell, 66 Conn. App. 332, 337-38 (2001).
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> Section 31-315 allows the commission to modify an award in three situations. First, modification is permitted where the incapacity of an injured employee has increased, decreased or ceased, or . . . the measure of dependence on account of which the compensation is paid has changed. . . Second, the award may be modified when changed conditions of fact have arisen which necessitate a change of [the award]. . . . Third, [t]he commissioner shall also have the same power to open and modify an award as any court of the state has to open and modify a judgment of such court. Id.

In the present case, the claimant needed to persuade the commissioner that the stipulations were obtained as the result of some sort of fraud, consistent with the standards delineated in Marone v. Waterbury, 244 Conn. 1, 17 (1998), "[t]his provision extends the commission's power to open and modify judgments to cases of accident; … to mistakes of fact; … and to fraud." (Internal citations omitted.) The fact that a claimant may decide years later that he or she was not adequately compensated for executing a stipulation does not establish that the stipulation was obtained as the result of

fraud. See DeLoreto, supra. The claimant has the burden of presenting factual evidence sufficient to persuade the commissioner that the initial stipulation was voidable. Having reviewed the record and the claimant's arguments, we believe the commissioner could reasonably have determined the claimant did not meet this burden, nor do we find the commissioner's decision was erroneous as a matter of law.

There is no error; the May 2, 2019 Finding and Decision of Charles F. Senich, the Commissioner acting for the Fifth District, is accordingly affirmed.

Commissioners William J. Watson III and Maureen E. Driscoll concur in this Opinion.