CASE NO. 6339 CRB-2-19-7 : COMPENSATION REVIEW BOARD
CLAIM NO. 200196905

CHRISTOPHER A. CLARK : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : JULY 15, 2020

TOWN OF WATERFORD
COHANZIE FIRE DEPARTMENT
EMPLOYER
RESPONDENT-APPELLANT

and

CONNECTICUT INTERLOCAL RISK
MANAGEMENT AGENCY
INSURER

APPEARANCES:

The claimant was represented by Eric W. Chester, Esq., and James N. Demetriades, Esq., Ferguson, Doyle & Chester, P.C., 35 Marshall Road, Rocky Hill, CT 06067.

Respondent Town of Waterford/Cohanzie Fire Department was represented by Kyle J. Zrenda, Esq., and James P. Berryman, Esq., Suisman, Shapiro, Wool, Brennan, Gray& Greenberg, P.C., The Courtney Building, Suite 200, 2 Union Plaza, P.O. Box 1591, New London, CT 06320.

Respondent Connecticut Interlocal Risk Management Agency (CIRMA) did not appear at oral argument. At proceedings below, CIRMA was represented by Nancy E. Berdon, Esq., Strunk, Dodge, Aiken, Zovas, 200 Corporate Place, Suite 100, Rocky Hill, CT 06067.

This Petition for Review from the June 25, 2019 Finding and Award of Peter C. Mlynarczyk, Commissioner acting for the Second District, was heard on January 31, 2020 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Randy L. Cohen and William J. Watson III.

# OPINION

STEPHEN M. MORELLI, CHAIRMAN. Respondent Town of Waterford Cohanzie Fire Department has petitioned for review from the June 25, 2019 Finding and Award (finding) of Peter C. Mlynarczyk, Commissioner acting for the Second District (commissioner). We find no error and accordingly affirm the decision of the commissioner.[1]

The commissioner identified as the issue for determination the claimant's eligibility for heart and hypertension benefits pursuant to General Statutes § 7-433c as a result of a myocardial infarction sustained on June 24, 2017.[2] The following factual findings are pertinent to our review. At trial, the claimant testified that he was hired as a part-time firefighter by the respondent municipality on May 24, 1992.[3] His duties

[1] We note that a motion for extension of time was granted during the pendency of this appeal.

[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.

(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."

[3] Prior to being hired by the respondent in 1992, the claimant was a volunteer firefighter for the town of Goshen.

included answering the telephone at the fire station, cleaning the fire station, responding to medical and fire emergencies, and performing day-to-day maintenance of the fire apparatus. At the time the claimant was hired, he also worked for Health Resources, a contractor at the Millstone nuclear power station. Although his employment at Millstone was "more or less" full-time at the beginning, his hours were reduced as time went on. Findings, ¶ 1.k., *quoting* March 7, 2019 Transcript, p. 21. The claimant also drove for Waterford Ambulance on an as-needed basis.

In his position as a firefighter, the claimant wore a uniform consisting of a shirt, badge, belt, pants and black shoes; he was also issued protective fire gear in case he had to respond to a fire call. His uniform was the same as the uniform worn by the other firefighters. He was paid for the work he performed while employed by the respondent. The claimant's shifts were affected by the time of year, the vacation and sick time used by the full-time firefighters, and the injuries sustained by the full-time staff. In some weeks, he would work multiple shifts, while in other weeks, he might not receive any assignments. As a part-time employee, he was not eligible for holiday or vacation pay or pension benefits.

Prior to being hired as a part-time firefighter, the claimant underwent and passed a pre-employment physical examination. He worked as a part-time firefighter for five years; in 1997, he was hired as a full-time firefighter by the respondent. The responsibilities of the part-time and full-time firefighters were the same; neither the claimant's duties nor his uniform changed when he became full-time.

On or about June 24, 2017, the claimant "suffered an NSTEMI type of myocardial infarction that resulted in his having quadruple bypass surgery on June 29, 2017."

Findings, ¶ 1.i. The commissioner took administrative notice of a form 30C (notice of claim) received by the Workers' Compensation Commission on August 14, 2017, in which the claimant asserted a claim for benefits pursuant to § 7-433c. The commissioner also took administrative notice of the fact that the town of Waterford is a municipality organized under the laws of the state of Connecticut.

Noting that the provisions of § 7-433c do not define the term "member" or distinguish between part-time and full-time status, the commissioner determined that the claimant's date of hire was May 24, 1992.[4] The commissioner concluded that because the claimant had been employed by the municipality prior to July 1, 1996, he was entitled to heart and hypertension benefits pursuant to the provisions of § 7-433c. The commissioner therefore ordered the respondent to accept as compensable the claimant's myocardial infarction of June 24, 2017.

The respondent filed a motion for articulation, which was granted, and a motion to correct, which was denied in its entirety. The respondent has appealed the finding, the articulation, and the denial of its motion to correct, stating that "[t]he essential issue with respect to all three decisions lies with the Commissioner's interpretation of the term 'member' as it is used in General Statutes § 7-433c." Appellant's Brief, pp. 1-2. More specifically, it is the respondent's contention that the commissioner should have utilized the definition of member contained in General Statutes § 7-425 (5) rather than applying his own definition of the term.[5] The respondent avers that had the commissioner done so,

[4] In Lehn v. Dailey, 77 Conn. App. 621 (2003), our Appellate Court stated that when "the legislature has not provided a specific definition of a word in a statute, 'we look to the common understanding of [that word] as expressed in a dictionary.'" (Internal quotation marks omitted.) Id., 626, *quoting* State v. Russo, 259 Conn. 436, 449, *cert. denied*, 537 U.S. 879 (2002).

[5] General Statutes § 7-425 (5) states in relevant part: "'Member' means any regular employee or elective officer receiving pay from a participating municipality, and any regular employee of a free public library that receives part or all of its income from municipal appropriation, who has been included by such

he "would have been compelled" to conclude that the myocardial infarction sustained by the claimant on June 24, 2017, was not compensable pursuant to the provisions of § 7-433c. Id., 2.

We begin our analysis with the well-settled standard of review we are obliged to apply to a trial commissioner's findings and legal conclusions. "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).

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municipality in the pension plan as provided in section 7-427, *but shall not include any person who customarily works less than twenty hours a week if such person entered employment after September 30, 1969*, any police officer or firefighter who will attain the compulsory retirement age after less than five years of continuous service in fund B, any teacher who is eligible for membership in the state teachers retirement system, any person eligible for membership in any pension system established by or under the authority of any special act or of a charter adopted under the provisions of chapter 99, or any person holding a position funded in whole or in part by the federal government as part of any public service employment program, on-the-job training program or work experience program, provided persons holding such federally funded positions on July 1, 1978, shall not be excluded from membership but may elect to receive a refund of their accumulated contributions without interest." (Emphasis added.)

The respondent's first claim of error implicates Findings, ¶ 1.l, in which the commissioner found that the claimant had testified that his "hours were consistent." The respondent points out that in fact, the claimant testified that his shifts were "inconsistent and variable, and that some weeks he may not have worked any hours at all." Appellant's Brief, p. 8. However, we note that the commissioner, in the same finding, went on to state that the claimant's hours "were affected by the time of year, as well as vacation, sick time, and injuries sustained by the full-time staff. There were some weeks when he worked multiple shifts and others when he might not get any assignments." Findings, ¶ 1.l. As such, while the use of the word "consistent" to describe the claimant's hours was perhaps inartful, our review of the formal hearing transcript indicates that the balance of the finding accurately reflects the claimant's testimony on this issue. See March 7, 2019 Transcript, p. 22.

The respondent also contends that the commissioner's decision to reject the application of the definition of the term "member" as set forth in § 7-425 (5) constituted an abuse of discretion. The respondent points out that "Section 7-425 is contained in Part II of Chapter 113 of Title 7 of the Connecticut General Statutes," Appellant Brief, p. 10, and although "this Part does govern the Municipal Employees Retirement Fund, *it also includes General Statutes § 7-433c*." (Emphasis in the original.) Id. The respondent further notes that § 7-425 (5) "does not limit itself to those statutes in the part governing the Municipal Employees Retirement Fund," id., and the legislature did not "see … fit to move or place § 7-433c into a different part of the General Statutes, or even into a different part of Chapter 113." Id.

It is of course axiomatic that we must "presume that laws are enacted in view of existing relevant statutes" and "[s]tatutes are to be interpreted with regard to other relevant statutes because the legislature is presumed to have created a consistent body of law...." (Internal citations omitted; internal quotation marks omitted.) Conway v. Wilton, 238 Conn. 653, 664 (1996), *quoting* M. DeMatteo Construction Co. v. New London, 236 Conn. 710, 715 (1996). In light of these well-settled rules of statutory construction, the respondent argues that "it must be assumed the legislature intended the definition of 'member' in § 7-425 (5) to apply to § 7-433c." Appellant's Brief, p. 11.

The respondent also contends that the commissioner was required to interpret the statutory language of § 7-433c in a manner consistent with the provisions of General Statutes § 1-2z, which state:

> The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

Given, then, that the provisions of § 1-2z appear to require that the commissioner refer to the definitions contained in § 7-425 for guidance before examining other "extratextual" sources, "the only logical conclusion is that the term 'member' in § 7-433c includes only those who work twenty hours per week or more." Appellant's Brief, p. 12.

The respondent points out that the record in the present matter is devoid of probative evidence which could provide a reasonable basis for ascertaining the number of hours per week the claimant worked for the respondent prior to being hired as a full-time firefighter. The respondent therefore argues that it cannot be reasonably inferred that the claimant became a "member" of the fire department until he was hired on a full-time

basis on June 18, 1997. However, this date of hire places him outside the ambit of the statute, which was repealed effective July 1, 1996.[6] In light of these factual circumstances, the respondent contends that the commissioner erred in concluding that the claimant had satisfied his burden of proof in establishing his eligibility for heart and hypertension benefits pursuant to § 7-433c.

We agree that the evidentiary record in the present matter does not provide an adequate basis for determining the number of hours worked by the claimant while he was employed as a part-time firefighter. The claimant testified, and the commissioner so found, that the claimant's assigned shifts were irregular and dependent upon circumstances which varied according to the time of year and the internal staffing requirements of the department. It therefore cannot be reasonably inferred that the claimant was employed for more than twenty hours per week prior to his promotion to a full-time firefighter on June 18, 1997.

Nevertheless, we are not persuaded that the legislature intended that statutory eligibility for heart and hypertension benefits be reserved solely for full-time firefighters. In Collingwood v. Branford, 4787 CRB-3-04-2 (July 6, 2005), this board noted that when the claimant was hired as a uniformed firefighter on January 4, 1993, the provisions of § 7-433c included the following preamble:

> In recognition of the peculiar problems of uniformed members of paid fire departments and regular members of paid police departments, and in recognition of the unusual risks attendant upon these occupations, including an unusually high degree of susceptibility to heart disease and hypertension, and in recognition that the enactment of a statute which protects such fire department and police department members against economic loss resulting

[6] General Statutes § 7-433c (b) states: "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."

> from disability or death caused by hypertension or heart disease would act as an inducement in attracting and securing persons for such employment, and in recognition, that the public interest and welfare will be promoted by providing such protection for such fire department and police department members, municipal employers shall provide compensation….

Id.

> We also observed that:
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> The intent of the statute is made clear by this text. In order to encourage people to enter the vital firefighting and police professions, lawmakers directed municipalities to provide a bonus of sorts by making benefits available for heart disease and hypertension suffered by firefighters and police officers, whom the legislature determined *'properly occupy a different status from other municipal employees.'* (Emphasis added.)

Id., *quoting* Grover v. Manchester, 168 Conn. 84, 88 (1975).

In Grover, our Supreme Court was asked to address a constitutional challenge to the heart and hypertension legislation. The court discussed at some length the rationale behind the legislation's passage and made the following observations:

> It is difficult to call to mind any field of activity more closely related to the public safety than the encouragement of qualified individuals to seek employment as firemen and policemen. It is evident from the preamble to § 7-433c that the legislature took into consideration the peculiar problems and unusual risks attendant upon these occupations in determining that they properly occupy a different status from other municipal employees. No other group has to withstand the abuses and attacks tacks of the oppressed and frustrated of our modern society or carry with them a constant apprehension that they may be the target of maniacal revenge; no other municipal employees are called out from the security of their homes to ensure the security of the homes of others; no other municipal employees are required to make immediate decisions which are the subject of debate and deliberation in our courts.[7]

[7] The Grover court rejected the constitutional challenges, holding that although General Statutes § 7-433c "is not regulatory, it does impose upon a town a financial obligation which, like restrictive regulations, is justified in the interest of promoting public safety, and does not deprive a town of property without due process of law." Grover v. Manchester, 168 Conn. 84, 88 (1975). The court also remarked that "the fact that [§ 7-433c] incidentally confers a direct benefit upon a certain class of individuals does not render it

Id., 88–89.

We further note that in Bucko v. New London, 13 Conn. App. 566, 570 (1988), our Appellate Court rejected the respondent's argument that a police officer was ineligible for heart and hypertension benefits because he was originally hired in a temporary capacity and his initial diagnosis of hypertension occurred prior to his promotion to a permanent position. The respondent municipality asserted that "the plaintiff's status prior to the medical examination of September 10, 1947, which revealed the mild hypertension, was not that of a 'regular member of a paid municipal police department' but rather was a temporary appointment and therefore outside the eligibility requirements of § 7-433c." Id., 569-570. In rejecting this contention, the Bucko court remarked:

> the city's argument is not tenable under the facts and circumstances of this case. Nowhere in § 7-433c is there a requirement that any appointment to the regular police force must be a "permanent" appointment. The qualifiers "permanent" or "temporary" are not mentioned in the statute; the only stated prerequisite to the collection of benefits is that the claimant must be a "*regular* member of a paid municipal police department." (Emphasis in the original.)[8]

Id., 570.

As the claimant in the present matter accurately points out, the terms "full-time" and "part-time" are not mentioned in the provisions of § 7-433c, and it is a "well-settled principle of [statutory] construction that specific terms covering the given subject matter

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invalid as creating a class preference which contravenes § 1 of article first of the Connecticut constitution." Id. 89.

[8] In Bucko v. New London, 13 Conn. App. 566 (1988), our Appellate Court concluded that "[t]he "commissioner's decision not only reflected a correct application of the appropriate law, it also promoted a manifestly just result." Id., 571.

will prevail over general language of the same or another statute which might otherwise prove controlling." Oles v. Furlong, 134 Conn. 334, 342 (1948). Moreover, according to the claimant's testimony, there were no discernible differences between his responsibilities and those of the full-time firefighters. He testified, and the commissioner so found, that his duties included responding to medical and fire emergencies and, in addition to wearing the same uniform worn by the full-time firefighters, he was issued fire protective gear. See March 7, 2019 Transcript, pp. 15-16. The claimant also indicated that he had undergone, and successfully passed, a pre-employment physical, the job descriptions for full- and part-time firefighters were the same, and neither his professional duties nor his uniform changed when he transitioned from part-time to full-time firefighter. See id., 16-18.

In light of the claimant's testimony, we find it difficult to distinguish between the risks and responsibilities attendant upon being a part-time firefighter as opposed to a full-time firefighter. As such, we are not persuaded that the legislature intended that eligibility for heart and hypertension benefits should rest upon what is, in our estimation, an almost meaningless distinction.

We also note that with the passage of General Statutes § 7-314a (d), the legislature saw fit to extend a rebuttable presumption for hypertension and heart disease to volunteer firefighters, albeit within the purview of chapter 568 rather than § 7-433c.[9]

[9] General Statutes § 7–314a (d) provides: "For the purpose of adjudication of claims for the payment of benefits under the provisions of chapter 568, any condition of impairment of health occurring to an active member of a volunteer fire department while such member is in training for or engaged in volunteer fire duty, caused by hypertension or heart disease resulting in death or temporary or permanent, total or partial disability, shall be presumed to have been suffered in the line of duty and within the scope of his employment, provided such member had previously successfully passed a physical examination by a licensed physician appointed by such department which examination failed to reveal any evidence of such condition."

In Evanuska v. Danbury, 285 Conn. 348 (2008), the court's analysis focused on whether the claimants, two volunteer firefighters who sustained injuries when they fell from a scaffolding while repairing the firehouse roof, were engaged in the performance of "fire duties," as contemplated by the provisions of General Statutes § 7-314 (a).[10] Ultimately, the court reversed the prior decisions of both this board and the Appellate Court affirming the commissioner's denial of benefits, holding that the claimants' roof-repair activities fell within the rubric of "any other duty ordered to be performed by a superior or commanding officer in the fire department" pursuant to the provisions set forth in § 7-314 (a). What the court did *not* do was take into consideration the hourly status of the volunteers.

Similarly, in Rothholz v. Chesterfield Fire Company, Inc., 4827 CRB-2-04-7 (August 12, 2005), this board considered an appeal brought by the respondent municipality regarding an award of benefits to a claimant who had injured his right upper extremity while attempting to move a file cabinet at the fire company's office. At the time the claimant sustained his injury, he was acting as president of the fire company, and his duties included handling the fire company's finances and paperwork. The respondent municipality contended that the claimant could not be considered an "active member" of

[10] General Statutes § 7-314 (a) states in relevant part: "Wherever used in this section and sections 7-314a and 7-322a, … the term 'fire duties' includes duties performed while at fires, while answering alarms of fire, while answering calls for mutual aid assistance, while returning from calls for mutual aid assistance, while directly returning from fires, while at fire drills or parades, while going directly to or returning directly from fire drills or parades, while at tests or trials of any apparatus or equipment normally used by the fire department, while going directly to or returning directly from such tests or trials, while instructing or being instructed in fire duties, while answering or returning from ambulance calls where the ambulance service is part of the fire service, while answering or returning from fire department emergency calls and any other duty ordered to be performed by a superior or commanding officer in the fire department; the term "active member of a volunteer fire company" includes all active members of said fire company, fire patrol or fire and police patrol company, whether paid or not paid for their services, except firemen who, because of contract of employment, come under the Workers' Compensation Act."

the volunteer fire department because at the time he sustained his injury at the fire company office, he was totally disabled from his regular employment due to an injury to his neck and left shoulder. The respondent also contended that at the time the claimant suffered his heart attack, he was not engaged in volunteer "fire duties" as they are defined in General Statutes § 7-314b (b).[11]

This board affirmed the commissioner's award of benefits, holding that the claimant, in his role as president of the volunteer fire company, was a superior officer of the company and, given that the claimant's injuries had occurred while he "was actually performing fire duties as set out in § 7-314 (a), it stands to reason that the claimant was an 'active member' of the fire company."[12] Id. As was the case in Evanuska, supra, the focus of the reviewing tribunal's inquiry was not on the hourly status of the claimant but, rather, the nature of his responsibilities. As such, we find it logically inconsistent that the legislature would endow volunteer firefighters who suffer an impairment due to hypertension or heart disease with the ability to invoke a rebuttable presumption pursuant to the provisions of § 7-314a (d) but deprive part-time firefighters of the ability to do the same pursuant to § 7-433c.

[11] General Statutes § 7-314b (b) states in relevant part: "As used in this section, the terms 'fire duties' includes duties performed while at fires, answering alarms of fire, answering calls for mutual aid assistance, returning from calls for mutual aid assistance, at fire drills or training exercises, and directly returning from fires…."

[12] In so deciding, this board reached a different result in Rothholz v. Chesterfield Fire Company, Inc., 4827 CRB-2-04-7 (August 12, 2005), than it had in Peabody v. Shelton, 16 Conn. Workers' Comp. Rev. Op. 25, 3024 CRB-4-95-3 (October 8, 1996), *aff'd*, 45 Conn. App. 913 (1997) (per curiam), *cert. denied*, 242 Conn. 906 (1997). In Peabody, this board affirmed the commissioner's denial of § 7-433c benefits to a volunteer firefighter who sustained a heart attack while waiting for a computer in the office to become available so he could update firehouse records. The board noted that the evidence demonstrated that the claimant's membership status had been changed to "life active member" and he was unable to physically perform the duties expected of active members.

As previously discussed, the record in this matter demonstrates that the claimant was hired as a part-time firefighter in 1992 and promoted to full time in 1997. At trial, he testified that when he sustained his myocardial infarction, he was already out of work, presumably due to the back condition for which he had undergone the abnormal pre-operative EKG. The record appears to be silent regarding the claimant's actual retirement date. Nevertheless, given that the respondent municipality did not contest the claim on the basis that the claimant's heart attack occurred after his retirement, it may be reasonably inferred that when the claimant suffered his heart attack on June 24, 2017, he was still employed by the respondent municipality. According to our calculations, he had at that point served the municipality as a firefighter for some thirty-odd years.

We note that the opening clause of § 7-433c states that the provisions of the statute shall be invoked "[n]otwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary…." It is of course axiomatic that "[i]nterpreting a statute to render some of its language superfluous violates cardinal principles of statutory interpretation." American Promotional Events, Inc. v. Blumenthal, 285 Conn. 192, 203 (2008). Moreover, "in construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous." (Internal quotation marks omitted.) Small v. Going Forward, Inc., 281 Conn. 417, 424 (2007).

Given these well-settled precepts of statutory construction, we believe that the legislature purposely included such a wide-ranging opening disclaimer in order to prevent exactly the sort of inequitable outcome sought by the respondent in this matter. This is particularly so in view of the well-settled maxim that "all workers' compensation

legislation, because of its remedial nature, should be broadly construed in favor of disabled employees." Szudora v. Fairfield, 214 Conn. 552, 557 (1990).

Thus, having reviewed relevant case law and closely examined the text of the disputed statutory provisions, we are not persuaded that the legislature intended that the definition of "member" as set forth by the legislature in § 7-425 (5) be applied to the provisions of § 7-433c. Moreover, we believe that such a result in the present matter would be contrary to the letter and spirit of the heart and hypertension legislation, particularly in light of the claimant's long career with the respondent municipality. We therefore affirm the award of § 7-433c benefits, and reject the respondent's contention that the commissioner's decision to adopt the commonly-held definition of the word "member," rather than the statutory definition set forth is § 7-425 (5), constituted an abuse of discretion.[13]

The respondent municipality has also claimed as error the commissioner's denial of its motion to correct. Apart from the proposed correction to Findings, 1.l., which we have addressed elsewhere in this Opinion, our review of the balance of the proposed corrections indicates that the respondent was merely reiterating the arguments made at trial which ultimately proved unavailing. As such, we find no error in the commissioner's decision to deny the respondent's motion to correct. D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003).

There is no error; the June 25, 2019 Finding and Award of Peter C. Mlynarczyk, Commissioner acting for the Second District, is accordingly affirmed.

Commissioner Randy L. Cohen concurs in this opinion.

[13] In so doing, we likewise affirm the commissioner's August 1, 2019 "Articulation of Finding and Award Dated June 25, 2019."

WILLIAM J. WATSON III, COMMISSIONER, DISSENTING.

I respectfully dissent from the majority Opinion in this matter because I am persuaded that the well-settled principles of statutory construction compel the result sought by the respondent. The claimant has argued that the "plain language" of the statute only requires that a firefighter be "uniformed." There is no question that the evidence adduced in this matter provides a reasonable basis for the inference that the claimant, as of his May 24, 1992 date of hire, was "uniformed." The evidence also establishes that the claimant's duties were essentially the same as those of the full-time firefighters, he successfully passed a pre-employment physical, and subsequently sustained an impairment of health caused by heart disease which resulted in disability.

However, it is not sufficient that most of the statutory requirements required for eligibility for benefits be satisfied; all statutory elements must be satisfied. The "plain language" of the statute requires that a firefighter claiming eligibility for heart and hypertension benefits must not only be "uniformed," but must also be a "member of a paid municipal fire department." While I agree that the provisions of § 7-433c do not explicitly state that an eligible firefighter must be a full-time employee, I am not persuaded that this board is at liberty to disregard the definition of "member" provided by the legislature in § 7-425 (5).[14]

[14] In their majority Opinion, my colleagues allude to a certain "logical inconsistency" resulting from the interpretation of the relevant statutes in a manner which allows for the inference that the legislature endowed a volunteer firefighter who suffers an impairment due to hypertension or heart disease with the ability to invoke a rebuttable presumption pursuant to the provisions of § 7-314a (d) but deprived part-time firefighters of the ability to do the same pursuant to § 7-433c. While I concede that there does appear to be some inconsistency reflected in the eligibility of different firefighters to invoke a rebuttable presumption, I would simply submit that the public policy considerations attendant upon recruiting volunteer firefighters might provide a plausible justification for the discrepancy.

I also note that the provisions of § 7-433c state that an eligible firefighter "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…." It is of course well-established in our case law that "[a]lthough an award of benefits under § 7-433c is not a workers' compensation award, the Workers' Compensation Act is used as a 'procedural avenue' for the administration of benefits under § 7-433c." (Internal quotation marks omitted.) Genesky v. East Lyme, 275 Conn. 246, 252, n.9 (2005), *quoting* Carriero v. Naugatuck, 243 Conn. 747, 755 (1998).

General Statutes § 31-275 (9) (B) (iv) specifically excludes from the definition of "employee" "[a]ny person engaged in any type of service in or about a private dwelling provided he is not regularly employed by the owner or occupier over twenty-six hours per week." The exclusion represented by § 31-275 (9) (B) (iv) is certainly not dispositive of the present matter; however, I would simply observe that in light of this exclusion, an interpretation of § 7-433c which restricts eligibility for heart and hypertension benefits to full-time fire-fighters, employed during the time period when the statute was in effect, does not strike me as an "absurd or unworkable result." General Statutes § 1-2z.

The claimant contends that the scope and purpose of § 7-433c can be distinguished from the other sections of Part II which address municipal employee retirement issues. However, as the respondent points out, the legislature did not place the heart and hypertension statutes in any other chapter or part of the Connecticut Statutes.

As such, I believe the rules of statutory construction require that the definitions provided by the legislature for Part II be attributed to the terms of the statutes contained in Part II.

Finally, the claimant points out that the provisions of § 7-433c set forth different statutory elements for police officers, given that a police officer must be "a regular member of a paid municipal police department" in order to be eligible for § 7-433c benefits. While the issues raised in the present claim appear to be a case of first impression, I do note that the interpretation of the phrase "a regular member of a paid municipal police department" has been the subject of prior litigation. In Genesky v. East Lyme, 275 Conn. 46 (2005), the claimant, who was employed as a full-time constable for the town, filed a claim for § 7-433c benefits after developing hypertension and suffering a myocardial infarction. Our Supreme Court, after conducting an intensive exercise in statutory construction, ultimately determined in a majority opinion that "the law enforcement arrangements that the town [had] chosen to adopt," id., 267, did not constitute a paid municipal police department as contemplated by the provisions of § 7-433c. As such, the claimant was deemed ineligible for heart and hypertension benefits. See also Zimmer v. Essex, 1 Conn. Workers' Comp. Rev. Op. 71, 42 CRD-2-80 (November 2, 1981), *aff'd*, 38 Conn. Sup. 419 (1982).

I recognize that the legislature chose to impose different statutory criteria for firefighters and police officers; however, in deciding the present matter, I believe this board is required to confine its analysis to the requirements applicable to firefighters. Therefore, although the evidence provides an adequate basis for the reasonable inference that the claimant was "uniformed," it does not provide a sufficient basis for inferring that the claimant was a "member" of the fire department as contemplated by the definitions

set forth in § 7-425 (5). Given that the definition of "member" provided by the legislature excludes "any person who customarily works less than twenty hours per week…," I am unable to conclude that the factual circumstances of the claimant's employment satisfy the statutory requirements of § 7-433c. As such, I am unable to sustain the commissioner's award of heart and hypertension benefits in this matter, and I respectfully dissent from the majority Opinion.