CASE NO. 6344 CRB-2-19-8 : COMPENSATION REVIEW BOARD
CLAIM NO. 200196529

LINDA FIELDHOUSE : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : AUGUST 12, 2020

REGENCY COACHWORKS, INC.
EMPLOYER

and

BERKLEY NET UNDERWRITERS
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Sheila Hall, Esq., Gesmonde, Pietrosimone & Sgrignari, L.L.C., 3127 Whitney Avenue, Hamden, CT 06518.

The respondents were represented by David C. Davis, Esq., McGann, Bartlett & Brown, L.L.C., 111 Founders Plaza, Suite 1201, East Hartford, CT 06108.

This Petition for Review from the August 5, 2019 Finding and Dismissal of Peter C. Mlynarczyk, Commissioner acting for the Second District, was heard on February 28, 2020 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners William J. Watson III and Toni M. Fatone.

OPINION

STEPHEN M. MORELLI, CHAIRMAN. The claimant has petitioned for review from the August 5, 2019 Finding and Dismissal (finding) of Peter C. Mlynarczyk, Commissioner acting for the Second District (commissioner). We find error and accordingly reverse the decision of the commissioner and remand this matter for additional proceedings consistent with this Opinion.

The commissioner identified as the issue for determination whether the claimant sustained compensable injuries to her head and her left leg, foot, and knee on November 27, 2015. The following factual findings are pertinent to our review. The claimant testified that she began working for the employer in 2011 and continued working there until May 2016. On November 27, 2015, while preparing to go on her lunch break, the claimant fell down several stairs, hitting her head on the door at the bottom of the stairs. She also remembered her knee hitting something and her foot bending.

Robert Charland, her direct supervisor on that date, assisted her to get up from the floor as she was unable to do so on her own. He eventually helped her back up the stairs to her office where she sat down at her desk. After a few hours, she realized the pain was not going away and informed Charland, who gave her permission to leave, at which point she went to an ambulatory clinic in Enfield.

The claimant testified that she drove herself to the clinic and was not directed by her employer to go to the clinic. When she arrived, she provided her personal health insurance information, and the appointment was paid for by her health insurance carrier. After her visit to the clinic, the patient next treated with her primary care physician,

Manjaree Daw, M.D.[1] The claimant then treated on numerous dates with Robert P. Dudek, M.D., who also sent the claimant for an MRI. The bills for Dudek's treatment and the MRI were paid by the claimant's health insurance carrier. The claimant testified that neither Charland nor Regency Coachworks reimbursed her for any of her out-of-pocket medical treatment.

The claimant indicated that at some point, she told Charland she was probably going to file a claim because she was not getting any better. He told her to go ahead, so she called Paradiso Insurance Agency (Paradiso), the workers' compensation insurance agency for the employer, and told a representative there that she needed to file a claim. The Paradiso office is located one street over from the claimant's office; after leaving several messages trying to get an appointment, she finally went to the office and sat there until Stephanie Fanelli helped her to complete a First Report of Injury (FRI). The claimant testified that Fanelli kept telling her not to "worry about it" because she had two years to file a claim. November 20, 2018 Transcript, p. 18. The claimant further testified that she specifically told Charland and Fanelli that she wanted to file a workers' compensation claim. See id.

The claimant indicated that she was not aware of any specific time frame for filing a workers' compensation claim in Connecticut, and she relied on what Fanelli had told her, which was that she had two years to file a claim and that Fanelli would file the claim for her. The claimant thought the FRI was her claim. After completing the FRI, BerkleyNet sent her a letter and a pharmacy card; her understanding upon receiving the letter was that a claim had been opened.

[1] The evidentiary record indicates that the claimant saw Manjaree Daw, M.D., on December 8, 2015 and December 15, 2015.

On November 22, 2016, she received a phone call from a BerkleyNet representative to whom she gave a recorded statement over the telephone that lasted approximately twenty-five minutes. Her understanding of the purpose of the telephone statement was for BerkleyNet to learn exactly what had occurred in the incident and the treatment she had received so she could continue with the claim.

On March 27, 2017, the claimant received correspondence from BerkleyNet indicating that the insurer wanted her to submit to an examination. The first sentence of the letter stated that "[i]n accordance with your Workers' Compensation claim from Friday, November 27, 2015, BerkleyNet Underwriters has arranged for you to be examined…." Claimant's Exhibit A. The claimant testified that the wording of the letter gave her an additional reason to believe that she had a pending workers' compensation claim. The claimant indicated that BerkleyNet also sent the claimant to Raymond J. Sullivan, M.D., and Jon C. Driscoll, M.D., as well as to a pain clinic.[2] The purpose of each visit was for an evaluation; no treatment was ever offered.[3]

It was the claimant's understanding that on November 16, 2016, she commenced a workers' compensation claim. However, she testified that as of the date of the formal hearing on November 20, 2018, she had received no workers' compensation benefits for

[2] The evidentiary record indicates that the claimant saw Raymond J. Sullivan, M.D., on January 9, 2017 and January 16, 2017; Jon C. Driscoll, M.D., on April 19, 2017; and Annette K. Macannuco-Winslow, M.D., at the Hartford Hospital Pain Treatment Center, on July 12, 2017.

[3] The record reflects that the purpose of the claimant's visit to Driscoll on April 19, 2017, was for a respondents' medical examination. However, Sullivan's report of January 9, 2017, does not indicate that he performed an RME. See November 20, 2018 Transcript, p. 34; Claimant's Exhibit A. Rather, in his follow-up note dated January 16, 2017, Sullivan stated that the claimant was not a surgical candidate at that time, opined that she was suffering from chronic regional pain syndrome, and referred her for pain management. See Claimant's Exhibit A. The visit to Macannuco-Winslow on July 12, 2017, was described as a "consult." Id. Macannuco-Winslow referred the claimant for physical therapy and to neurology for an EMG study of her left leg and also prescribed a Lidocaine patch. In the claimant's brief, she indicates that the respondents paid for the RME with Driscoll and the office visits with Sullivan but not for the office visit with Macannuco-Winslow.

her injuries. Based on her filing of the FRI, her receipt of documentation, correspondence, and a prescription card from the respondent insurer, the medical examinations at the behest of the respondent insurer, and the fact that a claim number had been assigned to her case, the claimant believed the insurer had received and was evaluating her claim. The claimant therefore "[asserted] that the totality of [the] circumstances should result in a finding that the Respondent was aware of her claim within one year of her date of injury." Findings, ¶ 6.

At trial, the respondents did not dispute that an incident occurred at the workplace on November 27, 2015. However, they argued that the Workers' Compensation Commission (commission) was deprived of subject matter jurisdiction because the claimant did not file a notice of claim ("form 30C") within one year of the date of injury, in accordance with the provisions of General Statutes § 31-294c (a), and none of the statutory requirements for the exceptions set forth in General Statutes § 31-294c (c) were satisfied.[4]

[4] General Statutes § 31-294c (a) states in relevant part: "No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury, provided, if death has resulted within two years from the date of the accident or first manifestation of a symptom of the occupational disease, a dependent or dependents, or the legal representative of the deceased employee, may make claim for compensation within the two-year period or within one year from the date of death, whichever is later. Notice of claim for compensation may be given to the employer or any commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident, or the date of the first manifestation of a symptom of the occupational disease and the nature of the disease, as the case may be, and the name and address of the employee and of the person in whose interest compensation is claimed…. If an employee, other than an employee of the state or a municipality, opts to mail to his or her employer the written notice of a claim for compensation required under the provisions of this section, such written notice shall be sent by the employee to the employer by certified mail…."

General Statutes § 31-294c (c) states: "Failure to provide a notice of claim under subsection (a) of this section shall not bar maintenance of the proceedings if there has been a hearing or a written request for a hearing or an assignment for a hearing within a one-year period from the date of the accident or within a three-year period from the first manifestation of a symptom of the occupational disease, as the case may be, or if a voluntary agreement has been submitted within the applicable period, or if within the applicable period an employee has been furnished, for the injury with respect to which compensation is claimed, with

The commissioner took administrative notice of a form 30C dated June 29, 2017, which was received by the commission on July 3, 2017. A second copy of the same form 30C was received by the commission on July 26, 2017. The commissioner also took administrative notice of a denial of claim ("form 43") received by the commission on July 26, 2017, in which the respondents challenged jurisdiction and compensability. In addition, the commissioner took administrative notice of the fact that the first hearing request in this matter was received from claimant's counsel on July 28, 2017, and the first hearing was held on August 21, 2017.

On the basis of the foregoing, the commissioner concluded that the claimant did not file a form 30C within one year of November 27, 2015; no hearing was held, and none was requested, within one year of November 27, 2015; no voluntary agreement was ever issued; and the respondents did not provide the claimant with any medical or surgical care. The commissioner determined that because the claimant failed to meet the statutory requirements for filing a claim set forth in § 31-294c, the commission lacked subject matter jurisdiction. The commissioner denied and dismissed the claim in its entirety.

The claimant has raised several claims of error relative to this decision. She contends that the commissioner, in denying and dismissing the claim, failed to consider the totality of circumstances in this matter and his decision was therefore inconsistent with the law. She also argues that the commissioner erroneously failed to "conclude that public policy and the remedial purpose of the workers' compensation act warrants the

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medical or surgical care as provided in section 31-294d. No defect or inaccuracy of notice of claim shall bar maintenance of proceedings unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice. Upon satisfactory showing of ignorance and prejudice, the employer shall receive allowance to the extent of the prejudice."

compensability of the … claim under the facts and circumstances that were presented." Appellant's Brief, p. 12. Finally, the claimant maintains that the commissioner erroneously failed to conclude that the respondents should have been estopped from raising the issue of jurisdiction relative to defective notice "in light of the representations made by the employer's insurance agent that the claimant had two years within which to assert a claim." Id., 13.

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). "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 begin our analysis with the claimant's contention that the commissioner failed to consider the totality of circumstances in denying and dismissing the claim. The claimant points out she provided both verbal and written notice of the injury to the employer during the one-year period following the injury, and the employer had

contemporaneous knowledge of her fall and resulting injuries. In addition, the claimant contends that the respondent insurer, BerkleyNet, sent her correspondence and issued a prescription card.[5] The claimant also gave a recorded statement to Janel Monroe, a BerkleyNet representative, who indicated at the time that she was "speaking by telephone with Linda Fieldhouse regarding the report of injury *filed with our office by Regency Coachworks, Inc. Today's date is November 22, 2016.*" (Emphasis in the original.) Id., 7, *quoting* Claimant's Exhibit A. The claimant therefore argues that because the actions taken by the insurer "were the direct result of being placed on notice of the claimant's workers' compensation claim by the claimant's employer, Regency Coachworks, Inc," id., the claimant "substantially complied with the notice provisions of the statute." Id.

As discussed previously herein, § 31-294c (c):

> requires one of four possible prerequisites to establish the [commission's] subject matter jurisdiction over a claim: (1) a timely written notice of claim …; (2) a timely hearing or a written request for a hearing or an assignment for a hearing …; (3) the timely submission of a voluntary agreement …; or (4) the furnishing of appropriate medical care by the employer to the employee for the respective work-related injury." (Citation omitted; footnote omitted; internal quotation marks omitted.)

Izikson v. Protein Science Corp., 156 Conn. App. 700, 708–09 (2015).

In Hayden-Leblanc v. New London Broadcasting, 12 Conn. Workers' Comp. Rev. Op. 3, 1373 CRD-2-92-1 (January 5, 1994), this board reviewed an appeal involving a claimant who had sustained back injuries in a fall while attempting to sit down at her desk. Several weeks later, she sought treatment with an orthopedic surgeon, and when

[5] The November 22, 2016 correspondence from BerkleyNet also included contact information for physical therapy and the mailing address for the submission of medical bills. See Claimant's Exhibit A.

she discussed submission of the medical bill with her employer, the employer gave the claimant a form to complete which, in addition to the claimant's name and address, requested a description of how the injury occurred. The employer submitted this form and a doctor's bill to the insurer, which denied the claim. Two years later, the claimant, having been advised that she could still file a claim, filed a form 30C, and the matter went to a formal hearing. Upon review, this board affirmed the commissioner's determination that the commission retained subject matter jurisdiction, noting that the employer "had knowledge of claimant's injury, and the 'totality of circumstances' involved in the written group medical form coupled with Northbrook's written rejection constituted Sec. 31-294 written notice within one year." Id.

Subsequently, in Funaioli v. New London, 52 Conn. App. 194 (1999), our Appellate Court reviewed a challenge to the board's subject matter jurisdiction involving a claimant who was diagnosed with hypertension in 1987 but did not file a form 30C until 1992. Citing, inter alia, Hayden-LeBlanc, supra, the court affirmed the commissioner (reversing the Opinion of this board) in concluding that the claimant's submission of an FRI, accompanied by a cover letter from counsel indicating that a hearing was not being requested at that time, was sufficient to satisfy the notice of claim requirement. The court noted that "[b]ecause the commissioner's determination is supported by his factual findings, we cannot conclude that he improperly found that the documents submitted by the plaintiff met the notice of claim requirement." Id., 198.

In Mehan v. Stamford, 127 Conn. App. 619, *cert. denied*, 301 Conn. 911 (2011), our Appellate Court upheld the commissioner and this board in a claim involving a firefighter who, upon receiving a diagnosis of heart disease, partially completed a notice

of claim which he then gave to the assistant fire chief, Peter Brown. Brown completed the injury section of the form and signed the form on the claimant's behalf. However, the notice was never delivered to the human resources department, which is where Brown normally sent such forms. In affirming the commissioner's decision to grant a motion for preclusion, the court stated the following:

> It was Brown's obligation to deliver forms 30C to the human resources department, and in the ordinary course of business he would have delivered the plaintiff's form there. Historically, the defendant accepted forms 30C for processing from the human resources department, the town clerk's office and the law department, thus establishing flexibility in the defendant's service procedures. When the plaintiff handed his form 30C to Brown, Brown was an administrative agent of the defendant with apparent authority to act on the defendant's behalf when dealing with the processing of workers' compensation claims. Therefore, the timely notice of the plaintiff's claim to Brown constituted timely notice of the claim to the defendant, and any deficiency on Brown's part in processing the plaintiff's form 30C did not deprive the defendant of timely notice of the plaintiff's claim.[6]

Id., 625.

> It should be noted that in reviewing Mehan, the court observed that:
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> [o]ur Supreme Court has stated that '[t]he rule of strict compliance ... is not supported by either the plain language or the legislative history of [General Statutes §] 31–297(b) [now § 31-294c].' To the contrary, our Supreme Court has noted that '[§] 31–297(b) [now § 31–294c] is remedial legislation that should be liberally construed to accomplish its humanitarian purpose.'

Id., *quoting* Pereira v. State, 228 Conn. 535, 543, n.8 (1994).

[6] The Restatement (Second) of Agency § 267 states: "A plaintiff in a tort case may establish apparent agency by proving that: (1) the principal held the apparent agent or employee out to the public as possessing the authority to engage in the conduct at issue, or knowingly permitted the apparent agent or employee to act as having such authority; (2) the plaintiff knew of these acts by the principal, and actually and reasonably believed that the agent or employee or apparent agent or employee possessed the necessary authority; and (3) the plaintiff detrimentally relied on the principal's acts, i.e., the plaintiff would not have dealt with the tortfeasor if the plaintiff had known that the tortfeasor was not the principal's agent or employee."

Ultimately, the Mehan court concluded that "the defendant has not provided any persuasive argument as to why it may have been unreasonable for the commissioner to have concluded that timely notice to Brown, as the defendant's agent, constituted timely notice to the defendant." Id., 628.

Finally, in Bedard v. Southbury, 5923 CRB-5-14-3 (April 24, 2015), a claim which also involved a firefighter, this board affirmed the findings of the commissioner relative to the sufficiency of service of the notice of claim upon the respondent municipality. The evidentiary record indicated that the claimant, a former fire chief, prepared a form 30C after sustaining an injury while fighting a fire, which he then delivered to the executive assistant to the current fire chief. While the claimant waited, the assistant completed the paperwork necessary for sending a certified copy of the form 30C to the commission.

However, as had been the case in Mehan, supra, the notice of claim was never received by the town's assistant treasurer, who was responsible for handling insurance matters, and the respondents asserted that the claimant's personal delivery of the form 30C to the assistant did not constitute adequate service because the evidentiary record indicated that the assistant was employed by the fire association and was not an agent for the Town of Southbury. This board rejected this argument, noting that testimony from the claimant indicated that when he was the fire chief, he had delivered forms 30C to the assistant, while testimony from the treasurer indicated that she had received forms 30C from the assistant in the past.

Moreover, although the board noted that the appeal could be distinguished from Mehan, supra, on the basis that the commissioner had not made a "declarative finding"

that the assistant "was an agent of the defendant with authority to act on the defendant's behalf in the processing of workers' compensation claims," id., *quoting* Mehan, supra, we held that the testimony at trial supported the inference that the assistant "was cloaked with the authority to accept a Form 30C on behalf of the town," id., and the "commissioner could not have concluded as he did without drawing the inference as to [the assistant's] authority." Id. As such, we concluded that:

> in the absence of a clear directive from either the Association or the respondent municipality regarding the proper procedure for filing notices of claim, and the apparent willingness of the respondent municipality to accept Forms 30C through a variety of channels, we find that the respondent employer demonstrated a certain "pattern and practice" in the processing and acceptance of Forms 30C. The vagaries in that process on the part of the respondent municipality should not operate to penalize the instant claimant.

Id.

Returning to the present matter, there is no dispute that although the FRI reflects that the employer was notified of the incident on November 27, 2015, the day it occurred, the form 30C was not received by the commission until July 3, 2017. However, the evidentiary record also contains testimony from the clamant indicating that "she told Charland that she was probably going to file a claim because she wasn't getting any better." Findings, ¶ 1.f; see also November 20, 2018 Transcript, p. 17. She further testified that because she was unable to get through to a workers' compensation insurance agent on the telephone, she finally went into the agency and told a representative, presumably Fanelli, that she wanted to file a claim. As discussed previously herein, Fanelli completed the FRI and told the claimant "not to worry about it because she has

two years to file a claim."[7] Findings, ¶ 1.g; see also November 20, 2018 Transcript, p. 18.

The respondents have not challenged the commissioner's factual findings in this matter, and do not dispute the claimant's narrative with respect to the circumstances surrounding her personal appearance at Paradiso or the preparation and filing of the FRI.[8] Fanelli did not testify at trial or by deposition, and the commissioner made no credibility findings with regard to any of the parties who provided testimony. This board has previously observed that a commissioner retains the discretion to determine which evidence he or she deems persuasive and is at liberty to disregard certain medical opinions or testimony even if no contradictory evidence is presented. See Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998).

However, even in the absence of credibility findings, we note that the evidentiary record contains, in addition to the FRI: (1) correspondence dated November 22, 2016, from BerkleyNet indicating that the insurer had opened a claim and assigned a claim number for a date of injury of November 27, 2015 and enclosing an Instant Access Pharmacy Card; correspondence from a third-party vendor dated March 27, 2017, arranging an RME with Driscoll on April 19, 2017; (3) correspondence dated May 4, 2017, welcoming the claimant to the BerkleyNet pharmacy program and enclosing a second pharmacy card; (4) the print-out of a recorded statement by the claimant given to Janel Munroe of BerkleyNet on November 22, 2016, describing the mechanism of injury,

[7] Our review of the formal hearing transcript indicates that the claimant testified that Fanelli "kept saying, if I'm not here it's okay, you've got two years to file anything and you know you're still hurting, so you don't even know what the extent of your injuries are. Let's you know [sic], we have time you don't have to do it right away, but I did." November 20, 2018 Transcript, p. 18.

[8] We note that Charland, in his deposition, admitted that the claimant had informed him "awhile after the incident" that she was planning to file a claim, but he denied that the claimant "[made] any references" to him about going over to the insurance agency. Respondents' Exhibit 1, pp. 30-31.

injured body parts, time lost from work, subsequent medical treatment, and claimant's medical history; and (5) Driscoll's RME report of April 19, 2017. It may therefore be reasonably inferred that the claimant's personal appearance at Paradiso on November 22, 2016, served as a catalyst for the subsequent actions taken by the respondent insurer.

Moreover, our review of the evidentiary record indicates that Charland corroborated the claimant's testimony that he assisted her to get up from the floor immediately after the fall, Respondents' Exhibit 1, p. 12, and that the claimant had communicated to him her intention to file a workers' compensation claim. Id., pp. 30, 56-57. Thus, in light of the evidentiary record in this matter, as reflected in the commissioner's findings, we believe the decision reflects an improper application of the "totality of circumstances" standard set forth in Hayden-LeBlanc, supra. The actions taken by the respondent insurer on and after November 22, 2016, serve to demonstrate that the claimant's interactions with her immediate supervisor, coupled with her personal appearance at the workers' compensation insurance agency with the express intention of filing a workers' compensation claim, reflect that the claimant "substantially complied" with the statutory notice provisions such that the respondents were provided with constructive notice of this claim.[9] Appellant's Brief, p. 7.

[9] We further note that the statutory provisions governing notices of claim for compensation state that "[n]o defect or inaccuracy of notice of claim shall bar maintenance of proceedings unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice." Section 31-294c (c). The respondents have not asserted, and the commissioner did not find, that the respondents were in any way prejudiced by the lack of a timely form 30C in this matter. On the contrary, the steps taken by the respondent insurer in response to the claimant's communications with Charland and Fanelli seem to be entirely consistent with the actions generally undertaken by an insurer when commencing the defense of a new workers' compensation claim. We recognize that in Kuehl v. Z-Loda Systems Engineering, 265 Conn. 525 (2003), our Supreme Court stated that "[t]his savings provision addresses a 'defect or inaccuracy' in a notice of claim for compensation; it does not excuse, however, the *failure to file* a notice of claim." (Emphasis in the original.) Id., 537. Nevertheless, in light of the totality of circumstances in this particular matter, the conspicuous lack of prejudice to the respondents merely serves to reinforce our conclusion that the claimant substantially

The claimant also contends that the commissioner erred in concluding that the statutory requirements for satisfying the medical care exception set forth in § 31-294c (c) were not met in this matter because the respondents did not provide the claimant with any medical or surgical care. We note that our Appellate Court has held that whether a certain set of "facts [constitutes] the furnishing of medical care under the statute is a legal conclusion on which neither the review division nor this court must defer to the commissioner." Carlino v. Danbury Hospital, 1 Conn. App. 142, 146, *cert. denied*, 192 Conn. 802 (1984).

In Gesmundo v. Bush, 133 Conn. 607 (1947), our Supreme Court explained the rationale behind the medical care exception, stating that the "exception is, no doubt, based upon the fact that if the employer furnishes medical treatment he must know that an injury has been suffered which at least may be the basis of … a claim." Id., 612. This tribunal has previously observed that:

> There is a substantial body of precedent involving claimants who have asserted that the medical care exception, as contemplated by General Statutes § 31-294c (c), obviated their need to file a timely written notice of claim. To the extent these efforts have been successful, it has been because the trial commissioner was persuaded that the factual circumstances were such that the respondent had constructive knowledge that a claim for Chapter 568 benefits was highly probable. Often, these circumstances included the fact that the respondent transported the claimant to a medical provider after being made aware of a work-related injury.

Smith-Glasper v. State/Southern Connecticut State University, 6179 CRB-3-17-3 (March 22, 2018).

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complied with the statutory notice provisions such that the respondents were provided with constructive notice of the claim.

In the present matter, the evidentiary record is devoid of any indication that the respondents physically transported the claimant to a medical provider, and the claimant herself testified that she submitted her medical bills to her group health insurer. This board has previously "held that relying on payment by an employer's group health insurer, in and of itself, does not confer knowledge on the employer that there is a potential workers' compensation claim." Valenti v. Norwalk Hospital, 5871 CRB-3-13-8 (July 16, 2014), *appeal dismissed*, A.C. 37054 (April 6, 2015), *citing* Culver v. Cyro Industries, 4444 CRB-7-01-10 (February 21, 2003). Moreover, in Spencer v. Manhattan Bagel Company, 5419 CRB-8-09-1 (January 22, 2010), we stated:

> the relevant line of inquiry in ascertaining whether the requirements of the medical care exception have been satisfied does not hinge upon whether an employer paid a certain medical invoice. Rather, the inquiry is global in nature, and should ideally lead to a determination as to whether the employer could reasonably expect that a workplace injury for which a claimant has received medical attention might conceivably lead to a workers' compensation claim against the employer.

Id.

In the present matter, the only possible factual circumstance which could even remotely serve to satisfy the medical care exception is the prescription card that was enclosed in BerkleyNet's correspondence of November 22, 2016, to the claimant. The claimant testified that she never used the card because she did not need to fill any prescriptions. See November 20, 2018 Transcript, pp. 24, 63. Nevertheless, it is the claimant's contention "that the issuance of the pharmacy prescription card should constitute medical treatment under the exception to the statute, especially when considered in conjunction with the other facts demonstrating notice of the claim within one year from the date of injury." Appellant's Brief, p. 9.

We concede that there is a certain logic to the claimant's arguments in this regard. However, we are reluctant to reverse the commissioner's conclusion on this particular issue, given that in Izikson v. Protein Science Corp., 156 Conn. App. 700 (2015), our Appellate Court specifically held that the proffering of a prescription card did not satisfy the medical care exception. In that decision, the court noted the following:

> the plaintiff failed to provide any sort of written notice informing the defendants that he was pursuing or intended to pursue a workers' compensation claim. [The controller], rather than the plaintiff, filed the first report of injury form. The plaintiff did not send any e-mails or correspondences mentioning any intent to file a claim. The plaintiff did not challenge the form 43 filed by [the insurer], but instead pursued benefits through his group health care provider. The plaintiff did not submit any medical bills to the defendants, and he did not use the prescription card [the insurer] provided to him. The plaintiff never contacted [the insurer], as [the controller] had suggested.

Id., 712.

Although the foregoing indicates that some factual similarities exist between the present matter and Izikson, there are also a number of salient differences. For instance, the insurer's correspondence to the Izikson claimant enclosing the prescription card "contained a disclaimer indicating that any payment issued by [the insurer] for prescriptions did not indicate that it had accepted any claim," id., 703, whereas in the matter at bar, the correspondence containing the prescription card contained no such disclaimer but, rather, assigned the claimant a claim number. In addition, apart from forwarding the correspondence enclosing the prescription card, the only other step taken by the Izikson respondents was to file a form 43, whereas in the present matter, upon receipt of the FRI, the respondents also took a recorded statement and referred the

claimant for an RME.[10] Finally, the record indicated that in Izikson, the claimant never contacted the insurer directly, whereas in the matter at bar, the claimant presented herself at the insurer's office with the express intention of filing a workers' compensation claim.

However, despite the factual circumstances differentiating this appeal from Izikson, we decline to reverse the commissioner's conclusion relative to the insufficiency of the prescription card for satisfying the medical care exception. Rather, consistent with our preceding analysis herein, we hold that both the furnishing of the prescription card and the referral to Driscoll for an RME contributed to the "totality of circumstances" in establishing that the claimant substantially complied with the provisions of § 31-294c (a) such that the respondents were provided with constructive notice of her workers' compensation claim.

The claimant's final claim of error in this matter concerns her contention that the respondents should be "estopped" from raising a jurisdictional challenge in light of the representations made by Fanelli that the claimant had two years to file her workers' compensation claim.[11] The claimant points out that "Fanelli was, at all times, acting as an agent on behalf of Regency Coachworks, and the Claimant was acting in accordance with the information that was being relayed to her as it relates to the filing of a workers' compensation claim." Appellant's Brief, pp. 13-14. Given that the claimant did in fact file her form 30C within two years of the date of injury, "the Respondents should be

[10] The Izikson court specifically rejected the claimant's argument that "an employee should be relieved of his or her burden of proving that an employer is on notice of the employee's pursuit or intended pursuit of a workers' compensation claim when a form 43 is submitted." Izikson v. Protein Science Corp., 156 Conn. App. 700, 713 (2015).

[11] In light of our decision to reverse the commissioner on the basis that he misapplied the "totality of circumstances" standard, we decline to reach the claimant's claim of error contending that "public policy should weigh in favor of the compensability of her claim…." Appellant's Brief, p. 13.

estopped from claiming that her claim is not compensable, particularly since she complied with the representations made by the Respondent's agent." Id., 14.

In Union Carbide Corp. v. Danbury, 257 Conn. 865 (2001), our Supreme Court explained that:

> estoppel always requires proof of two essential elements: the party against whom estoppel is claimed must do or say something calculated or intended to induce another party to believe that certain facts exist and to act on that belief; and the other party must change its position in reliance on those facts, thereby incurring some injury. (Internal quotation marks omitted.)

Id., 873, *quoting* Boyce v. Allstate Ins. Co., 236 Conn. 375, 385 (1996).

In addition, our Supreme Court has held that "it is the burden of the person claiming the estoppel to show that he exercised due diligence to ascertain the truth and that he not only lacked knowledge of the true state of things but had no convenient means of acquiring that knowledge." (Internal quotation marks omitted.) Dupuis v. Submarine Base Credit Union, Inc., 170 Conn. 344, 353 (1976).

In light of the foregoing, we do not disagree with the claimant's contention that the factual circumstances in this matter would seem to suggest that estoppel is appropriate. This is particularly so given that Fanelli, in her capacity as the representative for the employer's workers' compensation insurer, assured the claimant that her notice of claim would be taken care of and the claimant should not "worry about it" because she had two years in which to file her notice.[12] November 20, 2018 Transcript, p. 18. As such, it would seem that Fanelli's inaccurate representations regarding the filing deadline would serve to satisfy the first estoppel element required in

[12] Although we recognize that Fanelli was acting in her capacity as an "independent insurance agent" and not as an employee of Regency Coachworks, we are not persuaded that the distinction is dispositive under the particular circumstances of this matter. Appellees' Brief, pp. 7, 8.

accordance with Union Carbide, supra, and the fact that the respondents are now contesting the claim on the basis of untimely notice would seem to satisfy the second required estoppel element.

Moreover, we note that in Mehan, supra, our Appellate Court concluded that the claimant should not be penalized for an internal administrative issue involving the proper transmittal of the claimant's form 30C. Similarly, in Bedard, supra, this board also held that the claim should not be dismissed on the basis of the "vagaries" of the town's administrative processing of forms 30C. Id.

Nevertheless, this tribunal does not generally entertain arguments advocating the application of equitable remedies, as it is axiomatic that the workers' compensation commission "is a creature of statute … [and] a court which exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation." Castro v. Viera, 207 Conn. 420, 427-428 (1988), *quoting* Heiser v. Morgan Guaranty Trust Co., 150 Conn. 563, 565 (1963). Moreover, it is well-settled that "once the question of lack of jurisdiction of a court is raised, '[it] must be disposed of no matter in what form it is presented;' and the court must 'fully resolve it before proceeding further with the case.'" (Internal citations omitted.) Id., 429-430. We are therefore reluctant to conclude that the commissioner was obligated to invoke the principles of equitable estoppel in the present matter.

However, it is equally axiomatic that the "remedial purpose of Workers' Compensation Act should not be defeated by narrow and technical construction," Gartrell v. Department of Correction, 259 Conn. 29, 41 (2002), *citing* Muldoon v. Homestead

Insulation Co., 231 Conn. 469, 483 (1994); and "workers' compensation legislation ... should be broadly construed in favor of disabled employees." Szudora v. Fairfield, 214 Conn. 552, 557 (1990). As such, although we decline to hold that the commissioner erred in failing to find that the respondents in this matter were equitably estopped from raising the issue of jurisdiction, we do conclude that the "totality of circumstances" standard as set forth in Hayden-Leblanc, supra, was misapplied. Contrary to the commissioner's decision in this matter, we hold that the claimant's interactions with her immediate supervisor and her appearance on November 22, 2016, at the workers' compensation insurer's office with the express intention of filing a workers' compensation claim, coupled with the respondents' actions in assigning a claim number, providing the claimant with two prescription cards, taking a recorded statement, and referring the claimant for an RME, serve to establish that the claimant substantially complied with the statutory provisions of § 31-294c such that the respondents were provided with constructive notice of the claim.

There is error; the August 5, 2019 Finding and Dismissal of Peter C. Mlynarczyk, Commissioner acting for the Second District, is accordingly reversed and remanded for additional proceedings consistent with this Opinion.

Commissioners William J. Watson III and Toni M. Fatone concur in this opinion.