CASE NO. 6351 CRB-1-19-10 CLAIM NO. 100213542	:	COMPENSATION REVIEW BOARD
JOANN C. SMITH CLAIMANT-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
v.	:	NOVEMBER 5, 2020
SEDGEWICK CLAIMS MANGEMENT SERVICES EMPLOYER		
and		
SEDGEWICK CMS, INCORPORATED INSURER RESPONDENTS-APPELLEES		

APPEARANCES:

The claimant appeared at oral argument before the board as a self-represented party. At the formal hearing, the claimant was represented by Richard Lynch, Esq., Lynch, Traub, Keefe & Errante, 32 Trumbull Street, New Haven, CT 06506.

The respondents were represented by Lynn M. Raccio, Esq., 510 Rutherford Avenue, Hood Business Park, Boston, MA 02129.

This Petition for Review from the September 25, 2019 Finding and Dismissal by Daniel E. Dilzer, the Commissioner acting for the First District, was heard July 24, 2020 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Randy L. Cohen and Maureen E. Driscoll.[1]

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

OPINION

STEPHEN M. MORELLI, CHAIRMAN. The claimant has appealed from the September 25, 2019 Finding and Dismissal (finding) reached by Commissioner Daniel E. Dilzer (commissioner). The claimant argues the finding was inconsistent with the evidence presented at the formal hearing and she established that she sustained a compensable injury in the course of her employment. The respondents argue the claimant failed to meet her burden of proof that her injuries were compensable and that substantial evidence on the record supports the finding. Upon reviewing the finding and the arguments presented by the litigants, we are unable to reach a determination. Since the rationale for the commissioner's conclusion is opaque, we must remand this matter for an explanation as to how he arrived at his conclusions. Otherwise, we do not believe we can perform effective appellate review. Therefore, consistent with our precedent in Bazelais v. Honey Hill Care Center, 5011 CRB-7-05-10 (October 25, 2006), *appeal withdrawn*, A.C. 30307 (July 17, 2009), we remand this matter back to the commissioner for an articulation as to why he concluded the claimant's injuries were not sustained in the course of her employment.

We will summarize the facts presented to the commissioner. The claimant has worked as a claims adjuster for the respondent since 2015 and maintains a home office. She testified that she only goes into the respondent's office twice a month. The claimant's workday generally consisted of signing into the company computer network using her company password, typically at 8:30 a.m. on workdays, and she would process payments, answer e-mails and interact with coworkers through the company computer network from her home until she logged off the computer usually at 5:15 p.m. The

claimant's office was on the second floor of her home and she testified that when she went downstairs to obtain a snack or to eat lunch she would not log off. The claimant further testified that on June 29, 2018, she was going up the stairs after getting something to drink in the kitchen at approximately 10:30 or 10:45 a.m. when she tripped on the stairs. She fell down the stairs and landed on her left shoulder. She testified that the fall was very painful and she thought she had broken her arm.

The claimant testified she laid on the floor awhile, gathered herself, and then went back up the stairs to log off the computer. The day of her fall was the day of the company picnic and she had the option to go to the picnic, take personal time, or continue to work. The claimant further testified if she had her cell phone on her she would have called an ambulance, but she did not, nor did she notify her supervisor as to the incident prior to logging out of her computer. She said she took some Advil tablets and decided to attend the picnic. She arrived at noon and interacted with other guests, but she did not tell anyone at the picnic she had injured herself at home that day. Because she was still in pain, she left the picnic at 2 p.m. A witness for the respondents, Carolyn Thomas, testified that she had lunch with the claimant at the June 29, 2018 picnic, and the claimant did not tell her she had been injured, nor did she see any behavior or signs from the claimant that would indicate the claimant was injured.

The claimant stated that after she left the picnic she went home and rested over the weekend. She did not seek medical attention. On Monday, she stated she felt like she had to report the injury. She testified that she reported this at 8 a.m. to her supervisor, Catherine Morneault. After reporting the incident to her supervisor, it took 15 or 20 minutes for the claims department to contact her to get the details of the injury. The

claimant testified that her employer directed her to go to Concentra. The respondents produced evidence that the call occurred at 7:27 a.m. and did not reference a work injury. The commissioner found at 9:24 a.m. on July 2, 2018, the claimant asked her supervisor, via instant message, "[i]s there workers comp for telecommuters? I fell Friday about 11:30 at home, going up the stairs. Possible rotatos (sic) cuff or tendon injury. Let me know. Trying to work through it, but thought I should report it." Findings, ¶ 18. The respondents filed a first report of injury that same day. That report states the claimant reported the injury via e-mail and that the injury occurred at approximately 11:30 a.m. on June 29, 2018. The respondents produced computer records indicating the claimant had logged off their system at 11:03 a.m.

The respondents directed the claimant to go to Concentra Care Center where she had an X-ray of her shoulder, which did not reveal a fracture, but could not detect whether a rotator cuff tear was present. The claimant was referred to physical therapy, which failed to alleviate the claimant's symptoms. She was referred for an MRI, which was not performed as the claim was denied. The claimant has not missed any days from work as a result of her injury.

Based on this record, the commissioner reached the following conclusions.

> A. I find at all times the Claimant was employed by the Respondent and subject to the provisions of Chapter 568 of the Connecticut General Statutes.
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> B. The Claimant's injury did not occur in the course of her employment with the Respondent.
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> C. Therefore, the Claimant's claim is hereby DISMISSED.

Conclusion, ¶¶ A-C.

The claimant did not file a motion to correct, but did file a timely appeal. In her reasons of appeal, she states that since she was injured while working at a home office she believes her injuries should have been found to have been sustained in the course of her employment. The respondents argue that this constitutes a question of fact and that the commissioner resolved this factual issue in a manner adverse to the claimant.

The standard of deference 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 (1988). Nonetheless, while we must provide deference to the decision of a trial commissioner, we may reverse such a decision if the trial commissioner did not properly apply the law or reached a decision unsupported by the evidence on the record. See Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007). Moreover, when an appellate panel is presented with an inadequate record from a trial court, it cannot conduct a proper appellate review from that record. See Springer v. J.B. Hunt Transport, Inc., 145 Conn. App. 805, 818-19 (2013).

In reviewing the finding we note the commissioner found a number of facts, but failed to state his reasoning for concluding that those facts compelled him to dismiss the claim as being outside the scope of Chapter 568. Injuries claimed to have been sustained at what the claimant asserted was a home workplace have resulted in this board affirming findings of both compensability and dismissal, see Tutunjian v. Burns, Brooks & McNeil, 5618 CRB-6-11-1 (March 21, 2012), and also see Biggs v. Combined Insurance

Company of America, 6247 CRB-7-18-2 (April 12, 2019). The cases cited above included detailed analysis by the trial commissioner as to why they concluded the claimant was within or outside the scope of their employment at the time they were injured. This included an examination as to whether the home workplace at the time of the injury met the test delineated in Matteau v. Mohegan Sun Casino, 4998 CRB-2-05-9 (August 31, 2006), "in which a claimant must demonstrate 'a regular and substantial quantity of work to be performed at home, the continuing presence of work equipment in the home, and special employment circumstances that make it necessary rather than personally convenient to work at home.'" Labadie v. Norwalk Rehabilitation Servs., 4254 CRB-7-00-6 (June 21, 2001). See also 3 A. Larson & L. Larson, Workmen's Compensation Law (2000), §§ 16.10 [2], pp. 16-27.

The claimant herein believes she established that her home office met the test delineated in Matteau, but as the respondents point out, this does not end our inquiry. The claimant has the burden of proving her injury occurred in the course of her employment. While we may infer the commissioner was not persuaded of this fact we cannot, as an appellate panel, speculate from this record as to why he was not persuaded. The commissioner rendered no opinion as to the relative credibility of the witnesses, nor did he reach a determination as to whether he believed the claimant was injured on the morning of June 29, 2018. Assuming *arguendo*, the commissioner believed the claimant was injured on that date, we believe he needed to determine whether or not he believed the claimant was providing a benefit to her employer at the time of her injury. "[W]e note that a determination as to whether an injury was sustained in the course of employment is a fact-driven exercise." Biggs, supra. These are factual determinations

that we cannot perform while conducting appellate review and we believe pursuant to Bazelais,[2] supra, we must remand this matter for clarification.[3]

> An articulation may be necessary where the trial court fails completely to state any basis for its decision; or where the basis, although stated, is unclear. (citations omitted). State v. Wilson, 199 Conn. 417, 434 (1986). A Motion for Articulation should be granted when the basis of the commissioner's conclusion is unclear. Chemero v. Westreco, Inc., 10 Conn. Workers' Comp. Rev. Op. 142, 1081 CRD-7-90-7 (June 29, 1992). Brown v. State/Department of Correction, 4609 CRB-1-03-1 (December 17, 2003), *aff'd*, 89 Conn. App. 47 (2005), *cert. denied*, 274 Conn. 914 (2005). While in Brown this board did not believe the facts warranted a remand for articulation, we believe the standard as defined in Brown for causing an articulation to occur has been met in this case.

(Internal quotation marks omitted.) Id.

As a result, since the basis for the commissioner's conclusion in this matter is not sufficiently clear, we remand this matter to the commissioner for a detailed articulation as to his reasoning for the dismissal of the claim.

Commissioners Randy L. Cohen and Maureen E. Driscoll concur in this Opinion.

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[2] In Bazelais v. Honey Hill Care Center, 5011 CRB-7-05-10 (October 25, 2006), *appeal withdrawn*, A.C. 30307 (July 17, 2009), we determined the trial commissioner found two medical witnesses who offered inconsistent opinions both credible and we remanded the matter so he could articulate what opinions he relied upon and how he arrived at his ultimate conclusions.

[3] See also Aylward v. Bristol/Board of Education, 5756 CRB-6-12-5 (May 15, 2013), *aff'd*, 153 Conn. 913 (2014) (per curiam), where we held "[t]here may well be probative and reliable expert opinions in the record supportive of the trial commissioner's conclusion herein. It is not our place as an appellate board to reweigh the evidence. On the other hand, we are not allowed to speculate on what evidence the trier of fact finds persuasive and reliable in the absence of the commissioner identifying such evidence."