CASE NO. 6358 CRB-5-19-11 CLAIM NO. 500168435	:	COMPENSATION REVIEW BOARD
GLADYS REVERON CLAIMANT-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
v.	:	SEPTEMBER 16, 2020

COMPASS GROUP
EMPLOYER

and

NEW HAMPSHIRE INSURANCE COMPANY
GALLAGHER BASSETT SERVICES, INCORPORATED
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by John T. Bochanis, Esq., Daly, Weihing & Bochanis, 1776 North Avenue, Bridgeport, CT 06604.

The respondents were represented by Jane M. Carlozzi, Esq., Nuzzo & Roberts, L.L.C., One Town Center, P.O. Box 747, Cheshire, CT 06410.

This Petition for Review from the October 25, 2019 Finding and Decision by Carolyn M. Colangelo, the Commissioner acting for the Fifth District, was heard May 22, 2020 before a Compensation Review Board panel consisting of Commissioners Randy L. Cohen, William J. Watson III and Maureen E. Driscoll.

OPINION

RANDY L. COHEN, COMMISSIONER. The claimant has appealed from the October 25, 2019 Finding and Decision (finding) issued by Commissioner Carolyn M. Colangelo (commissioner) which dismissed the claim that the claimant submitted for a March 7, 2017 fall down incident. The claimant alleged that she injured her back when she fell down on this date. The commissioner determined that the claimant's testimony as to that incident was not credible or persuasive. She also found the opinion of the respondents' medical examiner credible and persuasive. The examiner opined that the incident was not a factor in the claimant's current medical condition. The claimant has appealed, arguing that the commissioner failed to properly credit the evidence on the record supportive of a finding of compensability and should not have credited the testimony of the respondents' medical examiner. The respondents argue that the claimant is essentially contesting matters entrusted to the commissioner's discretion. The respondents contend that there was sufficient probative evidence in the record to support the result reached in this case. We agree with the respondents and we affirm the finding.

The commissioner reached the following findings of fact at the conclusion of the formal hearing. She noted that the claimant testified that she began to work for the respondent in August 2016. On March 7, 2017, the claimant "slipped on an icy ramp, and timely reported her fall to the grounds keeper for the respondent." Findings, ¶ 3. That individual, Mark William Francisco, testified that the claimant had told him that morning she fell. See Claimant's Exhibit A. The claimant was offered but declined medical

treatment immediately after the incident. She testified that while she felt sore after the incident, she decided to wait to see if the pain in her back would go away.

On March 7, 2017, the day of the fall, the claimant had a follow-up appointment at Concentra, where she had been treating for a prior work-related left knee injury. See Findings, ¶ 6. At this visit, the claimant mentioned that "her knee pain had resolved. She did not mention the fall earlier in the day, nor did she mention any back pain." Findings, ¶ 7. About two or three weeks after the incident the claimant sought authorization to treat for a back injury but did not receive authorization to treat until September. She filed a form 30C seeking benefits for this injury in April 2017, which was received by the commission on May 4, 2017.

The claimant continued to treat for prior injuries in 2017, and on May 11 of that year she was examined by her neurosurgeon Gary Zimmerman, M.D., for follow up to a cervical fusion and discectomy. Zimmerman's note states, "Gladys is back to work light duty. She is having severe neck pain. Pain is exacerbated with work." Findings, ¶ 10 *citing* Respondents' Exhibit 7. The May 11, 2017, note contains no mention of back pain and no reference to the March 7, 2017 fall. The claimant testified that she previously had a lumbar fusion in 1995. She also testified that she had not experienced back pain while working for the respondent until the March 2017 fall on the ramp and that she had never had pain on her left side. The commissioner noted that the claimant had presented to Zimmerman on September 13, 2016, for follow up on her cervical spine condition and complained of "on going, long standing back pain that radiates down her legs." Findings, ¶ 14, *citing* Respondents' Exhibit 7. On August 11, 2015, Zimmerman stated the claimant "suffers from cervical/lumbar radiculopathy, and cannot sit or stand for long

periods." Findings, ¶ 15 *citing* Respondents' Exhibit 7. The commissioner also cited the claimant presenting for back pain to a number of treaters on a number of occasions between 2007 and 2010. See Findings, ¶¶ 16-19.

On September 19, 2017, the claimant went to Eric J. Katz, M.D., for treatment of back pain she attributed to the March 2017 fall. Katz stated:

> This 58 year old female states that on 03/07/17 while working for Flick Company in the kitchen, was walking up an icy ramp, slipped and fell injuring the low back region . . . The patient now complains of ongoing symptoms . . . into the left groin and thigh aggravated by long period of standing . . . .

Findings, ¶ 20, *citing* Respondents' Exhibit 1.

Katz later issued a report on May 22, 2018 on the issue of causation. This report concluded that the claimant's injury of March 7, 2017, "is a substantial factor causing her current lumbar symptoms." Findings, ¶ 21, *citing* Respondents' Exhibit 1.

The claimant was also examined by the respondents' medical examiner, Michael Karnasiewicz, M.D., and by a commissioner's examiner, Stephan C. Lange, M.D. Karnasiewicz determined that the incident of March 7, 2017, was not a substantial factor in the claimant's current condition or need for treatment for her low back. At his deposition Karnasiewicz cited to this written report which stated:

> There is a note from Dr. Zimmerman from September of 2016 where he states that Ms. Reveron has longstanding back pain that radiates down her legs that is becoming more of an issue. Symptoms are significantly limiting. Symptoms were so significant an MRI scan was performed. An MRI scan after the alleged injury is unchanged.
>
> After review of the patient's records, review of her imaging, history from the patient, examination of the patient, it is my feeling that it is not probable that the incident of 3/07/2017 is a substantial factor in the patient's current condition or need for treatment for her back.

Findings, ¶ 23, *citing* Respondents' Exhibit 11.

Lange performed a commissioner's examination on July 31, 2018, and issued a brief addendum to his initial report on October 2, 2018. This addendum stated in part "it is my opinion that the patient's work injury of March 7, 2017, is not a substantial contributing factor for her need for continued treatment for the back." Findings, ¶ 25 *citing* Respondents' Exhibit 9. Lange was deposed later and offered testimony at this deposition that the commissioner found "vacillated." Findings, ¶ 26.

> I apologize to everyone for being on the fence like this. You know, it's very soft, at best, to say that - - with this information, that the 2017 event pushed her into anything.
>
> Again, I'm kind of bothered by the fact that the symptoms and the complaints surfaced months later in a strong fashion; whereas, you know, she was complaining about it months before, then you had the event, and then you had the complaints thereafter.

Id., *citing* Claimant's Exhibit F, p. 28.

Based on those facts, the commissioner concluded that the claimant's testimony was not persuasive, nor was it credible. See Conclusion, ¶¶ C-D. She did not find Katz a reliable witness based on the fact his opinions were based in part on a narrative of the claimant, whom she did not find credible. See Conclusion, ¶ F. She did not find Lange a persuasive witness as his initial opinion had changed and that in the end he said he was "on the fence." Conclusion, ¶ G. On the other hand, she found Karnasiewicz's opinion fully credible and persuasive as it "comports with the balance of the evidence, including the medical records and diagnostic imaging in the record." Conclusion, ¶ E. Accordingly, she dismissed the claim for benefits.

The claimant filed a motion to correct seeking four corrections, three of which sought to expound as to the findings reached based on the opinions of Zimmerman, Karnasiewicz and Lange. The commissioner denied this Motion in its entirety and the claimant has pursued this appeal. The gravamen of the appeal is that the weight of the medical evidence, in particular how the claimant views the opinions of the commissioner's examiner, supported a finding of compensability. The respondents argue that the commissioner was simply not persuaded by this evidence and we find that paradigm applicable to this appeal.

The standard of deference we are obliged to apply to a commissioner's findings and legal conclusions on appeal is well-settled. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). "This presumption, however, can be challenged by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

We note that the claimant argues that since the commissioner's examiner appeared to support her claim for benefits that it was error for the trial commissioner not

to accept this opinion and award benefits. This is not an issue of first impression as the appellant in Sanchez v. Edson Manufacturing, 5980 CRB-6-15-1 (October 6, 2015), *aff'd*, 175 Conn. App. 105 (2017), raised a similar argument, and we determined that in that case the commissioner acted reasonably in choosing to rely upon the opinion of the respondent's examiner in that case. In Sanchez, we noted that our precedent, most notably DiNuzzo v. Dan Perkins Chevrolet Geo, Inc., 294 Conn. 132 (2009), established the need for a claimant to establish a nexus of proximate cause between his or her condition and the compensable injury to support a bid for benefits. "[T]he test of proximate cause is whether the defendant's conduct is a substantial factor in bringing about the plaintiff's injuries. . . . Further, it is the plaintiff who bears the burden to prove an unbroken sequence of events that tied his injuries to the [defendant's conduct]. . . ." Id., 142.

The claimant argues she presented evidence that she was injured at work and that this was the substantial factor behind her current medical condition. We do note that she did report falling at work to a coworker in a contemporaneous manner. The commissioner also noted that the claimant had a number of prior back injuries and that on the day of the incident, was examined at Concentra for a prior injury to her knee and did not raise the workplace incident earlier in the day to her treater. The claimant did testify that she thought that since the appointment at Concentra that day was to address a prior knee injury that her fall earlier was not relevant to the examination, and she would need to file a new claim for any back injury. See April 9, 2019 Transcript, pp. 68-69. While the claimant does not believe that her failure to address an injury earlier in the day to a medical treater should bear on whether this injury was a significant factor in her

current disability, we believe the commissioner was entitled to reach a different conclusion.[1] We note that the commissioner did not find the claimant a credible witness after observing her testify. This is a decision that an appellate panel such as ours cannot revisit. See Burton, supra, 40; see also Baron v. Genlyte Thomas Group, LLC, 132 Conn. App. 794, 804 (2010), *cert. denied*, 303 Conn. 939 (2012), *citing* Samaoya v. Gallagher, 102 Conn. App. 670, 673-74 (2007); Barbee v. Sysco Food Services, 5892 CRB-8-13-11 (October 16, 2014), *aff'd*, 161 Conn. App. 902 (2015) (per curiam).

If the claimant was not found to be fully credible, the commissioner could discount any medical opinion reliant on her narrative. See Abbotts v. Pace Motor Lines, Inc., 4974 CRB-4-05-7 (July 28, 2006), *aff'd*, 106 Conn. App. 436 (2008), *cert. denied*, 287 Conn. 910 (2008). Therefore, the commissioner would be justified in determining that Katz was not a reliable witness. It would also support her decision to deny a motion to correct seeking to find Zimmerman a reliable witness.[2] We turn to her decision to find the commissioner's examiner an unreliable witness. She specifically found his testimony vacillated and was somewhat equivocal. Having reviewed his testimony we do not find that determination lacked support in the record. Since "[i]t is the trial commissioner's function to assess the weight and credibility of medical reports and testimony," O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818 (1999), *quoting* Iannotti v. Amphenol/Spectra-Strip, 13 Conn. Workers' Comp. Rev. Op. 319, 321 1829 CRB-3-93-9

[1] See DeMattia v. Dunkin Donuts, 6289 CRB-4-18-9 (August 27, 2019), *appeal withdrawn*, A.C. 43403 (March 17, 2020), where a claimant's failure to mention a work injury to a treating physician was cited as grounds not to find her testimony reliable.

[2] As we have often observed, when a trier of fact is not persuaded by testimony, or finds evidence not probative or credible, they are not obligated to grant a motion to correct. See Brockenberry v. Thomas Deegan d/b/a Tom's Scrap Metal, Inc., 5429 CRB-5-09-2 (January 22, 2010), *aff'd,* 126 Conn. App. 902 (2011) (per curiam). We find no error from the commissioner's denial of the motion to correct.

(April 25, 1995), *aff'd*, 40 Conn. App. 918 (1996) (per curiam), we must defer to her assessment as to the persuasiveness of Lange's opinions herein.

We previously observed that Sanchez, supra, stands for the proposition that a commissioner may find a respondent's medical examiner more persuasive than the commissioner's examiner. Our precedent is that when a commissioner does not rely upon that opinion that a commissioner should proffer an explanation for discrediting that opinion. See Madden v. Danbury Hospital, 5745 CRB-7-12-4 (April 22, 2013). Conclusion, ¶ G, clearly explains the commissioner's rationale herein and therefore we find this decision comports with our precedent.

We have reviewed Respondents' Exhibit 11, which was Karnasiewicz's report following an examination of the claimant. After the examination he opined:

> Ms. Reveron has chronic low back pain. There is a note from Dr. Zimmerman from September 2016 where he states that Ms. Reveron has longstanding back pain that radiates down her legs that is becoming more of an issue. Symptoms are significantly limiting. Symptoms were so significant an MRI scan was performed. An MRI after the alleged injury is unchanged.

Id., p. 2.

Karnasiewicz opined that, "it is not probable that the incident of 03/07/2017 is a substantial factor in the patient's current condition or need for treatment for her lower back," id., and held to that opinion at his deposition. Respondents' Exhibit 11, p. 9. As a result, conclusion, ¶ E, faithfully recites the evidence of record.

The opinions of the respondent's medical examiner provide support in the record for the decision reached by the commissioner. We note that they are consistent with objective test results. See Shelesky v. Community Systems, Inc., 6263 CRB-5-18-4 (July 3, 2019), where the commissioner found the absence of objective evidence of a

concussion decisive. The commissioner had the right to find the respondent's examiner offered the most persuasive opinions. See O'Reilly, supra; also, Jodlowski v. Stanley Works, 169 Conn. App. 103, 108-109 (2016). Even had the commissioner not found Karnasiewicz's opinion credible, in the absence of finding the other witnesses credible and persuasive she would have been forced to dismiss this claim, for the reasons stated in Toroveci v. Globe Tool & Metal Stamping Co., Inc., 5253 CRB-6-07-7 (July 22, 2008).

It is well-settled that within the workers' compensation forum, the claimant bears the burden of persuasion in establishing that their employment was the proximate cause of their injuries. See Sapko v. State, 305 Conn. 360, 372 (2012); Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 447 (2001). The claimant failed to persuade the commissioner that her present lumbar condition was the result of the March 7, 2017 incident at work and as evidence on the record supports the commissioner's decision not to award benefits, we are compelled to uphold her decision.

There is no error; the October 25, 2019 Finding and Decision of Carolyn M. Colangelo, the Commissioner acting for the Fifth District, is accordingly affirmed.

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