CASE NO. 6370 CRB-6-20-1 CLAIM NO. 700182412	:	COMPENSATION REVIEW BOARD
RALPH REED CLAIMANT-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
v.	:	JANUARY 27, 2021

ASBESTOS MANAGEMENT COMPANY, L.L.C.
EMPLOYER

and

BERKLEY NET UNDERWRITERS
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Laura Ondrush, Esq., The Dodd Law Firm, L.L.C., 1781 Highland Avenue, Suite 105, Cheshire, CT 06410.

The respondents were represented by Michael J. McAuliffe, Esq., Pomeranz, Drayton & Stabnick, L.L.C., 95 Glastonbury Boulevard, Glastonbury, CT 06033-4412.

This Petition for Review from the December 16, 2019 Finding & Dismissal by William J. Watson III, the Commissioner acting for the Sixth District, was heard June 26, 2020 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Randy L. Cohen and Brenda D. Jannotta.[1]

[1] We note that two motions for extension of time were granted during the pendency of this appeal.

OPINION

STEPHEN M. MORELLI, CHAIRMAN. The claimant has petitioned for review from the December 16, 2019 Finding & Dismissal (finding) by William J. Watson III, the Commissioner acting for the Sixth 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 the compensability of eye injuries sustained by the claimant in a fall on December 1, 2017. The following factual findings are pertinent to our review. The claimant began working for the respondent employer in June 2002 and left the employment in May 2018. The claimant's duties included asbestos removal and lead abatement; at some point in time prior to the date of injury, he had become a supervisor. The owner of the company was Daniel Cimmino.

At approximately 7:00 a.m. on December 1, 2017, the claimant, along with Jason Reed, his nephew and co-worker, and three other workers arrived at a condominium in Danbury, Connecticut, to prepare the unit for asbestos removal.[2] The claimant testified that he and the other members of the crew worked from 7:00 a.m. until just before noon, at which time they took a lunch break. The claimant testified that he met Reed in the company van but once inside the van, he felt "discombobulated" and dizzy and stepped out to get some air.[3] June 5, 2019 Transcript, p. 15.

[2] In the interests of clarity, we will refer to the claimant as "the claimant" and Jason Reed as "Reed."
[3] Reed testified that when the claimant got into the van, he appeared to be having some difficulty fastening and unfastening his seatbelt.

The claimant then returned to the condominium to make sure the unit was secure. While doing so, he was talking on his cell phone with Cimmino regarding the status of the job.[4] After speaking with Cimmino, he began to walk back to the van to go to lunch. The next thing he remembered was waking up at Danbury Hospital. He testified that he had no recollection of falling, what might have caused him to fall, or the location where he fell.

When the claimant failed to return to the van, Reed went to search for him and found him lying face down and unconscious on the sidewalk. Reed called for an ambulance and also called the claimant's wife. The City of Danbury EMS notes indicated that "[t]he patient was found seated on the ground outside the structure. The patient was alert and confused."[5] Claimant's Exhibit A, p. 1. The claimant was transported to the Danbury Hospital emergency department, and the provider note from that encounter stated the following:

> 53-year-old male who reportedly fell on a concrete surface, sustained facial injury, and subsequently . . . also sustained loss of consciousness. Patient was notably confused at the scene and had no recollection of what happened. EMS was called, patient was collared, and reported to the emergency room for evaluation.

Claimant's Exhibit B, p. 8. [December 1, 2017 ED Provider Note, p. 1.]

This provider note also stated:

> It is unclear the height at which the patient fell, but patient was clearly concussed and had no recollection of the event. What is also unclear, according to a nephew who was reportedly there, patient may have had some . . . confusion prior to the fall. This raises the question as to whether or not something may have preceded that could have caused the fall such as a seizure, TIA, or

[4] Cimmino confirmed the claimant's testimony that he spoke with the claimant around noon on December 1, 2017. He indicated the claimant was not immediately replying to his questions and he felt there was something "weird" going on with him. June 5, 2019 Transcript, p. 42.

[5] Reed testified that it was not his recollection that the claimant was sitting up when the paramedics arrived.

> other neurological, or possible cardiac event. As a result patient will be subsequently admitted to the medical service on telemetry to be seen and reevaluated by neurology as well.

Id., 18. [December 1, 2017 ED Provider Note, p. 11.]

In addition, the note stated that a CT scan had "revealed a fracture to the lateral and inferior orbital walls of the left orbit." Id. Although a CT scan of the neck demonstrated spinal stenosis, the claimant "denied any previous history of neck problems, or problems with his arms." Id. The claimant was deemed neurologically stable and the cervical collar was removed.

During the course of the claimant's treatment at Danbury Hospital, blood and urine tests were conducted and a toxicology analysis demonstrated positive screens for amphetamines and cocaine. See id., 14, 28. [December 1, 2017 ED Provider note, p. 7; December 1, 2017 Western Connecticut Health Network laboratory report, p. 3.] In a consultation report, Samuel Markind, M.D., stated that the claimant "[recalled] that he was not feeling well prior to the episode; he denied any symptoms more specific than that." Id., 35. [December 2, 2017 Western Connecticut Health Network Consultation report, p. 1.] In addition, while taking a history from the claimant, Lily Singhaviranon, M.D., one of the attending physicians, noted that "[t]he patient is now stating that he used cocaine 2 days back. He is also stating that he has been drinking alcohol about 5 to 6 days a week, so there was concern about alcoholism and drug abuse." Id., 31. [December 1, 2017 Western Connecticut Health Network History and Physical report, p.1.]

The Hospitalist/Housestaff Progress Note of December 2, 2017, indicated that the claimant admitted he had used cocaine on November 30, 2017, and drank eight beers and

scotch several times a week. The note also stated that the claimant's syncope was "likely" due to his alcohol and substance use. Respondents' Exhibit 2, p. 2. The Hospitalist/Housestaff Progress note of December 3, 2017, indicated that the claimant suffered from a "recurrent syncopal episode likely due to blackouts from ETOH/cocaine/amphetamines," Respondents Exhibit 3, p. 1, and posited a diagnosis of "polysubstance abuse" involving cocaine, amphetamines and alcohol. Id., 2. The report also noted that the claimant denied having an alcohol or substance abuse problem.

The Hospitalist/Housestaff Progress note of December 4, 2017, indicated a diagnosis of "syncope plus LOC likely secondary to alcohol and substance abuse," Respondents' Exhibit 3, p. 1, and stated that counseling was given to the claimant regarding alcohol and substance abuse. Likewise, the hospital discharge instructions indicated a diagnosis of syncope and polysubstance abuse. See Claimant's Exhibit B, p. 2. [December 4, 2017 Western Connecticut Health Network Discharge Instructions and Home Medication List, p. 1.]

Having heard the foregoing, the commissioner concluded that the claimant had "provided no persuasive medical evidence, testimonial evidence or demonstrative evidence that [his] injuries arose out of or in the course of his employment." Conclusion, ¶ B. Instead, the commissioner determined, on the basis of the medical evidence and statements given by the claimant to his medical providers, that the claimant had "suffered a syncope incident secondary to alcohol and substance abuse," Conclusion, ¶ C, which incident was "an idiopathic event, solely independent of any work activities on December 1, 2017." Id. The commissioner denied and dismissed the claim for

workers' compensation benefits associated with the injuries sustained by the claimant on December 1, 2017.

The claimant filed a motion to correct, which was denied in its entirety, and this appeal followed. On appeal, the claimant contends that the commissioner erroneously concluded that the respondents "met their burden of proof even though they failed to provide an expert opinion in order to prove that the Claimant's intoxication was a substantial factor in causing the injuries that resulted from the Claimant's fall." Appellant's Brief, p. 7. The claimant also contends that the commissioner erred in failing to conclude that the claimant's injuries arose out of and during the course of his employment.[6]

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

[6] General Statutes § 31-275 (1) states in relevant part: "'Arising out of and in the course of [the] employment' means an accidental injury happening to an employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee's duty in the business or affairs of the employer upon the employer's premises, or while engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer . . . ."

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 with the claim of error relative to whether the commissioner erred in concluding that the respondents met their burden of proof as to causation in the absence of an expert opinion indicating that the claimant's impairment at the time he sustained his injuries was a substantial contributing factor to those injuries. The claimant challenges the commissioner's decision to rely upon medical records which "were prepared by essentially unidentified treaters who may or may not have even been qualified to testify as to whether the Claimant's use of any of the substances referred to were a substantial factor in causing his fall." Appellant's Brief, p. 7. The claimant further points out that the treaters were neither identified nor disclosed as expert witnesses, they provided no opinions as to causation, and the claimant was not given the opportunity to cross-examine the treaters or present an opinion by his own expert. Thus, although the claimant recognizes the "wide discretion" generally afforded to commissioners with regard to their factual determinations, it is the claimant's contention that the evidence submitted in this matter did not provide the commissioner with a reasonable basis for the inference that "the use of any substances was a substantial factor in [the claimant's] fall that day . . . ." Id., 8.

Before proceeding with our analysis of the merits of this claim of error, we would note that at the formal hearing held in this matter on June 5, 2019, counsel for both parties agreed that the issue for determination would be limited to compensability pursuant to General Statutes § 31-275 (1). See June 5, 2019 Transcript, p. 3. We also

note that at this hearing, counsel for the respondents stated: "We basically maintain that claimant's injury did not arise out of and in the course of employment . . . and we also question whether he was under the influence of alcohol and/or drugs pursuant to [General Statutes § 31-275 (1) (C)]."[7] Id., 6. In addition, in their proposed findings, the respondents stated that "[t]he sole issue to be determined by the undersigned is compensability under Connecticut General Statutes § 31-275." August 12, 2019 Respondents' Proposed Finding & Dismissal, p. 1. As such, it does not appear that the respondents explicitly acknowledged that they intended to proceed in accordance with the provisions of § 31-284 (a).

However, in Gamez-Reyes v. Biagi, 136 Conn. App. 258, *cert. denied*, 306 Conn. 905 (2012), our Appellate Court stated:

> An allegation of intoxication always has been held to raise an affirmative defense on which the employer bears the burden of proof. . . . Additionally, our Supreme Court has held that the employer asserting such a defense must show not only the misconduct itself but also that the injury was caused by the misconduct. . . . Intoxication, thus, always has been considered to be a matter of fact bearing on the issue of causation. (Internal citations omitted; quotation marks omitted.)

Id., 270–71.

Additionally, the court, in rejecting the respondents' argument that an allegation of intoxication pursuant to § 31-275 (1) (C) provided a basis for challenging subject matter jurisdiction, concluded:

> The burden was therefore on the defendant in this case to establish the affirmative defense of the intoxication of the plaintiff. Additionally, it was the defendant's further burden to prove that the plaintiff's intoxication caused him to fall off of the ladder and

[7] General Statutes § 31-275 (1) (C) states: "In the case of accidental injury, a disability or a death due to the use of alcohol or narcotic drugs shall not be construed to be a compensable injury."

> to suffer his injuries. The defendant is correct that, had he met his burden of proof, pursuant to § 31-284 (a), that the plaintiff was intoxicated and that the injuries were caused by intoxication, then the injuries would not be compensable pursuant to § 31-275 (1) (C).

Id., 275-76.

In light of the foregoing observations by our Appellate Court, it would therefore appear that in order to assess the compensability of injuries arising out of claims involving allegations of intoxication, a fact-finder must first engage in an analysis of whether the respondents have met the requirements necessary to establish the affirmative defense contemplated by the provisions of § 31-284 (a). It is axiomatic that in order to successfully invoke this defense, a respondent must satisfy a two-pronged inquiry. "[I]t is the respondent's burden to prove that the worker was intoxicated *at the time of the injury* and the intoxication was a substantial factor in the claimant's injury." (Emphasis added.) Gamez-Reyes v. Donald F. Biagi, Jr., 5552-CRB-7-10-5 (May 3, 2011), *aff'd, remanded in part for articulation on issue of interpreter's fees,* 136 Conn. App. 258 (2012), *cert. denied*, 306 Conn. 905 (2012). See also Carter, Civitello, et al, Connecticut Practice Series Volume 19, Workers' Compensation Law § 7:3 (2008).

This tribunal has also previously noted that "[i]n order for the intoxication exclusion to apply, the respondents need not prove that intoxication was the sole proximate cause of the injury, but only that the intoxication was a substantial factor in causing the accident." St. Germaine v. Buckingham Restaurant & Pizza, Inc., 4343 CRB-8-01-1 (January 10, 2002), *citing* Paternostro v. Arborio Corp., 3659 CRB-6-97-8 (September 8, 1998), *aff'd*, 56 Conn. App. 215 (1999), *cert. denied*, 252 Conn. 928 (2000). The elements necessary for establishing the affirmative defense have generally

been addressed through the submission into evidence toxicology reports reflecting that a claimant was actively under the influence of drugs or alcohol when the injuries occurred. See, e.g., Paternostro, supra; St. Germaine v. Buckingham Restaurant & Pizza, Inc., 4343 CRB-8-01-1 (January 10, 2002).[8]

There is no question that the evidentiary record in the present matter contains a number of medical reports confirming the presence of alcohol and other substances in the claimant's system and suggesting that the use of those substances may have played a role in the claimant's accident. For instance, as mentioned previously herein, the record contains a toxicology screening report demonstrating positive results for cocaine and amphetamines. However, as the claimant points out, the record is devoid of expert testimony addressing whether the levels of amphetamines and cocaine found in the claimant's system were such that it could be reasonably inferred the claimant was impaired *at the time of accident*, see Gamez-Reyes v. Donald F. Biagi, Jr., 5552-CRB-7-10-5 (May 3, 2011), *aff'd, remanded in part for articulation on issue of interpreter's fees,* 136 Conn. App. 258 (2012), *cert. denied*, 306 Conn. 905 (2012), or whether the levels were merely indicative of use at some point in the past.

We further note that the toxicology report also includes the following disclaimer: "This drug screen is intended for medical use and not for legal or employment purposes. Positive results have not been confirmed by a second, independent method and should be

[8] It should be noted that in Paternostro v. Arborio Corp., 56 Conn. App. 215 (1999), *cert. denied*, 252 Conn. 928 (2000), our Appellate Court affirmed the commissioner's decision "that the decedent's intoxicated state, combined with the proscribed acts of consuming alcohol while on duty and crossing the highway, constituted wilful [sic] and serious misconduct that caused the injuries that resulted in the decedent's death." Id., 223.

considered only as presumptive."[9] Claimant's Exhibit B, p. 28. [December 1, 2017 Western Connecticut Health Network laboratory results, p. 3.] In addition, the claimant testified that he took several prescription drugs on a regular basis. However, the record is devoid of expert testimony addressing the interpretive limitations of the toxicology screening or the potential role any of the claimant's prescription medications might have played in his fall and subsequent injuries.

This board has previously observed that "[i]n order to sustain a legal conclusion of liability, a medical opinion must be definite and positive and not merely speculative or likely." Moran v. Southern Connecticut State University, 4735 CRB-5-03-10 (September 9, 2004), *quoting* Aurora v. Miami Plumbing & Heating, Inc., 2 Conn. Workers' Comp. Rev. Op. 113, 238 CRD-7-83 (December 10, 1984), *no error*, 6 Conn. App. 45 (1986). Although we recognize that the issue of liability in the present matter is predicated on the sufficiency of the respondents' evidence in support of the affirmative defense of intoxication, we believe a similar standard should also apply to that determination. Given that the potential behavioral and/or physiological effects of the values demonstrated on the toxicology report cannot be considered "a matter of common knowledge," Sapko v. State, 305 Conn. 360, 386 (2012), we hold that under the circumstances of this matter, expert testimony interpreting the results of the toxicology report was required in order to provide a reasonable basis for inferring that the claimant's alcohol and/or drug use was such that he was impaired *at the time he sustained his injuries*. See Gamez-Reyes, supra.

[9] The "routine urinalysis" portion of the Western Connecticut Health Network laboratory report demonstrated negative results. The record does not appear to contain a urinalysis toxicology report.

The record also contains discharge instructions from Fernando Afonso, M.D., in which the doctor diagnosed the claimant with syncope and polysubstance abuse, and progress notes from Yung Park, M.D., in which Park attributed the claimant's fall to blackout from a syncopal episode "likely" due to alcohol and/or substance abuse. Respondents' Exhibits 2, 3. With regard to these submissions, it may be reasonably inferred that both doctors' diagnoses of polysubstance abuse were predicated on the positive toxicology report and the claimant's statements regarding his substance use when he was admitted.[10]

We acknowledge that we have previously stated that the "legally correct" burden of proof in inquiries implicating the applicability of the affirmative defense of intoxication is whether "it was more likely than not" that the claimant's injuries were due to intoxication or drug use. Claudio v. Better Bedding, 4786 CRB-1-04-2 (October 19, 2005), *appeal dismissed for lack of a final judgment*, 104 Conn. App. 1 (2007); see also Liptak v. State, 176 Conn. 320 (1978). However, a medical opinion that the claimant's injuries were "likely" due to syncope from substance abuse should not be conflated with the legal determination that "it was more likely than not" that the claimant's substance abuse was responsible for his injuries. Absent testamentary evidence from Park or Afonso explaining the reasoning behind their opinions, and the benefit of cross-examination in order to determine, inter alia, whether any other factors might have played a role in the claimant's accident, neither opinion as presented can provide a

[10] At the formal hearing, the claimant denied that he told the emergency room doctors he drank "8 beers and scotch 5 to 6 nights a week," June 5, 2019 Transcript, p. 34; he also testified that he had used cocaine two nights before the accident and not the night before. See id., 34-35. The claimant did testify that he would drink three beers a night four to five times a week. See id., 33. However, he denied using amphetamines, stating that the only medication he'd taken was his prescription for Cyclobenzaprine, and he didn't know what an amphetamine was. See id., 36.

reasonable basis for concluding that the claimant was impaired at the time he sustained his injuries.

It should also be noted that in prior cases which have come before this board involving allegations of intoxication, evidence of alcohol consumption prior to the workplace accident, in and of itself, was not always deemed dispositive. For instance, in Gamez-Reyes, supra, we stated that "intoxication is an affirmative defense and may not be presumed solely by asserting the presence of some level of a controlled substance or alcohol in the claimant's bloodstream subsequent to an injury." Id. Similarly, in Ogdon v. Treemasters, Inc., 3071 CRB-4-95-6 (December 20, 1996), this board affirmed a finding of compensability and the denial of an affirmative defense in a matter involving a claimant who had testified to consuming "a couple cans of beer" on the morning of the accident. We remarked:

> Although the evidence does show that the claimant had consumed some alcohol that morning, there is simply nowhere near enough evidence in the record to establish either prong of the intoxication defense (i.e., the intoxication itself, and its causal relationship to the accident) as a matter of law. There was no evidence that the claimant was actually affected by the moderate amount of liquor in his system, and there was testimony that the noise of the woodchipper, not the claimant's alleged intoxication, prevented him from hearing the warning cries of his co-workers when the tree fell.

Id.

Additionally, in Jacobs v. James Dwy d/b/a New Home Exteriors, 5327 CRB-5-08-3 (May 28, 2009), this board affirmed in part the decision by the commissioner to deny the § 31-284 (a) affirmative defense on both procedural and substantive grounds in

a matter involving a claimant who sustained injuries after falling off a roof.[11] The claimant subsequently testified that he had been "up late the night before using cocaine." Id. In affirming the commissioner's decision, we stated:

> The record consists solely of the claimant's testimony that he did use cocaine at a party two nights prior to the accident and hospital records documenting the presence of the drug when he was admitted. We cannot conclude that these admissions, in and of themselves, as a matter of law, demonstrate the claimant is statutorily barred from recovery.

Id.

It should also be noted that in Jacobs, this board observed that "[t]he record . . . lacks eyewitness testimony that would support the conclusion the claimant had used alcohol or drugs at the workplace … or was impaired at the time of the accident." Id. Our review of the evidentiary record in the present matter reveals a similar lack of eyewitness testimony suggesting that the claimant was under the influence of either alcohol or drugs when the accident occurred.

For instance, Reed corroborated the claimant's testimony that the claimant picked Reed up at his home in Torrington in the company truck around 6:00 a.m. and they arrived at the Danbury job site at approximately 7:00 a.m. Reed testified that the claimant did not appear to be drunk, high, or suffering from a hangover, and he did not witness the claimant drink, do any drugs, or take any pills during the drive. Reed corroborated the claimant's testimony that the crew took at break around 9:00 a.m. and then resumed working until noon, at which time they took another break for lunch. Reed further testified that during the morning shift, he did not see the claimant drink alcohol or

[11] This board remanded Jacobs v. James Dwy d/b/a New Home Exteriors, 5327 CRB-5-08-3 (May 28, 2009), for additional findings on the issue of the identity of the principal employer.

take any pills or other substances, and the claimant's behavior during this time period did not suggest that he had done so.

Under cross-examination, Reed testified that his uncle was not "acting at all unusual" during the ride to Danbury or the morning shift. June 5, 2019 Transcript, p. 52. Reed further testified that although he did see his uncle struggling with his seat belt when he got into the van to go to lunch, he thought the claimant was "messing with him" and "joking." Id., 54. Reed indicated that during the time he and his uncle were in the van together, they did not converse other than to discuss where to go for lunch. Reed's testimony therefore fails to provide a reasonable basis for the inference that the claimant's actions on the morning of the accident differed from his usual behavior on any other workday.

The evidentiary record is therefore devoid of compelling eyewitness accounts attesting to the claimant's impairment at the time he sustained his injuries and expert testimony relative to the toxicology report and the diagnoses offered by the claimant's treating physicians. As such, we are unable to sustain the commissioner's conclusion that the respondents satisfied their burden of proof with respect to the affirmative defense afforded by the provisions of § 31-284 (a) such that the claimant's injuries could be deemed non-compensable pursuant to § 31-275 (1) (C).

In his second claim of error, the claimant argues that the commissioner erroneously failed to conclude that the injuries sustained by the claimant arose out of and during the course of the employment. It is the claimant's position that he has proven the compensability of his claim by "competent evidence," Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 447 (2001), *quoting* Keenan v. Union Camp

Corp., 49 Conn. App. 280, 282 (1998), given that "there was only evidence confirming that he was on the job site when he fell, and that he fell while in the course of his job duties." Appellant's Brief, p. 6. We agree with the claimant that apart from the allegations of substance abuse, the record does not present any other explanation for the claimant's fall, and the commissioner made no additional findings in that regard.

In Clements v. Aramark Corp., 182 Conn. App. 224 (2018) [*cert. granted*, 330 Conn. 904 (September 12, 2018)], our Appellate Court reversed the Opinion of this board affirming the decision of the commissioner who had concluded that injuries sustained by the claimant did not arise out of her employment with the respondent employer but, rather, were due to a personal infirmity. The claimant, who had been injured in a fall while walking across the employer's premises on her way to sign in for her shift, was found to have had "a history of cardiac disease, hypertension, hyperlipidemia, hypothyroidism, and an irregular heartbeat. She also [had] a family history of coronary disease." Id., 227. In light of the fact that the claimant's diagnosis upon her discharge from the hospital was described as "asystolic arrest, cardiogenic syncope with concussive head injury, and hypothyroidism," id., the commissioner concluded that the claimant's injuries had not arisen out of her employment with the respondent employer but, rather, were due to an episode of cardiogenic syncope.

The Appellate Court disagreed. Citing Savage v. St. Aeden's Church, 122 Conn. 343 (1937), the court stated:

> In the present case, as in the Savage case, the plaintiff, due to a personal infirmity, fell backward and hit her head on the ground at her place of employment. Although the personal infirmity that caused her to fall did not arise out of her employment, the resultant injuries that were caused by her head hitting the ground at her workplace did arise out of her employment. Accordingly, the

> board improperly affirmed the commissioner's decision holding otherwise.[12]

Clements, supra, 237.

The Clements court further noted that in Savage, our Supreme Court had articulated its reasoning as follows:

> An injury which occurs in the course of the employment ordinarily arises out of the employment, because the fact that the employee is in the course of his employment is the very thing which subjects him to the risks which are incident to the employment. . . . But, aside from situations . . . where the injury arises from a cause which has no connection with the employment, an injury arising in the course of the employment ordinarily is the result of a risk incident to the employment. (Citation omitted.)

Savage, supra, 347-48.

Given, then, that we have determined that the commissioner's findings relative to the compensability of the injury pursuant to the provisions of § 31-275 (1) (C) cannot be sustained, and in the absence of any other findings which could provide a reasonable basis for the inference that there exists a non-work related explanation for the claimant's fall, we agree with the claimant that the compensability of this claim is governed by our Appellate Court's analysis in Clements, supra.

Finally, we note that the claimant has claimed as error the commissioner's denial of his motion to correct. Insofar as the commissioner's denial of the proposed corrections was inconsistent with the board's analysis as presented herein, the denial also constituted error.

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[12] In Savage v. St. Aeden's Church, 122 Conn. 343 (1937), our Supreme Court observed that "[t]he employer of labor takes his workman as he finds him and compensation does not depend upon his freedom from liability to injury through a constitutional weakness or latent tendency. Whatever predisposing physical condition may exist, if the employment is the immediate occasion of the injury, it arises out of the employment because it develops within it." (Internal quotation marks omitted.) Id., 346-347.

There is error; the December 16, 2019 Finding & Dismissal by William J. Watson III, the Commissioner acting for the Sixth District, is accordingly reversed and remanded for additional proceeding consistent with this Opinion.

Commissioners Randy L. Cohen and Brenda D. Jannotta concur.