CASE NO. 6390 CRB-8-20-5 CLAIM NO. 800203184	:	COMPENSATION REVIEW BOARD
AMY AHERN CLAIMANT-APPELLEE	:	WORKERS' COMPENSATION COMMISSION
v.	:	APRIL 28, 2021
ADP TOTALSOURCE/Z-MEDICA, L.L.C. EMPLOYER		
and		
LIBERTY MUTUAL INSURANCE COMPANY INSURER RESPONDENTS-APPELLANTS		

APPEARANCES:

The claimant was represented by Alexander J. Sarris, Esq., Law Office of Cicchiello & Cicchiello, L.L.P., 364 Franklin Avenue, Hartford, CT 06114.

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

This Petition for Review from the April 17, 2020 Finding and Award by Pedro E. Segarra, the Commissioner acting for the Eighth District, was heard October 23, 2020 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Randy L. Cohen and William J. Watson III.[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 respondents have petitioned for review from the April 17, 2020 Finding and Award (finding) by Pedro E. Segarra, the Commissioner acting for the Eighth District (commissioner). We find no error and accordingly affirm the decision.

The commissioner identified the following issues for determination: (1) compensability of an alleged right-knee injury sustained by the claimant on August 3, 2018; (2) medical treatment; (3) entitlement to temporary total disability benefits; and (4) entitlement to temporary partial disability benefits. The following factual findings are pertinent to our review. The claimant was hired as an Assistant Marketing Director for the respondent employer on or about October 1, 2016. Her responsibilities included coordinating company trade shows, overseeing the company web site and media publications, and various other marketing duties.

On August 3, 2018, the claimant participated at a company "field day" held offsite at Community Lake in Wallingford. The event, which was heavily attended, was paid for by the respondent employer and attendance was exclusively limited to employees. The employer's human resources department promoted the event through internal emails, flyers and posters, and the event was planned, staffed and executed by management and employees. Field day consisted of a company-sponsored lunch followed by games such as ring toss, cornhole, whiffle ball and ladder ball; employees selected the activities in which they wanted to participate and their meal options. On the day of the event, employees worked during the morning; the office building was then closed and locked for the afternoon.

The claimant testified that she generally participated in field day "because it was a team-building event, which if she failed to attend, might have negative consequences or disadvantage her in some way." Findings, ¶ 13. See also July 17, 2019 Transcript, pp. 26, 53, 66-67. During the afternoon of the event, the claimant was playing volleyball when she jumped up, twisting her right knee. Upon landing, she was unable to place any weight on her right leg.

The claimant was seen by John Ryng, PA-C, at Middlesex Orthopedic Surgeons later that day and was referred for an MRI of the right knee; Michael A. Kuhn, M.D., of Orthopedic Associates of Middletown subsequently diagnosed the claimant with ACL and meniscus tears in the right leg. On August 30, 2018, the claimant underwent surgery with Kuhn to repair the injuries. The claimant began a course of physical therapy on September 17, 2018 which continued through December 2018. Kuhn's medical reports indicated that the claimant continued to need ongoing treatment, including injections to the right knee.

On or about October 12, 2018, the claimant returned to work until November 2, 2018, at which time her employment was terminated due to a corporate reorganization. The claimant testified that in addition to several periods of total disability following the surgery, she was partially disabled from November 14, 2018, until May 13, 2019, when she found other employment. The respondents initially paid the claimant's medical expenses and indemnity benefits but, following her termination, filed a form 43 discontinuing all workers' compensation benefits.

On the basis of the foregoing, the commissioner concluded that as of the date of injury, the claimant was employed by the respondent employer as an Assistant Marketing Director. The claimant was paid for the entire workday; in the morning, she was at her

work station and in the afternoon, she attended a company event which was held exclusively for employees of the respondent. As part of this event, the claimant participated in several company-sponsored activities, including a volleyball game. While playing volleyball, the claimant sustained injuries to her right knee which required emergency medical care, surgery, and physical therapy. The commissioner determined that the medical and indemnity benefits paid by the respondents to the claimant were reasonable in light of these injuries.

The commissioner found credible the claimant's testimony indicating "that she believed … her attendance at this event was important to her employment with the respondent." Conclusion, ¶ F. The commissioner determined that the injuries sustained by the claimant "were incidental to her employment," Conclusion, ¶ G, and "there [was] a benefit to the Respondent from the participation of its employees in this event." Conclusion, ¶ H. As such, the commissioner concluded that on August 3, 2018, the claimant sustained a compensable injury to her right knee.

The respondents filed a motion to correct which was denied in its entirety, and this appeal followed.[2] In their appeal, the respondents contend that the commissioner erroneously found credible the claimant's testimony indicating that her attendance at the company field day was important for her employment. The respondents also argue that the commissioner's application of the "benefit to the employer analysis" to an injury sustained during a recreational/social event constituted error. It is therefore the respondents' position that the commissioner erred in concluding that the claimant's right-knee injuries were compensable.

[2] We note that on June 11, 2020, the claimant filed a motion to correct and motion for order to which the respondents objected on the basis of timeliness and which the commissioner denied in their entirety. The claimant has not filed a cross-appeal of the denial of these motions.

The standard of review we are obliged to apply to a 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). Thus, "it is … immaterial that the facts permit the drawing of diverse inferences. The [commissioner] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair v. People's Savings Bank, 207 Conn. 535, 540 (1988), *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

We begin our analysis with the respondents' contention that the commissioner erroneously found credible the claimant's testimony "that she believed that her attendance at this event was important to her employment with the respondent." Conclusion, ¶ F. Our review of the evidentiary record indicates that the claimant testified that "everyone was required to … head on over to the park for the field day. There wasn't a – I wasn't extended the option to stay and work, and if I had gone home, I would have had to use personal time." July 17, 2019 Transcript, p. 25. The claimant indicated that to the best of her knowledge, the office building closed at noon and no one was available to "scan in" employees. She stated that it was her "understanding … that this was a compulsory event

for Z-Medica employees," id., 26, and "it was something we were all required to attend and expected to participate in as well." Id.

The claimant also testified that she had initially signed up for cornhole and ring toss, "[b]ut at the last minute, there were scheduling issues and not enough people wanting to participate, so … [the human resources director] did some rearranging and assigned me to whiffle ball and volleyball, which I [had] not signed up for and did not want to participate in."[3] Id., 28. The claimant described both attendance at the event and participation in the scheduled activities as "compulsory," id., 53, and, with specific regard to the scheduled activities, stated that:

> they weren't optional. That's why it was – it was kind of a fiasco trying to get everyone into a slot, because most people didn't want to play things like whiffle ball or volleyball because they were athletic in nature and … that's how I ended up getting stuck doing them, because somebody had to take those slots.

Id., 29-30.

In addition, the claimant testified that a new supervisor began employment with the company on field day. "We had a new Board of Directors, a new CEO, I had a new manager … they were making really a big deal about field day and participating, and I think it would have looked really bad if somebody did not show up and did not participate in the activities." Id., 53. See also id., 67.

The respondents have challenged this testimony, contending that "[f]our employees of the appellant testified at the Formal hearing. Not one of them supported the appellee's

[3] The respondents have pointed out that although the commissioner found credible the claimant's testimony "that she believed her attendance at this event was important to her employment with the respondent," Conclusion ¶ F, he "did not find that the participation in the volleyball game at the event was important to the respondent," Appellants' Brief, p. 12, or that the claimant was "**'compelled' to play volleyball.**" (Emphasis in the original.) Id., 7. However, in light of this testimony by the claimant, found credible by the commissioner, describing the circumstances under which the claimant became involved in the volleyball game, we are not persuaded that the commissioner was required to parse his findings to the degree sought by the respondents.

contention that she was required to attend the field [day] or that she was required to play any games." Appellants' Brief, p. 5. The respondents also point out that the human resources manager "testified that the field day is sponsored by the company to provide a fun, social gathering for employees and that attendance is not mandatory." Id. See also July 7, 2019 Transcript, pp. 78, 81.

In addition, the respondents argue that several employees did not attend the field day "and nothing happened to them. They still work for Z-Medica."[4] Id., 6. It is therefore the respondents' position that the commissioner's conclusions relative to the credibility of the claimant are not supported by the evidentiary record given that "[t]he appellee's co-workers presented testimony that overwhelmingly refutes the appellee's statements that she was required to attend and required to participate in any activities during the company's field day."[5] Id., 7-8.

In reviewing this claim of error, we note at the outset that:

> Credibility must be assessed … not by reading the cold printed record, but by observing firsthand the witness' conduct, demeanor and attitude…. An appellate court must defer to the trier of fact's assessment of credibility because [i]t is the [fact finder … [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences therefrom…. As a practical matter, it is inappropriate to assess credibility without having watched a witness testify, because demeanor, conduct and

[4] The evidentiary record indicates that all but five of the employer's sixty-two or sixty-three employees attended the event. See October 8, 2019 Transcript, pp. 24-25, 59-60; Respondents' Exhibit 3.

[5] The respondents also introduced into evidence a copy of a text message dated January 10, 2020, from the claimant to Jorge Hernandez, a former coworker, wondering if Hernandez would be willing to provide a statement at trial to the effect that attendance at field day was not "completely voluntary." Respondents' Exhibit 5. At trial, respondents' counsel asserted that the correspondence cast doubt on the claimant's testimony relative to whether she believed her attendance at the field day was mandatory. See July 17, 2019 Transcript, pp. 73-74. Given that Hernandez appeared at trial and testified at length regarding this text message, we are not persuaded that the commissioner neglected to account for this evidentiary submission in reaching his assessment of the claimant's credibility. See October 8, 2019 Transcript, pp. 37-43. It is well within the purview of the commissioner to "to assess the weight and credibility of medical reports and testimony." O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818 (1999).

> other factors are not fully reflected in the cold, printed record. (Citations omitted; internal quotation marks omitted.)

Briggs v. McWeeny, 260 Conn. 296, 327 (2002).

Moreover, as the claimant accurately points out:

> Putting aside the obvious argument about how much fun it is to be outside performing physical activity for several hours during sweltering mid-day temperatures, the Trial Commissioner has the burden of assigning the weight and credibility of testimony and evidence as part of his fact-finding conclusions.[6] Whether a party introduces one piece of evidence versus one thousand on the other side is immaterial, as the substance of the evidence is the decisive factor, not mere quantity or volume.

Appellee's Brief, p. 6

We agree. As such, in view of the extensive degree of discretion generally afforded a fact-finder with regard to credibility determinations, we decline to disturb the commissioner's findings relative to the credibility of the instant claimant.

We next turn to the respondents' contention that the commissioner erroneously applied the "benefit to the employer analysis" to the facts of the present matter. The respondents argue that because "the law in effect at the time of this injury, C.G.S. Section 31-275 (16) (B) (i), does not define personal injury as one occurring during a recreational or social event … whether there is a benefit to the employer is irrelevant."[7] Appellants' Brief, p. 8. The respondents point out that "[t]he claimant was injured during voluntary

[6] The claimant and one of her former co-workers testified that field day was sunny with temperatures in the mid-nineties. See July 17, 2019 Transcript, p. 27; October 8, 2019 Transcript, p. 76. The evidentiary record also contains testimony from Alicia Mysiorski, the human resources director, indicating that she made an announcement during the luncheon saying "that because it was so hot 'please make sure you stay hydrated throughout the day, please just enjoy the day, this is for fun. And I also announced to everyone 'If you are not comfortable participating in any sport, please do not. Safety first." July 17, 2019 Transcript, pp. 87-88.

[7] General Statutes § 31-275 (16) (B) (i) states that a personal injury shall not be construed to include: "An injury to an employee that results from the employee's voluntary participation in any activity the major purpose of which is social or recreational, including, but not limited to, athletic events, parties and picnics, whether or not the employer pays some or all of the cost of such activity."

participation in a recreational event at a company picnic," id., and the commissioner did not find the claimant's participation in the field day events was mandatory. The respondents therefore contend that because the legislative history of § 31-275 (16) (B) (i) demonstrates that the statute "was enacted to prevent claims like the one at hand from being found to be compensable," id., 9, the commissioner, in finding that "there is a benefit to the Respondent from the participation of its employees in this event," id., 32, *quoting* Conclusion, ¶ H, while failing to find that the instant claimant was "required or compelled to participate in the volleyball game," id., 13, misapplied the law.

It is of course well-settled in our case law that a claimant "has the burden of proving the injury claimed arose out of the employment and occurred in the course of employment." McNamara v. Hamden, 176 Conn. 547, 550 (1979). Moreover, "[t]here must be a conjunction of the two requirements, 'in the course of the employment' and 'out of the employment' to permit compensation. The former relates to the time, place and circumstance of the accident, while the latter refers to the origin and cause of the accident." Id., *quoting* Stakonis v. United Advertising Corporation, 110 Conn. 384, 389 (1929). As such, "[i]n order to come within the course of the employment, an injury must occur (a) within the period of the employment; (b) at a place the employee may reasonably be; and (c) while the employee is reasonably fulfilling the duties of the employment or doing something incidental to it." Id., 550-551, *citing* Stakonis, supra, 389.

In McNamara, an examination of the activities generally deemed "incidental to employment" was conducted by our Supreme Court in the course of reviewing an appeal brought by a claimant who was injured while playing in an on-site ping-pong game with coworkers during a break. The commissioner, who had found that the employees had

purchased and installed the ping-pong table at their own expense and received permission to play when they were not "on the clock," dismissed the claim, citing the lack of a benefit to the employer. In its analysis, the McNamara court observed that because the claimant was "not fulfilling an employment duty [at the time he sustained injury] … the proper inquiry under part (c) of the test will be whether the activity, playing ping-pong, was incidental to his employment." Id., 551.

The court, noting that the assessment of whether a certain activity could be deemed "incidental to the employment" was generally implicated in claims involving the "going and coming rule," personal comfort, and horseplay, stated that, specifically in regard to the "going and coming cases, it is necessary for the commissioner to find a benefit to the employer before compensation will be awarded," id., 552, because "the injury has not occurred on the premises of the employer." Id., 553. However, "[w]hen an employee is on the premises and is within the period of employment … it should not be necessary to satisfy the additional test of employer benefit." Id. The court also remarked:

> The meaning of the term "incidental" need not be defined as compulsion by or benefit to the employer in all cases. For example, other activities such as those typical of the personal comfort and horseplay cases fulfill the requirements of place and time, without being of benefit to the employer; and yet compensation may be awarded in such instances, because the injury had occurred on the premises as the result of a customary activity sanctioned by the employer through approval or acquiescence.

Id., 553-54.

The McNamara court observed that "[t]he ping-pong game was found by the commissioner not to be of benefit to the employer, a finding we cannot and need not disturb." Id., 555. However, the commissioner did find that "[t]he employer sanctioned the games by regulating the permitted playing times, by allowing the equipment on the

premises, and by setting aside actual work hours in the afternoon for the activity." Id. The court therefore held that:

> when determining whether the activity is incidental to the employment, the following rule should be applied: If the activity is regularly engaged in on the employer's premises within the period of the employment, with the employer's approval or acquiescence, an injury occurring under those conditions shall be found to be compensable.

Id., 556.

Some fourteen years after McNamara, in 1993, our legislature passed the social/recreational exception codified at § 31-275 (16) (B) (i). In 2009, our Appellate Court, in the course of reviewing an appeal brought by an employee injured while walking on the employer's premises during her lunch break, examined the legislative history of this amendment and observed that the exception "was intended to exclude *voluntary* participation in sporting activities, regardless of the specific nature of such activities." (Emphasis in the original.) Brown v. United Technologies Corp., 112 Conn. App. 492, 508 (2009), *appeal dismissed*, *certification improvidently granted*, 297 Conn. 54 (2010). The court, noting that "there was no evidence in the record that [the employer] promoted [the claimant's] activity or encouraged employees to participate," id., 509-10, affirmed this board's reversal of the commissioner's finding of compensability.[8] The court further articulated that § 31-275 (16) (B) (i):

> was enacted after McNamara and was clearly intended to eliminate coverage under the act for injuries that occurred in a similar manner, i.e., those that occurred while the employee was engaged in an act for his or her relaxation or enjoyment on the employer's premises, even when there was employer approval or acquiescence to do so. Section 31–275(16) (B) (i) shifts the focus of the inquiry from employer approval or acquiescence, as in McNamara, to an

[8] See Brown v. UTC/Pratt & Whitney, 5145-CRB-8-06-10 (October 23, 2007), *aff'd*, 112 Conn. App. 492 (2009), *appeal dismissed*, *certification improvidently granted*, 297 Conn. 54 (2010).

> examination of the purpose of the employee's actions before the employee's injury will be compensable. As noted on the floor of the House of Representatives, the act as a whole, and this subdivision in particular, is a difficult, but necessary, balance of equities.

Id., 509.

It should be noted that in reaching its decision in Brown, our Appellate Court did not reference its earlier decision in Anderton v. WasteAway Services, L.L.C., 91 Conn. App. 345 (2005). In Anderton, the claimant appealed a decision by this board reversing the commissioner's finding of compensability for injuries sustained while playing in a basketball game organized by the claimant's employers and scheduled during normal working hours. The commissioner had found that the claimant's employers asked the claimant and his supervisor if they would play and promised they "would be treated to lunch if they were victorious." Id., 346. At trial, the claimant "testified that he believed that he had to participate and that if he refused, his employers and [his supervisor] would look on him unfavorably as an employee." Id.

The Anderton respondents appealed the commissioner's finding of compensability, arguing that the commissioner should have concluded that the claimant had sustained an injury as contemplated by § 31-275 (16) (B) (i) because he was voluntarily participating in a recreational event when he was injured. However, the commissioner had also determined that:

> the activity in question was a basketball game occurring during working hours, thereby fulfilling the time requirement. The employers exercised some compulsion in that they invited the plaintiff and his supervisor to play and scheduled it during the plaintiff's work hours. It also was known that the employers were visiting the stadium because of the maintenance staff's poor performance. The plaintiff believed that if he refused to play, his employers and his supervisor would look on him unfavorably as an employee. Also, one of the employers acknowledged that the notion

> of playing basketball with employees was to benefit the company by boosting company morale and fostering employee loyalty.

Id., 351.

In reversing the decision of this board, the court remarked that we had incorrectly determined that the claimant:

> bore the burden of establishing a concrete act or statement made by the employer that would have led a reasonable person to believe that there would be negative employment related consequences if the [claimant] had declined the employer's proposal for a two on two basketball game; that the [claimant's] subjective perception of a situation could not be the controlling factor in the determination of whether an activity was to be deemed voluntary; and that there must be evidence of a direct tie-in between one's employment duties or status and one's attendance at the activity. We conclude that this test is too strict.

Id., 350.

Instead, the court determined that Smith v. Seamless Rubber Co., 111 Conn. 365 (1930):

> provides us with more relevant guidance. In that case, in affirming the denial of benefits, our Supreme Court stated: Where an employer merely permits an employee to perform a particular act, without direction or compulsion of any kind, the purpose and nature of the act becomes of great, often controlling significance in determining whether an injury suffered while performing it is compensable. If the act is one for the benefit of the employer or for the mutual benefit of both, an injury arising out of it will usually be compensable; *on the other hand, if the act being performed is for the exclusive benefit of the employee so that it is a personal privilege or is one which the employer permits the employee to undertake for the benefit of some other person or for some cause apart from his own interests, an injury arising out of it will not be compensable....* (Emphasis in the original.)

Id., *quoting* Smith, supra, 368-67.

The court concluded that the commissioner's determination of compensability did not constitute error given that he had "found that the basketball game was requested by the

employers, it was played during working hours and the [claimant] believed that he had to agree to play with his employers…." Id., 349. As such, the "facts support the commissioner's finding that the plaintiff's injury arose out of and in the course of his employment, as playing basketball with his employers that day was part of his employment." Id., 351.

In a similar matter of more recent vintage, in 2018 this board reviewed an appeal brought by the respondents for a claim in which the claimant sustained injuries while playing softball at a company picnic. As was the case in Anderton, supra, the "commissioner found that the softball game was a morale booster for the respondent employer and its employees, and the claimant believed he would be looked upon unfavorably by the respondent employer if he did not participate in the softball game." Thomas v. Bridgeport, 6206 CRB-3-17-7 (July 30, 2018). The respondents argued that because "the claimant's decision to participate in this softball game was purely voluntary," id., compensation was barred by the provisions of § 31-275 (16) (B) (i); the respondents also contended that our Appellate Court's analysis in Brown, supra, should have been dispositive of the claim. However, this board was not persuaded, holding that:

> the claimant testified that his supervisor actively recruited him to play in part due to his perceived aptitude for the sport. Given the totality of the circumstances, we believe the trial commissioner could reasonably have concluded that the claimant's participation in the game was expected and was incidental to his employment.

Id.

We further noted that "in Brown, the Appellate Court stated that if an employer approves of an activity which occurs during working hours, the activity can become incidental to the employment." Id. However, the Brown court also observed that "[t]he

fact that [the claimant] engaged in recreational activity of her own volition without any recruiting by her firm's management was a critical element in determining that her injury was not compensable under the statute." Id. By contrast, in Thomas, the

> commissioner examined the purpose of the employee's actions and found those actions factually dissimilar from the facts in Brown. While the claimant in Brown was engaged in an exercise regimen to improve her own health, the claimant in the present matter was found by the trial commissioner to have played softball so as to improve his standing with his supervisor, and he did so in response to a direct request from his supervisor to play in the game. As such, the trial commissioner, having found that the claimant was a credible witness, could readily determine that the claimant's decision to engage in this activity was not 'purely voluntary.'

Id.

We therefore concluded that because "we can easily distinguish this case on the facts from Brown, and cannot distinguish it on the law or the facts from Anderton, stare decisis leads us to affirm the Finding and Decision." Id.

Returning to the matter at bar, we recognize that the commissioner did not specifically state in his findings that the claimant's participation in the company field day events was mandatory. However, given the commissioner's findings relative to the claimant's credibility, which we have affirmed herein, it may be reasonably inferred, in light of the overall tenor of this testimony, that he did not consider the claimant's participation in the company field day events to have been voluntary. As we have noted, in Brown, supra, our Appellate Court specifically stated that the social/recreational exception codified at § 31-275 (16) (B) (i) contemplated the exclusion of "*voluntary* participation in sporting activities, regardless of the specific nature of such activities." (Emphasis in the original). Id., 508. We therefore conclude, contrary to the contentions of the respondents, that the commissioner was under no compunction to automatically apply the provisions of

§ 31-275 (16) (B) (i) to the facts of this matter simply because the claimant sustained an injury while participating in a company-sponsored recreational event.

We would also point out that, consistent with our Supreme Court's analysis in Smith, supra, it cannot be reasonably inferred that the "purpose" of the instant claimant's activities at the company field day was such that "the act being performed [was] for the exclusive benefit of the employee so that it [was] a personal privilege or … one which the employer permits the employee to undertake for the benefit of some other person or for some cause apart from his own interests…." Smith, supra, 369. Rather, our review of the evidentiary record indicates, and the commissioner so found, that the company field day was held during the claimant's working hours; the event was promoted in-house by means of email messages, flyers and posters; and the claimant testified, and two coworkers acknowledged, that the event was intended to encourage "camaraderie" among the company employees. See July 17, 2019 Transcript, p. 100; October 8, 2019 Transcript, pp. 74, 79-80. The record also indicates that had the claimant decided not to attend the event, she would have been required to use personal or vacation leave because the office building was locked at noon.[9] See July 17, 2019 Transcript, pp. 25, 26, 81; October 8, 2019 Transcript, pp. 61-62.

[9] Relative to the issue of employees being required to use paid leave (or forego payment altogether) if they chose not to attend field day, we find of some interest a decision by the Supreme Court of Minnesota for a similar matter involving a claimant who sustained injuries while playing laser tag at a company-sponsored picnic. While Minnesota law is of course not binding on this or any other Connecticut tribunal, we note that in that appeal, the respondents, in defending the claim, relied upon legislation stating that "[i]njuries incurred while participating in *voluntary recreational programs* sponsored by the employer, including health promotion programs, athletic events, parties, and picnics, do not arise out of and in the course of the employment even though the employer pays some or all of the cost of the program. This exclusion does not apply in the event that the injured employee was ordered or assigned by the employer to participate in the program." (Emphasis in the original.) Shire v. Rosemount, Inc., 875 N.W.2d 289, 291–92 (Minn. 2016), *quoting* Minn. Stat. § 176.021, subd. 9. As was the case in the present appeal, employees were given the option of using personal leave if they chose not to participate in the event. The court, observing that the Minnesota legislature had not defined the word "voluntary" in its workers' compensation statutes, explained that "an option is 'voluntary' when it is '[d]one or undertaken of one's own free will' or 'done willingly and

In Anderton, supra, this board remarked that "[i]t is not enough that a claimant's subjective perception of a situation leads him to conclude that it is necessary for him to participate in such an activity…. There must be a direct tie-in between one's employment duties or status and one's attendance at the activity." Anderton v. Waste Away, L.L.C., 4435 CRB-4-01-9 (August 12, 2002), *rev'd*, 91 Conn. App. 345 (2005). However, our Appellate Court disagreed, holding that on the basis of the totality of the evidence adduced at trial, including the claimant's testimony regarding his subjective belief "that if he refused to play, his employers and his supervisor would look on him unfavorably as an employee," Anderton v. WasteAway Services, L.L.C., 91 Conn. App. 345, 351 (2005), it was within the commissioner's discretion to conclude that the claimant's "injury arose out of and in the course of his employment, as playing basketball with his employers that day was part of his employment." Id.

The respondents contend that the present matter "is distinguishable from the analysis in Anderton v. Wasteaway Services, LLC because the Commissioner did not find that the claimant was compelled or required to participate in the volleyball game." Appellants' Brief, p. 13. We disagree; having reviewed the totality of the evidence in the present matter along with the pertinent case law, we find that the factual circumstances surrounding the claimant's participation in the field day are far more consistent with the circumstances in Anderton, supra, and Thomas, supra, than with those in Brown, supra. We therefore affirm the decision of the commissioner concluding that the injuries sustained

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without constraint or expectation of reward.'" Id., 292, *quoting* The American Heritage Dictionary of the English Language, 1941–42 (5th ed. 2011). Noting that "[c]ontrary to these definitions, employees were 'constrained' by the fact that attendance at the employee-recognition event was the only means by which they could obtain their wages without expending limited vacation time," the court ultimately held that "an employer-sponsored recreational program is not 'voluntary' when it takes place during work hours and employees must either attend the event or use limited vacation time in order to get paid." Id., 296.

by the claimant arose out of and in the course of her employment by virtue of being "incidental" to that employment.[10]

Finally, in their Reasons of Appeal filed on May 15, 2020, the respondents claim as error the commissioner's denial of their motion to correct. Our review of the proposed corrections indicates that the respondents were merely reiterating arguments made at trial which ultimately proved unavailing. As such, we find no error in the commissioner's decision to deny the respondents' motion to correct.[11] See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003).

There is no error; the April 17, 2020 Finding and Award by Pedro E. Segarra, the Commissioner acting for the Eighth District, is accordingly affirmed. Insofar as any benefits due to the claimant may have remained unpaid during the pendency of this appeal, interest is awarded as required by General Statutes § 31-301c (b).

Commissioners Randy L. Cohen and William J. Watson III concur in this Opinion.

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[10] On November 30, 2018, the respondents filed a form 43 stating that they "[acknowledged] that the incident occurred but [retained] the right to contest any issues pertaining to the extent of disability or compensability of medical treatment." However, on December 24, 2018, the respondents filed a second form 43 challenging jurisdiction on the basis of the provisions of General Statutes § 31-275 (16) (B) (i). The claimant asserts that the respondents are now estopped from contesting the compensability of the claim given that they advanced payment for the claimant's medical expenses, without any indication that the payments were being made on a "without prejudice" basis, after filing the second form 43. In light of our analysis of this matter as presented herein, we decline to reach this issue.

[11] We note that in his "Ruling on Claimant's Motion to Correct" dated May 1, 2020, the commissioner indicated he was denying a motion to correct filed by the claimant on April 30, 2020. Given that the respondents filed their motion to correct on April 30, 2020, we deem this harmless scrivener's error. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 729 (2002), *cert. denied*, 262 Conn. 933 (2003).