CASE NO. 6398 CRB-1-20-8 CLAIM NO. 100214069	:	COMPENSATION REVIEW BOARD
MAYRA HOLBROOK CLAIMANT-APPELLEE	:	WORKERS' COMPENSATION COMMISSION
v.	:	AUGUST 9, 2021

STATE OF CONNECTICUT/
DEPARTMENT OF ECONOMIC
AND COMMUNITY DEVELOPMENT
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLANT

and

GALLAGHER BASSETT SERVICES, INCORPORATED
THIRD-PARTY ADMINISTRATOR

APPEARANCES:

The claimant was represented by Sydney T. Schulman, Esq., Schulman & Associates, 10 Grand Street, Second Floor, Hartford, CT 06106.

The respondent was represented by Donna Summers, Esq. and Francis C. Vignati, Jr., Esq., Assistant Attorney General, Office of the Attorney General, 165 Capitol Avenue, Suite 4000, Hartford, CT 06106-1668.

This Petition for Review from the August 13, 2020 Finding and Award by Pedro E. Segarra, the Commissioner acting for the First District, was heard February 26, 2021 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Brenda D. Jannotta and Maureen E. Driscoll.[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 respondent has appealed from a Finding and Award (finding). The issue presented was whether the claimant sustained a compensable injury to her knee when she fell at work on August 1, 2018. After review of the evidence, Commissioner Pedro E. Segarra (commissioner), concluded that the claimant fell in the course of her employment on August 1, 2018. He also found that the fall resulted in a compensable injury. The respondent argues that under Chapter 568, only injuries that "arise out of the employment" can be deemed compensable and submits that the record herein would not allow the commissioner to conclude the claimant's employment had anything to do with her fall.[2] The claimant argues that there was sufficient evidence presented to support a conclusion that floor conditions the claimant encountered during her workday were the proximate cause of her fall.

We acknowledge that after this appeal was heard by this tribunal, our Supreme Court in Clements v. Aramark Corp., S.C. 20167 (June 24, 2021), made clear that idiopathic falls during the workday unrelated to the conditions of one's employment are not compensable under Chapter 568. While the respondent argues that the evidence supports a finding the claimant's injury was due to such an idiopathic fall, pointing to her extensive history of noncompensable illnesses, we note that the claimant testified that other walkers were having difficulty crossing the floor she fell on. While it is the commissioner's duty to weigh and consider the evidence presented, we do not find that as

[2] General Statutes § 31-275 (1) states: "'Arising out of and in the course of his 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…."

a matter of law that the evidence presented establishes the compensability of the claimant's injury. We also note that the commissioner failed to identify what evidence he found probative and credible that established the claimant's injury arose out of the employment. Since the Clements opinion makes clear such a determination is a fact driven exercise, we decide, for the reasons stated in Aylward v. Bristol/Board of Education, 5756 CRB-6-12-5 (May 15, 2013), *aff'd*, 153 Conn. App. 913 (2014) (per curiam), and Smith v. Sedgewick Claims Management Services, 6351 CRB-1-19-10 (November 5, 2020), that we must remand this matter back to the commissioner for an articulation as to why he concluded the claimant's injuries arose out of her employment.

The commissioner reached the following factual findings at the conclusion of the formal hearing:

1. The Claimant, Mayra Holbrook (hereinafter "Claimant"), was employed by the State of Connecticut/Department of Economic and Community Development (hereinafter "Respondent") on August 1, 2018. (Formal hearing transcript of December 19, 2019 - pages 11 – 12).
2. On August 1, 2018, the Claimant arrived at work and, as part of her employment, was to undertake a Red Cross Blood Drive Volunteer Duty. While walking near the elevator area in the (Mezzanine Level), North Tower at her place of employment and as she approached the elevator area, she sustained a fall at approximately 8:28 a.m. (Formal hearing transcript of December 19, 2019 - pages 13 and 32).
3. The Claimant filed a Form 30C dated November 15, 2018, which was received at the 2nd District office of the Workers' Compensation Commission on November 19, 2018. (Administrative Notice 1). The Claimant further testified that she did not know the exact reason that may have caused her fall on August 1, 2018. (Formal hearing transcript of December 19, 2019 - pages 13, 32-33).
4. On December 3, 2018, the Respondents filed a Form 43 acknowledging the Claimant having suffered a compensable injury on August 1, 2018, reserving its right to contest the extent of Claimant's injuries. (Administrative Notice 2).

5. After the fall, the Claimant was transported, via ambulance, to the University of Connecticut Health Center Emergency Medical Unit where she was treated and released. She later treated at Hartford Health Care, the University of Connecticut Occupational Health and the Physical Therapy departments, as well as with Dr. Moore, Dr. Beebe and Dr. Krompinger. (Claimant's Exhibits A, B, C, D, E, G through J).
6. The Claimant testified that she truthfully and accurately reported her accidental August 1, 2018 fall, injuries and symptoms to her medical providers, and she further testified that certain inaccuracies in her medical reports were not of her making and that those inconsistencies were through no fault of her own.

Findings, ¶¶ 1-6.

We note that the respondent did present evidence focusing on the claimant's medical history which included prior syncopal episodes (see respondent's motion to correct, proposed ¶ 11) and her statement that she did not know why she fell. See December 10, 2019 Transcript, pp. 13-14. The respondent argued that the claimant was engaged in a benign activity when she fell and thus, believe this was an idiopathic fall that did not arise out of the employment. However, the commissioner heard the following testimony from the claimant which could support his conclusion that her fall was compensable. She testified that she had observed other people stumble in the corridor where she fell down. See December 10, 2019 Transcript, pp. 14-15. She described the reason as "I see its all usually—it's the friction on the floor with the rubber, almost like a basketball player on a basket court. You know what I mean?" Id., 15. She said she had seen Dale Dumont, her office's mail clerk, stumble on that floor. See Id., 20. She also said that when she was pulled up after her fall her hair was wet, see id., 20-21, and she remembered it had been "raining that day or drizzling that morning." Id., 64.

While it is possible the commissioner was persuaded by this evidence, we cannot, as an appellate panel, speculate from this record – where the commissioner made no subordinate findings as to why the injury was compensable – that this was the reason he awarded the claimant benefits. As this tribunal held in Bazelais v. Honey Hill Care Center, 5011 CRB-7-05-10 (October 25, 2006), *appeal withdrawn*, A.C. 30307 (July 17, 2009):

> 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 we held in Aylward, supra, "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." In this case, the commissioner's conclusions as to compensability were conclusory.[3]

In the Clements case, the standards for determining whether an injury arose out of the employment were most recently restated. In that case, the claimant fell down as the result of a syncopal episode during her hours of employment and sustained an injury. The trial commissioner denied her claim for benefits and this tribunal affirmed that

[3] The sole basis the commissioner identified in the finding to support compensability was "[t]he Claimant sustained a fall on August 1, 2018, while in the course of her employment." Conclusion, ¶ C.

decision. See Clements v. Aramark Corporation, 6034 CRB-2-15-10 (July 18, 2016). Our Appellate Court reversed our opinion, see Clements v. Aramark Corp., 182 Conn. App. 224 (2018), but our Supreme Court reinstated our decision, finding that without any further evidence as to work conditions contributing to an injury, an idiopathic fall of this nature was not compensable. Our Supreme Court found that "because the [claimant's] fall was caused by her personal medical condition and not by any condition of her workplace, the injury she suffered from the fall did not arise out of her employment and, consequently, was not compensable." Clements v. Aramark Corp., S.C. 20167 (June 24, 2021).

Since this case is governed by the Supreme Court's binding precedent, we believe that an articulation is required as to how this claim comports with the standards promulgated in that decision. The Supreme Court restated the standard to ascertain if injuries arise out of the employment, citing Mann v. Glastonbury Knitting Co., 90 Conn. 116 (1916), "the words 'arising out of and in the course of his employment' do not make the employer an insurer against all . . . risks . . . but include only those injuries arising from the risks of the business which are suffered while the employee is acting within the scope of his employment." Id., 118. While the claimant in this matter was within the scope of her employment when the commissioner found she slipped on a floor, the commissioner still must identify the factual basis wherein this injury arose out of her employment. The Clements opinion makes clear, citing cases such as Bluml v. Dee Jay's, Inc., 920 N.W.2d 82 (Iowa 2018) and Blakeslee v. Platt Bros. & Co., 279 Conn. 239, 244 (2006), that such an evaluation must include a determination as to how the

subordinate facts link the injury to a condition of her workplace and support the legal conclusion of compensability.[4]

Therefore, consistent with our reasoning in Smith, supra, a remand is necessary so the commissioner can articulate the basis for his conclusion.[5]

Commissioners Brenda D. Jannotta and Maureen E. Driscoll concur in this Opinion.

[4] We note that subsequent to our tribunal's hearing on this matter the respondent filed a motion to submit additional evidence. We denied this motion, and in light of our decision to remand this case back to the trial commissioner for articulation we believe this motion is now moot.

[5] We also note that the finding in this matter appears to have addressed the issues of entitlement to medical treatment and indemnity benefits. See Order I. Our review of the record indicates that the parties did not litigate these issues and no evidence on these issues was presented at the formal hearing. See October 16, 2019 Transcript, pp. 5-8; 28-29. Therefore, for the reasons discussed in Ramsahai v. Coca-Cola Bottling Company, 5991 CRB-1-15-2 (January 26, 2016), we vacate Order I and remand the issue of whether the claimant is entitled to further medical treatment and to ascertain the extent of her disability for further proceedings subsequent to a definitive ruling on compensability.