CASE NO. 6408 CRB-3-20-12 : COMPENSATION REVIEW BOARD
CLAIM NO. 601087762

HARRY GUSTAFSON : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : NOVEMBER 18, 2021

A. DUIE PYLE, INC.
EMPLOYER

and

NEW HAMPSHIRE INSURANCE COMPANY
D/B/A AIG CLAIMS, INC.
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Jonathan H. Dodd, Esq., and Matthew P. Lascelle, Esq., The Dodd Law Firm, L.L.C., 1781 Highland Avenue, Suite 105, Cheshire, CT 06410.

The respondents were represented by Claudia D. Heyman, Esq., and Alyssa S. Lynch, Esq., Halloran & Sage, L.L.P., 265 Church Street, New Haven, CT 06510.

This Petition for Review from the December 30, 2020 Corrected Finding and Decision Filed Sua Sponte of Carolyn M. Colangelo, Administrative Law Judge acting for the Fifth District, was heard on May 28, 2021 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Brenda D. Jannotta and David W. Schoolcraft.[1]

[1] Effective October 21, 2021, the Connecticut legislature directed that the phrase "administrative law judge" be substituted when referencing a workers' compensation commissioner. See Public Act 21-18.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The respondents have petitioned for review from the December 30, 2020 Corrected Finding and Decision Filed Sua Sponte of Carolyn M. Colangelo, Administrative Law Judge acting for the Fifth District.[2] We find harmless error and accordingly affirm the decision.[3]

The parties stipulated that the following issues were to be addressed at the formal hearing: (1) compensability of the cervical surgery undergone by the claimant on October 19, 2019; and (2) whether this surgery constituted "reasonable or necessary" medical treatment as contemplated by General Statutes § 31-294d (a).[4] The administrative law judge made the following factual findings which are pertinent to our review of this matter. On May 21, 2018, the claimant sustained an injury while moving freight for the respondent employer.[5] As of that date, the claimant had been working for the employer for approximately two or three months as a truck driver doing pick-ups and deliveries. The claimant had sustained a prior neck injury on September 21, 2017, while working for a different employer. The claimant testified that following that incident, the

[2] The administrative law judge indicated that she issued a corrected finding sua sponte in order to correct scrivener's errors relative to several erroneous dates referenced in the initial Finding and Decision issued on November 23, 2020.

[3] We note that one motion for extension of time was granted during the pendency of this appeal.

[4] General Statutes § 31-294d (a) (1) states: "The employer, as soon as the employer has knowledge of an injury, shall provide a competent physician, surgeon, physician assistant or advanced practice registered nurse to attend the injured employee and, in addition, shall furnish any medical and surgical aid or hospital and nursing service, including medical rehabilitation services and prescription drugs, as the physician, surgeon, physician assistant or advanced practice registered nurse deems reasonable or necessary."

[5] Although the record contains multiple references to a date of injury of May 22, 2018, the "History of Present Illness" section of the Velocity Urgent Care Summary Record dated May 22, 2018, indicates that the claimant reported that the injury had occurred the previous day, and the jurisdictional voluntary agreement reflects a date of injury of May 21, 2018. See Claimant's Exhibit A; Administrative Law Judge's Exhibit 1.

doctor told him he had pulled a muscle and he should return to the doctor's office in a week if it was still painful. The claimant further testified that "after that first week, I was fine." June 24, 2020 Transcript, p. 25. On March 1, 2018, Scott A. Bissell, an orthopedic surgeon, examined the claimant, diagnosed a "a right pericervical strain," and opined that the claimant was "capable of working full duty." Respondents' Exhibit 1, p. 4. The claimant underwent a pre-employment physical before he began working for the instant respondent and was not assigned any restrictions.

On May 21, 2018, the claimant was injured while moving a twenty-foot light pole weighing approximately 400 pounds. The claimant testified that he and three other men were attempting to move the pole when "we all bent down to lift it up. I got out almost all the way, and I felt ripping and tearing and burning in my left side. I told the guys, 'I got to put this down,' and we did." June 24, 2020 Transcript, p. 23. When queried as to where he had felt the "ripping and tearing and burning," the claimant replied, "[m]y neck; you know, my left shoulder; my right arm; and even my right side of my neck and my shoulder." Id.

On May 22, 2018, the claimant presented to Velocity Urgent Care where he underwent an X-ray of his left shoulder and a three-view X-ray of his cervical spine. On May 30, 2018, the claimant was seen by Daniel N. Fish, an orthopedic surgeon, whose records include a form entitled "History: Upper Extremity/Joint" completed by the claimant. In this form, the claimant described his symptoms as "[f]ront top Back pain, Shoulder blade, Left bicep, Left & Right Neck." Claimant's Exhibit C, p. 1.

On August 7, 2018, the claimant underwent a compensable surgery to his left shoulder and, on September 4, 2018, a compensable surgery to his left elbow. On

November 15, 2018, the claimant underwent a compensable surgery to his cervical spine performed by Justin C. Paul, an orthopedic surgeon. The cervical surgery consisted of: "1. Anterior cervical diskectomy and fusion, C5-6. 2. Application of intervertebral structural allograft. 3. Application of anterior cervical plate instrumentation. 4. Use of local bone graft." Claimant's Exhibit I, p. 1.

At the formal hearing, the claimant testified that when he woke up on the morning after the surgery, "my left side and my left side of my neck felt great. It was incredible. There was no pain. But I complained to [the doctor], saying that the right side is still bothering me." June 24, 2020 Transcript, p. 32. By December 31, 2018, the claimant was experiencing "relentless" right-sided neck pain. Claimant's Exhibit H. Paul's medical reports for January 22, 2019; March 1, 2019; March 29, 2019; and April 9, 2019, reflect that the claimant was experiencing persistent right-sided pain. In his report of September 19, 2019, Paul opined as follows:

> The [claimant] underwent an ACDF at C5-6 for his cervical radiculopathy. Immediately after surgery he had relief of his symptoms into the left upper extremity. He began to complain of severe right-sided neck pain with radiation into the right hand. Even though he did not present initially with right-sided symptoms [it] should be noted that … his initial MRI showed bilateral foraminal narrowing. He went for another epidural steroid [injection] which relieved his symptoms only temporarily. The patient has multilevel neuroforaminal narrowing and mild progressive degenerative disc disease. He continues to deteriorate and will be best served with posterior decompression from C4-7. These symptoms did not start until after the injury on May 22 of 2018. It is with a reasonable degree of medical certainty that the incident in May was the probable causative factor and is why he requires additional surgical intervention.[6]

[6] In his report of May 28, 2020, Paul stated that although he had initially indicated, in his office note of September 14, 2018, "that the MRI images were difficult to discern," Claimant's Exhibit H, he explained that this impression "was based on my initial office visit…. At a later date I was able to sit in my office with a larger monitor and higher resolution. At this point I was able to observe the clear bilateral foraminal

Claimant's Exhibit H.

On April 24, 2019, Clinton A. Jambor, an orthopedic surgeon, performed a respondents' medical examination on the claimant. In his report, Jambor noted that the claimant:

> Denies any history of a prior cervical injury or history of left- or right-sided neck pain. There is no evidence in the medical records provided of left- or right-sided neck pain prior to the patient's May 21, 2018 injury. It appears that the patient developed right-sided neck pain after his cervical surgery and it is, therefore, my opinion, that the patient's current right-sided neck pain is related to the work injury of May 21, 2018.

Respondents' Exhibit 2, pp. 6-7.

Following this examination, the respondents requested that Jambor review a copy of the Bissell's RME report of March 1, 2018.[7] On June 4, 2019, Jambor issued an addendum to his April 24, 2019 report, opining "that the patient's prior September 21, 2017 injury is a significant factor in the patient's current need for treatment. The patient's current neck pain is most likely related to both his September 21, 2017 and his May [21], 2018 injury." Respondents' Exhibit 3, p. 1. Jambor also recommended that the claimant continue with a home exercise program and opined that any additional injections would be palliative, not curative. On June 26, 2019, Paul recommended that the claimant undergo a second cervical surgery consisting of a "posterior directed decompression surgery at C4-5, C5-6 and C6-7." Claimant's Exhibit H.

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narrowing." Id. It should be noted that as neither party took Paul's deposition, it is impossible to determine when this actually occurred.

[7] The administrative law judge noted that Jambor did not have the records for the claimant's September 21, 2017 pericervical strain when he conducted his RME on April 24, 2019.

On August 20, 2019, Alan S. Waitze, a neurosurgeon, performed a commission medical examination. Waitze diagnosed the claimant with neck pain and opined that the claimant's "symptoms in his neck and arms are unrelated to his injury on [5/21/2018]." Respondents' Exhibit 4, p. 4. Waitze also indicated he would not recommend any additional treatment, including surgery; in addition, he stated that in light of the claimant's "previous neck surgery, and his current symptoms, I would not recommend that [the claimant] lift anything heavier than 20 lbs. This is unrelated to his injury." Respondents' Exhibit 4, p. 4.

On October 19, 2019, the claimant, utilizing his group health insurance, underwent a second cervical surgery consisting of bilateral C5-6 and left C6-7 foraminotomies with medial facetectomies; C5-6 posterior lateral fusion; use of local autograft and allograft; C5-6 segmental lateral mass screw instrumentation; and exploration of C5-6 fusion. See Claimant's Exhibit H. When asked at formal proceedings why he chose to undergo the surgery through his group health insurance, the claimant replied, "I couldn't take the pain no more, and I wanted to go back to work. I wanted to get fixed." June 24, 2020 Transcript, p. 35. The claimant further testified that after the surgery, "[e]verything was fine. I had no pain whatsoever, and to this day I don't."[8] Id., 36.

In correspondence dated May 28, 2020, Paul addressed the second cervical surgery:

> With regard to the timing of the right-sided pain which was addressed in the second surgery, I would still state that the 5/21/2018 injury is a substantial factor in the need for the 10/19/2019 surgery. It is often the case in my practice that the

[8] On March 1, 2020, the claimant found a new job driving a tractor trailer for another employer and, as of the date of the formal hearing, was still working for that employer.

> patient presents with an initial constellation of symptoms that is so severe, it is difficult for the patient to convey all aspects of the pain. The left-sided pain was so debilitating for him, it is very likely that the right side was unaccounted for on initial presentation. Clearly the right side [declared] itself over time especially since he had near complete resolution of his left-sided symptoms immediately postoperatively.

Claimant's Exhibit H.

In addition, Paul opined that the claimant's initial surgery on November 15, 2018, was also a substantial contributing factor to the claimant's need for the surgery on October 19, 2019.

> Although it is difficult to admit as a surgeon, I likely focused more on a thorough foraminal decompression on the left side during the surgery and did not focus my efforts on a thorough right-sided foraminal decompression. This likely left some residual right-sided foraminal stenosis which would certainly account for his exacerbation of symptoms postoperatively…. I also noted that there were adjacent level symptoms which also required decompression in the second surgery. Adjacent level disease is well described after spine fusion surgery and the two are directly and causally related.

Id.

On the basis of the foregoing, the administrative law judge concluded that the claimant's testimony was fully credible and persuasive, as was Paul's opinion that the lifting incident of May 21, 2018, was a substantial contributing factor to the need for the October 19, 2019 surgical intervention. She further noted that Paul's opinion was "supported by the medical records in evidence pertaining to the claimant's course of treatment, as well as the claimant's testimony regarding the course of events." Conclusion, ¶ D. In addition, she found fully credible and persuasive Paul's opinion "that the compensable surgery on November 15, 2018 was also likely a substantial factor

in the need for the October 19, 2019 surgery" given that this opinion was consistent with the evidentiary record. Conclusion, ¶ E.

The administrative law judge found credible Jambor's opinion that the claimant's right-sided neck pain was related to the incident of May 21, 2018, further noting that Jambor's "opinion did not change substantively in his addendum, when he added that the prior neck strain was also a cause of the right-sided neck pain." Conclusion, ¶ G. She indicated that she did not find Waitze's opinion persuasive given that it could not be reconciled with Paul's reporting that he had "focused on the left side during the initial cervical surgery and observed adjacent level symptoms which required decompression in the second." Conclusion, ¶ H.

The administrative law judge also stated that it was difficult to reconcile Waitze's opinion that the claimant's neck pain was unrelated to the incident of May 21, 2018, with his assignment of permanent restrictions, noting that this statement was "particularly hard to reconcile on a record that clearly reflects the claimant was working full duty at the time of the May 21, 2018 incident and the claimant's credible testimony that his previous neck strain had fully resolved."[9] Id. The administrative law judge therefore concluded

[9] At the formal hearing held in this matter on June 24, 2020, claimant's counsel objected to the full admission of the report for the August 20, 2019 commission medical examination (which had been ordered by a different administrative law judge) on the basis that Jambor, the respondents' expert, had already related the claimant's symptoms to his workplace injuries on two separate occasions. Counsel for the respondents stated that Waitze's opinion on causation was relevant because "causation with respect to the surgery [was] at issue." June 24, 2020 Formal Transcript, p. 14. We disagree with the respondents' assertion; the issue of the compensability of the second surgery necessitated an inquiry into the extent of the original injury, not causation. The trier allowed the report into evidence, noting that the claimant's arguments implicated the evidentiary weight that should be afforded the opinion of a commission's medical examiner. Although the decision to admit this portion of the report into evidence was well within the trier's discretion, we agree with the claimant that Waitze's opinion was improperly solicited relative to the issue of causation.

that the October 19, 2019 surgery constituted reasonable medical treatment and the claimant had satisfied his burden that this surgery was compensable.[10]

The respondents filed a motion to correct, which was denied in its entirety, and a motion to articulate, to which the claimant objected and which was also denied in its entirety, and this appeal followed. On appeal, the respondents contend that Paul's opinion is "based on insufficient subordinate facts" and the administrative law judge therefore erred in relying upon this opinion in concluding that the claimant sustained a right-sided neck injury in the May 21, 2018 incident. Appellants' Brief, p. 10. The respondents also assert that the reasons cited by the administrative law judge for disregarding the opinion of her own examiner are not supported by the record. We find both claims of error unavailing.

The standard of deference we are obliged to apply to a trier's findings and legal conclusions is well-settled.

> [T]he role of this board on appeal is not to substitute its own findings for those of the trier of fact. Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 451 (2001). The trial commissioner's role as factfinder encompasses the authority to determine the credibility of the evidence, including the testimony of witnesses and the documents introduced into the record as exhibits. Burse v. American International Airways, Inc., 262 Conn. 31, 37 (2002); Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999). If there is evidence in the record to support the factual findings of the trial commissioner, the findings will be upheld on appeal. Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002); Phaiah v. Danielson Curtain (C.C. Industries), 4409 CRB-2-01-6 (June 7, 2002). This board may disturb only those findings that are found without evidence, and may also intervene where material facts that are admitted and undisputed have been omitted from the findings. Burse, supra; Duddy, supra. We will also overturn a trier's legal conclusions when they result

[10] On December 31, 2020, the administrative law judge approved a voluntary agreement memorializing an 18 percent permanent partial disability to the claimant's left upper extremity.

> from an incorrect application of the law to the subordinate facts, or where they are the product of an inference illegally or unreasonably drawn from the facts. Burse, supra; Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998).

McMahon v. Emsar, Inc., 5049 CRB-4-06-1 (January 16, 2007).

We begin our analysis of this matter with the respondents' contention that the administrative law judge erroneously relied upon Paul's opinion for her conclusion that the claimant sustained a compensable right-sided neck injury in the workplace incident of May 21, 2018. The respondents point out that although both Jambor and Waitze were aware of the injury sustained by the claimant in the workplace incident of September 21, 2017, the claimant failed to apprise Paul of this injury; as such, because Paul's "opinion is derivative of the Claimant's incomplete narrative, it is inherently flawed and cannot be considered competent evidence to support a finding of compensability." Appellants' Brief, pp. 10-11. The respondents cite DiNuzzo v. Dan Perkins Chevrolet GEO, Inc., 294 Conn. 132 (2009), for the proposition that "the testimony of even the most persuasive expert witness cannot be credited if it is not based on fact." Appellants' Brief, p. 11. We are not persuaded.

In DiNuzzo, our Supreme Court affirmed our Appellate Court's reversal of this tribunal's affirmance of the administrative law judge's award of survivor's benefits to the widow of a decedent who had prosecuted a compensable injury to his cervical spine. The evidentiary record indicated that prior to his death, "the decedent had suffered from injuries and illnesses that were unrelated to his compensable injury."[11] DiNuzzo v. Dan Perkins Chevrolet Geo, Inc., 99 Conn. App. 336, 338 (2007), *aff'd*, 294 Conn. 132

[11] The record indicated that the decedent suffered from chronic bilateral shoulder and low back pain, a chronic hepatitis C infection, adult-onset diabetes, hypertension and high cholesterol.

(2009). The decedent's family physician, with whom the decedent had treated for twenty years, completed the death certificate and later testified at trial. The physician opined that the death could be attributed to the stress of the compensable injury and its associated medical treatment due to the decedent's inability to exercise or control his weight following the injury as well as his reliance upon high doses of narcotics for pain management. However, no autopsy was ever performed on the decedent, and a medical opinion proffered by the respondents' expert indicated that a records review had demonstrated no evidence of heart disease.

On appeal, our appellate court reversed this board's affirmance of the administrative law judge's finding of compensability, noting that according to the decedent's physician, "the decedent died of a heart attack caused by atherosclerotic disease, although he never ordered tests to determine whether the decedent, in fact, had atherosclerotic heart disease." Id., 344. In addition, the physician testified that he had never examined the decedent's body and he:

> did not know whether the decedent had a congenital heart defect that could have caused a heart attack and acknowledged that a ruptured aneurysm, pulmonary embolism, stroke or sudden arrhythmia can cause sudden death. He conceded that, without an autopsy, there [was] no way to know the exact cause of the decedent's death.

Id., 344–45 (footnote omitted).

In light of this testimony, our Appellate Court stated:

> The reality is that it was not possible to determine with any reasonable degree of probability the cause of the decedent's death given the factual gaps in the record. On the basis of our examination of [the physician's] testimony and opinion, we conclude that there were insufficient subordinate facts to support his opinion that the decedent's death was causally related to the

> compensable injury or to remove the cause of death from the realm of conjecture.

Id., 346.

In the present matter, we concede at the outset that Paul's reports do not reflect that he was ever informed by the claimant of the workplace injury that occurred on September 21, 2017. However, the evidentiary record also reflects that Bissell, in his RME report of March 1, 2018, diagnosed this injury as a "right pericervical strain," Respondents' Exhibit 1, p. 4; in addition, as referenced previously herein, at formal proceedings, the claimant described the injury as a pulled muscle from which he recovered in a week.[12] The claimant also testified, and the administrative law judge so found, that a pre-employment physical for the instant employer had not resulted in any restrictions.

We also note that when Jambor was presented with Bissell's RME report subsequent to having performed his own RME on April 24, 2019, Jambor opined that the claimant's current neck symptoms were related to both injuries. Moreover, although Waitze, in his report of August 20, 2019, noted that the claimant had suffered a previous work-related neck injury, he also stated that the claimant had indicated "that he did return to baseline and he did not go to any formal physical therapy or treatment after that injury." Respondents' Exhibit 4, p. 2. Finally, we note that Paul, in his correspondence of September 19, 2019, stated that the claimant's "symptoms did not start until after the injury on May [21] of 2018." Claimant's Exhibit H.

[12] Under cross-examination, the claimant testified that: (1) he did not remember telling Bissell that his neck symptoms had worsened; (2) he did not undergo any treatment for the neck injury; and (3) when he left the prior employer, he settled the neck injury claim along with a claim for a knee injury for which he had undergone several surgeries. See June 24, 2020 Transcript, pp. 43-44.

It is axiomatic that it is the administrative law judge's responsibility "to assess the weight and credibility of medical reports and testimony." O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818 (1999). In light of the tenor of the opinions expressed by Paul and Jambor, we conclude that it was well within the trier's discretion to choose to rely upon their opinions rather than the opinion proffered by Waitze in determining whether the claimant's injury of May 21, 2018 was a substantial contributing factor to his need for the second cervical surgery. This is particularly so in light of the fact that the trier also deemed credible the claimant's narrative regarding these injuries. "It is the quintessential function of the finder of fact to reject or accept evidence and to believe or disbelieve any expert testimony…. The trier may accept or reject, in whole or in part, the testimony of an expert." (Internal citations omitted.) Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999).

Moreover, we find the respondents' reliance upon DiNuzzo, supra, inapposite, given that in the present matter, the evidentiary record contains a series of reports from Paul reflecting that he commenced treatment of the claimant specifically for his neck injury on September 14, 2018, and continued treating the claimant, including performing two surgeries, until he returned him to work in January 2020. As such, we are not persuaded that the record in this matter was so lacking in subordinate facts as to render Paul's opinion "mere speculation or conjecture" such that the trier's reliance upon that opinion was erroneous. DiNuzzo, supra, 343.

The respondents also claim as error the trier's rejection of the opinion proffered by Waitze, the commission's medical examiner. Specifically, the respondents challenge the conclusion that it was difficult to reconcile Waitze's opinion that the claimant's neck

pain was unrelated to the May 21, 2018 incident with the twenty-pound lifting restriction recommended by Waitze. The respondents also assert that the fact that Paul reported observing adjacent level symptoms during the second surgery did "not negate Dr. Waitze's opinion that the surgery was neither reasonable [nor] necessary." Appellant's Brief, p. 13.

We recognize that this board has previously observed that:

> when a commissioner orders a medical examination, there is usually an expectation among the parties that said examination will provide strong guidance to the commissioner. Where a commissioner chooses not to adopt the diagnosis of the physician performing that examination, he or she should articulate the reasons behind his or her decision to disregard the examiner's report.

Iannotti v. Amphenol/Spectra-Strip, 13 Conn. Workers' Comp. Rev. Op. 319, 321, 1829 CRB-3-93-9 (April 25, 1995), *aff'd*, 40 Conn. App. 918 (1996) (per curiam).

However, in Nieves v. SCM Company, 3317 CRB-6-96-4 (July 9, 1997), we also stated that we:

> will not encroach upon the fact-finding authority of a commissioner to decide which evidence is the most credible simply because the commissioner ordered one of the medical examinations. Although we have stressed that a commissioner should articulate the reasons behind a decision to disregard a § 31-294f examiner's opinion, *the ultimate decision is always with the commissioner.* (Emphasis added.)

Id.

As such, given that the totality of the evidentiary record in Nieves supported the inferences drawn by the trier, we observed that "[t]here is no legal presumption of credibility for any expert witness in a workers' compensation case, even one who the parties assume is acting as a "tiebreaker" for the commissioner." Id.

In the present matter, we note that Waitze, in his report of August 20, 2019, opined as follows:

> I would not recommend any further treatment related to this injury for [the claimant's] neck, including any further proposed surgery. Given his previous neck surgery, and his *current* symptoms, I would not recommend that Mr. Gustafson lift anything heavier than 20 lbs. This is unrelated to his injury. His specific work capacity should be delineated by [a] functional capacity evaluation. (Emphasis added.)

Respondents' Exhibit 4, p. 4.

In light of Waitze's reference to the claimant's "current" symptoms in this report, we agree with the respondents that the document does not provide an adequate basis for the inference that Waitze had imposed any permanent work restrictions on the claimant. As such, we find that the administrative law judge erred in concluding that it was "difficult to reconcile Dr. Waitze's opinion that the claimant's neck pain is unrelated to the May 21, 2018 incident with his opinion that the claimant has permanent restrictions."[13] Conclusion, ¶ H. Nevertheless, we deem this inference harmless error, given that our review of the evidentiary record in its entirety provides ample support for the trier's conclusions relative to the compensability of the second cervical surgery as well as her finding that the surgery constituted "reasonable or necessary" medical treatment as contemplated by § 31-294d.

With regard to the surgery's compensability, we note at the outset that when the claimant presented to Orthopaedic Specialists of Connecticut on June 5, 2018, he referenced his "right side" as a primary complaint and listed both left- and right-sided neck pain in the description of his symptoms. Claimant's Exhibit C, p. 1. Similarly, in

[13] Insofar as the administrative law judge denied the respondents' motion to articulate the basis for her conclusions relative to this particular issue, that denial also constituted error.

the "Medical History" portion of the August 1, 2018 office note from Neurosurgery, Orthopaedics & Spine Specialists, P.C. (NOSS), the claimant reported, inter alia, that he was having problems with his neck and shoulder on the right side."[14] See Claimant's Exhibit E, p. 5.

On September 19, 2018, David S. Kloth, a pain management specialist, reported that the claimant was experiencing bilateral pain "in the cervical region … [which was] pretty equal right and left."[15] Claimant's Exhibit G. In an office note dated March 21, 2019, Robert R. Yaghoubian, an orthopedist, reported that the claimant was complaining of "right-sided neck pain … with radiation to his right upper extremity." Claimant's Exhibit F.

In a report dated March 28, 2019, Kloth opined as follows:

> Dr. Paul has been requesting an MRI, as well [as] an injection [to] the right side, everything has been denied by Workers' Compensation. For some reason Workers' Compensation does not understand that this is related to his original surgery. I would point out to Workers Compensation that he woke up from surgery in the recovery room with severe right sided pain…. This was directly related to the surgery and there should not be any question as to whether this is related to Workers Compensation. Denial of this gentleman's care is not only counterproductive, but the delay in his care could potentially result in [a] permanent nerve injury. It is just simply common sense that this is related and the fact that Workers Compensation cannot understand that seems absurd. His attorney is apparently pushing the matter, hopefully the Commissioner will intervene.

Claimant's Exhibit G.

[14] The claimant underwent an electrodiagnostic evaluation of his left arm at this office visit.
[15] The claimant underwent a "[l]eft C5-6 selective transforaminal epidural steroid injection" at this visit. Claimant's Exhibit G. Kloth opined that additional injections were contraindicated because the relief obtained from the injection lasted for only three days and the steroid medication adversely affected the claimant's blood sugar levels. See id.

As discussed previously herein, Jambor, in his April 24, 2019 RME, opined that the claimant's right-sided neck pain was related to the May 21, 2018 workplace injury; in his June 4, 2019 addendum, Jambor related the right-sided neck pain to both the September 21, 2017 and May 21, 2018 workplace injuries. See Respondents' Exhibit 3, p. 1.

Paul's office notes dated December 31, 2018; January 22, 2019; March 1, 2019; March 29, 2019; and April 9, 2019, reference right-sided neck pain. In correspondence to counsel dated September 19, 2019, Paul stated that the claimant's "symptoms did not start until after the injury on May [21] of 2018. It is with a reasonable degree of medical certainty that the incident in May was the probably causative factor and is why he requires additional surgical intervention." Claimant's Exhibit H. Moreover, as previously discussed herein, in correspondence to counsel dated May 28, 2020, Paul opined that the injury of May 21, 2018, was a substantial contributing factor to the need for the October 19, 2019 surgery and explained that the claimant's right-sided symptoms after the first surgery were likely due to "residual right-sided foraminal stenosis" and "adjacent level symptoms which also required decompression in the second surgery." Id.

In Sapko v. State, 305 Conn. 360 (2012), our Supreme Court stated:

> all the medical consequences and sequelae that flow from the primary injury are compensable. Thus, for example, an injured worker may recover for a new injury or an aggravation of a compensable injury resulting from medical treatment on the theory that the initial injury is the cause of all that follows.

Id., 381.

As such, in light of the opinions relative to compensability proffered by the various medical providers involved in this claim, we find the evidentiary record provides

a more than adequate basis for the administrative law judge's inference that the claimant's May 21, 2018 injury, along with the initial cervical surgery, were substantial contributing factors to the claimant's need for a second cervical surgery.

With regard to the inquiry into whether this second surgery constituted "reasonable or necessary medical treatment," we would note that in Bowen v. Stanadyne, Inc., 2 Conn. Workers' Comp. Rev. Op. 60, 232 CRD-1-83 (June 19, 1984), this board held that:

> Reasonable or necessary medical care is that which is curative or remedial. Curative or remedial care is that which seeks to repair the damage to health caused by the job even if not enough health is restored to enable the employee to return to work. Any therapy designed to keep the employee at work or to return him to work is curative. Similarly, any therapy designed to eliminate pain so that the employee can work is curative. Finally, any therapy which is life-prolonging is curative.

Id., 64.

In the present matter, the evidentiary record indicates that when the claimant first presented to Velocity Urgent Care on May 22, 2018, he was deemed "unable to work until reevaluated." Claimant's Exhibit A. On June 15, 2018, June 27, 2018, and July 12, 2018, Fish issued office notes indicating that the claimant was unable to work. At formal proceedings, the parties stipulated to the fact that the claimant underwent compensable surgeries on August 7, 2018, September 4, 2018, and November 15, 2018; on September 27, 2018, Kloth indicated that the claimant should remain out of work pending spinal surgery. On March 28, 2019, Kloth reported that "[t]he first thing [the claimant] stated to me at our appointment today was, 'all I want to do is return to work.' Claimant's Exhibit G. On June 4, 2019, Jambor advised that "[i]f the patient is unable to

return to work full duty 12 months status post surgery (November 15, 2019) a functional capacity evaluation should be considered." Respondents' Exhibit 3, p. 2.

In addition, although Paul's reports prior to June 26, 2019, do not directly address the claimant's work capacity, on that date and again on August 2, 2019, Paul indicated that the claimant "should be off work until further notice …." Claimant's Exhibit H. On September 18, 2019, Paul issued correspondence stating that the claimant remained totally disabled pending surgery scheduled for October 14, 2019, and a subsequent note issued by Paul on October 8, 2019 maintained that status. On November 1, 2019, Paul recommended an additional four weeks of temporary total disability, and on January 9, 2020, Paul, noting that the claimant was "eager to return to work," returned him to transitional duty with a twenty-five pound lifting restriction.[16] Id.

We also note that in his correspondence of May 28, 2020, Paul directly addressed Waitze's recommendation against additional surgery, stating that although Waitze's opinion was "understandable … it is quite compelling given [the claimant's] full recovery and pain relief that the surgery was well indicated." Id. In addition, Paul pointed out that the claimant had not experienced any injury or trauma between the two surgeries.

Finally, we note that the claimant's testimony at formal proceedings reflected his profound dissatisfaction with his long-term inability to work. When queried as to why he had pursued the second cervical surgery through his group insurance, he testified, "I couldn't take the pain no more, and I wanted to go back to work. I wanted to get fixed." June 24, 2020 Transcript, p. 35. When queried as to whether he was "glad" he'd undergone the second surgery, he replied:

[16] It is not entirely clear from Paul's records whether he returned the claimant to work effective January 9, 2020, or January 20, 2020.

> It's very – you know, I never been out of work at all. The two years, I wasn't looking for this. You know, two years you don't work, your bills start piling up. Then you start thinking, what's going to happen? Am I ever going to work again? Then you know, finally I get the operation and everything is a success. My life is back to normal. I'm getting back to where I should be.[17]

Id., 37-38.

The foregoing analysis strongly suggests that, absent the second cervical surgery, it is highly doubtful that the claimant would have ever been able to return to work. We are not necessarily persuaded that it would have been illogical for the administrative law judge to infer that the second cervical surgery constituted "reasonable or necessary" medical treatment given that it was ultimately successful. However, we believe the evidentiary record provided a more than sufficient basis for the inference that even had the surgery not been as successful as it was, it would still have constituted "reasonable or necessary" medical treatment in light of the claimant's longstanding inability to work due to his ongoing symptomatology and the fact that his pain and discomfort had not been alleviated by conservative measures. This is particularly so given this board's previous observation that "[t]here is nothing in § 31-294d limiting 'reasonable [or] necessary' medical care to courses of treatment that will probably be successful, nor would the humanitarian spirit of the Workers' Compensation Act be furthered by our reading such a limitation into the statute." Cirrito v. Resource Group Ltd. of Conn., 4248 CRB-1-00-6 (June 19, 2001).

[17] The claimant testified that as soon as Paul had returned him to work, he immediately contacted the respondent employer's dispatcher for employment. Although he was initially told that the employer could assign him "night line hauling" (driving a trailer from terminal to terminal), he was terminated from the employment four days later.

Thus, in light of the fact that the second cervical surgery was the option best "designed to keep the employee at work or to return him to work," Bowen, supra, the surgery was clearly "curative in nature," and, as such, satisfied the standard for reasonable or necessary medical treatment as set forth in Bowen, supra.

There is harmless error; the December 30, 2020 Corrected Finding and Decision Filed Sua Sponte of Carolyn M. Colangelo, Administrative Law Judge acting for the Fifth District, is accordingly affirmed.

Administrative Law Judges Brenda D. Jannotta and David W. Schoolcraft concur in this opinion.