CASE NO. 6415 CRB-7-21-2 : COMPENSATION REVIEW BOARD
CLAIM NO. 400096827

ROBERTA R. O'DONNELL : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : NOVEMBER 4, 2021

GLOBAL MEDICAL RESPONSE, INC.
EMPLOYER

and

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.
INSURER
RESPONDENTS-APPELLEES

APPEARANCES: The claimant was represented by Michael P. Foley, Jr., Esq., 1120 South Main Street, Cheshire, CT 06410.

The respondents were represented by Gerald V. Davino II, Esq., Testan Law, 2080 Silas Deane Highway, Suite 304, Rocky Hill, CT 06067.

This Petition for Review from the January 21, 2021 Findings and Orders of Randy L. Cohen, Administrative Law Judge acting for the Fourth District, was heard on June 25, 2021 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges David W. Schoolcraft and Maureen E. Driscoll.[1]

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[1] Effective October 1, 2021, the 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 claimant has petitioned for review from the January 21, 2021 Findings and Orders (finding) of Randy L. Cohen, Administrative Law Judge acting for the Fourth District. We find no error and accordingly affirm the decision.[2]

The administrative law judge identified the following issues for analysis in association with a claimed injury of February 14, 2014: (1) compensability of a seizure disorder; (2) form 36 approval;[3] (3) form 43 approval;[4] (4) medical treatment; (5) eligibility for temporary total incapacity benefits; and (6) eligibility for permanent partial disability benefits. The following factual findings are pertinent to our review of this matter. On February 14, 2014, the claimant, who was employed as an emergency medical technician for the respondent, was transporting a patient to St. Vincent's Medical Center in Bridgeport, Connecticut, when she was assaulted by the patient. During the assault, the claimant's head struck the inside wall of the ambulance, and the claimant sustained injuries to her face, head and neck.

The administrative law judge took administrative notice of a Voluntary Agreement approved on October 20, 2020, documenting the compensability of "psych, head and neck" injuries as the result of the claimant being struck by the patient on February 14, 2014. She also noted that the respondents were paying the claimant temporary total disability benefits in the amount of $734.00 per week. On January 31, 2021, the respondents filed a form 36 seeking to convert the claimant's temporary total

[2] We note that one motion for extension of time was granted during the pendency of this appeal.
[3] A "form 36" is entitled "Notice of Intention to Reduce or Discontinue Payments."
[4] A "form 43" is entitled "Notice to Administrative Law Judge and Employee of Intention to Contest Employee's Right to Compensation Benefits."

disability benefits to permanent partial disability benefits on the basis of a respondents' medical examination performed by Kenneth M. Selig, a medical and legal forensic psychiatrist, on December 31, 2019. Selig found the claimant was at maximum medical improvement psychiatrically and assigned a 5 percent permanent partial disability rating to the brain pursuant to the sixth edition of the American Medical Association Guides for the Evaluation of Permanent Impairment (guides).

The claimant presented to St. Vincent's Medical Center following the assault in the ambulance on February 14, 2014. The medical records for that visit indicate that while the claimant was transporting a patient to the emergency department at St. Vincent's, the patient "began to punch and kick the [claimant] repeatedly in the left side of the face." Findings, ¶ 11, *quoting* Claimant's Exhibit A. At that visit, the claimant reported a minor headache and denied any loss of consciousness, neck pain, blurred vision or eye pain. The claimant was prescribed several medications and diagnosed with a contusion of the face and "[b]lunt trauma to face by punch and kick." Claimant's Exhibit A.

On February 17, 2014, the claimant presented to Concentra Medical Center, where she reported the assault, stating that she had been "punched in the head and her head was forced back into the ambulance wall. The patient admits she does not recall all of the injury and loss of consciousness is questionable.... No CT [scan] was performed because the patient was asymptomatic." Findings, ¶ 12, *quoting* Claimant's Exhibit C. The assessment reflected that the claimant had experienced cervical strain and a brief loss of consciousness, and she was advised to return to the emergency department for a CT scan of her head.

When the claimant presented to St. Vincent's on February 17, 2014, she reported that she was feeling dizzy and experiencing nausea, headache, and ringing in her ears. A CT scan of the facial bone did not show evidence of a fracture but did demonstrate a perforated nasal septum. The diagnoses at that visit were a closed head injury and a contusion to the face. The claimant was subsequently diagnosed with post-traumatic concussion syndrome and cervical strain at Concentra.

On February 26, 2014, the claimant was examined by Robert Bonwetsch, a neurologist, who, noting that the claimant at that time was reporting head and neck pain, sensitivity to light, and dizziness, opined that the claimant was suffering from headaches, a concussion with no loss of consciousness and cervicalgia. Bonwetsch recommended that the claimant "avoid screens, computers, TVs, smartphones, loud music and physical exercise," referred the claimant for physical therapy, ordered an ImPACT test to assess cognitive function, and prescribed Nortriptyline at bedtime for the post-traumatic headaches. Findings, ¶ 16, *quoting* Claimant's Exhibit D.

The claimant returned to Bonwetsch on March 12, 2014, at which time the claimant reported that her headaches had mildly improved but her anxiety level had significantly increased and she had experienced a few panic attacks. The claimant also reported that she was feeling more irritable and short-tempered, that she felt dizzy and nauseous at times, and her neck stiffness was constant. Bonwetsch diagnosed the claimant with post-concussion syndrome and recommended physical therapy as well as a behavioral health consultation for post-traumatic anxiety and panic attacks.

In March 2014, the claimant was seen by Mary Murphy, a psychologist, who reported that the claimant was exhibiting symptoms of depression, anxiety, panic and

post-traumatic stress disorder (PTSD); Murphy diagnosed the claimant with PTSD.[5] In April 2014, the claimant returned to Bonwetsch, who prescribed medication for headache prevention and recommended the claimant continue with physical therapy, trigger point injections, and heat applications. The claimant continued to treat with Bonwetsch and other medical providers in his office through April 2020.

On May 30, 2014, the claimant presented to Numan Gharaibeh, a psychiatrist. Gharaibeh reported that the claimant was suffering from anxiety, an increased startle response, difficulty falling asleep and nightmares. The doctor's "Diagnostic Impression" was "PTSD [and] some obsessive/compulsive traits, rule out executive dysfunction due to TBI/ABI/concussion." Claimant's Exhibit G. The claimant treated with Gharaibeh for PTSD through June 2015.

On July 27, 2014, the claimant underwent a respondents' medical examination with Samuel L. Bridgers, a neurologist. Bridgers "reported that the claimant was unable to recall anything related to the attack other than the first kick to her head," Findings, ¶ 22, *citing* Respondents' Exhibit 5, Claimant's Sub-Exhibit 16, p. 1, and that "[s]he was told that she had been kicked and punched multiple times." Id. Bridgers noted that as of the date of his examination, the claimant's neck pain and facial contusion "were almost completely resolved," id., and he diagnosed the client as suffering from post-concussion syndrome and post-concussion headaches, both of which were improving. Bridgers also noted that although other providers had diagnosed the claimant with PTSD, he had not done so because such a diagnosis was not within his field of expertise.

[5] The claimant underwent PTSD treatment with Murphy through December 1, 2016.

In August 2015, the claimant returned to part-time light duty as an EMT/paramedic instructor at Hartford Hospital. She remained employed part time until almost the end of 2017 and was able to drive herself to work during that period. Bonwetsch reported that by July 2015, the claimant was running more than three miles per day, and by June 23, 2016, she was running three to five miles three times per week and thirteen miles on the weekend. In 2016, the claimant entered and completed a "Tough Mudder" competition.[6] In a report dated February 9, 2017, Bonwetsch indicated that the claimant had reached maximum medical improvement and the injury had caused post-traumatic migraines (because the claimant had experienced migraines prior to the injury), increased her anxiety and PTSD, and possibly caused a seizure disorder. Bonwetsch stated that although the claimant did not meet the criteria for a permanent partial disability, she would continue to require medication for headache and seizure prevention, possibly for the rest of her life.[7]

In February 2017, the claimant began treating with Joseph H. Williams, Jr, a psychiatrist, who diagnosed the claimant with anxiety, depression and post-traumatic stress disorder. In March 2017, the claimant underwent a neuropsychological evaluation with Erin Lasher Jacobstein, a clinical neuropsychologist, the results of which were inconclusive. However, the evaluation detected no underlying neurological condition which could be contributing to the claimant's symptoms. On April 17, 2017, Williams opined that the claimant had a permanent partial disability rating between 60 and 70

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[6] At his deposition, Selig testified that the claimant had explained to him that the "Tough Mudder" competition was about five kilometers and was "not really a race." Respondents' Exhibit 5, p. 165. Selig remarked that "what [he] took to be more sufficient was this ongoing running which she was doing, if not [on] a daily basis, very frequently several miles." Id.

[7] Based on the claimant's report of having experienced a seizure, Bonwetsch also ordered an EEG, an ambulatory EEG, and an MRI of the brain. The results of these tests were normal.

percent of the brain. On January 3, 2019, Williams placed the claimant at maximum medical improvement but felt that she continued to be totally disabled from all work.

In July 2019, the respondents contested the claimant's ongoing medical treatment on the basis that it was not reasonable or necessary for the work-related injury. In correspondence dated September 10, 2019, Bonwetsch stated that he was unable to causally connect the claimant's seizures to her workplace injury.

The claimant underwent a respondents' medical examination with Selig on December 31, 2019. In addition to conducting an interview lasting one and three-quarter hours, Selig reviewed extensive medical records and evaluations along with a transcript of the claimant's deposition taken on October 6, 2017.[8] Selig concluded that the claimant was not suffering from PTSD given that she could not remember the incident save for being kicked once in the face. Although she reported having hit her head on the side of the ambulance, and later described being kicked several times in the face, Selig found it "notable that the only observable damage was a contusion to her eye – essentially a black eye. There were no other bumps or bruises noted on her head." Findings, ¶ 34.a, *quoting* Respondents' Exhibit 5, Respondents' Sub-Exhibit B, p. 13. Selig stated that "[g]iven her lack of memory, she cannot have post-traumatic stress disorder because the trauma itself was not directly experienced by her, and therefore, the characteristic chemical and hormonal changes that occur during a sufficiently severe trauma would not have occurred with her." Findings, ¶ 34.b, *quoting* id.

Selig also opined that it was "difficult to understand whether or not she had a traumatic brain injury," Findings, ¶ 34.c, *quoting* id., noting that "[a]ll objective testing

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[8] The claimant did not testify at formal proceedings.

has been within normal limits including a CT scan of the head, an MRI of the brain, EEGs and neuropsychological testing, which was invalid." Id. Selig further noted an inconsistency between the claimant's reports of experiencing no retrograde amnesia prior to being kicked the first time but experiencing extensive anterograde amnesia after the assault. In addition, Selig pointed out that "[t]here are [a] variety of other significantly stressful issues that are both pre-existing and co-existing over the years … [as well as] evidence that she has been exaggerating her symptoms." Findings, ¶ 34.d, *quoting* id.

Selig concluded that the claimant had suffered an unspecified anxiety disorder which was no longer substantially related to the workplace assault of February 14, 2014. Selig also opined that the claimant had reached maximum medical improvement "long ago." Findings, ¶ 34.e, *quoting* id. On the basis of the sixth edition of the AMA guides, he assigned a 5 percent disability of the brain. Selig indicated that he completely disagreed with Williams' assignment of a 60 to 70 percent permanency rating, noting that Williams did not explain how he arrived at that figure and appeared to have "suggested that it had something to do with the fact that [the claimant] was working only two days per week …." Findings, ¶ 34.f, *quoting* id., 14. Selig also pointed out that there was no evidence that Williams had utilized the AMA guides or any other agreed-upon method in arriving at his permanency rating.

Selig determined that the claimant had a work capacity, noting that she had been working for two years, part time, until she was laid off, at which time Williams had opined that she was temporarily totally disabled. Selig remarked that the medical record contained no persuasive notes reflecting that the claimant's situation significantly worsened; "[r]ather, the only change was that she was let go from her job." Findings,

¶ 34.g, *quoting* id. Selig concluded: "I do not think that she needs any further treatment at this time for any anxiety substantially related to the injury on February 14, 2014. It appears that she has exaggerated both the nature of the event and the extent of her injuries." Findings, ¶ 34.h, *quoting* id.

Based on the foregoing, the trier found Bonwetsch credible and persuasive relative to his opinion that the claimant had reached maximum medical improvement for her head and neck on February 9, 2017 and there was no basis for a permanent partial disability rating. She also found credible Bonwetsch' conclusion that the claimant's seizure disorder was not related to the workplace injury. In addition, she found credible Williams' opinion that the claimant had reached maximum medical improvement for her psychological condition on January 3, 2019. However, she did not find Williams credible or persuasive relative to his January 3, 2019 opinion that the claimant was totally disabled from employment based on her psychiatric condition or that she had sustained a 60 to 70 percent impairment of the brain. Rather, she found credible Selig's opinions, testimony and reports indicating that pursuant to the sixth edition of the AMA guides, the claimant had a 5 percent permanent partial disability of the brain and was capable of working from a psychiatric perspective.

The administrative law judge approved the form 36 filed by the respondents on January 31, 2020, and converted the claimant's temporary total disability benefits to permanency as of that date. She also denied and dismissed the claim attributing the claimant's seizure disorder to the workplace injury of February 14, 2014. She awarded the claimant a 5 percent permanent partial disability of the brain and concluded that the

respondents were no longer liable for any ongoing medical treatment rendered by either Bonwetsch or Williams.

The claimant filed a motion to correct, to which the respondents objected and which was denied in its entirety, and this appeal followed.[9] On appeal, the claimant contends that the administrative law judge erred in relying upon Selig's opinion given that Selig did not review all of the claimant's medical records or the claimant's deposition transcript of November 19, 2015, before rendering his opinion. More specifically, the claimant argues that the trier's decision to approve the respondents' form 36 and convert the claimant's temporary total disability benefits to permanency constituted error. The claimant also claims as error the award of a 5 percent permanent partial disability of the brain. The claimant further contends that the trier erred in approving the respondents' form 43 denying additional medical treatment by either Bonwetsch or Williams. Finally, the claimant asserts that the trier's conclusion that the claimant does not suffer from PTSD constituted error.

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

[9] On March 4, 2021, the administrative law judge issued "Corrected Findings and Orders" indicating that Findings, ¶ 34.a, should be corrected to read as follows: "The claimant does not suffer from PTSD."

> (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 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 claimant's general contention that the trier's reliance upon Selig's opinion constituted error. The claimant argues that because Selig, prior to issuing his RME report, did not review the claimant's deposition transcript of November 19, 2015; the March 12, 2014 ImPACT study and report by Neil Culligan, M.D.; Murphy's report of March 30, 2017; the trigger point injection reports from Associated Neurologists; or Williams' June 27, 2018 report, he was not a credible expert witness.

There is no question that during the course of his deposition, Selig acknowledged that he had not reviewed the evidentiary items referenced by the claimant. See Respondents' Exhibit 5, pp. 91-92, 99-100, 139, 171-172. However, relative to the claimant's deposition testimony from November 2015, we note that a portion of that deposition in which the claimant had relayed the circumstances surrounding the workplace injury was read into the record at Selig's deposition, prompting him to concede that the claimant appeared to have "[s]ome memory" of the assault. Respondents' Exhibit 5, p. 144.

With regard to Culligan's March 12, 2014 ImPACT Integration Report, we note that the "Impression" portion of that report states that "[t[he patient scored in the lowest

percentile in memory composite scores and in motor speed and reaction time…. Overall today's test shows very poor cognitive functioning compared to normative data." Claimant's Exhibit F. However, when presented with this report at his deposition, Selig stated:

> I do not know whether it's valid, how it's been determined to be valid and it appears inconsistent with his assessment up above under neurological where he says, no decrease in concentration, remote memory not impaired, recent memory not impaired, adequate fund of knowledge, no language abnormalities. That appears to be inconsistent with what the ImPACT score would test which is cognitive functioning.

Respondents' Exhibit 5, p. 104.

With regard to the March 30, 2017 correspondence from Murphy to claimant's counsel, wherein Murphy addressed the claimant's impairments "based on the Guidelines as published by the American Medical Association," Claimant's Exhibit E, Selig remarked: "I don't agree with that. None of these [factors], as best as I can tell, are part of the Sixth Edition in the AMA Guidelines. As I pointed out in my direct, this is not the way you do an analysis and she doesn't give a permanency rating." Respondents' Exhibit 5, p. 102. Selig also testified that he had not used the fifth edition of the guides since the sixth was published; that he didn't "recognize it as authoritative," id., 146; and he remembered there was "a very distinct difference between what the Fifth Edition wanted us to do and what the Sixth Edition wanted us to do. There's a tremendous difference between the two." Id.

Relative to Williams' June 27, 2018 report, wherein he noted that the claimant was experiencing recurrent episodes of suicidal ideation, Selig opined that suicidal ideation is not a symptom of PTSD. See id., 119. Finally, with regard to the trigger point

injection reports, Selig testified he had reviewed one of the reports.[10] See id., 171. Of greater significance for our purposes, Selig indicated that on the two occasions he met with the claimant, she did not discuss the neck pain or the trigger point injections or indicate "that the neck problem in any way was still a physical inhibitant [sic] to her working and needed more treatment."[11] Id., 167.

Having reviewed the foregoing, we are not persuaded that the omission of the referenced evidentiary items from Selig's RME review inordinately compromised his ability to serve as an expert witness upon whose opinion the administrative law judge could reasonably rely. This is particularly so given that the record reflects that Selig's examination of the claimant lasted for almost two hours; his RME report references thirteen separate items, consisting of correspondence, various sets of medical records, and deposition transcripts, that he did review; and he was given the opportunity to review, and comment upon, all of the omitted items at his deposition.

The claimant also identifies as error the trier's decision to approve the form 36 filed by the respondents on January 31, 2020, thereby converting the claimant's temporary total disability benefits to permanency as of that date. In his RME report, Selig opined that the claimant had a work capacity, in direct contrast to the opinion advanced by Williams, who had deemed the claimant temporarily totally disabled two weeks after she was laid off from her part-time employment in 2017 and never altered

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[10] Our review of the record indicates that the claimant underwent a series of six trigger point injections during the period from May 14, 2014, to March 12, 2015. See Claimant's Exhibit F.

[11] Selig initially met with the claimant on August 2, 2017, ultimately concluding that although the interview had lasted one and one-half hours, it was not helpful due to the variability of the claimant's memory. Selig also reported that the claimant's "anxiety appeared to be overwhelming to the point that I could not obtain enough information to resolve the questions in my mind as to whether or not she was having cognitive problems, what the real nature of her psychological condition was, and whether she was malingering or strategizing the examination." Respondents' Exhibit 5, Respondents' Sub-Exhibit B, p. 3.

that status assessment. However, Selig indicated, and the trier so found, that "there [were] no persuasive notes that [indicated] a significant worsening of her situation such that she was capable of working and then became disabled." Respondents' Exhibit 5, Respondents' Sub-Exhibit B, p. 14.

Our review of the evidentiary record indicates that Williams, at a deposition held on July 12, 2018, unambiguously opined that the claimant did not have a work capacity. He testified that the claimant was no longer able to work due to her "psychiatric issues" and "anger outbursts." Claimant's Exhibit J, p. 9. Williams indicated that the claimant "struggles to get out of the house" and "it's an avoidance of doing anything stressful, in essence." Id., 19. In discussing the claimant's anger issues, Williams stated that "[i]t's one thing to manifest that [for] a short period of time. It's another thing to have that constantly be the thing that coworkers and everybody are having to deal with." Id. Williams testified:

> It's sad to say, I just don't think that she can [return to work]. Better for her and better for me if she's working because it means a lot of things are going better and then there's professional satisfaction on her part. There's structure in her life, something to do. I would love it if she could, I just don't see it.

Id., 40.

However, we note that on February 9, 2017, Bonwetsch opined that the claimant had reached maximum medical improvement even though she continued to suffer from post-traumatic migraines. Bonwetsch also stated that the claimant had "developed at least worsening of her anxiety and continues to see a psychologist as well as a psychiatrist and I would have to leave any assessment regarding disability due to anxiety/PTSD to them." Respondent's Exhibit 1, p. 3. Moreover, on January 3, 2019,

Gharaibeh reported that the claimant "appears to have reached maximal medical improvement on her med regimen."[12] Respondents' Exhibit 3. In light of the foregoing, we therefore find no error relative to the administrative law judge's decision to approve the form 36 as of the filing date of January 31, 2020, and convert the claimant's benefits from temporary total disability to permanent partial disability.

The claimant also contends that the trier erroneously relied upon Selig's opinion in awarding the claimant a 5 percent permanent partial disability of the brain. The claimant argues that Selig's opinion "was based on speculation and conjecture," Appellant's Brief, pp. 10-11, and the "[f]inding that Dr. Williams did not indicate what he used to obtain the permanency rating was inconsistent with the evidence at trial." Id., 8. The claimant points out that Williams, at his deposition, explained that in calculating his permanency rating, he had referenced Murphy's March 30, 2017 correspondence to counsel wherein Murphy articulated the claimant's various impairments consistent with the AMA guidelines. The claimant therefore asserts that "[t]he fact that Dr. Selig had not reviewed Dr. Murphy's report … is significant because Dr. Murphy clearly indicates in her report that the Claimant had sustained a permanent partial impairment based upon the AMA Guides and describes each of the impairments that she had sustained in great detail …." Id., 10.

Our review of the record indicates that at deposition, Williams testified regarding his opinion that the impairment factors discussed in Murphy's March 30, 2017 correspondence to counsel provided an adequate basis for his permanency rating of 60 to

[12] Although Murphy articulated her opinion regarding the extent of the claimant's permanent impairment in her correspondence to counsel of March 30, 2017, she did not state that the claimant had reached maximum medical improvement. See Claimant's Exhibit E.

70 percent of the brain. Williams explained that in arriving at the rating, he had considered "a combination of factors," Claimant's Exhibit J, p. 25, such as the persistence of the claimant's panic and anxiety symptoms and sleep disturbances as well as the fact that, although the claimant had been working part time, she was no longer able to do so.

However, when queried as to whether he had ever previously done a permanent impairment rating for a workers' compensation claimant, Williams replied that he had not, although he had consulted the AMA guides once before in another workers' compensation matter. He indicated that he could not recall whether he had referenced the AMA guides in formulating the rating for the instant claimant, stating that throughout the course of his career, he had primarily done "a lot of disability work and assessments" using a formal disability form. Claimant's Exhibit J, p. 26. In a SOAP note dated April 11, 2017, Williams stated that the claimant "seems to have [a] 60-70% disability as she is only able to attend work 2 days out of the week and she ends up leaving work early a portion of the time." Claimant's Exhibit G.

As discussed previously herein, although the record does demonstrate that Selig did not review Murphy's March 30, 2017 report prior to his deposition, he was given the opportunity to do so at the deposition. At that time, Selig testified he was unsure of the basis for both the impairment assessment offered by Murphy and the disability rating assigned by Williams in that neither appeared to have been based on factors set forth in the sixth, and most recent, edition of the guides.[13] He also remarked that the customary

[13] At his deposition, Selig walked the attorneys through his method of calculating a permanency rating pursuant to the sixth edition of the AMA guides. See Respondents' Exhibit 5, pp. 50-58.

calculation of a permanency rating is not based on "a percentage of how much somebody is working," Respondents' Exhibit 5, p. 49, and pointed out that:

> if you look at what it would require for somebody to be at … a 40 or 50 percent permanency rating, still below what Dr. Williams said, they are essentially just not functioning at all, not taking care of their hygiene. Just completely dysfunctional. And that would not be appropriate with her.

Id.

Given that the administrative law judge deemed this testimony credible, we find no error relative to her decision to accept Selig's permanency rating rather than the rating assigned by Williams. "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).

The claimant also claims as error the trier's denial of additional medical treatment with either Bonwetsch or Williams on the basis of Selig's assertion that the claimant no longer required ongoing psychiatric treatment or medication "*as relates to the assault of February 14, 2014*." (Emphasis added.) Respondents' Exhibit 5, p. 58. The claimant points out that on October 29, 2019, Williams opined in correspondence to counsel that the workplace injury of February 14, 2014 was a substantial contributing factor to the claimant's psychiatric injuries and that she "continues to manifest symptoms of … PTSD. She will require ongoing treatment with both medications and therapy. Such treatments continue to be medically necessary and are life-prolonging." Claimants Exhibit G. We also note that on January 8, 2019, Williams again stated in correspondence to counsel that

the claimant would "need to remain on medications and receive psychiatric follow-up sessions throughout the rest of her life to prevent an escalation in her symptoms." Id.

This board has previously 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.

Bowen v. Stanadyne, Inc., 2 Conn. Workers' Comp. Rev. Op. 60, 64, 232 CRD-1-83 (June 19, 1984).

There is no question that Williams was of the opinion that the claimant's ongoing psychiatric care and medication regimen constituted reasonable and necessary medical treatment. However, it should be noted that Selig did not state that the claimant was no longer in need of psychiatric care or medication in a general sense; rather, he specifically opined that the claimant's requirement for these modalities of treatment was no longer associated with the February 14, 2014 assault. He further testified that he did "not think that any anxiety that she suffered *from the assault in 2014* impairs her capacity to work in any way at this time," (emphasis added) Respondents' Exhibit 5, p. 58, and the claimant "has recovered from any anxiety that she suffered *as a result of the assault*. If she can't work, then it's not because of that anxiety." (Emphasis added.) Id., 59.

As such, in light of our previous analysis herein relative to the trier's discretion in deeming Selig a credible witness in this matter, we are not persuaded that Selig's "opinion that the claimant did not require any ongoing medical treatment was clearly

based on speculation and conjecture and should not have been accepted by the trial commissioner." Appellant's Brief, p. 12.

Finally, the claimant contends that the administrative law judge erroneously relied on Selig's opinion for her conclusion that the claimant does not suffer from PTSD, again arguing that Selig's opinion was based on speculation and conjecture. The claimant further asserts that the testimony she offered at her November 19, 2015 deposition, which testimony was presented to Selig at his deposition, refuted Selig's belief that she did not recall the details of the assault. See Respondents' Exhibit 5, pp. 140-143, *quoting* Respondents' Exhibit 5, Claimant's Sub-Exhibit 18, pp. 14-17.

The claimant also points to the medical reports authored by Murphy, Gharaibeh, Williams, and Bridgers, all of whom opined that the claimant was suffering from PTSD. See Claimant's Exhibit E (Murphy's reports of March 28, 2014 and August 6, 2014); Claimant's Exhibit G (Gharaibeh's report of May 30, 2014); Claimant's Exhibit G (Williams' SOAP note of February 24, 2017); Claimant's Exhibit J, p. 10 (Williams' deposition of July 12, 2018); and Respondents' Exhibit 5, Claimant's Sub-Exhibit 16, p. 3 (Bridgers' RME report of July 17, 2014).[14]

In addition, the claimant contends that Selig, at his deposition, acknowledged that Bridgers had related the claimant's PTSD to the workplace assault, and testified that the claimant had no history of an anxiety disorder or PTSD prior to the assault. As such, it is the claimant's position that the trier erred in relying upon Selig's opinion that the

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[14] It should be noted that in his RME report, Bridgers indicated that his assessment that the claimant was suffering from PTSD was predicated on the diagnoses of her treating psychologist and psychiatrist. See Respondents' Exhibit 5, Claimant's Sub-Exhibit 16, p. 3.

claimant was suffering from an anxiety disorder rather than PTSD as a result of the workplace injury.

There is no question that the claimant's psychiatric treaters diagnosed the claimant with PTSD, and that the trier's findings identified those assessments. See Findings, ¶¶ 5, 18, 20, 21. However, Selig challenged those diagnoses, primarily on the basis of the claimant's own testimony that she could not remember much of the attack. At her deposition of November 19, 2015, the claimant, in relaying the circumstances leading up the assault, testified:

> We were moving by then and the first punch came then and then the first kick got me and that first kick is what hit me and my head went into the side of the ambulance and when my head hit the side of the ambulance I don't remember too much after that because it kind of like I saw stars and then I saw the foot come again and then after that I don't remember anything.

Respondents' Exhibit 5, Claimant's Sub-Exhibit 18, pp. 16-17.

The claimant went on to state:

> And then I remember the emergency room and then I know I talked to my friends a couple days later and they said do you remember talking to me and I don't remember any of the conversations from, like, a couple days. Supposedly I talked to people and I don't remember running the run [sic] forms. I don't remember talking to them for those couple days. I don't remember, like, the conversations at the emergency room. I don't remember going to the – you know, going back to the emergency room.

Id., 17.

We also recognize that the records for the claimant's visits to the St. Vincent's Emergency Department on February 14, 2014, and February 17, 2014, as well as the records for her visit to Concentra on February 17, 2014, all indicate that the claimant reported being punched and kicked repeatedly. However, as previously noted herein, the

Concentra records also state that "[t]he patient admits she does not recall all of the injury and loss of consciousness is questionable." Claimant's Exhibit C.

Moreover, Bridgers, in his RME of July 17, 2014, states that the claimant was "unable to recall anything related to the actual attack other than the first kick in her head. Her next recollection is of being in the emergency room. She was reported as not having lost consciousness. She was subsequently told that she had been kicked and punched multiple times." Respondents' Exhibit 5, Claimant's Exhibit 16, p. 1.

It may be reasonably inferred that the foregoing testimony and medical records provided the basis for the following observation in Selig's RME report of January 20, 2020, wherein he stated:

> within reasonable medical probability, that [the claimant] does not suffer from post-traumatic stress disorder. The best evidence is that she has a loss of memory for the incident except for remembering that she was kicked once in the face. She has trouble remembering what else happened…. Given her lack of memory, she cannot have post-traumatic stress disorder because the trauma itself was not directly experienced by her ….

Respondents' Exhibit 5, Respondents' Sub-Exhibit B, p. 13.

Moreover, at his deposition, Selig remarked that the claimant "remembered being kicked in the face. And that was the incident as far as she could remember." Respondents' Exhibit 5, p. 29. Selig also observed that the claimant "had been told, I'm not sure by whom, that she had been kicked and punched several times. So, that is the extent of the incident as I understand it." Id., 29-30. In discussing the fact that the claimant experienced a loss of memory for approximately two days following the assault, Selig also testified that it has been his experience, in situations involving a traumatic brain injury, that the patient either experiences amnesia both before <u>and</u> after the event, or

no amnesia at all, and this was the first case he had seen in which the patient only experienced amnesia after the fact.

Selig went on to state that he did not believe the trauma was "sufficiently severe" to result in PTSD, id., 38, pointing out that the emergency room evaluation immediately after the assault reported "relatively little bruising," no bump or laceration on her head, and damage to her left eye which "was described essentially like a black eye." Id., 39. Selig commented that he "would have expected if the trauma were as severe as she was told that it was, that there would have been a lot more findings on physical examination." Id.

As previously noted herein, Selig also explained that:

> what really causes PTSD is the chemical and hormonal changes in the brain as a result of the individual's response to the trauma. She doesn't remember what we are calling the trauma. In the absence of being able to remember it, it never got loaded into the brain. And so she would have not had that kind of outflow. Nor would she have had, for example, recurrent intrusive memories. Nor would she have had nightmares because none of that would have been laid down since she was amnestic.[15]

Id.

Under cross-examination, Selig did concede that the claimant had "[s]ome memory," id., 144, of the assault, and agreed that the claimant "has characteristic symptoms of PTSD," id., 150, but repeated that he didn't think a "kick in the head and a punch in the head [constitutes] an adequate trauma. That's my opinion." Id., 150. He also stated that the claimant's symptoms, as described by her other providers, were consistent with his diagnosis of an anxiety disorder. See id., 161.

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[15] Selig admitted that he did not inquire of the claimant from whom she received information regarding the extent of the assault, stating that "[s]he told me she heard it from other people and I should have been more inquisitive." Respondents' Exhibit 5, p. 40.

Having reviewed the foregoing, we find no merit in the claimant's contention that the trier improperly relied upon Selig's opinion in concluding that the claimant did not suffer from PTSD. As discussed previously herein, we are not persuaded that the omission of several evidentiary items from Selig's RME review significantly impacted his ability to render a credible opinion in this matter. This is particularly so given the extensive list of medical records, correspondence and deposition testimony he did review, see Respondents' Exhibit 5, Respondents' Sub-Exhibit B, p. 2; his cooperation in sitting for a deposition on June 18, 2020, which commenced at 11:58 a.m. and concluded at 4:46 p.m.; and the fact that he was given the opportunity to review the omitted evidentiary items at his deposition.

It is axiomatic that "[t]he trial commissioner has the sole authority to decide which, if any, of the evidence is reliable, and he is always free to decide that he does not trust a particular medical opinion or a particular witness' testimony, even if there does not appear to be any evidence that directly contradicts it." Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998); see also Jusiewicz v. Reliance Automotive, 3140 CRB-6-95-8 (Jan. 24, 1997). We therefore find no error in the administrative law judge's decision to rely upon Selig's opinion in rendering her conclusions in this matter, given that the "decision was based on the medical evidence of the case and there is no basis to conclude it was contrary to the law or based on unreasonable or impermissible factual inferences." Appellees' Brief, p. 9.

It should also be noted that Selig, at his deposition, addressed the fact that the expert opinions proffered by the claimant's various medical providers were generally

inconsistent with his opinion. Selig explained the difference between his role as a forensic psychiatrist and the role of a treating physician, stating that:

> The field of forensic psychiatry focuses on providing psychiatric knowledge to try to answer legal questions. It does not involve the establishment of a doctor-patient relationship. The goal is to provide truthful and objective information to some legal authority.

Respondents' Exhibit 5, p. 10.

Selig also pointed out that the standard of care for a treating physician is to rely on what the patient tells him or her, and the "treater wants to maintain a therapeutic alliance," id., 20, which would be compromised were the treater to offer "an opinion opposed to the patient." Id.

As such, while we recognize that the conclusions drawn by the trier were not those sought by the claimant, the record provides an adequate basis for those conclusions and they are not subject to reversal on review. "[I]t 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).

There is no error; the January 21, 2021 Findings and Orders of Randy L. Cohen, Administrative Law Judge acting for the Fourth District, is accordingly affirmed.

Administrative Law Judges David W. Schoolcraft and Maureen E. Driscoll concur in this opinion.