CASE NO. 6437 CRB-2-21-7 CLAIM NO. 200179324	: COMPENSATION REVIEW BOARD
JOANN TINNERELLO, SURVING SPOUSE OF VINCENT TINNERELLO CLAIMANT-APPELLEE	: WORKERS' COMPENSATION COMMISSION
v.	: JUNE 16, 2022
ELECTRIC BOAT CORPORATION EMPLOYER SELF-INSURED RESPONDENT-APPELLANT	

APPEARANCES:

The claimant was represented by Amity L. Arscott, Esq., Embry Neusner Arscott & Shafner, L.L.C., P.O. Box 1409, 118 Poquonnock Road, Groton, CT 06340-1409.

The respondent was represented by Peter D. Quay, Esq., Law Office of Peter D. Quay, L.L.C., P.O. Box 70, Taftville, CT 06380.

This Petition for Review from the July 15, 2021 Finding & Award and the August 23, 2021 Supplemental Finding & Award of Soline M. Oslena, Administrative Law Judge acting for the Second District, was heard on December 17, 2021 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Brenda D. Jannotta and Maureen E. Driscoll.[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 Acts 2021, No. 18, § 1.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The respondent has petitioned for review from the July 15, 2021 Finding & Award and the August 23, 2021 Supplemental Finding & Award of Soline M. Oslena, Administrative Law Judge acting for the Second District.[2] We find no error and accordingly affirm the decisions.[3]

The administrative law judge identified as the threshold inquiry whether the doctrine of collateral estoppel precluded relitigating the nature of the causal connection between the decedent's work-related back injury and his death.[4] She further noted that if collateral estoppel did not apply, the issue for determination then became whether the decedent's compensable injury was a substantial contributing factor to his death, such that his surviving spouse was entitled to workers' compensation benefits pursuant to General Statutes § 31-306.[5]

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[2] It should be noted that all references to the administrative law judge's findings and conclusions herein are from the August 23, 2021 Supplemental Finding & Award.

[3] It should be noted that one motion for extension of time was granted during the pendency of this matter.

[4] "The common-law doctrine of collateral estoppel, or issue preclusion, embodies a judicial policy in favor of judicial economy, the stability of former judgments and finality.... Collateral estoppel ... prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties upon a different claim.... For an issue to be subject to collateral estoppel, it must have been fully and fairly litigated in the first action. It also must have been actually decided and the decision must have been necessary to the judgment.... An issue is actually litigated if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined.... An issue is necessarily determined if, in the absence of a determination of the issue, the judgment could not have been validly rendered.... If an issue has been determined, but the judgment is not dependent upon the determination of the issue, the parties may relitigate the issue in a subsequent action...." (Citations omitted; emphasis omitted; internal quotation marks omitted.) Lafayette v. General Dynamics Corp., 255 Conn. 762, 772–73 (2001). In addition, "[t]he application of the collateral estoppel doctrine may not be proper when the burden of proof or legal standards differ between the first and subsequent actions." Birnie v. Electric Boat Corp., 288 Conn. 392, 406 (2008).

[5] General Statutes § 31-306 states in relevant part: "(a) Compensation shall be paid to dependents on account of death resulting from an accident arising out of and in the course of employment or from an occupational disease as follows:

(1) Four thousand dollars shall be paid for burial expenses in any case in which the employee died on or after October 1, 1988, and before June 23, 2021, and twelve thousand dollars shall be paid for burial

The administrative law judge made the following factual findings which are pertinent to our review. The decedent commenced employment with the respondent on August 18, 1981, but stopped working after he sustained an injury in June 1984.[6] He initially pursued a federal claim under the Longshore and Harbor Workers' Compensation Act (Longshore Act). On June 6, 1989, a federal administrative law judge (federal judge), having "made undisputed findings of fact concerning the compensability of [the decedent's] initial back injuries," Findings, ¶ 11, issued a Decision and Order Awarding Benefits.[7] At that time, the parties stipulated that the decedent had sustained an injury on June 5, 1984, which injury arose out of and in the course and scope of his employment. The issues for determination by the federal judge were the extent of the decedent's disability and the entitlement of the respondent to Second Injury Fund relief.

The claimant testified at the December 11, 2020 formal hearing before the Workers' Compensation Commission (commission). The decedent and the claimant were married on June 21, 1983, and remained married until the decedent's death on

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expenses in any case in which the employee died on or after June 23, 2021.... If there is no one wholly or partially dependent upon the deceased employee, the burial expenses shall be paid to the person who assumes the responsibility of paying the funeral expenses.

(2) To those wholly dependent upon the deceased employee at the date of the deceased employee's injury, a weekly compensation equal to seventy-five per cent of the average weekly earnings of the deceased calculated pursuant to section 31-310, after such earnings have been reduced by any deduction for federal or state taxes, or both, and for the federal Insurance Contributions Act made from such employee's total wages received during the period of calculation of the employee's average weekly wage pursuant to said section 31-310, as of the date of the injury but not more than the maximum weekly compensation rate set forth in section 31-309 for the year in which the injury occurred or less than twenty dollars weekly...." (Footnote omitted.)

[6] In her August 23, 2021 Supplemental Finding & Award, the administrative law judge found that the parties had stipulated to a date of injury of June 6, 1984, rather than June 5, 1984. See Findings, ¶ 2. We deem this harmless scrivener's error. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 729 (2002), *cert. denied*, 262 Conn. 933 (2003).

[7] In his June 6, 1989 Decision and Order Awarding Benefits, the federal judge noted that the decedent had testified that he injured his back on October 19, 1982, and March 4, 1983, but the record contained no description of those injuries. In addition, the federal judge found that the claimant sustained another injury on June 5, 1984, and never returned to work thereafter.

October 1, 2016. The decedent was employed by the respondent as a first-class sheet-metal worker from 1980 until 1984. His duties required heavy lifting as well as climbing in and out of confined spaces in submarines under construction.

On June 5, 1984, the decedent was evaluated by Henry Brown, a neurosurgeon, at the Lawrence and Memorial Hospitals' Emergency Room, at which time Brown informed the decedent that a CT scan demonstrated disc defects at L4 and L5 and he would eventually require surgery. On July 20, 1988, Raul F. Nodal, a neurologist, after reviewing CT scans from 1984 and 1986, opined that the decedent had sustained "permanent motor damage to the L-5 and S-1 nerve roots, more pronounced on the left than on the right, secondary to a combination of herniated nucleus pulposus at L4-5 and L5-S1 superimposed on congenital spinal stenosis." Claimant's Exhibit J, p. 2. Nodal advised the decedent that his condition "may be progressive if left untreated." Id.

On July 30, 2001, Kennedy Yalamanchili, a neurosurgeon, performed the following procedures: "1. Right-sided T11-T12 hemilaminotomy, microdiskectomy, T11, T12 foraminotomy. 2. Left-sided T12-L1 hemilaminotomy, microdiskectomy; T12, L1 foraminotomies; partial removal of pedicle." Claimant's Exhibit N [Operative Report]. The decedent developed paralysis of the left leg following this surgery and experienced increasing lower back pain with radiation into the right leg. On February 3, 2005, the decedent underwent a decompressive laminectomy at L1 to L4 and bilateral foraminotomies at L1-to L5 with Pawan Rastogi, a neurosurgeon. On November 19, 2009, Rastogi performed a left-sided diskectomy and arthrodesis with Corin cage, BMP and XL plate to levels L1-L2 through L4-L5. See Claimant's Exhibits N, S [Operative

Reports]. The decedent never recovered; his back condition was further exacerbated by paralysis and he subsequently became wheelchair-bound.

The claimant had also testified at a Longshore Act hearing on July 18, 2018, resulting in a second "Decision and Order Awarding Benefits" on April 30, 2019. The federal judge presiding over that hearing identified as the issue for adjudication "whether Decedent's work-related injuries from his employment with Electric Boat caused, contributed to, or aggravated Decedent's death." Claimant's Exhibit A, p. 9. The federal judge noted that the claimant had offered the medical opinions of Rastogi and Terrance L. Baker, a board-certified physician in family practice, emergency medicine and forensic medicine, both of whom supported a causal connection between the decedent's work-related injuries and his death. She concluded that these medical opinions went beyond "mere fancy," id., 43, and, as such, were sufficient to establish a prime facie case.[8] This conclusion in turn triggered the so-called "§ 20 (a) presumption" codified at 33 U.S.C. § 920 (a) of the Longshore Act. Lafayette v. General Dynamics Corp., 255 Conn. 762, 775 (2001).

[8] The following provides the "statutory framework [governing] proof of a claim under the Longshore Act." Filosi v. Electric Boat Corp., 330 Conn. 231, 236 n. 5 (2018). A claimant "must establish a prima facie case by showing that he 'suffered harm, and that workplace conditions ... could have caused, aggravated, or accelerated the harm.'" (Internal quotation marks omitted.) Rainey v. Director, Office of Workers' Compensation, 517 F.3d 632, 634 (2d Cir. 2008). "Once a prima facie case has been established for ... death benefits, § 20 (a) of the Longshore Act provides a presumption that the claim is covered by the Longshore Act.... If the so-called § 20 (a) presumption of coverage is invoked, the burden of going forward with the evidence shifts to the employer. In order to rebut the § 20 (a) presumption, the employer must introduce substantial evidence that the injury did not arise out of or in the course of employment.... If the employer offers substantial evidence that the injury was not work-related, the presumption falls out of the case entirely ... and the administrative judge must weigh all of the evidence in the record. The administrative judge may then rule in favor of the claimant only if he or she concludes that the claimant has met his or her burden of proving by a preponderance of the evidence that the injury was work-related." (Citations omitted; footnote omitted.) Lafayette v. General Dynamics Corp., 255 Conn. 762, 774–75 (2001).

The federal judge then reviewed medical opinions from Thomas F. Morgan, a board-certified neurologist and independent medical examiner, and Milo F. Pulde, a board-certified internal medicine physician. Both of these opinions, which were proffered "to a reasonable degree of medical certainty," were introduced by the respondent in order to rebut the § 20 (a) presumption. Claimant's Exhibit A, p. 44. The federal judge found these opinions provided an adequate basis for concluding that the decedent's "work-related injury did not cause or contribute to his ultimate death in 2016." Id.

Having determined that the respondent's evidence was "sufficient to rebut the presumption," Rainey v. Director of Workers' Comp., 517 F.3d 632, 634 (2d Cir.2008), the federal judge then reviewed the totality of the evidentiary record, noting that:

> Both Dr. Morgan and Dr. Rastogi are equally qualified physicians who have presented well-reasoned medical opinions on the issue of the causation of Decedent's death. It is, therefore, relevant to fully weigh both medical opinions against each other and the other medical evidence of record in order to determine which of the two opinions is controlling in this case. (Footnote omitted.)

Claimant's Exhibit A, p. 46.

The federal judge found that both physicians "[linked] Decedent's 2016 spinal cord compression to his later complications and eventual death." Id., 47.

> Additionally, while Dr. Rastogi and Dr. Morgan credit different theories with respect to the totality of the circumstances behind why Decedent's spinal cord ultimately compressed, both physicians are essentially in agreement that the 2009 L1-L5 fusion of Decedent's spine was a contributing factor to Decedent's later thoracic issues. (Footnote omitted.)

Id.

Following an assessment of both medical opinions, the federal judge determined that because Rastogi had been the decedent's treating physician, his opinion was entitled to greater evidentiary weight than Morgan's. She therefore concluded as follows:

> Based on the more creditable physician opinion evidence, a causal connection has been established between Decedent's 1984 work-related injuries and his ultimate death in 2016. As discussed *supra*, Decedent's chronic pain from his work-related injuries necessitated surgeries which hastened the deterioration of his spine, which in turn ultimately contributed to his spinal cord compressing in 2016 and led to the conditions which caused Decedent's death. Therefore, claimant has met her evidentiary burden under Section 9 of the LHWCA and is entitled to benefits.

Id., 49-50.

On the basis of these findings in the federal judge's decision, the administrative law judge for the Workers' Compensation Commission (commission judge) concluded that the issue of whether the decedent's work-related injury was a substantial contributing factor to his death had been "actually litigated and necessarily determined," Conclusion, ¶ F, in the prior Longshore Act proceedings, and "[i]n the absence of a determination by [the federal judge], the judgment could not have been validly rendered." Id. She found the federal judge had relied on credible evidence in reaching her conclusion that the decedent's work-related injuries of 1984, and the resulting 2009 lumbar fusion, were contributing factors to the decedent's 2016 spinal compression, which ultimately led to his death.

The commission judge further noted that there was "[n]othing in the [federal judge's] decision to suggest she applied a 'mere aggravation' standard," Conclusion, ¶ E, and, although the federal judge did not specifically state that she was applying the substantial factor test, there was nothing in "her decision that would serve as a red flag

suggesting the [federal judge] applied a "de minimis" contribution standard." Id., *quoting* Birnie v. Electric Boat Corp., 288 Conn. 392, 413 (2008). The commission judge determined that "[b]ased on this analysis, the contributing factor applied by [the federal judge] in her decision sufficiently rises to the level of contribution necessary to satisfy the causation standard under our State Act." Conclusion, ¶ G. As such, she concluded that the respondent was collaterally estopped from relitigating the issue of causation and ordered that the claimant be paid the statutory funeral allowance of $4000. In addition, she ordered that the claimant be paid ongoing weekly benefits, commencing as of October 2, 2016, at the rate of $1005.90 per week, along with the payment of any associated cost-of-living adjustments.[9]

The respondent filed a motion to correct, which was granted in part, and this appeal followed. On appeal, the respondent contends that because the federal judge "clearly applied a relaxed evidentiary standard," id., 15, the commission judge erred in concluding that the issue of causation had been sufficiently adjudicated in the prior federal proceedings such that the respondent was collaterally estopped from relitigating the issue before the commission. The respondent also asserts that allowing a claimant to prosecute a claim under the auspices of the federal standard, and then to use a favorable result in that forum to pursue benefits before this commission, contravenes the purpose of the Connecticut Workers' Compensation Act (state act).

[9] The commission judge also noted that the respondent would be due a credit for any prior payments made to the claimant pursuant to the Longshore and Harbor Workers' Compensation Act, in accordance with McGowan v. General Dynamics Corporation/Electric Boat Division, 15 Conn. App. 615 (1988), *aff'd per curiam*, 210 Conn. 580 (1989).

The standard of review we are obliged to apply to a trier's findings and legal conclusions is well-settled. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). Thus, "it is … immaterial that the facts permit the drawing of diverse inferences. The [trier] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair v. People's Savings Bank, 207 Conn. 535, 540 (1988), *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

We begin our analysis with the respondent's contention that the commission judge erroneously concluded the respondent was collaterally estopped from relitigating the issue of whether the decedent's work-related injury was a substantial contributing factor to his death. The respondent points out that in Birnie, supra, our Supreme Court recognized that our state act has "a more stringent standard to establish causation," Appellant's Brief, p. 15, than that of Longshore Act. Moreover, the federal judge did not conclude that the decedent's injuries were a substantial contributing factor to the spinal cord compression which ultimately led to his death but, rather:

> stated that the initial injuries and subsequent progression, development of disc herniations, and eventual arthritic changes and

> spinal stenosis *hastened, aggravated, or contributed* to the lumbar symptoms. She determined the lumbar injuries *hastened or contributed* to the death. She found the 1984 injury had *contributed* to the 2016 spinal cord compression and *hastened* the demise of Claimant-Decedent. (Emphasis in the original.)

Id., 15-16.

The respondent therefore argues that the commission judge "erred in stating that the [federal judge] had applied the same contributing factor standard as that of the Connecticut Act. Judge Harris specifically said this is not what she was doing." Id., 16.

In Birnie, supra, our Supreme Court reviewed a collateral estoppel matter implicating an inquiry into:

> whether the contributing factor standard applied by the [federal] administrative law judge ... is a more relaxed standard of causation than the substantial factor standard under the state act, such that the commissioner in the subsequent state action should have been prohibited from collaterally estopping the defendant from relitigating the issue of causation ....

Id., 404-5.

The court, citing Lafayette, supra, noted that the respondent had successfully rebutted the § 20 (a) presumption in the federal forum. As such, the claimant had borne the same procedural burden of proof in both forums and was therefore required to prove by a preponderance of the evidence that the decedent's injury arose out of and in the course of his employment.[10]

[10] In Lafayette v. General Dynamics Corp., 255 Conn. 762 (2001), our Supreme Court stated that "in the federal action, the administrative judge imposed on the plaintiff the burden to prove, by a preponderance of the evidence, that the decedent's injury arose out of and occurred in the course of his employment at Electric Boat, and that the administrative judge in fact required that this burden be satisfied without the aid of any presumption. This is the same burden that would obtain in the state workers' compensation proceeding." (Footnote omitted.) Id., 780-81. The Lafayette court deemed untimely and declined to review the respondent's claim, raised for the first time at oral argument, that the federal judge had applied a contributing factor standard which differed from the substantial contributing factor utilized in state proceedings.

The court then embarked upon a detailed examination of the substantial factor standard, stating that the standard "is met if the employment '*materially or essentially contributes* to bring about an injury ....'" (Emphasis in the original.) Id., 412, *quoting* Norton v. Barton's Bias Narrow Fabric Co., 106 Conn. 360, 365 (1927). The court further noted that "[t]he term 'substantial,' however, does *not* connote that the employment must be the *major* contributing factor in bringing about the injury; ... nor that the employment must be the *sole* contributing factor in development of an injury." (Emphasis in the original; internal citation omitted; internal quotation marks omitted.) Id. Rather, the court explained that "the substantial factor causation standard simply requires that the employment, or the risks incidental thereto, contribute to the development of the injury in *more than a de minimis way*."[11] (Emphasis in the original; footnote omitted.) Id., 412-13.

The Birnie court then reviewed the prior Longshore Act decision in that matter, noting that although the federal judge had:

> concluded that *some* causal connection is required under the contributing factor standard, that decision provides no indication of the scope of the standard actually applied; that is, whether a de minimis causal connection would satisfy the standard, or whether, like claims under the state act, the causal connection needs to be more than de minimis in order to be compensable. Because we cannot adequately compare the scope of the contributing factor standard as applied, and the substantial factor standard as required

[11] It should be noted that in Sapko v. State, 305 Conn. 360 (2012), our Supreme Court revisited this language discussing the substantial contributing factor test in Birnie v. Electric Boat Corp., 288 Conn. 392 (2008), stating that a close reading of the entirety of the passage in question should make it "evident that we did not intend to lower the threshold beyond that which previously had existed." Sapko, supra, 391. Rather, it should be "clear that the court's aim was not to clarify – much less alter – the substantial factor test but to explicate it in such a way as to facilitate a fair comparison with the federal test in question." Id. Both the Birnie and Sapko courts also recognized that because the inquiry into whether a claimant's conditions of employment were a substantial contributing factor to his or her injuries is essentially factual in nature, such an inquiry will vary depending on the circumstances of each case. As such, any "attempt to articulate a more precise standard may, in practice, be unnecessarily restrictive, and may inadvertently foreclose a claimant's right to compensation." Sapko, supra, 392, *quoting* Birnie, supra, 413 n.11.

> under the state act, we are unable to determine whether the application of the collateral estoppel doctrine is proper in this case. We conclude, therefore, that the application of collateral estoppel in this case was improper. (Emphasis in the original.)

Id., 414.

Some ten years later, in Filosi v. Electric Boat Corp, 330 Conn. 231 (2018), our Supreme Court reviewed a challenge to the invocation of collateral estoppel in proceedings before this commission following a finding of compensability by a federal judge in a Longshore Act hearing. In Filosi, the federal judge, in reaching his conclusions regarding causation, had relied upon a medical report in which the physician stated that although the decedent's smoking habit had contributed to his lung cancer, "his asbestos exposure was a substantial contributing cause." Id., 235. The federal judge concluded that the claimant had established a prima facie case, thereby triggering the § 20 (a) presumption of coverage, which the respondent successfully rebutted through the submission of medical evidence from its own experts. At that point, "the administrative law judge weighed all of the evidence in the record and concluded that the plaintiff had carried her burden of proving by a preponderance of the evidence that the decedent's lung cancer was work-related." Id., 237.

However, in subsequent proceedings before the Workers' Compensation Commission (commission), the commission judge found that the respondent:

> was not collaterally estopped from challenging causation because the [federal] administrative law judge had neither defined the "requisite causal connection" required to be proved under federal law nor determined that the [claimant] had proved [the decedent's] employment and exposure [to asbestos] to be a significant factor, or substantial contributing factor, in the development of his cancer. (Internal quotation marks omitted.)

Id.

This board reversed, concluding that the decision of the federal judge was consistent with the analysis presented in Lafayette, supra, and reflected that the federal judge had adopted the substantial contributing factor standard in reaching his decision. Our Supreme Court agreed, holding that this board had "properly determined that the defendant was collaterally estopped from challenging compensability in the state act proceeding because the administrative law judge in the prior Longshore Act proceeding found the asbestos exposure to be a substantial factor contributing to the decedent's lung cancer." Id., 241. The court also pointed out that:

> Although the [federal] administrative law judge did not expressly state as a matter of law that he was applying a substantial factor standard of causation, he nevertheless specifically credited the opinion of ... the plaintiff's medical expert, who stated in her report that "[i]t is my opinion with a reasonable degree of medical certainty that the asbestos exposure sustained by [the decedent] in his more than [thirty] years [of] work at the [defendant's] shipyard was a substantial contributing cause to the development of his lung cancer."[12]

Id., 245-246.

The Filosi court determined that this finding served to distinguish the matter from Birnie, supra, wherein the federal administrative law judge had relied on an expert opinion indicating only that the decedent's workplace exposure to industrial irritants had contributed to his lung disease. The court remarked that the scope of the contributing factor standard applied by the federal judge in Birnie was unclear, given that he ultimately concluded only that the decedent's workplace exposure was "a *contributing*

[12] In Filosi v. Electric Boat Corp., 330 Conn. 231 (2018), the court noted that "once the § 20 (a) presumption dropped after the defendant rebutted the plaintiff's prima facie case in the Longshore Act proceeding, the plaintiff bore the same burden of persuasion to prove causation by a preponderance of the evidence in both forums; where the parties disagree is *the level of causation* the plaintiff was required to prove in the state and federal forums." (Emphasis in the original.) Id., 240 n.8.

factor in his myocardial infarction and death." (Emphasis in the original; internal quotation marks omitted.) Filosi, supra, 246, *quoting* Birnie, supra, 399. However, in Filosi, the federal judge "specifically credited an expert's testimony that the asbestos exposure was a 'substantial contributing cause,' which is the same causation standard required under the state act." Id.

The Filosi court also agreed with this board that because the federal judge had relied upon an expert opinion which satisfied the substantial contributing factor standard, it was not necessary to reach the issue of "whether the difference in the minimum standards of proof between [the state act] and the federal Longshore Act would preclude the application of the collateral estoppel doctrine." (Internal quotation marks omitted; footnote omitted.) Id., 247. The court recognized that the federal judge's findings had not articulated with any specificity the causation standard which a claimant seeking benefits pursuant to the Longshore Act must satisfy, and "the standard appears vague as a matter of federal law."[13] Id., n.10. Nevertheless, the court concluded that "[o]ur analysis ... remains one of looking to the standard *as applied by* the administrative law judge; ... and, in the present case, the causation standard applied was the same substantial factor standard that governs proceedings under the state act."[14] (Emphasis in the original; internal citation omitted.) Id., 251.

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[13] In Filosi v. Electric Boat Corp., 330 Conn. 231 (2018), the court also stated that "we agree with the plaintiff that the lack of a universal causation standard under the Longshore Act means that, for purposes of collateral estoppel, the standard of causation the administrative law judge applied was in fact a 'necessary determination' to the decision under the Longshore Act." Id., 249.

[14] In Birnie v. Electric Boat Corp., 288 Conn. 392 (2008), our Supreme Court remarked: "As an initial matter, we note that, for purposes of determining whether the defendant properly was estopped from relitigating the issue of causation, we are not concerned with whether the federal administrative law judge in the underlying Longshore Act proceeding applied the *correct* legal standard for causation ...; but rather, whether the standard *as applied by* the federal administrative law judge differs from the substantial factor standard to such an extent that the application of the collateral estoppel doctrine would '[undermine] the rationale of the doctrine.'" (Emphasis in the original; internal citation omitted.) Id., 395 n.2, *quoting*

In the present matter, as noted previously herein, the federal judge identified as the issue for determination whether the decedent's work-related injuries "caused, contributed to, or aggravated Decedent's death." Claimant's Exhibit A, p. 9. The respondent therefore asserts that the commission judge erred in concluding that the federal judge utilized the same substantial contributing factor standard that applies in this forum. We recognize that this matter resembles both Birnie, supra, and Filosi, supra, in that the federal judge did not specifically state that she was applying the substantial contributing factor standard. Rather, her findings reflect that a "causal connection" existed between the decedent's work-related injuries and his death. Nevertheless, we are not persuaded by the respondent's claim of error in this regard.

Our review of the federal judge's decision indicates that she found persuasive Rastogi's November 29, 2016 causation report in which Rastogi "asserted ... that Decedent's work related injury was the event that incited his thoracic disc problems and subsequent paraplegia." Claimant's Exhibit A, p. 18, *quoting* Claimant's Exhibit V. The federal judge also reviewed Rastogi's deposition testimony of November 1, 2017, noting that the physician testified that he began treating the decedent in September 2004 and first performed surgery on him in 2005. When queried as to whether the decedent's work-related injuries had contributed to his back symptoms, Rastogi replied that the condition was "sort of unfortunately the progression of the injury." Id.

The federal judge found that in 2009, Rastogi performed an anterior diskectomy and fusion because the decedent was no longer able to withstand his back pain. At his

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Bath Iron Works Corp. v. Director, Office of Workers' Compensation Programs, 125 F.3d 18, 22 (1st Cir.1997).

deposition, Rastogi testified that although the decedent's pain levels improved following this surgery, he lost strength in the muscles of his left leg and "essentially became wheelchair-bound at [that] point." Claimant's Exhibit A, p. 19. Rastogi further testified that when the decedent was admitted to the hospital in 2016, he "had herniated a disc significantly at the area above his fusion at T11-12.... This herniated disc was severely compressing his spinal cord and had effectively popped out." (Internal citation omitted.) Id. Rastogi explained that the decedent "had spontaneously fused T12-L1 just above the surgical fusion" and "spontaneous fusions occasionally happen because of stress." (Citations omitted.) Id.

When claimant's counsel inquired of Rastogi as to whether the lumbar fusion was necessitated by the decedent's work-related injuries, Rastogi replied that those "injuries were the reason that Decedent's back continued to deteriorate." Id. The federal judge further noted that Rastogi opined that the decedent's "initial injuries, progression of the disease, development of disc herniations, and eventually some arthritic changes and spinal stenosis hastened, aggravated, or contributed to his lumbar symptoms." Id., 20. In addition, Rastogi testified that the decedent's injuries to his lumbar spine had "hastened or contributed" to the decedent's death. Id. The doctor stated that:

> in the treatment of his lumbar spine issues [the decedent] underwent a fairly extensive fusion, and the reason for his eventual demise was his spinal cord injury which occurred just adjacent to that fusion, so I think the added stress into that level led to the disc protruding and compressing the spinal cord, causing the urinary retention, which led to the kidney failure, which led to multiple complications leading to essentially multi-organ failure.

Claimant's Exhibit KK, pp. 19-20.

In her review of this matter, the federal judge also considered the expert opinion proffered by Morgan, who opined that the decedent's eventual spinal cord compression was the result of disease rather than an injury. The federal judge found that although Rastogi and Morgan "credit different theories with respect to the totality of the circumstances behind why Decedent's spinal cord ultimately compressed, both physicians are essentially in agreement that the 2009 L1-L5 fusion of Decedent's spine was a contributing factor to Decedent's later thoracic issues." (Footnote omitted.) Claimant's Exhibit A, 47.

She also found that because Rastogi had been the decedent's treating physician, whereas Morgan had never examined the decedent, Morgan's review of the decedent's medical records did "not rise to the level of familiarity" Rastogi had with the decedent. Id., 49. As such, she determined that:

> Based on Dr. Rastogi's well-reasoned opinion, it must be concluded that (1) Decedent's original 1984 work-related injuries caused Decedent chronic pain, symptoms, and deterioration of his back that led to the need for subsequent lumbar surgeries, including the 2009 L1-L5 fusion, and (2) that 2009 L1-L5 fusion contributed to the 2016 spinal cord compression which caused the complications leading to Decedent's ultimate death.

Id., 49.

The foregoing discussion clearly reflects that the federal judge, in reviewing this claim, was required to examine and weigh multiple evidentiary submissions, and ultimately determined that Rastogi's opinion was most persuasive.[15] Moreover, in adopting Rastogi's opinion, she essentially concluded that the decedent's work-related

[15] This is particularly so given that the federal judge was required to review the totality of the evidentiary record once the § 20 (a) presumption had been rebutted by the respondent.

injuries: "*incited* his thoracic disc problems and subsequent paraplegia"; the decedent's back condition "was unfortunately the *progression* of the injury"; the decedent's "work-related injuries were *the reason* that Decedent's back continued to deteriorate"; and "*the reason* for his eventual demise was his spinal cord injury which occurred just adjacent to that fusion ...." (Citations omitted; emphasis added.) She further concluded that the added stress from the decedent's fusion "*led to* the [thoracic] disc protruding and compressing the spinal cord, *causing* the urinary retention, which *led to* the kidney failure, which *led to* multiple complications *leading to* essentially multi-organ failure." (Emphasis added; internal citations omitted.) Claimant's Exhibit KK, p. 20.

Having closely examined the language in Rastogi's November 29, 2016 report and deposition testimony, we concede that the phrase "substantial contributing factor" does not appear, thus distinguishing this appeal, to a certain extent, from Filosi, supra. However, despite the lack of these "magic words," we find this matter can also be distinguished from Birnie, supra, wherein the federal judge, without clearly articulating the causation standard being applied, found most persuasive an expert opinion stating only that the decedent's workplace exposure had contributed to his disease and eventual death. Struckman v. Burns, 205 Conn. 542, 555 (1987). As such, we believe the federal judge's adoption of Rastogi's opinion allowed for the reasonable inference on the part of the commission judge that the decedent's employment "materially or essentially [contributed] to bring about [his] injury ...." Norton v. Barton's Bias Narrow Fabric Co., 106 Conn. 360, 365 (1927), and that "the proffered evidence in this case [satisfied] the baseline level of causation necessary to render an injury compensable." Birnie, supra, 409. Such a factual determination was well within the purview of the commission judge,

given that "[i]t 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). We therefore affirm the decision of the commission judge to apply collateral estoppel to the issue of causation in the present matter.

The respondent also points out that the claimant sought a determination from the federal administrative law judge that the decedent's work injuries "caused, contributed to, or aggravated Decedent's death," Claimant's Exhibit A, p. 9, and then, in proceedings before this commission, sought a determination that the decedent's work-related injury was a substantial contributing factor to his death. The respondent avers that "the purpose of the Connecticut Act is not served by allowing [a] Claimant-Dependent to argue a relaxed standard to the Administrative Law Judge and then to allow Claimant-[Dependent] to use the result to enforce a stricter rule in place under the Connecticut Act." Appellant's Brief, p. 14.

Given that this statement appears to be more of a general observation than an actual claim of error, we decline to address it at any length, particularly as we prefer to refrain from commenting on litigation strategy. However, we would point out that although we recognize that the standard for causation in a federal Longshore claim differs from the "substantial contributing factor" standard in the state act, we would also submit that it makes little sense for an advocate appearing in any tribunal to seek a ruling from the presiding factfinder based on a non-applicable evidentiary standard.

The respondent filed a motion to correct which was granted in part, and the resulting corrections were incorporated into the Supplemental Finding & Award of August 23, 2021. Our review of the balance of the proposed corrections indicates that the respondent was primarily reiterating the arguments made at trial which ultimately proved unavailing. As this board has previously observed, when "a motion to correct involves requested factual findings which were disputed by the parties, which involved the credibility of the evidence, or which would not affect the outcome of the case, we would not find any error in the denial of such a motion to correct." Robare v. Robert Baker Companies, 4328 CRB-1-00-12 (January 2, 2002).

There is no error; the corrected July 15, 2021 Finding & Award and the August 23, 2021 Supplemental Finding & Award of Soline M. Oslena, Administrative Law Judge acting for the Second District, are accordingly affirmed.

Administrative Law Judges Brenda D. Jannotta and Maureen E. Driscoll concur in this Opinion.