CASE NO. 6445 CRB-5-21-9 : COMPENSATION REVIEW BOARD
CLAIM NO. 500167225

RONALD NORDBY : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : SEPTEMBER 2, 2022

TOWN OF WATERTOWN/
BOARD OF EDUCATION
EMPLOYER

and

PMA MANAGEMENT CORPORATION OF NEW ENGLAND
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Jonathan H. Dodd, Esq., The Dodd Law Firm, L.L.C., Ten Corporate Center, 1781 Highland Avenue, Suite 105, Cheshire, CT 06410.

The respondents were represented by Colette S. Griffin, Esq., Howd & Ludorf, L.L.C., 65 Wethersfield Avenue, Hartford, CT 06114-1190.

This Petition for Review from the September 15, 2021 Finding and Decision of Charles F. Senich, Administrative Law Judge acting for the Fifth District, was heard on March 25, 2022 before a Compensation Review Board panel consisting of Administrative Law Judges Daniel E. Dilzer, David W. Schoolcraft and Toni M. Fatone.[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

DANIEL E. DILZER, ADMINISTRATIVE LAW JUDGE. The respondents have petitioned for review from the September 15, 2021 Finding and Decision of Charles F. Senich (finding), Administrative Law Judge acting for the Fifth District. We find no error and accordingly affirm the decision.[2]

The administrative law judge identified as the issues for determination whether: (1) the claimant sustained a compensable right-knee injury on December 15, 2015; (2) said injury was a substantial contributing factor to the claimant's right-knee surgery on August 11, 2017; and (3) said injury was a substantial contributing factor to the claimant's total knee replacement surgery on October 9, 2018. The administrative law judge made the following factual findings which are pertinent to our review. The claimant testified that on December 15, 2015, he was setting up musical risers in the school auditorium when one of the sections began to collapse.[3] The claimant explained the mechanism of injury as follows:

> The day I was putting it up, I was putting up the middle one. The middle one is a little longer, so it points on the ends. When I was pushing it up, it slid because it's a rug. I slid on it and I hit my knee. When I went – it was starting to come back down on top of me, and if it did, it would have collapsed on my hand. I twisted to hold it up and push it up. I hurt my back and I hurt my right knee.

October 21, 2020 Transcript, pp. 13-14.

The claimant testified that both of his knees were "in pretty bad shape." Findings, ¶ 3. In December 2015, the claimant presented to Saint Mary's Occupational

[2] We note that one motion for extension of time was granted during the pendency of this appeal.
[3] The claimant explained that the musical risers consist of five interlocking solid steel pieces which, when fastened together, create a three-level semicircular platform in the front of the auditorium.

Health Center; notes from a visit on December 18, 2015, state that the claimant had "hit [right] knee on riser while he was moving them. [Right] knee also twisted at the same time."[4] Claimant's Exhibit A. Also on December 18, 2015, Linda Burmeister completed a First Report of Injury reflecting a date of injury of December 15, 2015, and stating that the claimant was "moving risers which were heavy and hurt back."[5] Respondents' Exhibit 3.

The claimant eventually sought treatment with T. Michelle Mariani, an orthopedic surgeon. In a report dated November 17, 2016, Mariani described the claimant's "History of Present Illness" as follows: "This is a 60-year-old male who presents today with complaints of right knee pain. This is an old, work-related injury from 12/15/2015. It was a fall. He was seen at occupational health at the same time as [sic] a back injury." Claimant's Exhibit B. In the "Impression/Plan" portion of the report, Mariani indicated that the claimant:

> has right knee effusion; had a twisting injury to the knee back in December, and has continued to have some discomfort. He is having pain medially, but also anterolateral knee pain with kneeling directly on the knee. I have recommended MRI to further evaluate his knee injury as it has been almost a year since his injury.

Id.

On August 11, 2017, Mariani performed arthroscopic surgery on the claimant's right knee; on August 16, 2017, Mariani reported that the claimant was "doing very well" following the surgery and he had encouraged the claimant to perform range-of-motion

[4] The claimant testified that he presented to Saint Mary's Occupational Health Center on December 15, 2015; however, a report bearing that date does not appear to have been submitted into the record. See October 21, 2020 Transcript, p. 14.
[5] The claimant testified that Linda Burmeister was a member of the Board of Education.

exercises. Id. On January 3, 2018, Mariani again noted that in December 2018, the claimant had sustained a work-related injury for which he had received treatment at an occupational health clinic. In correspondence to claimant's counsel dated January 5, 2018, Mariani opined that the condition of the claimant's right knee at that time was "more likely than not related to his work injury from 2015, which was likely an occult undiagnosed medial meniscus tear that became more symptomatic from the time of injury and ultimately led to a partial medial meniscectomy." Id. On October 9, 2018, the claimant underwent a right-side total knee replacement with Mariani.

On April 30, 2018, the claimant presented for a respondents' medical examination (RME) with Scott A. Bissell, an orthopedic surgeon, who noted that there was a "disagreement between the medical documentation and the claimant's subjective recollection of events as they relate to his right knee," and the claimant's medical reports did not reference a right-knee injury or any right-knee complaints in 2015 or 2016. Respondents' Exhibit 1, p. 8. Bissell opined that the "alleged" December 15, 2015 date of injury was not a substantial contributing factor to the claimant's knee condition or need for treatment. Id.

At a deposition held on August 6, 2018, Bissell testified that there was "no way to causally relate the subsequent MRI findings of meniscus tear, et cetera, to that injury in December of 2015." Respondents' Exhibit 2, p. 18. However, Bissell admitted he was not aware of the December 18, 2015 progress note from Saint Mary's Occupational Health Center when he issued his April 30, 2018 RME report. When queried as to whether the mechanism of injury as described by the claimant could cause a meniscal tear, Bissell replied, "[c]ould." Id., 24.

On January 5, 2021, the claimant underwent a second RME with Bissell, who reported that the claimant had "sustained a right knee contusion as a result of the 12/15/2015 described work incident." Respondents' Exhibit 5, p. 8. Noting that the claimant had not complained of right-knee pain until "well into" 2016, Bissell opined that "[t]here [was] no evidence that the Claimant sustained an occult meniscal tear at the time of the 12/15/2015 incident that would then have become symptomatic in a latent fashion." Id. At a deposition held on March 9, 2021, Bissell adopted the opinion set forth in his January 5, 2021 RME report. See Respondents' Exhibit 7, pp. 19-20, 32-33.

On the basis of the foregoing, the administrative law judge concluded that the claimant had sustained a compensable injury to his right knee on December 15, 2015, which injury was a substantial contributing factor to the claimant's need for right-knee surgery on August 11, 2017, and his total right-knee replacement on October 9, 2018. The trier found the claimant's testimony as well as Mariani's opinions and reports fully credible and persuasive. He did not find Bissell's opinion persuasive, noting that Bissell was not aware of the December 18, 2015 progress note from Saint Mary's Occupational Health Center when he rendered his April 30, 2018 RME report. The trier further noted that Bissell, at a deposition held on August 6, 2018, acknowledged that the mechanism of injury as described by the claimant could have caused a meniscal tear.

The trier ordered the respondents to pay to the claimant "any benefits he is due pursuant to the Connecticut Workers' Compensation Act ... as a result of the work-related injury sustained on December 15, 2015." Order, ¶ I. He also ordered the respondents "to pay all reasonable and necessary medical, diagnostic, hospital, surgical, physical therapy, and pharmaceutical bills incurred as a result of the injury sustained on

December 15, 2015." Order, ¶ II. In addition, he ordered the respondents "to pay for all medical bills incurred, at the Connecticut Workers' Compensation rate, as a result of the Claimant's surgeries on August 11, 2017 and October 9, 2018." Order, ¶ III.

The respondents filed a motion to correct, to which the claimant objected and which was denied in its entirety. However, the administrative law judge granted the claimant's reply to the motion to correct, and amended Order, ¶ I, to reflect that additional hearings could be scheduled if the parties were unable to reach agreement regarding the benefits owed to the claimant. On appeal, the respondents contend the administrative law judge erred in ordering the respondents to pay any medical bills and/or indemnity associated with the December 15, 2015 injury.

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).

As previously referenced herein, the administrative law judge in the present matter concluded the claimant had sustained a compensable right-knee injury on December 15, 2015, which injury was a substantial contributing factor to the claimant's need for knee surgery on August 11, 2017, and a total right-knee replacement on October 9, 2018. The respondents have not appealed the finding relative to the issue of compensability/causation; however, they argue that the orders for the payment of medical bills constituted error because the evidentiary record does not provide an adequate basis for such payments. The respondents also assert that the order for the payment of indemnity was erroneous because the evidentiary record does not establish the periods of time during which the claimant was disabled or the type of benefits to which he is entitled. We find neither claim of error persuasive.

With regard to the claim of error regarding medical bill payments, we note at the outset that 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. (Emphasis added.)

The foregoing statutory provision makes it clear that an employer's liability for medical expenses automatically attaches upon the occurrence of a compensable work injury or, if the injury is initially contested, upon either the acceptance or a finding of compensability. Nevertheless, the respondents in the present matter challenge their

liability on the grounds that no evidence regarding medical bills was submitted at the formal hearings, and none of the trier's factual findings reference medical bills. "As the only mention of medical expenses appears in the section of the Finding and Decision ordering the Respondents to pay the same, it *cannot* be argued this order was supported by evidenced or subordinate facts, and the second and third orders cannot stand." (Emphasis in the original.) Appellant's Brief, p. 18.

The respondents further contend that because "no evidence regarding any unpaid bills or the existence of a lien was submitted, the Respondents respectfully submit no legal authority exists to reimburse the medical providers or health insurers in this matter." Id., 12. The respondents rely in part for this contention on Besitko v. McDonald's Restaurant, 12 Conn. Workers' Comp. Rev. Op. 111, 1415 CRB-8-92-5 (February 28, 1994), in which the parties agreed to limit the scope of the formal hearing to a determination of whether the claimant's general practitioner, who had referred the claimant to a specialist, could continue as an authorized treating physician, and whether the respondents were liable for certain prescriptions. The commissioner ordered inter alia the payment of outstanding medical bills, and this board vacated that order, stating that when a claimant has "not [introduced] evidence regarding any outstanding doctor or hospital bills, the commissioner's order regarding payment of those bills cannot stand." Id., 112.

The respondents also rely on Bombria v. Anthony J. Bonafine, 5740 CRB-2-12-3 (March 6, 2013), in which the commissioner, after finding the claimed injury compensable, ordered the payment of certain medical bills on the basis of an evidentiary submission about which no testimony had been elicited at trial. The respondents

appealed, contending the record contained no evidence regarding the existence of any unpaid or outstanding medical bills; the record was also silent on the issue of whether any of the claimant's medical providers had filed a lien pursuant to General Statutes § 31-299a.[6] We sustained the appeal, stating that we were "uncertain what legal authority exists to reimburse the medical providers or health insurers in this matter if at this point in time no money is owed to them by the claimant." Id.

In addition, the respondents cite Pokorny v. Getta's Garage, 219 Conn. 439 (1991), for the proposition that "even in cases where a lien does exist our Supreme Court has held that where a medical insurance carrier covers the costs of a workers' compensation Claimant's medical bills and then fails to assert a lien against the workers' compensation insurer, the latter is not required to pay to the claimant the amount of his medical bills." Appellants' Brief, p. 13.

We concede that no evidence was adduced in this matter regarding either the amount of any outstanding medical bills or the existence of a lien pursuant to § 31-299a (b). This is hardly surprising, given that the parties agreed at the commencement of formal proceedings to limit the scope of the administrative law judge's review to compensability/causation. See October 21, 2020 Transcript, p. 4. We are therefore somewhat perplexed by the respondents' assertion that "the group carrier had

[6] General Statutes § 31-299a (b) states: "Where an employer contests the compensability of an employee's claim for compensation, and the employee has also filed a claim for benefits or services under the employer's group health, medical, disability or hospitalization plan or policy, the employer's health insurer may not delay or deny payment of benefits due to the employee under the terms of the plan or policy by claiming that treatment for the employee's injury or disease is the responsibility of the employer's workers' compensation insurer. The health insurer may file a claim in its own right against the employer for the value of benefits paid by the insurer within two years from payment of the benefits. The health insurer shall not have a lien on the proceeds of any award or approval of any compromise made by the administrative law judge pursuant to the employee's compensation claim, in accordance with the provisions of section 38a-470, unless the health insurer actually paid benefits to or on behalf of the employee."

two years to perfect their lien and failed to do so," given that the evidentiary record does not appear to establish a factual predicate for that assumption. Appellants' Brief, p. 14.

Moreover, we do not find Pokorny, supra, relevant to the present matter, given that in Pokorny, our Supreme Court was asked to determine whether the respondents were required to reimburse the claimant directly for medical treatment for which the medical provider had failed to assert a statutory lien. The court rejected the claim, stating that "the legislature did not intend for an employee to receive the amount of his medical bills in addition to the health care itself." Id., 456. However, in the matter at bar, double recovery was not contemplated; the claimant has not requested reimbursement for his medical expenses, and the administrative law judge did not order such reimbursement.

In addition, we do not find the factual circumstances in Besitko, supra, on point with the present matter, given that compensability was not implicated in that appeal and the trier's findings regarding medical bill reimbursement clearly exceeded the scope of the parameters established by the parties at the outset of formal proceedings. We further note that in Bombria, supra, this board vacated the trier's orders relative to the payment of medical bills because the amount of the medical bill payments ordered by the trier was not supported by the evidentiary record. We did not conclude that the trier had exceeded the scope of his discretion solely because he ordered the payment of medical bills following a finding of compensability. Rather, the trier's orders for payment, while flawed, represented the logical corollary of a finding of compensability/causation consistent with the statutory provisions of § 31-299d.

In the present matter, the orders of the administrative law judge, which also do not recite any specific amounts due or owing any medical provider, would likewise seem to

merely reflect the statutory obligation inuring to an employer upon a finding of compensability/causation. As the claimant accurately points out, "there is no applicable law that exists that states that the Respondents do not have to pay for medical bills simply because a group health insurance carrier paid.... If the injury and the two surgeries are compensable, then as a matter of law Respondents are responsible for medical and indemnity benefits that flow therefrom." Appellee's Brief, p. 8.

In a similar vein, we find unavailing the respondents' claim of error relative to the payment of indemnity. It is axiomatic that the claimant is entitled to disability benefits arising from the December 15, 2015 injury for any time periods for which he can provide a persuasive medical opinion. "The burden of proving an entitlement to disability benefits rests with the claimant, and ... '[s]uch proof must be established by competent evidence.'" Hubbard v. University of Connecticut Health Center, 5705 CRB-6-11-12 (November 30, 2012), *quoting* Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142, 151 (1972). The lack of specific factual findings at this juncture relative to the issue of indemnity does not obviate the respondents' general obligations in this regard. Rather, the claimant's potential entitlement to disability benefits represents yet another logical corollary to a finding of compensability/causation.

Moreover, in both Besitko, supra, and Bombria, supra, the remedy for the identified error consisted of a remand for additional proceedings. We note that in the present matter, as referenced previously herein, the administrative law judge granted the claimant's reply to the respondents' motion to correct, and amended Order, ¶ 1, as follows:

> Respondents are ordered to pay all benefits due under the Workers' Compensation Act as a result of the work-related injury sustained

> on December 15, 2015, including but not limited to the compensable right knee surgeries of 8/11/2017 and 10/9/2018, *with further hearings to be held should the parties not agree to the amount thereof*." (Emphasis added.)

October 8, 2021 Ruling on Claimant's Reply to Motion to Correct.

In light of this correction, we believe any perceived deficiencies in the orders were cured by the administrative law judge's clear indication that additional hearings were contemplated on the issues of medical payments and indemnity, at which proceedings the claimant will be left to his proof. The fact that the trier's orders did not identify any specific amounts currently due or owing is entirely consistent with this interpretation. Given that we are not persuaded that the orders, as amended, exceed the scope of an employer's statutory obligations generally consistent with a finding of compensability/causation, we consider the respondents' appeal premature, at best.

There is no error; the September 15, 2021 Finding and Decision of Charles F. Senich, Administrative Law Judge acting for the Fifth District, is accordingly affirmed.

Administrative Law Judges David W. Schoolcraft and Toni M. Fatone concur in this Opinion.