CASE NO. 6448 CRB-7-21-11 CLAIM NO. 601076085	:	COMPENSATION REVIEW BOARD
KEVIN MIKULSKI CLAIMANT-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
v.	:	AUGUST 8, 2022
A. DUIE PYLE, INC. EMPLOYER		
and		
NEW HAMPSHIRE INSURANCE COMPANY d/b/a AIG CLAIMS, INCORPORATED INSURER RESPONDENTS-APPELLEES		

APPEARANCES:

The claimant appeared at oral argument before the board as a self-represented party.

The respondents were represented by Claudia D. Heyman, Esq., Halloran Sage, 265 Church Street, Suite 802, New Haven, CT 06510.

This Motion for Additional Evidence regarding the Petition for Review from the October 18, 2021 Findings and Orders of Randy L. Cohen, Administrative Law Judge acting for the Seventh District[1], was heard May 27, 2022 before a Compensation Review Board panel consisting of Administrative Law Judges Daniel E. Dilzer, David W. Schoolcraft, and Soline M. Oslena.[2]

[1] Although the caption of the October 18, 2021 Findings and Orders lists the Sixth District, we note that the formal hearing was heard in the Seventh District.

[2] Effective October 1, 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.

RULING RE: MOTION FOR ADDITIONAL EVIDENCE

DANIEL E. DILZER, ADMINISTRATIVE LAW JUDGE. The claimant has appealed from the October 21, 2021 Findings and Orders of Randy L. Cohen, Administrative Law Judge acting for the Seventh District, which denied the claimant's bid to open a stipulation on the grounds of fraud or mutual mistake. During the pendency of this appeal, the claimant filed a motion to submit additional evidence on November 9, 2021, and an additional memorandum in support of this motion on January 27, 2022. The respondents filed a brief on April 12, 2022, outlining their opposition to the claimant's motion.[3] The hearing on the motion to submit additional evidence was bifurcated from the underlying merits of the claimant's appeal and was the subject of oral argument on May 27, 2022. After hearing oral argument and having reviewed the documents marked for identification at the May 27, 2022 hearing, we deny the motion.[4]

Connecticut General Statutes § 31-301 (b) authorizes the board to review additional evidence not submitted to the administrative law judge in limited circumstances.[5] The procedure that parties must employ in order to request the board to review additional evidence is provided in Section 31-301-9 of the Regulations of Connecticut State Agencies.[6] Based on this unambiguous language, this board has held

[3] Counsel for the respondents did not attend oral argument in this matter and advised the tribunal prior to the hearing that they were resting on their arguments in their brief.
[4] We note that a motion for continuance was granted during the pendency of this appeal.
[5] General Statutes § 31-301 (b) states: "The appeal shall be heard by the Compensation Review Board as provided in section 31-280b. The Compensation Review Board shall hear the appeal on the record of the hearing before the commissioner, provided, if it is shown to the satisfaction of the board that additional evidence or testimony is material and that there were good reasons for failure to present it in the proceedings before the commissioner, the Compensation Review Board may hear additional evidence or testimony."
[6] Section 31-301-9 of the Regulations of Connecticut State Agencies states: "If any party to an appeal shall allege that additional evidence or testimony is material and that there were good reasons for failure to present it in the proceedings before the commissioner, he shall by written motion request an opportunity to

"it is the claimant's burden to recognize and resolve any inconsistencies in the evidence at the formal hearing, whether or not those discrepancies seemed significant to the claimant at the time of the hearing." Abdule v. Walnut Hill Convalescent Home, 3383 CRB-6-96-7, *appeal withdrawn*, (August 27, 1997), *quoting* Ruling on Motion to Submit Additional Evidence issued March 25, 1997; see also Fusco v. J.C. Penney Company, 1952 CRB-4-94-1 (March 20, 1997), *appeal withdrawn*, A.C. 17050 (July 17, 1997). "Moreover, a motion to submit additional evidence may not properly be used to alter a party's evidentiary decisions regarding the presentation of evidence at a formal hearing." Abdule, supra. As the Connecticut Supreme Court has stated,

> A party to a compensation case is not entitled to try his case piecemeal, to present a part of the evidence reasonably available to him and then, if he loses, have a rehearing to offer testimony he might as well have presented at the original hearing. He must be assumed to be reasonably familiar with his rights and with the requisites of proof necessary to establish his claim; and to permit him intentionally to withhold proof, or to shut his eyes to the reasonably obvious sources of proof open to him, would be fair neither to the commissioner and the court nor to the defendant. Where an issue has been fairly litigated, with proof offered by both parties, a claimant should not be entitled to a further hearing to introduce cumulative evidence, unless its character or force be such that it would be likely to produce a different result.

Kearns v. Torrington, 119 Conn. 522, 529 (1935).

Finally, as the Appellate Court has noted, "[a]lthough we allow pro se litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law." Tomaszek v. Girard Motors, Inc.,

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present such evidence or testimony to the compensation review division, indicating in such motion the nature of such evidence or testimony, the basis of the claim of materiality, and the reasons why it was not presented in the proceedings before the commissioner. The compensation review division may act on such motion with or without a hearing, and if justice so requires may order a certified copy of the evidence for the use of the employer, the employee or both, and such certified copy shall be made a part of the record on such appeal."

70 Conn. App. 122, 124 (2002), *quoting* Wittman v. Krafick, 67 Conn. App. 415 (2001), *cert. denied*, 260 Conn. 916 (2002).

Having restated the applicable legal standards governing this motion, we reviewed the specific documentation that the claimant requested to be added to the record. We also reviewed the transcript of the formal hearing. At the hearing before our tribunal, the claimant argued that the following exhibits should be added to the record:

1. Claimant's Proposed Compensation Review Board Exhibit A – a letter from Ametros to the claimant dated October 27, 2021 regarding a request for a withdrawal of $58,000 and informing him that money can only be used for treatment otherwise covered by Medicare;

2. Claimant's Proposed Compensation Review Board Exhibit B – a reference guide for Workers' Compensation Medical Savings Account;

3. Claimant's Proposed Compensation Review Board Exhibit C – an e-mail from Attorney Matthew Necci to the claimant dated December 8, 2020 informing him of the relationship between Ametros and CareGuard and providing a point of contact;

4. Claimant's Proposed Compensation Review Board Exhibit D – an e-mail from Attorney Matthew Necci to the claimant dated December 10, 2020 providing a phone number for the point of contact at Ametros;

5. Claimant's Proposed Compensation Review Board Exhibit E – an e-mail from Attorney Matthew Necci to the claimant dated December 8, 2020 providing a phone number for the contact at Ametros; and

6. Claimant's Proposed Compensation Review Board Exhibit F – an e-mail from Attorney Matthew Necci to the claimant dated December 8, 2020 confirming that CareGuard is a program owned/managed by Ametros and providing a point of contact.

In his pleadings, the claimant stated the purpose of the motion herein is "some of the evidence that I wished to enter was ultimately refused by Commissioner Cohen." Claimant's memorandum dated January 27, 2022, p. 2. However, the documents he presented at our hearing were not previously considered by the trier and, therefore, that

argument is moot. Nevertheless, we note that our case law is unequivocal as to the deference extended on appeal to the evidentiary rulings at a formal hearing. See Valiante v. Burns Construction Company, 5393 CRB-4-08-11 (October 15, 2009), which held "[o]ur case law clearly states, 'a trial commissioner has broad discretion to determine the admissibility of evidence, and an evidentiary ruling will not be set aside absent a clear abuse of that discretion.'" Lamontagne [v. F & F Concrete Corp., 5198 CRB-4-07-2 (February 25, 2008)]. See Keeney v. Laidlaw Transportation, 5199 CRB-2-07-2 (May 21, 2008). See also Mosman, [v. Sikorsky Aircraft Corp. 4180 CRB-4-00-1 (March 1, 2001)], and Vetre v. State/Dept. of Children and Youth Services, 3443 CRB-6-96-10 (January 16, 1998), which states that "[d]ecisions regarding the relevance and remoteness of evidence in workers' compensation proceedings fall solely within the discretion of the trier of fact." Id.

We now turn to the merits of the documentation the claimant submitted before our tribunal. We note that proposed Exhibits C-F were all available to the claimant prior to the close of the record in the formal hearing. We are not persuaded that these documents were unavailable to the claimant at that time and our precedent in cases such as Diaz v. Pineda, 117 Conn. App. 619, 626-29 (2009), stands for the proposition that the burden is on the appellant to demonstrate that evidence which had not been presented at the formal hearing could not have been obtained at that time and presented to the trier of fact. We do not find that threshold was met. Furthermore, these proposed exhibits are immaterial to the request to open the Stipulation. The proposed Exhibit B is a reference guide which we do not believe was material to the specific issues which were litigated at the formal hearing. Finally, although the proposed Exhibit A was generated subsequent to the close

of the record in the formal hearing, since the predicate for opening an award under General Statutes § 31-315 is fraud, accident or mutual mistake, Marone v. Waterbury, 244 Conn. 1, 14-18 (1998), it is unclear upon which element of this test this document would apply. If the claimant was mistaken as to the manner in which a medical savings account operated and the respondent was not, the mistake alleged was not mutual.

Our reasoning is based on precedent which holds that attempting to present documentary evidence subsequent to the close of a formal hearing generally constitutes impermissible piecemeal litigation. See Kearns, supra, see also Gibson v. State/Dept. of Developmental Services-North Region, 5422 CRB-2-09-2 (January 13, 2010). While the claimant argues that he had difficulty locating his file at our commission to gather evidence, see claimant's memorandum dated January 27, 2022, p. 2; we note that when the record closed at the June 24, 2021 formal hearing, the claimant did not seek a continuance to obtain additional evidence nor make any representation to the administrative law judge that he had additional documentation he had yet to obtain. Nonetheless, we have given the claimant an opportunity to explain why this additional documentation would be essential to enable us to rule on his appeal, but after consideration of the arguments he presented, we do not believe admission of these exhibits is warranted and, therefore, deny the motion in its entirety.

Administrative Law Judges David W. Schoolcraft and Soline M. Oslena concur in this Ruling.