

CASE NO. 6452 CRB-6-21-11 : COMPENSATION REVIEW BOARD  
CLAIM NOS. 800128948, 601091244,  
601082828, 800131599 & 800133236

AUDREY W. RIGGINS : WORKERS' COMPENSATION  
CLAIMANT-APPELLANT COMMISSION

v. : AUGUST 8, 2022

STATE OF CONNECTICUT/  
DEPARTMENT OF CORRECTION  
EMPLOYER  
SELF-INSURED  
RESPONDENT-APPELLEE

and

GALLAGHER-BASSETT SERVICES, INC.  
THIRD-PARTY ADMINISTRATOR

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

The respondent was represented by Francis C. Vignatti, Jr., Esq., Assistant Attorney General and Christopher K.C. Boyer, Esq., Assistant Attorney General, Office of the Attorney General, 165 Capitol Avenue, Suite 4000, Hartford, CT 06106.

This Motion for Additional Evidence regarding the Petition for Review from the November 10, 2021 Finding and Dismissal of Pedro E. Segarra, Administrative Law Judge acting for the Sixth District, was heard May 27, 2022 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Carolyn M. Colangelo and David W. Schoolcraft.<sup>1</sup>

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<sup>1</sup> 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**

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant has appealed from the November 10, 2021 Finding and Dismissal of Pedro Segarra, Administrative Law Judge acting for the Sixth District, which denied the claimant's bid for interest and penalties due to an alleged late payment of permanent partial disability benefits and, instead, found an overpayment of benefits. During the pendency of this appeal, the claimant filed a motion to submit additional evidence on February 2, 2022, to which the respondent objected on February 14, 2022. 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 grant this motion in part and deny the motion in part.<sup>2</sup>

Connecticut General Statutes § 31-301 (b) authorizes the board to review additional evidence not submitted to the administrative law judge in limited circumstances.<sup>3</sup> 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.<sup>4</sup> Based on this unambiguous language, this board has held

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<sup>2</sup> We note that a motion for continuance was granted during the pendency of this appeal.

<sup>3</sup> 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."

<sup>4</sup> 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 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

“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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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).

With these parameters in mind, we will address the proposed submissions. The claimant has argued that the administrative law judge in this matter ruled on the issue of overpayment without having a complete record and that various documents are essential to enabling this tribunal to rule on the merits of the pending appeal. We have endeavored to delineate these proposed submissions and, after oral argument on this motion, have determined that the following documents are those that the claimant believes should be added to the record.

1. Claimant's Proposed Compensation Review Board Exhibit A. One page letter dated September 24, 2020, rejecting submission of proposed voluntary agreements;
2. Claimant's Proposed Compensation Review Board Exhibit B. Two voluntary agreement rejection letters dated June 27, 2007, with respect to the December 12, 2000 date of loss, and March 24, 2008, with respect to the October 5, 2001 date of loss;
3. Claimant's Proposed Compensation Review Board Exhibit C. Thirteen pages of documents including a medical report from Michael Aronow, M.D., Orthopedic Associates of Hartford; letters from Gallagher Bassett to the claimant; an email from Gallagher Bassett to respondent's counsel; Form 1A dated December 19, 2016; unapproved voluntary agreements for the December 6, 2016 date of loss; and pay histories for the following periods: April 7, 2005 to December 14, 2009; July 22, 2002 to November 1, 2002; and October 28, 2019 to November 18, 2019;
4. Claimant's Proposed Compensation Review Board Exhibit D. Eight pages of documents including hearing notes from administrative law judges at prior hearings and a handwritten note from the claimant to the Workers' Compensation Commission;
5. Claimant's Proposed Compensation Review Board Exhibit E. Twelve pages of documents including letters from the claimant to administrative law judges William J. Watson III and Daniel E. Dilzer; copies of approved and denied voluntary agreements; letters from Gallagher Bassett to the claimant; and handwritten notes by the claimant;

6. Claimant's Proposed Compensation Review Board Exhibit F. Six pages of documents including billing records and two medical reports from Michael Aronow, M.D., Orthopedic Associates of Hartford;
7. Claimant's Proposed Compensation Review Board Exhibit G. Six pages of letters from the claimant's previous counsel;
8. Claimant's Proposed Compensation Review Board Exhibit H. Ten pages of documents consisting of a cover letter from respondent's counsel to the claimant; copies of approved voluntary agreements for the December 12, 2000 and December 6, 2016 dates of loss; an email from Gallagher Bassett Services to respondent's counsel; and copies of checks made payable to the claimant;
9. Claimant's Proposed Compensation Review Board Exhibit I. An e-mail dated July 15, 2021 between Gallagher Bassett Services and respondent's counsel;
10. Claimant's Proposed Compensation Review Board Exhibit J. Two unapproved voluntary agreements for a December 12, 2000 date of injury; Form 1A dated December 2, 2002; and an e-mail between the respondent and Gallagher Bassett Services;
11. Claimant's Proposed Compensation Review Board Exhibit K. Form 42 that set forth a 10 percent permanent partial disability rating for the claimant's foot; and
12. Claimant's Proposed Compensation Review Board Exhibit L. Letter dated April 12, 2022 from Attorney Jeremy Brown to the claimant.

In reviewing these submissions, we keep in mind that the submitted evidence must be material to the issues presently being adjudicated before this tribunal and, if we determine these submissions are not material, we cannot admit them as evidence since “[i]t is axiomatic that ‘[e]vidence is admissible only to prove material facts, that is to say, those facts directly in issue or those probative of matters in issue; evidence offered to prove other facts is ‘immaterial.’ ” Salmon v. Dept. of Public Health & Addiction Services, 259 Conn. 288, 316 (2002), *quoting* C. Tait, *Connecticut Evidence* (3d Ed. 2001) § 4.1.3, p. 200, *citing* Adams v. Way, 32 Conn. 160, 167-69 (1864). In addition to

demonstrating that the proposed additional evidence is material, the movant must also satisfactorily explain why the evidence was not submitted at the time of trial.

If a claimant has failed to address relevant issues during the first set of formal hearing proceedings, he does not get a second, third or fourth bite at the apple when he later realizes that he forgot something. A party is not entitled to present his case in a piecemeal fashion, nor may he indulge in a second opportunity to prove his case if he initially fails to meet his burden of proof.

Krajewski v. Atlantic Machine Tool Works, Inc., a/k/a Atlantic Aerospace Textron, 4500 CRB-6-02-3 (March 7, 2003).

Based on those standards, we herein determine the following proposed submissions are material and the claimant has offered a sufficient explanation for their previous absence from the record. Specifically, the claimant contended at oral argument before this board that, as a pro se litigant, she was under the erroneous belief that the respondent had the burden of proof and that, due to the COVID-19 pandemic, she was unable to adequately review her file. The claimant has, therefore, persuaded us that she had good cause to submit these documents after the close of the record, or in the alternative, that she rested her case at the formal hearing in the inaccurate assumption that these documents were already part of the record. Therefore, we admit the following documents:

1. Claimant's Proposed Compensation Review Board Exhibit C. We admit the pay histories from April 7, 2005 to December 14, 2009; from July 22, 2002 to November 1, 2002; and from October 28, 2019 to November 18, 2019. Additionally, we admit the Form 1A dated December 19, 2016, and the unapproved voluntary agreements for the December 6, 2016 date of loss.
2. Claimant's Proposed Compensation Review Board Exhibit E. We admit the unapproved voluntary agreement submitted for the December 6, 2016 date of injury; and

3. Claimant's Proposed Compensation Review Board Exhibit J. We admit the two unapproved jurisdictional voluntary agreements for the December 12, 2000 date of loss and the Form 1A dated December 2, 2002.

In addition to the aforementioned documents, we find the following proposed additional evidence is admissible, in part, as administrative law judge Segarra took administrative notice of the contents of the Workers' Compensation Commission file during the formal hearing on this claim. See August 19, 2021 Transcript, p. 12.

Furthermore, consistent with our precedent in Kummer v. BIC, 5406 CRB 4-08-12 (December 15, 2009), hearing request forms and administrative law judges' notes can be administratively noticed by the trier of fact, and that occurred in this proceeding.

1. Claimant's Proposed Compensation Review Board Exhibit B. We admit two pages of voluntary agreement rejection letters dated June 27, 2007, for the December 12, 2000 date of loss, and March 24, 2008, for the October 5, 2001 date of loss;
2. Claimant's Proposed Compensation Review Board Exhibit D. We admit the administrative law judges' hearing notes from October 15, 2020 to March 8, 2021, and the handwritten note from the claimant to the commission, which was received on November 17, 2021, requesting an appointment for the review of her file;
3. Claimant's Proposed Compensation Review Board Exhibit E. We admit the letters dated November 5, 2020 and March 20, 2021, from the claimant to administrative law judges William J. Watson III and Daniel E. Dilzer, respectively. We also admit the copy of the specific voluntary agreements approved on October 27, 2020 with respect to the December 6, 2016 date of loss; and
4. Claimant's Proposed Compensation Review Board Exhibit H. We admit the specific voluntary agreements approved on October 27, 2020 and the Form 1A dated December 2, 2002 (as noted above).

We deny the balance of the claimant's request. We note that the vast majority of these submissions are duplicative of identical submissions offered by the claimant or the

respondent as exhibits at the formal hearing. Such proposed additional evidence include the following:

1. Claimant's Proposed Compensation Review Board Exhibit A. The September 24, 2020 rejection of the voluntary agreements relative to the December 6, 2016 claim is already part of the formal hearing record as Claimant's Trial Exhibit C;
2. Claimant's Proposed Compensation Review Board Exhibit C. The letter dated October 16, 2020 from the third-party administrator to the claimant is already part of the formal hearing record as Claimant's Trial Exhibit E. Dr. Aronow's October 28, 2019 report is already part of the formal hearing record as Claimant's Trial Exhibit B. The July 15, 2021 email from the third-party administrator to Assistant Attorney General Francis Vignati, that includes a copy of a September 24, 2002 file note, is already part of the formal hearing record as Respondent's Trial Exhibit 9. Letters dated September 16, 2020 and March 25, 2021, from Linda Tulloch-Peart, adjuster, to the claimant are already part of the formal hearing record as Claimant's Trial Exhibit E;
3. Claimant's Proposed Compensation Review Board Exhibit E. The September 24, 2020 denial of the voluntary agreements based on the need of proof of the 10 percent allegedly paid is already part of the record as Claimant's Trial Exhibit C. The letters dated September 16, 2020 and October 16, 2020, from the third-party administrator to the claimant are already part of the formal hearing record as Claimant's Trial Exhibit E;
4. Claimant's Proposed Compensation Review Board Exhibit H. The copies of checks related to the payment of specific benefits are already part of the formal hearing record as Respondent's Trial Exhibits 2-3 and 5-8. As noted above, the July 15, 2021 email from the third-party administrator to Assistant Attorney General Francis Vignati, that includes a copy of a September 24, 2002 file note, is already part of the formal hearing record as Respondent's Trial Exhibit 9;
5. Claimant's Proposed Compensation Review Board Exhibit I. As noted above, the July 15, 2021 email from the third-party administrator to Assistant Attorney General Francis Vignati, that includes a copy of a September 24, 2002 file note, is already part of the formal hearing record as Respondent's Trial Exhibit 9; and
6. Claimant's Proposed Compensation Review Board Exhibit K. The Form 42 that sets forth the permanent impairment rating of 10 percent of the foot is already part of the formal hearing record as Respondent's Trial Exhibit 10.



We further find that other documentation denied herein would not be material to the issues being litigated and, therefore, fails to meet the standard for admission

delineated in Salmon, supra. These proposed additional exhibits include the following:

1. Claimant's Proposed Compensation Review Board Exhibit E. Two handwritten notes from the claimant regarding the voluntary agreements;
2. Claimant's Proposed Compensation Review Board Exhibit F. Billing records from October 12, 2019 to August 31, 2021, and medical reports from June 3, 2020 and July 12, 2021, from Orthopedic Associates of Hartford;
3. Claimant's Proposed Compensation Review Board Exhibit G. Six pages of letters from prior counsel John D'Elia and Deborah Nemeth dated January 13, 2003, November 25, 2002, August 9, 2002, and July 5, 2002;
4. Claimant's Proposed Compensation Review Board Exhibit J. An email dated April 27, 2007, between the State of Connecticut and the third-party administrator regarding the claimant's base compensation rate.

Finally, we also note that the claimant rested her case at the August 19, 2021 formal hearing and represented that she had no further exhibits. See August 19, 2021 Transcript, p. 13. For that reason, admission of any further opinion evidence, such as Claimant's Proposed Compensation Review Board Exhibit L, would violate the due process standards that we established in cases such as Ghazal v. Cumberland Farms, 5397 CRB-8-08-11 (November 17, 2009). Furthermore, the claimant could have submitted the March 18, 2021 letter from the third-party administrator to the claimant at the same time that she admitted two other similar letters that were entered as Claimant's Trial Exhibit E, at the formal hearing.

Administrative Law Judges Carolyn M. Colangelo and David W. Schoolcraft concur in this Ruling.