CASE NO. 6457 CRB-5-21-12 CLAIM NO. 500173677	:	COMPENSATION REVIEW BOARD
EMIL COVIELLO CLAIMANT-APPELLEE	:	WORKERS' COMPENSATION COMMISSION
v.	:	JUNE 16, 2022

RONALD CONROY
EMPLOYER
NO RECORD OF INSURANCE
RESPONDENT-APPELLANT

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

The claimant was represented by Brian Tynan, Esq., Tynan and Iannone, 250 Wolcott Road, Wolcott, CT 06716.

The respondent-appellant, Ronald Conroy, appeared at oral argument before the board as a self-represented party.

The respondent-appellee, Second Injury Fund, was represented by Lisa Guttenberg Weiss, Esq., Assistant Attorney General, Office of the Attorney General, 165 Capitol Avenue, Suite 4000, Hartford, CT 06106, who did not file a brief or appear at oral argument. At the trial level, the Second Injury Fund, was represented by Marie Gallo-Hall, Esq., Assistant Attorney General, Office of the Attorney General.[1]

This Petition for Review from the November 9, 2021 Finding and Decision by Charles F. Senich, the Administrative Law Judge acting for the Fifth District, was heard April 22, 2022 before a Compensation Review Board panel consisting of

[1] It should be noted that Attorney Marie Gallo-Hall, in her former position as Assistant Attorney General for the State of Connecticut, was involved with this matter at the trial level. In view of the fact that Attorney Gallo-Hall accepted the position of Agency Legal Director for the Workers' Compensation Commission on July 17, 2021, she has recused herself from any and all appellate review of this matter.

Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Daniel E. Dilzer and Peter C. Mlynarczyk.[2]

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The respondent, Ronald Conroy, has appealed from a Finding and Decision (finding) of Charles Senich, Administrative Law Judge acting for the Fifth District, which determined that an employer-employee relationship existed between the claimant and the respondent at the time of the claimant's injury. Conroy has appealed alleging various discrepancies in the record should have caused the administrative law judge to conclude the claimant's employer was actually another business entity. The claimant points out that Conroy was properly cited as a party in this case and testified at the formal hearing, and the issues herein are factual questions determined in a manner adverse to the respondent. He also points out that this appeal appears to be jurisdictionally invalid as a result of a late filing pursuant to General Statutes § 31-301 (a),[3] and therefore has moved for a dismissal.

Upon review, we concur with the claimant that we lack jurisdiction in this matter as a result of a late appeal and must dismiss the appeal. Even had we considered this

[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.

[3] General Statutes § 31-301 states: "(a) At any time within twenty days after entry of an award by the commissioner, after a decision of the commissioner upon a motion or after an order by the commissioner according to the provisions of section 31-299b, either party may appeal therefrom to the Compensation Review Board by filing in the office of the commissioner from which the award or the decision on a motion originated an appeal petition and five copies thereof. The commissioner within three days thereafter shall mail the petition and three copies thereof to the chief of the Compensation Review Board and a copy thereof to the adverse party or parties. If a party files a motion subsequent to the finding and award, order or decision, the twenty-day period for filing an appeal of an award or an order by the commissioner shall commence on the date of the decision on such motion."

matter on the merits, there was sufficient factual foundation in the record to support the administrative law judge's conclusion and we would affirm the finding.

The administrative law judge found the following facts in the finding. On or about June 21, 2019, the claimant was injured while driving a dump truck. The truck was provided to him by Conroy and the claimant was hauling dirt at Conroy's direction at the time he was injured. The administrative law judge found the truck was owned by another individual, Ralph Johnson, who gave permission to Conroy to use the truck; who then provided the truck to the claimant. The finding also determined that Conroy acknowledged hiring the claimant to help him build a road and that the claimant testified that he had worked for Conroy for about six weeks before the accident. The claimant testified that Conroy supervised and directed all the work that he performed and the administrative law judge found Conroy supplied all the equipment, tools and materials in regard to this matter. The administrative law judge also found Conroy did not have workers' compensation insurance.

Based on those facts, the administrative law judge concluded that the claimant was injured in the course of his employment on June 21, 2019, and that as of that date, an employer-employee relationship existed between the claimant and Conroy. He found the claimant's testimony credible and persuasive but found Conroy's testimony not to be fully credible and persuasive. Since Conroy provided all the tools and materials in regard to this matter, paid the claimant by the hour, and controlled the duties and hours of the claimant's work, he was responsible for the claimant's compensable injury. The administrative law judge left the claimant to his proof as to the extent of his injuries and the benefits he was entitled to because of the accident.

The finding was issued on November 10, 2021. On December 6, 2021, the appellant filed his petition for review and reasons for appeal. He did not file a motion to correct. The claimant subsequently filed a motion to dismiss arguing that the late filing of this appeal deprived our tribunal of jurisdiction. In his appeal, the appellant argues that the actual party in interest should have been found to be the owner of the truck, Johnson, and expresses displeasure at how counsel for the Second Injury Fund questioned him at the hearing. The appellant also stated that due to illness he had difficulty representing himself at the hearing and that he had difficulty participating in sessions held virtually over Microsoft Teams as he had to use a cell phone.[4] The claimant argues that these averments are essentially efforts to retry the factual findings reached at the hearing and the late appeal prevents the Compensation Review Board from offering the appellant any relief. We concur with the claimant.

We have frequently been confronted with the issue of whether we can rule on a late appeal. Unless unusual circumstances are present where an appellant did not have the means to know there was a decision to appeal from, as discussed in Szyszka v. Rose City Taxi, LLC, 6371 CRB-3-20-1 (April 28, 2021), we have uniformly found we lack subject matter jurisdiction over late appeals. Our most recent decision on this point was Swaggerty v. Hartford, 6262 CRB-1-18-4 (March 15, 2019). In Swaggerty, we explained our reasoning as follows:

> We find the facts in this matter are indistinguishable from Sutherland Hofler v. State/Dept. of Developmental Services, 6173

[4] Due to the Covid-19 pandemic, Commission hearings in 2020 and the first half of 2021 were generally held electronically pursuant to Commission Memorandum 2020-2 TEMPORARY EMERGENCY GUIDELINES IN RESPONSE TO COVID-19 OUTBREAK, available at https://wcc.state.ct.us/crb/memos/2020/2020-02.htm (last visited May 31, 2022) and Memorandum 2020-4 UPDATED HEARING POLICY EFFECTIVE THURSDAY, MARCH 19, 2020, available at https://wcc.state.ct.us/crb/memos/2020/2020-04.htm (last visited May 31, 2022).

> CRB-5-17-1 (December 12, 2017), and we are therefore compelled to reach the same result. In Sutherland, this tribunal remarked that: consistent with Mankus v. Mankus, 4958 CRB-1-05-6 (August 22, 2006), *aff'd*, 107 Conn. App. 585 (2008), *cert. denied*, 288 Conn. 904 (2008), and Brockenberry v. Thomas Deegan d/b/a Tom's Scrap Metal, Inc., 5429 CRB-5-09-2 (January 22, 2010), *aff'd*, 126 Conn. App. 902 (2011) (per curiam) ... "[o]nce a determination is reached that we lack subject matter jurisdiction no further inquiry is warranted." Mankus, supra. Our decision in Bond v. Lee Manufacturing, Inc., 5868 CRB-8-13-8 (April 21, 2016), also stands for the proposition that prior to taking any action on the merits of an appeal, we must resolve any questions pertaining to whether we have jurisdiction to consider the appeal. In Brown v. Lawrence & Memorial Hospital, 5853 CRB-2-13-5 (April 21, 2014), the claimant offered an explanation for her late filing of an appeal, but we concluded that we were not in a position to consider the matter because "[o]ur courts have determined that the failure of a party to file a timely appeal deprives the board of jurisdiction over the appeal." Id.; see also Stec v. Raymark Industries, Inc., 299 Conn. 346 (2010).
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> We also stated that: 'the claimant was obligated, if she was dissatisfied with or confused about the trial commissioner's Finding and Denial, to either appeal to this tribunal within twenty days, or file an appropriate motion with the trial commissioner seeking a correction or clarification within that period. See Garvey v. Atlas Scenic Studios, Inc., 5493 CRB-4-09-9 (February 14, 2012). Otherwise, her appellate rights would be extinguished pursuant to General Statutes § 31-301 (a). The claimant failed to take either action within that twenty-day window. Given that the claimant, although aggrieved by the December 14, 2016 decision of the trial commissioner, took no responsive action within twenty days, we therefore lack subject matter jurisdiction to consider the appeal.' Id.
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> In the present matter, the claimant failed to exercise his right to respond to the finding within the jurisdictional time period. Having failed to exercise this right, we may not offer the claimant relief at this juncture.

Id.

At our hearing of this appeal, the appellant advised this tribunal that he was aware of the finding prior to the end of the statutory appeal period but he found himself unable

to file his appeal within the allotted twenty-day period. As we do not find this materially different in any factual or legal manner from Swaggerty, supra, we find we are bound by precedent and statute to grant the claimant's motion to dismiss.

In any event, were we to have considered this case on the merits we would have affirmed the finding. The administrative law judge found the claimant a credible and persuasive witness and his testimony was consistent with a conclusion that he had been hired by Conroy. The finding determined that the appellant provided the claimant with the truck he had been driving, that the claimant was hired by the appellant and that he was working at the appellant's direction. The finding of an employer-employee relationship was established consistent with cases such as Vignali v. Richard Renner, 5473 CRB-5-09-6 (June 17, 2010), where we pointed out, *citing* Maskowsky v. Fed Ex Ground, 5200 CRB-3-07-2 (July 28, 2008), that Hanson v. Transportation General, Inc., 245 Conn. 613, 625 (1998), had established a "totality of factors" test, which placed the responsibility to weigh the evidence on the trier of fact. As the administrative law judge credited evidence that Conroy controlled the claimant's hours of work and provided the tools the claimant used on the job, see January 13, 2021 Transcript, pp. 17-23, sufficient evidence was submitted supportive of an employer-employee relationship by the claimant to satisfy the "totality of the factors" test delineated in Hanson, supra.[5]

The gravamen of Conroy's appeal is that the manner in which the appeal was conducted was unfair to him. We note that he extensively cross-examined the claimant as to the averments he presented to the Commission. See January 13, 2021 Transcript,

[5] The respondent did not file a motion to correct. Therefore, we must accept the validity of the facts found by the administrative law judge, and that this board is limited to reviewing how the trier of fact applied the law. See Stevens v. Raymark Industries, Inc., 5215 CRB-4-07-4 (March 26, 2008), *appeal dismissed*, A.C. 29795 (June 26, 2008).

pp. 42-66. The respondent was also granted a motion to reopen by the administrative law judge after initially closing the record, which enabled him to present witnesses at the March 30, 2021 formal hearing such as Johnson whom he believed would support his narrative. At the conclusion of that session, Conroy sought to conduct additional inquiry as to the claimant's prior employment. The administrative law judge denied that request. See March 30, 2021 Transcript, pp. 78-79. Given the broad latitude under which an administrative law judge may conduct hearings, see General Statutes §§ 31-278 and 31-298, we believe that the hearing in this matter comported with due process and that the respondent was provided a full opportunity to defend this claim. See Reid v. Sheri A. Speer d/b/a Speer Enterprises, LLC, 5818 CRB-2-13-1 (January 28, 2014), *aff'd*, 209 Conn. App. 540 (2021) (per curiam), *cert. denied*, 342 Conn. 908 (2022).

The appeal is dismissed. Administrative Law Judges Daniel E. Dilzer and Peter C. Mlynarczyk concur in this Opinion.