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| CASE NO. 6459 CRB-4-21-12<br>CLAIM NO. 300097882 | : | COMPENSATION REVIEW BOARD |
| JO LYNN WILSON<br>CLAIMANT-APPELLANT | : | WORKERS' COMPENSATION COMMISSION |
| v. | : | MAY 9, 2022 |
| YALE UNIVERSITY<br>EMPLOYER<br>SELF-INSURED<br>RESPONDENT-APPELLEE | | |
| and | | |
| SECOND INJURY FUND<br>RESPONDENT-APPELLEE | | |

# RULING ON MOTION TO SUBMIT ADDITIONAL EVIDENCE

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant has appealed from Administrative Law Judge Michelle D. Truglia's November 18, 2021 ruling on her December 10, 2019 motion to open the stipulation that was approved by Administrative Law Judge Scott A. Barton on July 17, 2019. Oral argument was presented before the Compensation Review Board on April 27, 2022. The claimant did not, EITHER prior to OR AT the April 22, 2022 oral argument before the board, make any motion to submit additional evidence. On April 26, 2022, however, an email was sent to the board requesting that a March 8, 2019 letter from John Letizia, counsel for the respondents, be added to the official record. After reviewing that letter, and given the nature of the proceedings, as well as due process concerns, we hereby deny the claimant's request.

Pursuant to the Regulations of Connecticut State Agencies § 31-301-9 sets forth the procedure for submitting additional evidence after the close of the record.[1] Specifically, a party wishing to submit such evidence must allege that the proffered evidence or testimony is material and that there are good reasons for the failure to present it in the proceedings before the administrative law judge. The request must be in the form of a written motion that indicates the nature of the evidence or testimony, the basis of the claim of materiality, and the reasons why it was not presented in the proceedings before the Administrative Law Judge. The aforementioned email does not meet that criterium. Furthermore, since the appeal has already been heard by the Compensation Review Board panel by way of oral argument on April 22, 2022, this request is untimely and may negatively impact the due process rights of the other parties.

The only issue that was before the Administrative Law Judge on November 16, 2021, and therefore before this board, was the claimant's motion to open the July 17, 2019 stipulation. Such a motion to open is subject to the provisions of General Statutes § 31-315[2] which requires a moving party to demonstrate that the incapacity of an injured

[1] Regulations of Connecticut State Agencies § 31-301-9. "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 [administrative law judge], he shall by written motion request the 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 [administrative law judge]. 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 copies shall be made part of the record on such appeal."

[2] General Statutes § 31-315 states: "Any award of, or voluntary agreement concerning, compensation made under the provisions of this chapter or any transfer of liability for a claim to the Second Injury Fund under the provisions of section 31-349 shall be subject to modification in accordance with the procedure for original determinations, upon the request of either party or, in the case of a transfer under section 31-349, upon the request of the custodian of the Second Injury Fund, whenever it appears to the [administrative law judge], after notice and hearing thereon, that the incapacity of an injured employee has increased, decreased or ceased, or that the measure of dependence on account of which the compensation is paid has changed, or that changed conditions of fact have arisen which necessitate a change of such agreement, award or transfer in order to properly carry out the spirit of this chapter. The [administrative law judge] shall also have the same power to open and modify an award as any court of the state has to open and modify a judgment of

employee has increased, decreased, or ceased, or that the measure of dependency on account of which compensation is paid has changed, or that changed conditions of fact have arisen which necessitate a change of such agreement or award. This statute provides an Administrative Law Judge with the same power to open and modify an award as any court of the state has to open and modify a judgment of such court.

This board has long held that "[a]n award by Stipulation is a binding award which, on its terms, bars a further claim for compensation unless Sec. 31-315, which allows for modification is satisfied." (Footnote omitted.) Marriott v. Northington Builders, 3357 CRB-1-96-5 (November 7, 1997), *quoting* Mongillo v. Terminal Taxi Co., 12 Conn. Workers' Comp. Rev. Op. 197, 199, 1455 CRB-3-92-7 (March 7, 1994). It has further held that, "[l]ike a stipulated judgement in Superior Court, an Award by Stipulation may be set aside without the consent of all parties only if it was obtained by fraud, misrepresentation, accident or mistake." Id., *quoting* Gonzalez v. Electric Transport (Penske), 13 Conn. Workers' Comp. Op. 6, 8, 1729 CRB-1-93-5 (October 13, 1994).

As required by the statute, all proposed additional evidence must be material to the merits of the question before the administrative law judge. "It 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,

such court. The [administrative law judge] shall retain jurisdiction over claims for compensation, awards, and voluntary agreements, for any proper action thereon. During the whole compensation period applicable to the injury in question."

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).

The proposed additional evidence in this matter is a settlement offer made by the respondents four months before the final settlement agreement was executed by the parties and approved by the Administrative Law Judge. Notwithstanding the fact that it is inappropriate for an Administrative Law Judge to review settlement negotiations in rendering any decision in a case, such negotiations are not material to whether the settlement agreement should be opened. Furthermore, if the claimant wanted this letter to be considered by the Administrative Law Judge presiding over the November 16, 2021 formal hearing, she should have submitted it at that time. "[I]t 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. Furthermore, in Tomaszek v. Girard Motors, Inc., 70 Conn. App. 122, 124 (2002) *quoting* Wittman v. Krafick, 67 Conn. App. 415 (2001), *cert. denied*, 260 Conn. 916 (2002), the Appellate Court noted that, "[a]lthough we allow pro se litigants some latitude, the right to self-representation provides no attendant license not to comply with the relevant rules of procedure and substantive law." Since the claimant failed to introduce this proffered

evidence at the time of the formal hearing and has not offered any compelling reason why she did not do so, we decline to allow it at this late stage in the proceedings.

Based on the aforementioned, we deny the claimant's request to submit additional evidence.

Administrative Law Judges Daniel E. Dilzer and William J. Watson III concur in this ruling.