CASE NO. 6463 CRB-6-21-12 CLAIM NO. 601091638	:	COMPENSATION REVIEW BOARD
ISMAIL NASSER CLAIMANT-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
v.	:	DECEMBER 30, 2022
PREMIER LIMOUSINE OF HARTFORD EMPLOYER		
and		
CALIFORNIA INSURANCE COMPANY INSURER RESPONDENTS-APPELLEES		

APPEARANCES:

The claimant appeared at oral argument before the board as a self-represented party. Also present with the claimant was Al-Mustafa Mobalel, a family member, who served as the interpreter. At the initiation of this appeal, the claimant was represented by James H. McColl, Jr., Esq., The Dodd Law Firm, L.L.C., Ten Corporate Center, 1781 Highland Avenue, Suite 105, Cheshire, CT 06410, who filed a motion to withdraw appearance which was granted. At the trial level, the claimant was represented by Mathew E. 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 Erik S. Bartlett, Esq., McGann, Bartlett & Brown, LLC, 111 Founders Plaza, Suite 1201, East Hartford, CT 06108.

This Petition for Review from the December 10, 2021 Finding and Dismissal by Pedro E. Segarra, the Administrative Law Judge acting for the Sixth District, was heard October 28, 2022, before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Daniel E. Dilzer and Carolyn M. Colangelo.[1]

[1] We note that a motion for continuance was granted during the pendency of this appeal.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant has appealed from a December 10, 2021 Finding and Dismissal (finding) issued by Administrative Law Judge Pedro E. Segarra (administrative law judge). The claimant believes that the evidence the administrative law judge relied upon was flawed, and had other evidence been presented at the hearing, he would have prevailed. The respondents' position is that the claimant is seeking to retry facts on appeal. The respondents further argue that the claimant's failure to file any written submissions in support of his appeal, such as a brief or reasons of appeal, constitutes a failure to properly prosecute the appeal pursuant to Practice Book § 85-1. As a result, the respondents have moved to dismiss the appeal.

Upon review, we find the respondents' position meritorious and grant their motion to dismiss. Having heard the claimant's position at oral argument, we further conclude that, had this appeal been properly prosecuted, we would affirm the finding, as the claimant conceded factual evidence presented at the hearing supported the administrative law judge's conclusions.

We will summarize the facts herein. The claimant asserted that he sustained cervical spine and knee injuries as the result of an October 3, 2019 motor vehicle accident that occurred in the course of his employment. The claimant, who was represented by counsel at the formal hearing, testified at the hearing and various medical records were presented supportive of his claim. The respondents presented a video which depicted the October 3, 2019 accident. That video was also shown to one of the claimant's treating physicians, Farhan Karim, M.D., who subsequently opined the claimant's narrative as to

how he was injured was inconsistent with that video. See Findings, ¶ 10, *citing* Respondents' Exhibit 1. Following the hearing, the administrative law judge concluded the video evidence was inconsistent with the claimant's narrative and that the claimant's testimony was not persuasive or credible. Consequently, the administrative law judge found that the claimant's cervical spine and knee injuries were not the result of the October 3, 2019 accident.

The claimant, through his attorney at the time, filed a timely petition for review, but then failed to file any further pleadings delineating his claims of error such as reasons for appeal, a motion to correct or an appellate brief. The respondents have filed a motion to dismiss pursuant to Practice Book § 85-1 for the claimant's failure to properly prosecute the appeal. We considered very similar circumstances in the appeal filed by the claimant in Van Fleet v. Balfour Beatty Construction, 5801 CRB-4-12-11 (March 17, 2014), and we are compelled to dismiss this appeal for the same reasons we dismissed Van Fleet.

> We find that in the present matter it is difficult to discern what the averments of legal error are, as the claimant, who is a self represented party, did not file an appellant brief. While we acknowledge the difficulties *pro se* claimants may have in advancing an appellate argument, and generally extend considerable leeway to such litigants, there must still be a reasonable effort to comply with the rules to enable this panel to take action. The appellant is expected to present a cogent explanation to the tribunal and the respondent prior to this board's hearing that explains why the trial commissioner erred in their decision. [See] Claros v. Keystone Pipeline Services, 5399 CRB-1-08-11 (October 28, 2009). The respondents have moved to dismiss this appeal pursuant to Practice Book Section 85-1, alleging that they were prejudiced by the manner in which the claimant pursued his appeal. We are persuaded by this argument and grant the motion. As we pointed out in Marino v. Cenveo/Craftman Litho, Inc., 5448 CRB-5-09-3 (March 16, 2010), when an appellant fails to sufficiently apprise the tribunal and the

> opposing party of their rationale for the appeal prior to the hearing, the appeal is subject to dismissal.

Id.

While we believe the procedural deficiencies in the claimant's appeal were sufficiently material as to warrant a dismissal, were we to have considered the merits of the claimant's appeal we would have affirmed the administrative law judge's decision. We believe that the claimant is essentially seeking to have this panel retry the factual underpinnings of the finding, which is beyond our role as an appellate panel. See Warren v. Federal Express Corp., 4163 CRB-2-99-12 (February 27, 2001). We considered the arguments raised by the claimant in his oral presentation to this tribunal. We also noted that the claimant conceded that the administrative law judge had factual evidence supportive of his decision but argued that other evidence which his lawyer at that time did not present should have been presented.

> JUDGE COLANGELO: I have one question. Based on what the judge had before him, does he understand how the judge could have reached the conclusion that he did?
>
> INTERPRETER: Like, what do you mean by that?
>
> JUDGE COLANGELO: The trial court judge made a decision based on the video and the medical records. Did --
>
> CHAIRMAN MORELLI: From Dr. Arcero and Karim.
>
> INTERPRETER: You said he made like a decision, right?
>
> JUDGE COLANGELO: Based on the evidence he had before him -- just translate that, please.
>
> INTERPRETER: He made a decision, right?
>
> JUDGE COLANGELO: And is it his belief that the judge's decision is wrong, because the evidence that was in, is not accurate?

> INTERPRETER: What did you say? I'm sorry.
>
> JUDGE COLANGELO: Is it his belief that the judge's decision was wrong, because the evidence, the medical reports, and the video, are not accurate?
>
> INTERPRETER: He doesn't have an issue with what the judge concluded. But his issue, originally, was with what the lawyers provided to the judge.

October 28, 2022 Transcript, pp. 10-11.

The claimant's argument that his attorney did not present persuasive evidence at the formal hearing is not a matter that we may consider as an appellate tribunal. See Macon v. Colt's Manufacturing, 5505 CRB-1-09-10 (September 27, 2010), *appeal dismissed*, A.C. 32785 (December 13, 2010). The claimant has conceded that, based on the evidence presented, the administrative law judge could reasonably have denied his claim. Therefore, our precedent in cases such as Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988) and Jodlowski v. Stanley Works, 169 Conn. App. 103, 108-09 (2016), would compel us to affirm the finding. As this board pointed out in Torres v. New England Masonry Company, 5289 CRB-5-07-10 (January 6, 2009), "[t]he burden of proof in a workers' compensation claim for benefits rests with the claimant." Id. See also, Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440 (2001); and Lentini v. Connecticut College, 4933 CRB-2-05-4 (May 15, 2006). The claimant failed in this effort and conceded the decision herein was not unreasonable. In any event, as the claimant failed to properly prosecute this appeal, we must grant the pending motion to dismiss.

Administrative Law Judges Daniel E. Dilzer and Carolyn M Colangelo concur in this Opinion.