CASE NO. 6468 CRB-6-22-2 CLAIM NO. 601095036	:	COMPENSATION REVIEW BOARD
EDWARD A. PREECE CLAIMANT-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
v.	:	DECEMBER 28, 2022

CITY OF NEW BRITAIN
EMPLOYER
SELF-INSURED

and

PMA MANAGEMENT CORPORATION
OF NEW ENGLAND
THIRD-PARTY ADMINISTRATOR
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Eric W. Chester, Esq., Ferguson, Doyle & Chester, P.C., 35 Marshall Road, Rocky Hill, CT 06067.

The respondents were represented by Nicole A. Fluckiger, Esq., McGann, Bartlett & Brown, LLC., 111 Founders Plaza, Suite 1201, East Hartford, CT 06108.

This Petition for Review from the February 2, 2022 Finding and Dismissal by Pedro E. Segarra, the Administrative Law Judge acting for the Sixth District, was heard August 26, 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 extension of time was granted during the pendency of this appeal.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant has petitioned for review from the February 2, 2022 Finding and Dismissal of Pedro E. Segarra, Administrative Law Judge acting for the Sixth District. On appeal, we have reviewed this case and are concerned the administrative law judge may not have applied the appropriate causation standard in his decision. As a result, we remand this decision to the administrative law judge for an articulation based on the relevant precedent regarding workplace causation of an injury.

The administrative law judge determined that the sole issue at the formal hearing on this claim was "whether the claimant sustained a compensable injury on January 6, 2021.[2] More specifically, whether the Claimants COVID-19 diagnosis was a result of workplace exposure." February 2, 2022 Finding and Dismissal (findings). He found the following facts from the evidence submitted, and we note these facts are essentially undisputed. On December 30, 2020, the claimant was a lieutenant in the New Britain Fire Department and at all times relevant to this inquiry an employer/employee relationship existed between him and the respondent city. The claimant supervised three firefighters that were assigned to ladder number 2 and his duties included administrative tasks and commanding the crew at emergency scenes. On December 30, 2020, Donald Gray, a fellow firefighter informed the claimant that he had been exposed to COVID-19. This information was conveyed in person and neither Gray nor the claimant were wearing

[2] In the "Issue" section of the findings, the claimant's date of injury is stated as "January 19, 2021." We find that the record reflects the claimant actually was diagnosed with COVID-19 on January 6, 2021. However, this is not material to the issues herein and is merely a scrivener's error which we will accord no weight. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 729 (2002), *cert. denied*, 262 Conn. 933 (2003).

masks or vaccinated. The interaction lasted for about five minutes and the parties were standing approximately four to five feet apart. See Findings, ¶ 5.

On January 7, 2021, the claimant was informed of a positive result from a routine covid test administered by the respondents on January 3, 2021. On January 6, 2021, he also learned of a positive result from a rapid molecular test. The administrative law judge noted that during December 2020, the claimant was out in the general community attending to household responsibilities. See Findings, ¶ 8; December 15, 2021 Transcript, p. 18. The administrative law judge concluded the claimant had not met his burden of proof that he contracted COVID-19 in the workplace. See Conclusion, ¶ I.

The administrative law judge noted that claimant's counsel sought an opinion from the claimant's primary care medical provider, Michelle Steele, APRN, but Steele declined to provide an opinion as to whether the claimant's COVID-19 infection was causally related to his employment. See Respondents' Exhibit 1.[3] The administrative law judge also noted that Governor Ned Lamont signed Executive Order 7JJJ (Executive Order) during the pandemic, impacting eligibility for chapter 568 benefits for certain claimants asserting exposure to COVID-19. This Executive Order created a rebuttable presumption for any employee diagnosed with COVID-19 between March 20, 2020, and May 20, 2020.

Based on these factual findings, the administrative law judge concluded the claimant was diagnosed with COVID-19, but that his diagnosis did not occur during the

[3] Pursuant to Public Act 19-98, Advanced Practice Registered Nurses may perform the role of physicians as an authorized treater pursuant to General Statutes Section 31-294d. We note that Findings, ¶ 9 of the Finding and Dismissal refers to "Dr. Michelle Steele" but in light of Public Act 19-98, we deem this to be a harmless scrivener's error. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 729 (2002), *cert. denied*, 262 Conn. 933 (2003).

period covered by the Executive Order. He further found "there are not sufficient facts to convince me that the exposure was caused directly by his work activities" and noted that the claimant has failed to sustain his burden of proof that his COVID-19 diagnosis was the result of his work activities. Conclusion, ¶ D. Therefore, the administrative law judge reached the following conclusion:

> (I) As the Claimant has failed to meet his burden of proof that he sustained a compensable injury while working for the City of New Britain; failed to provide a medical opinion of causation that the Claimant's claim that he sustained a compensable injury at work on January 6, 2021, is hereby DENIED and DISMISSED.

Orders, ¶ I.

The claimant filed a motion to correct and a motion for articulation. The motion to correct sought a conclusion that (1) Gray had tested positive for COVID-19 as of December 30, 2020, (2) claimant contracted COVID-19 in the course of his employment, and (3) the COVID-19 infection was a compensable illness. The motion for articulation sought to have the administrative law judge explain how he had reached the conclusions he did in light of Gray's positive COVID-19 test and further sought an explanation as to how he applied the causation standard in chapter 568 proceedings to this claim. The administrative law judge denied both motions in their entirety and the claimant pursued this appeal. The gravamen of the appeal is that the administrative law judge applied an incorrect standard of causation and that given the facts of the case, the claimant did not need to present a causation opinion from a medical professional.

The standard of deference we are obliged to apply to an administrative law judge's findings and legal conclusions is well-settled. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or

based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003). "This presumption, however, can be challenged by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

The claimant draws our attention to Findings, ¶ 11, where the administrative law judge cites the Executive Order, notes its inapplicability to the date of injury alleged in this claim, and then states "the Claimant would face a higher burden of establishing causation" subsequent to the period in which claims received a rebuttable presumption. The claimant believes that the administrative law judge inaccurately determined that once the period in the Executive Order expired, any claim asserting a workplace injury due to COVID-19 exposure would require a more elevated level of proof than an ordinary claim for a workplace injury, mandating the presentation of an expert opinion.

The appropriate standard, according to the claimant, is enunciated in Brinson v. Finlay Bros. Printing Co., 77 Conn. App. 319, 329-30 (2003):

> The trial commissioner is the trier of fact and, as such, has the power and duty to determine the facts. *Smith v. Connecticut Light & Power Co.*, 73 Conn. App. 619, 624, 808 A.2d 1171 (2002). "The trier [of fact] may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical." (Internal quotation marks omitted.) *State v. Jimenez*, 73 Conn. App. 664, 668, 808 A.2d 1190, cert. denied, 262 Conn. 929, 814 A.2d 381 (2002). "The commissioner must

> determine as a factual matter the causal relationship between a claimant's symptoms and a compensable injury." (Internal quotation marks omitted.) *Barron v. City Printing Co.*, 55 Conn. App. 85, 94, 737 A.2d 978 (1999). Medical testimony that there is a definitive causal connection between the claimant's symptoms and his incapacity is not required. *English v. Manchester*, 175 Conn. 392, 396–97, 399 A.2d 1266 (1978); *Poulick v. Radio City Restaurant*, 153 Conn. 410, 412, 216 A.2d 831 (1966). "It is enough if there is evidence from which the commissioner can properly conclude that it is reasonably probable, or more probable than not, that the causal connection existed." (Internal quotation marks omitted.) *English v. Manchester*, supra, 397; *Poulick v. Radio City Restaurant*, supra, 412–13. Moreover, "it is clear that the lack of a definitive diagnosis does not preclude recovery under the Work[-ers'] Compensation Act." *English v. Manchester*, supra, 398.

Brief of the Claimant-Appellant dated June 15, 2022, pp. 6-7.

The claimant interpreted Brinson, supra, to mean that it was error for the administrative law judge to determine that a claim alleging workplace COVID-19 exposure must, as a matter of law, require an expert opinion as to workplace causation. He argued that the totality of the facts, including the proposed correction that Gray had tested positive for COVID-19 prior to his December 30, 2020 meeting with the claimant, would be sufficient to establish causation to a level of reasonable probability. In our review of the administrative law judge's decision, we are unclear as to the standard of proof imposed on this claim. We remind all parties, however, that we may only correct errors of law on appeal and cannot reweigh the evidence.

Findings, ¶ 11 states,

> As per the Executive Order, injuries falling within this rebuttable period did not require a medical expert to provide an opinion on compensability, whereby injuries falling outside the rebuttable presumption period would need a medical opinion as to compensability. Thus, the Claimant would face a higher burden of establishing causation (Executive Order #7JJJ).

The reference to a "higher burden," however, is ambiguous in that we cannot ascertain whether the administrative law judge is speaking to a higher burden than that which is standard for claims in this forum or merely higher than that required under Executive Order 7JJJ.

The precedent advanced by the claimant in Brinson, supra, is nearly two decades old and more contemporary precedent governs our decisions. We reiterate what is the current black-letter law for determining whether workplace causation of an injury has been established. See Pederzoli v. United Technologies/Pratt & Whitney, 6129 CRB-8-16-9 (July 18, 2017):

> It is well-settled that the "traditional concepts of proximate cause furnish the appropriate analysis for determining causation in workers' compensation cases," Dixon v. United Illuminating Co., 57 Conn. App. 51, 60 (2000), and "the test for determining whether particular conduct is a proximate cause of an injury [is] whether it was a substantial factor in producing the result." (Internal quotation marks omitted.) Paternostro v. Arborio Corp., 56 Conn. App. 215, 222 (1999), *cert. denied*, 252 Conn. 928 (2000), *quoting* Hines v. Davis, 53 Conn. App. 836, 839 (1999). In order to establish the requisite causal connection between the employment and the injury, a claimant "must demonstrate that the claimed injury (1) arose out of the employment, and (2) in the course of the employment...." Sapko v. State, 305 Conn. 360, 371 (2012), *quoting* Daubert v. Naugatuck, 267 Conn. 583, 589 (2004). The claimant therefore "bears the burden of proof, not only with respect to whether an injury was causally connected to the workplace, but that such proof must be established by *competent evidence*." (Emphasis in the original.) Dengler v. Special Attention Health Services, Inc., 62 Conn. App 440, 447 (2001), *quoting* Keenan v. Union Camp Corp., 49 Conn. App. 280, 282 (1998).
>
> In Birnie v. Electric Boat Corp., 288 Conn. 392 (2008), our Supreme Court held that "[i]t has been determined that the substantial factor standard is met if the employment "'*materially or essentially contributes* to bring about an injury....'" (Emphasis in the [original].) Id., at 412, *quoting* Norton v. Barton's Bias

> Narrow Fabric Co., 106 Conn. 360, 365 (1927). The Birnie court explained that:
>
> [t]he term "substantial" ... does *not* connote that the employment must be the *major* contributing factor in bringing about the injury; ... nor that the employment must be the *sole* contributing factor in development of an injury.... In accordance with our case law, therefore, the substantial factor causation standard simply requires that the employment, or the risks incidental thereto, contribute to the development of the injury in *more than a de minimis way*. (Citations omitted, emphasis in the original.) Birnie, supra, at 412-13.
>
> However, it should be noted that in Sapko, supra, our Supreme Court revisited the language discussing the substantial contributing factor test in Birnie, stating that a full reading of the passage in question should make it "evident that we did not intend to lower the threshold beyond that which previously had existed." Sapko, supra, at 391.

Id.

An administrative law judge must ascertain if the evidence presented by the claimant establishes that an incident or exposure in the workplace is a substantial contributing factor behind the claimant's injury. This incident does not need to be the sole contributing factor. See Birnie v. Electric Boat Corp., 288 Conn. 392 (2008). In addition, a totality of the circumstance paradigm, Marandino v. Prometheus Pharmacy, 294 Conn. 564, 595 (2010), may obviate the need for the claimant to present expert testimony on causation. In Sprague v. Lindon Tree Service, Inc., 80 Conn. App. 670, 676 (2003), the cause of the claimant's injury could be determined via "common knowledge and ordinary human experience . . . ." See also Jodlowski v. Stanley Works, 5627 CRB-6-11-2 (March 13, 2012).

While competent evidence is necessary in determining causation, a trier of fact should acknowledge, pursuant to Estate of Haburey v. Winchester, 150 Conn. App. 699

(2014), *cert. denied*, 312 Conn. 922 (2014), that "[our] law does not demand metaphysical certainty in its proofs." Id., 716 *quoting* Curran v. Kroll, 118 Conn. App. 401, 408 (2009), *aff'd*, 303 Conn. 845 (2012). However, questions outside the scope of common knowledge require the presentation of expert opinions, as the claimant presented in Haburey, supra. Although we cannot identify any statutory or administrative guideline mandating that all claimants seeking benefits for a COVID-19 infection must present expert testimony supporting their claim, the trier of fact may determine, consistent with Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142, 151 (1972), that the facts of the individual case would make expert testimony necessary to establish causation.[4] Such a determination is the province of the administrative law judge and must be driven by the facts presented on the record.

The claimant accurately states the facts herein that he was exposed in the workplace to a COVID-19 positive individual and later developed COVID-19. The respondents accurately point out that the claimant has the burden of persuasion to establish that his injury and/or condition arose out of his employment, and that this Board may not usurp the fact-finding prerogative of an administrative law judge. See Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 451 (2001). We further note that in Dengler, our Appellate Court concluded that the circumstances therein required the presentation of expert opinions on causation. "Given the complex medical issue before him, the commissioner was not at liberty to reason that the plaintiff's leg

[4] We note that in occupational disease cases where a claimant asserted injurious exposure to a harmful substance or pathogen such as Chappell v. Pfizer, Inc., 5139 CRB-2-06-10 (November 19, 2007), *aff'd*, 115 Conn. App. 702 (2009) (asthma); and Woodmansee v. Milford, 5768 CRB-4-12-7 (December 18, 2013) (Hepatitis C infection), the claimant presented expert opinions as to causation.

injury resulted from her back injury simply because it occurred after her back injury." Id., 449.

Administrative Law Judge Segarra found the claimant's COVID-19 infection was not compensable. Having reviewed the record, we are not persuaded that the claimant's evidence was so compelling as to mandate an award as a matter of law, and therefore we cannot reverse the finding. As a result, we remand this matter to Administrative Law Judge Segarra to articulate, based on the appropriate standards of causation for chapter 568 claims, how he evaluated the causation standard given that the Executive Order was inapplicable to this case; whether an expert opinion was necessary; and whether the claimant's injury herein was compensable.

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