CASE NO. 6455 CRB-1-21-12 : COMPENSATION REVIEW BOARD
CLAIM NO. 100214069

MAYRA HOLBROOK : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : APRIL 6, 2023

STATE OF CONNECTICUT/DEPARTMENT OF
ECONOMIC AND COMMUNITY DEVELOPMENT
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLANT

and

GALLAGHER BASSETT SERVICES
THIRD-PARTY ADMINISTRATOR

APPEARANCES:

The claimant was represented by Sydney T. Schulman, Esq., Schulman & Associates, 10 Grand Street, Hartford, CT 06106.

The respondent was represented by Ksenya C. Hentisz, Esq., and Francis C. Vignati, Jr., Assistants Attorney General, Office of the Attorney General, 165 Capital Avenue, Suite 4000, Hartford, CT 06106.

This Petition for Review from the November 12, 2021 Amended Finding and Award Pursuant to the Commission Review Board Remand of Pedro E. Segarra, Administrative Law Judge acting for the First District, was heard on November 18, 2022 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Carolyn M. Colangelo and Zachary M. Delaney.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The respondent has petitioned for review from the November 12, 2021 Amended Finding and Award Pursuant to the Commission Review Board Remand of Pedro E. Segarra, Administrative Law Judge acting for the First District (finding).[1] We find no error and accordingly affirm the decision.[2]

In his decision, the administrative law judge identified the following issues for determination: (1) compensability of the August 1, 2018 right-knee injury; (2) medical treatment; and (3) eligibility for temporary total and/or temporary partial disability benefits.[3] The trier incorporated by reference Findings, ¶¶ 1-6, of his August 13, 2020 Finding and Award. In the prior decision, he found that the claimant was employed by the respondent on August 1, 2018, on which date she sustained a fall at approximately 8:28 a.m. while walking near the elevator area located in the mezzanine level of the north tower at her place of employment.

The claimant was transported via ambulance to the UConn Health Department of Emergency Services where she was treated and released. She subsequently received additional medical treatment for her injuries at Hartford HealthCare, the UConn Health Departments of Occupational Health and Physical Therapy, and Orthopedic Associates of

[1] In Holbrook v. State/DECD, 6398 CRB-1-20-8 (August 9, 2021), this board remanded the August 13, 2020 Finding and Award previously issued in this matter for an articulation of the basis upon which the trier had deemed the claimant's injuries compensable along with a concomitant examination of whether that basis comported with our Supreme Court's reasoning in Clements v. Aramark Corp., 339 Conn. 402 (2021), which decision had been released in the interim.

[2] We note that one motion for extension of time and one motion for continuance were filed during the pendency of this appeal. Two motions for continuance were granted.

[3] At formal proceedings held on October 16, 2019, the parties agreed that the administrative law judge would determine compensability before reaching issues related to medical treatment or indemnity.

Hartford, P.C. She also treated with George W. Moore, an occupational medicine physician at UConn Health, and Roy D. Beebe, an orthopedic surgeon at UConn Health.

The claimant filed a notice of claim on November 19, 2018 reporting injuries to her neck, back, both shoulders, wrists and both knees.[4] See Administrative Notice Exhibit 1. On December 6, 2018, the respondent filed a disclaimer acknowledging that the clamant had suffered a compensable injury on August 1, 2018 but reserving its right to contest the extent of the claimant's injuries.[5] See Administrative Notice Exhibit 3. At trial, the claimant testified that she did not know why she had fallen and indicated that she had "truthfully and accurately" reported the incident as well as her injuries and symptoms to her medical providers. Findings, ¶ 6. The claimant also testified that "certain inaccuracies in her medical reports were not of her making and that those inconsistencies were through no fault of her own."[6] Id.

In his amended finding, the administrative law judge found credible the claimant's testimony indicating that the floor in the area where she fell was wet and that when she was lifted from the floor, parts of her body, including her hair, were also wet. In addition, the trier found credible the claimant's testimony regarding prior occasions when she had seen other individuals lose their footing in the same general area, as well as "the claimant's testimony that the 'friction on the floor with rubber' created difficulties in

[4] "A form 30C is the document prescribed by the workers' compensation commission to be used when filing a notice of claim pursuant to the Workers' Compensation Act, General Statutes § 31-275 et seq." Mehan v. Stamford, 127 Conn. App. 619, 622 n.4, *cert. denied*, 301 Conn. 911 (2011).

[5] "A form 43 is a disclaimer that notifies a claimant who seeks workers' compensation benefits that the employer intends to contest liability to pay compensation. If an employer fails timely to file a form 43, a claimant may file a motion to preclude the employer from contesting the compensability of his claim." Mehan v. Stamford, 127 Conn. App. 619, 623 n.6, *cert. denied*, 301 Conn. 911 (2011).

[6] On the basis of these findings, the administrative law judge, in his August 13, 2020 Finding and Award, found the claimant credible and concluded that because the incident had occurred during the course of her employment, the injuries resulting from the incident were compensable.

walking on the surface." Findings, ¶ 9, *quoting* December 10, 2019 Transcript, p. 15. The trier determined that the fall occurred while the claimant was performing the duties of her employment and could not be attributed to either a preexisting condition or her prior medical history. Rather, the trier found credible the claimant's testimony that she believed it had rained during the morning on the day of her fall and concluded that the claimant fell because of a defect in the premises. Given that the claimant had established a causal connection between her injuries and her employment, the trier deemed the injuries compensable.

The respondent filed a motion to correct which was denied in its entirety, and this appeal followed. On appeal, the respondent contends that the amended finding warrants reversal because the evidentiary record does not provide an adequate basis for the trier's findings and the inferences made by the trier "were illegally or unreasonably drawn from the facts." Appellant's Brief, p. 1. The respondent argues that, contrary to the conclusions drawn but the trier, the evidentiary record demonstrates that the claimant's fall was due to a medical condition. The respondent also challenges the trier's credibility findings relative to the claimant's testimony that the floor in the area where she fell was wet, that parts of her body were also wet when she was lifted from the floor, and other individuals had fallen in the general area where she fell. Finally, the respondent contends that the trier erroneously concluded that the claimant fell due to a defect in the floor. In light of the totality of the evidentiary record presented in this matter, we are not persuaded by these claims of error.

The standard of appellate review we are obliged to apply to a trier's findings and legal conclusions is well-settled.

> [T]he role of this board on appeal is not to substitute its own findings for those of the trier of fact. Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 451 (2001). The trial commissioner's role as factfinder encompasses the authority to determine the credibility of the evidence, including the testimony of witnesses and the documents introduced into the record as exhibits. Burse v. American International Airways, Inc., 262 Conn. 31, 37 (2002); Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999). If there is evidence in the record to support the factual findings of the trial commissioner, the findings will be upheld on appeal. Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002); Phaiah v. Danielson Curtain (C.C. Industries), 4409 CRB-2-01-6 (June 7, 2002). This board may disturb only those findings that are found without evidence, and may also intervene where material facts that are admitted and undisputed have been omitted from the findings. Burse, supra; Duddy, supra. We will also overturn a trier's legal conclusions when they result from an incorrect application of the law to the subordinate facts, or where they are the product of an inference illegally or unreasonably drawn from the facts. Burse, supra; Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998).

McMahon v. Emsar, Inc., 5049 CRB-4-06-1 (January 16, 2007).

We turn first to the respondent's claim of error challenging the administrative law judge's conclusion that the August 1, 2018 incident resulted in compensable injuries because the claimant's fall was not due to a preexisting medical condition or her prior medical history. The respondent points out that the claimant's medical history reflects that she had been diagnosed with a pituitary adenoma, "which by its very nature causes dizziness, unsteady gait, vision problems, and migraines." Appellant's Brief, p. 2. The respondent references the UConn Health emergency department notes for the date of injury wherein the triage nurse stated that the claimant had suffered an unwitnessed fall at work and did not remember falling. In addition, the nurse noted that the claimant had reported "frequent falls up to 3 times a week from dizziness and unsteady gait secondary to pituitary adenoma and chronic migraines. [Patient] arrives with soft collar in place

which patient states is in place related to neck pain from previous fall." Claimant's Exhibit E.

The respondent also points out that on that same date, Aleksandr Gorenbeyn, the emergency department physician, reported that the claimant had received a recent diagnosis of a pituitary microadenoma and that:

> She has been experiencing episodes of falls due to tripping however today she reports walking in the hallway at work and then waking up on the floor to coworker telling her not to move…. However she has no recollection of how she fell as opposed to 100 times when she knew that she tripped and fell. She reports recent vision difficulties all attributed to this pituitary microadenoma. Prior to her diagnosis months or so ago she was only suffering from migraines.

Claimant's Exhibit E.

Finally, the respondent references the September 13, 2018 progress note authored by Seth Hagymasi, a physical therapist, who reported that the "[p]atient does not recall falling and does not know the reason for the fall, however states she regained consciousness while on the floor…. Patient endorses changes in balance with frequent loss of balance and falls, blurred vision, which have previously been attributed to presence of tumor." Claimant's Exhibit J.

The respondent argues that the foregoing medical reports reflect that the claimant "had a number of physical problems prior to the fall relating to her pituitary adenoma." Appellant's Brief, p. 3. The respondent further contends that although "the records do not prove beyond a reasonable doubt that the claimant fell from her own physical problems due to the adenoma, they do provide evidence of what probably caused her to fall." Id. As such, it is the respondent's position that the administrative law judge's failure to reference any of these reports in his finding constituted error.

In making this argument, the respondent appears to be relying at least in part on our Supreme Court's reasoning in Clements v. Aramark Corp., 339 Conn. 402 (2021), wherein the court held that an idiopathic fall on a level floor was not compensable.[7] However, it should be noted at the outset that the present matter can be distinguished from Clements given that in that claim, the workers' compensation commissioner specifically determined that the claimant's fall was due to "a personal medical infirmity" whereas in the instant appeal, the administrative law judge concluded, on the basis of the evidentiary record, that the claimant's fall could not be attributed to her medical condition. Id., 405.

It is axiomatic that in order to for an injury to be deemed compensable pursuant to General Statutes § 31-275,[8] the fact finder must determine whether the claimed injury "arose out of and in the course of the employment." "There must be a conjunction of the two requirements … to permit compensation. The former relates to the time, place and circumstance of the accident, while the latter refers to the origin and cause of the accident." Stakonis v. United Advertising Corporation, 110 Conn. 384, 389 (1930). Moreover, "an injury arises in the course of the employment when it takes place (a) within the period of the employment, (b) at a place where the employee may

[7] In Clements v. Aramark Corp., 339 Conn. 402 (2021), our Supreme Court overruled its prior decision in Savage v. St. Aeden's Church, 122 Conn. 343 (1937) "insofar as it concluded that an employee is entitled to compensation as a matter of law when, during the course of his or her employment, the employee is injured due to an idiopathic fall onto a level floor." Clements, supra, 405. In Savage, the court had held that "the head injury sustained by the employee in that case due to his fall onto a level concrete floor at his workplace was compensable, even if the fall was caused by a preexisting medical condition, because the injury itself was caused by the employee's fall to the floor, which, we explained, was a potential hazard of his employment." Id., 408-09.

[8] General Statutes § 31-275 (1) states: "'Arising out of and in the course of his employment'" means an accidental injury happening to an employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee's duty in the business or affairs of the employer upon the employer's premises, or while engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer …"

reasonably be, and (c) while he is reasonably fulfilling the duties of the employment or doing something incidental to it." Id.

In the instant appeal, the administrative law judge specifically stated that he had found no "convincing evidence that the fall was related to [the claimant's] prior medical history." Findings, ¶ 7. It may therefore be reasonably inferred that although the respondent may have found these medical reports persuasive, the trier did not. Moreover, the record contains a March 25, 2019 report authored by Adeniyi Fisayo, a neuro-ophthalmologist, wherein he indicated that the claimant's neuro-ophthalmic examination on that date was normal. Fisayo stated that the claimant's pituitary mass was "not causing any neurologic, hormonal or vision problems," Claimant's Exhibit E, and that the August 1, 2018 fall "was absolutely unrelated to the pituitary mass."[9] Id. It was well within the trier's discretion to rely upon this report in reaching his conclusions, given that "[i]t is the quintessential function of the finder of fact to reject or accept evidence and to believe or disbelieve any expert testimony…. The trier may accept or reject, in whole or in part, the testimony of an expert." (Internal citations omitted.) Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999).

It should also be noted that at formal proceedings, the claimant offered testimony on the issue of whether her medical history might have contributed to the fall. The claimant consistently testified that she did not know what had caused her to fall. See

[9] We further note that the evidentiary record contains a report from a CT scan of the claimant's head taken on the date of injury demonstrating that "[w]hen compared with the MRI from 6/13/2018, there has been no significant interval change in the size of the enlarged pituitary…. The overall height of the pituitary with the included presumed adenoma is unchanged measuring 9 mm. There is no evidence of pituitary apoplexy." Claimant's Exhibit J.

December 10, 2019 Transcript, pp. 13-14, 21-22. She also indicated that although she informed the EMTs at the scene that she had recently been diagnosed with a brain tumor, when queried under direct examination as to whether she believed the brain tumor had caused her fall, she replied, "[n]ot at all." Id., 21. The claimant testified that she had no recollection of reporting that she had experienced a recent history of falls to the UConn Health emergency department providers. See id., 42-43. In addition, although she admitted to prior incidents when she may have tripped or lost her footing, she denied having an unsteady gait, see id., 56, and did not attribute any of those prior incidents to dizziness. See id., 53-54. The claimant also testified that when she had queried her treating physician as to whether the tumor might have caused her to fall, the physician "laughed and said, '[n]o way. Absolutely not." Id., 28.

We concede that this latter statement constituted hearsay, and was admitted over the objection of respondent's counsel, who accurately pointed out that the medical reports were in evidence and should speak for themselves. However, it is well settled that General Statutes § 31-298[10] affords a fact finder in the workers' compensation forum the discretion to consider evidence which would quite possibly be deemed inadmissible in other forums under the rules of evidence. It should also be noted that none of the claimant's medical providers were deposed in this matter and the administrative law judge was therefore bereft of live expert testimony regarding the existence of a causal relationship between the claimant's pituitary adenoma and the fall. As this board has

[10] General Statutes § 31-298 states in relevant part that: "In all cases and hearings under the provisions of this chapter, the administrative law judge shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of this chapter."

previously observed, "[o]ne can only expect the trier of fact to render a decision based on what evidence actually says, not what it should have said." Ben-Eli v. Lowe's Home Improvement Center, 5006 CRB-3-05-10 (November 16, 2006).

With regard to the respondent's claim that the trier improperly relied on the claimant's testimony, we would point out that our Supreme Court has stated that "it is proper to consider medical evidence *along with all other evidence* to determine whether an injury is related to the employment." (Emphasis in the original.) Marandino v. Prometheus Pharmacy, 294 Conn. 564, 595 (2010), *citing* Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142, 151 (1972). Thus, in light of the foregoing, we decline to reverse the trier's conclusions relative to the lack of causation between the claimant's medical history and her injuries.

The respondent has also claimed as error the administrative law judge's conclusion that the claimant's fall was due to a defect on the premises; to wit, a wet floor. The respondent contends that the trier erred in finding credible the claimant's testimony "as to the conditions of the floor being wet and that parts of her body including her hair were wet when lifted from the floor." Findings, ¶ 8. The respondent points out that the claimant testified that she did not notice if there was any water on the floor before she fell and "[t]he likelihood is that the Appellee would have noticed if the floor was wet while she was lying on the floor after her fall." Appellant's Brief, p. 4. The claimant also testified that she did not notice any problems on the floor prior to falling and did not report any issues with the floor to the maintenance department after the fall. Rather, as discussed previously herein, she testified that she did not know why she fell.

Our review of the record indicates that at several points during the trial, the claimant testified that although she did not notice if the floor was wet before she fell, she did notice that her hair was wet while she was lying on the floor immediately after the fall. See December 10, 2019 Transcript, pp. 21, 32. She also testified that she thought it had rained during the morning of her fall and other employees arriving for work at the building had been walking back and forth in the mezzanine on their way to their offices. See id., 64, 73.

We concede that this testimony is somewhat speculative; nevertheless, we would also point out that no meteorological reports were submitted into evidence which would have served to clarify the weather conditions on the morning of the incident. It was certainly not unreasonable for the trier to infer, for any number of reasons, that there may have been some water on the floor in light of the claimant's credible testimony that her hair was wet following the fall. In the absence of any other evidence on the issue, the administrative law judge retained the discretion to credit the claimant's testimony as he deemed appropriate, given that the trier is the "sole arbiter of the weight of the evidence and the credibility of witnesses in workers' compensation cases …." Keenan v. Union Camp Corp., 49 Conn. App. 280, 286 (1998).

In a similar vein, the respondent challenges the trier's credibility findings with regard to the claimant's testimony concerning incidents when she had ostensibly witnessed other individuals, including the mail clerk, lose their footing in the mezzanine area "[n]ear the elevators on the south tower." December 10, 2019 Transcript, p. 20. Noting that at trial, the claimant attributed these events to "friction on the floor with the rubber, almost like a basketball player on a [basketball] court," id., 15, the respondent

argues that the trier's apparent reliance on this testimony was improper given that the claimant "is not a floor expert." Appellant Brief, p. 5. The respondent avers that the claimant's testimony regarding the condition of the floor was "irrelevant" and the trier therefore erred in relying on this testimony in reaching his conclusions as to causation. Id. The respondent also points out that the claimant's testimony regarding the location of the incidents when other individuals had lost their footing was unclear, in that she stated that the other incidents had occurred near the elevators for the south tower which were "[t]he opposite of where I was." Id., 5, *quoting* December 10, 2019 Transcript, p. 20. In addition, the claimant did not testify as to the exact time frames when she had witnessed those incidents.

Our review of the claimant's testimony on this point indicates that she stated that she had "watched [other people] stumble, literally," December 10, 2019 Transcript, p. 15, but she didn't know the identities of any of the individuals in question. The claimant could not remember any specific incidents but, rather, indicated that the incidents had occurred on "various … dates. Various times of day." Id., 18-19. She also testified that although she had witnessed the mail clerk stumble "on the other side of the mezzanine from where [she] fell," id., 65., she could not recall when that incident had occurred.

We concede that the claimant's testimony on this point, although consistent, was rather vague. However, we also note that no blueprints or building plans demonstrating the layout of the elevators in the mezzanine area were submitted into evidence, and no witnesses were summoned to testify regarding any prior reports of safety issues in the mezzanine area or any prior falldown injuries sustained by other individuals in the building. The administrative law judge was provided with no other evidence upon which

he could rely in evaluating the accuracy of the claimant's assertions. In light of the well-settled maxim that the assessment of the credibility of witnesses is "uniquely and exclusively the province of the trial commissioner," we are not empowered to reverse his credibility findings on review. Smith v. Salamander Designs, Ltd, 5205 CRB-1-07-3 (March 13, 2008), *citing* Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007).

Finally, the respondent challenges the administrative law judge's finding that the claimant's fall was sustained in the course of employment because of a defect in the floor. In this factual finding, the trier reiterated that he had found credible the claimant's testimony indicating that it had rained during the morning on the day of the fall, which circumstance accounted for why the floor was wet in the area where she fell. The respondent contends that the trier has not clearly articulated which portions of the claimant's testimony he found credible or "clearly stated what he claims the 'defect' in the floor was that caused the Appellee to fall." Appellant's Brief, p. 6. The respondent again points out that the claimant's testimony reflected that she did not notice if the floor was wet before or after the fall; nor did she testify that she had slipped on a wet floor. The respondent argues that in concluding that the claimant fell because the floor was wet, the administrative law judge drew an improper inference from the claimant's unsubstantiated testimony.

This claim of error appears to be a restatement of the preceding claims of error. As we have previously stated herein, the trier retained the discretion to credit as much or as little of the claimant's testimony as he deemed appropriate in reaching his conclusions on the basis of that testimony. It is quite clear that the trier inferred from the claimant's testimony that the floor where she fell was wet and the wet floor constituted the defect on

the premises which served to render the incident compensable. In the absence of any evidence to the contrary, we lack a plausible basis to reverse the decision. "[I]t is … immaterial that the facts permit the drawing of diverse inferences. The [trier] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair v. People's Savings Bank, 207 Conn. 535, 540 (1988), *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

There is no error; the November 12, 2021 Amended Finding and Award Pursuant to the Commission Review Board Remand of Pedro E. Segarra, Administrative Law Judge acting for the First District, is accordingly affirmed.

Administrative Law Judges Carolyn M. Colangelo and Zachary M. Delaney concur in this Opinion.