CASE NO. 6491 CRB-6-22-11 CLAIM NO. 601089653	:	COMPENSATION REVIEW BOARD
ANN MARIE BARROS CLAIMANT-APPELLEE CROSS-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
v.	:	OCTOBER 6, 2023
CITY OF BRISTOL/BOARD OF EDUCATION EMPLOYER		
and		
FUTURECOMP/USI INSURER RESPONDENTS-APPELLANTS CROSS-APPELLEES		

APPEARANCES:

The claimant was represented by David J. Morrissey, Esq., Morrissey, Morrissey & Rydzik, LLC, 203 Church Street, P.O. Box 31, Naugatuck, CT 06770.

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

These Petitions for Review from the November 7, 2022 Finding and Dismissal/Award of Daniel E. Dilzer, Administrative Law Judge acting for the Sixth District, were heard April 28, 2023 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Toni M. Fatone and Soline M. Oslena.[1]

[1] We note that three motions for extension of time were granted during the pendency of this appeal.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant herein was a Bristol schoolteacher who sustained a compensable injury and subsequently sought temporary total disability benefits. After a formal hearing, Administrative Law Judge Daniel E. Dilzer awarded the claimant temporary partial disability benefits, but not as much as she had sought. The administrative law judge explained his rationale in the Finding and Dismissal/Award dated November 7, 2022 (finding), wherein he stated that the claimant was not credible, but that the medical evidence on the record supported an award of temporary partial disability benefits for a certain period of time following the claimant's injury. Both parties appealed from the finding. The claimant argued that the evidence she presented would justify a longer period of indemnity benefits and the continuance of benefits pursuant to General Statutes § 31-284b. The respondents argued on appeal that, since the claimant was found not to be credible, she should not be awarded any form of indemnity benefits for her injury. They also argued that it was error to award the claimant temporary partial disability benefits when she had claimed an entitlement to temporary total benefits and that the administrative law judge neglected to rule on an approved form 36 despite this being a noticed issue for the hearing.

After reviewing the record herein, we conclude that the administrative law judge reached a reasonable conclusion in the finding. We conclude that he addressed the form 36 issue by inference and sufficient evidence was presented to award the claimant the benefits that were awarded in this decision. Therefore, we find no error and we affirm the finding.

Following the formal hearing, the administrative law judge found the following facts which are pertinent to our consideration of this appeal. He noted that the claimant became a teacher for the City of Bristol in 2001 and had worked in that position continuously until her 2019 injury. See Findings, ¶ 1. He also noted that the claimant obtained a real estate license in 2015 or 2016 and had worked with her husband in his various real estate ventures. Her husband is in the business of buying, renovating and selling houses. She and her husband owned rental properties together, and she had utilized her real estate license to list properties to sell and to rent. See Findings, ¶¶ 2-6. This arrangement saved the couple commission expenses from their real estate transactions. See Findings, ¶ 8. The claimant did not claim concurrent employment when she filed for compensation benefits, although she testified that she sold real estate in the year prior to her injury. See Findings, ¶ 4. Subsequent to her injury, she limited her real estate work to her husband's business. See Findings, ¶ 9.

The claimant sustained an injury that arose out of and in the course of her employment on February 8, 2019 while trying to resolve an altercation between two students. During this incident, the claimant was struck in the temple and eye area. See Findings, ¶ 10. She drove herself to Medworks following the injury. See July 27, 2021 Transcript, p. 31. She was diagnosed with a concussion and was instructed to rest at home over the weekend and return to Medworks the following Monday, February 11, 2019, for a recheck. See id., p. 32. The claimant returned to Medworks that day and was disabled from work as of February 11, 2019 because her headache was unremitting. See Findings, ¶ 11. She returned to Medworks on February 20, 2019 and reported that her headaches and neck pain were a lot worse and was kept out of work. See Findings, ¶ 14.

On February 25, 2019, the claimant was seen at Yale-New Haven Hospital with a complaint of constant headache pain being described as "headache remains to be all over." Claimant's Exhibit H; see also Findings, ¶ 15. On February 27, 2019, the claimant was examined by Moshe Hasbani, M.D., a neurologist, who diagnosed the claimant with a mild concussion. At that visit, the claimant recounted to Hasbani that she was experiencing cognitive delay but denied any loss of consciousness from the work injury. See Claimant's Exhibit I. She explained she could not fill out her workers' compensation paperwork "because she couldn't understand it and was having trouble copying the addresses correctly." Id., see also Findings, ¶ 16.

The administrative law judge noted the claimant's activities in the real estate business during the early part of 2019. On February 15, 2019, the claimant listed one of the units owned by her for rent and it was leased on April 11, 2019. See Findings, ¶ 12. The claimant also rented another property on February 18, 2019, which was owned by her and held in the name of an LLC. See Findings, ¶ 13. On February 28, 2019, the claimant rented out another apartment which her family owned. See Findings, ¶ 17. The claimant listed a property owned by her husband for sale on May 11, 2019, and this property sold on August 19, 2019. See Findings, ¶ 24. The administrative law judge also noted the claimant represented an unrelated party in connection with the sale of a property for which she earned a commission of $2,850 on May 31, 2019. See Findings, ¶ 25. In June of 2019, the claimant sold property her family owned and, had another real estate agent been retained for this deal, the commission would have been $12,000. See Findings, ¶ 27.

The claimant continued to seek medical treatment during this period. Hasbani examined her on March 11, 2019, and deemed her to be "100% disabled from returning to her job as a teacher." Claimant's Exhibit I; see also Findings, ¶ 19. She treated at Medworks on March 12, 2019, and received a note indicating she was totally disabled, based upon which the respondents paid the claimant total disability benefits. See Findings, ¶¶ 20-21. Hasbani examined the claimant again on April 8, 2019, and adjusted her medications to try to alleviate her headache pain and noted that the claimant's headache issues and side-effects from the medication, together with having a 10-month-old baby at home, were not an optimal situation. See Findings, ¶ 22. However, he anticipated that within four weeks she would improve enough to return to work. See id. On May 6, 2019, the claimant was seen for a psychiatric examination by Marc A. Rubenstein, M.D. He confirmed the concussion diagnosis and believed the claimant suffered from depression and post-traumatic stress symptoms from the work-related event and recommended a period of weekly psychotherapy sessions. See Claimant's Exhibit J; see also Findings, ¶ 23. Rubenstein noted the claimant was temporarily disabled but indicated that he was optimistic the claimant could return to work as a teacher in the Fall of 2019. See id. Hasbani saw the claimant again on June 6, 2019, at which time he noted the claimant continued to have difficulty with concentration and memory. See Findings, ¶ 26.

On June 15, 2019, the claimant was seen at Gaylord Hospital for cognitive therapy. The history notes from that visit indicated the claimant reported that she forgot what she read and heard and had difficulty paying attention at home. See Claimant's Exhibit K; see also Findings, ¶ 28. The claimant was examined by Hasbani again on

July 25, 2019, after which he opined that she remained "100% disabled from performing any gainful employment or from returning to work," a position which he also reiterated in his August 15, 2019 note and again in his October 3, 2019 note in which he opined, "[s]he remains temporarily 100% disabled related to the injury suffered on February 8, 2019." Claimant's Exhibit I; see also Findings, ¶ 30. At her October 16, 2019 Gaylord Center for Concussion Care appointment, the claimant reported experiencing light and noise sensitivity and difficulty in "high stim environments such as grocery store and other stores and notes that she panics in parking lots" and testified she was bothered by bright lights and was startled by sounds. Claimant's Exhibit L; see also Findings, ¶ 33. Despite these symptoms which the claimant reported to her treaters, the administrative law judge noted in his finding that the claimant had engaged in extensive work in the real estate business during this time period. She also took frequent trips to an amusement park in the summer of 2019, frequent trips to the beach in the summer of 2019 and 2020, and a trip to Portugal in the summer of 2019. See Findings, ¶ 33.

While the claimant had been treating for her injuries in the summer of 2019, the respondent's claims adjuster, Jose Gaspar, filed a form 36 on July 17, 2019, seeking to discontinue total disability benefits, alleging that the claimant was not cooperating with treatment and further indicating he had not received any medical reports since April of 2019. See January 25, 2022 Transcript, pp. 31-32, 34; see also Findings, ¶ 29. Susan Shaw, claimant's former attorney, testified it was not until October of 2019 that she was able to provide medical reports of the claimant's ongoing medical treatment. See January 25, 2022 Transcript, p. 70. The administrative law judge noted that the claimant's work as a real estate agent came to the attention of the respondent through surveillance and

through deposition testimony elicited at her October 17, 2019 and November 22, 2019 depositions. See Findings, ¶¶ 35-36. At the October 2019 deposition, the claimant claimed to be unable to do yard work, which was inconsistent with surveillance evidence. See Findings, ¶ 37. Following the depositions, her former attorney advised her to stop selling real estate. See Findings, ¶ 41. A hearing was held on October 23, 2019, with the issue of the classification of the claimant's disability benefits cited in the notice. See Findings, ¶ 34. At a hearing on November 12, 2019, the above referenced form 36 was granted by Administrative Law Judge William J. Watson III, discontinuing the claimant's indemnity benefits. See Findings, ¶ 40.

Subsequent to the claimant's real estate work and social activities coming to light, Hasbani opined on November 11, 2020, after reviewing the deposition transcripts and records of real estate transactions conducted by the claimant, that "[t]hroughout the period that I have followed [the claimant] . . . [i]t was my impression all along that she is 100% disabled from holding a job." Claimant's Exhibit I; see also Findings, ¶ 39. He also opined that "[i]n particular I found her not fit to be able to return to her job as a teacher. It was this particular job of a teacher that I felt that she was unable to return to." Id. The administrative law judge noted that since March 12, 2019, the respondents and their counsel had received no information from the claimant or her treaters that she was anything less than totally disabled. The respondents paid total disability benefits to the claimant until the form 36 was approved. See Findings, ¶¶ 42-43. The claimant testified at the formal hearing that she believed the physical injuries she sustained limited her *only* from teaching. See Findings, ¶ 44 *citing* September 28, 2021 Transcript, p. 37. The administrative law judge noted the claimant never reported any of her real estate earnings

or the value of the money she and her husband saved as a result of her acting as their realtor, to the respondent while she was collecting total disability benefits. See Findings, ¶¶ 45-46.

Issues related to the claimant's collective bargaining agreement with the respondents were noted by the administrative law judge in the finding. Shaw testified that the claimant was receiving full pay pursuant to her collective bargaining agreement when she was injured. Because of this, it was her belief that the claimant's pay would not have been affected whether the claimant was temporarily totally disabled or temporary partially disabled. See Findings, ¶ 47. Gaspar, the respondent's adjuster, testified the respondent's labor agreement with the teachers' union provides that employees get full pay when injured, unlike typical compensation claims where the injured worker is entitled to 75 percent of their pay. See January 25, 2022 Transcript, p. 6. In cases such as these, the city pays the full salary and their carrier reimburses the city for 75 percent of that cost. See Findings, ¶ 53. The administrative law judge noted that Article 25:1 of the labor contract between the respondent and the claimant's union provides payment of the difference between the teacher's full salary and the amount of any workers' compensation award for the period of absence up to a year for injuries sustained in the course and scope of employment. See Findings, ¶ 54. The claimant testified that while out of work, she continued to receive payments from the respondent by direct deposit, her paystubs were sent via email and she was unaware of how the benefits were characterized. See Findings, ¶ 57.

The claimant's separation from employment and its impact on her entitlement to benefits was assessed by the administrative law judge in the finding. In February of

2020, the claimant attended a meeting with Samuel Galloway, the respondent's human resources director, and her union representative, Dave Latimere. See July 27, 2021 Transcript, pp. 48, 50; see also Findings, ¶ 61. At that meeting, the issue concerning her selling real estate and renting properties while she was out of work on temporary total disability for the February 8, 2019 work injury was discussed. The claimant testified she was sent a letter terminating her employment with the respondent effective May 26, 2020. See id., pp. 50-51; see also Findings, ¶ 62. In the May 21, 2020 letter, Galloway noted the claimant and her union representative stated she was "nowhere near able or ready to resume your teaching responsibilities." Claimant's Exhibit C; see also Findings, ¶ 62. Galloway also testified at the formal hearing that at no time did the claimant or her counsel advise him that she had any work capacity. See September 28, 2021 Transcript, p. 55; see also Findings, ¶ 68. When he met the claimant in May of 2020, the claimant made it "explicitly clear that she was not able and/or willing to come back." September 28, 2021 Transcript, p. 56. However, her union representative negotiated a separation agreement which provided her with pay and benefits through December 15, 2020. See July 27, 2021 Transcript, p. 50; see also Findings, ¶ 62. Subsequently, the claimant's application for disability retirement was approved and granted effective December 16, 2020. See Findings, ¶ 63. She is currently receiving a disability retirement but has been paying for her own health insurance. See Findings, ¶ 64.

The administrative law judge also made findings as to the claimant's current condition. The claimant testified she continues to have light and noise sensitivity, bad headaches, has trouble multitasking and now has issues with rage. She also testified she still experiences pain in her low back and legs, suffers from headaches, eye sensitivity,

fatigue, confusion, depression and anxiety. See Findings, ¶¶ 48, 51. She testified that her work capacity varies, as her psychiatrist says she has good and bad days. See Findings, ¶ 67. The administrative law judge noted the claimant had a prior history of anxiety and depression. See Findings, ¶ 71. The claimant testified that when the form 36 was granted in the fall of 2019, nobody told her she needed to look for work. See July 27, 2021 Transcript, p. 53. The respondent did not have a light-duty program. See Claimant's Exhibit D, p. 18; see also Findings, ¶ 66. The administrative law judge found the claimant did not perform any work searches. See Findings, ¶ 49.

Based on this record, the administrative law judge concluded that the claimant had sustained a compensable injury on February 8, 2019, but that she was not credible, particularly as she was not forthcoming with her medical providers about the extent of her physical limitations and her ability to work. As a result, he dismissed her claim for temporary total disability benefits. The administrative law judge did credit Hasbani's opinion that the claimant was temporarily partially disabled, as she was unable to work as a teacher despite retaining some level of a work capacity. The administrative law judge ordered the respondents to provide reasonable and necessary medical treatment to the claimant and to provide the claimant temporary partial disability benefits from her date of injury until her resignation date of December 15, 2020. He ordered the respondents to reimburse the claimant for any out-of-pocket medical or health insurance expenses prior to December 15, 2020, but declined to order them to provide continuing insurance benefits pursuant to General Statutes § 31-284b, as the claimant had voluntarily resigned her employment as of that date and was no longer collecting any indemnity benefits.

Both parties filed a motion to correct. The respondents sought to add testimony from Marissa Mazzone, a Bristol Board of Education employee, who asserted the school system actually had light duty available. The motion also sought to add additional testimony from Galloway that the claimant had never brought to his attention that she had any work capacity and testimony from Hasbani that he had continuously totally disabled the claimant. The respondents also sought a revised conclusion which would have denied the claimant temporary partial disability benefits. The administrative law judge denied this motion in its totality. The claimant filed her own motion to correct which sought to add testimony from Galloway that light duty would have been unavailable to a teacher. The motion also sought to add findings regarding the claimant's separation from employment. Specifically, she sought a finding that, had she not agreed to the separation agreement, she would have been terminated on May 26, 2020. The claimant further requested a clarification as to Hasbani's testimony. The motion sought a conclusion that the respondents should pay all benefits to the claimant until December 15, 2020, award the claimant continuing benefits under General Statutes § 31-284b and leave the claimant to her proof for continuing temporary partial disability benefits after December 15, 2020. The administrative law judge also denied this motion in its entirety.

Both parties commenced timely appeals to this tribunal. The respondents asserted it was error for the administrative law judge not to address the matter of the approved form 36. They also asserted a number of claims of error concerning the decision herein to grant the claimant temporary partial disability benefits when she had sought temporary total disability benefits. In particular, they asserted that Hasbani's opinions, which were found credible, did not support the results herein. They also asserted it was error to

award the claimant medical benefits when there was an alleged agreement for such matter to be addressed by the claimant's group health insurance. For her part, the claimant argued that it was error not to grant the relief sought in her motion to correct, specifically the decision not to award her § 31-284b benefits. Upon review of these arguments, we conclude the administrative law judge's decision was reasonable.

On appeal, we generally extend deference to the decisions made by the administrative law judge. "As 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." Daniels v. Alander, 268 Conn. 320, 330 (2004), *quoting* Burton v. Mottolese, 267 Conn. 1, 54 (2003). The Compensation Review Board cannot retry the facts of the case and may only overturn the findings of the administrative law judge if they are without evidentiary support, contrary to the law, or based on unreasonable or impermissible factual inferences. See Kish v. Nursing and Home Care, Inc., 248 Conn. 379, 384 (1999) and Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988).

Both parties have appealed on the basis that the administrative law judge's ruling was against the weight of the evidence. We note, however, that both parties submitted motions to correct which highlighted evidence supporting their position, and both motions were denied in their entirety. We may, therefore, properly infer that the administrative law judge did not find this evidence probative or reliable. See Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008), *appeal withdrawn*, A.C. 30306 (September 29, 2009). As we held in 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),

> [w]hen a party files a Motion to Correct this is an effort to bring factual evidence to the trial commissioner's attention in an effort to obtain a Finding that is consistent with such facts. When a trial commissioner denies such a motion, we may properly infer that the commissioner did not find the evidence submitted probative or credible. Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008). On appeal, our inquiry is limited to ascertaining if this decision was arbitrary or capricious. Id. The leading case on this point is Beedle v. Don Oliver Home Improvement, 4491 CRB-3-02-2 (February 28, 2003). Beedle v. Don Oliver Home Improvement, 4491 CRB-3-02-2 (February 28, 2003).
>
> We also note that virtually all of the 'undisputed facts' cited by the respondent in their Motion to Correct were derived from testimony, which the trier was not required to believe even if those statements were uncontradicted or otherwise corroborated. Duddy [v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002)]; Pallotto v. Blakeslee Press, Inc., 3651 CRB-3-97-7 (July 17, 1998). The trier's denial of those corrections implies that he was not swayed by this testimony, and we cannot invade his sphere of authority by reappraising the evidence and drawing a contrary inference on appeal. Sendra v. Plainville Board of Education, 3961 CRB-6-99-1 (January 20, 2000).

(Footnote omitted.) Brockenberry, supra, *quoting* Beedle, supra.

This precedent is pertinent to the claimant's appeal. She argued that it was error for the administrative law judge not to enable her to seek temporary partial disability or temporary total disability benefits on or after December 15, 2020 and to qualify her for further insurance benefits. In order to succeed in that argument, the claimant would need to establish that she did not voluntarily end her employment with the respondents on that date, which was a fact the administrative law judge did not choose to find. While the factual circumstances of the claimant's departure from the Bristol school system were contested, it was reasonable for the administrative law judge to conclude the claimant's

separation was the result of a consensual negotiated agreement. We will not second guess this determination on appeal.

Moreover, since the date of the claimant's departure from the Bristol school system, she has had an adjudicated work capacity, has not worked, and has not conducted a job search. Based on the precedent for awarding benefits pursuant to General Statutes § 31-308 (a), we do not believe that she would have qualified during this time period for such benefits. See Pettway v. Enviro Express, Inc., 5846 CRB-2-13-5 (April 17, 2014). Also, in Pettway we noted;

> In Sellers v. Sellers Garage, 80 Conn. App. 15, 20-21 (2003), the Appellate Court outlined the standard for awarding a full partial disability award, "[t]o receive full compensation for partial disability under § 31-308(a), a plaintiff must satisfy the following three-pronged test: (1) the physician attending an injured employee certifies that the employee is unable to perform his usual work but is able to perform other work, (2) the employee is ready and willing to perform other work in the same locality and (3) no other work is available . . . ." (Internal quotation marks omitted.) Mikula v. First National Supermarkets, Inc., 60 Conn. App. 592, 598, (2000).
>
> In Bennett v. Wal-Mart Stores, 4939 CRB-7-05-5 (May 15, 2006), we outlined the claimant's burden when seeking § 31-308(a) C.G.S. benefits. We remanded the case because upon review we concluded that while the trial commissioner found the claimant was "able" to work; there were no findings or inferences in the record that enabled this board to conclude the commissioner found the claimant was "willing" to work. "[F]or the claimant to collect benefits under § 31-308(a), she was required to show she was 'ready and willing' to perform work within her restrictions." Id. In the present matter the trial commissioner concluded the claimant had not made a credible effort to find work within his restrictions. See Conclusions, c-e. Having reached that conclusion the trial commissioner could reasonably find the claimant had not satisfied the test delineated in Sellers, supra, for § 31-308(a) C.G.S. benefits.

(Footnote omitted.) Pettway v. Enviro Express, Inc., 5846 CRB-2-13-5 (April 17, 2014).

While the opinions of Hasbani, the claimant's treater, that the administrative law judge found credible would have supported that the claimant was "able" to work, the record herein demonstrates that, following her separation from the Bristol school system, she was not "willing" to work. "It is the claimant's burden to prove eligibility for § 31-308(a) C.G.S. benefits." Gelinas v. P & M Mason Contractors, Inc., 5567 CRB-8-10-6 (June 7, 2011). Therefore, she would not be eligible for further indemnity benefits and pursuant to our precedent in McLain v. New London Board of Education, 5575 CRB 2-10-7 (May 13, 2011), her eligibility for continued insurance benefits would have ceased.[2]

The claimant also argued that the weight of the evidence would have supported a finding that she was totally disabled. We believe, however, that the administrative law judge could have appropriately relied upon those opinions of Hasbani that he chose to credit that she had a work capacity, especially in light of her remunerative activities in the real estate industry. See Ayna v. Graebel Movers, Inc., 5452 CRB 4-09-03 (July 21,

---

[2] In McLain v. New London Board of Education, 5575 CRB-2-10-7 (May 13, 2011), the claimant sought continued health insurance benefits, which were denied by the commissioner for the following reasons:

> Based on these facts the trial commissioner determined that the claimant was not entitled to any permanency or indemnity benefits at that point in time. The commissioner determined that the terms of the statute required the continuance of insurance coverage only when such benefits were being paid. The commissioner found the cases of Kelly v. Bridgeport, 61 Conn. App. 9 (2000) and Auger v. Stratford, 64 Conn. App. 75 (2001) on point and compelled the dismissal of a claim for § 31-284b C.G.S. benefits.

This tribunal affirmed for the following reasons: We noted that there was a prior finding of fact that the claimant was not totally disabled and unless he proved his status had changed, he could not avail himself of this statutory remedy. We further noted:

> The claimant further asserts that the Kelly and Auger cases relied on by the trial commissioner are not on point as they involved retired employees. We have reviewed these cases. These opinions are not limited to situations involving retired employees and are a generalized prohibition against reliance on § 31-284b C.G.S. to extend group health benefits to *any* claimant not receiving permanency or indemnity benefits. We find no error on the trial commissioner's part relying on the Kelly and Auger cases for his decision.

Id. (Emphasis in original.)

2010), *aff'd*, 133 Conn. App. 65 (2012), *cert. denied*, 304 Conn. 905 (2012). The administrative law judge clearly had the right to choose which one of Hasbani's opinions he deemed worthy of being credited, "[w]e have held that it is within the discretion of the trial commissioner to accept some, but not all, of a physician's opinion." Lopez v. Lowe's Home Improvement Center, 4922 CRB-6-05-3 (March 29, 2006), *citing* Nasinka v. Ansonia Copper & Brass, 13 Conn. Workers' Comp. Rev. Op. 332, 335-36, 1592 CRB-5-92-12 (April 27, 1995). See also Ramsahai v. Coca-Cola Bottling Company, 5991 CRB-1-15-2 (January 26, 2016). The evidence the administrative law judge relied upon, specifically Hasbani's November 11, 2020 opinion, supported an award of benefits for temporary partial disability. We further note that Habani's November 11, 2020 opinion was consistent with the claimant's own testimony at the September 28, 2021 formal hearing, at which time she testified that she believed her injuries only disabled her from teaching. See Findings, ¶ 44.

This paradigm is also dispositive of the respondents' primary grounds for appeal. They argued at great length that since the claimant was found to have credibility deficiencies, and as Hasbani had opined in reliance upon her narrative that she was totally disabled, her bid for indemnity benefits should have been denied in its entirety. As they viewed the case, once the administrative law judge found the claimant had failed in her bid for § 31-307 benefits she should have been awarded no benefits at all. However, the administrative law judge denied the motion to correct on this point, and based on Vitti, supra, and Brockenberry, supra, we may only infer he was not persuaded by the respondents' supporting evidence on this point. We find that administrative law judge had a basis in the evidence provided by Hasbani, as well as by the claimant herself, to

determine the claimant was medically incapable of working as a teacher but had some work capacity. See, specifically, Hasbani's opinion of November 11, 2020 in Exhibit I.[3] As the administrative law judge specifically relied upon this opinion, see Conclusion E, we find a reasonable basis in the record supporting this relief.[4]

We further note that much of the evidence on the record regarding the claimant's work capacity was elicited by the respondents as a result of their video surveillance and deposition of the claimant. This undermines one of their other claims of error that the administrative law judge erred by awarding temporary partial disability benefits when the claimant sought temporary total disability benefits. We have reviewed the hearing notices issued for this claim and at each session of the formal hearing the issue of General Statutes § 31-308 (a) benefits was a noticed issue under consideration at the hearing. See hearing notices for July 27, 2021, September 28, 2021, January 25, 2022, June 9, 2022, and September 9, 2022. The respondents, therefore, should have been aware this relief was under consideration by the administrative law judge and unlike the circumstances in Ghazal v. Cumberland Farms, 5397 CRB-8-08-11 (November 17, 2009), should not have been surprised by the inclusion of this issue in the proceedings. Moreover, it is black-letter law that an administrative law judge in the course of a hearing may follow the evidence where it may lead. See DiDonato v. Greenwich, 5431 CRB-7-09-2 (May 18, 2010). The evidence credited by the fact-finder herein is that the claimant had a

[3] See also the claimant's testimony at the September 28, 2021 formal hearing, p. 37., Findings, ¶ 44.
[4] The respondents argued that pursuant to the precedent in Mikula v. First National Supermarkets, Inc., 60 Conn. App. 592, 598 (2000), that the claimant had failed to qualify for General Statutes § 31-308 (a) benefits during the period when she was employed by the respondent in that she had a work capacity and failed to seek appropriate employment. We note that in the record herein, her treater did not opine that she had any work capacity until shortly before her separation from employment. See Exhibit H, November 11, 2020 note. In light of the totality of the record, we believe it was reasonable for the administrative law judge to conclude that although the claimant may have possessed a limited work capacity, she was not directed by her treaters to that effect, thus obviating the necessity for her to seek alternative employment.

work capacity for employment, although not as a teacher; agreed to a separation agreement as of December 15, 2020; and has not sought employment since that time. These facts support the award of benefits pursuant to § 31-308 (a) benefits for the duration awarded in the finding.

We also are not persuaded by the other claims of error presented by the respondents. They argued that it was error for the administrative law judge to order additional medical treatment for the claimant, asserting there was an agreement between the parties upon the claimant's separation from employment that such expenses would be handled by her group health carrier subsequent to the respondents filing of a form 43. After hearing arguments on this issue, we are not persuaded such a meeting of the minds existed on this issue. In the absence of a full and final stipulation, our precedent has been that the respondents remain liable for treatment that is causally related to the compensable injury. See Schenkel v. Richard Chevrolet, Inc., 4639 CRB-8-03-3 (March 12, 2004), *aff'd*, 123 Conn. App. 55 (2010) (per curiam) and Hodio v. Staples, Inc., 5152 CRB-3-06-10 (October 3, 2007). If the respondents question the appropriateness of the claimant's medical care, that constitutes a factual issue warranting additional hearings before the commission. Id.

The respondents' final argument was that it was error for the administrative law judge not to rule on the form 36 previously approved by Judge Watson and to order relief inconsistent with that prior ruling. However, when considering whether a previously approved form 36 should be upheld at a de novo hearing, our precedent has been that an administrative law judge "is entitled to consider a broad range of issues at a subsequent formal hearing on a Form 36 . . . ." Papa v. Jeffrey Norton Publishers, Inc.,

4486 CRB-3-02-1 (February 25, 2003), *citing* Ryba v. West-Con, 3196 CRB-2-95-10 (February 27, 1997). Consistent with our precedent in Pereira v. State/Department of Developmental Services, 6204 CRB-3-17-6 (August 1, 2018), the administrative law judge reached a conclusion as to the duration of the claimant's benefits which was consistent with the evidence he found credible and persuasive. We reasonably infer that in his award of benefits to the claimant, the administrative law judge had *de facto* ruled on the pending form 36 and we do not find this decision erroneous.

There is no error; the November 7, 2022 Finding and Dismissal/Award of Daniel E. Dilzer, Administrative Law Judge acting for the Sixth District, is accordingly affirmed.

Administrative Law Judges Toni M. Fatone and Soline M. Oslena concur in this Opinion.