CASE NO. 6492 CRB-1-22-12 CLAIM NO. 100225806	:	COMPENSATION REVIEW BOARD
JAMES CURRAN CLAIMANT-APPELLEE	:	WORKERS' COMPENSATION COMMISSION
v.	:	NOVEMBER 17, 2023

STATE OF CONNECTICUT/
DEPARTMENT OF CORRECTION
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLANT

and

GALLAGHER BASSETT SERVICES, INC.
THIRD-PARTY ADMINISTRATOR

APPEARANCES:

The claimant was represented by James F. Aspell, Esq., Law Offices of James F. Aspell, P.C., 40 Stanford Drive, First Floor, Farmington, CT 06032.

The respondent was represented by Cynthia Sheppard, Assistant Attorney General, Office of the Attorney General, 165 Capital Avenue, Suite 4000, Hartford, CT 06106.

This Petition for Review from the November 3, 2022 Finding and Award of William J. Watson III, Administrative Law Judge acting for the First District, was heard June 23, 2023 before a Compensation Review Board panel consisting of Administrative Law Judges Soline M. Oslena, Daniel E. Dilzer, and David W. Schoolcraft.[1]

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

OPINION

SOLINE M. OSLENA, ADMINISTRATIVE LAW JUDGE. The respondent, Department of Correction, has appealed from the November 3, 2022 Finding and Award (finding) of William J. Watson III, Administrative Law Judge acting for the First District, who determined that the medical care exception to our notice statute, General Statutes § 31-294c (c), had been met by the claimant and found he had a jurisdictionally valid claim before our commission.[2] The respondent argued that the facts presented by the claimant did not establish that he met this exception and that the finding was inconsistent with our precedent interpreting the notice statute. The claimant argued that the determination as to whether the medical care exception was met was a fact driven determination by the administrative law judge and the determination in this case was consistent with prior decisions our tribunal has reached. Upon review of the record, we conclude there was sufficient evidence herein to find the medical care exception had been met. We, therefore, affirm the finding.

The administrative law judge found the following facts at the conclusion of the formal hearing. He found that as of April 12, 2011, the claimant was employed as a correction officer by the respondent at Northern Correctional Facility and, on that date,

[2] General Statutes § 31-294c (c) states in relevant part: "Failure to provide a notice of claim under subsection (a) of this section shall not bar maintenance of the proceedings if there has been a hearing or a written request for a hearing or an assignment for a hearing within a one-year period from the date of the accident or within a three-year period from the first manifestation of a symptom of the occupational disease, as the case may be, or if a voluntary agreement has been submitted within the applicable period, or if within the applicable period an employee has been furnished, for the injury with respect to which compensation is claimed, with medical or surgical care as provided in section 31-294d. No defect or inaccuracy of notice of claim shall bar maintenance of proceedings unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice. Upon satisfactory showing of ignorance and prejudice, the employer shall receive allowance to the extent of the prejudice."

he was escorting an inmate up the center stairwell when he felt a pop in his right hip and his leg gave out. The claimant also experienced numbness and felt a tearing when walking up the stairwell. Later that day, he completed a Connecticut Department of Correction Incident Report that outlined the mechanism of injury and the resulting symptomatology. He provided that form to his immediate superior, Lieutenant Sharp, who referred the claimant to the respondent's medical unit to be seen and evaluated by the on-duty nurse. Barbara Savoie, a registered nurse at the on-site clinic, assessed the claimant's condition.

The claimant testified as to the examination by Savoie, who spent approximately twenty to twenty-five minutes with him completing paperwork and evaluating him. The claimant stated Savoie felt his hip, took his temperature and blood pressure, provided him with an ice pack, and gave him some Advil. Savoie completed a Medical Incident Report, noting that she conducted a visual assessment of the claimant and indicating that the claimant had difficulty with his gait, had comfort issues, and that he should follow up with "workmans comp MD if needed." Findings, ¶ 8, *quoting* Claimant's Exhibit B. It did not reference any provision of Advil or an ice pack. See Claimant's Exhibit B.

The claimant did not file a form 30C seeking compensation for this April 12, 2011 incident until July 15, 2021. A second form 30C citing a right hip injury sustained on April 12, 2011 was received by the commission on August 27, 2021. That same day, the respondent filed a form 43 contesting the claim for benefits noting that liability was being contested as being time-barred pursuant to the notice requirements of General Statutes § 31-294c (a). In response, the claimant argued that the medical care he received

at the respondent's medical unit tolled the notice period and activated the exception to timely written notice delineated in General Statutes § 31-294c (c).

Based on this record, the administrative law judge concluded the testimony of the claimant and the documentation from Savoie were credible that the claimant sustained a work-related injury on April 12, 2011. The administrative law judge also concluded the respondent, through its agent, Savoie, provided and furnished medical treatment to the claimant on the date of his workplace injury on April 12, 2011. The administrative law judge further concluded that such medical treatment constituted medical treatment pursuant to General Statutes § 31-294d[3] and, therefore, tolled the statutory notice provisions of § 31-294c (c).

The respondent filed a timely motion to correct which sought wholesale revisions to the finding. The proposed revisions included references to numerous department protocols for notification of injuries; a finding that a logbook that should have referenced the claimant's incident lacked such a reference; and a determination that the treatment Savoie provided to the claimant in 2011 did not constitute medical care within the terms of the statute. The administrative law judge denied this motion in its entirety and the respondent pursued this appeal, essentially focusing upon the arguments raised in the motion to correct. The claimant, on the other hand, argued that he presented sufficient

[3] General Statutes § 31-294d (a) (1) states: "The employer, as soon as the employer has knowledge of an injury, shall provide a competent physician, surgeon, physician assistant or advanced practice registered nurse to attend the injured employee and, in addition, shall furnish any medical and surgical aid or hospital and nursing service, including medical rehabilitation services and prescription drugs, as the physician, surgeon, physician assistant or advanced practice registered nurse deems reasonable or necessary. The employer, any insurer acting on behalf of the employer, or any other entity acting on behalf of the employer or insurer shall be responsible for paying the cost of such prescription drugs directly to the provider. If the employer utilizes an approved providers list, when an employee reports a work-related injury or condition to the employer the employer shall provide the employee with such approved providers list within two business days of such reporting."

evidence at the hearing to support his contention that he had been provided medical care, thereby tolling the notice statute. He further argued that this tribunal should not revisit a factual determination by the administrative law judge.

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).

Prior to considering the merits of this appeal, we will address what we believe was an administrative error made in the finding by the administrative law judge. In Conclusion, ¶ C, the finding states that the claimant was deemed to be a credible witness in that "he suffered a workplace injury on April 12, 2011, which arose out of and in the course of his employment with the Respondent." Id. This statement implies that the hearing reached a determination as to the causation of the claimant's injury, not solely whether the claimant's narrative established the jurisdictional basis to seek an award for his injury. For the reasons we addressed in Henry v. Ansonia, 5674 CRB-4-11-8 (August 8, 2012), this was not appropriate, as the hearing notices herein indicated the hearing was confined to jurisdictional issues and the respondent did not present a defense on

substantive grounds to compensability or the proximate cause of the claimant's current condition. Consequently, we will disregard as dicta any representation in Conclusion, ¶ C, that goes beyond a finding that the administrative law judge found the claimant's testimony as to the circumstances surrounding the medical care exception to be credible and persuasive.

Broadly stated, the medical treatment exception set out in § 31-294c (c), will forgive the failure to file a timely notice of claim in circumstances where the employer has actually provided medical treatment for the work injury within the notice period, and when the circumstances were such that the employer should reasonably have known a claim for compensation was likely to result. See Gesmundo v. Bush, 133 Conn. 607 (1947); see also Kulis v. Moll, 172 Conn. 104 (1976).

In this case, the claimant, whom the administrative law judge found credible, testified that he reported his injury to Lieutenant Sharp and was instructed to go see Savoie. See Findings, ¶ 4. That the claimant did, in fact, go to see Savoie at that time is supported by not only the claimant's testimony, but also by the Medical Incident Report filled out by the nurse on that date. See Respondent's Exhibit B. The incident report Savoie filled out specifically described the incident wherein the claimant alleges to have injured his knee. The claimant also testified that Savoie examined him, took vital signs, and provided him with Advil and an ice pack. See Findings, ¶ 7. The administrative law judge was entitled to credit the testimony of the claimant. Under the circumstances, we cannot say the administrative law judge's findings lacked support in the record.

The respondent herein argued that this matter was essentially indistinguishable from Delconte v. State/Dept. of Correction, 4766 CRB-8-03-12 (December 8, 2004), in

which this tribunal addressed a claim wherein a correction officer attempted but failed to obtain a medical care exception to an untimely claim for chapter 568 benefits. The respondent claimed that the relief in this matter contravenes the precedent in Delconte and we should dismiss this claim for the same reasons. Counsel for the claimant argued the cases are materially dissimilar and the differences justify a different result in the present case. Upon review of the facts in both cases, we find the claimant's argument more persuasive.

In making that determination, we note that the claimant in Delconte was not found to be credible as to material elements of his narrative such as the date of his injury and was also found to have had a relationship outside of the workplace with the nurse at the correctional facility who provided him aid after the alleged injury. We also note that in our Delconte decision, we pointed out that,

> [t]he trial commissioner has a certain amount of discretion to make the determination of whether activities the employer engaged in constituted medical care as to meet the medical care exception within the meaning of the statute. Horn v. State/Dept. of Correction, 3727 CRB-3-97-11 (December 16, 1998) [*appeal withdrawn*, A.C. 19168 (March 11, 1999)]; Griffith-Patton v. State /Dept. of Agriculture, 13 Conn. Workers' Comp. Rev. Op., 177, 1888 CRB-1-93-11 (March 10, 1995), *aff'd*, 41 Conn. App. 911 (1996) (per curium), *cert. denied*, 237 Conn. 930 (1996). Here the trial commissioner found that based on the evidence in the case the medical care exception to the notice of claim statute was not met.

Id.

We continued, "[w]hether a claimant was 'furnished medical care' pursuant to § 31-294 (c) is a factual determination. As such it falls within the province of the trial commissioner and will not be disturbed unless contrary to law, without evidence or based

on unreasonable or impermissible factual inferences. (Citations omitted)." Delconte, supra, *quoting* Distassio v. HP Hood, Inc., 4592 CRB-4-02-11 (May 5, 2004).

In the present case, unlike Delconte, supra, the administrative law judge concluded the claimant was a credible witness. Despite the lack of any mention of the provision of Advil and an ice pack on the medical form completed by Savoie it can, therefore, be inferred that the administrative law judge believed the claimant regarding this "treatment", thereby supporting the finding that the claimant succeeded in proving that he met the medical care exception. We cannot revisit the factual determination of witness credibility, see Baron v. Genlyte Thomas Group, LLC, 132 Conn. App. 794 (2012), *cert. denied*, 303 Conn. 939 (2012). The administrative law judge ultimately found "that the medical treatment provided and furnished by the Respondent to the Claimant on April 12, 2011, constitutes medical treatment pursuant to Section 31-294d of the Connecticut General Statutes, and as such, tolls the statutory notice provisions of Section 31-294c (c) of the Connecticut General Statutes." Conclusion, ¶ G.

The respondent argued that this scenario was inadequate to place it on notice that the claimant might seek benefits for a workplace injury in the future, noting in part that various documents the Department of Correction believed should have memorialized this incident were not in their records. We note, however, that in cases such as Mehan v. Stamford, 127 Conn. App. 619 (2011), *cert. denied*, 301 Conn. 911 (2011) and Bedard v. Southbury, 5923 CRB-5-14-3 (April 24, 2015), this tribunal and our Appellate Court have been hesitant to penalize claimants when respondents claim their own bureaucratic lapses failed to put the employer on notice. In the present case, the claimant immediately sought medical treatment from an on-site provider. While the respondent believed the

claimant should have followed up with additional documentation or have promptly seen an outside physician specifically for his alleged right hip injury,[4] the administrative law judge held the claimant's actions herein were sufficient and we believe that this was a factual determination he was entitled to reach.

The respondent argues that pursuant to General Statutes § 31-294d, the medical care sufficient to meet the exception to timely written notice must be rendered by a physician or an APRN. As it does not appear Savoie was an APRN, but an RN, they argued that her treatment on April 12, 2011 was inadequate to provide the exception to notice. We note that there is no precedent on this legal argument and our precedent has interpreted the medical care exception more broadly. In Delconte, supra, we cited Chaney v. Riverside Health Care Center, 4270 CRB-1-00-7 (December 17, 2001), A.C. 22597, *appeal dismissed*, (March 19, 2003) and Horn v. State/Dept. of Correction, 3727 CRB-3-97-11 (December 16, 1998), *appeal withdrawn*, A.C. 19168 (March 11, 1999), for the proposition "that care provided by a non-physician may meet the medical care requirement of § 31-294c (c)." Delconte, supra. We are hesitant to overrule these cases in the absence of any contrary case law.

There is no error; the November 3, 2022 Finding and Award of William J. Watson III, Administrative Law Judge acting for the First District, is herein affirmed. Future formal hearings regarding the compensability of the original right hip injury, as well as

[4] The record indicates that the claimant did treat after the April 12, 2011 incident with Michael E. Joyce, M.D., on January 26, 2012, who was treating the claimant for previous left hip and right knee injuries. See February 16, 2022 Transcript, pp. 48-49; p. 70; see also Respondent's Exhibit 5. Although the January 26, 2012 report did not mention any problems with the right hip, the claimant testified that he discussed his right hip at this examination but did not receive any treatment for it at this encounter.

the proximate cause of such alleged injury to the claimant's current condition, should be conducted.

Administrative Law Judges Daniel E. Dilzer and David W. Schoolcraft concur in this Opinion.