CASE NO. 6496 CRB-2-23-2 CLAIM NO. 400108898	: COMPENSATION REVIEW BOARD
RICHARD HERRICK, JR. CLAIMANT-APPELLEE	: WORKERS' COMPENSATION COMMISSION
v.	: FEBRUARY 2, 2024
I.P.C. LYDON, L.L.C. EMPLOYER	
and	
CHUBB INDEMNITY INSURANCE INSURER	
and	
GALLAGHER BASSETT SERVICES, INC. CLAIMS ADMINISTRATOR RESPONDENTS-APPELLANTS	

APPEARANCES:

The claimant was represented by Nathan J. Shafner, Esq., Embry, Neusner, Arscott & Shafner, L.L.C., P.O. Box 1409, Groton, CT 06340.

The respondents were represented by Peter M. LoVerme, Esq., Tentindo, Kendall, Canniff & Keefe, L.L.P., 75 Hood Park Drive, Hood Business Park, Boston, MA 02129.

This Petition for Review from the January 24, 2023 Finding and Award of Soline M. Oslena, Administrative Law Judge acting for the Second District, was heard on June 23, 2023 before a Compensation Review Board panel consisting of Administrative Law Judges Daniel E. Dilzer, David W. Schoolcraft, and William J. Watson III.

OPINION

DANIEL E. DILZER, ADMINISTRATIVE LAW JUDGE. The respondents have petitioned for review from the January 24, 2023 Finding and Award of Soline M. Oslena, Administrative Law Judge acting for the Second District (finding). We affirm the decision.

At trial, the administrative law judge identified the following issues for determination relative to her inquiry into whether the claimant sustained a repetitive trauma injury arising out of and in the course of his employment: (1) compensability/causal connection; (2) medical treatment; and (3) apportionment pursuant to General Statutes § 31-299b.[1] Having determined that an employer/employee relationship existed between the claimant and IPC Lydon, L.L.C., (IPCL) and the parties were subject to the Workers' Compensation Act (act), the trier made the following factual findings which are pertinent to our review of this matter.

The claimant has asserted a repetitive trauma claim for bilateral shoulder injuries, with the final date of injurious exposure allegedly occurring on or about May 12, 2018.[2]

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[1] General Statutes § 31-299b states: "If an employee suffers an injury or disease for which compensation is found by the administrative law judge to be payable according to the provisions of this chapter, the employer who last employed the claimant prior to the filing of the claim, or the employer's insurer, shall be initially liable for the payment of such compensation. The administrative law judge shall, within a reasonable period of time after issuing an award, on the basis of the record of the hearing, determine whether prior employers, or their insurers, are liable for a portion of such compensation and the extent of their liability. If prior employers are found to be so liable, the administrative law judge shall order such employers or their insurers to reimburse the initially liable employer or insurer according to the proportion of their liability. Reimbursement shall be made within ten days of the administrative law judge's order with interest, from the date of the initial payment, at twelve per cent per annum. If no appeal from the administrative law judge's order is taken by any employer or insurer within twenty days, the order shall be final and may be enforced in the same manner as a judgment of the Superior Court…."

[2] General Statutes § 31-275 (16) (A) provides that: "'Personal injury' or 'injury' includes, in addition to accidental injury that may be definitely located as to the time when and the place where the accident occurred, an injury to an employee that is causally connected with the employee's employment and is the direct result of repetitive trauma or repetitive acts incident to such employment, and occupational disease."

The trial judge identified IPCL as the claimant's last employer based on a five-day period of employment from May 8, 2018, to May 12, 2018.[3]

The claimant was a boilermaker and journeyman welder for approximately thirty-seven years. He began his career at Electric Boat (EB) working in the shipyard as a welder from 1980 to 1993. The claimant's job duties at EB included carrying welding machines and gear such as wire feeders, stick rods, cables ranging in length from seventy-five to one hundred feet, and spools of wire weighing approximately forty-five pounds each. He described these activities as "labor intensive." Findings, ¶ 11. On or about December 1, 1987, while employed at EB, the claimant sustained a compensable injury to his left shoulder which required multiple surgeries. As a result of the injury and the subsequent surgeries, the claimant was assigned a 25 percent permanent partial disability to his left upper extremity. See Respondents' Exhibit 6 [December 5, 1991 correspondence to claimant's counsel from James C. Kelly, an orthopedic surgeon].

In April 1993, while still employed at EB, the claimant sought medical care from Kelly following a lifting incident at work which caused "a snap, pain and subluxation of the shoulder." Findings, ¶ 15, *quoting* Respondents' Exhibit 6 [May 5, 1993 office note]. The 1993 recurring shoulder injury resulted in a third surgery in 1993 or 1994. The claimant testified that this surgery failed; afterwards, his left shoulder was "shot," which then caused him to overuse his right arm. Findings, ¶ 17, *quoting* March 3, 2022 Transcript, p. 33. The claimant never returned to work at EB.

[3] In her finding, the trial judge identified the claimant's period of employment at IPCL as running from May 5, 2018, through May 12, 2018. See Findings, ¶ 4. We deem this harmless scrivener's error. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 729 (2002), *cert. denied*, 262 Conn. 933 (2003).

The claimant remained out of work from 1993 until approximately 1996, at which time he re-entered the workforce and accepted employment with Welding Services, Inc., as a boilermaker/journeyman welder. Although Welding Services was the claimant's primary employer from 1996 to 2017, he accepted other "fill in" union welding jobs during that time period as well. However, because Welding Services paid better wages than the union jobs, the claimant would quit the union jobs whenever the opportunity presented to work for Welding Services.

The claimant's duties at Welding Services involved heavy physical labor. The claimant testified that his employment at Welding Services was "the hardest work ever," Findings, ¶ 22, *quoting* Respondents' Exhibit 5, p. 51, and that while employed by Welding Services, "you were either working or sleeping, there was no in between." Findings, ¶ 23, *quoting* Respondents' Exhibit 5, p. 57. The claimant's duties for Welding Services included: (1) working twelve or thirteen hour days, seven days a week; (2) unloading equipment from trucks, setting up sandblasting equipment, and loading pots with bags of sand weighing between fifty and one hundred pounds; (3) overlay welding with robots; (4) lifting and hanging robot welders weighing between fifty and one-hundred twenty-five pounds; (5) lifting twelve-foot long robot welder tracks weighing between one hundred and one-hundred fifty pounds; and (6) orbital and hand welding. See Findings, ¶ 24. The final five years of his employment with Welding Services required somewhat less physical labor than the first sixteen years.

The claimant indicated that the union jobs generally involved welding at power plants, refineries, and incinerators. The activities included: (1) "welding, rigging, fitting, sandblasting, overlay," March 3, 2022 Transcript, p. 18; (2) replacing tubes, expansion

joints, and valves; (3) mirror and pipe welding, pipe-hanging, rebuilding vessels; (4) lifting manhole covers; and (5) climbing stairs, ladders, scaffolding and towers. See Findings, ¶ 27.

The claimant testified that he was employed by Day & Zimmermann from April 9, 2018, until April 16, 2018, to replace a tube at a power plant in Montville, Connecticut. Although accompanied by an apprentice, the claimant performed the entire tube replacement except for the welding inside the boiler. The claimant was responsible for removing the tube section, preparing and fitting the replacement tube, and welding the outside of the boiler.[4]

After the Day & Zimmermann job, the claimant was employed by IPCL from May 8, 2018, to May 12, 2018, at a power plant in Bridgeport, Connecticut. The claimant testified that his job duties at IPCL involved replacing an expansion joint and some valves on a gas burner. For several of the days that the claimant worked for IPCL, he was accompanied by two apprentices. The claimant explained that valve replacements are more physically demanding than expansion joint replacements, stating that "the valve job is a lot more involved with the fitting part, the welding part, especially the rigging part, you don't want to get that wrong." August 30, 2022 Transcript, p. 23. Although the claimant was required to demonstrate for the apprentices the proper techniques for valve replacement, the apprentices were able to perform approximately 60 percent of the tasks associated with the expansion joint replacement.

[4] On July 2, 2018, the claimant filed a notice of claim against Day & Zimmermann reporting a bilateral shoulder repetitive trauma claim bearing a date of injury of April 23, 2018. On the same date, the claimant also filed a notice of claim against IPCL, again asserting a bilateral shoulder repetitive trauma claim but reporting a date of injury of May 20, 2018. Day & Zimmermann has not appealed the subject finding.

At trial, the claimant explained the various steps involved in valve replacement and testified that one of the valve replacements at IPCL was performed at eye level while the other two were performed at a height of ten feet. He stated that valve replacement could be extremely strenuous and often required the use of heavy equipment. The claimant further testified that throughout his career, although he regularly experienced shoulder pain, he typically would have time off in the winters and summers during which his shoulders would be able to recover. He indicated that expansion joint work was relatively easy, and valve replacement a bit more difficult, but his job duties at Welding Services were "much more laborious" than both expansion joint and valve replacement. August 30, 2022 Transcript, p. 26. Nevertheless, following the job at IPCL, he was unable to return to any type of employment due to a worsening of his shoulder symptoms.

On August 29, 2018, the claimant presented to Ammar Anbari, an orthopedic surgeon, complaining of bilateral shoulder pain. In his report of that date, Anbari noted that Kelly had operated on the claimant's left shoulder several times; however, following the surgeries, the claimant began to experience increasing pain and discomfort. Anbari opined that the claimant had been coping with bilateral shoulder pain for many years and attributed his condition to his entire career as a welder.

On November 22, 2019, the claimant underwent a respondents' medical examination (RME) with Clinton A. Jambor, an orthopedic surgeon. Jambor diagnosed the claimant with "chronic bilateral shoulder pain, status [post] 3 left shoulder stabilization procedures." Respondents' Exhibit 6 [November 22, 2019 RME report, p. 3]. Jambor opined that the left shoulder injury sustained by the claimant while working for EB was a substantial contributing factor to the need for treatment for his left

shoulder. In addition, Jambor stated that "[i]f you are to believe the patient's history that he overused his right shoulder secondary to left shoulder dysfunction due to his prior surgery, it would be my opinion that his prior left shoulder injury is a substantial factor in his need for right shoulder treatment." Id.

Noting that "[t]here is no evidence of an actual injury occurring between May 8, 2018 and May 12, 2018," id., 4, Jambor opined that the claimant's five days of employment with IPCL was not "a significant factor in the development of a repetitive trauma injury to the shoulder absent [evidence] of an injury having occurred in that time period."[5] Findings, ¶ 51, *citing* Respondents' Exhibit 6 [November 22, 2019 RME report, p. 4]. Jambor further opined that the five days of employment with IPCL did not "constitute an injurious exposure relative to the bilateral shoulder injuries." Respondents' Exhibit 6 [November 22, 2019 RME report, p. 4.]

On February 3, 2020, the claimant underwent a commission medical examination (CME) with Clifford G. Rios, an orthopedic surgeon. In his report, Rios stated:

> the work-related traction type injury to the arm initiated the instability of the left shoulder and was a substantial contributing factor to the development of posttraumatic degenerative joint change particularly in light of having had 3 surgeries within 1 year, which failed to yield a stable glenohumeral joint. From that point

[5] It should be noted that Jambor's opinion is problematic in light of his observation regarding the lack of evidence that "an actual injury" occurred during the claimant's period of employment with IPCL. Respondents' Exhibit 6 [November 22, 2019 RME report, p. 4]. The standard for evaluating whether a claimant has sustained a repetitive trauma injury, regardless of whether apportionment is implicated, does not require that a discrete injury occur during the period in question. In Russell v. Mystic Seaport Museum, Inc., 252 Conn. 596 (2000), our Supreme Court found persuasive this board's reasoning in Grady v. G & L Oxygen & Medical Co., 6 Conn. Workers' Comp. Rev. Op. 12, 572 CRD-6-87 (September 12, 1988), wherein we stated: "Repetitive trauma injuries by their very nature as recognized in the statutory definition cannot be "definitely located as to . . . time and . . . place." Were we then to construe Sec. 31–294 as requiring claimants to give specific dates and places of accidents in their notices of claims for repetitive trauma injuries it would effectively negate legislative intent as expressed in Sec. 31-275 (8) [now codified as amended at § 31-275 (16) (A)]. Under such a construction, no claimant could ever perfect a repetitive trauma claim." Id., 13.

> forward, repetitive subluxation and shear stress across the joint likely hastened the development of symptoms and arthritic change.

Claimant's Exhibit D, p. 3.

Rios further noted that "[i]t is well-documented that recurrent instability of the left shoulder is a specific risk factor for glenohumeral degenerative joint change later in life." Id. Regarding the claimant's right shoulder condition, Rios opined "that the arthritis on this shoulder is degenerative in nature, but … the chronic repetitive overuse with the right upper extremity did contribute at least partially to the onset of symptoms for the right upper extremity." Id.

At his deposition, when queried as to whether he believed the claimant's long career as a boilermaker was a substantial contributing factor to the condition of both shoulders, Rios replied in the affirmative. With specific reference to the five days of employment with IPCL, Rios stated that "[i]t's very hard to measure proportionally each day, each pound that is lifted…. But the work [the claimant] described was physical. And whether it was three very hard days and two light days or five above-average days, it's really hard for me to change [my] opinion tremendously." Respondents' Exhibit 4, pp. 21-22. Rios further opined that each individual day of employment, in and of itself, would not necessarily constitute a substantial contributing factor; however, in his role as a medical provider, he is generally "looking at cumulative exposure over many years." Id., 27.

On the basis of the foregoing, the trial judge found that the claimant had worked for more than thirty-seven years as a welder and journeyman boilermaker. Noting that the claimant's testimony was credible and persuasive, she found that the claimant's description of the activities he performed for IPCL and Day & Zimmermann reflected

that those job duties were consistent with the tasks he had carried out throughout the entirety of his career.

The trial judge also found credible and persuasive the opinions of Anbari and Rios indicating that the claimant's bilateral shoulder symptoms were the result of the labor-intensive work he had performed for several decades. In addition, she found credible and persuasive the opinions of Jambor and Rios indicating that because the claimant's left shoulder surgery had resulted in repetitive overuse of the right shoulder, the left shoulder injury and subsequent surgeries had contributed to the claimant's need for treatment to his right shoulder.

The trial judge concluded that the claimant's last date of employment was with IPCL in May 2018 and the claimant had sustained repetitive trauma injuries to his bilateral shoulders that arose out of and in the course of his employment with IPCL. The trier determined that the medical treatment provided to date was reasonable, necessary, and substantially related to the repetitive nature of the claimant's employment with IPCL. She appointed Anbari as the claimant's authorized treating physician and ordered IPCL to authorize ongoing medical treatment recommended by Anbari. She also ordered IPCL to accept compensability and initial liability pursuant to § 31-299b for the medical and indemnity expenses associated with the claimant's bilateral shoulder injury. Finally, she indicated that additional hearings would be held to determine whether any prior employers or their insurers were liable for a portion of the compensation and the extent of their liability.

The respondents filed a motion to correct, which was denied in its entirety, and this appeal followed. On appeal, the respondents essentially contend that because the

trial judge erred in concluding that the claimant's period of employment with IPCL was a substantial contributing factor to the development of his bilateral shoulder condition, they should not be held initially liable for accepting compensability of the repetitive trauma claim or administering the claim in accordance with § 31-299b. To that end, they argue that the trier's denial of their motion to correct constituted error, stating that had she granted their motion, she "would have found the claimant's five days of employment with IPCL were not a substantial contributing factor to the bilateral shoulder complaints and did not constitute an injurious exposure relative to the bilateral shoulder injuries." Appellants' Brief, p. 6. The respondents further assert that the trial judge did not properly apply the law to the subordinate facts and the findings were not supported by the evidence. We are not persuaded by the respondents' claims of error.

The standard of appellate review we are obliged to apply to a trial judge's findings and legal conclusions is well-settled. A trier'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), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). Thus, "it 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, supra, 540, *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

We begin our analysis with the respondents' allegation of error relative to the failure of the administrative law judge to correct certain findings which, according to the respondents, improperly provided a basis for the conclusion that the claimant's employment with IPCL constituted a substantial contributing factor to his bilateral shoulder injuries. It is axiomatic that, when determining whether a claimed injury arose out of and in the course of the employment, "the substantial factor standard is met if the employment '*materially or essentially contributes* to bring about an injury…'" (Emphasis in the original.) Birnie v. Electric Boat Corp., 288 Conn. 392, 412 (2008), *quoting* Norton v. Barton's Bias Narrow Fabric Co., 106 Conn. 360, 365 (1927). In Stakonis v. United Advertising Corporation, 110 Conn. 384 (1930), our Supreme Court explained that "[t]here must be a conjunction of the two requirements, 'in the course of the employment' and 'out of the employment' 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." Id., 389. In order to come within the course of the employment, an injury must occur "(a) within the period of the employment, (b) at a place where the employee may reasonably be, and (c) while he is reasonably fulfilling the duties of the employment or doing something incidental to it." Id.

In the present matter, we note at the outset that the respondents are not challenging the trial judge's conclusion, predicated on the medical opinions of Anbari and Rios, that the claimant sustained a compensable bilateral shoulder injury during the course of his career as a welder. In addition, the respondents have not appealed the trier's

conclusion, predicated on the opinions of Jambor and Rios, that the claimant's repetitive overuse of his right shoulder following the surgery for his left shoulder contributed to the claimant's need for surgery to the right shoulder. Rather, the respondents assert that "[t]he narrow issue addressed in this case was whether or not the claimant's five days of employment with IPCL were a substantial contributing factor to the development of bilateral shoulder injuries and need for treatment." Appellant's Brief, p. 11. As such, they contend that the trial judge erroneously concluded that the claimant sustained "injurious repetitive trauma to his bilateral shoulders that arose out of and in the course of his employment with IPC Lydon, L.L.C."[6] Conclusion, ¶ G.

In support of this argument, the respondents point out that the triers' findings do not specifically state that the claimant's five days of employment at IPCL constituted a substantial contributing factor to the claimant's bilateral shoulder symptoms and/or need for medical treatment. The respondents also point out that both Jambor and Rios opined that the five-day employment at IPCL "was not a significant factor," Respondents' Exhibit 4, p. 9, and the findings of the trial judge omitted any mention of Rios' testimony opining that "the contribution of the claimant's last five days of work for IPCL [was] insignificant." Appellants' Brief, p. 8.

The respondents further assert that "[a]lthough the claimant's decades' long career as a welder may be a substantial contributing factor in the development of bilateral shoulder injuries, there is no evidence in the record from Dr. Rios to support the

[6] We recognize that this conclusion was unquestionably responsive to the arguments propounded by the respondents at trial. However, in light of our holding herein that an inquiry into the extent to which the five-day employment period at IPCL materially contributed to the claimant's overall injury is not yet ripe for adjudication, we believe this conclusion constituted harmless error. We would further note that the administrative law judge appropriately reserved the issue of the extent of the liability of the claimant's employers for future hearings.

conclusion that the claimant's last five days of work for IPCL were a substantial contributing factor." Id. It is therefore the respondents' position that because Rios consistently opined that the claimant's five-day span of employment with IPCL was "insignificant and nothing more than a de minimis contributing factor," id., 9, the trier improperly inferred from Rios' testimony that the employment at IPCL contributed in any meaningful fashion to the claimant's overall repetitive trauma injury. See Respondents' Exhibit 4, pp. 16, 21, 26.

In addition, the respondents challenge the trial judge's reliance on Anbari's opinion as expressed in his medical report of August 29, 2018, pointing out that in that report, Anbari opined that "[w]ithin reasonable medical probability, the only reason why the patient has these symptoms is because of the work he did for E.B. and the union for the past 30 some years." Claimant's Exhibit C. However, the report is silent regarding the precise contribution that can be attributed to the employment at IPCL. Finally, the respondents contend that Jambor, in his RME report, opined that the claimant's employment with IPCL constituted neither "a significant factor in the patients' repetitive use claim"; nor "an injurious exposure relative to the bilateral shoulder injuries." Respondents' Exhibit 6 [November 22, 2019 RME report, p. 4].

Having reviewed the foregoing, we would note at the outset that the various excerpts from the medical reports relied upon by the respondents do not necessarily reflect the totality of the expert opinion in this matter. Of more significance to our review of the appeal at this juncture, however, is the fact that we are not persuaded that the respondents' arguments on appeal are relevant in light of the current status of the litigation in the claim.

As previously mentioned herein, § 31-299b specifically contemplates that "the employer who last employed the claimant prior to the filing of the claim, or the employer's insurer, shall be initially liable for the payment of such compensation." The legislative intent behind the implementation of § 31-299b reflects the presumption that:

> in many cases involving repetitive trauma, the very nature of the injury will make it impossible to demarcate a specific date of injury. Thus, out of necessity, some other clear threshold had to be established as the start of the applicable limitation period. The last day of exposure to the relevant trauma is a logical choice, *as the process of injury from a repetitive trauma is ongoing until that point.* (Emphasis added.)

Discuillo v. Stone & Webster, 242 Conn. 570, 581 n.11 (1997).

The respondents have not disputed their role as "the employer who last employed the claimant," General Statues § 31-299b, and the record is devoid of any evidence that the claimant was employed after May 12, 2018. Moreover, the respondents have not argued that the claimant's job duties during the five-day employment period with IPCL deviated significantly from the responsibilities associated with his prior periods of employment throughout his career as a welder. In short, the respondents have propounded no persuasive arguments which would serve to relieve them of initial liability for the claim as contemplated by the mandatory provisions of § 31-299b.

As the claimant accurately states, the apportionment legislation was implemented in order "to fashion a quick remedy in cumulative trauma claims."[7] Appellee's Brief, p. 12. The legislation was therefore consistent with the "humanitarian and remedial purposes of the act …." (Internal quotation marks omitted.) Sullins v. United Parcel Service, Inc., 315 Conn. 543, 550 (2015), *quoting* DiNuzzo v. Dan Perkins Chevrolet

[7] We agree with the claimant that the legislature's laudable intentions appear to have been frustrated in the present matter.

Geo, Inc., 294 Conn. 132, 150 (2009). This board has previously observed that § 31-299b arose out of "our state lawmakers' dismay that employees injured at the workplace, particularly those suffering from occupational diseases, were often being deprived of compensation for long periods of time while multiple employers or multiple insurance carriers were embroiled in litigation over the degrees of their respective financial responsibility." Konovaluk v. Graphite Die Mold, Inc., 4437 CRB-3-01-9 (August 8, 2002). We therefore believe an assessment of the extent to which the respondents' period of employment materially contributed to the claimant's repetitive trauma injury is not only premature at this stage of the litigation but is also at odds with the legislative intent of the apportionment statute.[8]

Moreover, if we were to adopt the respondents' interpretation of § 31-299b, and it was determined that the period of exposure while working for IPLC from May 8, 2018, through May 12, 2018, was not a substantial contributing factor in the development of the repetitive trauma injury, the claimant would then need to file a new claim against the employer on the risk prior to the employment at IPLC. The record indicates that this employer was Day & Zimmermann, for whom the claimant testified he was employed from April 9, 2018, until April 16, 2018. In order to determine whether that brief period of employment constituted a substantial contributing factor to the repetitive trauma injury, the claimant would again be required to seek medical opinions and witness

[8] Accordingly, we find no error in the trial judge's denial of the respondents' motion to correct, in part because the proposed corrections essentially reiterated arguments made at trial which ultimately proved unavailing. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003). This tribunal has also previously held that a motion to correct "may be denied properly where the corrections are immaterial because the outcome of the case would not be altered by the substituted findings." Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998), *quoting* Knoblaugh v. Greenwood Health Center, 13 Conn. Workers' Comp. Rev. Op. 150, 152, 1608 CRB-1-92-12 (February 6, 1995).

statements. If that litigation in turn proved unsuccessful, the claimant would have to pursue the employer immediately preceding Day & Zimmerman, with litigation in this manner possibly continuing indefinitely.

However, it should be noted that General Statutes § 31-294c (a) imposes upon injured workers the obligation to file a written notice of claim for compensation "within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury …." As such, in order for jurisdiction to lie in the prosecution of individual claims against successor employers, a claimant would need to have filed a notice of claim against every prior employer at the same time that he filed a notice against the last employer of record. The imposition of such an onerous requirement is precisely the type of burden on injured workers that the legislature sought to relieve via the statutory scheme delineated in § 31-299b.[9]

Finally, we would note that § 31-299b affords the respondents rights of recovery, with interest, from the other former employers of the claimant who are ultimately found liable. "Under the Workers' Compensation Act … the last insurer on a risk for which other insurers also bear some liability is deemed initially liable for payment to the injured employee, with the right to recover proportional reimbursement from the other insurers."

[9] As referenced previously herein, the evidentiary record indicates that, as was the case with the respondent employer, the claimant's employment with Day and Zimmermann lasted for only one week. In fact, it is not uncommon for employment periods in apportionment claims to be of relatively short duration. It is therefore possible to envision a scenario in which each period of employment, taken individually, would not be deemed a significant contributing factor to the development of the repetitive trauma injury, despite medical evidence indicating that the claimant's career in the aggregate did constitute a substantial contributing factor. Such an outcome would clearly be both illogical and inconsistent with the legislative intent of § 31-299b. "It is not our practice to construe a statute in a way to thwart its purpose or lead to absurd results ... or in a way that fails to attain a rational and sensible result that bears directly on the purpose the legislature sought to achieve." (Citation omitted; internal quotation marks omitted.) State v. Reynolds, 264 Conn. 1, 33 (2003), *quoting* Colonial Penn Ins. Co. v. Bryant, 245 Conn. 710, 725 (1998).

Franklin v. Superior Casting, 302 Conn. 219, 221-22 (2011). This board has previously remarked that the provisions of § 31-299b endow a trier with a certain amount of discretion in weighing the contribution of the various periods of employment to the overall claim. In Konovaluk, supra, we stated that:

> Rather than specifically stating that prior employers or their insurers may be held liable only for their share of causal responsibility, [§ 31-299b] instructs the commissioner to determine, on the basis of the hearing record, "whether prior employers, or their insurers, are liable for a portion of such compensation and the extent of their liability." It then instructs such prior employers or insurers to reimburse the initially liable employer/insurer "according to the proportion of their liability."

Id., *quoting* General Statutes § 31-299b.

We recognize that the claimant's five-day period of employment at IPCL is not likely to be deemed heavily influential vis-à-vis the final apportionment schedule in this matter. Nevertheless, in light of the legislative intent behind the enactment of § 31-299b, IPCL cannot continue to evade initial liability for the claim merely because the claimant's employment was of short duration, particularly as the evidentiary record clearly supports the claimant's contention that "[i]t is fair to characterize the IPC employment as a microcosm of [the claimant's] career." Appellee's Brief, p. 8.

There is no error; the January 24, 2023 Finding and Award of Soline M. Oslena, Administrative Law Judge acting for the Second District, is accordingly affirmed. Consistent with this Opinion, we would draw to the respondents' attention the provisions of General Statutes § 31-301 (f), which provide that:

> During the pendency of any appeal of an award made pursuant to this chapter, the claimant shall receive all compensation and medical treatment payable under the terms of the award to the extent the compensation and medical treatment are not being paid by any health insurer or by any insurer or employer who has been

> ordered, pursuant to the provisions of subsection (a) of this section, to pay a portion of the award. The compensation and medical treatment shall be paid by the employer or its insurer.

General Statutes § 31-301 (f).

Administrative Law Judges David W. Schoolcraft and William J. Watson III concur.