CASE NO. 6500 CRB-1-23-4 : COMPENSATION REVIEW BOARD
CLAIM NO. 400097459

WILLIE HAYES, JR. : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : NOVEMBER 24, 2023

LILY TRANSPORTATION CORPORATION
EMPLOYER

and

ACE AMERICAN INSURANCE COMPANY
c/o GALLAGHER BASSETT SERVICES, INC.
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by James H. McColl, Jr., Esq., The Dodd Law Firm, L.L.C., Ten Corporate Center, 1781 Highland Avenue, Suite 105, Cheshire, CT 06410.

The respondents were represented by Timothy D. Ward, Esq., McGann, Bartlett & Brown, L.L.C., 111 Founders Plaza, Suite 1201, East Hartford, CT 06108.

This Petition for Review from the April 12, 2023 Finding and Award of Toni M. Fatone, Administrative Law Judge acting for the First District, was heard on September 29, 2023 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Soline M. Oslena and Peter C. Mlynarczyk.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The respondents have petitioned for review from the April 12, 2023 Finding and Award of Toni M. Fatone, Administrative Law Judge acting for the First District (finding). We affirm the decision.

At proceedings below, the administrative law judge identified as the issue for determination whether the claimant's bilateral wrist surgeries were causally related to his November 17, 2014 motor vehicle accident (MVA) and, therefore, compensable. The trier made the following factual findings which are pertinent to our review. The claimant was employed by the respondent employer as a tractor-trailer driver during the years 2013 to 2015. While making a delivery on November 17, 2014, he was involved in an MVA when another automobile on the highway went into a spin and came to a stop directly in front of his truck.[1] The claimant utilized his defensive driving techniques and successfully avoided jack-knifing his truck or hitting any other automobiles apart from the one that had stopped in front of him. However, in so doing, he gripped the steering wheel with so much force that "he left his fingerprints on it," resulting, initially, in an injury to the fingers of his right hand. Findings, ¶ 1.

The claimant sought medical treatment for the injury with Stewart C. Gross, a hand surgeon, who diagnosed damage to the tendons in the right hand and finger. The claimant testified that an MRI ordered by Gross required multiple hearings over the span

[1] The claimant testified that the other driver lost control of his vehicle, hit the barrier, and then crossed the shoulder and several travel lanes before coming to a stop directly in front of his truck. See August 4, 2022 Transcript, p. 19.

of eleven-and-a-half months before being authorized by the respondents.[2] Gross ultimately performed two surgeries on the claimant's right little finger.[3] The trier noted that although the MVA occurred on November 17, 2014, the respondents did not authorize the surgery until 2016.

The claimant testified that he first noticed a "tingling sensation" in his wrists in the months following the MVA but it wasn't "significant." Findings, ¶ 4, *citing* August 4, 2022 Transcript, p. 23. He indicated that he mentioned the problems with his wrists to Gross in 2014 and 2015, but also stated that "[a]s months went by, and we

[2] Gross' medical reports reflect that he initially treated the claimant for a "trigger finger." See Claimant's Exhibit A. On May 26, 2015, Gross noted that "there [was] no other evidence for a specific diagnosis based upon [the claimant's] symptoms to the right middle digit" and Gross was therefore seeking authorization for an MRI. Id. On October 28, 2015, having reviewed the MRI, Gross suspected the claimant was suffering from "stenosing tenosynovitis to the A1 pulley" and was therefore a suitable candidate for a tenovaginotomy "[involving] the A1 pulley and direct inspection of the A2 pulley area." Id. By the time Gross saw the claimant again on November 30, 2015, this procedure had been authorized and scheduled for January 5, 2016. However, Gross' medical report of December 23, 2015, reflects that following his review of the claimant's MRI with the radiologist, the surgery would instead consist of "a repair or reconstruction of [the claimant's] A2 pulley to the right little digit and not just an exploration." Id.

[3] Following the surgery of January 5, 2016, the claimant was scheduled to begin occupational therapy on February 16, 2016; in his notes of February 29, 2016, Gross noted that the claimant had developed a "PIP joint flexion contracture" which would also require occupational therapy. Claimant's Exhibit A. However, on April 4, 2016, Gross stated that the claimant "[n]ever received approval from workers' compensation for occupational therapy, did not contact this office with that issue and has been only performing self-supervised flexion exercises to this digit." Id. Gross also noted that "[w]orkers' compensation will be contacted for this approval process with the patient, appreciating that driving a standard truck with this flexion contracture might [be] dangerous and for that reason … [he] will remain on TTD." Id. On June 2, 2016, Gross stated that "[m]ultiple therapeutic regimes have been attempted to correct the fixed flexion deformity at the PIP joint. To date, they have all been unsuccessful." Id. Gross further indicated that the claimant would "require … surgical collateral ligament release and temporary internal fixation to significantly improve the extension function of the PIP joint or he can live with the deformity." Id. At some point subsequent to the office visit of June 2, 2016, the claimant underwent the procedure and presented to Gross for a post-operative visit on July 25, 2016. On September 8, 2016, Gross reported that the claimant "has finally been able to attend occupational therapy sessions but with the [delay], the flexion contracture to the PIP joint has reoccurred." Id. Gross stated that the claimant "appreciates that the fixed flexion contracture reoccurred secondary to the delay in initiation of occupational therapy. At this point, surgical treatment whether it be [release] of the ligaments again, application of an apparatus which might over time improve the contracture or even amputation at the PIP joint, would be risky considering his response to general anesthesia." Id. Gross returned to claimant to full duty as of September 23, 2016, albeit restricted from driving a truck. On November 7, 2016, Gross concluded that the claimant was permanently restricted from truck-driving; on May 11, 2017, he opined that the claimant had reached maximum medical improvement with a permanent partial disability rating of 60 percent to the right little finger due to the fixed flexion contracture.

fought to try to get just the MRI for my finger, it was further, further discouraged to even think about trying to even mention that, because I couldn't even get attention to my finger through Comp for what initially happened." Id. The administrative law judge noted that Gross' medical records did not include a diagnosis of any problems with or treatment recommendations for the claimant's wrists; rather, his evaluations focused on the dominant injury, which was to the claimant's finger.

The claimant did not seek medical treatment during 2017, 2018 or 2019 because the medications he had taken following the second surgery triggered a relapse into substance abuse and addiction. In 2020, the claimant presented to Daniel J. Mastella, an orthopedic surgeon; in his initial evaluation report of July 15, 2020, Mastella noted that the claimant's "problem really started with a tractor-trailer accident on 11-17-2014," Claimant's Exhibit B, at which time the claimant immediately developed pain in his right small finger. Mastella further noted that the claimant's diagnosis was delayed but he ultimately underwent an initial surgery to the right small finger in January 2016 and a second surgery in July 2016. Mastella stated:

> After the second surgery, [the claimant] developed right and left wrist pain. Initially, under the care of Dr. Stewart Gross, he was deemed to reach maximum medical improvement. He ultimately lost his CDL license as a result of the small finger injury. Wrist pain persisted and it was focused to the radial aspect.

Id.

In this initial evaluation, Mastella diagnosed the claimant as suffering from: (1) Bilateral post traumatic wrist arthritis/SLAC wrist; (2) Status post scaphoid excision,

four-corner arthrodesis on the left side; and (3) Right small finger PIP flexion contracture.[4] See id.

In a follow-up report dated July 30, 2020, Mastella noted that although the claimant had initially undergone wrist surgery at the Hartford Hospital hand clinic, he was now being seen in Mastella's office, as "there [was] a question about [the injury] being related to his work."[5] Id. Mastella stated that "[b]ased on the patient's description of his injury, as well as the accident he was involved with, his job as a truck driver [was] a substantial contributing factor to his diagnosis of bilateral wrist arthritis and its need for treatment." Id. In correspondence to claimant's counsel dated November 9, 2020, Mastella stated that the claimant's "symptoms of SLAC wrist arthritis date back to a tractor-trailer accident he was involved in. He did have a distracting injury at the small finger, apparently. This ultimately caused him to lose his driver's license." Id. Mastella opined:

> In terms of clarification as to causation of the wrist arthritis and need for SLAC wrist reconstruction, it seems more likely than not within a reasonable degree of medical probability that the specific motor vehicle accident of 11-17-2014 was a substantial contributing factor to the diagnosis of symptomatic wrist arthritis and its ultimate need for surgical treatment.[6]

Id.

Richard A. Bernstein, an orthopedic hand surgery specialist, performed a respondents' medical examination (RME) on July 1, 2021. After conducting a review of

[4] The claimant underwent a scapholunate advanced collapse wrist reconstruction to his left side on June 30, 2020 at The Hand Center at the Hartford Surgery Center. See Claimant's Exhibit B.
[5] At his deposition, Mastella explained that the claimant initially presented to the Hartford Hospital hand clinic due to an insurance issue. However, the claimant was subsequently referred to Mastella's office when "there arose some question as to whether or not this was a workers' compensation injury" because the hand clinic does not handle workers' compensation cases. Respondents' Exhibit 1, p. 12.
[6] The claimant subsequently underwent a scapholunate advanced collapse wrist reconstruction to his right side on December 11, 2020.

the claimant's medical records since the date of injury, Bernstein concluded that "within reasonable medical probability there is absolutely no relationship of the wrist arthritis, subsequent surgeries to the accident in 2014." Respondents' Exhibit 1, Sub-Exhibit 8, p. 5.

Based on the foregoing, the administrative law judge, having determined that the parties were subject to the provisions of chapter 568 of the General Statutes, found credible and persuasive the claimant's testimony that he sustained a compensable injury to his bilateral wrists on November 17, 2014, during the course of his employment with the respondent employer. In addition, she determined that the medical treatment rendered to the claimant for his wrist injuries was related to the November 17, 2014 date of injury. She found Mastella's opinion as to causation more persuasive than Bernstein's, and concluded that Gross' medical opinion had "*no* bearing on the Claimant's bilateral wrist injury," Conclusion, ¶ G, given that "Gross was solely focused on the Claimant's initial injury to his right hand and fingers." (Emphasis in the original.) Id. She further noted that the respondents' authorization for diagnostic testing and surgery "were subject to lengthy delays." Id.

Having concluded that the claimant had satisfied his burden of proof vis-à-vis the compensability of his bilateral wrist surgeries and post-surgical treatment, she ordered the respondents to accept compensability for the injuries of November 17, 2014, and, accordingly, to pay for the medical treatment associated with the injuries.

The respondents filed a motion to correct, which was denied in its entirety, and this appeal followed. On appeal, the respondents contend that the administrative law judge erroneously: (1) substituted her own opinions for those proffered through expert

testimony; (2) made findings which were not supported by the evidence and were significant to her ultimate conclusion; (3) relied on expert opinion which was based on speculation and conjecture rather than competent evidence; and (4) denied the motion to correct.

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).

Although the respondents have raised four discrete claims of error in this matter, the gravamen of their appeal is that the administrative law judge, in reaching her conclusions as to causation, chose to rely upon Mastella's opinion as set forth in his reports issued prior to his deposition rather than relying upon his deposition testimony. We are not persuaded by the respondents' contentions.

It is well-settled that the "traditional concepts of proximate cause furnish the appropriate analysis for determining causation in workers' compensation cases," Dixon v. United Illuminating Co., 57 Conn. App. 51, 60 (2000), and "the test for determining whether particular conduct is a proximate cause of an injury [is] whether it was a substantial factor in producing the result." (Internal quotation marks omitted.) Paternostro v. Arborio Corp., 56 Conn. App. 215, 222 (1999), *cert. denied*, 252 Conn. 928 (2000), *quoting* Hines v. Davis, 53 Conn. App. 836, 839 (1999).

In order to establish the requisite causal connection between the employment and the injury, a claimant "must demonstrate that the claimed injury (1) arose out of the employment, and (2) in the course of the employment…." Sapko v. State, 305 Conn. 360, 371 (2012), *quoting* Daubert v. Naugatuck, 267 Conn. 583, 589 (2004). The claimant therefore "bears the burden of proof, not only with respect to whether an injury was causally connected to the workplace, but that such proof must be established by *competent evidence*." (Emphasis in the original.) Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 447 (2001), *quoting* Keenan v. Union Camp Corp., 49 Conn. App. 280, 282 (1998).

In Stakonis v. United Advertising Corporation, 110 Conn. 384 (1930), our Supreme Court held that in order to establish that an injury "arose out of and in the course of the employment," "[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 addition, "[a]n 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 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, the evidentiary record includes: (1) medical records generated by Gross during the course of his treatment for the claimant's finger injuries during the time period from December 31, 2014, to May 11, 2017; (2) Mastella's reports for the time period of June 30, 2020, to January 10, 2022, along with his deposition testimony of February 25, 2022; and (3) a Hartford Healthcare hand clinic report authored by Kyle E. Grooms, a hand surgeon, for the claimant's office visit of February 18, 2020. In his report dated July 30, 2020, Mastella, primarily on the basis of the claimant's narrative, identified the November 17, 2014 MVA as a substantial contributing factor to the claimant's bilateral wrist arthritis. See Claimant's Exhibit B. Subsequently, on November 9, 2020, Mastella wrote to claimant's counsel opining that the MVA constituted "a substantial contributing factor to the diagnosis of symptomatic wrist arthritis and its ultimate need for surgical treatment." Id.

At the outset of Mastella's deposition on February 25, 2022, he stated that he had neither received nor reviewed any records from Gross and had based his opinion regarding causation on his physical examination of the claimant and the history provided to him by the claimant. See Respondents' Exhibit 1, p. 18. When presented by respondents' counsel with medical records from the claimant's various providers, including Gross, Mastella agreed that the contemporaneous reports did not reflect that the claimant had sustained an injury to his wrists in the November 17, 2014 MVA. He also conceded that a Concentra examination conducted on November 25, 2014, demonstrating that "range of motion testing of the wrist is normal to all planes," id., Sub-Exhibit 2, p. 1,

suggested "a lower likelihood that there's significant pathology of the wrist." Id., 21. Mastella testified that the contemporaneous reports, "[t]aken in isolation … would certainly push me more towards saying that it was not related, as the patient, over the course of six or seven months, does not report any problems with his wrists." Id., 24.

However, Mastella was also presented with Gross' report of December 31, 2014, wherein Gross had noted that a radiological examination report demonstrated "a slight DISI positioning of the lunate."[7] Id., 27, *citing* Sub-Exhibit 3, p. 2. Mastella explained that the radiological finding was "a sign of instability at the wrist that may produce arthritis." Id. He therefore disagreed that the claimant's examination was "normal" at that point, as a DISI deformity is not congenital but, rather, "is a sign of instability at the wrist that is often symptomatic and is on the spectrum of wrist changes that lead to arthritis at the wrists." Id., 28. Nevertheless, he did not find "any indication in the report … that the condition was symptomatic in any way." Id.

Respondents' counsel also presented Mastella with Bernstein's July 21, 2021 RME report, in which Bernstein had found no causal connection between the claimant's November 17, 2014 MVA and his subsequent need for wrist surgery.[8] Mastella stated that "based on the additional records reviewed, it would seem more likely than not that [the claimant's wrist surgery] would not be related to the patient's diagnosis of wrist arthritis, in which case I would be in agreement with Dr. Bernstein's evaluation of 7/1/21." Id., 31-32.

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[7] We note that only page one of three for this exhibit was submitted into the evidentiary record.
[8] Bernstein's July 1, 2021 RME report came into evidence over the objection of claimant's counsel, who pointed out that the report was being proffered without any deposition testimony. The administrative law judge overruled the objection and allowed the report into evidence on the basis that the RME report was included in the exhibits attached to Mastella's deposition and he had testified regarding the report. See August 4, 2022 Transcript, pp. 9-11.

Having reviewed the foregoing, it is apparent that Mastella's opinion as to causation of the claimant's wrist injuries appeared to undergo a significant alteration at his deposition from the opinion offered in his July 30, 2020 report and November 9, 2020 correspondence to claimant's counsel. Regardless, the administrative law judge chose to rely predominantly upon the opinion set forth in Mastella's earlier reports and correspondence rather than his deposition testimony in reaching her conclusions as to compensability. This decision was well within her discretion, 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).

In addition, it should be noted that at Mastella's deposition, claimant's counsel posed the following hypothetical question:

> And is it also fair to say that if [the claimant] was to testify at a formal hearing that, in spite of the reports that were shown to you, he did, in fact have wrist pain following the injury that occurred on November 17, 2014, that your opinion would be the same as set forth in your November 9, 2020 correspondence to Attorney Lascelle?

Id., 32.

Mastella replied:

> With that testimony, it would certainly push me back that direction. Recall is bad enough that we try to rely mostly on the records. That said, the records, as presented, are fairly cursory with some repetition, which is one of the faults of records, that they're not specific. However, having a patient see someone on the day of injury and subsequently over the course of several months regularly and have no complaints related to wrist pain at that time would be fairly strong, in my opinion, as to the patient

> did not present with wrist pain at that time and related it himself to the accident, or we would have mentioned it.

Id., 32-33.

In light of Mastella's somewhat ambiguous testimony, we find no merit in the respondents' assertion that "Dr. Mastella has clearly testified that the surgery was not related to the 2014 date of loss." Appellants' Brief, p. 12. Moreover, our review of the formal hearing transcript reflects that the claimant did indeed testify that he had injured his wrists in the MVA. He stated:

> I guess it was during the time I – like about I will say a week after, maybe even two weeks after the accident – and I had gotten Doctor Gross – I noticed something but it wasn't to the point where it was significant at all.
>
> As months went by, and we fought to try to get just the MRI for my finger, it was further, further discouraged to even think about trying to even mention that, because I couldn't even get attention to my finger through Comp for what initially happened.

August 4, 2022 Transcript, p. 23.

When queried by his counsel regarding the symptoms he had experienced, the claimant stated that he had felt "a little tingle" in both wrists. Id. He indicated that when he commenced treatment with Mastella in 2020, he provided him with a history of the MVA and the medical treatment he had received since the MVA. The claimant testified that although he had declined to take medication for the first surgery with Gross:

> Unfortunately, the comp carrier, Gallagher Bassett, didn't approve therapy after the first surgery, which caused me to have scar tissue, which caused my fingers to be stuck. That caused me to have to get another surgery … to try to straighten it out. When I did that, I ended up taking medication, which opened up my addiction and caused me to be pretty much absent from life, lost everything for

> that period of time, um, before I even got cleaned again and I was able to start to attend to my health issues.

Id., 25.

The claimant further testified that Mastella had informed him that he would need reconstructive surgery for bone fractures inside his wrists which appeared to have worsened over time.[9] The claimant stated:

> I know I can attribute that to what occurred there, because I worked for 11-and-a-half months after the accident before I got any kind of approval to get any attention to that particular injury, and that definitely was a lot of wear and tear. I haven't driven tractor-trailers since then.

Id., 26.

The claimant ultimately went on to have surgery to the right wrist in 2020 and the left wrist in 2021. When queried as to whether he had experienced any pain during 2017, 2018 and 2019, he replied, "[o]f course. But when you're on drugs, you don't pay attention to anything. You can lose a kidney and it doesn't even matter." Id., 27. However, he recalled that by the time he did seek treatment, the pain:

> had gotten so bad that it was difficult for me to even open up doors. To put any type of pressure on my wrists just basically, like, put my palms down to help myself sit up that was impossible. It [had] gotten to that point to where I could put … no pressure on my hands.

Id., 27-28.

On cross-examination, when respondents' counsel inquired as to whether his wrists were "normal" in 2014, the claimant stated, "I wouldn't say normal. I would just

[9] X-rays taken on February 18, 2020, demonstrated the following: "1. Chronic appearing avulsion fragment at the distal radius. 2. No acute fracture or dislocation. Joint spaces appear maintained throughout. 3. There is mild widening of the scapholunate interval bilaterally measuring 3 mm." Claimant's Exhibit C.

say we didn't [pay] any attention to it." Id., 33. When asked whether Gross had "paid attention" to his wrists, the claimant replied:

> It's not that he didn't pay attention, it had gotten to the point where they left the burden on me – him and his secretary – to communicate with the comp carrier because there was cooperative [sic] communication with getting any of the things that he requested available for us to be able to move forward.
>
> So, before – he wasn't interested in trying to touch something different if we couldn't even get attention for what we initially went out for. That was the issue. Eleven-and-a-half months no cooperation with any of the orders that he put in to be able to get me some kind of resolve.

Id., 34-35.

The claimant reiterated that he had mentioned the wrist problems to Gross, and denied respondent counsel's assertion that the reason he did not pursue medical treatment for his wrists in 2014 and 2015 was due to a lack of "significant symptomology." Id., 36.

We believe that the foregoing testimony offered by the claimant, which testimony was found credible by the administrative trial judge and upon which she retained the discretion to rely, essentially addressed the hypothetical question posted to Mastella at his deposition by claimant's counsel. It is axiomatic that "[a]ssessing the credibility of witnesses is "uniquely and exclusively the province of the trial commissioner," and such assessments are not generally subject to reversal 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).

In light of the claimant's testimony, we therefore disagree with the respondents' contention that the conclusions reached by the administrative law judge run directly counter to Mastella's opinion. Rather, we believe her conclusions reflect the totality of

his opinion, which allowed for the possibility of causation if the claimant were to testify at trial that his wrists were symptomatic during 2014 and 2015 when he was attempting to obtain medical treatment for his finger injury.

Moreover, the fact that the trier chose to rely upon an opinion which was somewhat nuanced does not lead inexorably to the conclusion that the "expert opinion [was] based on speculation and conjecture;" Appellants' Brief, p. 3; nor are we persuaded that the trier "erred in substituting her own opinions for that of the expert testimony." Id., 2. Although there is no question that certain "cherry picked" portions of Mastella's testimony could be interpreted as supportive of the respondents' position, we believe the totality of his opinion provided an adequate basis for the conclusions regarding causation drawn by the administrative law judge. "[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).

The respondents also challenge two specific factual findings reached by the trier. In the first allegedly problematic finding, the trier stated that "Dr. Mastella did not identify a need to see Dr. Gross's medical records, and he appeared to find the Claimant's history credible and did not express any doubts." Findings, ¶ 9. The respondents contend that this finding was in error because "[t]here is no evidence that Dr. Mastella did not identify a need to see Dr. Gross' medical records and that he appeared to find the Claimant's history credible and did not express any doubts." Appellants' Brief, p. 6. We agree that the record does not contain any testimony wherein Mastella either assessed the

claimant's credibility or specifically stated that he had never felt the need to review Gross' records. However, the record is also devoid of any testimony from Mastella in which he did question the claimant's credibility or express a desire to review Gross' records. As such, we believe the trier's observation merely describes the state of the evidentiary record as presented.

In a similar vein, the respondents also challenge the following finding:

> Mastella provided causation without needing to see any of the medical records related to the finger injury and based his opinion on the patient's history provided, the Claimant's work as a truck driver, and the major motor vehicle accident he was involved in. He does not find that pain in the wrists should have occurred initially, nor does he refute that the wrist pain could have developed after the second finger surgery as described by the Claimant.

Findings, ¶ 11.

Again, the trier's observations as to the methodology by which Mastella arrived at his causation opinion essentially mirror the doctor's deposition testimony, and, as such, are merely descriptive of the evidentiary record as presented. In addition, although the trier's characterization of Mastella's opinion in this finding does perhaps travel somewhat beyond the limits of the record, the observation constitutes at most harmless error as the balance of the record provided a more-than-adequate basis for her conclusions.

It should also be noted that the claimant, in describing the November 17, 2014 MVA at trial, stated that he gripped the steering wheel with such force that his "fingerprints like literally put indentations on the steering wheel …." August 4, 2022 Transcript, p. 20. After reviewing the claimant's MRI with the radiologist, Gross altered his assessment of the claimant's injury in his December 23, 2015 report to reflect a "[t]raumatic rupture of flexor sheath pulley of finger" on the claimant's right hand.

Claimant's Exhibit A. In addition, the "Assessment" portion of the July 15, 2020 report for the claimant's initial evaluation of his right wrist at Mastella's office states inter alia "[b]ilateral posttraumatic wrist arthritis/SLAC wrist," Claimant's Exhibit B, while the "Plan" portion of Mastella's follow-up reports dated April 22, 2021, and January 10, 2022, states "[p]ost-traumatic osteoarthritis, right wrist." Id.

These medical assessments provide a reasonable basis for the inference that the claimant, at some point, sustained a traumatic injury to his wrists. In Madore v. New Departure Mfg. Co., 104 Conn. 709 (1926), our Supreme Court observed that when:

> it is difficult to ascertain whether or not the disease arose out of the employment, it is necessary to rely on expert medical opinion. Unless the medical testimony by itself establishes a causal relation, or unless it establishes a causal relation when it is considered along with other evidence, the commissioner cannot conclude that the disease arose out of the employment.[10]

Id., 714.

In the present matter, consistent with Madore, the administrative law judge did rely on expert opinion establishing a causal relationship between the MVA and the injuries to his wrists. The respondents contend that the administrative law judge drew improper inferences from this evidence, a claim of error we have rejected. It should also be noted that in Garofola v. Yale & Towne Mfg. Co., 131 Conn. 572 (1945), the trial judge found a causal connection between the claimant's low back sprain and his employment as a molder despite a lack of expert opinion in the evidentiary record. The decision was subsequently reversed by our Appellate Court; in its review of the appeal, our Supreme Court, in contrasting the case with another in which the claimant had

[10] Effective October 21, 2021, the Connecticut legislature directed that the phrase "administrative law judge" be substituted when referencing a workers' compensation commissioner. See Public Acts 2021, No. 18, § 1.

asserted a workers' compensation claim for a detached retina, held that "there was not the like necessity for such testimony as to cause and effect, for it is in accord with ordinary human experience that such a sprain might well ensue in consequence of heavy work such as that in which the plaintiff was engaged."[11] Id., 574.

The court further observed that:

> It may be said to be a matter of common knowledge that heavy manual labor that ordinarily results in no ill effect may on occasion result in a strain or sprain of the muscles or ligaments. In the case before us, the commissioner could have concluded that it was much more likely that the sprain occurred from the work in which the plaintiff was engaged, arising, as it did, during performance of the work, than that it occurred from some unknown cause.[12]

Id.

In reciting these remarks by the Garofola court, we do not mean to imply that the claimant in the present matter would have been able to successfully prosecute his claim for post-traumatic wrist arthritis on the basis that the injury constituted a "matter of common knowledge" or was "in accord with ordinary human experience …." Id. However, neither do we share the respondents' apparent incredulity that the forcefulness of the impact from the November 17, 2014 MVA which led to the claimant's traumatic finger injuries could have subsequently manifested as post-traumatic arthritis in his wrists.

Finally, the respondents have claimed as error the administrative law judge's denial of their motion to correct. Our review of the proposed corrections indicates that the respondents were merely reiterating arguments made at trial which ultimately proved

[11] See McGrath v. Crane Co., 119 Conn. 170 (1934).
[12] In Garofola v. Yale & Towne Mfg. Co., 131 Conn. 572 (1945), our Supreme Court remanded the matter as the commissioner appeared to have relied on a subordinate fact involving the claimant's employment activities at the time of injury that was not in evidence.

unavailing. As such, we find no error in the trier's decision to deny the respondents' motion to correct. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003).

There is no error; the April 12, 2023 Finding and Award of Toni M. Fatone, Administrative Law Judge acting for the First District, is accordingly affirmed.

Administrative Law Judges Soline M. Oslena and Peter C. Mlynarczyk concur in this Opinion.