CASE NO. 6504 CRB-3-23-5 CLAIM NO. 300124154	:	COMPENSATION REVIEW BOARD
BRIANNE F. WRATCHFORD CLAIMANT-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
v.	:	MAY 22, 2024
STOP & SHOP SUPERMARKET COMPANIES, L.L.C./AHOLD USA EMPLOYER		
and		
CHUBB INSURANCE COMPANY INSURER		
and		
RETAIL BUSINESS SERVICES, L.L.C. THIRD-PARTY ADMINISTRATOR RESPONDENTS-APPELLEES		

APPEARANCES:

The claimant was represented by Robert F. Carter, Esq., Carter & Civitello, Woodbridge Office Park, One Bradley Road, Suite 305, Woodbridge, CT 06525.

The respondents were represented by James P. Henke, Esq., Nuzzo & Roberts, L.L.C., One Town Center, P.O. Box 747, Cheshire, CT 06410.

This Petition for Review from the May 19, 2023 Finding and Decision of Maureen E. Driscoll, Administrative Law Judge acting for the Third District, was heard February 23, 2024 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges David W. Schoolcraft and Zachary M. Delaney.[1]

[1] We note that the claimant filed a motion to submit additional evidence which this tribunal considered and ruled upon prior to the hearing of this appeal. See Ruling Re: Claimant's Motions to Present Additional Evidence issued December 8, 2023.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant has appealed from a May 19, 2023 Finding and Decision issued by Administrative Law Judge Maureen E. Driscoll who determined the claimant had not established that she was entitled to temporary total disability benefits as a result of a work injury that occurred on October 23, 2019. The administrative law judge concluded that the claimant did not present as a credible or persuasive witness. Consequently, she held that the medical evidence the claimant presented to support her claim was unreliable as it was substantially based upon the narrative the claimant presented to her treaters and examiners.

The gravamen of the claimant's appeal was that the administrative law judge reached an unreasonable decision insofar as she, the claimant, believed the medical evidence presented was uncontroverted and, therefore, the denial of benefits was inconsistent with precedent, specifically, Bode v. Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672 (2011), *cert. denied*, 302 Conn. 942 (2011). The respondents argued that this case turned on an evaluation of factual evidence which proved to be detrimental to the claimant and should not be disturbed on appeal. In recent years, we have re-examined Bode on multiple occasions after claimants have raised similar averments on appeal. See Diaz v. Dept. of Social Services, 6072 CRB-3-16-1 (December 22, 2016), *aff'd*, 184 Conn. App. 538 (2018), *cert. denied*, 330 Conn. 971 (2019) and Cassella v. O & G Industries, 6017 CRB-4-15-5 (June 27, 2018). Having reviewed the facts in this case, as well as the relevant precedent in recent years, we are satisfied that the administrative law judge evaluated all the relevant evidence presented

and had reasonable grounds to determine it was insufficient to support an award of temporary total disability benefits. We, therefore, affirm the Finding and Decision.

The administrative law judge's decision contains seventy-one findings of fact and fourteen conclusions. We will summarize the pertinent elements herein. The claimant was employed by the respondent, Stop & Shop Supermarket Companies, on October 23, 2019. The claimant alleged that on that date, she was "zapped" for five to ten seconds when she plugged in an iPad at work. Findings, ¶ 13. The fire department report did not indicate that she sustained an electrical burn. See Findings, ¶ 15. The claimant presented at an emergency room on multiple occasions following the incident, the first time being on the date of the incident, October 23, 2019. The report from that visit stated that, while the claimant complained of pain in her fingertips and right arm, she did not display unresponsiveness or present with any burns. It further noted that she was oriented as to person, place and time. See Findings, ¶ 18. In subsequent visits to the ER on October 29, 2019, November 5, 2019, and November 16, 2019, it was noted that the claimant complained of intermittent chest pain, right upper extremity weakness, right arm pain, and paresthesia. The claimant was observed to have a full range of motion and was advised to make an appointment with a neurologist. See Findings, ¶¶ 19-20.

The claimant started treating with a neurologist, Srinath Kadimi, on November 27, 2019. He reported the claimant was able to move her shoulder and elbow but not her right hand, and guarded her movements saying she had pain. He noted that when the claimant was distracted, she was able to move her right hand. He also opined the claimant did not give complete effort, and doubted she had significant muscle weakness. He did opine that she was unable to work because of pain and subjective weakness in her

right upper extremity. The claimant was examined again by Kadimi on January 28, 2020, at which time he noted her report of upper extremity pain was not in a physiological distribution of any nerve root and was without detectable motor deficit. He ordered electrodiagnostic testing with nerve conduction velocities, which showed normal nerve conductivity. Based on these findings, Kadimi opined that, from a neurological standpoint, there was no definitive evidence of a nerve injury and recommended the claimant undergo an orthopedic evaluation. See Findings, ¶¶ 26-28.

The claimant moved to her home state of Maryland and began treating with Thomas Raley, a pain management doctor.[2] She reported to Raley that her arm continued to hurt all the time and she was prescribed Percocet and physical therapy. See Findings, ¶ 30. She commenced physical therapy on July 1, 2020, but subsequent to a visit with Raley on October 30, 2020, appeared to have stopped this treatment modality. In 2022, the claimant began treating with another pain management specialist, William S. Raoofi, and described what he reported as constant allodynia, numbness and weakness. After a September 23, 2022 visit, Raoofi opined the claimant had upper extremity pain most likely secondary to Complex Regional Pain Syndrome, Type 1. Raoofi suggested a trial of a spinal cord stimulator for the claimant, but this trial proved unsuccessful. See Findings, ¶¶ 34-35. The administrative law judge noted that both Raley and Raoofi had taken a history from the claimant as to the October 23, 2019 injury and her subsequent symptoms, but neither offered an opinion as to whether that incident was a substantial factor in her condition or need for treatment.

[2] The claimant also began treating in Maryland with a primary care physician, Elizabeth Hamilton, M.D., who reported the claimant was applying for Social Security disability due to mental illness. The claimant was awarded SSI disability. See Findings, ¶ 17; n.3.

The respondents' expert witness, Robert Berland, a neurologist, examined the claimant on June 22, 2022. Berland noted in his report that the claimant stated that she was unable to write due to pain, tried not to use her right upper extremity, had difficulty using her hand to eat, and was not capable of typing, communicating or driving. Berland noted that the MRIs done of the claimant's neck and right upper extremity, as well as an electromyography conducted on January 28, 2020, were normal. He also noted that the claimant did not display any of the typical findings associated with complex regional pain syndrome (CRPS) such as skin changes, color changes, swelling or temperature change. Berland's review of the claimant's past medical history noted she was obese, had mental health issues and post-traumatic stress disorder since 2015, and had sustained a prior ankle fracture in 2016, along with various sprains of the wrists and left ankle. He further noted the claimant kept her arm in a sling, thereby making it difficult to evaluate her arm's strength as she reported pain with any movement. Berland described the claimant's symptoms as allodynia, hyperalgesia and hyperpathia. He determined that the claimant had reached maximum medical improvement and recommended no further treatment. He concluded the claimant had an impairment to her arm and was not capable of gainful employment. See Findings, ¶¶ 39-46.

The administrative law judge noted the claimant's testimony at the formal hearing. At that hearing, the claimant testified to spending long hours during the day with her arm propped up while using a computer. See December 5, 2022 Transcript, pp. 26-27; see also Findings, ¶ 48. She testified to watching videos, using a speech to text program to write, and playing video games. She testified she used her right hand to play video games and that she spent one to two hours a day on the social media site

Reddit.com, posting entries under the handle "Angry Audra." Id., pp. 34-36; see also Findings, ¶¶ 51-52. She said she typed on Reddit using her left hand. The claimant further testified to playing video games such as Mass Effect Trilogy and Dragon Age online for hours. See id., pp. 34-35; see also Findings, ¶¶ 54-55.

The claimant's authorship of an online book "Something to Call My Own" was discussed at the formal hearing. The book was, at the time of the hearing, 269 pages long and the claimant said she was adding new chapters to her book monthly. See Respondents' Exhibit 7; see also id., p. 36; and see also Findings, ¶ 58. She said she began working on the project about a year before the formal hearing and she wrote it using one hand or through speech to text. December 5, 2022 Transcript, p. 37; see also Findings, ¶¶ 60, 62. The claimant described her work on this publication as sporadic and testified that she could go long periods of time without working on it, and then work eight hours in a day on it. See id., p. 38; see also Findings, ¶¶ 67-68. She said she needed to spend hours online researching topics for her book. See id., p. 37; see also Findings, ¶ 69. The claimant also testified that while attending college in Connecticut, she earned money from online activities. See id., p. 39; see also Findings, ¶ 70.

Based on this record, the administrative law judge determined that the claimant was not credible or persuasive, that she was a poor historian, and that she exaggerated her disabilities to her medical providers. See Conclusions, ¶¶ C-D. Since the administrative law judge did not find the claimant credible, she concluded that any medical opinions based on a history that the claimant provided to her treaters or examiners were not persuasive. See Conclusion, ¶ J. Consequently, she did not find Kamini's opinion regarding the claimant's disability to be credible or persuasive. She similarly determined

that Berland's opinion as to the claimant's employability was not credible or persuasive. See Conclusions, ¶¶ H-I. The administrative law judge did find Kadimi's objective findings regarding the claimant's condition to be credible and persuasive, specifically his finding that the claimant could move her right hand when distracted and his finding that no nerve injury was present. See Conclusions, ¶¶ E-F. Therefore, she did not find the claimant established a need for further medical treatment for her right hand and she found there was insufficient evidence that the claimant was temporarily totally disabled.

As a result, the administrative law judge, while noting the October 23, 2019 injury was accepted by the respondents, dismissed the claim for total disability benefits. The claimant filed a motion to correct that sought a wholesale replacement of the entire finding and a determination that the evidence presented supported her claim for relief. This motion was denied in its entirety. The claimant then filed two motions to submit additional evidence, which this tribunal denied, see Ruling re: Claimant's Motions to Present Additional Evidence dated December 8, 2023. She also filed a timely appeal in which she asserted that the administrative law judge erred in not crediting the expert witnesses who opined that the 2019 incident at Stop & Shop was a significant factor in her current condition and that she lacked a work capacity. The respondents argued that this case turned on an assessment of the facts presented and should not be disturbed by an appellate panel. After reviewing the record, we find the respondents' position herein better reasoned.

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).

Counsel for the claimant argued that if documentary medical evidence was uncontroverted and supported the claim, it was an abuse of discretion for the administrative law judge not to find it reliable and award benefits. He specifically stated, "**[t]hus *no* medical evidence supports the judge's finding that the claimant does not suffer from severe debilitating symptoms as a result of her electrocution injury on October 23, 2019.**" (Emphasis in original.) Claimant's Brief, p. 7. We do not believe this accurately describes the evidence on the record upon which the administrative law judge relied. We also believe counsel's assertion that "[t]he judge impermissibly substituted her own lay medical opinions for the medical evidence in this case," id., p. 8, is incorrect and does not accurately describe the law governing cases such as this one. The administrative law judge's decision clearly cited observations by the claimant's treaters that could cause a reasonable fact finder to conclude the 2019 incident herein was not a significant factor in her current condition. Having evaluated the evidence in this manner, we do not believe Bode, supra, or its progeny of cases support the proposition that the administrative law judge committed legal error.

The administrative law judge cited the findings of Kadimi at length in her conclusions as grounds to question a link between the compensable injury and the claimant's asserted lack of a work capacity. It is black-letter law that "our appellate courts have restated the need for claimants seeking an award under Chapter 568 to present reliable, nonspeculative evidence and to carry their burden of proof that there is a clear nexus of proximate cause between employment and injury." Larocque v. Electric Boat Corporation, 5942 CRB-2-14-6 (July 2, 2015). Various observations by Kadimi could cause a reasonable fact finder to question whether a nexus between the compensable injury at Stop & Shop and the claimant's condition existed. He generally noted the claimant's condition manifested itself via subjective complaints that could not be corroborated with objective testing.[3] See Exhibit D, January 28, 2020 office note cited in Findings, ¶¶ 27-29. Kadimi's notes also documented that the claimant appeared to have a range of motion with her right hand inconsistent with her stated symptoms. Consequently, there was evidence in the record supportive of Conclusions, ¶¶ E-G. The administrative law judge was within her discretion to disregard any opinion based solely upon a subjective narrative and clearly could rely on those observations and opinion of Kadimi she found persuasive and reliable. See Lopez v. Lowe's Home Improvement Center, 4922 CRB-6-05-3 (March 29, 2006).

We have also reviewed Berland's report and conducted a similar analysis. The administrative law judge found that his conclusion as to the claimant's disability was primarily based upon her narrative as he did not find objective indicia of nerve damage or

[3] We note that this scenario is similar to a prior case where we affirmed a denial of temporary total disability benefits, see Shelesky v. Community Systems, Inc., 6263 CRB-5-18-4 (July 3, 2019), where objective testing was found by the trier of fact to be inconsistent with the claim that the claimant sustained a debilitating concussion.

CRPS. See Exhibit A; see also Findings, ¶¶ 40-41. It has been long standing precedent that when a medical opinion is based upon a patient's narrative that the trier of facts deems unreliable, any opinion in reliance upon this opinion may also be deemed unreliable. See Abbotts v. Pace Motor Lines, Inc., 4974 CRB-4-05-7 (July 28, 2006), *aff'd*, 106 Conn. App. 436 (2008), *cert. denied*, 287 Conn. 910 (2008). The administrative law judge noted that Berland's report discussed issues with symptom magnification. As the claimant testified in person at a formal hearing, the administrative law judge had an opportunity to evaluate her candor and demeanor, and concluded that the claimant's testimony was not credible or persuasive and that she was not an accurate historian. See Conclusion, ¶ C. Thus, consistent with Abbotts, supra, the administrative law judge determined "the medical opinions in evidence are not persuasive to the issues before me to the extent they are based upon the history secured from the claimant." Conclusion, ¶ J.

It is well-settled that when a trier of fact observes the testimony of a witness and draws inferences therefrom, the trier's assessment of the value of such testimony is virtually inviolate on appeal. See Burton, supra, 40; see also Baron v. Genlyte Thomas Group, LLC, 132 Conn. App. 794, 804, *cert. denied*, 303 Conn. 939 (2012), *citing* Samaoya v. Gallagher, 102 Conn. App. 670, 673-74 (2007); Barbee v. Sysco Food Services, 5892 CRB-8-13-11 (October 16, 2014), *aff'd*, 161 Conn. App. 902 (2015) (per curiam). We, therefore, find no error from the administrative law judge's conclusion that medical opinions based on the claimant's narrative were too unreliable to support a claim for benefits. The claimant's argument that the respondents failed to present competent medical evidence contrary to the opinions favoring the claimant is without merit. If an

administrative law judge does not find the claimant's evidence credible, the claim must be dismissed. See Toroveci v. Globe Tool & Metal Stamping Co., Inc., 5253 CRB-6-07-7 (July 22, 2008) and Warren v. Federal Express Corp., 4163 CRB-2-99-12 (February 27, 2001).

Claimant's counsel also argued that the administrative law judge impermissibly placed excessive weight on the claimant's extensive avocational interest in publishing and video gaming to conclude she was not totally disabled. We disagree as it has been long standing precedent that, pursuant to Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010), "it is proper to consider medical evidence *along with all other evidence* to determine whether an injury is related to the employment." (Emphasis in the original). Id., 595, *citing* Murchison v. Skinner Precision Industries, Inc., 162 Conn. 142, 151 (1972). See also the "holistic standard" for determining disability enunciated in O'Connor v. Med-Center Home Health Care Inc., 140 Conn. App. 542, 554 (2013). Extensive time-consuming activity in mentally demanding hobbies can be considered as a factor in evaluating medical opinions as to disability in the same manner as a claimant's engagement in strenuous athletic activities or household repairs.[4] In addition, we have long held that a trier of fact may consider a claimant's demeanor in evaluating whether he or she is totally disabled. See Leandres v. Mark IV Construction, Inc., 5159 CRB-4-06-11 (October 22, 2007).

[4] We note that we have extensive precedent before our tribunal where a claimant's non remunerative activities were deemed sufficiently demanding for a trier of fact to determine he or she possessed a work capacity. See Ayna v. Graebel Movers, Inc., 5452 CRB 4-09-03 (July 21, 2010), *aff'd*, 133 Conn. App. 65 (2012), *cert. denied*, 304 Conn. 905 (2012); Ferrua v. Napoli Foods, Inc., 6137 CRB-5-16-9 (July 27, 2017); Ritch v. Connecticut Materials Testing Labs, 5766 CRB-7-12-7 (October 24, 2013); Savageau v. Stop & Shop Companies, Inc., 5808 CRB-3-12-12 (November 7, 2013); Anderson v. Target Capital Partners, 5615 CRB-6-10-12 (January 3, 2012); and Smith v. Federal Express Corp., 5405 CRB-7-08-12 (December 1, 2009). We find no distinction between the evidence in those cases relied upon to deny total disability benefits and the record herein.

Notwithstanding this body of case law which supports the discretion of a fact finder to find medical evidence unreliable, counsel for the claimant argued that the precedent in Bode, supra, and Pietraroia v. Northeast Utilities, 254 Conn. 60 (2000), compels us to reverse the Finding and Decision and award the claimant benefits. The argument was that uncontested documentary evidence must be afforded full faith and credit before our tribunals. However, as we held in Fortin v. Southern Connecticut Gas Company, 6387 CRB-3-20-04 (March 31, 2021), "our precedent does not stand for the premise that undisputed evidence is sufficient, as a matter of law, to compel an award of benefits. See Diaz v. Dept. of Social Services, 6072 CRB-3-16-1 (December 22, 2016), *aff'd*, 184 Conn. App. 538 (2018), *cert. denied*, 330 Conn. 971 (2019)." Our review of the case law since the issuance of Bode, supra, and Pietraroia, supra, including but not limited to Diaz, supra, is unsupportive of the claimant's position.

In Diaz, the claimant argued that the trier of fact failed to credit allegedly undisputed medical evidence supporting her claim in derogation of Bode v. Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672 (2011), *cert. denied*, 302 Conn. 942 (2011). This board conducted a thorough review of Bode and explained why, when a trier of fact fully reviews all the evidence on the record in rendering a decision, that they may choose not to rely upon even allegedly uncontroverted evidence.

The Diaz decision involved a comprehensive review of prior cases where claimants had asserted they presented uncontroverted medical evidence and that, consistent with the Bode precedent, it was reversible error for their claim to be denied. In rendering that decision, we examined Pupuri v. Benny's Home Service, LLC, 5697 CRB-2-11-11 (November 5, 2012), where the claimant's narrative was not found

persuasive, but he believed his medical evidence was so compelling that he should have been awarded benefits. We found Bode, supra, factually distinguishable as,

> [t]he Appellate Court also determined that a trier of fact was not entitled to the same level of deference in evaluating the credibility of documentary evidence as he or she would be accorded in evaluating the credibility of live witness testimony. [See Bode, 685-86.] The Appellate Court concluded the trial commissioner in Bode failed to properly credit undisputed documentary evidence and awarded the claimant temporary total disability benefits. [See Bode, 689.]

Pupuri v. Benny's Home Service, LLC, 5697 CRB-2-11-11 (November 5, 2012), *citing* Bode v. Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672 (2011).

Since the claimant in Pupuri testified and his demeanor could be evaluated, we concluded the trier of fact's determination should stand in that case.

This tribunal's decision in Diaz, supra, also evaluated Olwell v. State/Dept. of Developmental Services, 5731 CRB-7-12-2 (February 14, 2013). In Olwell, the claimant raised a similar argument that her medical evidence should have been credited and that her disability should have been deemed to be the sequalae of a compensable injury. We reviewed that case and applied the "holistic standard" for evaluating disability delineated by the Appellate Court in O'Connor, supra. "As the trial commissioner in Bode focused solely on the claimant's lack of a medical opinion of total disability, and failed to consider his vocational evidence supportive of a finding of no work capacity, the decision of the trial commissioner was overturned by the Appellate Court. Bode, supra, 687. Olwell, supra." Diaz v. State/Dept. of Social Services, 6072 CRB-3-16-1 (December 22, 2016).

Our Appellate Court affirmed our decision in Diaz, reiterating the obligation that appellate panels have to affirm the factual findings of a trier of fact on appeal if those findings are based on their evaluation of the evidence presented.

> It is well within the authority of the commissioner to choose which evidence he found persuasive and which evidence he found unpersuasive, and adjudicate the claim accordingly. As the fact finder, the commissioner may reject or accept evidence . . . . It is not the province of this court to second-guess the commissioner's factual determinations. [T]he trier of fact—the commissioner—was free to determine the weight to be afforded to [the] evidence. . . . This court, like the board, is precluded from substituting its judgment for that of the commissioner with respect to factual determinations. Jodlowski v. Stanley Works, supra, 169 Conn. App. [103,] 109 [2016].

Diaz v. Dept. of Social Services, 6072 CRB-3-16-1 (December 22, 2016), *aff'd*, 184 Conn. App. 538, 554 (2018), *cert. denied*, 330 Conn. 971 (2019).

In the present case, unlike Bode, supra, the determination of the administrative law judge turned on her evaluation of the claimant's veracity, not the veracity of documentary evidence. This case is, therefore, on all fours with Lazu v. State/Dept. of Children and Families, 6433 CRB-8-21-6 (February 18, 2022). In Lazu, the claimant asserted that the trier of fact failed to reach a reasonable conclusion based on the evidence presented at the hearing. We pointed out, however, that we have generally found distinctions between the fact pattern in Bode, supra, where the trier of fact did not evaluate documentary evidence supportive of the claimant in the text of his finding. In Lazu, supra, we found the trier of fact fully evaluated the claimant's presentation and credibility, unlike the decision overturned in Bode, supra, and therefore could discount expert opinions reliant on his narrative supportive of his claim.

> In the present case, the administrative law judge did conduct an evaluation of the claimant's supportive evidence and determined that these medical and vocational expert opinions were

> unpersuasive, based on the administrative law judge's belief that the claimant did not offer an accurate presentation to these witnesses. We note that in evaluating total disability a trier of fact is directed to conduct a "holistic determination" O'Connor, supra, and therefore, we believe the administrative law judge herein could have considered the claimant's demeanor in reaching his conclusions.

Id.

Our opinion in Lazu was consistent with our reasoning in Cassella v. O & G Industries, 6017 CRB-4-15-5 (June 27, 2018), where we affirmed a decision by a trier of fact to find the claimant's expert witnesses unpersuasive after deeming the claimant's narrative was unreliable; thus rejecting the claimant's reliance upon Bode, supra. This reasoning is equally applicable herein.

> In the present case, the trial commissioner concluded that the claimant was not a credible witness. As we pointed out in Anderson [v. Target Capital Partners, 5615 CRB-6-10-12 (January 3, 2012] supra, when a claimant is deemed not credible, any medical evidence derivative of the claimant's narrative may be discounted by the trial commissioner.

(Footnote 7 omitted.) Id.

> A claimant's credibility also bears heavily on whether medical testimony reliant on his or her narrative is to be given weight by the trial commissioner. When a trial commissioner does not find the claimant credible, the commissioner is entitled to conclude any medical evidence which relied on the claimant's statements was also unreliable. See Baker v. Hug Excavating, Inc., 5443 CRB-7-09-3 (March 5, 2010); Do v. Danaher Tool Group, 5029 CRB-6-05-12 (November 28, 2006), and Abbotts v. Pace Motor Lines, Inc., 4974 CRB-4-05-7 (July 28, 2006), *aff'd*, 106 Conn. App. 436 (2008), *cert. denied*, 287 Conn. 910 (2008). We may reasonably infer this would provide justification for the trial commissioner discounting the opinions of the claimant's treating physicians.

Id., *quoting* Anderson v. Target Capital Partners, 5615 CRB-6-10-12 (January 3, 2012).

In light of this substantial contemporary precedent interpreting Bode, supra, we find the claimant's reliance upon Pietraroia, supra, misplaced as that case is factually distinguishable from the issues at hand. Pietraroia involved a dispute as to the manner in which a formal hearing could be conducted for an expatriate claimant, not a dispute as to causation or disability. For that reason, we declined to rely upon this precedent in Casella, supra, see footnote 5. We further note our Appellate Court specifically determined in considering the Pietraroia precedent that when a finder of fact is presented with live testimony in our forum, he or she may choose to place greater weight upon that evidence than upon documentary evidence. See Biasetti v. Stamford 123 Conn. App. 372, 381 (2010).

> The plaintiff's reliance on *Pietraroia* is unpersuasive. In the present case, the commissioner's findings were based on the live testimony of the plaintiff and the plaintiff's expert Albert, as well as the deposition testimony of Rubinstein. Thus, we are not faced with a situation analogous to that addressed by our Supreme Court in *Pietraroia*, in which the commissioner's determinations were based solely on documentary evidence. The commissioner's credibility determinations therefore are entitled to deference, as the commissioner is "the sole arbiter of the weight of the evidence and the credibility of witnesses...."

(Internal quotation marks omitted.) Id., n.5, *quoting* Mele v. Hartford, 118 Conn. App. 104, 107 (2009).

It is axiomatic that expert opinions are only as good as the information on which they are based. When the expert opinion is founded on factual allegations by the claimant it is not enough that the expert believe those allegations, it is the claimant's burden to convince the trier of fact that the allegations are true. To hold otherwise would be to take away the judge's fact-finding responsibility and farm it out to the expert. The claimant has the burden of proving his/her case. If a respondent believes the factual

assumptions on which any expert opinion relies are incorrect, it is under no obligation to secure an opposing opinion which, itself, would necessarily be based on factual assumptions not yet determined. Rather, a respondent is entitled to rely on the fact-finding process to prove or disprove the existence of the underlying facts needed to support the decision.

Finally, we address the claimant's motion to correct. Upon review we conclude it was essentially an attempt to replace the conclusions reached by the administrative law judge with the claimant's view of the evidence. The administrative law judge was under no obligation to adopt the claimant's position. See 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). It has long been our precedent that if an administrative law judge was not persuaded by the claimant's evidence, we as an appellate tribunal may not intercede on appeal. See Wierzbicki v. Federal Reserve Bank of Boston, 4147 CRB-1-99-11 (December 19, 2000), *appeal dismissed*, A.C. 21533 (June 14, 2001).

Finding no errors of law and finding substantial evidence in the record supportive of the decision, we herein affirm the May 19, 2023 Finding and Decision of Maureen E. Driscoll, Administrative Law Judge acting for the Third District.

Administrative Law Judges David W. Schoolcraft and Zachary M. Delaney concur in this Opinion.