CASE NO. 6509 CRB-5-23-7 : COMPENSATION REVIEW BOARD
CASE NO. 6522 CRB-5-23-12
CLAIM NO. 500176975

AMIE MCKAY : WORKERS' COMPENSATION COMMISSION
CLAIMANT-APPELLEE

v. : AUGUST 9, 2024

DEEPDALE EMPLOYMENT, L.L.C.
EMPLOYER

and

ACCIDENT FUND INSURANCE COMPANY OF AMERICA
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Michael R. Kerin, Esq., Kerin Law Offices, P.C., 120 Broad Street, Milford, CT 06460.

The respondents were represented by Matthew S. Necci, Esq., and Paul Shearer, Esq., Montstream Law Group, L.L.P., 175 Capital Boulevard, Suite 204, Rocky Hill, CT 06067.

These Petitions for Review from the July 12, 2023 and December 19, 2023 Finding and Award of Scott A. Barton, Administrative Law Judge acting for the Fifth District, was heard March 22, 2024 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges David W. Schoolcraft and Maureen E. Driscoll.[1]

[1] We note that five motions for extension of time, one of which required a continuance, were granted during the pendency of this appeal.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The instant appeals arose from injuries the claimant sustained on the evening of June 25, 2021, while she was a live-in estate manager at Rock Cobble Farm in South Kent. On that evening at approximately 9:51 p.m., the claimant received a text message regarding an internet problem on the property. Since she was unable to resolve the problem remotely, she prepared to leave her home with her son to address the issue directly. Just before departing, she was informed that the problem was resolved. Moments after receiving that call, she sustained physical injuries falling into a stairwell. The claimant sought compensation for her injuries claiming they were sustained in the course of her employment. After a formal hearing, the administrative law judge agreed with the claimant's position and awarded her benefits in a Finding and Award dated July 12, 2023. The respondents appealed and argued that at the time she was injured, the claimant was no longer acting as their employee. We find that this case hinged on the administrative law judge's assessment of the facts. Since the administrative law judge concluded that the claimant was called out to address an emergency at work, and this injury would not have happened had that not occurred, we affirm the Finding and Award.

Subsequent to the determination of compensability, the administrative law judge issued an award on December 19, 2023 related to the scars the claimant sustained as the result of the June 25, 2021 incident. The respondents also appealed this award, arguing it was untimely pursuant to General Statutes § 31-308 (c).[2] Upon review, we conclude the

[2] General Statutes § 31-308 (c) states: "In addition to compensation for total or partial incapacity or for a specific loss of a member or use of the function of a member of the body, the administrative law judge, not earlier than one year from the date of the injury and not later than two years from the date of the injury or

administrative law judge performed his review of the claimant's scar within the statutory time period permitted to award benefits and that the respondents consented to having the award held in abeyance pending the resolution of the dispute regarding compensability of the incident. Therefore, we also affirm the scar award to the claimant.

The administrative law judge reached the following findings of fact in this matter. He found the claimant had been hired by the respondent, Deepdale Employment, to manage Rock Cobble Farm, an expansive estate which included a functioning farm, a farmer's market and multiple residential dwellings. The claimant had experience in managing properties for high-net-worth individuals prior to working for Deepdale. The claimant had a written employment agreement with Deepdale which had been signed by her supervisor and the respondents' Chief Administrative Officer, Leigh Garofalow. The agreement had set hours, and the claimant had an office on the estate, but also included that she was to be willing "to arrive early or stay late as needed." Findings, ¶ 5. The

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the surgery date of the injury, may award compensation equal to seventy-five per cent of the average weekly earnings of the injured employee, calculated pursuant to section 31-310, after such earnings have been reduced by any deduction for federal or state taxes, or both, and for the federal Insurance Contributions Act made from such employee's total wages received during the period of calculation of the employee's average weekly wage pursuant to said section 31-310, but not more than one hundred per cent, raised to the next even dollar, of the average weekly earnings of production and related workers in manufacturing in the state, as determined in accordance with the provisions of section 31-309, for up to two hundred eight weeks, for any permanent significant disfigurement of, or permanent significant scar on, (A) the face, head or neck, or (B) on any other area of the body which handicaps the employee in obtaining or continuing to work. The administrative law judge may not award compensation under this subsection when the disfigurement was caused solely by the loss of or the loss of use of a member of the body for which compensation is provided under subsection (b) of this section or for any scar resulting from an inguinal hernia operation or any spinal surgery. In making any award under this subsection, the administrative law judge shall consider (1) the location of the scar or disfigurement, (2) the size of the scar or disfigurement, (3) the visibility of the scar or disfigurement due to hyperpigmentation or depigmentation, whether hypertrophic or keloidal, (4) whether the scar or disfigurement causes a tonal or textural skin change, causes loss of symmetry of the affected area or results in noticeable bumps or depressions in the affected area, and (5) other relevant factors. Notwithstanding the provisions of this subsection, no compensation shall be awarded for any scar or disfigurement which is not located on (A) the face, head or neck, or (B) any other area of the body which handicaps the employee in obtaining or continuing to work. In addition to the requirements contained in section 31-297, the administrative law judge shall provide written notice to the employer prior to any hearing held by the administrative law judge to consider an award for any scar or disfigurement under this subsection."

claimant had an employer-provided cellphone and had, after the Covid 19 pandemic started, been doing an increased amount of her work from home. The claimant was responsible for managing technology on the estate, including computers and Wi-Fi connections and she had to troubleshoot these systems frequently while employed by Deepdale. She testified that if she became aware of an issue, it was her practice to travel to the location on the property which was experiencing the problem to ascertain if it could be fixed, or if she needed to contact an outside service. Maintaining proper Wi-Fi service at the property was a priority for her, whether it was for a resident of the estate or if an employee needed it, as the residences there were "virtually working spaces" and the property, due to its remote location, had poor cell service reception. Findings, ¶¶ 10-11.

The administrative law judge also made findings as to the claimant's living arrangements. In June 2021, the claimant was living with her three-year-old son in a house on the estate provided to her by her employer. As the pandemic had made finding childcare difficult, the claimant testified that there were many instances when she had to bring her son with her to attend to an issue on the estate, especially when she needed to respond to an emergent issue outside of normal work hours. She also testified that her employer and supervisors, including Garofalow, were aware that she brought her son with her on these emergency calls. See Findings, ¶ 47; see also January 12, 2023 Transcript, p. 85.

On June 25, 2021, the claimant was focused on assisting Deepdale's finance director, Lisa Boatman, and a companion who arrived at the estate from Texas, as the Farmer's Market was to open the next day. The claimant made sure their apartments were properly stocked with food and the Wi-Fi was operating. The claimant and her son

met Boatman at about 6 p.m. at the apartment where Boatman was staying. Once Boatman was settled in, the claimant drove back to her residence with her son in an employer owned vehicle. She returned home at approximately 6:30 p.m., made dinner for herself and her son, and decided to watch a movie on TV. At 9:51 p.m., the claimant received a text from Garofalow, who was at her home in New Jersey. See Findings, ¶ 18.

The events which transpired over the fourteen minutes after receiving Garofalow's text are gravamen of this appeal of the finding and award. The claimant was informed that Boatman had a Wi-Fi password issue at her apartment, and the claimant was asked to troubleshoot the problem. Initially, this occurred via a phone call from the claimant to Boatman. The claimant provided Boatman the estate's password. However, this did not resolve the problem. As a result, the claimant advised Garofalow and Boatman that she would drive over to Boatman's apartment and fix the malfunction. The claimant testified that, if the internet issue did not need to be fixed immediately, she would not have received a text message at a late hour seeking to have the matter resolved. The claimant told her son they had to go out to "help Lisa" and he needed to put his shoes on quickly so they could leave the house and drive the one-half mile to her apartment. Findings, ¶ 21. While bringing a plate to the kitchen prior to leaving, the claimant received another text from Garofalow advising that the Wi-Fi problem had been resolved and she no longer needed to travel there to fix it. The claimant's son, however, had already left through the front door and the claimant called out to him. At that point, the claimant testified she heard her son scream, and she left the house to ascertain what had occurred, fearing he was injured. It was very dark, and the claimant tripped over a stone, fell into a stairwell and sustained serious injuries. The claimant testified she had walked

about twenty feet before she fell and was injured, and this occurred over a period of seconds. She also testified that this side of her house where she fell was completely dark. See Findings, ¶¶ 24, 40; see also October 14, 2022 Transcript, p. 85.

Following this incident, the claimant crawled out of the stairwell and located her son, whom she believed also tripped on a stair. Her son was not seriously injured but the claimant had suffered severe facial lacerations and had lost a tooth. She did not know if she lost consciousness. The claimant called 911 at 9:59 p.m., approximately three to four minutes after the text exchange with Garofalow wherein claimant was advised that the trip to Boatman's apartment was no longer necessary. At 10:01 p.m., the claimant texted Garofalow to advise she had been injured. Boatman arrived at the claimant's home to attend to her son and the claimant was treated by the local ambulance service. She was then transported the next morning to Hartford Hospital for extensive dental and trauma treatment. See Findings, ¶¶ 35-37.

Garofalow testified at the formal proceeding. She testified that she was the claimant's supervisor and had extended the initial offer of employment to the claimant. She further testified that the claimant was subject to working before or after scheduled working hours as part of her employment and was responsible for maintaining all the technology on the estate, including the Wi-Fi. She also testified that the claimant was provided housing on the estate as part of her compensation package, which housing arrangement provided a benefit to the employer as it allowed the claimant to promptly respond to emergency calls. Additionally, Garofalow testified she knew the claimant lived with her son and that he would need to accompany her to after-hour emergency calls. As for the events of June 25, 2021, Garofalow's testimony corroborated that she

contacted the claimant to fix the Wi-Fi at Boatman's apartment and further noted that this was essential as Boatman needed Wi-Fi access in order to process Deepdale's payroll. She understood that the claimant needed to leave her house and travel with her son to Boatman's apartment to address this problem. Garofalow also testified that when Boatman was able to access the password, she texted the claimant informing her that she did not need to travel to Boatman's apartment as the problem had been fixed. Finally, Garofalow testified that it was her belief that when she texted the claimant the Wi-Fi issue had been resolved, the claimant's work responsibilities had concluded. See Findings, ¶ 51 *citing* January 12, 2023 Transcript, p. 105.

The administrative law judge reached twenty-seven conclusions following the formal hearing. The first fifteen conclusions essentially restate the testimony on the record presented by the claimant and Garofalow. In the balance of his conclusions, the administrative law judge made the following findings.

> P. I find the testimony of the Claimant as fully credible and persuasive regarding the issues presented. I find that her recitation of the events as they unfolded on June 25, 2021, are fully credible and reliable. I find that it was reasonable for Ms. McKay to respond to her son's scream in a quick and decisive manner, leading to the unfortunate accident that caused grievous injuries to her face, mouth, and teeth.
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> Q. I find that on the night of June 25, 2021, the Claimant was engaged to perform her duties on behalf of Deepdale by Leigh Garofalow, her immediate supervisor. I find that the terms of her employment require that Ms. McKay is available to resolve emergent issues on an on-call basis. I find that the Claimant was provided a vehicle as a condition of her employment, in order for her to perform her duties during and outside her normal work hours.
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> R. I find that, on the night of June 25, 2021, the Claimant was engaged to perform her duties on behalf of Deepdale by her supervisor, Ms. Garofalow, in order to resolve the

> important and urgent issue of providing access to the Estate's Wi-Fi system to Ms. Boatman in order to allow her to perform her employment responsibilities as Deepdale's Chief Financial Officer. I find that during the texting session that night, the Claimant was fully engaged in the performance of her duties on behalf of the Respondent/Employer.

Conclusions, ¶¶ P-R.

The administrative law judge concluded that when the claimant was preparing to leave her residence to travel to Boatman's apartment, she was engaged in a special errand at the direction of Garofalow for the joint benefit of Deepdale and the claimant. He further found that, although the claimant knew at the time of the accident that the Wi-Fi problem had been resolved, she was still participating in the special errand at the direction of her employer. See Conclusions, ¶¶ S-T. He further concluded that the employer was aware that the claimant's son would need to accompany her to this emergency call and it was reasonable for the claimant to run to her son after hearing him scream, as

> at this time, the special errand that she had embarked upon at the direction of her employer had not ended. This is due to the fact that the events that occurred just prior to her serious fall-down injury were already set in motion by the request from Ms. Garofalow to resolve the Wi-Fi problem.

Conclusion, ¶ U.

As a result, based on the language in Dombach v. Olkon Corporation, 163 Conn. 216 (1972), the administrative law judge held that "the Claimant was still engaged in a necessary preliminary act to enable her to complete the assigned task of driving to Ms. Boatman's apartment to resolve the Wi-Fi issue at the direction of her employer." Conclusion, ¶ U.

The administrative law judge concluded that the claimant's son "would not have been outside of the home that night but for the undisputed fact that the Claimant was performing her duties on behalf of, and at the direction of, Deepdale in attempting to resolve the Wi-Fi issue." Conclusion, ¶ V. He further determined that the claimant had implied consent from the respondent-employer to travel to Boatman's apartment and that "traveling to the apartment to resolve the Wi-Fi problem was for the joint benefit of the Claimant and Deepdale." Conclusion, ¶ W. The administrative law judge also determined that when the claimant was injured "she was still engaged in the special errand that was assigned to her by Garofalow, her immediate supervisor" and while finding her son was a minor temporary deviation for the claimant from the business purpose, the errand had already been set in motion and "but for the special errand, her son would not have been outside requiring the Claimant to run after him resulting in her unfortunate and serious injuries." Conclusion, ¶ X. He concluded that,

> the special errand did not end at the moment the Claimant received the text message from Ms. Garofalow that the Wi-Fi issue was resolved due to the fact that the Claimant needed to respond to an emergent issue with her son because he was outside the home directly due to the special errand.

Conclusion, ¶ Y.

Therefore, as the administrative law judge determined the claimant's "accident took place within the period of employment, at a place she reasonably may have been, and while she was reasonably fulfilling her employment duties or doing something incidental to her work duties" and "the Claimant sustained her burden of proof that she suffered injuries that arose out of and in the course of her employment with the

Respondent/Employer on June 25, 2021," he awarded the claimant benefits under chapter 568. Conclusions, ¶¶ Z-AA.

The respondents filed both a motion to correct and a motion for articulation in this matter. The motion to correct included twenty separate proposed corrections which sought to correct the findings they viewed as factual discrepancies in the record. Those proposed corrections also sought to replace the conclusions as to compensability with conclusions that found the claimant was not engaged in a "special errand" at the time of the injury and, therefore, the injury was not compensable. The administrative law judge denied nineteen of the twenty proposed corrections and the single correction granted had no material impact on the Finding. The motion for articulation sought to have the administrative law judge clarify his rationale for finding the claimant was engaged in a special errand at the time of injury, in part by proffering hypothetical situations outside the record herein. The administrative law judge denied this motion in its entirety. The respondents appealed the finding as to compensability, as well as the subsequent scar award to the claimant. We will address the merits of that dispute in greater detail later in this opinion, as the issue as to whether the claimant sustained a compensable injury is a threshold question that needs to be resolved prior to reviewing any award for scarring to the claimant.

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 & Home Care, Inc., 248 Conn. 379, 384 (1999) and Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988).

In considering whether this case was properly deemed compensable by the administrative law judge it is important to note that, notwithstanding the locus of the claimant's injury outside her dwelling, this is **not** a typical "work from home" case. We find that the scenario herein is clearly distinguishable from our precedent in those cases such as Smith v. Sedgewick Claims Management Services, 6406 CRB-1-20-12 (August 19, 2021); Biggs v. Combined Insurance Company of America, 6247 CRB-7-18-2 (April 12, 2019); or Matteau v. Mohegan Sun Casino, 4998 CRB-2-05-9 (August 31, 2006). In all those cases, our tribunal reviewed the facts and concluded that the claimant's injuries had occurred outside their period of employment and, therefore, the injury was not compensable. In Smith, supra, the administrative law judge found the claimant had clocked out from a work at home job prior to the time when she testified she had sustained her injury. In Biggs, supra, the claimant was injured in her driveway prior to traveling to a work meeting, which the administrative law judge concluded was a preparatory act prior to commencing her workday and, therefore, not compensable. While the trier of fact in Matteau, supra, found the claimant's injury compensable, we concluded those facts did not support compensability under our law as her injury was also sustained during a preparatory act (commuting) prior to commencing her workday and "the requirement that 'special employment circumstances [exist] that make it necessary

rather than personally convenient to work at home' was not satisfied." Matteau v. Mohegan Sun Casino, 4998 CRB-2-05-9 (August 31, 2006), *citing* Labadie v. Norwalk Rehabilitation Services, Inc., 4529 CRB-7-02-5 (June 3, 2003), *rev'd*, 84 Conn. App. 220 (2004), *cert. granted*, 271 Conn. 925 (2004), *aff'd*, 274 Conn. 219 (2005).

In this case, unlike our long-standing precedent governing work from home situations, the administrative law judge determined that the claimant was engaged in a "special errand" on behalf of her employer and sustained injuries before that errand had concluded. In doing so, he cited a number of cases governing those situations. See Kish v. Nursing & Home Care, Inc., 248 Conn. 379, 384 (1999); Mazzone v. Connecticut Transit Co., 240 Conn. 788 (1997); Spatafore v. Yale University, 239 Conn. 408 (1996); Dombach v. Olkon Corporation, 163 Conn. 216 (1972); and Loffredo v. Wal-Mart Stores, 4369 CRB-5-01-2 (February 28, 2002), *appeal withdrawn*, A.C. 22869 (October 3, 2002). In reviewing this precedent, we find support for the administrative law judge's opinion under these facts.

In Conclusion, ¶ AA, the administrative law judge cited Loffredo, supra, to support his conclusion that the claimant was injured while performing a necessary activity for the respondent. In the Loffredo case, the claimant was a store manager alerted by an overnight burglar alarm at her store and woke up and began a journey to travel to the store to turn off the alarm. Immediately outside her home she fell, broke her ankle, and subsequently died from an embolism which was a sequalae of the injury. The respondents argued this was not a compensable injury since, unlike Lake v. Bridgeport, 102 Conn. 337 (1925), which deemed certain injuries on a public highway compensable, the claimant had yet to leave her driveway at the time of the accident. The Compensation

Review Board, however, determined that when the claimant is subject to emergency calls, *citing* Dombach, supra, a broader view of compensability applies.[3]

> We now turn to the crux of this case, which is whether the decedent's fall on her own property may be covered under the emergency call exception to the highway rule. Clearly, in the instant case the trier found that the decedent's injury satisfied the third exception listed by the court in Dombach, supra, specifically: "where, by the terms of his employment, the employee is subject to emergency calls." Unfortunately, we have found no cases in this state (and the parties have not cited any) which explain whether an injury on one's own property may be covered under this exception. However, this issue has been examined in Larson's treatise under the "Special Errand Rule." See 1 Larson's Workers' Compensation Law (2000), §§ 14.05, p. 14-15.
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> The treatise explains: The special errand rule may be stated as follows: When an employee, having identifiable time and space limits on the employment, makes an off-premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard, or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself.

(Footnote omitted.) Loffredo v. Wal-Mart Stores, 4369 CRB-5-01-2 (February 28, 2002), *appeal withdrawn*, A.C. 22869 (October 3, 2002), *quoting* Dombach v. Olkon Corporation, 163 Conn. 216, 222 (1972).

Based on its review of the case law, this board held in the Loffredo decision that injuries that occur when the claimant is subject to emergency calls or special errands may be compensable.

The decision in Loffredo followed a line of cases in which the Connecticut courts extensively reviewed the reach of chapter 568 to cases where the claimant was

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[3] In Dombach v. Olkon Corporation, 163 Conn. 216 (1972), the Supreme Court concluded that although the claimant was injured on his way to engage in a personal errand during the course of a business trip, the accident occurred while the claimant was engaged in benefiting his employer.

The administrative law judge in the current case cited Dombach in Conclusion, ¶ U, for the proposition that the claimant was engaged in a special errand for the respondent at the time she was injured and that errand had not concluded.

undertaking some activity the respondent claimed was a personal errand at the time of their injury. The first of these cases cited by the administrative law judge was Spatafore, supra. The claimant in that case was injured returning from a union meeting and claimed that, since her employer derived a mutual benefit from this activity, it was incidental to the employment. Our Supreme Court concluded that when a claimant is injured off premises and on their own time, the activity must benefit the employer in order for the injury to be compensable, and the union meeting in question offered no mutual benefit to the employer. See Spatafore, supra, 425-26. The administrative law judge in this case, however, reached a contrary conclusion as to the claimant's activities, holding that her leaving her home at night was due to the respondent's need to have Boatman's Wi-Fi properly running, therefore providing the mutual benefit absent in Spatafore, supra. See Conclusion, ¶ S.

Spatafore, supra, was followed by the Supreme Court's decision in Mazzone, supra. In Mazzone, the claimant was also off the clock at the time of his injury, but was injured while on a parked bus in the employer's lot eating lunch. Our commission declined to find this injury compensable. See Mazzone, supra, 791. Our Supreme Court, however, found that the facts in Mazzone were governed by the three-prong test it promulgated in McNamara v. Hamden, 176 Conn. 547, 550-51 (1979). Mazzone, supra, 792-93.[4] Finding that two of the three prongs were satisfied by the claimant, the court determined the key question was whether the claimant had been injured while engaged in

[4] In conclusion, "we restate the rule to be applied in [workers'] compensation cases generally: In order to be compensable, an injury must (1) arise out of the employment; and (2) occur in the course of the employment." McNamara v. Hamden, 176 Conn. 547, 556 (1979). To occur in the course of the employment, the injury must take place "(a) within the period of the employment; (b) at a place where the employee may reasonably be; and (c) while the employee is reasonably fulfilling the duties of the employment or doing something incidental to it." Id., 550-51, *quoting* Stakonis v. United Advertising Corporation, [110 Conn. 384], 389 [(1930)].

a course of conduct the employer had acquiesced to, thus meeting the "in the course of employment" prong, Mazzone, supra, 796-97, and the case was remanded for a factual determination on that issue. In the case before us, the administrative law judge held that the claimant's activities at the time of her injury were during the period of her employment, at a place she reasonably may have been, and were either fulfilling work responsibilities or incidental to her employment.

Per the administrative law judge's Conclusions X and Z, he relied upon Kish, supra, in his determination that the claimant was still engaged in a special errand for her employer when she was injured. Specifically, in the Kish case, our Supreme Court concluded that, while the claimant lacked permission from her employer to do what she was doing at the time of her injury, the nature of her deviation was too minor and inconsequential to negate compensability. See Kish, supra, 389-90.

Our review of the testimony herein leads us to concur with the administrative law judge's analysis of the facts and his application of the law thereto. His determination that the nature of the claimant's employment subjected her to emergency calls was supported by the evidence. Furthermore, the employer knew that the claimant might need to bring her son with her on emergency calls and/or special errands and acquiesced to such actions.

As such, it was reasonable for the administrative law judge to conclude that the claimant was summoned to deal with an emergency after her normal work hours on June 25, 2021. The record also supports the conclusion that the claimant was engaged in conduct incidental to her employment at the time of her injury and that any deviation from performing work duties was too insignificant to deny compensability.

The gravamen of the respondents' arguments before this tribunal center on the fact that immediately prior to her injury, the claimant had been informed by Garofalow that her services that evening were no longer necessary. The administrative law judge held, however, that when the claimant's injury occurred the special errand had not concluded. See Conclusions, ¶¶ U-X. Whether the claimant was on or off the clock at that time is immaterial as we have held "even when an employee is 'off the clock,' if he or she is injured during a journey undertaken at the respondent's direction which benefits the respondent, that injury arises out of the employment and is compensable." Dias v. Webster Financial Corporation/Webster Bank N.A., 6153 CRB-4-16-11 (February 15, 2018), *quoting* King v. State/Department of Correction, 5339 CRB-8-08-4 (March 20, 2009). In the present case, the amount of time that elapsed between notice of the cancellation of the errand and the injury was a matter of a few minutes. We note that numerous similar incidents where an injury occurred proximate to the claimant being relieved of work obligations have been deemed compensable, especially if the claimant had not returned home before sustaining injury.

In Herman v. Sherwood Industries, Inc., 244 Conn. 502 (1998), the claimant was injured shortly after he had been terminated by the respondent while retrieving his personal toolbox. See id., 504-05. Although this commission found the injury not to be compensable, our Supreme Court overturned that decision and held that the claimant's removal of his toolbox was "an activity incidental to his employment with Sherwood." Id., 507. The court determined, citing Larson's treatise, that "[c]ompensation coverage is not automatically and instantaneously terminated by the firing or quitting of the employee" and "[h]e or she is deemed to be within the course of employment for a

reasonable period while winding up his or her affairs and leaving the premises." Id., 509 *citing* A. Larson & L. Larson, Workers' Compensation (1997), § 26.10, p. 5-329.

Similarly, in Solis v. Middletown, 6043 CRB-8-15-10 (August 8, 2017), *appeal withdrawn*, A.C. 40754 (April 12, 2019), the claimant, who was a plow driver subject to emergency calls, was called into work during a snowstorm, worked until 3 a.m., and was directed by his supervisor to clock out, go home, and report back to the garage at 7 a.m. At 3:04 a.m., while off the clock on a public road traveling home, he sustained an injury. The respondents challenged compensability and the trier of fact analyzed the circumstances in detail and decided, "I am satisfied that Mr. Solis was still in the course and scope of his employment, as expanded by the emergency-call exception to the coming-and-going rule, at the time of his accident." Id. Based on the holding in Loffredo, supra, we affirmed the finding of compensability. We further noted that the decision of the respondent to send the claimant home and direct him to return later clearly provided a mutual benefit to the employer. Like the claimant in this case, the claimant in Solis, supra, was responding to an emergency call from his employer and injured shortly after his job duties concluded. We cannot discern any material distinction in this case suggesting the administrative law judge erred in his application of the law.

We reach this conclusion in part by examining cases where the trier of fact concluded too large an amount of time elapsed between an employee completing his errand at the time of his injury for the injury to be deemed compensable. In Mleczko v. Haynes Construction Company, 111 Conn. App. 744 (2008), our Appellate Court affirmed this tribunal's decision that the claimant who was a construction supervisor and who was injured crossing a street after leaving a restaurant, allegedly en route to meet a

roofer, did not sustain a compensable injury since he had been advised hours earlier he had no further work responsibilities that evening. A similar fact pattern governed the analysis in Rauser v. Pitney Bowes, Inc., 190 Conn. App. 541 (2019), in which the claimant, who was on business trip out of town, engaged in an hours long pub crawl after a sales meeting at another restaurant with co-workers and was assaulted by some unknown individual. This injury was found not to be compensable by the trier of fact and this tribunal, and our Appellate Court affirmed that decision. Citing Mlezcko, supra, our Appellate Court noted:

> the plaintiff does not make any significant attempt to undermine the commissioner's determination that, between 8 p.m. and midnight, he was no longer at a place he reasonably may have been expected to be in the course of his employment and he was no longer fulfilling the duties of his employment or doing something incidental to his employment.

Id., 551-52.

It is readily apparent the claimant's injury in this case, which occurred within minutes of her special errand being called off and in the process of bringing her son, who needed to accompany her on this errand, back to her house safely, does **not** resemble the injuries found not to be compensable in Mleczko, supra, and Rauser, supra, which occurred hours after the claimant's work had concluded.[5] The claimant's injury far more closely resembles the compensable injuries sustained in Solis, supra, and Herman, supra, which occurred in close proximity to the conclusion of the claimant's paid work. Therefore, we reject the respondent's argument that the moment the claimant was made

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[5] Indeed, we note the parallel with Dombach, supra, which in *citing* Matter of Marks v. Gray, 251 N.Y. 90, 167 N.E. 181, noted that if a claimant would not have undertaken a journey absent a business purpose, an injury sustained in the journey is compensable. The claimant testified she would not have left her home at that hour with her son unless she was on an emergency call for the respondent. See Findings, ¶ 38; see also October 19, 2022, Transcript, p. 54.

aware that she did not need to travel to Boatman's apartment that their obligation for an injury incidental to performing that errand concluded. Precedent supports the administrative law judge's conclusions as to compensability and we affirm his finding.[6]

We also affirm the administrative law judge's award of scar benefits to the claimant in accordance with General Statutes § 31-308 (c). The respondents do not challenge the factual predicate to award these benefits but argue that as the final award herein occurred on December 23, 2023, more than two years after the date of injury, the award is jurisdictionally invalid. In reviewing the record herein, we find that the administrative law judge did perform his review of the claimant's scars within the statutory window to award benefits on November 3, 2022. An informal hearing was held on that date pursuant to a hearing request filed by the claimant. The notes from that hearing document that counsel for the respondent was in attendance and was advised that this evaluation was being done at that time "to preserve the statutory authority to do a scar award." Judges Notes, November 3, 2022. The administrative law judge noted that as compensability was still being litigated the jurisdiction at that point to award statutory scar benefits did not exist. The award herein was the subject of a formal hearing held on November 15, 2023, at which time the administrative law judge discussed the circumstances that led the award to be "effectively held in abeyance." November 15, 2023 Transcript, pp. 3-5. The administrative law judge read his November 3, 2022 scar

[6] We also note similarities with an older case neither party cited, see Ruckgaber v. Clark, 131 Conn. 341 (1944). In that case, the claimant was a domestic servant who inadvertently left her glasses at a friend's house, needed the glasses for her work, and after her workday travelled to retrieve those glasses, where she was injured an hour after she had clocked out. As this injury occurred at the direction of the respondents and the respondents received a mutual benefit from the activity the claimant was engaged in at the time of her injury the injury was compensable. See id., 343-44. In the present case, the claimant was also directed to leave her residence by the respondent, the respondent would derive a benefit from this errand, and the administrative law judge concluded the errand had not been completed by the time the claimant was injured.

analysis into the record. See id., pp. 10-15. The respondents offered no further comment and the record was closed. See id., p. 16. Nonetheless, after being advised of this situation at said formal hearing, the respondents now challenge the award.

We are unable to discern how the respondents believe the administrative law judge could have addressed the claimant's entitlement under our law to a scar award in any other manner. An award made prior to the adjudication of compensability would be deficient as a condition precedent to the award would not exist; and had the administrative law judge delayed any consideration as to the claimant's scar until after compensability was fully litigated, the statutory window would lapse. The administrative law judge conducted his examination within the statutory time period, held the award in abeyance until compensability was determined, and then, with counsel for the respondents present, finalized the award at a formal hearing. If we were to accept the respondents' argument, the claimant would be left without any ability to be compensated for her scars since the dispute over compensability was not resolved within two years of her injury. As we pointed in in Corbin v. Saint Mary's Hospital, 5965 CRB-5-14-10 (July 7, 2015), "when one has a legal right, one must also be afforded a remedy to vindicate that right." Marbury v. Madison, 5 U.S. 137, 163 (1803).

In reviewing the administrative law judge's decision as to the scar award, we find it was reasonable, supported by the evidence, and conducted in a manner providing due process to the litigants. The respondents did not at any point in this process suggest an alternative means to address this issue, and to some extent this constitutes a de facto waiver. Given "the public interest in the prompt and comprehensive resolution of

workers' compensation claims." Duni v. United Technologies Corp./Pratt & Whitney Aircraft Division, 239 Conn. 19, 27 (1996), we find no error in the decision herein.[7]

Administrative Law Judges David W. Schoolcraft and Maureen E. Driscoll concur.

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[7] We affirm the administrative law judge's denial of the motion to correct. We may reasonably infer that he did not find the evidence cited in those proposed corrections either probative or persuasive. 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); and Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008), *appeal withdrawn*, A.C. 30306 (September 29, 2009). We also do not find that the Finding and Award was sufficiently ambiguous as to mandate an articulation. See Biehn v. Bridgeport, 5232 CRB-4-07-6 (September 11, 2008), *appeal withdrawn*, A.C. 30336 (March 9, 2011).