CASE NO. 6513 CRB-7-23-8 : COMPENSATION REVIEW BOARD
CLAIM NO. 400114392

ALBERTHA DAFINICE : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : AUGUST 9, 2024

SENIOR PHILANTHROPY OF NEWINGTON
EMPLOYER

and

UNITED HEARTLAND
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Daniel A. Benjamin, Esq., Benjamin, Gold & Troyb, P.C., 350 Bedford Street, Stamford, CT 06901.

The respondents were represented by Michael W. Vernile, Esq., Montstream Law Group, L.L.P., 175 Capital Boulevard, Suite 204, Rocky Hill, CT 06067.

This Petition for Review from the August 3, 2023 Finding and Dismissal of Brenda D. Jannotta, Administrative Law Judge acting for the Fourth District, was heard on 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.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant has petitioned for review from the August 3, 2023 Finding and Dismissal of Brenda D. Jannotta, Administrative Law Judge acting for the Fourth District (finding). We find error and accordingly remand this matter for additional proceedings consistent with this Opinion.

The administrative law judge identified as the issue for determination whether the claimant's motion to preclude pursuant to General Statutes § 31-294c (b)[1] should be granted. After noting that all parties were subject to the provisions of the Workers' Compensation Act, the trier made the following factual findings which are pertinent to our review. On April 27, 2020, the claimant, who was employed by the respondent employer as a licensed practical nurse, sustained injuries when medical charts, which were located on a shelf over the computer where she was working, fell onto her head,

[1] General Statutes § 31-294c (b) provides in relevant part: "Whenever liability to pay compensation is contested by the employer, he shall file with the administrative law judge, on or before the twenty-eighth day after he has received a written notice of claim, a notice in accord with a form prescribed by the chairperson of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested. The employer shall send a copy of the notice to the employee in accordance with section 31-321. If the employer or his legal representative fails to file the notice contesting liability on or before the twenty-eighth day after he has received the written notice of claim, the employer shall commence payment of compensation for such injury or death on or before the twenty-eighth day after he has received the written notice of claim, but the employer may contest the employee's right to receive compensation on any grounds or the extent of his disability within one year from the receipt of the written notice of claim, provided the employer shall not be required to commence payment of compensation when the written notice of claim has not been properly served in accordance with section 31-321 or when the written notice of claim fails to include a warning that (1) the employer, if he has commenced payment for the alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim, shall be precluded from contesting liability unless a notice contesting liability is filed within one year from the receipt of the written notice of claim, and (2) the employer shall be conclusively presumed to have accepted the compensability of the alleged injury or death unless the employer either files a notice contesting liability on or before the twenty-eighth day after receiving a written notice of claim or commences payment for the alleged injury or death on or before such twenty-eighth day...."

shoulders and upper back. A claim payment report submitted by the respondents indicated that the respondent-insurer commenced payment for the claimant's medical treatment on or about May 15, 2020. See Respondents' Exhibit 1.

A notice of claim, or "form 30C," dated June 12, 2020, was received by the Workers' Compensation Commission (commission) on June 29, 2020, alleging injuries to the claimant's head, neck, shoulders and upper back.[2] The claimant also sent a form 30C dated June 12, 2020, to the Golden Hill Rehab Pavilion [sic] via certified mail. Although the green-card receipt for this certified mailing was signed and dated "June 25," the calendar year and the printed name of the individual who signed for the form 30C were missing from the receipt.

The claimant did not miss any time from work due to the injuries sustained on April 27, 2020. On January 21, 2021, the claimant presented to David L. Tung, a physical medicine and rehabilitation specialist, complaining of neck, shoulder and arm pain and headaches. In the office note for that encounter, Tung causally related the claimant's cervical spine injury to the workplace incident of April 27, 2020.

The trier took administrative notice of a motion to preclude dated June 8, 2021, whereby the claimant moved that the respondents be precluded from contesting her claim for compensation for the work-related injuries which had occurred on April 27, 2020.[3] By cover letter dated July 21, 2021, the respondents tendered to the claimant a jurisdictional voluntary agreement documenting a strain/sprain to the head, neck, bilateral

[2] "A form 30C is the document prescribed by the workers' compensation commission to be used when filing a notice of claim pursuant to the Workers' Compensation Act, General Statutes § 31-275 et seq." Mehan v. Stamford, 127 Conn. App. 619, 622 n.4, *cert. denied*, 301 Conn. 911 (2011).

[3] Internal records for the Workers' Compensation Commission indicate the motion to preclude was filed on June 11, 2021. In that motion, the claimant referenced a date of injury of May 27, 2020.

shoulders, and upper back caused when "binders fell from shelf." Claimant's Exhibit B; see also Respondents' Exhibits 2, 3, 4. In addition, the trial judge took administrative notice of the respondents' disclaimer, or "form 43," filed on July 12, 2022, contesting the claimant's right to workers' compensation benefits for an alleged injury to her syrinx.[4] The form 43 stated that "[t]he respondents hereby deny your request for an evaluation of the claimant's syrinx as unrelated to the compensable claim. The respondents also deny the request for physical therapy as unrelated to the compensable claim."

On July 13, 2022, Tung completed a Physician's Permanent Impairment Evaluation, or "form 42," opining that the claimant had reached maximum medical improvement and assigning a permanent partial disability rating of 9 percent to the claimant's cervical spine predicated on the 5th and 6th editions of the AMA Guides to the Evaluation of Permanent Impairment. At trial, the respondents entered into evidence an unsigned and undated voluntary agreement documenting Tung's permanency assessment.

The trier took administrative notice of the respondents' Objection to Claimant's Motion to Preclude and Memorandum of Law in Support of Its Objection to Claimant's Motion to Preclude dated July 23, 2022.[5] At formal proceedings held on September 8, 2022, counsel for the claimant stipulated that the respondents, consistent with their claim payment report, had commenced payment for medical treatment on or about May 15, 2020, which date was within twenty-eight days of the respondents' receipt of the notice of claim. However, at formal proceedings held on January 31, 2023,

[4] "A form 43 is a disclaimer that notifies a claimant who seeks workers' compensation benefits that the employer intends to contest liability to pay compensation. If an employer fails timely to file a form 43, a claimant may file a motion to preclude the employer from contesting the compensability of his claim." Mehan v. Stamford, 127 Conn. App. 619, 623 n.6, *cert. denied*, 301 Conn. 911 (2011).

[5] Internal records for the Workers' Compensation Commission indicate the respondents' objection to the motion to preclude was filed on July 23, 2022.

counsel for the claimant indicated that certain medical bills for diagnostic imaging had not been paid.

On the basis of the foregoing, the administrative law judge, having determined that the claimant was an employee of the respondent employer on April 27, 2020, concluded that the claimant sustained compensable injuries to her head, neck, bilateral shoulders and upper back on that date while in the course and scope of her employment. The trier found that the claimant's form 30C for these injuries was properly filed with the respondent employer on June 25, 2020, and with the commission on June 29, 2020. Moreover, the information provided in this form adequately apprised the respondents of the claim and, as such, afforded them the opportunity to investigate or, in the alternative, file a disclaimer.

The trier determined that the respondents did not file a form 43 within twenty-eight days of receiving the claimant's form 30C. However, sufficient evidence was introduced into the record to conclude that on May 15, 2020, the respondents commenced payment to the claimant's medical providers, which date was within the statutory window of twenty-eight days as contemplated by § 31-294c (b). The trier also found that the claimant "did not claim indemnity benefits at any time" and the respondents had provided the claimant with two voluntary agreements which were never executed. Conclusion, ¶ 6. The trier denied the motion to preclude, and also indicated that the claimant's entitlement to permanent partial disability benefits was not an issue for determination "at this formal hearing." Order, ¶ III.

The claimant filed a motion to correct, which was denied in its entirety, and a motion for reconsideration, which was also denied.[6] On appeal, the claimant contends that the trier, in denying the claimant's motion for preclusion, "disregarded stare decisis and incorrectly applied [§ 31-294c (b)]." Appellant's Brief, p. 3. In addition, the claimant argues that the trier erroneously determined that the claimant had not made a claim for indemnity benefits, and further contends that the denial of the motion to correct constituted error.

We begin our analysis of this matter with a recitation of the well-settled standard of review we are obliged to apply to the findings and legal conclusions of an administrative law judge. A trier's "factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). "This presumption, however, can be challenged by the argument that the [trier] did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

[6] In her motion for reconsideration, the claimant requested that the administrative law judge review her finding in light of our Appellate Court's holdings in Quinones v. R.W. Thompson Co., 188 Conn. App. 93 (2019), and Dubrosky v. Boehringer Ingelheim Corp., 145 Conn. App. 261, *cert. denied*, 310 Conn. 935, (2013), as well as this board's analysis in Mott v. KMC Music, Inc., 6025 CRB-1-15-8 (August 23, 2016).

In the present matter, we note at the outset that § 31-294c (b) provides inter alia that an employer who does not file a notice contesting liability of a claim on or before the twenty-eighth day after its receipt of a written notice of claim, but does "commence payment of compensation" within this statutory window, will nevertheless find itself "precluded from contesting liability unless a notice contesting liability is filed within one year from the receipt of the written notice of claim ...." General Statutes § 31-294c (b).

In the matter at bar, the claimant contends that although the respondents issued medical payments within the statutory window of twenty-eight days, they did not proffer a voluntary agreement, or any other correspondence signifying acceptance of the claim, to the claimant within one year of the date on which they had received the notice of claim. The respondents' form 43 was also filed more than one year after this date. Moreover, at neither of the two formal hearings held in this matter did the respondents stipulate to their acceptance of the claim or present evidence that they had accepted the claim within one year of their receipt of the claimant's form 30C. As such, it is the claimant's position that "the issue in the present case concerns the repercussions of [the] respondents' failure to preserve the safe haven and their untimely filed form 43." Appellant's Brief, p. 4.

The claimant further avers that the administrative law judge improperly denied the claimant's motion to preclude solely on the basis that the respondents had commenced payment for medical treatment within the statutory window of twenty-eight days. In so doing, the trial judge erroneously "found by implication that the safe haven is preserved solely by timely commencing payment," regardless of whether the respondents accept or contest the claim within one year. Id., 5. It is therefore the claimant's position

that because the trier incorrectly applied the law and disregarded relevant precedent, the trier's denial of the motion to preclude constituted error.

In support of this claim of error, the claimant relies in part on Domeracki v. Dan Perkins Chevrolet, 5727 CRB-4-12-1 (May 1, 2013), *appeal withdrawn*, A.C. 35673 (January 19, 2016), wherein this board reviewed the denial of a motion to preclude in a claim for which the respondents had commenced payment of medical bills within twenty-eight days of their receipt of the claimant's form 30C. Over the course of several years, the respondents paid some, but not all, of the claimant's medical bills, and ultimately filed a form 43 almost a decade after the commencement of the claim. The claimant filed a motion to preclude at that point, which was denied. On review, this board reversed the decision, concluding that the respondents' payment of the claimant's medical bills "satisfied the first prong of the safe harbor for preserving their right to contest." Id. However, the respondents' failure to comply with the statutory one-year deadline for advising the claimant that they were contesting a claim for medical treatment did not satisfy the second prong and, as such, did not preserve the statutory safe harbor.[7]

In the present matter, the claimant argues, consistent with this board's reasoning in Domeracki, that although the respondents' initial payment of medical bills satisfied the first prong of the safe harbor provision for preserving their right to contest the claim, their failure to file a timely disclaimer of payment for medical treatment failed to satisfy the second prong of the provision. "The consequence of failing to timely contest within the safe harbor period is the granting of a motion to preclude." Appellant's Brief, p. 5.

[7] In Domeracki v. Dan Perkins Chevrolet, 5727 CRB-4-12-1(May 1, 2013), *appeal withdrawn*, A.C. 35673 (January 19, 2016), the evidentiary record reflected that the respondents filed a form 43 on February 9, 2009, denying payment for medical invoices which were generated in 2000, 2001, 2002 and 2003.

In a similar vein, the claimant also relies on this board's analysis in Mott v. KMC Music, Inc., 6025 CRB-1-15-8 (August 23, 2016), wherein this board affirmed the granting of a motion to preclude in a matter in which the respondents advanced one indemnity payment to the claimant prior to their receipt of the form 30C, and a second payment within twenty-eight days of their receipt of the form 30C. At least one payment to a medical provider was also issued prior to the respondents' receipt of the form 30C. A third indemnity payment was made to the claimant following the execution of three voluntary agreements, which agreements were tendered more than one year after the respondents' receipt of the form 30C. Despite this payment history, the commissioner granted the claimant's motion to preclude on the basis that the respondents had failed to file a disclaimer within one year of their receipt of the form 30C.[8]

In reviewing the appeal, this board stated that a voluntary agreement which is proffered within one year of receipt of form 30C "evinces acceptance of the claim and preserves the respondents' 'safe harbor' against preclusion, even if [the agreement was] not accepted by the claimant and approved by the commission." Id., *citing* Pagan v. Carey Wiping Materials, Inc., 5829 CRB-6-13-4 (March 28, 2014). However, because the claimant in Mott was not provided with voluntary agreements until more than one year after the respondents' receipt of the notice of claim, "these agreements would not serve to lock in the statutory 'safe harbor' under § 31-294c (b) ... by operation of law." Id.

[8] Effective October 1, 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.

In their defense against the motion to preclude, the Mott respondents argued that because they had accepted compensability for the injuries, the circumstances of the claim were more properly governed by our Supreme Court's analysis in Adzima v. UAC/Norden Division, 177 Conn. 107 (1979). In Adzima, the evidentiary record reflected that the respondents issued a voluntary agreement, provided payment for the claimant's medical treatment, and paid indemnity to the claimant consistent with the reports issued by the medical providers. In affirming the commissioner's denial of the motion to preclude, our Supreme Court stated that the provisions of § 31-294c (b) [then General Statutes § 31-297 (b)] were never "intended to apply to a situation, where, as here, an employer accepts liability to pay a compensable injury, but contests only on the issue of the *extent* of the employee's disability." (Emphasis in the original.) Id., 112.

The Adzima court also distinguished the circumstances of that matter from Menzies v. Fisher, 165 Conn. 338 (1973), wherein the respondents:

> had contested the *initial claim of the employee* as to the employer's *liability* for compensation: the employer argued that the plaintiff's injury did not "arise out and in the course of his employment." It was in this context – a disclaimer of initial liability – that we held that an employer was precluded from asserting a defense if it failed to specifically indicate grounds for a contest over liability.[9] (Emphasis in the original.)

Adzima, supra, 177 Conn. 112, *quoting* General Statutes § 31-275 (1).[10]

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[9] In Menzies v. Fisher, 165 Conn. 338 (1973), our Supreme Court explained that the preclusion legislation was intended "to correct some of the glaring inequities and inadequacies of the Workmen's Compensation Act. Among the defects in previous provisions of the act were the needless, prejudicial delays in the proceedings before the commissioners, delays by employers or insurers in the payment of benefits, lack of knowledge on the part of employees that they were entitled to benefits and the general inequality of resources available to claimants with bona fide claims." Id., 342.

[10] General Statutes § 31-275 (1) provides in relevant part: "'Arising out of and in the course of his employment' means an accidental injury happening to an employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee's duty in the business or affairs of the employer upon the employer's premises, or while engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer ...."

In our review of Mott, however, this board was not persuaded by the respondents' arguments relative to their purported acceptance of liability, remarking that "in the absence of proffering a voluntary agreement within the statutory time limitation ... a respondent must present persuasive evidence to the trial commissioner that demonstrates acceptance of the claim." Mott, supra. Given that it was not within the purview of this board to determine whether the evidence provided by the respondents had satisfied that standard, we deferred to the commissioner's factual findings and affirmed the motion to preclude.[11]

In the present matter, the claimant, consistent with this board's reasoning in Mott, points out that the voluntary agreements were not timely proffered, and the respondents did not "submit any evidence reflecting any communication with the claimant regarding the status of the claim." Appellant's Brief, p. 6. Moreover, the administrative law judge neither found nor concluded that the respondents had introduced into the record any persuasive evidence signifying their acceptance of the claim. The claimant therefore asserts that the trier's failure to grant the motion to preclude constituted error.

The claimant also relies on this board's analysis in Monaco-Selmer v. Total Customer Service, 5622 CRB-3-10-12 (January 19, 2012), wherein we affirmed the granting of a motion to preclude against respondents who issued one nominal indemnity

[11] We note that in Mott v. KMC Music, Inc., 6025 CRB-1-15-8 (August 23, 2016), then-Chairman John A. Mastropietro dissented from the majority, indicating that because the claimant's signature of the voluntary agreements "[effectuated] an accord and satisfaction" of the claimant's demand for compensation, the motion to preclude should have been vacated. Id. He explained that, had the claimant filed her motion to preclude prior to executing the voluntary agreements, he would have joined the majority in affirming the granting of the motion to preclude. However, the evidentiary record reflected that "the claimant knew the respondent had accepted the case and she had received substantial benefits prior to filing her preclusion motion. This in my opinion constitutes an implied waiver of the claimant's right to seek preclusion and estops her from obtaining this relief." (Footnote omitted.) Id. Mott was never appealed to the higher courts.

payment to the claimant within twenty-eight days of their receipt of the notice of claim, and a second nominal indemnity payment just after the expiration of the statutory twenty-eight-day window. No additional payments were advanced, and the respondents' disclaimer was issued after the expiration of the statutory window. The commissioner also found that the respondents had not complied with § 31-296-1 of the Regulations of Connecticut State Agencies due to their failure to calculate an average weekly wage or disability rate, or to provide the claimant with a written explanation as to the basis for the payments made.[12] In affirming the commissioner's decision to grant preclusion, we stated:

> to "commence" payments a respondent must make consistent, regular payments to the claimant until a form 43 or voluntary agreement is issued. Those payments must be calculated in a manner consistent with our statute and regulations so that the claimant receives adequate weekly compensation for his or her disability during the respondent's investigation period, which may run as long as 52 weeks under our present statute.... Following these clear directives achieves two important goals. It provides necessary sustenance to injured workers while prompting

[12] Section § 31-296-1 of the Regulations of Connecticut State Agencies provides that: "A voluntary agreement shall be prepared by the employer or his insurer in connection with all cases concerning which there is no dispute that the claimant suffered an accident and injury arising out of and in the course of his employment causing either temporary partial or temporary total disability beyond the three-day waiting period. The voluntary agreement shall be submitted to the claimant for execution by him and forwarded by the employer or its insurer to the commissioner having jurisdiction within three weeks after the employer has actual knowledge of the accident and that the disability will extend beyond the three-day waiting period. Failure of the employer to furnish the insurer with a wage statement for the computation of the proper compensation rate shall not excuse failure to comply with the provisions of this section. Failure or inability of the employer to secure a medical report shall not excuse failure to file a voluntary agreement whenever the employer or the insurer has actual knowledge, or with reasonable diligence could have secured knowledge, that the claimant was actually disabled by a compensable accident. Noncompliance with this section is subject to the penalty provided in section 31-288 of the general statutes." It should also be noted that General Statutes § 31-296 (a) provides in relevant part: "If an employer and an injured employee, or in case of fatal injury the employee's legal representative or dependent, at a date not earlier than the expiration of the waiting period, reach an agreement in regard to compensation, such agreement shall be submitted in writing to the administrative law judge by the employer with a statement of the time, place and nature of the injury upon which it is based; and, if such administrative law judge finds such agreement to conform to the provisions of this chapter in every regard, the administrative law judge shall so approve it."

> employers and insurers to reach prompt decisions as to how they intend to address disputed claims.

Id.

Consistent with this board's analysis in Monaco-Selmer, the claimant in the present appeal points out that:

> The filing of a form 43 can be untimely because it was not filed within twenty-eight days of receipt of the form 30C. The form 43 can also be untimely filed because it was not filed within the safe harbor period as prescribed by § 31-294c (b). In the instant matter, the [administrative law judge] incorrectly applied the law by failing to grant claimant's motion to preclude for the reasons that no voluntary agreement was proffered within the one-year safe harbor and ... respondents' form 43 was untimely filed.

Appellant's Brief, p. 8.

In defense of their handling of this claim, the respondents assert that they did not file a form 43 "because the claim was accepted as compensable from the very beginning." Appellees' Brief, pp. 3-4. The respondents also point out that they paid all benefits associated with the accepted injuries and did not file a form 43 until the claimant sought treatment for a condition which had neither been identified by the claimant in her original notice of claim nor accepted by the respondents. They further assert that because the claimant's injuries did not involve any lost time from employment, they were not required to issue a voluntary agreement pursuant to § 31-296-1. Moreover, the jurisdictional voluntary agreements which were provided to the claimant following the filing of the motion to preclude were never signed.[13]

[13] The respondents also furnished to the claimant a voluntary agreement reflecting Tung's assignment of a 9 percent permanent partial disability rating for the claimant's cervical spine and the designation of a maximum medical improvement date of July 13, 2022. That agreement was never executed by the claimant.

In support of their position, the respondents liken the factual circumstances in this matter to those in Grzeszczyk v. Stanley Works, 5975 CRB-6-14-12 (December 9, 2015), *appeal withdrawn*, A.C. 38743 (June 15, 2016), wherein this board affirmed the denial of a motion to preclude on the basis that the respondents paid the one medical bill which was submitted and proffered a voluntary agreement within one year of their receipt of the form 30C. We are not persuaded by this analogy, as the record in the present matter clearly indicates that the respondents did not affirmatively acknowledge the compensability of the claim by providing the claimant with a voluntary agreement within the one-year safe harbor.

The respondents also cite Dubrosky v. Boehringer Ingelheim Corp., 145 Conn. App. 261, *cert. denied*, 310 Conn. 935 (2013), for the proposition that the issuance of a form 43 within one year "would not have been appropriate" in light of their acceptance of the claim. Appellees' Brief, p. 9. In making this assertion, the respondents are presumably referring to the Dubrosky court's observation that:

> The language of [the] form 43 indicates that it is to be used by employers who are contesting their liability to pay alleged compensation benefits. The form does not include a space for those employers who initially accept liability but may later, after investigation, choose to contest the extent of the disability. This distinction is not a superficial one, as an employer who is contesting liability is distinguishable from one who solely contests the extent of the disability.

Id., 271-72.

The respondents further argue that "[u]pon the development of a new condition ... the filing of a form 43 was appropriate and the respondents were not precluded from contesting the extent of disability." Appellees' Brief, p. 9. The respondents also cite Dubrosky for the proposition that "the failure to comply strictly with § 31-294c (b) will

not preclude the employer from contesting the extent of the employee's disability." Id., 274.

It should be noted that in Dubrosky, our Appellate Court's comments relative to the necessity for strict statutory compliance were prompted by its review of the evidentiary record which demonstrated that the claimant had neither lost time from work nor generated any medical bills within the statutory window of twenty-eight days. Having determined that "it was not reasonably practical for the board to require the defendant to have complied with § 31-294c (b)," the court reversed our affirmance of the commissioner's decision to grant the motion to preclude. Id., 267. In so doing, the court stated that "where notice, by filing a form 43 or commencing medical payments, is impossible to provide in a timely manner, the failure to comply strictly with § 31-294c (b) will not preclude the employer from contesting the extent of the employee's disability." Id., 274. As such, we are not persuaded that the court's analysis in Dubrosky is on point with the present matter, given that the instant record clearly reflects that medical payments were made within the statutory window of twenty-eight days, thus eliminating "impossibility" as a defense to preclusion.

Finally, the respondents contend that their payment of the claimant's medical expenses in the present matter created a scenario that is more consistent with Quinones v. R.W. Thompson Co., 5953 CRB-6-14-7 (July 29, 2015), *aff'd*, 188 Conn. App. 93 (2019), than Mott. In Quinones, the commissioner denied a motion to preclude despite finding that the respondents had failed to file a disclaimer or provide a voluntary agreement within one year of their receipt of the notice of claim. The evidentiary record reflected that the respondents had made "substantial" payments to the claimant following

the injury; as such, the trier "concluded that the respondents had acknowledged a compensable claim and immediately began paying medical and indemnity benefits until a form 36 was approved." Id.

In affirming the denial of the motion to preclude, we stated that "[i]n light of the evidence presented, the trial commissioner reasonably concluded that because the compensability of the claim was not and had never been contested, the respondents were never obligated to file a form 43." Id. We also rejected the claimant's contention that the respondents' failure to issue a voluntary agreement within one year should "automatically result in the conclusive presumption of compensability."[14] Id. Subsequently, in Mott, we stated that "[t]he impact of Quinones is that, in the absence of filing a voluntary agreement within one year of the filing of a notice of claim, the respondent must persuade the trial commissioner that the claimant knew or should have known by virtue of some other means that the claim had been accepted." Id.

Our Appellate Court affirmed our decision, remarking that the respondents "did not contest the liability of the plaintiff's injury and compensated him until the approval of a form 36.... The plaintiff, therefore, was never in a disadvantaged position."[15] Quinones v. R.W. Thompson Co., 188 Conn. App. 93, 108 (2019). Moreover, in that case, the commissioner specifically found that, in addition to advancing medical and indemnity payments, the respondents had also "acknowledged a compensable claim." Quinones v. R.W. Thompson Co., 5953 CRB-6-14-7 (July 29, 2015), *aff'd*, 188 Conn. App. 93

[14] In rejecting the claimant's arguments regarding the force and effect of a voluntary agreement on the validity of a motion to preclude, this board noted that although both § 31-296 and § 31-296-1 "set out the parameters for preparation and delivery of a voluntary agreement, [§ 31-296-1] clearly states the penalty for non-compliance is not the 'automatic granting of preclusion' but, rather, 'the penalty provided in section 31-288 of the general statutes.'" Quinones v. R.W. Thompson Co., 5953 CRB-6-14-7 (July 29, 2015), *aff'd*, 188 Conn. App. 93 (2019).

[15] A "form 36" is entitled "Notice of Intention to Reduce or Discontinue Payments."

(2019). In the present matter, as the claimant points out, neither a voluntary agreement nor a disclaimer was provided to the claimant within one year of the filing of the notice of claim, and the administrative law judge did not specifically find that the respondents had acknowledged the compensability of the claim.

In light of the foregoing analysis of relevant precedent, we find the factual circumstances of this matter more akin to Monaco-Selmer, Domeracki, and Mott, wherein preclusion was ultimately granted, than Dubrosky, Grzeszczyk, or Quinones, wherein preclusion was ultimately denied. However, as noted previously herein, the respondents in the present appeal have also asserted that they did not file a form 43 "because the claim was accepted as compensable from the very beginning." Appellees' Brief, pp. 3-4. They therefore argue, as did the respondents in Mott, that because they initially accepted compensability for the claimant's injuries, the circumstances of the claim should be governed by our Supreme Court's analysis in Adzima. The respondents also contend, in light of their payment of the submitted medical bills and the proffer of voluntary agreements, that "[t]he claimant in this matter has failed to prove that the respondents caused 'needless prejudicial delay' in the furtherance of this claim." Appellees' Brief, p. 8, *quoting* Menzies, supra, 165 Conn. at 342.

In reviewing the respondents' arguments vis-à-vis their initial acceptance of liability, we note that this board has previously observed that "the determination of whether a motion to preclude should be granted is a fact-driven exercise." Mott, supra, *citing* Pringle v. National Lumber, Inc., 5912 CRB-3-14-1 (December 31, 2014), *appeal withdrawn*, A.C. 37682 (March 30, 2016). "Whether the respondent adequately responded to a notice of claim, or acted in a manner so as to prejudice the claimant, is a

quintessential factual question." Pringle, supra. In the matter at bar, the respondents contend that their timely payment of the claimant's medical expenses constituted "persuasive evidence," as contemplated by Mott, that the respondents had accepted the claim. However, the claimant disputes this assertion, pointing out that the respondents neither stipulated to their acceptance of the claim at trial nor provided the claimant with correspondence to that effect within the one-year statutory safe harbor.

The respondents further aver that the administrative law judge concluded that the medical "payments constituted effective acceptance of the claim." Appellees' Brief, p. 10. Our review of the decision indicates that the trier found that "[s]ufficient evidence was presented to conclude that the respondents commenced payment of benefits to the claimant or her medical providers beginning on May 15, 2020, which is within the twenty-eight-day statutory period." Conclusion, ¶ 7. However, the finding is silent on the issue of whether the claim was accepted by the respondents, the point in time at which liability was accepted, and the manner by which the respondents' purported acceptance of liability for the claim was communicated to the claimant.[16]

In addition, although the trier ultimately denied the motion to preclude, it cannot be reasonably inferred from the decision that this denial was predicated on the trier's conclusion that the respondents had accepted liability for the claim and, as such, were not obligated by § 31-294c (b) to file a notice contesting compensability within one year

[16] We note that in her decision, the administrative law judge concluded that "[t]he claimant sustained compensable injuries to her head, neck, bilateral shoulders and upper back on April 27, 2020, while in the course and scope of employment with the respondent-employer." Conclusion, ¶ 2. Insofar as preclusion was identified as the sole issue for determination, a finding of compensability, in the absence of the claimant having demonstrated a prima facie claim consistent with our Supreme Court's analysis in Harpaz v. Laidlaw Transit, Inc., 286 Conn. 102 (2008), and Donahue v. Southington, 259 Conn. 783 (2002), was improper. Moreover, it cannot be reasonably inferred, in light of the totality of the decision, that the intent of this particular conclusion was to establish that the respondents had accepted the compensability of the original claim.

from their receipt of the form 30C. We therefore remand this matter for additional proceedings in order to afford the administrative law judge the opportunity to assess the extent to which the evidentiary record provides a reasonable basis for the inference that the respondents' actions demonstrated their acceptance of the claim such "that the claimant knew or should have known ... that the claim had been accepted." Mott, supra. As this board has previously observed, the "post-Harpaz line of cases reflect that when a claimant files a form 30C, the respondents must appreciate the gravity of the claimant's declaration and respond in a meaningful way."[17] Domeracki, supra.

The claimant also claims as error the administrative law judge's conclusion that "[t]he claimant did not claim indemnity benefits at any time." Conclusion, ¶ 6. Our review of the record indicates that at the formal proceedings held on September 8, 2022, the claimant acknowledged that the issue in dispute was a motion for preclusion but also stated that she was claiming permanent partial disability benefits consistent with Tung's impairment rating of July 13, 2022. Although both the impairment rating and the voluntary agreements documenting the claimant's entitlement to permanency benefits were entered into evidence without objection at those proceedings, the issue of permanent partial disability was not listed on the hearing notice as an item for discussion.

Nevertheless, it is quite clear that the administrative law judge was aware of the claim for permanency benefits, given that she specifically noted in her finding that "[t]he issue of permanent partial disability is not an issue to be addressed at this formal hearing." Order, ¶ III. It may be reasonably inferred that the trier's conclusion that "the claimant did not claim indemnity benefits at any time" merely served to acknowledge

[17] See Harpaz v. Laidlaw Transit, Inc., 286 Conn. 102 (2008).

that the claimant had not sought indemnity benefits during the one-year window following the respondents' receipt of the notice of claim. As such, while the choice of words in this conclusion was perhaps somewhat inartful, there is no error.

Finally, the claimant contends that the administrative law judge's denial of her motion to correct constituted error. Our review of this motion indicates that the claimant proposed that the trier amend her finding to reflect that: (1) the voluntary agreements proffered by the respondents were issued more than one year after the claimant's filing of her notice of claim; and (2) the respondents did not file a form 43 or a form 36 within one year from the date of filing for the notice of claim. Both of these proposed corrections reflect the claimant's contention that the respondents failed to comply with the statutory requirements set forth in § 31-294c (b). The respondents assert that correcting the record in this manner would have been "inconsequential to the outcome," particularly as the claimant had no statutory entitlement to a jurisdictional voluntary agreement. Appellees' Brief, p. 12.

This board has previously held that when "a motion to correct involves requested factual findings which were disputed by the parties, which involved the credibility of the evidence, or which would not affect the outcome of the case, we would not find any error in the denial of such a motion to correct." Robare v. Robert Baker Companies, 4328 CRB-1-00-12 (January 2, 2002). In the present matter, the corrections sought by the claimant were not disputed by the respondents, as their defense was not predicated on the theory that they had complied with the statutory requirements set forth in § 31-294c (b). As such, the corrections had little bearing on the issue left unresolved by the finding – to wit, the extent to which the respondents' actions demonstrated their

acceptance of the claim such that they were not obligated to comply with the provisions of § 31-294c (b). We are therefore not persuaded that the administrative law judge erred in denying these proposed corrections.

There is error; the August 3, 2023 Finding and Dismissal of Brenda D. Jannotta, Administrative Law Judge acting for the Fourth District, is accordingly remanded for additional proceedings consistent with this Opinion.

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