CASE NO. 6515 CRB-7-23-9 : COMPENSATION REVIEW BOARD
CLAIM NO. 400081416

ANTONIO VITTI : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : AUGUST 30, 2024

CITY OF MILFORD
EMPLOYER
RESPONDENT-APPELLEE

and

P.M.A. MANAGEMENT CORPORATION OF
NEW ENGLAND
THIRD-PARTY ADMINISTRATOR

APPEARANCES:

The claimant was represented by David J. Morrissey, Esq., Morrissey, Morrissey & Rydzik, L.L.C., 203 Church Street, P.O. Box 31, Naugatuck, CT 06770.

The respondents were represented by Scott W. Williams, Esq., Williams Law Firm, L.L.C., 2 Enterprise Drive, Suite 412, Shelton, CT 06484.

This Petition for Review from the August 21, 2023 Finding and Dismissal of Brenda D. Jannotta, Administrative Law Judge acting for the Fourth District, was heard on January 26, 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 21, 2023 Finding and Dismissal of Brenda D. Jannotta, Administrative Law Judge acting for the Fourth District (finding). We find no error and accordingly affirm the decision.[1]

At trial, the administrative law judge identified as the issue for determination whether the claimant was entitled to interest pursuant to General Statutes §§ 31-295 (c),[2] 31-301c (b),[3] or 31-300[4] due to a delay in the payment of permanent partial disability (PPD) benefits for a 23 percent impairment rating to his heart.[5] Said benefits, which were paid on September 23, 2019, were awarded pursuant to a February 1, 2018 Finding

[1] We note that one motion for extension of time was granted during the pendency of this appeal.

[2] General Statutes § 31-295 (c) provides in relevant part: "If the employee is entitled to receive compensation for permanent disability to an injured member in accordance with the provisions of subsection (b) of section 31-308, the compensation shall be paid to him beginning not later than thirty days following the date of the maximum improvement of the member or members and, if the compensation payments are not so paid, the employer shall, in addition to the compensation rate, pay interest at the rate of ten per cent per annum on such sum or sums from the date of maximum improvement...."

[3] General Statutes § 31-301c (b) provides: "Whenever an employer or his insurer appeals an administrative law judge's award, and upon completion of the appeal process the employer or insurer loses such appeal, the Compensation Review Board or the Appellate Court, as the case may be, shall add interest on the amount of such award affirmed on appeal and not paid to the claimant during the pendency of such appeal, from the date of the original award to the date of the final appeal decision, at the rate prescribed in section 37-3a."

[4] General Statues § 31-300 provides in relevant part: "In cases where, through the fault or neglect of the employer or insurer, adjustments of compensation have been unduly delayed, or where through such fault or neglect, payments have been unduly delayed, the administrative law judge may include in the award interest at the rate prescribed in section 37-3a and a reasonable attorney's fee in the case of undue delay in adjustments of compensation and may include in the award in the case of undue delay in payments of compensation, interest at twelve per cent per annum and a reasonable attorney's fee.... No employer or insurer shall discontinue or reduce payment on account of total or partial incapacity under any such award, if it is claimed by or on behalf of the injured person that such person's incapacity still continues, unless such employer or insurer notifies the administrative law judge and the employee of such proposed discontinuance or reduction in the manner prescribed in section 31-296 and the administrative law judge specifically approves such discontinuance or reduction in writing. The administrative law judge shall render the decision within fourteen days of receipt of such notice and shall forward to all parties to the claim a copy of the decision not later than seven days after the decision has been rendered. If the decision of the administrative law judge finds for the employer or insurer, the injured person shall return any wrongful payments received from the day designated by the administrative law judge as the effective date for the discontinuance or reduction of benefits...."

[5] The claimant has not appealed the denial of interest pursuant to General Statutes § 31-300.

and Award (2018 finding) which inter alia established a maximum medical improvement date of November 21, 2013.

The administrative law judge, after noting that all parties were subject to the provisions of the Workers' Compensation Act, made the following factual findings which are pertinent to our review.[6] On August 19, 2010, the claimant, who was employed by the respondent municipality as a police officer, filed a claim for a heart injury pursuant to General Statutes § 7-433c[7] following a diagnosis of giant cell myocarditis (GCM).[8] On September 29, 2010, he underwent a heart transplant. The respondents contested the claim on the basis that GCM did not constitute heart disease as contemplated by § 7-433c but, rather, was the sequela of a systemic medical condition. On December 13, 2015, the claimant's GCM was deemed compensable pursuant to a Finding and Award

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[6] The Workers' Compensation Act is codified at chapter 568 of the Connecticut General Statutes.

[7] General Statutes § 7-433c provides: "(a) Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems. The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 or the municipal or state retirement system under which he is covered, except as provided by this section, as a result of any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability. As used in this section, 'municipal employer' has the same meaning as provided in section 7-467.

(b) Notwithstanding the provisions of subsection (a) of this section, those persons who began employment on or after July 1, 1996, shall not be eligible for any benefits pursuant to this section."

[8] At a deposition held on September 6, 2016, Rocklin testified that GCM "is a form of cardiomyopathy ...." Respondents' Exhibit 4, p. 44.

(2015 finding).[9] This decision was subsequently affirmed by this board and by our Appellate Court; on September 11, 2019, our Supreme Court denied the respondents' petition for certification.[10]

On October 13, 2011, Joseph Robert Anthony, a cardiologist, assigned the claimant a PPD disability rating of "approximately 28 percent ... specifically related to his cardiac status which included the giant cell myocarditis requiring heart transplantation." Claimant's Exhibit B, p. 2. Subsequently, the respondents requested that Martin J. Krauthamer, a cardiologist, perform a records review to determine whether, in his opinion, GCM constituted heart disease or a systemic condition. In his report of January 29, 2012, Krauthamer did not opine on the extent of permanent impairment.[11] See Claimant's Exhibit F, pp. 19, 21-22.

On November 21, 2013, Donald M. Rocklin, the claimant's treating cardiologist, opined that the claimant had suffered a 100 percent impairment to his native heart, or a 23 percent impairment to his whole person for the transplanted heart.[12] Rocklin's report was not discovered by the respondents until the doctor was deposed on September 6, 2016. On July 19, 2016, Stephen L. Demeter, a board-certified physician in

[9] On August 14, 2013, the claimant's GCM was deemed compensable pursuant to a Finding and Award concluding that the respondents had failed to rebut the presumption that the GCM constituted heart disease as contemplated by General Statutes § 7-433. On appeal to this board, the decision was vacated and remanded on the basis that the rebuttable presumption was inapplicable to the claim. See Vitti v. Milford, 5877 CRB-4-13-8 (September 16, 2014).

[10] See Vitti v. Milford, 6066 CRB-4-15-12 (April 21, 2017), *aff'd*, 190 Conn. App. 398 (June 4, 2019), *cert. denied*, 333 Conn. 902 (September 11, 2019).

[11] Krauthamer opined that the materials he had reviewed "strongly supported the concept that GCM is a systemic disease rather than just a disease of the heart." Claimant's Exhibit F, p. 7.

[12] Rocklin explained that he had not distinguished between the heart and the whole person in assigning the disability rating of 23 percent. See Respondents' Exhibit 4, p. 28.

internal medicine, pulmonary medicine, and occupational medicine, assigned the claimant a 12 percent impairment of the whole person following a records review.[13]

While final adjudication on the issue of compensability was still pending, the parties commenced litigation on the issue of the claimant's eligibility for PPD benefits pursuant to General Statutes § 31-308 (b).[14] At those proceedings, the parties were seeking a determination as to whether the claimant was entitled to a PPD award of 100 percent, reflecting the loss of use of his native heart, or to a PPD award for a lesser percentage predicated on the loss of use of his transplanted heart. On February 1, 2018, the commissioner concluded that the claimant had reached maximum medical improvement as of the date of Rocklin's November 21, 2013 report and sustained a 23 percent impairment to his transplanted heart.[15]

In correspondence dated March 14, 2018, claimant's counsel notified the respondents that the claimant did "not wish to get paid until all appeals are concluded." Respondents' Exhibit 1. At the formal hearing held on February 1, 2023, claimant's counsel explained that, had the claimant accepted the PPD award "and then lost the appeal," the cumulative legal effect of General Statutes § 31-301 (f)[16] and General

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[13] In his report of July 19, 2016, Demeter stated that the 12 percent PPD rating reflected "the interferences in [the claimant's] activities of daily living caused by his cardiac transplantation." Claimant's Exhibit D, p. 15.

[14] General Statutes § 31-308 (b) provides in relevant part: "With respect to the following injuries, the compensation, in addition to the usual compensation for total incapacity but in lieu of all other payments for compensation, shall be seventy-five per cent of the average weekly earnings of the injured employee, calculated pursuant to section 31-310 ... but in no case 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, or less than fifty dollars weekly. All of the following injuries include the loss of the member or organ and the complete and permanent loss of use of the member or organ referred to ...."

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

[16] General Statutes § 31-301 (f) provides: "During the pendency of any appeal of an award made pursuant to this chapter, the claimant shall receive all compensation and medical treatment payable under the terms

Statutes § 31-301 (g)[17] would have required him to repay the PPD award along with interest at the annual rate of 10 percent. February 1, 2023 Transcript, p. 10.

The claimant appealed the 2018 finding, which decision was ultimately affirmed by this board on January 17, 2019, and by our Supreme Court on August 24, 2020.[18] On September 11, 2019, prior to the final adjudication on the issue of permanency, our Supreme Court denied the respondents' petition for certification on the issue of compensability. On September 23, 2019, the respondents issued a check in the amount of $110,271.20 representing payment in full of the PPD award.

At a formal hearing held on February 1, 2023, the claimant contended he was eligible for interest and penalties due to the delayed payment of the PPD benefits. More specifically, the claimant argued that he was due interest on the entire permanency award pursuant to § 31-301c (b) for the period commencing on February 1, 2018, the date of the finding as to permanency, and continuing through September 11, 2019, the date our Supreme Court denied certification on the issue of the compensability of the claim. In addition, he contended that, pursuant to § 31-295 (c), he was due interest on a partial

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of the award to the extent the compensation and medical treatment are not being paid by any health insurer or by any insurer or employer who has been ordered, pursuant to the provisions of subsection (a) of this section, to pay a portion of the award. The compensation and medical treatment shall be paid by the employer or its insurer."

[17] General Statutes § 31-301 (g) provides: "If the final adjudication results in the denial of compensation to the claimant, and he has previously received compensation on the claim pursuant to subsection (f) and this subsection, the claimant shall reimburse the employer or its insurer for all sums previously expended, plus interest at the rate of ten per cent per annum. Upon any such denial of compensation, the administrative law judge who originally heard the case or his successor shall conduct a hearing to determine the repayment schedule for the claimant."

[18] See Vitti v. Milford, 6246 CRB-4-18-2 (January 17, 2019), *aff'd*, 336 Conn. 654 (2020). The Supreme Court, having transferred the appeal to itself pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1, rejected the claimant's contention that the transplanted heart was "akin to a prosthetic device," Vitti v. Milford, 336 Conn. 654, 659 (2020), concluding instead that the PPD award from the 2018 finding "properly [reflected] the functional loss of use of his transplanted heart rather than the total loss of his native heart." Id.

permanency award of 12 percent for the time period commencing on November 13, 2013, and continuing until February 1, 2018, the date of the finding and award.

In the August 21, 2023 Finding and Dismissal which is the subject of the instant appeal, the administrative law judge, after noting that the claimant had suffered a compensable injury to his heart while employed by the respondents on August 19, 2010, determined that because the claim had been "fully disputed and litigated on the issue of permanent partial disability, there was no meeting of the minds, award, or agreement until the February 1, 2018 Finding and Award ...." Conclusion, ¶ B, *citing* Brennan v. Waterbury, 331 Conn. 672, 697 (2019).

The trier further concluded that the claimant's entitlement to PPD benefits did not mature until the 2018 finding identified November 21, 2013, as the date of maximum medical improvement on the basis of Rocklin's report. As such, the claimant was not entitled to interest on any portion of the benefits pursuant to § 31-295 (c) for the period between November 21, 2013, and February 1, 2018.

The trier noted that the claimant did not dispute that the respondents had offered to pay the PPD benefits prior to the final adjudication on the issue of compensability, and found persuasive the March 14, 2018 correspondence from claimant's counsel advising the respondents that the claimant did not wish to be paid any permanency benefits "until all appeals are concluded." Conclusion, ¶ D, *quoting* Respondents' Exhibit 1. In addition, she found persuasive the fact that the respondents paid the PPD benefits on September 23, 2019, which date was within twenty days of the Supreme Court's affirmance of the compensability of the underlying claim on September 11, 2019. She also noted that the respondents made this payment despite the claimant having indicated

that he did not want to be paid until all appeals were concluded. She concluded that the claimant was not entitled to interest pursuant to § 31-301c (b) because it was the claimant, rather than the respondents, who had appealed the 2018 finding.[19] Accordingly, she denied the claims for interest pursuant to both §§ 31-295 (c) and 31-301c (b).

The claimant filed a motion to correct which was denied in its entirety, and this appeal followed. On appeal, the claimant contends that the administrative law judge erroneously: (1) failed to award mandatory interest pursuant to § 31-301c (b) for the time period between the 2018 finding and the Supreme Court's decision of September 11, 2019, affirming the compensability of the claim; and (2) failed to award interest pursuant to § 31-295 (c) on the 12 percent disability rating assigned by Demeter on July 19, 2016, for the time period between the date of maximum medical improvement on November 21, 2013, and the 2018 finding. We are not persuaded by either claim of error.

We note at the outset that the standard of appellate review we are obliged to apply to a trial judge's findings and legal conclusions is well-settled. A trier's "factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988).

[19] In addition, the administrative law judge concluded that the claimant was not entitled to interest and penalties pursuant to General Statutes § 31-300 on the basis of undue delay due to fault or neglect on the part of the respondents, given that the claimant had appealed the 2018 finding and instructed the respondents not to pay any permanency benefits until all appeals were resolved. The trier also found that the respondents had authorized a records review and obtained a report on July 19, 2016, which date she found to be "within a reasonable amount of time" following the issuance of the December 13, 2015 finding deeming the claimant's GCM compensable pursuant to § 7-433c. Conclusion, ¶ I. As such, she rejected the claimant's argument that he was entitled to interest and penalties pursuant to § 31-300 because the respondents had unreasonably delayed securing their own opinion regarding the disability rating.

Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). Thus, "it is … immaterial that the facts permit the drawing of diverse inferences. The [trier] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair, supra, 540, *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

We begin with the claimant's allegation of error relative to § 31-301c (b), which provides for the imposition of interest "[w]henever an employer or his insurer appeals an administrative law judge's award, and upon completion of the appeal process the employer or insurer loses such appeal ...." General Statutes § 31-301c (b). The claimant acknowledges that he appealed the 2018 finding as to the denial of PPD benefits for 100 percent of the native heart, but argues that neither party appealed the award for 23 percent of the transplanted heart or challenged the date of maximum medical improvement.

However, because litigation on the issue of compensability was still ongoing, the claimant, pursuant to his March 14, 2018 correspondence, declined payment of the permanency award pending resolution of that issue. This declination of payment was predicated on the requirements of § 31-301 (g), which obligate a claimant to repay the full amount of any compensation received "[d]uring the pendency of any appeal of an award made pursuant to this chapter," if the respondent ultimately prevails in a challenge

to the award. General Statutes § 31-301 (f). Section 31-301 (g) also requires a claimant to pay interest on the compensation received at an annual rate of 10 percent.

This board has previously observed that § 31-301 (f) was intended "to prevent claimants from having to endure financial hardship during a lengthy appellate process following an award of compensation." Horn v. State/Dept. of Correction, 4764 CRB-3-03-12 (January 24, 2005). Nevertheless, the repayment requirements codified at § 31-301 (g) are such that "[t]here are many claimants who would not want to risk having to repay a § 31-301 (f) award along with such a significant amount of interest." Id. Upon review, this board held "that § 31-301 (f) requires the payment of benefits pending appeal *upon request by the claimant* .... (Emphasis in the original.) This construction of the statute is consistent with its remedial legislative purpose, and does not run afoul of the statutory language." Id.

In the matter at bar, the claimant concedes that the administrative law judge correctly determined that "the claimant declined to accept payment of the 23% until there was a final adjudication on the merits of the underlying claim of compensability." Appellant's Brief, p. 11. However, the trier also concluded that the claimant was not entitled to interest pursuant to § 31-301c (b) "because it was the claimant, not the respondents, who appealed the February 1, 2018 Finding and Award on this issue." Conclusion, ¶ G. As such, the claimant argues that the trier "mistakenly believed that the appellant refused to accept payment for the permanency award of February 1, 2018, because of the appeal that he took regarding the denial of his claim for 100% of the native heart." Appellant's Brief, p. 10. The claimant further asserts that it was not his "appeal which caused any delay. If it was, then claimant would not have accepted

payment until final adjudication of his appeal of the permanency award which was finally resolved by the Supreme Court in 2020." Id., 11.

In advancing this argument, the claimant would seem to be contending that because the respondents appealed the compensability of the underlying claim, the claimant was entitled to interest pursuant to § 31-301c (b) on the permanency award for the time period between the 2018 finding and September 11, 2019, the date when our Supreme Court denied the petition for certification on the issue of compensability. Leaving aside, for the moment, the role of the claimant's March 14, 2018 correspondence, we are not persuaded that this position reflects an accurate interpretation of § 31-301c (b). More specifically, we do not believe that the respondents' appeal from the Appellate Court's affirmance of compensability constituted an appeal of an "award" as contemplated by § 31-301c (b), given that the Supreme Court's decision denying certification on that issue did not implicate the payment of a "sum certain" on which interest could be assessed. Moreover, the "actual" award in this claim – i.e., the PPD benefits – was appealed by claimant, and not the respondents. As such, the condition precedent for the application of § 31-301c (b) does not exist under the factual circumstances of this claim.

In addition, even if we were to subscribe to the claimant's interpretation of § 31-301c (b), we find the claimant's eligibility for interest on the permanency award for the time period between the 2018 finding and September 11, 2019, was estopped by his correspondence of March 14, 2018. Although the claimant's reasons for refusing payment in 2018 may have been sound given the repayment obligations presented by § 31-301 (g), the record indicates that the claimant not only failed to request payment of

the benefits pending appeal, as contemplated by this board's analysis in Horn, but affirmatively requested that no benefits be advanced pending resolution of all appeals.

As previously discussed herein, the record reflects that the claimant accepted payment of the permanency award while his appeal of the 2018 finding was still pending. The claimant asserts that, although the March 14, 2018 correspondence stated that he would not accept payment "until all appeals are concluded," Respondents' Exhibit 1, "he did, in fact, accept full payment once the appeal of his underlying case was resolved on September 11, 2019. He is, therefore, entitled to interest from February 1, 2018 through September 11, 2019." Appellant's Brief, p. 12.

This contention by the claimant would appear to imply that his decision to accept payment of the permanency award following the Supreme Court's affirmance of compensability, but prior to the final resolution of the permanency litigation, somehow served to retroactively void his prior decision to waive payment. We find no reasonable basis for the inference that the claimant's decision to accept payment of the permanency award signified that the claimant had abandoned the position taken in his March 14, 2018 correspondence. We therefore affirm the trier's denial of interest pursuant to § 31-301c (b) for the time period between the February 1, 2018 finding and the Supreme Court's refusal to grant the respondents' motion for certification on September 11, 2019.

The claimant has also claimed as error the administrative law judge's denial of interest pursuant to § 31-295 (c), which provides for an interest payment at an annual rate of 10 percent on PPD awards not paid within thirty days following the date of maximum medical improvement. The administrative law judge found that Anthony assigned the claimant a 28 percent disability rating on October 13, 2011, and on November 21, 2013,

Rocklin assigned a 23 percent disability rating. Thereafter, the respondents obtained a disability rating of 12 percent from Demeter on July 19, 2016. The trier further noted that the commissioner who issued the 2018 finding had awarded the claimant a disability rating of 23 percent predicated on Rocklin's November 21, 2013 report and established the date of that report as the date of maximum medical improvement. The respondents did not contest the 23 percent disability rating, and neither party contested the date of maximum medical improvement.

In light of this procedural history, it is the claimant's position that there was "a binding meeting of the minds," as contemplated by our Supreme Court's analysis in Brennan v. Waterbury, 331 Conn. 672, 697 (2019), that the claimant had sustained at least a 12 percent impairment of the heart as of the date of Demeter's July 19, 2016 report. The claimant therefore claims interest on the unpaid 12 percent permanency pursuant to § 31-295 (c) for the time period between the date of maximum medical improvement on November 21, 2013, until the issuance of the 2018 finding, at which time, according to the claimant, he then became entitled to interest pursuant to § 31-301c (b).

In Brennan, our Supreme Court reviewed an appeal involving a dispute over PPD benefits in a § 7-433c claim of long duration. Citing inter alia Churchville v. Bruce R. Daly Mechanical Contractor, 299 Conn. 185 (2010), the court observed that "our case law reflects that permanent disability benefits vest, or become due, when the claimant reaches maximum medical improvement."[20] Id., 695. The evidentiary record in Brennan

[20] In Churchville v. Bruce R. Daly Mechanical Contractor, 299 Conn. 185 (2010), our Supreme Court stated that "[a]s for entitlement to disability benefits, because the extent of that award necessarily depends on both the establishment of a permanent disability and the extent of the disability, '[w]e have long held

contained three medical reports opining to impairment ratings for the claimant's heart condition of 50 percent, 75 percent, and 80 percent, respectively, in addition to a posthumous report assigning a fourth disability rating of 90 percent. The subject finding awarded the decedent an 80 percent permanent partial disability to the heart and established the date for maximum medical improvement.

On review, the Brennan court stated it could not "conclude on the present record that the degree of permanency was fixed prior to the decedent's death." Id., 697. Moreover, although the evidence appeared to suggest that the parties had agreed upon a compromised disability rating, the record was ambiguous relative to the parties' acceptance of the agreement. In referencing the applicability of § 31-295 (c) to the claim, the court remarked that it had previously "recognized that the condition precedent, entitlement to this benefit, 'depends on both the establishment of a permanent disability and the extent of that disability ....'" Id., 696, *quoting* Churchville, supra, 193. The court remanded the matter for additional factual findings, holding that "we are compelled to conclude that permanent disability benefits mature only after the degree of permanency has been fixed by way of an award or an agreement between the parties sufficient to establish a binding meeting of the minds."[21] Id., 697. See also A. Sevarino, Connecticut Workers' Compensation After Reforms (7th Ed. 2017) § 2.14.7, pp. 152-53.

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that an injured worker has a right to a permanent partial disability award once he or she reaches maximum medical improvement.'" Id., 193-194, *quoting* McCurdy v. State, 227 Conn. 261, 268 (1993).

[21] On remand, the administrative law judge concluded that "there was a clear meeting of the minds," May 21, 2021 Finding and Decision [of Charles F. Senich, Administrative Law Judge acting for the Fifth District,] Conclusion, ¶ G, that the decedent had sustained a permanent partial disability of the heart and the decedent's entitlement to permanent partial disability benefits had "vested and was matured," id., Conclusion, ¶ P, as of the stipulated date for maximum medical improvement. The trier awarded all unpaid permanency benefits to the estate. In Brennan v. Waterbury, 6430 CRB-5-21-6 (April 11, 2022), *appeal pending*, A.C. 45467 (May 2, 2022), this board affirmed in part and remanded in part (on other grounds) the decision of the administrative law judge.

However, with specific reference to the disability rating of 50 percent assigned by the respondent's expert, the Brennan court:

> [acknowledged] that an argument could be made that there was a meeting of the minds that there was a permanent impairment of *at least* 50 percent.... We note that this is an issue of first impression as to whether benefits could mature under such circumstance, and the board should be given an opportunity to weigh in on this matter should an appeal be necessary. (Emphasis in the original.)

Id., 699-700.

In light of this observation by the Brennan court, the claimant in the present matter asserts that because neither party disputed the 12 percent rating in Demeter's July 19, 2016 report, and the other two permanency ratings contained in the evidentiary record were higher, the claimant therefore became entitled to a PPD rating of at least 12 percent as of the date of maximum medical improvement on November 21, 2013. Given that no permanency benefits were paid until September 23, 2019, the claimant also argues that he became entitled to interest pursuant to § 31-295 (c) on the 12 percent rating for the time period between November 21, 2013, and the 2018 finding.

Although we recognize there are certain similarities between Brennan and the matter at bar, in that both were long-running § 7-433c claims which involved inter alia disputed permanency ratings, we note at the outset that there is at least one salient difference between the two cases. Unlike the present matter, the compensability of the claimant's heart condition in Brennan had been settled via a finding and award prior to the decedent's request for PPD benefits. We believe this factual distinction allowed for the possibility entertained by the Brennan court that there may have been "a binding meeting of the minds" that the claimant was entitled to some portion of the PPD benefits prior to the final adjudication of the permanency dispute.

However, under the unusual circumstances of the present matter, the appeal of the compensability of the underlying claim was not resolved until well after the commencement of litigation regarding the extent of the impairment to the claimant's heart. We are therefore not persuaded that it can be reasonably inferred that the parties in the appeal at bar could have reached "a binding meeting of the minds" regarding any portion of the permanency while the compensability of the underlying claim continued to be unresolved. As such, while the Brennan court's analysis on this particular issue may have been constrained by the limitations of the evidentiary record, the possibility of the existence of "a binding meeting of the minds" relative to the claimant's entitlement to some portion of the PPD benefits in the instant appeal was essentially nullified by the ongoing litigation relative to compensability.

Moreover, as the Brennan court observed, § 31-295 (c) begins with the phrase, "[i]f the employee is entitled to receive compensation for permanent disability to an injured member ...." General Statutes § 31-295 (c). The court noted that this board has previously held "that payment of interest pursuant to § 31-295 (c) is mandatory *if conditions enumerated by [the] provision are met,* and that conditional language suggests 'that the provision is implicated only after the issue of permanent partial disability is no longer the subject of litigation.'" (Emphasis added.) Id., 697, *quoting* Abrahamson v. State/Dept. of Public Works, 5280 CRB-2-07-10 (February 26, 2009); see also Schenkel v. Richard Chevrolet, Inc., 4639 CRB-8-03-3 (March 12, 2004), *aff'd*, 123 Conn. App. 55 (2010). In Abrahamson, this board also remarked that "our review of the ... testimony and medical reports suggests that the establishment of the claimant's permanency award

was a less straightforward matter than claimant's counsel has suggested." As such, we concluded that:

> while there is no question that any delay in providing a claimant benefits rightfully due that claimant is at sharp variance with the stated purpose of the Workers' Compensation Act, we find that in this particular matter, the complexity of the claimant's medical issues and apparent confusion regarding the appropriate compensation rate were such that the trial commissioner's refusal to award the claimant interest pursuant to § 31-295 (c) ... did not constitute reversible error.

Id.

Similarly, in the present matter, the litigation relative to the compensability of the underlying claim was not concluded until September 11, 2019, and the dispute as to permanency was not concluded until the Supreme Court issued its affirmance of the 2018 finding in its decision of August 24, 2020. As such, consistent with this board's analysis in Abahamson, we are not persuaded that the particular circumstances of this claim satisfied the condition precedent for eligibility for interest pursuant to § 31-295 (c) on some portion of the permanency award prior to August 24, 2020.

We would also note, as discussed previously herein, that the record reflects that the issuance of the 2018 finding establishing the parameters of the claimant's entitlement to PPD benefits was followed shortly thereafter by the claimant's correspondence of March 14, 2018, declining payment of PPD benefits pending resolution of "all appeals." Respondents' Exhibit 1. The litigation relative to the compensability of the underlying claim was not concluded until our Supreme Court denied the respondents' petition for certification on that issue on September 11, 2019. It cannot be reasonably inferred from the four corners of the March 2018 correspondence that the claimant would have accepted payment for the 12 percent disability rating at that time or any time prior to the

issuance of the Supreme Court's decision as to compensability. We therefore believe that, as was the case for the claim for interest pursuant to § 31-301c (b), this correspondence estops the claimant from claiming interest pursuant to §31-295 (c) on the 12 percent disability rating assigned by Demeter on July 19, 2016. Accordingly, we decline to reverse the findings of the administrative law judge in this regard.

We would note that, had the compensability of the claim not been contested, and the parties able to stipulate to an agreed-upon date of maximum medical improvement, the respondents could conceivably have advanced payment to the claimant in July 2016 on the basis of Demeter's 12 percent disability rating. Indeed, in light of our Supreme Court's observation in Brennan that "an argument could be made" that a binding meeting of the minds may have existed relative to the lowest disability rating obtained by the respondent in that file, such a payment might have been warranted pending resolution of the issue of permanency. Brennan, supra, 699. However, in light of the fact that litigation as to the underlying compensability of the claim was still ongoing at the point in time when Demeter assigned his disability rating, we are not persuaded that a binding meeting of the minds existed such that the permanency benefits associated with the 12 percent disability rating had matured at either the point in time when the rating was assigned in 2016 or when the 2018 finding issued.[22]

There is no error; the August 21, 2023 Finding and Dismissal of Brenda D. Jannotta, Administrative Law Judge acting for the Fourth District, is accordingly affirmed.[23]

[22] The petition for review from the December 3, 2015 Finding and Award was filed on December 11, 2015.
[23] It should be noted that the exhibits for the depositions of Demeter and Rocklin -- Respondents' Exhibits 3 and 4, respectively -- were introduced for identification and not submitted into the evidentiary record.

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