CASE NO. 6525 CRB-2-23-12 CLAIM NOS. 800210040; 800210038; 800207534; 800207382; 800207383; 800207384; 800207535; & 800207742	:	COMPENSATION REVIEW BOARD
TACHICA CALLAHAN CLAIMANT-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
v.	:	MAY 10, 2024

ICARE HEALTH MANAGEMENT D/B/A
SILVER SPRING CARE CENTER
EMPLOYER

and

MEMIC INDEMNITY COMPANY
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant-appellant appeared at oral argument before the board as a self-represented party.

The respondents-appellees were represented by Christopher Buccini, Esq., Strunk, Dodge, Aiken, Zovas, L.L.C., 200 Corporate Place, Suite 100, Rocky Hill, CT 06067.

This Motion to Submit Additional Evidence regarding the Petition for Review from the November 30, 2023 Finding and Dismissal by Soline M. Oslena, the Administrative Law Judge acting for the Second District, was heard April 26, 2024 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Shanique D. Fenlator and Benjamin Blake.

RULING RE: MOTION TO SUBMIT ADDITIONAL EVIDENCE

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant has appealed from the November 30, 2023 Finding and Dismissal (finding) by Soline M. Oslena, Administrative Law Judge acting for the Second District, who dismissed her claim for benefits regarding a number of injuries that she claimed were causally related to her employment as a certified nursing assistant. The administrative law judge concluded after reviewing the record that the claims in question were jurisdictionally untimely, as the claimant failed to establish that she had sustained an occupational disease as defined under our statutes.[1] The claimant commenced a timely appeal from this decision, and on January 12, 2024, she filed a motion to submit additional evidence. The purpose of this motion was to supplement the record with additional evidence that the claimant believed would establish that her injuries were in fact the result of an occupational disease. After hearing oral argument, we concluded that the majority of the evidence in question had been available at all times during the pendency of the formal hearing or was substantially already in the record for this claim. To the extent the other submissions were unavailable as of the date of the formal hearing,

[1] General Statutes § 31-275 (15) states: "'Occupational disease' includes any disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such, and includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course of his employment."

General Statutes § 31-294c provides in relevant part: "(a) No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury, provided, if death has resulted within two years from the date of the accident or first manifestation of a symptom of the occupational disease, a dependent or dependents, or the legal representative of the deceased employee, may make claim for compensation within the two-year period or within one year from the date of death, whichever is later."

we determined that they would not constitute probative evidence as to the issues which were litigated. Accordingly, we deny the motion.

General Statutes § 31-301 (b) authorizes the board to review additional evidence not submitted to the administrative law judge in limited circumstances. The procedure that parties must employ in order to request the board to review additional evidence is provided in Section 31-301-9 of the Regulations of Connecticut State Agencies. As we held in Baker v. HUG Excavating, Inc., 5443 CRB-7-09-3 (March 5, 2010), however, the claimant must establish that certain conditions are present in order to have evidence added to the record. "As the Appellate Court pointed out in Mankus v. Mankus, 107 Conn. App. 585 (2008), when a litigant seeks pursuant to Admin. Reg. § 31-301-9 to present previously unconsidered evidence directly to this panel the moving party must establish good cause." Id. "Thus, in order to request the board to review additional evidence, the movant must include in the motion 1) the nature of the evidence, (2) the basis of the claim that the evidence is material and (3) the reason why it was not presented to the commissioner." Mankus, supra, 596.

We have reviewed the proposed submissions and summarize them herein.

A. An August 29. 2023 report from Carrie Redlich, M.D., of Yale Medicine.

B. A June 22, 2023 Partially Favorable Decision of the Social Security Administration. We note the claimant sought to have the administrative law judge accept this decision as additional evidence prior to the issuance of the trial decision on November 30, 2023. The administrative law judge denied that request.

C. Reports from the Hospital for Special Surgery dated February 1, 2024, March 11, 2024, and two dated March 19, 2024.

D. Reports from Yale Medicine dated March 1, 2024; reports from Yale New Haven Health dated December 19, 2017; reports from Michael Vincent Gormally, M.D., Ph.D., Internal Medicine, dated February 12, 2020; from Andrew Lischuk, M.D., dated March 23, 2020; from Olga Solovyoya, M.D., at UConn Health dated June 29, 2020; from Vincent Williams, M.D., dated August 18, 2020; and a list of appointment dates at Gaylord Hospital from 2020.

E. A list of exhibits from the May 1, 2023 formal hearing.

F. Two forms 30C dated December 12, 2023, listing the original date of injury of June 19, 2017, citing occupational disease injuries to the bilateral hips.

We note that the administrative law judge's finding dismissing the claim was based on her conclusion that the claimant did not sustain an occupational disease within the meaning of our statute and, therefore, her claim was untimely, and the commission lacked jurisdiction to award benefits. See, in particular, Conclusions, ¶¶ G-H.[2] Any additional evidence sought to be added to the record would only be relevant were it to shed light on that issue.

[2] "G. I find the Claimant failed to prove that her alleged injuries were peculiar or more likely to be caused by her occupation as a certified nursing assistant than would other kinds of manual labor employment carried out under the same circumstances.
H. I find that the Claimant's alleged injuries including left hip osteoarthritis more closely resembles a repetitive trauma injury and, therefore, the Claimant failed to meet the jurisdictional requirements of Sec. 31-294c as the notice of Claims were not filed within one year of Claimant's last date of employment with Respondent." Conclusions, ¶¶ G-H.

During oral argument before this tribunal, the claimant demanded that we proffer a definition of "occupational disease," as she fervently believes that her work as a certified nursing assistant and her injuries emanating from that employment constitute such an ailment. General Statute § 31-275 (15). We note that on several occasions our Supreme Court has offered such a definition, and our consideration of this matter must be guided by their binding precedent. See, for example, Malchik v. Division of Criminal Justice, 266 Conn. 728 (2003), where a criminal investigator's cardiac condition was determined not to meet this jurisdictional threshold.

> In interpreting the phrase occupational disease, we have stated that the requirement that the disease be peculiar to the occupation and in excess of the ordinary hazards of employment, refers to those diseases in which there is a causal connection between the duties of the employment and the disease contracted by the employee. In other words, [the disease] need not be unique to the occupation of the employee or to the work place; it need merely be so distinctively associated with the employee's occupation that there is a direct causal connection between the duties of the employment and the disease contracted. Hansen v. Gordon, 221 Conn. 29, 35, 602 A.2d 560 (1992). Thus, an occupational disease does not include a disease which results from the peculiar conditions surrounding the employment of the claimant in a kind of work which would not from its nature be more likely to cause it than would other kinds of employment carried on under the same conditions. Madeo v. I. Dibner & Bro., Inc., 121 Conn. 664, 667, 186 A. 616 (1936). (Internal quotation marks omitted.) Crochiere v. Board of Education, 227 Conn. 333, 352-53, 630 A.2d 1027 (1993). In the present case, the facts fail to demonstrate that the plaintiff's coronary artery disease is "peculiar to" and "so distinctively associated with [criminal investigators and police officers] that there is a direct causal connection between the duties of the employment and the disease contracted." (Internal quotation marks omitted.) Hansen v. Gordon, supra, 221 Conn. 35.

Id., 734-35.

Having restated the prerequisites to establish that a claimant's injury constitutes or is the sequalae of an occupational disease, we will review the individual elements of

evidence the claimant seeks to add to the record. We look first at Redlich's August 2023 report. We note that this witness has offered substantial prior evidence in the claimant's proceedings before this commission. We find that this report is essentially cumulative of this prior evidence. As we have long held, we are not obligated to admit evidence to a record which is cumulative to that evidence which has already been introduced. See Reid v. Sheri A. Speer d/b/a Speer Enterprises, LLC, 5818 CRB-2-13-1 (January 28, 2014), *aff'd*, 209 Conn. App. 540 (2021) (per curiam), *cert. denied*, 342 Conn. 908 (2022). Moreover, this report reiterates the expert's opinion as to workplace causation, it does not address the threshold jurisdictional question as to whether the claimant's workplace injury was "distinctively associated" with her occupation, as the report makes no mention as to the relative prevalence of this injury amongst certified nursing assistants, nor any explanation as to how the specific job duties of that occupation would increase the likelihood of sustaining injuries similar to those sustained by the claimant. Submission A. Therefore, Redlich's report would not constitute probative evidence and we deny to admit Submission A.

We turn to the claimant's second submission, which was a decision reached as to her eligibility for social security disability benefits. Since this decision was reached by a tribunal applying different standards as to disability than those utilized by this commission, we do not believe evidence from this forum is probative evidence as to the claimant's eligibility for benefits under chapter 568. As we held in Dzienkiewicz v. State/Dept. of Correction, 5211 CRB-8-07-3 (March 18, 2008), *transferred to S.C.* (29748), *aff'd,* 291 Conn. 214 (2009):

> 'The standards of the Social Security Administration in adjudicating total disability are not the same standards used by our

> workers' compensation commission and, thus, a commissioner may decline to admit them into evidence.' Bidoae [v. Hartford Golf Club, 4693 CRB-6-03-7 (June 23, 2004), *aff'd*, 91 Conn. App. 470, 480-81 (2005), *cert. denied*, 276 Conn. 921 (2005)]. The record herein indicates the Medical Examining Board applies an analogous standard to their decisions as applied by the Social Security Administration. Therefore, we conclude there was no error when the trial commissioner determined that the Medical Examining Board's decision was not probative evidence on the issue of whether the claimant was entitled to an award under workers' compensation.

Id.

We have also reviewed the specific submission herein. In our review, we note that the text of this decision does not address whether the claimant's injury is the result of an occupational disease as defined in our statutes. We also note that subsequent to the closing of the record at the formal hearing, the claimant sought to admit this documentation into the record as evidence as part of her motion to correct, and the administrative law judge denied the motion. See Ruling on Claimant's Motion to Correct dated December 28, 2023. These factors weigh against admitting this documentation into the record as evidence. In any event, as we do not believe the decision of the Social Security Administration is dispositive as to whether the claimant met our standards to receive compensation, we deny Submission B.

The third submission consists of various notes and reports from New York's Hospital for Special Surgery regarding a procedure performed on the claimant's hip in February 2024. We note that this encounter occurred well after the record of the formal hearing closed and we believe that admission of such evidence constitutes the sort of piecemeal litigation we have consistently ruled against. See Diaz v. Pineda a/k/a Jamie Pineda d/b/a J.P. Landscaping Company, 5244 CRB-7-07-7 (July 8, 2008), *aff'd in part;*

rev'd in part, 117 Conn. App. 619 (2009); see also Gibson v. State/Department of Developmental Services - North Region, 5422 CRB 2-09-2 (January 13, 2010). Had the claimant sought to have had the administrative law judge consider the import of her hip surgery, she could have sought a continuance to have the hearing subsequent to this surgery, but this did not occur. In any event, none of these documents opine on the jurisdictional issues herein, and therefore we deny Submission C.

Submission D consists of various notes and reports generated by Yale Internal Medicine; Yale Rehabilitation Services; Yale Center for Musculoskeletal Care-Physiatry; Gaylord Hospital; and UConn Health. One report was dated March 1, 2024, well after the completion of the hearing, but the remainder of these records were generated between 2017 and 2020. We do not find the 2024 report sheds any light on the jurisdictional issues herein, and we are not persuaded that any of the other records were unavailable and could not have been proffered at the formal hearing. We note that the claimant submitted a substantial number of reports from her medical providers at the hearing, and these reports appear to be cumulative to what has already been produced. Finally, we find none of these reports contain a causation opinion supportive of finding the claimant's ailments were the result of an occupational disease.[3] Consequently, we deny Submission D.

Submission E is the list of exhibits presented to the administrative law judge at the May 1, 2023 formal hearing. As this information is already in the record, this document is totally redundant and does not need to be admitted to the record.

[3] Indeed, we note that the report of Vincent Williams, M.D., of UConn Health, dated August 18, 2020, stated "there is no correlation between lifting patients turning and twisting that would give her arthritis. I believe this was an underlying condition." Submission E.

The final submission herein, Submission F, is the various 30C forms the claimant has filed for her claim and supportive medical records. The claim forms all exist in the record, and we believe all the associated medical records were available to the claimant to submit as part of the record, as voluminous documentation from these same medical providers already exists in the record. We also note that many of these claim forms cite a date of injury of June 19, 2017, which was the date of injury for the claim that the claimant previously executed a full and final stipulation to resolve, and which an administrative law judge has already denied a motion to open. See Callahan v. Healthcare Services Group-Meriden Care Center, 6453 CRB-8-21-11 (November 4, 2022), *appeal dismissed*, 223 Conn. App. 902 (February 6, 2024) (per curiam), *cert. denied*, 348 Conn. 962 (April 2, 2024), which affirmed a November 3, 2021 Decision on Claimant's Motion to Reopen Stipulation.

In addition, we do not find an opinion letter herein as to the jurisdictional issue in dispute. Therefore, this documentation is redundant and cumulative and pursuant to Reid, supra, need not be admitted. Admission of such documentation at this juncture would also constitute impermissible piecemeal litigation. See Diaz, supra, and Gibson, supra. We, therefore, deny the admission of Submission F.

As none of the proposed evidence to be submitted are relevant as to whether the claimant's injury was the result of an occupational disease, as defined in Malchik, supra, we deny the claimant's motion to submit additional evidence.

Administrative Law Judges Shanique D. Fenlator and Benjamin Blake concur in this Ruling.