

CASE NO. 6532 CRB-8-24-2 : COMPENSATION REVIEW BOARD  
CLAIM NO. 800212970

MICHAEL A. BOCCHINO : WORKERS' COMPENSATION  
CLAIMANT-APPELLANT COMMISSION

v. : JULY 19, 2024

JOSEPH'S AUTO BODY  
(J.F.P. ENTERPRISES, L.L.C.)  
EMPLOYER

and

GRAPHIC ARTS MUTUAL INS. CO.  
(UTICA NATIONAL INS. GROUP)  
INSURER  
RESPONDENTS-APPELLEES

APPEARANCES:

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

The respondents were represented by Craig T. Abbott, Esq., Solimene & Secondo, L.L.P., 1501 East Main Street, Suite 204, Meriden, CT 06450.

This Ruling Re: Motion to Submit Additional Evidence regarding the Petition for Review from the February 8, 2024 Finding and Award of David W. Schoolcraft, Administrative Law Judge acting for the Eighth District, was heard June 28, 2024 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Zachary M. Delaney and Daniel E. Dilzer.

## **RULING RE: MOTION TO SUBMIT ADDITIONAL EVIDENCE**

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant has filed a motion to submit additional evidence in this matter. He seeks to add various documents to the record which he believes were omitted in error. The respondents have objected, arguing that none of the proffered documents meet the standard under our statute<sup>1</sup> and regulations<sup>2</sup> for admission after the conclusion of a formal hearing. Upon review, we deem some of the documents offered by the claimant should be added to the record, some of the documents presented herein are already exhibits to the record, and certain documents pertain to settlement negotiations and are inadmissible as evidence before our tribunal.

The matter herein involves an appeal from a February 8, 2024 Finding and Award which awarded the claimant certain benefits for a repetitive trauma injury to his right shoulder. The administrative law judge, after hearing the evidence at a formal hearing, found the claimant's injuries to be compensable and held that the claimant was entitled to a permanent partial disability award. The administrative law judge, however, denied the claim for temporary total and temporary partial disability benefits. The administrative

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<sup>1</sup> General Statutes § 31-301 (b) states: "The appeal shall be heard by the Compensation Review Board as provided in section 31-280b. The Compensation Review Board shall hear the appeal on the record of the hearing before the administrative law judge, provided, if it is shown to the satisfaction of the board that additional evidence or testimony is material and that there were good reasons for failure to present it in the proceedings before the administrative law judge, the Compensation Review Board may hear additional evidence or testimony."

<sup>2</sup> Administrative Regulation § 31-301-9 states: "If any party to an appeal shall allege that additional evidence or testimony is material and that there were good reasons for failure to present it in the proceedings before the commissioner, he shall by written motion request an opportunity to present such evidence or testimony to the compensation review division, indicating in such motion the nature of such evidence or testimony, the basis of the claim of materiality, and the reasons why it was not presented in the proceedings before the commissioner. The compensation review division may act on such motion with or without a hearing, and if justice so requires may order a certified copy of the evidence for the use of the employer, the employee or both, and such certified copy shall be made a part of the record on such appeal."

law judge also determined the claimant was not a surgical candidate as of the date that the record was closed. The claimant appealed this decision and sought to add the following documents into the record based on his belief that they were relevant to the determination of this appeal.

- Page 1. Correspondence from Jeremy Nadelman, M.D.
- Pages 2-9. 8 pages of correspondence regarding settlement negotiations.
- Pages 10-12. 3 pages of correspondence to the commission.
- Page 13. A letter to respondents counsel re: settlement.
- Pages 14-15. Medical reports from Scott Bissell, M.D.
- Pages 16-18. Documents pertaining to Bissell’s practice.
- Page 19. An authorization form to the commission, signed by the claimant on August 25, 2021.
- Page 20. Correspondence to Judge Schoolcraft dated January 28, 2024.

In conducting our inquiry, we are bound by our Appellate Court’s long-standing precedent in Diaz v. Pineda, 117 Conn. App. 619 (2009). After citing the relevant statute and regulation, see *id.*, pp. 627-28, the court promulgated the test which we cite herein.

‘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 v. Mankus*, 107 Conn. App. 585, 595–96, 946 A.2d 259, cert. denied, 288 Conn. 904, 953 A.2d 649 (2008). The question whether additional evidence should be taken calls for an exercise of discretion by the board, which we review under the abuse of discretion standard. See *Salmon v. Dept. of Public Health & Addiction Services*, 58 Conn. App. 642, 664, 754 A.2d 828 (2000), rev’d on other grounds, 259 Conn. 288, 788 A.2d 1199 (2002).

*Id.*, 628.

In reviewing the proposed submissions, we note that it is black-letter law that materials related to settlement negotiations are generally inadmissible in administrative proceedings. See Jutkowitz v. Department of Health Services, 220 Conn. 86, 97-98

(1991). Therefore, we deem that pages 2-9 and 13 of the claimant's submissions cannot be admitted to the record and we deny that element of the motion.

We further note that the medical reports from Bissell (pages 14-15 of the submission) are already incorporated in the record as Respondent's Exhibit 3. As such, these documents are cumulative evidence and do not necessitate admission at this juncture. This request is, therefore, denied.

The remainder of the claimant's proposed evidence consists of documents which have not been previously admitted to the record and which are not related to settlement negotiations. We note that Nadelman's January 4, 2024 letter was generated after the administrative law judge closed the record to this hearing on November 14, 2023. This document also appears to pertain to future medical treatment and would potentially be more relevant at a future hearing. Nonetheless, we will admit this document to the record.

The documents submitted on pages 10-12 of this motion constitute correspondence to this commission prior to the issuance of the Finding and Award. While it appears that it would have been possible for the claimant to have submitted this documentation prior to the closure of the record, we will grant the claimant's motion as to these documents. The documents pertaining to Bissell's practice (pages 16-18) and the authorization form to the commission (page 19), also could have been presented to the administrative law judge prior to the closure of the record. Nonetheless, we will extend leniency to the claimant herein and permit them to be added to the record, substantially based upon our belief that delayed admission of these documents does not pose any due process concerns to the respondents.

Finally, we consider page 20 of the submission, which is a January 28, 2024 letter from the claimant to Judge Schoolcraft. Since we believe this document could be functionally deemed to serve as a post-hearing brief for the claimant, we grant the motion to add this document to the record.

Administrative Law Judges Zachary M. Delaney and Daniel E. Dilzer concur in this ruling.