CASE NO. 6453 CRB-8-21-11 : COMPENSATION REVIEW BOARD
CLAIM NOS. 800199543 & 800202184

TACHICA CALLAHAN : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : JUNE 6, 2022

HEALTHCARE SERVICES
GROUP-MERIDEN CARE CENTER
EMPLOYER
RESPONDENT-APPELLEE
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, Healthcare Services Group-Meriden Care Center and Memic Indemnity Company were represented by Christopher Buccini, Esq., Strunk, Dodge, Aiken, Zovas, LLC, 200 Corporate Place, Suite 100, Rocky Hill, CT 06067.

The respondent-appellee, Healthcare Services Group-Meriden Care Center was represented by Jonathan Starble, Esq., iCare Management, LLC, Legal Department, 341 Bidwell Street, Manchester, CT 06040 with respect to the claimant's allegations under C.G.S. § 31-290a only. Attorney Starble did not file a brief or participate in oral argument but he did appear.

This Motion for Additional Evidence regarding the Petition for Review from the November 3, 2021 Decision on the Claimant's Motion to Reopen Stipulation by Peter C. Mlynarczyk, the Administrative Law Judge acting for the Eighth District, was heard March 25, 2022 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M.

Morelli and Administrative Law Judges Daniel A. Dilzer and Carolyn M. Colangelo.[1]

RULING RE: MOTION FOR ADDITIONAL EVIDENCE

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant has appealed from Administrative Law Judge Peter C. Mlynarczyk's November 3, 2021 denial of her motion to open the stipulation that was approved by Administrative Law Judge David W. Schoolcraft on November 14, 2019. During the pendency of this appeal, the claimant filed motions to submit additional evidence on December 23, 2021 and December 31, 2021. The respondents objected to the submission of new evidence on February 25, 2022. The motion to submit additional evidence was bifurcated from the underlying merits of the claimant's appeal and was the subject of oral argument on March 25, 2022. After hearing oral argument and having reviewed the documents marked for identification at the March 25, 2022 hearing, we hereby deny the claimant's request.[2]

Connecticut General Statutes § 31-301(b) authorizes the board to review additional evidence not submitted to the administrative law judge in limited circumstances.[3] 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

[1] 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.

[2] We note that one motion for extension of time and a motion for continuance were granted during the pendency of this appeal.

[3] General Statute § 31-301(b) states that "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."

Connecticut State Agencies.[4] Based on this unambiguous language, this board has held "it is the claimant's burden to recognize and resolve any inconsistencies in the evidence at the formal hearing, whether or not those discrepancies seemed significant to the claimant at the time of the hearing." Abdule v. Walnut Hill Convalescent Home, 3383 CRB-6-96-7, *appeal withdrawn* (August 27, 1997) *quoting* Ruling on Motion to Submit Additional Evidence issued March 25, 1997; see also Fusco v. J.C. Penney Company, 1952 CRB-4-94-1 (March 20, 1997), *appeal withdrawn*, A.C. 17050 (July 17, 1997). "Moreover, a motion to submit additional evidence may not properly be used to alter a party's evidentiary decisions regarding the presentation of evidence at a formal hearing." Abdule, supra. As the Connecticut Supreme Court has stated,

> A party to a compensation case is not entitled to try his case piecemeal, to present a part of the evidence reasonably available to him and then, if he loses, have a rehearing to offer testimony he might well have presented at the original hearing. He must be assumed to be reasonably familiar with his rights and with the requisites of proof necessary to establish his claim; and to permit him intentionally to withhold proof, or to shut his eyes to the reasonably obvious sources of proof open to him, would be fair neither to the commissioner and the court nor to the defendant. Where an issue has been fairly litigated, with proof offered by both parties upon an issue, a claimant should not be entitled to a further hearing to introduce cumulative evidence unless its character or force be such that it would be likely to produce a different result.

Gonirenki v. American Steel & Wire Co., 106 Conn. 1, 11 (1927).

[4] Connecticut 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 [administrative law judge], 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 [administrative law judge]. 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 part of the record on such appeal."

Finally, as the Appellate Court has noted, "[a]lthough we allow pro se litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law." Tomaszek v. Girard Motors, Inc., 70 Conn. App. 122, 124 (2002), *quoting* Wittman v. Krafick, 67 Conn. App. 415 (2001), *cert. denied*, 260 Conn. 916 (2002).

With these parameters in mind, we will address the proposed submissions. In the present case, the administrative law judge denied the claimant's motion to open the full and final settlement after five formal hearing sessions held on August 25, 2020, November 3, 2020, January 11, 2021, March 22, 2021, and July 8, 2021. A final pro forma hearing was scheduled for October 14, 2021, for the purpose of submission of briefs. During these proceedings, the claimant introduced multiple exhibits into evidence, called a witness, and testified on her own behalf. Subsequent to the administrative law judge's denial of the claimant's motion to open, the claimant requested to submit additional evidence. Although the claimant's proposed exhibits list sets forth only twenty-seven items, a review of those documents reveals seventy-eight separate items for consideration. See Claimant's Exhibits A-B.

As set forth above, the claimant must establish that all proposed additional evidence is both material to the merits of the issue at hand and that there are good reasons for the failure to present it in the proceedings before the administrative law judge. "It is axiomatic that '[e]vidence is admissible only to prove material facts, that is to say, those facts directly in issue or those probative of matters in issue; evidence offered to prove other facts is 'immaterial.' '" Salmon v. Dept. of Public Health & Addiction Services, 259 Conn. 288, 316 (2002), *quoting* C. Tait, Connecticut Evidence (3d Ed. 2001) § 4.1.3,

p. 200, *citing* Adams v. Way, 32 Conn. 160, 167-169 (1864). See also Tutsky v. YMCA of Greenwich, 28 Conn. App. 536 (1992) *citing* Lucarelli v. Earl C. Dodds, Inc., 121 Conn. 640 (1936) (motion to open award not based on a changed condition of fact, but rather a claim to produce evidence that was previously available) and Meadow v. Winchester Repeating Arms Co., 134 Conn. 269 (1948) (motion to open denied as party not allowed to try his case piecemeal, particularly when evidence should have been anticipated to be needed).

In this matter, the only issue before the administrative law judge was the motion to open the November 14, 2019 stipulation. "An award by Stipulation is a binding award which, on its terms, bars a further claim for compensation unless Sec. 31-315, which allows for modification is satisfied."[5] (Footnote altered.) Marriott v. Northington Builders, 3357 CRB-1-96-5 (November 7, 1997) *quoting* Mongillo v. Terminal Taxi Co., 12 Conn. Workers' Comp. Rev. Op. 197, 199, 1455 CRB-3-92-7 (March 7, 1994). "Like a stipulated judgment in Superior Court, an Award by Stipulation may be set aside without the consent of all parties only if it was obtained by fraud, misrepresentation, accident or mistake." Id., *quoting* Gonzalez v. Electric Transport (Penske), 13 Conn. Workers' Comp. Rev. Op. 6, 8, 1729 CRB-1-93-5 (October 13, 1994). Based on this

[5] General Statute § 31-315 states that, "[a]ny award of, or voluntary agreement concerning, compensation made under the provisions of this chapter or any transfer of liability for a claim to the Second Injury Fund under the provisions of section 31-349 shall be subject to modification in accordance with the procedure for original determination, upon the request of either party or, in the case of a transfer under section 31-349, upon request of the custodian of the Second Injury Fund, whenever it appears to the [administrative law judge], after notice and hearing thereon, that the incapacity of an injured employee has increased, decreased or ceased, or that the measure of dependence on account of which compensation is paid has changed, or changed conditions of fact have arisen which necessitate a change of such agreement, award, or transfer in order properly to carry out the spirit of this chapter. The [administrative law judge] shall also have the same power to open and modify an award as any court of the state has to open and modify a judgment of such court. The [administrative law judge] shall retain jurisdiction over claims for compensation, awards and voluntary agreements, for any proper action thereon, during the whole compensation period applicable to the injury in question."

criterium, we deny the request to submit the following documents as they are not material to the motion to open the November 14, 2019 stipulation:

1. December 14, 2021 return to work note from Carrie Redlich, a physician at Yale Occupational Medicine;

2. Two pages of emails from the claimant regarding work capacity;

3. December 9, 2021 progress note from Redlich that mentions work injury, treatment, and a discussion of the return-to-work plan;

4. Eight pages of emails and job description between the claimant and the Guilford House regarding her employment;

5. December 9, 2021 work status note signed by Redlich;

6. Social Security disability assessment signed by Redlich on December 9, 2021;

7. Six pages of emails between the claimant and Yale Health Services regarding work and her claim;

8. March 24, 2022 note from Paul L. Bernstein, an internal medicine and nephrology physician, regarding weight loss and medication;

9. March 24, 2022 after visit summary from appointment with Bernstein;

10. February 28, 2022 note from Yale-New Haven Hospital/St. Raphael's Hospital emergency department regarding medication;

11. October 17, 2021 note from Yale-New Haven Hospital/St. Raphael's Hospital emergency department regarding medication;

12. February 28, 2022 after visit summary and provider notes from Yale-New Haven Hospital emergency department for a chief complaint of chest pain;

13. October 18, 2021 emergency department provider notes from Yale-New Haven Hospital for chief complaints of back pain, constipation, and nasal congestion;

14. Five of twelve total pages of an October 18, 2021 after visit summary regarding back pain, constipation, and nasal congestion (also incomplete record;

15. January 11, 2022 note regarding upcoming tests and procedures;

16. Chart of vitals dated May 14, 2021 through January 11, 2022;

17. March 17, 2022 appointment details with HSS Adult Ambulatory Care Center;

18. March 14, 2022 telephone encounter with HSS regarding emotional distress concerns;

19. List of appointments with HSS from September 2, 2021 through February 16, 2022;

20. Billing information from HSS from May 14, 2021 through February 9, 2022;

21. November 9, 2021 email from Elm City Communities regarding the claimant's escrow account;

22. University of Bridgeport Bachelor of Science degree plan;

23. Document from the Connecticut Department of Labor regarding a student questionnaire and a hearing;

24. Emails between the claimant, Guilford House, and Yale Health Services regarding work restrictions;

25. Associate in Science degree from Gateway Community College;

26. Connecticut Department of Public Health affidavit dated February 8, 2021 regarding the completion of a course in cosmetology;

27. Bill and transcript from the University of Bridgeport;

28. Claimant's resume and Indeed profile;

29. Documentation regarding the claimant's job searches;

30. Copy of a 2009 article from the Journal of American Medical Association regarding labral tears;

31. April 27, 2020 letter from Yale Orthopaedics & Rehabilitation regarding the breakdown of the therapeutic relationship;

32. Copy of an April/March 2008 article from the Journal of Athletic Training regarding the more precise classification of orthopedic injury types and treatment;

33. Documentation regarding the claimant's nursing aide certification and a copy of Chapter 378a Nurse's Aide;

34. Copy of Fed. Reg. 416-945, "Your residual functional capacity";

35. Claimant's earnings records;

36. Connecticut Department of Labor paperwork;

37. University of Bridgeport paperwork;

38. Social Security disability denial and appeal;

39. Medical authorization for Ann Zovas, counsel for the respondents, dated September 6, 2018; and

40. Demand letter for $1,100,000 from Alex Sarris, prior counsel for the claimant, dated November 21, 2017.

In addition to demonstrating that the proposed additional evidence is material, the movant must also satisfactorily explain why the evidence was not submitted at the time of trial.

> If a claimant has failed to address relevant issues during the first set of formal hearing proceedings, he does not get a second, third or fourth bite at the apple when he later realizes that he forgot something. A party is not entitled to present his case in a piecemeal fashion, nor may he indulge in a second opportunity to prove his case if he initially fails to meet his burden of proof.

Krajewski v. Atlantic Machine Tool Works, Inc., a/k/a Atlantic Aerospace Textron, 4500 CRB-6-02-3 (March 7, 2003).

Before this board, the claimant alleged that she was unable to obtain certain records and/or opinions because neither the respondents nor Medicaid (Husky) would authorize the necessary evaluations or treatment. In our review of the claimant's submissions, however, it was clear that many of the requested admissions were medical records that were generated prior to the close of the record on October 14, 2021. In fact,

some of those records were actually generated *prior* to the November 14, 2019 stipulation approval. As such, we deny the request to submit the following evidence as the claimant has not supported her burden that such records were unavailable:

1. September 10, 2020 progress notes from Redlich and her staff;

2. September 28, 2020 out-of-work note;

3. June 25, 2020 out-of-work note;

4. March 11, 2019 narrative letter from Clinton Jambor, an orthopedic surgeon, to Christopher Buccini, counsel for the respondents, regarding causation and permanent impairment;

5. May 14, 2021 x-ray report of the back and knees;

6. May 14, 2021 progress notes from David Hyams, a physiatrist, regarding the back and the hip, inclusive of a recommendation for an MRI;

7. August 7, 2021 "to whom it may concern" narrative letter from Redlich that speaks to the causation of the left hip;

8. August 13, 2021 note from the emergency department regarding chronic back pain;

9. August 3, 2021 adult urgent visit note from the Cornell Scott Health Center regarding back pain;

10. May 27, 2021 report regarding a left hip injection;

11. May 27, 2021 appointment details note regarding an MRI of the back (also immaterial);

12. Progress notes dated August 10, 2021 from Hyams regarding back and hip treatment;

13. September 9, 2021 Gaylord physical therapy orthopedic assessment;

14. October 17, 2019 after visit summary regarding back pain, pain in the right shoulder, and a skin rash (also immaterial);

15. Emails in September 2019 between the claimant and Kathleen McAvoy, an internal medicine specialist, regarding a functional capacity evaluation (also immaterial);

16. September 16, 2019 after visit summary from Yale Health Services regarding back pain (also immaterial);

17. August 15, 2019 after visit summary from Yale Orthopaedics regarding back pain and referral to pain clinic (also immaterial);

18. June 5, 2019 letter to the claimant from Yale Health Services regarding behavioral health referrals for Husky patients (also immaterial);

19. February 19, 2019 "to whom it may concern" narrative letter regarding a past medical history of back pain and the need for periodic days off work (also immaterial);

20. January 29, 2019 MRI report of the low back (also immaterial);

21. Incomplete medical report issued sometime in the Spring/Summer of 2018 (also immaterial);

22. June 13, 2018 after visit summary from Yale regarding back pain (also immaterial);

23. June 29, 2020 report from the UConn Health Center regarding osteoarthritis of the left hip;

24. October 2, 2017 report from the Yale-New Haven Hospital/St. Raphael's Hospital emergency department regarding back pain (also immaterial);

25. October 28, 2017 report from the Yale-New Haven Hospital/St. Raphael's Hospital emergency department regarding back pain (also immaterial); and

26. September 6, 2018 physician's report of occupational disease regarding back pain from Redlich (also immaterial).

Claimant's Exhibit B contained several additional documents. Having reviewed these records, we deny the admission of these records for the following reasons:

1. October 30, 2018 narrative letter from Redlich regarding causation of the claimant's back condition as it is already part of the record;

2. October 27, 2021 left hip x-ray report as it is merely a follow-up study to diagnostic films that were conducted prior to the close of the record;

3. December 14, 2021 narrative letter from Redlich to Attorney Robert Carter requesting that he assist the claimant in her claim and that suggests causation for the left hip as it is a reiteration of Redlich's August 7, 2021 opinion and not a medical record per se;

4. October 27, 2021 report regarding an injection to the left hip. The claimant underwent a similar injection to the left hip prior to the close of the record and, therefore, the information contained therein is cumulative in nature with respect to such treatment and does not offer any new, material information;

5. Email chain from September 18, 2019 through October 2, 2020 between the claimant and her doctors wherein the claimant is seeking opinions regarding her medical status and causation as it is not a medical record per se and it constitutes an inadmissible communication absent the respondents having been given their due process rights of cross examination prior to the close of the formal hearing record (also generated prior to the close of the record);

6. Forms 30C received on October 31, 2017 and October 24, 2019 as they are already part of the record;

7. Form 43 dated November 16, 2017 as it is already part of the record;

8. First Report of Injury dated October 22, 2017 as it is already part of the record;

9. Undated MRI reports of the back, bilateral hip x-rays, and MRI of the left hip as it cannot be verified as to when they were generated such that a determination can be made as to whether they were available for submission into the record at the time of the formal hearing (also immaterial); and

10. Form 42 dated July 11, 2018 from Julia Perry, an internal medicine specialist, that sets forth a 50 percent permanent impairment of the back as it is already part of the record (also immaterial and generated prior to the close of the record).

Since the claimant has failed to satisfy her burden that the proposed additional evidence is material to her case, see Mankus v. Mankus, 107 Conn. App. 585, 596 (2008), *cert. denied*, 288 Conn. 904 (2008) and that it could not have been obtained

before the close of the record on October 14, 2021, see also Diaz v. Pineda, 117 Conn. App. 619, 629 (2009), we deny her request to submit additional evidence.

Administrative Law Judges Daniel E. Dilzer and Carolyn M. Colangelo concur in this Ruling.