

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

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

v. : JANUARY 24, 2025

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 did not appear at oral argument before the board. The claimant is 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 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 September 27, 2024 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges William J. Watson III and Soline M. Oslena.¹

¹ The claimant filed a Motion to Submit Additional Evidence on March 6, 2024. We ruled on this motion in a Ruling Re: Motion to Submit Additional Evidence issued on July 19, 2024.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant has appealed from a February 8, 2024 Finding and Award issued by Administrative Law Judge David W. Schoolcraft. Issues at the formal hearing were compensability of the claimant's injury, eligibility for indemnity benefits, and treatment. The administrative law judge determined that the claimant's shoulder injury was compensable and ordered medical treatment for the injury. He also awarded the claimant specific benefits for the permanent impairment of his upper extremity, but found the claimant failed to sustain his burden of proof regarding temporary total or temporary partial disability benefits. The claimant appealed the decision and argued that it was error not to have awarded him temporary total and/or temporary partial disability benefits, in part because he was awarded Social Security disability benefits. He also argued that there were a number of evidentiary errors made during the formal hearing; there had been misconduct between his prior counsel and respondents' counsel; a private court reporter had allegedly deleted portions of his deposition transcript; and medical witnesses worked with the respondents to conspire against him. The claimant also claimed error from the trial judge refusing to recuse himself from the file based on the alleged misconduct. The respondents argued that the findings reached by the administrative law judge were based on probative evidence that he chose to credit, the hearing was managed in an appropriate fashion, and an appellate tribunal should not second guess factual determinations made by a finder of fact. Upon review of the record and the pleadings, we find the respondents' position more persuasive. We affirm the Finding and Award.

In reviewing this case we note that the claimant had a career as an auto body technician and started working for the respondent around 2011. On or about September 18, 2018, the claimant was involved in a horseplay incident at work which led to pain around his right shoulder joint. The claimant's treator at the time suspected a rotator cuff injury. However, the claimant started taking anti-inflammatory drugs, further tests did not reveal significant damage, and the condition proved self-limiting. See Findings, ¶¶ 6-8, *citing* Claimant's Exhibit A. The claimant did not file a claim and did not miss time from work. Although the claimant did treat for other orthopedic issues after this incident, he did not relate any concerns to his treaters regarding his right shoulder between 2018 and July 2021.

The current claim was brought subsequent to a series of events in July 2021. At that time, the claimant was engaged in an extensive repair job on a Honda Civic and on the morning of July 8, 2021 he woke up with difficulty moving his right arm. Later that day, he presented at Connecticut Orthopedic Specialists and was examined by Derek Shia, who opined that the claimant had "right shoulder impingement, possible rotator cuff tear." Findings, ¶ 21. After steroid and lidocaine injections, the claimant experienced some temporary relief and was able to continue in his full duty capacity. At about the same time, the claimant had a dispute with his employer over an unrelated issue and, on July 27, 2021, he quit working for the respondent. On August 30, 2021, the claimant filed a form 30C that alleged a right shoulder injury on July 7, 2021 while working on the Honda Civic. The respondent filed a timely form 43 contesting compensability.

The claimant had a heart attack on December 11, 2021. On January 5, 2022 while recovering from that cardiac event, he was examined by orthopedic surgeon Michael

Pierce Connair. Connair related the claimant's shoulder pain to "repetitive rotation, pressing, lifting and overhead use" at work. Findings, ¶ 35. He performed an injection to relieve pain and opined the claimant was not currently able to work as an automotive technician. A February 15, 2022 MRI of the claimant's right shoulder disclosed, among other ailments, a full thickness tear of the supraspinatus tendon. See Findings, ¶ 36, *citing* Claimant's Exhibit C. The claimant continued to treat with Connair during early 2022 and pursued informal hearings seeking acceptance of compensability of his claim by the respondents. Alternatively, the claimant was interested in a negotiated settlement.

The respondents scheduled a respondents' medical examination (RME) for the claimant with orthopedic surgeon, Scott Bissell. The examiner did not have the claimant's medical records at the time of the examination on July 28, 2022. The claimant explained to the examiner that he believed the mechanism of his injury was repetitive trauma at work. Bissell did have the claimant's MRI and concurred as to the full tendon tear of the supraspinatus. He also opined the claimant was a surgical candidate to repair the rotator cuff tear and that the claimant had a light-duty work capacity with lifting restrictions. See Findings, ¶¶ 44-47, *citing* Respondent's Exhibit 1. Although Bissell did not originally opine as to causation of the claimant's injury, in response to an inquiry from a representative of the carrier, he opined on August 4, 2022 that, based on the available documentation that he had, he was not able to causally connect the claimant's injury to his work activities in July 2021. See Findings, ¶ 50. Bissell later issued a second addendum in November 2022, again indicating his opinion that the claimant's shoulder injury was not due to his employment. See Findings, ¶ 56.²

² As of the date of Bissell's addendum, he still had not received the full package of medical documentation.

Connair issued a response to Bissell's opinion on November 16, 2022, wherein he reiterated his opinion that the claimant's shoulder ailment was caused by repetitive trauma at work. He also opined, however, that the claimant's use of blood thinning medication and his shoulder atrophy might result in a suboptimal surgical result. Furthermore, Connair noted that the claimant was not interested in surgery at that time. See Findings, ¶ 57.

On April 19, 2023 Patrick A. Ruwe, an orthopedic surgeon, performed an examination of the claimant at the request of the administrative law judge. Ruwe reviewed medical reports which documented the claimant's medical history prior to his 2021 injury. In his report, Ruwe found the claimant did have a full thickness rotator cuff tear but noted that it did not create significant limitations on motion or strength. Ruwe did not recommend surgery. Ruwe further opined that the most likely cause of the tear was the 2018 incident at work; the claimant had reached maximum medical improvement with a 5 percent impairment of the arm; and that he had a work capacity with a lifting restriction and a ban on overhead work. See Findings, ¶¶ 70-73, *citing* Respondent's Exhibit 8. The claimant disagreed with the opinions set forth in Ruwe's report and sought a formal hearing on his claim.

The deposition of Bissell was held on July 27, 2023, by which time Bissell had been provided with the claimant's medical records. At his deposition, Bissell testified that he agreed with Ruwe that the claimant's rotator cuff tear was the result of the 2018 work incident. He further testified that the prior medical records did not support a finding of a repetitive trauma injury. See Findings, ¶¶ 96-97, *citing* Respondent's Exhibit 4. Bissell's deposition transcript, as well as the claimant's medical records and

the claimant's live testimony, were entered into the record at the August 9, 2023 formal hearing.

During the claimant's testimony at the formal hearing, he provided details as to the 2018 incident with a co-worker and stated that he continued to work after that incident. The claimant also testified that he quit his job on July 27, 2021 over an overtime dispute with his employer. Although he testified that he had looked for work after his termination of employment, he did not produce any job search records. The claimant further testified about his December 10, 2021 heart attack³ and medications to treat his heart condition which he stated made him feel nauseated and dizzy. At the time of the formal hearing the claimant admitted his shoulder was better and his heart condition ruled out any surgery. See Findings, ¶¶ 107-111, *citing* August 9, 2023 Transcript. The claimant was awarded social security disability benefits, see Respondent's Exhibit 6,⁴ and he did not present evidence of seeking work after his heart attack. See Findings, ¶ 109, *citing* August 9, 2023 Transcript, p. 74. The administrative law judge noted that the claimant did not produce any medical evidence that he was totally incapacitated, any medical evidence responsive to Ruwe's commission medical examination (CME) report, nor any medical reports recommending treatment to the shoulder. See Findings, ¶ 112. The claimant was offered additional time to obtain a response to Bissell and Ruwe's opinions but did not avail himself of this opportunity prior to the close of the record.

³ The administrative law judge cited medical records stating this event occurred on December 11, 2021, see Findings, ¶ 33, while the claimant testified to a December 10, 2021 date, see Findings, ¶ 110. The discrepancy is not material to the issues in this appeal.

⁴ This exhibit did not outline the rationale behind the decision to award disability benefits. In any event, decisions reached by a tribunal applying different standards than this commission, such as the Social Security Administration, are not binding upon our commission. See Bidoae v. Hartford Golf Club, 4693 CRB-6-03-7 (June 23, 2004), *aff'd*, 91 Conn. App. 470, 480-81, *cert. denied*, 276 Conn. 921 (2005).

During the course of the proceedings in this case, the claimant alleged malfeasance by a private stenographer and collusion between the respondent's insurer, respondents' counsel, and his prior attorney. He further alleged that the commission covered-up these alleged improprieties and filed a complaint with the Judicial Review Council regarding the administrative law judge, which was dismissed. Upon a request for recusal by the claimant, the administrative law judge held a hearing regarding that request and subsequently issued a ruling declining to disqualify himself.

In his February 8, 2024 decision, the administrative law judge found that Connair's opinion was the most persuasive as to the question of causation and that the claimant's rotator cuff tear had arisen out of and in the course of his employment. He further found that the claimant had not produced any evidence that he was totally disabled prior to the December 2021 heart attack and, therefore, denied the claim for total disability benefits. Noting that the evidence supported a finding that the claimant retained some work capacity after his rotator cuff injury, but that he had not sought work, the administrative law judge also denied a claim for temporary partial disability benefits. The administrative law judge found Ruwe's opinion persuasive that the claimant had a 5 percent permanent partial disability and awarded 10.4 weeks of benefits under Section 31-308 (b).

The claimant filed a timely motion to correct and a motion to submit additional evidence responsive to the administrative law judge's decision. The motion to correct sought to remove numerous findings and conclusions based on the claimant's position that collusion prevented the RME and CME from being properly performed. The motion also argued that the compensation rate was inaccurate and that reimbursements were due

to the claimant. He did not, however, offer an alternative compensation rate nor a list of expenses. The motion also contended that the claimant's heart attack should have been more thoroughly discussed and stated that the administrative law judge should have helped him obtain an opinion regarding total disability. The administrative law judge denied this motion in its entirety on February 29, 2024 with a detailed written rationale for denying each proffered correction. As for the motion for additional evidence, our tribunal issued a response on July 19, 2024, granting the motion in part and denying the motion in part. See Ruling Re: Motion to Submit Additional Evidence issued July 19, 2024.

We now turn to the merits of the claimant's appeal, noting that we have a long-standing precedent of extending great deference to the fact-finding role of our administrative law judges. "As 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." Daniels v. Alander, 268 Conn. 320, 330 (2004), *quoting* Burton v. Mottolese, 267 Conn. 1, 54 (2003). The Compensation Review Board cannot retry the facts of the case and may only overturn the findings of the administrative law judge if they are without evidentiary support, contrary to the law, or based on unreasonable or impermissible factual inferences. See Kish v. Nursing & Home Care, Inc., 248 Conn. 379, 384 (1999) and Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988).

Our analysis herein is focused upon the pleadings as the claimant did not attend our appellate hearing and the respondents essentially rested upon their brief. In his reasons of appeal, the claimant focused much of his attention upon averments that

suggested the administrative law judge failed to take steps to advance his claim. We have had occasion to opine previously on that issue and remind litigants that a trier of fact cannot act as a de facto advocate for an unrepresented party. “The trial commissioner is not charged with the responsibility of ‘advising’ the parties who appear before him during the course of the trial. The trial commissioner is expected to review the evidence submitted by the parties and to issue a decision on the merits.” Flood v. Travelers Property & Casualty, 5267 CRB-1-07-8 (December 8, 2008), *appeal withdrawn*, A.C. 30649 (December 29, 2009).⁵

Having reviewed the record in this matter, we are left unpersuaded that the administrative law judge erred in how this hearing was conducted. We note that many of the claimant’s averments of error focus on the administrative law judge’s decision not to admit evidence pertaining to settlement negotiations. We do not find that decision erroneous as the leading case on this issue, Jutkowitz v. Department of Health Services, 220 Conn. 86 (1991), supports the administrative law judge’s ruling.

The general rule that evidence of settlement negotiations is not admissible at trial is based upon the public policy of promoting the settlement of disputes. *Simone Corporation v. Connecticut Light & Power Co.*, 187 Conn. 487, 490, 446 A.2d 1071 (1982); C. Tait & J. LaPlante, *Connecticut Evidence* (2d Ed.1988) § 11.5.4 (b). Although hearings before administrative agencies are not governed by the strict rules of evidence, they “ ‘must be conducted so as not to violate the fundamental rules of natural justice.’ ” *Huck v. Inland Wetlands & Watercourses Agency*, 203 Conn. 525, 536, 525 A.2d 940 (1987), quoting *Connecticut Fund for the Environment, Inc. v. Stamford*, 192 Conn. 247, 249, 470 A.2d 1214 (1984). Allowing evidence of settlement negotiations to be admitted at administrative hearings is inconsistent with both fundamental principles of justice and with the public policy of encouraging settlements. We conclude, therefore, that evidence of attempts at

⁵ 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.

settlement is generally not admissible at adjudicative hearings by agencies.

Id., pp. 97-98.

As to the various allegations of collusion, the claimant failed to support those claims. Additionally, we do not believe the administrative law judge was obligated to pursue the claimant's unsupported and conclusory assertions.

It is black-letter law that our statutes provide the trier of fact a broad grant of authority to "run one's own courtroom." Valiante v. Burns Construction Company, 5393 CRB-4-08-11 (October 15, 2009). The administrative law judge offered a cogent explanation in his denial of the claimant's motion to correct as to why he did not address the collusion claims in his decision. We do not find his rationale arbitrary or capricious, see In re Shaquanna M., 61 Conn. App. 592 (2001). Furthermore, we do not find that he denied the claimant due process of law, as delineated in Balkus v. Terry Steam Turbine Co., 167 Conn. 170, 177 (1974).⁶ Consequently, we affirm his decision on those points.

We also believe it is necessary to address the effort by the claimant to obtain the administrative law judge's recusal. Having examined the record and our precedent in such matters, see Martinez-McCord v. State/Judicial Branch, 5647 CRB-7-11-4 (August 1, 2012), *appeal withdrawn*, A.C. 34935 (April 4, 2013), we fail to find any grounds to support recusal, as the administrative law judge did not have any personal knowledge of this case outside the evidence presented on the record.

Having addressed the claimant's claims of procedural errors, we turn to the merits of the case. The claimant contended that he was entitled to an award for temporary total

⁶ Many of the claimant's averments of misconduct center around the examinations and reports of Bissell. However, we are not persuaded that these arguments are particularly relevant since the Finding and Award did not adopt Bissell's opinions.

disability, based in part on having been awarded social security disability benefits. We have long held that an award of social security disability benefits is not dispositive of whether one is entitled to a disability award under chapter 568. See Bidoae v. Hartford Golf Club, 4693 CRB-6-03-7 (June 23, 2004), *aff'd*, 91 Conn. App. 470 (2005), *cert. denied*, 276 Conn. 921 (2005). It is also the claimant's burden to prove that he is totally incapacitated. See also, Hernandez v. American Truck Rental, 5083 CRB-7-06-4 (April 19, 2007), and to establish that such disability is the result of a compensable injury, see Olwell v. State/Dept. of Developmental Services, 5731 CRB-7-12-2 (February 14, 2013). The administrative law judge concluded the claimant did not produce any evidence of total disability prior to his heart attack, which was found to be a superseding event that caused the claimant's disability, thereby breaking any potential causal connection between the compensable injury and his disability status. Pursuant to Sapko v. State, 305 Conn. 360 (2012) and Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440 (2001), we find that the administrative law judge could have reasonably reached this conclusion.⁷

We also hold that the administrative law judge reached a reasonable conclusion as to the claimant's entitlement to temporary partial disability benefits. The claimant left his job for reasons unrelated to the compensable injury and was not seeking employment. Therefore, the trier of fact could determine he had not presented a persuasive case for Section 31-308 (a) benefits. See Gelinas v. P & M Mason Contractors, Inc., 5567 CRB-8-10-6 (June 7, 2011).

⁷ We note that none of the medical evidence on the record, even including that evidence admitted subsequent to our ruling on the motion to submit additional evidence, would support an inference the claimant was totally disabled as a result of his shoulder injury.

Gelinas is also dispositive with respect to the claimant's arguments of error in the determination of § 31-308 (b) benefits. The sole evidence on the record regarding the claimant's level of permanent partial disability was Ruwe's opinion that the claimant sustained a 5 percent permanent partial impairment. Since only one opinion was presented, it was not erroneous to award benefits based on that uncontested evidence.

Finally, we address the denial of the claimant's motion to correct. The administrative law judge denied this motion in its entirety with a detailed written rationale for denying each proffered correction. Having reviewed the record and the grounds presented for denial, we are satisfied that the administrative law judge reached a reasonable conclusion and was not obligated to accept the litigant's position as to these issues. See Brockenberry v. Thomas Deegan d/b/a Tom's Scrap Metal, Inc., 5429 CRB-5-09-2 (January 22, 2010), *aff'd*, 126 Conn. App. 902 (2011) (per curiam).

Finding no errors of law and finding substantial evidence in the record supportive of the decision, we herein affirm the February 8, 2024 Finding and Award of David W. Schoolcraft, Administrative Law Judge acting for the Eighth District. Administrative Law Judges William J. Watson III and Soline M. Oslena concur in this opinion.