

Public Act 16-112: A NEW ERA OF UNIFORMITY

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What is a 30C Form?

The 30C is the employee's official notice of claim for workers' compensation. When an employee is injured on the job, or is diagnosed as having a work-related disease, the State of Connecticut Workers' Compensation Act requires that he/she notify their employer of their intention to file a workers' compensation claim.

There is a statute of limitations for filing workers' compensation claims:

- Within 1 year from a date of injury; either specific or repetitive trauma; or
- Within 3 years from the first manifestation of a symptom involving an occupational disease

Neither the First Report of Injury nor the employer's Accident Report satisfies this official notice of claim requirement.

How is a 30C Form received?

The employee must send the 30C Form by registered or certified mail to both the employer (Town Clerk) and the Workers' Commission with a return receipt requested to show proof of the date it was received.

The employee may also elect to hand deliver the 30C Form in person to the employer (Town Clerk). In this instance, it is essential that you, the employer (Town Clerk), date stamp or sign and date the form as proof of the City's receipt. It is furthermore essential that any party at the City who is in receipt of a 30C Form understands the imperative nature of said receipt and is aware of the City's procedure for handling.

History – Case Law Disasters - why was this change needed - Discussion

NEW LEGISLATION REGARDING DELIVERY OF A 30C FORM TO THE EMPLOYER – EFFECTIVE 7/1/16

House Bill No. 564 Public Act No. 16-112 AN ACT CONCERNING THE FILING OF WORKERS' COMPENSTAION CLAIMS WHEN A MUNICIPALITY IS THE EMPLOYER. The enactment of this bill, effective July 1, 2016, requires the employee of a municipality to send a copy of the 30C notice to the Town Clerk of the municipality in which he or she is employed.

NOTE: Teachers and the New Act – An Issue to Monitor

As the employer, what do I do when a 30C Form is received?

Develop a plan – make sure everyone is on board with the plan:

(The Following is a *recommendation* for procedures to be followed – a municipal employer should create their own customized plan to conform to the uniqueness of your City or Town)

Upon receipt of a 30C Form, the Town Clerk shall first confirm date of receipt is clearly defined whether via certified/registered mail receipt or, if hand delivered, Town Clerk has acknowledged receipt by signing and dating the Form. Immediately thereafter, the 30C Form must be sent to PMA at which time PMA, within 28 days of receipt of the 30C Form, must make a determination as to the compensability of the claim.

IF A FORM 30C IS SERVED UPON THE TOWN CLERK, THE FOLLOWING INTERNAL PROCESS INSTRUCTIONS SHOULD BE FOLLOWED:

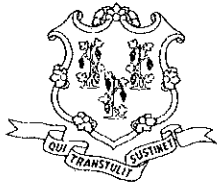
Internal Process Instructions for Town Clerk

1. Town Clerk immediately sends Form 30C to correct designated municipal officer (Corp. Counsel, Risk Manager, etc.);
2. Town Clerk documents and confirms:
 - a) date received in Clerk's office;
 - b) date forwarded to correct designated municipal officer;
 - c) continues to follow up until designated municipal officer has acknowledged receipt;
3. Designated Municipal Officer transmits 30C to WC Carrier or TPA
4. WC Carrier or TPA prepares and files Form 43 (assuming denial is warranted)
5. Town Clerk and Designated Municipal Officer maintains a log, and copy of all documents pertaining to 30C including envelope, certified mail receipts.

Written instructions should contain FAX and email addresses of all parties involved in this process for easy reference.

When on vacation, holiday, sick leave, all persons with responsibilities in the processing of workers' compensation claims should have a designated back-up, so that no time is lost in the monitoring of filings.

An employer has 28 days in which to either deny the claim or make payment of workers' compensation benefits without prejudice. If, within the 28 day period, an employer fails to either issue a denial of benefits, or to initiate the payment of workers' compensation benefits, then compensability of the claim must be accepted. (i.e. Preclusion – for a more detailed discussion on the issue of Preclusion – please contact Joseph Passaretti to schedule a conference or seminar at no cost)



State of Connecticut Workers' Compensation Commission

Please TYPE or PRINT IN INK

Rev. 8-23-2010

30C

WCC File #

Date filed in District

Notice of Claim for Compensation

(Employee to Commissioner and to Employer)

This form prepared by the WCC is proper for ordinary use and is recommended, but any other notice complying with Section 31-294c shall be deemed sufficient.

Notice is hereby given that the injured worker, while in the employ of the employer, sustained injuries arising out of and in the course of his/her employment as follows, and makes claim for compensation benefits.

(for WCC use only)

INJURED WORKER

Name _____
(first) (middle) (last)

D.O.B. (required) _____

Check, if a Minor (under 18 yrs. of age)

Address _____

Town _____ State _____

Zip Code _____ Tel.# _____

INJURY

Date of Injury _____

Town of Injury _____

Body Part(s) _____

Describe Injury and How It Happened:

Check, if an Occupational Disease or a Repetitive Trauma

Check, if you have MORE THAN ONE Employer

EMPLOYER

Employer _____

Address _____

Town _____ State _____

Zip Code _____ Tel.# _____

Was Injury ON Premises of Employer? YES NO

If NO, where? _____

Address _____

Town _____ State _____

Zip Code _____ Tel.# _____

SIGNATURE OF INJURED WORKER OR REPRESENTATIVE

Signature _____

Date _____

Print name & address below, if other than injured worker:

Name _____

Name of Firm _____

Address _____

Town _____ State _____

Zip Code _____ Tel.# _____

This notice must be served upon the Commissioner and *Employer by personal presentation or by registered or certified mail. For the protection of both parties, the employer should note the date when this notice was received and the claimant should keep a copy of this notice with the date it was served.

* Persons employed by the State of Connecticut must also serve the employer by serving this notice upon the Commissioner of Administrative Services, 165 Capitol Avenue, Hartford, CT 06106.

WARNING: If an employer does not file a notice contesting liability (e.g. Form 43) for this claim OR begin making workers' compensation benefit payments "without prejudice" within 28 calendar days from the date when this claim is received by personal delivery or by registered or certified mail, **COMPENSABILITY SHALL BE PRESUMED** and cannot thereafter be contested. If an employer chooses to begin making workers' compensation benefit payments "without prejudice" within 28 calendar days from the date of receipt of this claim and still wishes to contest this claim, it must do so by filing a notice contesting liability for this claim within one year from receipt of this claim. [See Sec. 31-294c(b).]

A 30C Form should be filed promptly after a work-related injury or illness takes place. There is a statute of limitation for filing workers' compensation claims: within **one** year of the date of an accidental injury or within **three** years from the first manifestation of a symptom of an occupational disease. [NOTE: If, within the applicable time period described above, (1) there has been a hearing or a written request for a hearing or an assignment for a hearing or (2) your employer's insurance carrier has already signed a Voluntary Agreement, you do **NOT** need to file a 30C Form for the injury or illness it covers.]

You Should File A 30C Form Because . . .

- There will be no doubt that you are claiming that you have a work-related injury or occupational disease.
- It is the **best way** to insure that you have met the statute of limitations for filing a workers' compensation claim.
- A simple "accident report" filed with the employer is **not** an official claim for workers' compensation.
- Your claim will be more likely to receive prompt attention from your employer or insurance carrier.
- Once your employer receives an official claim, they have only 28 calendar days in which to either deny your claim or to begin making workers' compensation benefit payments "without prejudice." If an official denial is not issued within 28 calendar days or if benefit payments are not initiated within 28 calendar days, your employer must accept the compensability of your claim.

Directions for Completing the 30C Claim Form

Please pay close attention to these directions.

When filling out a 30C Form, remember to Type or Print Neatly In Ink (except for signatures).

In filling out the 30C Form, please note the following:

1. In the "INJURED WORKER" box at the upper left side of the form, **type or neatly print the name of the injured worker (If YOU are the injured worker, print YOUR name here.)** Also fill in the injured worker's D.O.B. (date of birth), put a check in the box, if the worker is a minor (under the age of 18) and fill in the injured worker's street address, town, state, zip code, and telephone number.
2. In the "EMPLOYER" box at the lower left side of the form, **type or neatly print the name of the employer** ("Name of employer" means the name of the organization for which you work, **NOT** your boss or supervisor.) and its street address, town, state, zip code, and telephone number. Next indicate (YES or NO) whether the injured worker's injury occurred at the employer's location just listed; if the injury took place at a location other than that listed, fill in the location, street address, town, state, zip code, and telephone number where the injury actually occurred.
3. In the "INJURY" box at the upper right side of the form, **type or neatly print the date of the injured worker's injury and the town in which the injury occurred** (Note the city or town in which the injury actually occurred. This will **not necessarily** be the same location as the employer's business address!). Next indicate the part(s) of the worker's body injured and how the injury occurred (In the blank space describe your injury in simple terms. Indicate the part(s) of your body affected and the type(s) of injury. For example: "sprain to the right shoulder", "amputation of the left thumb", "fracture of the right ankle", "severe strain to lower back", etc.). Lastly, indicate (YES or NO) whether the injury is an occupational disease or a repetitive trauma, and check the appropriate box, if you have more than one employer.
4. In the "SIGNATURE OF INJURED WORKER OR REPRESENTATIVE" box at the lower right side of the form, **sign your name and fill in the date of your signature, if you are the injured worker. If you are NOT the injured worker, then sign your name, fill in the date of your signature, and then type or neatly print your name, the name (if any) of your firm, your street address, town, state, zip code, and your telephone number.**
5. In the "WCC File #" box at the upper right side of the form (just below the "30C" number with the black background), **type or neatly print the WCC File Number, ONLY IF YOU KNOW IT.** In most instances, this number will be assigned to your claim by the Workers' Compensation Commission only after you send the 30C Form in, so it is okay to leave this one area of the form blank, if you are not absolutely sure of the number.

Once you have completed the 30C Form, follow these procedures:

6. Make two (2) extra copies of your completed 30C Form (this can be done at many quick-copy printers).
7. **Send the original 30C to your employer** by Certified or Registered mail, return receipt requested. The claim may also be delivered in person but if so, have the employer acknowledge in writing the receipt of the claim. State employees' work-related injuries and illnesses are reported on Form PER-WC 207, entitled "Report of Occupational Injury or Disease to an Employee". If a State employee elects to file a 30C Form, then he or she must send the 30C Form to the Commissioner of Administrative Services, 165 Capitol Avenue, Hartford, CT 06106, **NOT** to the particular office where employed. (The Form PER-WC 207 is **ONLY** an accident report and is **NOT** the official claim form for workers' compensation benefits — State employees, like any other employees, must file a 30C Form in order to file an official workers' compensation claim.)
8. **Send a copy of the 30C to the appropriate Workers' Compensation Commission District Office** by Certified or Registered mail, return receipt requested, or deliver by personal presentation. Addresses for all Workers' Compensation Commission District Offices may be found in this packet of material. The "District Office" refers to the number given to the District Workers' Compensation Commission Office for the town in which you were injured. Refer to the Connecticut map provided with the Form 30C for the number of the Compensation District for the town in which you were injured.
9. **Keep the remaining copy of the 30C for your own file.**

Workers' Compensation Commission District Offices

District 1 — Hartford

999 Asylum Avenue
Hartford, CT 06105
Phone: (860) 566-4154
Fax: (860) 566-6137

District 5 — Waterbury

55 West Main Street
Waterbury, CT 06702
Phone: (203) 596-4207
Fax: (203) 805-6501

District 2 — Norwich

55 Main Street
Norwich, CT 06360
Phone: (860) 823-3900
Fax: (860) 823-1725

District 6 — New Britain

233 Main Street
New Britain, CT 06051
Phone: (860) 827-7180
Fax: (860) 827-7913

District 3 — New Haven

700 State Street
New Haven, CT 06511-6500
Phone: (203) 789-7512
Fax: (203) 789-7168

District 7 — Stamford

111 High Ridge Road
Stamford, CT 06905
Phone: (203) 325-3881
Fax: (203) 967-7264

District 4 — Bridgeport

350 Fairfield Avenue
Bridgeport, CT 06604
Phone: (203) 382-5600
Fax: (203) 335-8760

District 8 — Middletown

90 Court Street
Middletown, CT 06457
Phone: (860) 344-7453
Fax: (860) 344-7487



State of Connecticut
Workers' Compensation Commission

Please TYPE or PRINT IN INK

Rev. 7-13-2009

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Notice to Compensation
Commissioner and Employee
of Intention to Contest Employee's
Right to Compensation Benefits

WCC File # _____

Date filed in District _____

(for WCC use only)

EMPLOYEE

Name _____

D.O.B. (required) _____

Address _____

City/Town _____ State _____

Zip Code _____ Tel.# _____

ATTORNEY OR REPRESENTATIVE OF EMPLOYEE

Name _____

Name of Firm _____

Address _____

City/Town _____ State _____

Zip Code _____ Tel.# _____

EMPLOYER

Name _____

Address _____

City/Town _____ State _____

Zip Code _____ Tel.# _____

INSURER

Claim Number _____

Name _____

Address _____

City/Town _____ State _____

Zip Code _____

Contact Person _____

Tel.# _____

INJURY

Date of Injury _____

Date of Death _____

City/Town of Injury _____

State _____ Zip Code _____

Body Part(s) _____

Nature of Injury _____

Check, if an Occupational Disease or a Repetitive Trauma

REASON(S) FOR CONTEST — SIGNATURE

You are hereby notified that the employer/insurer will contest liability to pay compensation benefits to the employee named on this form for the following reason(s) — SPECIFIC EXPLANATION REQUIRED:

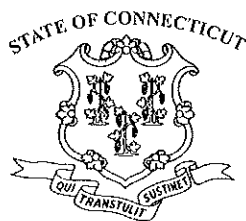
Signature _____

Date _____

Name (type or print) _____

Title _____

This notice must be served upon the Commissioner and Employee (or representative, if applicable) by personal presentation or by registered or certified mail. When medical care is the issue for contest, send a copy of this form to the medical provider also. For the protection of both parties, the claimant should note the date when this notice was received and the employer/insurer should keep a copy of this notice with the date it was served.



House Bill No. 5364

Public Act No. 16-112

AN ACT CONCERNING THE FILING OF WORKERS' COMPENSATION CLAIMS WHEN A MUNICIPALITY IS THE EMPLOYER.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (a) of section 31-294c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

(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. Notice of [a] claim for compensation may be given to the employer or any commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident, or the date of the first manifestation of a symptom

House Bill No. 5364

of the occupational disease and the nature of the disease, as the case may be, and the name and address of the employee and of the person in whose interest compensation is claimed. An employee of the state shall send a copy of the notice to the Commissioner of Administrative Services. An employee of a municipality shall send a copy of the notice to the town clerk of the municipality in which he or she is employed. As used in this section, "manifestation of a symptom" means manifestation to an employee claiming compensation, or to some other person standing in such relation to him that the knowledge of the person would be imputed to him, in a manner that is or should be recognized by him as symptomatic of the occupational disease for which compensation is claimed.

Approved June 3, 2016

Connecticut General Statutes Annotated
Title 7. Municipalities
Chapter 113. Municipal Employees (Refs & Annos)
Part III. General Provisions (Refs & Annos)

C.G.S.A. § 7-467

§ 7-467. Collective bargaining. Definitions

Currentness

When used in sections 7-467 to 7-477, inclusive:

- (1) "Municipal employer" means any political subdivision of the state, including any town, city, borough, district, district department of health, school board, housing authority or other authority established by law, a private nonprofit corporation which has a valid contract with any town, city, borough or district to extinguish fires and to protect its inhabitants from loss by fire, and any person or persons designated by the municipal employer to act in its interest in dealing with municipal employees;
- (2) "Employee" means any employee of a municipal employer, whether or not in the classified service of the municipal employer, except elected officials, administrative officials, board and commission members, certified teachers, part-time employees who work less than twenty hours per week on a seasonal basis, department heads and persons in such other positions as may be excluded from coverage under sections 7-467 to 7-477, inclusive, in accordance with subdivision (2) of section 7-471;
- (3) "Seasonal basis" means working for a period of not more than one hundred twenty calendar days in any calendar year;
- (4) "Department head" means an employee who heads any department in a municipal organization, has substantial supervisory control of a permanent nature over other municipal employees, and is directly accountable to the board of selectmen of a town, city or borough not having a charter or special act form of government, or to the chief executive officer of any other town, city or borough;
- (5) "Department" means any major functional division in a municipal organization, notwithstanding the provisions of any charter or special act to the contrary;
- (6) "Employee organization" means any lawful association, labor organization, federation or council having as a primary purpose the improvement of wages, hours and other conditions of employment among employees of municipal employers.

Credits

(1965, Feb.Sp.Sess., P.A. 159, § 1, eff. June 4, 1965; 1969, P.A. 688, § 5; 1978, P.A. 78-375, § 1; 1983, P.A. 83-503; 1985, P.A. 85-40; 1990, P.A. 90-47, § 1.)

Notes of Decisions containing your search terms (0)

[View all 10](#)

C. G. S. A. § 7-467, CT ST § 7-467

The statutes and Constitution are current with enactments of the 2016 Regular Session and the 2016 May Special Session.

End of Document

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Connecticut General Statutes Annotated
Title 10. Education and Culture (Refs & Annos)
Chapter 166. Teachers and Superintendents (Refs & Annos)
Part I. Teachers

C.G.S.A. § 10-151

§ 10-151. Employment of teachers. Definitions. Tenure. Notice
and hearing on failure to renew or termination of contract. Appeal

Effective: June 30, 2015

Currentness

(a) For the purposes of this section:

(1) "Board of education" means a local or regional board of education, a cooperative arrangement committee established pursuant to section 10-158a, or the board of trustees of an incorporated or endowed high school or academy approved pursuant to section 10-34, which is located in this state;

(2) "Teacher" includes each certified professional employee below the rank of superintendent employed by a board of education for at least ninety calendar days in a position requiring a certificate issued by the State Board of Education;

(3) "Continuous employment" means that time during which the teacher is employed without any break in employment as a teacher for the same board of education;

(4) "Full-time employment" means a teacher's employment in a position at a salary rate of fifty per cent or more of the salary rate of such teacher in such position if such position were full-time;

(5) "Part-time employment" means a teacher's employment in a position at a salary rate of less than fifty per cent of the salary rate of such teacher in such position, if such position were full-time;

(6) "Tenure" means:

(A) The completion of forty school months of full-time continuous employment for the same board of education, provided the superintendent offers the teacher a contract to return for the following school year on the basis of effective practice as informed by performance evaluations conducted pursuant to section 10-151b. For purposes of calculating continuous employment towards tenure, the following shall apply: (i) For a teacher who has not attained tenure, two school months of part-time continuous employment by such teacher shall equal one school month of full-time continuous employment except, for a teacher employed in a part-time position at a salary rate of less than twenty-five per cent of the salary rate of a teacher in such position, if such position were full-time, three school months of part-time continuous employment shall equal one school month of full-time continuous employment; (ii) a teacher who has not attained tenure shall not count layoff time towards tenure, except that if such teacher is reemployed by the same board of education within five calendar years of the layoff, such teacher may count the previous continuous employment immediately prior

to the layoff towards tenure; (iii) a teacher who has not attained tenure shall not count authorized leave time towards tenure if such time exceeds ninety student school days in any one school year, provided only the student school days worked that year by such teacher shall count towards tenure and shall be computed on the basis of eighteen student school days or the greater fraction thereof equaling one school month; (iv) for a teacher who has not attained tenure and who is employed by a local or regional board of education that enters into a cooperative arrangement pursuant to section 10-158a, such teacher may count the previous continuous employment with such board immediately prior to such cooperative arrangement towards tenure; and (v) for a teacher who has not attained tenure and who is employed by a local board of education or as part of a cooperative arrangement, pursuant to section 10-158a, and such board or cooperative arrangement joins a regional school district, such teacher may count the previous continuous employment with such local board or cooperative arrangement immediately prior to employment by the regional board of education towards tenure.

(B) For a teacher who has attained tenure prior to layoff, tenure shall resume if such teacher is reemployed by the same board of education within five calendar years of the layoff.

(C) Except as provided in subparagraphs (B), (D) and (E) of this subdivision, any teacher who has attained tenure with any one board of education and whose employment with such board ends for any reason and who is reemployed by such board or is subsequently employed by any other board, shall attain tenure after completion of twenty school months of continuous employment, provided the superintendent offers the teacher a contract to return for the following school year on the basis of effective practice as informed by performance evaluations conducted pursuant to section 10-151b. The provisions of this subparagraph shall not apply if, (i) prior to completion of the twentieth school month following commencement of employment by such board such teacher has been notified in writing that his or her contract will not be renewed for the following school year, or (ii) for a period of five or more calendar years immediately prior to such subsequent employment, such teacher has not been employed by any board of education.

(D) Any certified teacher or administrator employed by a local or regional board of education for a school district identified as a priority school district pursuant to section 10-266p may attain tenure after ten months of employment in such priority school district, if such certified teacher or administrator previously attained tenure with another local or regional board of education in this state or another state.

(E) For a teacher who has attained tenure and is employed by a local or regional board of education that enters into a cooperative arrangement pursuant to section 10-158a, such teacher shall not experience a break in continuous employment for purposes of tenure as a result of such cooperative arrangement.

(F) For a teacher who has attained tenure and is employed by a local board of education or as part of a cooperative arrangement, pursuant to section 10-158a, and such board or cooperative arrangement joins a regional school district, such teacher shall not experience a break in continuous employment for purposes of tenure as a result of joining such regional school district.

(7) "School month" means any calendar month other than July or August in which a teacher is employed as a teacher at least one-half of the student school days.

(b) Any board of education may authorize the superintendent to employ teachers. Any superintendent not authorized to employ teachers shall submit to the board of education nominations for teachers for each of the schools in the town or

towns in such superintendent's jurisdiction and, from the persons so nominated, teachers may be employed. Such board shall accept or reject such nominations not later than thirty-five calendar days from their submission. Any such board of education may request the superintendent to submit multiple nominations of qualified candidates, if more than one candidate is available for nomination, for any supervisory or administrative position, in which case the superintendent shall submit such a list and may place the candidates on such list in the order in which such superintendent recommends such candidates. If such board rejects such nominations, the superintendent shall submit to such board other nominations and such board may employ teachers from the persons so nominated and shall accept or reject such nominations not later than one month from their submission. Whenever a superintendent offers a teacher who has not attained tenure a contract to return for another year of employment, such offer shall be based on records of evaluations pursuant to subsection (a) of section 10-151b. The contract of employment of a teacher shall be in writing.

(c) The contract of employment of a teacher who has not attained tenure may be terminated at any time for any of the reasons enumerated in subdivisions (1) to (6), inclusive, of subsection (d) of this section; otherwise the contract of such teacher shall be continued into the next school year unless such teacher receives written notice by May first in one school year that such contract will not be renewed for the following year. Upon the teacher's written request, not later than three calendar days after such teacher receives such notice of nonrenewal or termination, a notice of nonrenewal or termination shall be supplemented not later than four calendar days after receipt of the request by a statement of the reason or reasons for such nonrenewal or termination. Such teacher, upon written request filed with the board of education not later than ten calendar days after the receipt of notice of termination, or nonrenewal shall be entitled to a hearing, except as provided in this subsection, (1) before the board, or (2) if indicated in such request and if designated by the board, before an impartial hearing officer chosen by the teacher and the superintendent in accordance with the provisions of subsection (d) of this section. Such hearing shall commence not later than fifteen calendar days after receipt of such request unless the parties mutually agree to an extension not to exceed fifteen calendar days. The impartial hearing officer or a subcommittee of the board of education, if the board of education designates a subcommittee of three or more board members to conduct hearings, shall submit written findings and recommendations to the board for final disposition. The teacher shall have the right to appear with counsel of the teacher's choice at the hearing. A teacher who has not attained tenure shall not be entitled to a hearing concerning nonrenewal if the reason for such nonrenewal is either elimination of position or loss of position to another teacher. The board of education shall rescind a nonrenewal decision only if the board finds such decision to be arbitrary and capricious. Any such teacher whose contract is terminated for the reasons enumerated in subdivisions (3) and (4) of subsection (d) of this section shall have the right to appeal in accordance with the provisions of subsection (e) of this section.

(d) The contract of employment of a teacher who has attained tenure shall be continued from school year to school year, except that it may be terminated at any time for one or more of the following reasons: (1) Inefficiency, incompetence or ineffectiveness, provided, if a teacher is notified on or after July 1, 2014, that termination is under consideration due to incompetence or ineffectiveness, the determination of incompetence or ineffectiveness is based on evaluation of the teacher using teacher evaluation guidelines established pursuant to section 10-151b; (2) insubordination against reasonable rules of the board of education; (3) moral misconduct; (4) disability, as shown by competent medical evidence; (5) elimination of the position to which the teacher was appointed or loss of a position to another teacher, if no other position exists to which such teacher may be appointed if qualified, provided such teacher, if qualified, shall be appointed to a position held by a teacher who has not attained tenure, and provided further that determination of the individual contract or contracts of employment to be terminated shall be made in accordance with either (A) a provision for a layoff procedure agreed upon by the board of education and the exclusive employees' representative organization, or (B) in the absence of such agreement, a written policy of the board of education; or (6) other due and sufficient cause. Nothing in this section or in any other section of the general statutes or of any special act shall preclude a board of education from making an agreement with an exclusive bargaining representative which contains a recall provision. Prior to terminating a contract, the superintendent shall give the teacher concerned a written notice that termination of such teacher's contract is under consideration and give such teacher a statement of the reasons for such consideration of termination. Not

later than ten calendar days after receipt of written notice by the superintendent that contract termination is under consideration, such teacher may file with the local or regional board of education a written request for a hearing. A board of education may designate a subcommittee of three or more board members to conduct hearings and submit written findings and recommendations to the board for final disposition in the case of teachers whose contracts are terminated. Such hearing shall commence not later than fifteen calendar days after receipt of such request, unless the parties mutually agree to an extension, not to exceed fifteen calendar days (A) before the board of education or a subcommittee of the board, or (B) if indicated in such request or if designated by the board before an impartial hearing officer chosen by the teacher and the superintendent. If the parties are unable to agree upon the choice of a hearing officer not later than five calendar days after the decision to use a hearing officer, the hearing officer shall be selected with the assistance of the American Arbitration Association using its expedited selection process and in accordance with its rules for selection of a neutral arbitrator in grievance arbitration. If the hearing officer is not selected with the assistance of such association after five days, the hearing shall be held before the board of education or a subcommittee of the board. When the reason for termination is incompetence or ineffectiveness, the hearing shall (i) address the question of whether the performance evaluation ratings of the teacher were determined in good faith in accordance with the program adopted by the local or regional board of education pursuant to section 10-151b and were reasonable in light of the evidence presented, and (ii) be limited to twelve total hours of evidence and testimony, with each side allowed not more than six hours to present evidence and testimony except the board, subcommittee of the board or impartial hearing officer may extend the time period for evidence and testimony at the hearing when good cause is shown. Not later than forty-five calendar days after receipt of the request for a hearing, the subcommittee of the board or hearing officer, unless the parties mutually agree to an extension not to exceed fifteen calendar days, shall submit written findings and a recommendation to the board of education as to the disposition of the charges against the teacher and shall send a copy of such findings and recommendation to the teacher. The board of education shall give the teacher concerned its written decision not later than fifteen calendar days after receipt of the written recommendation of the subcommittee or hearing officer. Each party shall share equally the fee of the hearing officer and all other costs incidental to the hearing. If the hearing is before the board of education, the board shall render its decision not later than fifteen calendar days after the close of such hearing and shall send a copy of its decision to the teacher. The hearing shall be public if the teacher so requests or the board, subcommittee or hearing officer so designates. The teacher concerned shall have the right to appear with counsel at the hearing, whether public or private. A copy of a transcript of the proceedings of the hearing shall be furnished by the board of education, upon written request by the teacher within fifteen days after the board's decision, provided the teacher shall assume the cost of any such copy. Nothing herein contained shall deprive a board of education or superintendent of the power to suspend a teacher from duty immediately when serious misconduct is charged without prejudice to the rights of the teacher as otherwise provided in this section.

(e) Any teacher aggrieved by the decision of a board of education after a hearing as provided in subsection (d) of this section may appeal therefrom, not later than thirty calendar days after such decision, to the Superior Court. Such appeal shall be made returnable to said court in the same manner as is prescribed for civil actions brought to said court. Any such appeal shall be a privileged case to be heard by the court as soon after the return day as is practicable. The board of education shall file with the court a copy of the complete transcript of the proceedings of the hearing and the minutes of board of education meetings relating to such termination, including the vote of the board on the termination, together with such other documents, or certified copies thereof, as shall constitute the record of the case. The court, upon such appeal, shall review the proceedings of such hearing. The court, upon such appeal and hearing thereon, may affirm or reverse the decision appealed from in accordance with subsection (j) of section 4-183. Costs shall not be allowed against the board of education unless it appears to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

Credits

(1949 Rev., § 1438; 1949, Supp. § 160a; 1955, Supp. § 938d; 1959, P.A. 625; 1961, P.A. 480; 1961, P.A. 556, § 1, eff. July 1, 1961; 1965, Feb.Sp.Sess., P.A. 278; 1969, P.A. 532; 1971, P.A. 61; 1973, P.A. 73-456, § 1, eff. July 1, 1974; 1974, P.A.

74-278, § 3, eff. July 1, 1974; 1975, P.A. 75-435; 1975, P.A. 75-615; 1976, P.A. 76-436, § 297, eff. July 1, 1978; 1978, P.A. 78-218, § 99; 1978, P.A. 78-280, § 1, eff. July 1, 1979; 1979, P.A. 79-90; 1979, P.A. 79-504, § 1, eff. July 1, 1979; 1980, P.A. 80-354, §§ 1, 2, eff. July 1, 1980; 1981, P.A. 81-216, § 1, eff. May 28, 1981; 1982, P.A. 82-257; 1983, P.A. 83-398, § 1; 1985, P.A. 85-230; 1985, P.A. 85-343, §§ 1, 2, eff. July 1, 1985; 1986, P.A. 86-22, § 1, eff. July 1, 1986; 1995, P.A. 95-58, § 2, eff. July 1, 1995; 1997, P.A. 97-247, § 25, eff. July 1, 1997; 2000, P.A. 00-13, § 1, eff. July 1, 2000; 2001, P.A. 01-173, § 16, eff. July 1, 2001; 2010, P.A. 10-111, § 9, eff. July 1, 2010; 2011, P.A. 11-28, § 8, eff. June 3, 2011; 2011, P.A. 11-135, § 10, eff. July 1, 2011; 2011, P.A. 11-136, § 14, eff. July 1, 2011; 2012, P.A. 12-116, § 57, eff. July 1, 2014; 2013, P.A. 13-31, § 12, eff. July 1, 2014; 2013, P.A. 13-245, § 4, eff. July 1, 2014; 2015, P.A. 15-215, § 21, eff. June 30, 2015.)

Relevant Notes of Decisions (7)

[View all 211](#)

Notes of Decisions listed below contain your search terms.

IN GENERAL

Validity

Section 10-151 did not create protectable property interests such that forced retirement of teacher without observance of those statutory procedures would constitute violation of due process. *Zimmerman v. Board of Educ. of Town of Branford*, D.C.Conn.1984, 597 F.Supp. 72. Constitutional Law [§ 4201](#)

Purpose

Legislative intent of Teacher Negotiations Act [C.G.S.A. §§ 10-153a to 10-153n] and Teacher Tenure Act [C.G.S.A. § 10-151] is not to require that cross-unit bumping questions be resolved by ensnaring school boards and bargaining representatives in multilateral negotiations, but rather through bilateral bargaining between boards of education and unions. *Connecticut Educ. Ass'n v. State Bd. of Labor Relations* (1985) 498 A.2d 102, 5 Conn.App. 253, certification denied 499 A.2d 804, 197 Conn. 814, certification denied 499 A.2d 804, 197 Conn. 815. Labor And Employment [§ 1138](#)

Policy

Clear legislative intent of Teacher Tenure Act [C.G.S.A. § 10-151] is that administrative unit teachers are to have same degree of employment security as teacher unit personnel, including right to bump in accordance with layoff procedure. *Connecticut Educ. Ass'n v. State Bd. of Labor Relations* (1985) 498 A.2d 102, 5 Conn.App. 253, certification denied 499 A.2d 804, 197 Conn. 814, certification denied 499 A.2d 804, 197 Conn. 815. Education [§ 418](#); Public Employment [§ 196](#)

Teachers within section

Certified teacher remains part of teacher class for purposes of Teacher Tenure Act [C.G.S.A. § 10-151], regardless of what other administrative positions might be attained. *Connecticut Educ. Ass'n v. State Bd. of Labor Relations* (1985) 498 A.2d 102, 5 Conn.App. 253, certification denied 499 A.2d 804, 197 Conn. 814, certification denied 499 A.2d 804, 197 Conn. 815. Education [§ 495](#); Public Employment [§ 196](#)

TERMINATION OF TEACHERS WITH TENURE

Grounds for termination--In general

Even if Tenure Act [C.G.S.A. § 10-151] was invoked by local board of education to limit any potential damages that might result from tenured teacher's lawsuit seeking damages for wrongful termination, statute was properly invoked where local board was required to invoke the statute in order legally to terminate teacher's employment and, even though it arguably could have been invoked earlier, delay was due to protracted negotiations with teacher concerning her future employment. *Cahill v. Board of Educ. of City of Stamford* (1985) 502 A.2d 410, 198 Conn. 229. Education ☞ 607; Public Employment ☞ 256

Exhaustion of administrative remedies

Tenured teacher was not excused from exhausting administrative remedy afforded by Tenure Act [C.G.S.A. § 10-151] in challenging her termination of employment despite her claim that local board of education was biased since place to make claim of bias and record on that claim was before local board. *Cahill v. Board of Educ. of City of Stamford* (1985) 502 A.2d 410, 198 Conn. 229. Education ☞ 608; Public Employment ☞ 436

Notice of termination of contract

Tenured teacher with statutory right to continued employment under C.G.S.A. § 10-151(b) possessed property right that was entitled to constitutional protection which, at a minimum, entitled plaintiff to notice and opportunity to be heard at meaningful time and in meaningful manner. *LaCroix v. Board of Educ. of City of Bridgeport* (1986) 505 A.2d 1233, 199 Conn. 70. Constitutional Law ☞ 4202

C. G. S. A. § 10-151, CT ST § 10-151

The statutes and Constitution are current with enactments of the 2016 Regular Session and the 2016 May Special Session.

2015 WL 3604033 (Conn.Work.Comp.Com.)

Compensation Review Division

Workers' Compensation Commission

State of Connecticut

ROBERT BEDARD, CLAIMANT-APPELLEE

v.

TOWN OF SOUTHBURY, EMPLOYER

AND

TRIDENT INSURANCE SERVICES OF NEW ENGLAND, INSURER, RESPONDENTS-APPELLANTS

Case No. 5923 CRB-5-14-3

April 24, 2015

*1 Appearances:

The Claimant was Represented by Ross T. Lessack, Esq.

The Dodd Law Firm, LLC

1781 Highland Avenue, Suite 105

Cheshire, CT 06410

The Respondents were Represented by Andrew J. Hern, Esq.

Law Offices of Andrew J. Hern

221 Main Street

Hartford, CT 06106

This Petition for Review from the March 10, 2014 Findings and Orders by the Commissioner acting for the Fifth District was heard on September 26, 2014 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Michelle D. Truglia and Daniel E. Dilzer.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have petitioned for review from the March 10, 2014 Findings and Orders by the Commissioner acting for the Fifth District. We find no error and accordingly affirm the findings of the trial commissioner but remand this matter for additional proceedings consistent with this opinion.¹

The trial commissioner took administrative notice of a Form 30C dated July 15, 2013 and received by the Workers' Compensation Commission on July 17, 2013 in which the claimant alleged that on April 22, 2013, he sustained injuries to his right shoulder; left hip, leg and foot; low back; and pelvis.² The trial commissioner also took administrative notice of a Form 43 dated September 6, 2013 and received by the Workers' Compensation Commission on September 10, 2013 wherein Argonaut Insurance acknowledged that the claimant had sustained injuries on April 22, 2013 but denied that the claimant injured his low back or buttocks on that date.³

The claimant testified that he has been an active member of the Southbury volunteer fire department since approximately 1977; the legal name of the fire department is "Southbury Volunteer Firemen's Association ["Association"]. He is currently a firefighter, but was chief of the Association from 1998 to 2001. After sustaining an injury on April 22, 2013 while fighting a fire, the claimant prepared a Form 30C at home on July 15, 2013 and then brought a copy to Joan

Haman, the executive assistant to the fire chief. While the claimant waited, Haman completed the paperwork necessary for sending a certified copy of the Form 30C to the Workers' Compensation Commission.

The claimant testified that the Association's office is located at 461 Main Street in Southbury, and the building is owned by the Town of Southbury. The total budget for the Association is approximately \$375,000.00, of which the Town of Southbury contributes \$300,000.00. Haman, who reports to the fire chief and president of the Association, is paid by the Association directly. The claimant indicated that when he was chief of the Association, he was responsible for reporting work-related injuries and filling out paperwork. His assistant would then take the paperwork to the town hall and present it to them. The claimant believed that the Form 30C could be hand-delivered, and testified that as far as he knew, the Association was his employer.

*2 The claimant also testified that on July 15, 2013, he e-mailed a copy of the Form 30C to Ed Edelson, the first selectman for the Town of Southbury. In addition, on the same day that the claimant brought his paperwork to Haman, he tried to make an appointment with Edelson because he felt he was not making any progress with the respondent insurer relative to obtaining medical treatment. Edelson's assistant told the claimant that Edelson was out of town but she would let him know.

Joyce Girgasky, assistant treasurer for the Town of Southbury, also testified. Girgasky stated that she has worked for the town for twenty-seven (27) years and in addition to reconciling the town's books, she currently handles all of the town's insurances. She testified that she never received a Form 30C regarding the claimant's injury of April 22, 2013 and never sent a Form 30C to the Workers' Compensation Commission on the claimant's behalf. Girgasky stated that Haman works for the Association and is neither employed nor paid by the town. Girgasky testified that Haman's duties did include bringing paperwork to Girgasky when a firefighter was injured so Girgasky could file the forms with the workers' compensation insurer. However, Girgasky stated that Haman did not bring her a copy of the claimant's Form 30C and if she had, Girgasky would have immediately forwarded it to the insurance company. Girgasky testified that Haman had brought her Forms 30C before on behalf of other injured firefighters.

In addition to the foregoing, the trial commissioner also found that on October 11, 2013, the claimant filed a Motion to Preclude dated October 10, 2013 with the Workers' Compensation Commission. See Commissioner's Exhibit 1. The certified mail card and receipt attached to the Motion to Preclude were completed by Joan Haman.

Following the presentation of the evidence, the trial commissioner concluded that by tendering a Form 30C to Joan Haman, the claimant had provided adequate notice to the employer that he was making a claim for workers' compensation benefits. Noting that the claimant had signed the Form 30C on July 15, 2013 and a copy was received by the Workers' Compensation Commission on July 17, 2013, the trier determined that Haman must have received the form from the claimant on either July 15 or July 16, 2013. Given that the respondents failed to file a Form 43 or otherwise deny the claim within twenty-eight (28) days, the trial commissioner, pursuant to the provisions of § 31-294c(b) C.G.S., granted the claimant's Motion to Preclude.⁴

The respondents filed a Motion to Correct which was denied in its entirety, and this appeal followed. On appeal, respondents contend that the trial commissioner erroneously concluded that the claimant's tender of a Form 30C to Joan Haman constituted adequate notice to the employer given that the record contained no evidence that Haman was an agent of the Town of Southbury. The respondents also argue that the trier's conclusion that the twenty-eight day period to file a disclaimer commenced on either July 15 or July 16, 2013 constitutes reversible error because the town never received adequate notice of the claim pursuant to § 31-321 C.G.S.⁵ As such, the respondents claim as error the trial commissioner's decision to grant the Motion to Preclude.

*3 The standard of deference we are obliged to apply to a trial commissioner's findings and legal conclusions is well-settled. "The trial commissioner'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). 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). Thus, “it is ... immaterial that the facts permit the drawing of diverse inferences. The [[commissioner] 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 (1988), quoting *Del Vecchio v. Bowers*, 296 U.S. 280, 287 (1935).

Section § 31-294c(b) C.G.S. provides that any employer who fails to either contest liability or commence payment for an alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim shall be conclusively presumed to have accepted the compensability of the alleged injury or death.⁶ As such, it is clear that the consequences of failing to file a disclaimer, or filing a disclaimer which is subsequently deemed fatally defective, are significant. Nevertheless, while there is no question that the preclusion statute imposes a significant penalty upon employers who do not abide by the terms of § 31-294c(b) C.G.S., it is equally clear that our Supreme Court supports its application where appropriate despite the severity of the measure. In *Harpaz v. Laidlaw Transit, Inc.*, 286 Conn. 102 (2008), the court “conclude[d] that, under § 31294c (b), if an employer neither timely pays nor timely contests liability, the conclusive presumption of compensability attaches and the employer is barred from contesting the employee's right to receive compensation on any ground or the extent of the employee's disability. *Such a penalty is harsh, but it reflects a just and rational result.*” (Emphasis added.) *Id.*, at 130.

In *Callender v. Reflexite Corp.*, 137 Conn. App. 324 (2012), cert. granted, 307 Conn. 915 (2012), appeal withdrawn, S.C. 19040 (2013), our Appellate Court set forth the following twopart inquiry which a trial commissioner must follow when deciding a Motion to Preclude:

First, he must determine whether the employee's notice of claim is adequate on its face.... Second, he must decide whether the employer failed to comply with § 31-294c either by filing a notice to contest the claim or by commencing payment on that claim within twenty-eight days of the notice of claim.... If the notice of claim is adequate but the employer fails to comply with the statute, then the motion to preclude must be granted.

*4 *Id.*, at 338. (Internal citations omitted.)

In addition, once a motion to preclude has been granted, “the employer is precluded from contesting either the compensability of its employee's claimed injury or the extent of the employee's resulting disability.” *Id.*, 334.

Returning to the matter at bar, as mentioned previously herein, the respondents contend that the claimant's failure to properly serve the employer with a copy of his Form 30C rendered the notice of claim fatally deficient. When determining whether it is appropriate to apply the preclusive effects of § 31-294c(b) C.G.S., it may also be necessary to determine whether the notice was “sufficient to allow the employer to make a timely investigation of the claim.” *Pereira v. State*, 228 Conn. 535, 542-43 n.8 (1994). See also, *Chase v. State*, 45 Conn. App. 499, 508 (1997). However, in the instant matter, there is no dispute regarding the sufficiency of the information contained on the Form 30C itself; rather, the dispute centers on the circumstances surrounding its delivery to the “employer.”

The respondents assert that the claimant's personal delivery of the Form 30C to Joan Haman did not constitute adequate service because the record is devoid of evidence that Haman was an agent of the Town of Southbury. “In order to conclude that service to the Town was adequately made through Joan Haman, there must first be a finding that Joan Haman is an agent of the Town of Southbury duly authorized to accept service or holding a position in the Town responsible for the receipt of such notice.” Appellants' Brief, p. 4. The appellants also argue that because service to Haman was improper, the town was never obligated to file a disclaimer within the statutory twentyeight days and the

“presumption of preclusion” never attached. As such, the trier's decision to grant the Motion to Preclude constituted error as it arose from the improper application of the facts to the law. We are not persuaded by the appellants' arguments.

Section 31-294c(a) C.G.S. specifically contemplates that a “[n]otice of a claim for compensation may be given to the employer *or* any commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident ... and the name and address of the employee and of the person in whose interest compensation is claimed...”⁷ (Emphasis added.) The written instructions appearing on the Form 30C developed by the Workers' Compensation Commission state that “[t]his notice must be served upon the Commissioner *and* Employer by personal presentation or by registered or certified mail.” It is now axiomatic that in order to invoke the jurisdiction of the Workers' Compensation Commission, a claimant is expected to provide both the employer and the Commission with a copy of the notice of claim.

In the instant matter, the respondents contend that the trier could not have found that Joan Haman was an authorized agent of the town because the evidence identified Haman as an employee of the Association and not the town. January 6, 2014 Transcript, pp. 9, 23. That argument might carry greater weight but for the claimant's own testimony regarding the past pattern and practice of the Association and the town and Joyce Girgasky's testimony relative to her acceptance of Form 30C's from Haman.

*5 For instance, the claimant testified that when he served as the fire chief, he was responsible for reporting work-related injuries and filling out paperwork. As part of that process, he would complete the paperwork and would then give it to his assistant for personal delivery to the town hall. *Id.*, 9. The claimant also testified that he was unaware of the Association having a formal procedure for filing a notice of claim for a workrelated injury but that there is a letter in the by-laws which “says the chief is responsible for filling out any paperwork.” *Id.* In addition, the claimant testified that the informational packet attached to the Form 30C stated that it could be hand-delivered to the employer, and that as far as he knew, the Association was his employer. *Id.*, 14. The record also contains testimony offered by Joyce Girgasky to the effect that Haman had brought Girgasky a notice of claim for an injured fire fighter as recently as two months prior to the formal hearing, and that on occasion Girgasky would also receive notices of claim via certified mail. *Id.*, 24.

This board is of course well-acquainted with the provisions of § 7-314a(a) C.G.S., which state:

Except as provided in subsections (e) and (f) of this section, active members of volunteer fire departments and active members of organizations certified as a volunteer ambulance service in accordance with section 19a-180 shall be construed to be employees of the municipality for the benefit of which volunteer fire services or such ambulance services are rendered while in training or engaged in volunteer fire duty or such ambulance service and shall be subject to the jurisdiction of the Workers' Compensation Commission and shall be compensated in accordance with the provisions of chapter 568 for death, disability or injury incurred while in training for or engaged in volunteer fire duty or such ambulance service.

Section 7-314a(a) C.G.S.

We also concede, as the respondents point out, that this matter may be distinguished from *Mehan v. Stamford*, 127 Conn. App. 619 (2011), cert. denied, 301 Conn. 911 (2011), wherein our Appellate Court noted that the *Mehan* trial commissioner actually found that the assistant fire chief, who assisted the claimant in completing the Form 30C and took possession of the form but failed to deliver it to the town's human resource department, “was an agent of the defendant with authority to act on the defendant's behalf in the processing of workers' compensation claims.”⁸ *Id.*, 628. Such a declarative finding is indeed lacking in the present matter. However, the testimony proffered by the claimant and others arguably provides support for the inference drawn by the trial commissioner that someone in Haman's position, the executive assistant to the fire chief, was cloaked with the authority to accept a Form 30C on behalf of the town. Indeed,

the trier concluded that, “[b]y tendering a Form 30C to Joan Haman, the Claimant provided adequate notice to the employer that a claim was being made.” Conclusion, ¶ A. The trial commissioner could not have concluded as he did without drawing the inference as to Haman’s authority.

*6 Moreover, we note that in *Mehan*, the court remarked that “[h]istorically, the defendant accepted Forms 30C for processing from the human resources department, the town clerk’s office and the law department, thus establishing flexibility in the defendant’s service procedures.” *Mehan*, supra, 624. We think the *Mehan* court’s reference to the procedures employed by the respondent employer in accepting Forms 30C has relevance to the matter on review. Thus, in the absence of a clear directive from either the Association or the respondent municipality regarding the proper procedure for filing notices of claim, and the apparent willingness of the respondent municipality to accept Forms 30C through a variety of channels, we find that the respondent employer demonstrated a certain “pattern and practice” in the processing and acceptance of Forms 30C. The vagaries in that process on the part of the respondent municipality should not operate to penalize the instant claimant.

Finally, the *Mehan* court observed that “[w]hen the plaintiff handed his Form 30C to Brown, Brown was an administrative agent of the defendant with *apparent* authority to act on the defendant’s behalf when dealing with the processing of workers’ compensation claims.” (Emphasis added.) *Id.*, 624625. Given that the record also provides for the reasonable inference that Joan Haman possessed the *apparent* authority to process workers’ compensation claims, we hereby affirm the findings of the trial commissioner with respect to the adequacy of service of the Form 30C.

We note that the record contains testimony from claimant’s counsel at trial indicating that the respondents accepted a shoulder injury arising from the subject Form 30C for which they paid medical expenses and indemnity. January 6, 2014 Transcript, p. 4. Moreover, in his brief to this board, the claimant refers to a medical report from Concentra Medical Center dated April 30, 2013 reflecting an injury date of April 22, 2013. Appellee’s Brief, p. 6; see also Claimant’s Exhibit A. As mentioned previously herein, the Callender court stated that a trial commissioner must engage in a twopart inquiry when deciding whether to grant a Motion to Preclude: the trier must first determine whether the claimant’s notice of claim was “adequate on its face.” Callender, supra, 338. Second, the trier must determine whether the employer complied with the provisions of § 31-294c(b) C.G.S. “either by filing a notice to contest the claim or by commencing payment on the claim within twenty-eight days of the notice of claim.” (Emphasis added.) *Id.* Given that the litigants do not appear to have addressed the second prong of the Callender inquiry in the proceedings below, we hereby remand this matter for additional proceedings to determine the legal significance of the respondents’ actions regarding the accepted shoulder injury when evaluated through the prism of the second prong of the Callender inquiry. “No case under this Act should be finally determined when the ... court is of the opinion that, through inadvertence, or otherwise, the facts have not been sufficiently found to render a just judgment.” *Cormican v. McMahon*, 102 Conn. 234, 238 (1925).

*7 As mentioned previously herein, the respondents also filed a Motion to Correct which was denied in its entirety. Our review of the proposed corrections indicates that the respondents are merely reiterating the arguments made at trial which ultimately proved unavailing. As this board has previously observed, when “a Motion to Correct involves requested factual findings which were disputed by the parties, which involved the credibility of the evidence, or which would not affect the outcome of the case, we would not find any error in the denial of such a Motion to Correct.” *Robare v. Robert Baker Companies*, 4328 CRB-1-00-12 (January 2, 2002).

There is no error; the March 10, 2014 Findings and Orders by the Commissioner acting for the Fifth District are accordingly affirmed, but the matter is remanded for additional proceedings consistent with this opinion.

Commissioners Michelle D. Truglia and Daniel E. Dilzer concur.

John A. Mastropietro

Chairman

Footnotes

- 1 We note that two motions for extension of time were granted during the pendency of this appeal.
- 2 "A form 30C is the document prescribed by the workers' compensation commission to be used when filing a notice of claim pursuant to the Workers' Compensation Act, General Statutes § 31-275 et seq." *Mehan v. Stamford*, 127 Conn. App. 619, 622 n.4, cert. denied, 301 Conn. 911 (2011).
- 3 "A form 43 is a disclaimer that notifies a claimant who seeks workers' compensation benefits that the employer intends to contest liability to pay compensation. If an employer fails timely to file a form 43, a claimant may file a motion to preclude the employer from contesting the compensability of his claim." *Mehan v. Stamford*, 127 Conn. App. 619, 623 n.6, cert. denied, 301 Conn. 911 (2011).
- 4 Section § 31-294c(b) C.G.S. (Rev. to 2013) states: "Whenever liability to pay compensation is contested by the employer, he shall file with the commissioner, on or before the twenty-eighth day after he has received a written notice of claim, a notice in accord with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested. The employer shall send a copy of the notice to the employee in accordance with section 31-321. If the employer or his legal representative fails to file the notice contesting liability on or before the twenty-eighth day after he has received the written notice of claim, the employer shall commence payment of compensation for such injury or death on or before the twenty-eighth day after he has received the written notice of claim, but the employer may contest the employee's right to receive compensation on any grounds or the extent of his disability within one year from the receipt of the written notice of claim, provided the employer shall not be required to commence payment of compensation when the written notice of claim has not been properly served in accordance with section 31-321 or when the written notice of claim fails to include a warning that (1) the employer, if he has commenced payment for the alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim, shall be precluded from contesting liability unless a notice contesting liability is filed within one year from the receipt of the written notice of claim, and (2) the employer shall be conclusively presumed to have accepted the compensability of the alleged injury or death unless the employer either files a notice contesting liability on or before the twenty-eighth day after receiving a written notice of claim or commences payment for the alleged injury or death on or before such twenty eighth day. An employer shall be entitled, if he prevails, to reimbursement from the claimant of any compensation paid by the employer on and after the date the commissioner receives written notice from the employer or his legal representative, in accordance with the form prescribed by the chairman of the Workers' Compensation Commission, stating that the right to compensation is contested. Notwithstanding the provisions of this subsection, an employer who fails to contest liability for an alleged injury or death on or before the twenty-eighth day after receiving a written notice of claim and who fails to commence payment for the alleged injury or death on or before such twenty-eighth day, shall be conclusively presumed to have accepted the compensability of the alleged injury or death."
- 5 Section § 31-321 C.G.S. (Rev. to 2013) states: "Unless otherwise specifically provided, or unless the circumstances of the case or the rules of the commission direct otherwise, any notice required under this chapter to be served upon an employer, employee or commissioner shall be by written or printed notice, service personally or by registered or certified mail addressed to the person upon whom it is to be served at the person's last-known residence or place of business. Notices on behalf of a minor shall be given by or to such minor's parent or guardian or, if there is no parent or guardian, then by or to such minor."
- 6 See footnote 4, supra.
- 7 Section 31-294c (a) C.G.S. states, in pertinent part, that: "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.... Notice of a claim for compensation may be given to the employer or any commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident ... and the name and address of the employee and of the person in whose interest compensation is claimed. ..."
- 8 It should also be noted that *Mehan* can also be distinguished on another basis, in that the *Mehan* claimant was not a volunteer fire fighter, but, rather, a paid member of the respondent municipality's fire department.

2015 WL 3604033 (Conn.Work.Comp.Com.)

1996 WL 726785 (Conn.Work.Comp.Com.)

Compensation Review Board

Workers' Compensation Commission

State of Connecticut

AUDREY CUNNINGHAM CLAIMANT-APPELLEE

v.

CITY OF STAMFORD EMPLOYER

AND

KEMPER RISK MANAGEMENT SERVS. INSURER RESPONDENTS-APPELLANTS

Case No. 3112 CRB-7-95-7

December 16, 1996

***I Appearances:**

The claimant was represented by Gary J. Wilson, Esq.,
4 Daniels Farm Road,
Trumbull, CT 06611-4552.

The respondents were represented by Kevin J. Maher, Esq.,
Maher & Williams,
1300 Post Road,
Fairfield, CT 06430.

This Petition for Review from the July 6, 1995 Ruling Granting Claimant's Motion to Preclude of the Commissioner acting for the Seventh District was heard March 15, 1996 before a Compensation Review Board panel consisting of the Commission Chairman Jesse M. Frankl and Commissioners George A. Waldron and Robin L. Wilson.

OPINION

The respondents have petitioned for review from the July 6, 1995 Ruling Granting Claimant's Motion to Preclude of the Commissioner acting for the Seventh District. The commissioner found that the claimant was diagnosed with a stress-related vocal disorder by Dr. Resor, and that she hand-delivered a Form 30C and a copy of Dr. Resor's report to the city risk manager, Allan Brown, on October 11, 1994. The next day, Brown completed an injury report for the claimant's alleged spasmodic dysphonia, and signed and dated it, giving the claimant a copy. The claimant sent a copy of her Form 30C to the Workers' Compensation Commission on November 9, 1994. The respondents filed a Form 43 contesting liability for the claimant's condition on December 21, 1994.

The claimant filed a Motion to Preclude the respondents from contesting liability on January 17, 1995. She argued in her motion that the respondents failed to file a notice to contest within the 28-day time period allowed by § 31-294c(b) C.G.S., and thereby lost their right to contest the compensability of her injury. The respondents defended on two grounds. First, they argued that the claimant had not served her Form 30C on the proper municipal official. Second, they contended that the claimant's alleged spasmodic dysphonia falls within § 31-275(16)(B)(ii) C.G.S., which excludes mental and emotional impairments from being personal injuries under the Workers' Compensation Act, unless they result from a physical impairment or occupational disease. The commissioner found that spasmodic dysphonia is in fact a physical impairment, and that it is not excluded from the definition of "personal injury." He further found that the claimant's service of notice

complied with § 31-321 C.G.S. As more than 28 days had elapsed between the date of service and the notice to contest, the commissioner granted the Motion to Preclude. The respondents have petitioned for review from that decision.

In the process of preparing their appeal, the respondents filed a Motion to Correct, which the commissioner denied. One of the three requested corrections was a change in the description of spasmodic dysphonia from a physical impairment to a mental or emotional impairment, thus bringing it outside the statutory definition of "personal injury." The respondents now argue that no evidence was submitted to support the commissioner's finding that spasmodic dysphonia is a physical injury. Although a commissioner has wide latitude to assess the credibility of the evidence, a material fact found without any support in the record cannot stand on appeal. Webb v. Pfizer, Inc., 14 Conn. Workers' Comp. Rev. Op. 69, 70-71, 1859 CRB-5-93-9 (May 12, 1995). A review of the record here shows that neither party introduced any medical evidence or testimony regarding the claimant's medical condition or the nature of spasmodic dysphonia. All of the proceedings focused on the issue of the notice given to the city's risk manager.

*2 An administrative agency such as the Workers' Compensation Commission is a tribunal of limited jurisdiction whose authority is completely dependent on the statutes creating its power. Figueroa v. C&S Ball Bearing, 237 Conn. 1, 4 (1996), *citing* Castro v. Viera, 207 Conn. 420, 428 (1988). The Workers' Compensation Act sets the boundaries of our subject matter jurisdiction, which cannot be conferred through consent or waiver. *Id.*, 429-30; see also Allingham v. Burns International Security, 14 Conn. Workers' Comp. Rev. Op. 333, 1977 CRB-1-94-2 (Sept. 20, 1995). In order for a commissioner to exercise jurisdiction over a case, the claimant must adduce evidence sufficient for the commissioner to conclude that there is subject matter jurisdiction over the claim. Castro, *supra*, 434; In Re Veterans Memorial Medical Center, 3063 CRB-8-95-5 (decided May 20, 1996). Manifestly, one of these essential elements is the existence of a personal injury within the meaning of the Workers' Compensation Act.

Without any evidence to support the commissioner's finding that spasmodic dysphonia falls within the definition of "personal injury," we cannot uphold his implicit determination that the requirements of subject matter jurisdiction have been met here. Therefore, we remand this case to the Seventh District for further findings on that issue. We need not reach the respondents' arguments regarding sufficiency of notice, nor the claimant's Motion to Submit Additional Evidence, as they are both rendered moot by this decision.

Commissioners George A. Waldron and Robin L. Wilson concur.

Jesse M. Frankl
Chairman

1996 WL 726785 (Conn.Work.Comp.Com.)

127 Conn.App. 619
Appellate Court of Connecticut.

Edward MEHAN
v.
CITY OF STAMFORD et al.

No. 31648.
|
Argued Dec. 9, 2010.
|
Decided April 5, 2011.

Synopsis

Background: City appealed from decision of the workers' compensation review board affirming decision of the workers' compensation commissioner awarding workers' compensation benefits to claimant, a former city firefighter.

Holdings: The Appellate Court, Beach, J., held that:

[1] record supported commissioner's finding that claimant timely and sufficiently notified the city with notice of his claim, which triggered city's responsibility to file a disclaimer;

[2] conclusive presumption of compensability of claimant's claim, after city neither timely paid nor timely contested liability, did not deprive city of due process; and

[3] sufficient evidence supported commissioner's decision awarding benefits.

Affirmed.

West Headnotes (11)

- [1] **Workers' Compensation**
⇒ Conclusiveness of administrative findings in general
Workers' Compensation
⇒ Inferences or conclusions from facts proved

The conclusions drawn by the workers' compensation commissioner from the facts found must stand unless they result from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them; neither the workers' compensation review board nor the appellate court has the power to retry facts.

1 Cases that cite this headnote

- [2] **Administrative Law and Procedure**
⇒ Labor, employment, and public officials
Workers' Compensation
⇒ Scope and Extent of Review in General
Although not dispositive, the appellate court accords great weight to the construction given to the workers' compensation statutes by the workers' compensation commissioner and workers' compensation review board.

2 Cases that cite this headnote

- [3] **Workers' Compensation**
⇒ Questions of Law and Fact
The workers' compensation commissioner has the power and duty, as the trier of fact, to determine the facts.

1 Cases that cite this headnote

- [4] **Workers' Compensation**
⇒ Knowledge or Notice of Accident, Injury, or Disability
Workers' Compensation
⇒ Knowledge of agent or representative
City had sufficient notice of firefighter's workers' compensation claim, triggering its responsibility to file a disclaimer of liability, where firefighter timely notified assistant fire chief with document prescribed for filing notice of his claim, and assistant fire chief was city's agent with authority to act on city's behalf in processing of claim. C.G.S.A. §§ 31-321, 31-294c.

Cases that cite this headnote

[5] **Workers' Compensation**

⇔ Knowledge or notice of accident, injury, or disability

To the extent that the determination of whether the employer received proper notice of a workers' compensation claim is a factual issue, the appellate court generally is obligated to defer to the findings of the workers' compensation commissioner. C.G.S.A. § 31-294c.

1 Cases that cite this headnote

[6] **Constitutional Law**

⇔ Workers' compensation and employers' liability

Workers' Compensation

⇔ Estoppel of, or waiver by, employer, or insurance carrier

Workers' Compensation

⇔ Injuries or Death for Which Compensation May Be Had

Conclusive presumption of compensability of employee's workers' compensation claim for permanent partial disability benefits, so as to bar employer from contesting employee's right to receive workers' compensation or from contesting extent of employee's disability, after employer neither timely paid nor timely contested liability, did not amount to unconstitutional denial of due process. U.S.C.A. Const. Amend. 14; C.G.S.A. §§ 31-321, 31-294c.

Cases that cite this headnote

[7] **Courts**

⇔ Highest appellate court

State Supreme Court is the ultimate arbiter of the law in Connecticut, and the Appellate Court is not at liberty to overrule or discard the decisions of the Supreme Court, but is bound by them.

Cases that cite this headnote

[8] **Courts**

⇔ Highest appellate court

It is not within the Appellate Court's province to reevaluate or replace the decisions of the state Supreme Court.

Cases that cite this headnote

[9] **Workers' Compensation**

⇔ Scope and extent of review in general

Workers' Compensation

⇔ Trial De Novo

The workers' compensation review board's hearing of an appeal from the workers' compensation commissioner is not a de novo hearing of the facts; rather, the board is obligated to hear the appeal on the record and not retry the facts.

Cases that cite this headnote

[10] **Workers' Compensation**

⇔ Scope and extent of review in general

Workers' Compensation

⇔ Determination and disposition of proceeding

Workers' Compensation

⇔ In general; questions of law or fact

On appeal of a workers' compensation award, the workers' compensation review board must determine whether there is any evidence in the record to support the workers' compensation commissioner's findings and award, and the appellate court's scope of review of the actions of the board is similarly limited; however the decision of the board must be correct in law, and it must not include facts found without evidence or fail to include material facts which are admitted or undisputed.

1 Cases that cite this headnote

[11] **Workers' Compensation**

⇔ Heart and cardiovascular conditions

Sufficient evidence supported workers' compensation commissioner's finding that firefighter's acute coronary syndrome he suffered while fighting a fire was a significant

contributing factor to his coronary artery disease, as required to support award of permanent partial disability benefits; treating physician testified "to a reasonable medical probability" that firefighter's acute coronary syndrome aggravated his preexisting coronary artery disease, that prior to incident, firefighter's coronary artery disease was stable, and following the incident, firefighter's anginal pattern increased, and he suffered from 30% percent permanent partial disability of heart, 25% of which was attributable to the coronary artery disease.

Cases that cite this headnote

Attorneys and Law Firms

****1124** Maribeth M. McGloin, with whom, on the brief, was Scott Wilson Williams, Fairfield, for the appellants (defendants).

Daniel A. Benjamin, with whom, on the brief, was Derek Mello, Stamford, for the appellee (plaintiff).

DiPENTIMA, C.J., and BEACH and PELLEGRINO, Js.

Opinion

BEACH, J.

***621** The defendant city of Stamford¹ appeals from the decision of the workers' compensation review board (board) affirming the decision of the workers' compensation commissioner for the seventh district (commissioner) awarding workers' compensation benefits to the plaintiff, Edward Mehan. On appeal, the defendant claims that the board erred in affirming the commissioner's decision (1) granting the plaintiff's motion to preclude, (2) denying the defendant's motion for reconsideration and (3) finding that the plaintiff sustained a compensable work-related injury. We affirm the decision of the board.

The following facts, as found by the commissioner and accepted by the board, are relevant to this appeal. The plaintiff had been a firefighter with the defendant since 1959. On February 10, 2001, he suffered chest pains

while fighting a fire and subsequently was taken to Stamford Hospital for treatment and to undergo a medical examination. The results of his medical examination showed that he did not suffer a myocardial infarction.² The plaintiff continued to suffer chest pains and, in March, 2001, underwent a cardiac catheterization by Robert L. Labarre,³ his treating physician. Following his catheterization, the plaintiff was informed that he had preexisting coronary artery disease.

Shortly after the February 10, 2001 incident, the plaintiff reported it to his supervisor, who so informed the ***622** defendant's third party administrator for workers' compensation claims. On April 9, 2001, the plaintiff filled out a form 30C,⁴ in which he entered his personal information but did not fill out the "injury section" or sign the form. The plaintiff gave the partially completed form 30C to assistant fire chief Peter Brown and explained to him the nature of the injury that he sustained on February 10, 2001. Brown then filled out the "injury section" of the form, describing the nature of the plaintiff's injury, and signed the form on the plaintiff's behalf as his representative. The plaintiff's form 30C, however, apparently never was delivered to the defendant's human resources department, which is where Brown normally sent such forms.

In October, 2002, the plaintiff was found to be physically unfit for active duty as a firefighter. In May and December, 2003, he had stents⁵ inserted into his coronary arteries. Having undergone these procedures and having been deemed physically ****1125** unfit to work, the plaintiff retired in late 2003. On September 26, 2005, Labarre described the injury suffered by the plaintiff on February 10, 2001, as an "acute coronary syndrome." He described the syndrome as an "insufficient blood flow via the coronary arteries to the heart" and opined that "[i]t is reasonably likely that [the plaintiff's] heart exertion while firefighting on [February 10, 2001] precipitated his acute coronary syndrome."

The plaintiff initiated proceedings against the defendant, and a hearing was held on November 20, 2006, to determine whether the commissioner had subject ***623** matter jurisdiction to hear the case. On July 25, 2007, the commissioner determined that she had subject matter jurisdiction to hear the case. On January 28, 2008, the plaintiff's case proceeded to a formal hearing on the merits

before the commissioner. The hearing did not conclude on that date and was continued. In March, 2008, our Supreme Court issued its decision in *Harpaz v. Laidlaw Transit, Inc.*, 286 Conn. 102, 942 A.2d 396 (2008), and the plaintiff filed a motion to preclude the defendant from contesting liability on March 14, 2008. In support of his motion to preclude, the plaintiff relied on *Harpaz* and the fact that the defendant did not timely file a form 43.⁶

The hearing on the merits resumed on April 7, 2008, and the record closed on June 25, 2008. On October 2, 2008, the commissioner denied the plaintiff's motion to preclude. The plaintiff filed a motion to correct and for reconsideration on October 3, 2008. On October 10, 2008, the commissioner granted the plaintiff's motion for reconsideration and issued, sua sponte, a decision vacating the October 2, 2008 order. Concluding that the plaintiff properly filed his form 30C and that the defendant did not timely file a form 43, the commissioner granted the plaintiff's motion to preclude on October 13, 2008. On October 16, 2008, the commissioner issued a decision concluding that the plaintiff's acute coronary syndrome, suffered as a result of the February 10, 2001 incident, was a compensable work-related injury that aggravated his preexisting coronary artery disease. The commissioner further concluded that the defendant was entitled to workers' compensation benefits, including those for a 25 percent permanent partial disability rating to his heart.

*624 On October 30, 2008, the defendant filed a motion for reconsideration regarding the commissioner's October 16, 2008 decision, and also filed an appeal from the commissioner's decision with the board. The commissioner denied the motion on January 28, 2009. The board then affirmed the decision of the commissioner on October 14, 2009, and this appeal followed. Additional facts will be set forth as necessary.

I

The defendant first claims that the board erred in affirming the commissioner's granting of the plaintiff's motion to preclude. Specifically, the defendant argues that the form 30C that the plaintiff delivered to Brown on April 9, 2001, was insufficient to trigger its obligation to file a form 43.⁷ We disagree.

**1126 The following additional facts are relevant to our resolution of this claim. The commissioner made findings regarding the execution and delivery of the plaintiff's form 30C. Brown was an administrative chief with the defendant's fire department, and it was his job to represent the department and its employees with matters involving the defendant's human resources department. It was Brown's obligation to deliver forms 30C to the human resources department, and in the ordinary course of business he would have delivered the plaintiff's form there. Historically, the defendant accepted forms 30C for processing from the human resources department, the town clerk's office and the law department, thus establishing flexibility in the defendant's service procedures. When the plaintiff handed his form 30C to Brown, Brown was an administrative agent of the defendant with apparent authority to act on the *625 defendant's behalf when dealing with the processing of workers' compensation claims. Therefore, the timely notice of the plaintiff's claim to Brown constituted timely notice of the claim to the defendant, and any deficiency on Brown's part in processing the plaintiff's form 30C did not deprive the defendant of timely notice of the plaintiff's claim. On the basis of these findings, the commissioner concluded that the plaintiff sufficiently complied with his obligation in presenting a form 30C, such that the defendant was put on notice of the plaintiff's claim, and thus triggered the defendant's obligation to file a form 43, if it intended to contest liability. The board adopted the findings and affirmed the commissioner's decision, holding that the commissioner properly granted the plaintiff's motion to preclude.

[1] [2] [3] We begin by setting forth our standard of review governing workers' compensation appeals. "The conclusions drawn by [the commissioner] from the facts found must stand unless they result from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them.... Neither the ... board nor this court has the power to retry facts. It is well established that [a]lthough not dispositive, we accord great weight to the construction given to the workers' compensation statutes by the commissioner and [the] board.... The commissioner has the power and duty, as the trier of fact, to determine the facts." (Citation omitted; internal quotation marks omitted.) *Cervero v. Mory's Assn., Inc.*, 122 Conn.App. 82, 90, 996 A.2d 1247, cert. denied, 298 Conn. 908, 3 A.3d 68 (2010).

General Statutes § 31-294c governs notice of claims for workers' compensation benefits. Section 31-294c (a) provides in relevant part: "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 *626 accident.... Notice of a claim for compensation may be given to the employer or any commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident ... and the name and address of the employee and of the person in whose interest compensation is claimed...." The workers' compensation commission created the form 30C for use in complying with § 31-294c (a). See *Tardy v. Abington Constructors, Inc.*, 71 Conn.App. 140, 150, 801 A.2d 804 (2002).

Regarding the manner of serving a notice of claim for workers' compensation benefits, General Statutes § 31-321 provides **1127 in relevant part: "Unless otherwise specifically provided, or unless the circumstances of the case or the rules of the commission direct otherwise, any notice required under this chapter to be served upon an employer, employee or commissioner shall be by written or printed notice, service personally or by registered or certified mail...." Regarding any defects in notice, § 31-294c (c) provides in relevant part that "[n]o defect or inaccuracy of notice of claim shall bar maintenance of proceedings unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice...." General Statutes § 31-294c (c).

Section 31-294c (b) dictates the strict standards of an employer that seeks to contest liability. Section 31-294c (b) provides in relevant part: "Whenever liability to pay compensation is contested by the employer, he shall file with the commissioner, on or before the twenty-eighth day after he has received a written notice of claim, a notice in accord with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific *627 grounds on which the right to compensation is contested. The employer shall send a copy of the notice to the employee in accordance with section 31-321.... Notwithstanding the provisions of this subsection, an employer who fails to contest liability for an alleged injury or death on or before

the twenty-eighth day after receiving a written notice of claim and who fails to commence payment for the alleged injury or death on or before such twenty-eighth day, shall be conclusively presumed to have accepted the compensability of the alleged injury or death." The workers' compensation commission created the form 43 for use in complying with § 31-294c (b).

The defendant claims that the board erred in affirming the commissioner's granting of the motion to preclude because the plaintiff's form 30C was insufficient to trigger the defendant's obligation to file a form 43. The defendant contends that the form 30C was insufficient because, at the time it was delivered to Brown, it did not contain the information required by § 31-294c (a) relating to the nature of and date of the plaintiff's injury. The defendant argues that without such information, the form 30C was insufficient to trigger its obligation to file a form 43, if it wanted to contest the claim. The plaintiff argues that his form 30C, as completed by Brown after discussion, was sufficient because it put the defendant on notice of his claim and thus triggered its obligation to file a form 43. We agree with the plaintiff.

Our Supreme Court has stated that "[t]he rule of strict compliance ... is not supported by either the plain language or the legislative history of [General Statutes §] 31-297(b) [now § 31-294c]." *Pereira v. State*, 228 Conn. 535, 543 n. 8, 637 A.2d 392 (1994). To the contrary, our Supreme Court has noted that "[§] 31-297(b) [now § 31-294c] is remedial legislation that should be liberally construed to accomplish its humanitarian purpose." *628 *Id.* Section 31-294c "was enacted to require a prompt and thorough investigation of the employee's claim so as to yield a specific disclaimer of liability and to avoid unnecessary delay in the adjudication of workers' claims." *Id.* Accordingly, "if the notice of claim is sufficient to allow the employer to make a timely investigation of the claim, it triggers the employer's obligation to file [a form 43 contesting liability]." *Id.*; see also *Tardy v. Abington Constructors, Inc.*, *supra*, 71 Conn.App. at 149-50, 801 A.2d 804; *Pernacchio v. New Haven*, 63 Conn.App. 570, 575-76, 776 A.2d 1190 (2001).

**1128 [4] [5] In the present case, the commissioner found, and the board agreed, that the plaintiff's form 30C as delivered to and completed by Brown, after conversing with the plaintiff, was sufficient to give the defendant notice of his claim. To the extent that the

determination of whether the defendant received proper notice of the claim is a factual issue, we generally are obligated to defer to the findings of the commissioner. See *Cervero v. Mory's Assn., Inc.*, supra, 122 Conn.App. at 90, 996 A.2d 1247. The record supports the commissioner's finding that "[the plaintiff] timely notified ... Brown ... of his work-related incident" and that "[s]aid notice resulted in the preparation of a form 30C [that] was reasonably calculated to give the employer notice of the claim." The record also supports the commissioner's finding that Brown was an agent of the defendant with authority to act on the defendant's behalf in the processing of workers' compensation claims. Furthermore, the defendant has not provided any persuasive argument as to why it may have been unreasonable for the commissioner to have concluded that timely notice to Brown, as the defendant's agent, constituted timely notice to the defendant. Accordingly, the board did not err in determining that the plaintiff's form 30C was sufficient to trigger the defendant's responsibility to file a form 43. We, therefore, conclude that the board properly *629 affirmed the commissioner's granting of the plaintiff's motion to preclude.

II

[6] The defendant next claims that the board erred in affirming the commissioner's denial of its motion for reconsideration. Specifically, the defendant argues that the denial of its motion deprived it of a meaningful opportunity to defend against the plaintiff's claim because the commissioner was prohibited from considering any evidence it presented, thus denying the defendant due process of law. We disagree.

The following additional facts are relevant to our resolution of this claim. After granting the plaintiff's motion to preclude, the commissioner, in rendering her decision, considered only the evidence presented by the plaintiff to prove a prima facie case of compensability and expressly disregarded all evidence previously offered by the defendant. In its motion for reconsideration, the defendant argued that although *Harpaz* limited its ability to defend once a motion to preclude has been granted, it should "at least be provided the due process opportunity to address, via posttrial memorandum, what *Harpaz* means in general, and, more importantly, its impact upon

partial disability benefits, in the context of [the plaintiff's] case." The commissioner denied the motion on January 28, 2009. The board, in rendering its decision, concluded that the Supreme Court's decision in *Donahue v. Veridiam, Inc.*, 291 Conn. 537, 970 A.2d 630 (2009), "clearly demonstrate[d] that the ... commissioner properly applied the precedent in *Harpaz* in rendering her decisions ... as to the effect of preclusion."

The defendant asks this court to hold that the conclusive presumption contained in § 31-294c (b) is an unconstitutional denial of due process. We are constrained *630 by our Supreme Court's decisions in *Harpaz v. Laidlaw Transit, Inc.*, supra, 286 Conn. at 102, 942 A.2d 396, and *Donahue v. Veridiam, Inc.*, supra, 291 Conn. at 537, 970 A.2d 630. In *Harpaz*, our Supreme Court analyzed the extent to which a motion to preclude pursuant to § 31-294c (b) limits an employer's ability to contest compensability for a claim of workers' compensation. The court concluded that "under § 31-294c (b), if an employer neither timely pays nor timely contests **1129 liability, the conclusive presumption of compensability attaches and the employer is barred from contesting the employee's right to receive compensation on any ground or the extent of the employee's disability." *Harpaz v. Laidlaw Transit, Inc.*, supra, at 130, 942 A.2d 396. The court also held that although a motion to preclude bars noncomplying employers from contesting liability, a claimant is still required "to prove that he has suffered a compensable injury, i.e., an injury that arose out of and in the course of his employment, including the extent of his disability." *Id.*, at 131, 942 A.2d 396.

In *Donahue*, our Supreme Court further examined the extent to which an employer's ability to contest a workers' compensation claim is limited by the granting of a motion to preclude, addressing the issue of "whether an employer subject to the conclusive presumption is precluded from challenging the claimant's proof through cross-examination and submission of a written argument." *Donahue v. Veridiam, Inc.*, supra, 291 Conn. at 540, 970 A.2d 630. The court answered in the affirmative, holding that "once a motion to preclude is granted, the only role an employer plays is to decide whether to stipulate to the compensation claimed. If the employer does not so stipulate, the claimant proceeds with her case, subject to examination by the commissioner." *Id.*, at 546-47, 970 A.2d 630.

The court acknowledged that it was “conscious of the drastic effect of a [m]otion to [p]reclude, as it divests the employer of the right to contest liability for a claim.”

*631 (Internal quotation marks omitted.) *Id.*, at 550, 970 A.2d 630. The court further acknowledged that it did “not believe that this rather harsh remedy should be imposed without ensuring that both parties have been provided with ... due process protections....” (Internal quotation marks omitted.) *Id.* The court reasoned that an employer is not denied due process because “the employer does have a role to play following [the granting of a motion to preclude], albeit a rather limited one.” *Id.* The court described the nature of the employer’s role as follows: “[W]hen an employer stipulates entirely to the compensation being claimed, that is, both the compensability and the extent of disability arising from the alleged injury, the remand to the commissioner usually involves a nondiscretionary calculation of benefits using the formula set forth by statute and thus is a final judgment; but when the employer does not so stipulate, an evidentiary hearing is necessary so that the claimant may prove her right to the compensation claimed.” *Id.*, at 551, 970 A.2d 630. Accordingly, the court concluded that “[t]here is nothing ... to suggest that an employer has the right to test the evidence proffered by the claimant ... by way of question or argument.” *Id.*

[7] [8] In arguing that the conclusive presumption contained in § 31–294c (b) is unconstitutional, the defendant essentially asks this court to overturn both *Harpaz* and *Donahue*. It is axiomatic that “[o]ur Supreme Court is the ultimate arbiter of the law in this state.” *State v. Brown*, 73 Conn.App. 751, 756, 809 A.2d 546 (2002). “[W]e are not at liberty to overrule or discard the decisions of our Supreme Court but are bound by them....[I]t is not within our province to reevaluate or replace those decisions.” (Internal quotation marks omitted.) *State v. Smith*, 107 Conn.App. 666, 684–85, 946 A.2d 319, cert. denied, 288 Conn. 902, 952 A.2d 811 (2008). Accordingly, we must decline the defendant’s request to reevaluate decisions of our Supreme Court.

*632 III

The defendant finally claims that the board erred in affirming the commissioner’s **1130 decision concluding that the plaintiff’s February 10, 2001 incident was a compensable work-related injury. Specifically, the

defendant argues that the board erred in affirming the commissioner’s decision because the evidence presented did not support the commissioner’s conclusion that the acute coronary syndrome that the plaintiff suffered as a result of the February 10, 2001 incident was a substantial contributing factor in the aggravation of his preexisting coronary artery disease. We disagree.

[9] [10] We begin by reiterating our standard of review that governs workers’ compensation appeals. “The commissioner is the sole trier of fact and [t]he conclusions drawn by [the commissioner] from the facts found must stand unless they result from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them.... The review [board’s] hearing of an appeal from the commissioner is not a de novo hearing of the facts.... [I]t is [obligated] to hear the appeal on the record and not retry the facts.... On appeal, the board must determine whether there is any evidence in the record to support the commissioner’s findings and award.... Our scope of review of [the] actions of the [board] is [similarly] ... limited.... [However] [t]he decision of the [board] must be correct in law, and it must not include facts found without evidence or fail to include material facts which are admitted or undisputed.” (Internal quotation marks omitted.) *DiBlase v. Logistec Connecticut, Inc.*, 123 Conn.App. 753, 757–58, 3 A.3d 128, cert. denied, 299 Conn. 908, 10 A.3d 524 (2010).

[11] In arguing that the evidence presented did not support the commissioner’s conclusion that the plaintiff’s *633 acute coronary syndrome was a substantial contributing factor⁸ in the aggravation of his preexisting coronary artery disease, the defendant points to the following testimony of Labarre: “I do think, with a fair likelihood, that his climbing five flights of stairs at age sixty-eight, carrying heavy medical equipment, which we assessed could be more than seventy pounds, at this time could have exacerbated coronary disease through a physical force which may have moved coronary plaque and caused a transient but significant acute coronary syndrome for which he was hospitalized....” The defendant contends that in light of this testimony, the commissioner reasonably could not have concluded that the plaintiff’s acute coronary syndrome was a significant contributing factor in his coronary artery disease. After examining the evidence considered by the commissioner in its totality, we conclude that there was sufficient evidence

from which she reasonably could have concluded that the plaintiff's acute coronary syndrome was a significant contributing factor to coronary artery disease.

In rendering her decision, the commissioner relied on the deposition of Labarre. In his deposition, Labarre testified that it was his opinion, "*to a reasonable medical probability,*" that the plaintiff's exertion while fighting a fire on February 10, 2001, precipitated his acute coronary syndrome. (Emphasis added.) Labarre further testified that it was his opinion to a reasonable medical probability that the plaintiff's acute coronary syndrome aggravated his ****1131** preexisting coronary artery disease. Additionally, Labarre opined that prior to the plaintiff's ***634** February 10, 2001 acute coronary syndrome, his coronary artery disease was stable. Labarre also noted that following the February 10, 2001 incident, the plaintiff had an increase in his anginal pattern. Finally, Labarre stated that the plaintiff suffered from a 30 percent permanent partial disability of the heart, 25 percent of which was attributable to coronary artery disease.

On the basis of this information, the commissioner concluded that the plaintiff suffered a compensable work-

related injury and was entitled to workers' compensation benefits. In its decision, the board concluded that "[g]iven the totality of the evidence provided, we believe [that] the ... commissioner could reasonably have determined that the February 10, 2001 cardiac incident did *not* create merely a transient impairment in the [plaintiff's] medical condition but, instead, led to a permanent increase in the [plaintiff's] level of disability." The evidence presented supported the commissioner's decision. Accordingly, we conclude that the board did not err in affirming the decision of the commissioner awarding workers' compensation benefits to the plaintiff.

The decision of the workers' compensation review board is affirmed.

In this opinion the other judges concurred.

All Citations

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Footnotes

- 1 The other defendant, PMA Management Corporation of New England, did not file a separate brief or participate at oral argument in this appeal. We refer in this opinion to the city of Stamford as the defendant.
- 2 A myocardial infarction is a heart attack. Stedman's Medical Dictionary (27th Ed.2000) p. 895.
- 3 Prior to the February 10, 2001 incident, the plaintiff was treating with Joseph Costanzo, a physician, for hypertension.
- 4 A form 30C is the document prescribed by the workers' compensation commission to be used when filing a notice of claim pursuant to the Workers' Compensation Act, General Statutes § 31-275 et seq.
- 5 A stent is defined as a "thread, rod, or catheter, lying within the lumen of tubular structures, used to provide support during or after their anastomosis, or to assure patency of an intact but contracted lumen." Stedman's Medical Dictionary (27th Ed.2000) p. 1696.
- 6 A form 43 is a disclaimer that notifies a claimant who seeks workers' compensation benefits that the employer intends to contest liability to pay compensation. If an employer fails timely to file a form 43, a claimant may file a motion to preclude the employer from contesting the compensability of his claim.
- 7 The defendant does not contest the fact that it did not file a timely form 43 in response to the plaintiff's April 9, 2001 form 30C. The defendant contests only the determination that the plaintiff's form 30C was sufficient to trigger its obligation to file a form 43.
- 8 In *McDonough v. Connecticut Bank & Trust Co.*, 204 Conn. 104, 117, 527 A.2d 664 (1987), our Supreme Court stated that it is a "long-standing rule that the claimant must prove that a sudden, unusual, and unexpected employment factor was a substantial factor in causing the claimant's condition." The court further stated that "[i]n order to recover [workers' compensation benefits], the claimant must prove causation by a reasonable medical probability." *Id.*, at 118, 527 A.2d 664.