Compensation Quarterly

Volume 32 • Number 4
Winter 2023

THE WORKERS' COMPENSATION UPDATE

Comments from Nancy Bonuomo

to the Executive Committee of the Workers' Compensation Section of the Connecticut Bar Association

April 13, 2022

By Nancy Bonuomo

I want to thank you for inviting me to be here. First of all, allow me to express my gratitude to Chief Judge Morelli for permitting me to serve as a per diem Workers' Compensation administrative law judge. Truly, that is an honor in and of itself. Secondly, a big thank-you to Attorney Colette Griffin and the Executive Committee for giving me this opportunity to address you and share some of the thoughts and reflections that I have. It is especially gratifying that Colette reached out to me.

Colette, I remember the first day we met. You were standing outside the fishbowl at the then-University of Bridgeport law school. The fishbowl, as it was called, was a glassed-in area right off the entrance to the main building. It was a place where students gathered and commiserated with each other, generally in the guise of a study group. It was a place where grades were posted back in ancient times when paper posting was your first indication as to how well you did in your law school exams. It's been a long time my friend, and I am so grateful that we can both be here at this point and acknowledge how far we've traveled in our journey.

Colette asked me to chat with you regarding changes I've experienced in my 35+ years associated with the Workers' Compensation Commission. My first draft was centered on the legal changes to the Act and the commission in the last 35 years. I discussed it with Colette, who said you would really rather hear about the changes between my role up at Oak Street in the Chief Judge's/Chairman's office and my current role. Frankly, it's a lot easier to do this draft rather than that other draft because this draft comes from my heart. Oh and by the way, if you don't like this draft blame Colette- the other one was much funnier.

Let me begin by telling you what the change in my role is. Previously I was the Chief Law Clerk, and later the Agency Legal Director for the Workers' Compensation Commission. I worked directly for the Chairman/Chief Judge of the Workers' Compensation Commission. I oversaw the administration of the Compensation Review Board under his direction. In

continued on page 3

IN THIS UPDATE

Congratulations to Francis "Bud" Drapeau from the Editorial Board

Congratulations to one of CBA's Workers' Compensation Section's preeminent members, Francis "Bud" Drapeau, for being inducted into the College of Workers' Compensation Lawyers.

The College of Workers' Compensation Lawyers is a national organization established to honor attorneys who distinguish themselves in the workers' compensation forum. To be eligible, each inductee must have practiced in the field for at least twenty years and distinguished themselves though their professionalism, ethics, integrity, expertise, and leadership. Once inducted, the fellow is expected to display the following traits:

- Stand out to newer attorneys as a model of professionalism in deportment and advocacy:
- Earn the respect of the bench, opposing counsel, and the community:
- Display civility in the adversarial relationships;
- Avoid allowing ideological differences to affect civility in negotiations, litigation and other aspects of the law practice;
- Demonstrate an active interest in resolving issues;
- Be a student of the law;
- Have a thirst for knowledge in all areas of the law that affects their representation of their clients or their duties in adjudicating cases; and
- Actively participate in local, state and/or federal bars.

Attorney Drapeau is a Board-Certified Workers' Compensation Specialist, representing injured workers at the state agency and on appeal in Connecticut. He is a past chair of the Connecticut Bar Association's Workers' Compensation Section, and the founder and chair of the section's Legislative Initiative Committee. Attorney Drapeau was recently appointed to the legislature's Firefighter Cancer Relief Task Force, and he currently sits on the CBA's Board of Governors.

To those of us who know Bud, it is no surprise that he has received this honor. He has conducted himself with professionalism, a high ethical standard, zealous advocacy, and civility, which are the cornerstones of our collegial Workers' Compensation Bar.

Attorney Drapeau joins other distinguished fellows, David J. Morrissey, John "Jack" Clarkson, Robert F. Carter, Donna Jean Civitello, Jason M. Dodge, Stephen Embry, James L. Pomeranz, Angelo P. Sevarino, Lucas D. Strunk, Diane Duhamel, Hon. John Mastropietro, Hon. Randi Cohen, and Joseph Passarretti.

addition, I provided policy input, drafted opinions, and assisted with the drafting of various legal documents and policies. However, perhaps the most absorbing tasks I performed pertained to my administrative and supervisory duties. I believe my role is best titled as that of a feline shepherd- herder of cats. While they may have been people, they still came in various varieties. Some could be described as truly domestic- easy to deal with. Some were more feral- exhibiting distrust in the first instance. Some were just plain wily, and some were just plain broken, just like the rest of humanity. And in that former role, my job was to take these cats and get them to the next stage of where we needed to be.

In my capacity with the Compensation Review Board, I've described my former role as akin to the role of a coroner. Something had gone wrong with the patient, and part of my job and of the people with whom I worked was to look at the patient and see what went wrong. The next step was to engage in analysis and determine how in the future such an outcome could be avoided.

Now, in my capacity as a judge presiding over informal and pre-formal hearings, I would analogize my role to something more like the ER doctor standing over the patient with defibrillator paddles and yelling "clear." In my present role I have more of a say in keeping the patient (the claim) alive and viable.

To say the least, I have found my experiences as a judge to be extraordinarily humbling. I have said to people that as I look back on my former role and the manner in which I sometimes performed that assignment, I fear that I may have, upon occasion, come across as an officious prig. But that role required the enforcement of policies and "compliance" encouragement. The role of the officious bureaucrat is exactly the role you must assume. It's not easy and it's especially difficult in the quasi-judicial/administrative setting. I sometimes used to say to those attorneys who tried to apply the procedural technicalities of civil litigation to that of the dispute resolution procedures in workers' compensation that the workers' compensation process sometimes bordered on "the law west of the Pecos." What I meant when I said that was that a great deal of what we do in workers' compensation is based on not only the law, but on custom and practice. Most importantly, I think the core of dispute resolution at the district level is driven obviously by the law, but also by the overarching sense of purpose of resolving matters in an expedient manner. It is a dispute resolution process that succeeds because of the parties' communications and respect for each other.

I am proud to note that, as I sit at the district level, I see that the system that was designed and implemented almost 110 years ago succeeds because of the professional commitment and deportment of people like you. As I said earlier, the law is the driving force, but the ability to temper the application of the law so as to administer it in a way that effects the broad humanitarian purpose of the Act is dependent upon your knowledge, your experience, your respect for the system, and your cooperation. I have been so very impressed with your ability to zealously advocate on behalf of your clients, and balance that with professional respect toward your adversary and the tribunal.

In addition to my already-noted pithy observations, I would also note that our forum is a microcosm of other forums of jurisprudence. We share the same professional concerns of our brothers and sisters toiling in other court and court-like systems. We share the tension of trying to mete out justice when the legal confines of the remedy seem to be at cross-purposes with "individual" concepts of justice and fairness.

In those instances where the result that we are compelled to reach does not match an individual's personal definition of what is fair or just, the individual whose grievance we addressed must believe that the process employed in reaching that conclusion was consistent with traditional notions of due process. That is, they received a fair hearing before a neutral arbiter.

To me, almost as important as the decision we reach is to assure those that come before us that they have been listened to. When you step into our forum, and I believe this to the very core of my soul, the judges' job is not only to apply the law but to treat the parties who appear before them with dignity. We must acknowledge the parties' positions, and when they exit the courtroom, they should know their arguments were heard and considered in reaching whatever the judge's recommendation or ruling is.

They must leave firm in the belief that they have been treated respectfully. Most importantly, as the case concludes, one should leave the process knowing the law was applied in an even-handed manner. It did not matter what education level the grievant achieved, how much money they earned, or any other factor by which others in our society may attempt to categorize us- and dare I say, worse- divide us.

continued on page 4

Comments from Nancy Bonuomo

I say this not just because I happen to believe it's the right thing to do. I say it because we are, sometimes, a person's first or only encounter with a judicial or quasi-judicial system. We need, as the professionals in the system, to not only mediate disputes but to serve as representatives of the judicial system as a whole. There's a clause in the Constitution that mandates granting full faith and credit to the decisions of other tribunals. That's a legal concept and I happen to think it a good one. But what the drafters of our Constitution may not have realized was the fact that the full faith and credit legal concept isn't just limited to the legal principles of comity. It applies to the litigant's spirit and belief system.

If someone doesn't have full faith that the system is fair, and if someone doesn't credit the judge or the hearing officer or the mediator with upholding a commitment to assure that everyone who appears before the tribunal is treated equally under the law, then the whole system is endangered.

So, I guess my point is that the role I now take on is to personally reflect the best of what dispute resolution in our forum should look like. Up at Oak Street my role was to try to assure that the written response to disputes was crafted in such a way that the words in a decision conveyed not only the law, but also the legal analysis employed. I believed someone should read a decision and say "I wish the conclusion was different but I understand the Board's rationale and reasoning."

I try to bring the same concept to our hearings. I don't have the luxury of time to ruminate, or to phrase things in as precise a way as I might like. But the overarching sentiment which guides me, and I'm sure other judges in our system, is the same.

Finally, and I think that might be the best word that any lawyer can hear when you are listening to someone like me speaking- finally, today is the 279th anniversary of the birth of Thomas Jefferson. Many of you know that Jefferson was a lawyer, although he only practiced for about eight years. He was a man of incredible intelligence, although not always an example of stellar personal conduct. He graduated from William and Mary and then interned and studied law under George Wythe, who was a brilliant and highly respected lawyer. There is no question that much of Jefferson's commentary on government and its role was framed by his legal education.

As I prepared these comments, I went back and read a letter Jefferson posted to James Madison. We all know that the general public does not always hold lawyers in high esteem. That view appears to have deep roots in our history. (And if you really want to know public scorn, be a lawyer and a public employee.) In the 17th century, and I just don't understand this, but the Commonwealth of Virginia outlawed lawyers. During that century the colony went back and forth outlawing them, reinstituting them and so on but certainly after 1776, lawyers were part of the system, given our separation from the British Empire's judiciary. However, while lawyers may have been accepted, that doesn't mean that the vexing characteristics of some didn't get assigned to the class as a whole.

In a letter to James Madison, written as the nation faced the war of 1812, Jefferson registered his concerns at permitting the Congress to play a significant role in the conduct of the war. Former President Jefferson wrote:

> Dear Sir, —Yours of the 12th has been duly received. I have much doubted whether, in case of a war, Congress would find it practicable to do their part of the business. That a body containing 100 lawyers in it, should direct the measures of a war, is, I fear, impossible; and that thus that member of our Constitution, which is its bulwark, will prove to be an impracticable one from its cacoethes loquendi. It may be doubted how far it has the power, but I am sure it has not the resolution to reduce the right of talking to practicable limits…

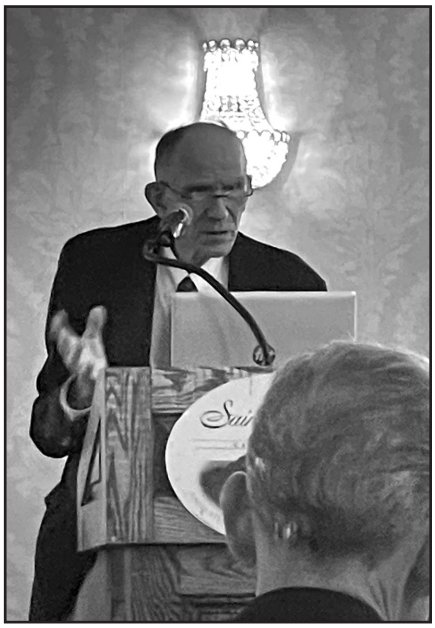
Well Mr. Jefferson, I wish you could know the lawyers that I have come to know in our workers' compensation proceedings. It is their very willingness to talk and to communicate that allows us to resolve issues and to provide injured workers with access to medical care and an economic safety net. The lawyers who are part of our system and with whom I've interacted are knowledgeable, professional, and committed in their obligations to their clients. On a daily basis, they demonstrate that zealous advocacy can still be undertaken without an abandonment of professional civility and respect. I said at the outset that it was my honor to serve in my present capacity but it is further my honor to get to know the practitioners who come before us. Your camaraderie, generosity and how you treat others, even if of opposing viewpoints, has not gone unnoticed. And I commend you all for that and thank you for letting me be part of the process.

Editors' Note: Nancy Bonuomo is an Acting Administrative Law Judge, Per Diem, and the former Legal Director for the Connecticut Workers' Compensation Commission.

Un-Ringing the Bell

By Robert S. Bystrowski

On a beautiful fall morning, a capacity crowd gathered at Saint Clements Castle in Portland, Connecticut, which is situated on more than 90 acres overlooking the scenic Connecticut River. The purpose of the gathering was to hear from some of the preeminent minds in the State of Connecticut on one of the most challenging aspects of our workers' compensation system and medical science in general – proper diagnosis and treatment of concussion and brain injury. The CLE committee organizers, led by Cori-Lynn Webber, along with Melissa Murello and Michael Kerin, produced a highly educational and information-packed program which those fortunate enough to attend will no doubt incorporate into their practices going forward and not soon forget. In addition to the esteemed medical providers, the attendees were privileged to receive insights from Judges Oslena and Mlynarczyk as well as practice tips from learned attorneys, John D'Elia and Brian Smith.



Leading off the day was the formidable Dr. Steven Conway. Dr. Conway explained the pathophysiology of concussion and the concept of post-concussive syndrome (PCS). He addressed factors to consider when evaluating and diagnosing a concussion or PCS and its potential relationship to a work injury. He explained why documentation of the facts surrounding the time of the injury are so critical to the analysis used to assess compensability. He also waded into the age-old medical question of whether loss of consciousness is required for diagnosis of concussion and/or traumatic brain injury (TBI).

Dr. Conway was followed by the energetic Dr. Stephanie Alessi-LaRosa. Dr. Alessi-LaRosa provided practical definitions of brain injury and outlined the requirements to make the diagnosis as well as assess the relationship of the diagnosis to a work injury. Dr. Alessi distinguished her experience as a clinician with a sub-specialty in sports medicine from the typical neurologist evaluating and treating a concussion. Although it initially appeared that Dr. Alessi-LaRosa was issuing a challenge to Dr. Conway with regard to his comments on necessity of loss of consciousness as a condition precedent to diagnosis of concussion and/or TBI, ultimately both doctors came together on agreement that documented "alteration of consciousness" is a necessary requirement.

Following a brief mid-morning break, Dr. Robert Lesser spoke about visual disturbances caused by traumatic brain injuries and concussion. He described the mechanisms that cause injury or aggravation to the anatomy of the eye and disturbance to the eye-brain connection. He also focused on causation and treatment including prism glasses and visual therapy.

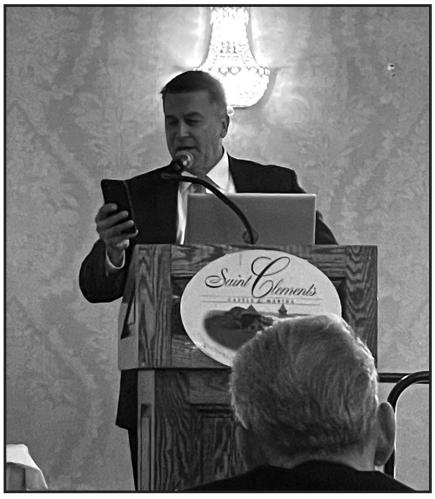
Following Dr. Lesser, Dr. Marc Eisen addressed diagnosis and management of ear and dizziness issues that can result from head injury. He enlightened the crowd on proper pronunciation of the term "tinnitus", and explained that this phenomenon, while often referenced in medical reports in hearing loss cases, is entirely subjective in its diagnosis and severity, and may technically fall outside of a strict definition of a "medical condition".

Following a lunch during which both speakers and attendees were able to obtain the nourishment necessary to continue through the afternoon, the group heard from Dr. Kevin Young at the Institute for Living. Dr. Young addressed the role of

continued on page 6

neuropsychology evaluations in concussion evaluation and management. He addressed those practices in evaluating diagnosing concussion, expected medical trajectories and complications that can arise such as pre-morbid psychological issues, cognitive function, and behavioral issues. He also addressed assessing whether a work injury is a substantial causative factor in the need for treatment, or simply an ancillary circumstance. He provided insight on what information is necessary in order to obtain a valid neuropsychological examination and how such information assists with evaluating causation and treatment.

Dr. Young's counterpart at the Institute of Living, Dr. Alfred Herzog provided the attendees with an insightful explanation of the evaluation and treatment of TBI and concussion from a psychiatrist's perspective. He described how treatment has changed over the past several decades, and the importance of identifying co-morbidities and their impact on causation and treatment. He also provided some personal stories of challenging cases over his several decades of practice, including challenges experienced practicing medicine in the workers' compensation forum.



Following a mid-afternoon snack, Dr. Arnold Holzman presented on his experience in addressing the relevance of prior history and co-morbidities in evaluating and treating TBI and concussion from the perspective of a therapist. He provided useful information on his methods for parsing out what has been traumatically caused, or aggravated, versus a patient's baseline psychological condition. He also addressed the challenging issue of the inherent conflicts of being a psychological treater in the workers' compensation system.

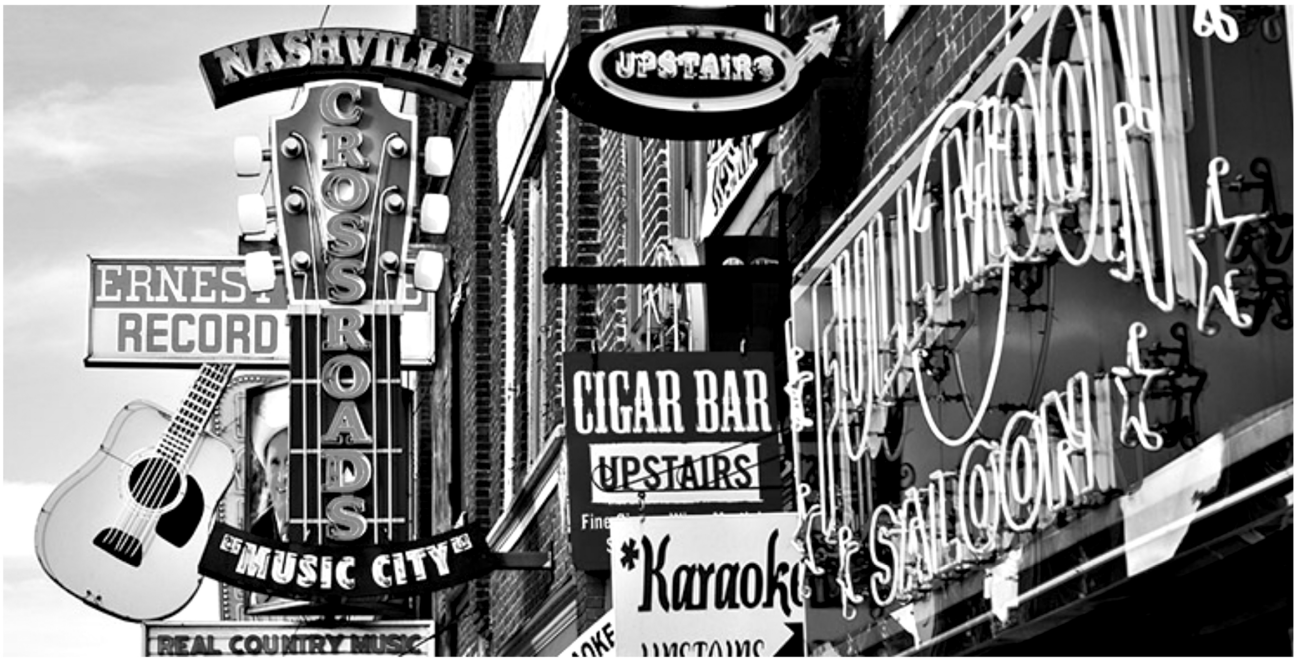
Anthony Silver, from Gray Matters, provided some interesting data and information on how quantitative EEGs can help to confirm the occurrence of a TBI or concussion. He explained the science supporting the validity of these assessments, as well as its use in the court system litigation forum.

Throughout the day, the attendees of the seminar had the benefit of the insights and comments of two esteemed members of the bench, Judge Oslena and Judge Mlynarczyk. Both judges provided helpful information to practitioners on procuring the information, facts and documentation necessary to support your position in litigation before the commission on behalf of a client, whether claimant or respondent.

Finally, the attendees were treated to the passionate comments of two experienced and well-regarded practitioners, John D'Elia and Brian Smith. Attorney D'Elia provided an overview of the challenges faced in presenting the claimant's case with a psychological component, and reminded the attendees, including the experts on the panel that each of the injured workers pursuing claims are people first, and patients and litigants second. Attorney Smith, who has extensive experience representing both claimants and respondents provided some helpful practice tips for attorneys who are challenged in their efforts to properly defend or prosecute a claim with underlying or overlaying psychological issues.

In summary, the members of the bar who were fortunate enough to attend this event were the beneficiaries of a unique program addressing issues which, while are often present in the cases we handle, are rarely the subject of continuing legal education, much less direct dialogue with experienced medical practitioners. The seminar was an excellent example of the benefits of continuing legal education, and hopefully the sign of interesting programs to come in the future, which I encourage all of you to explore in 2023.

Editors' Note: Robert Bystrowski is a partner at Morrison Mahoney in Hartford, CT., the Vice-Chair of the Workers' Compensation Executive Committee, and a board-certified workers' compensation specialist. Attorney Bystrowski also represents companies in defense of general liability and employment related matters throughout the state of Connecticut.



May 7-9, 2023

Workers' Compensation Retreat

Nashville, TN

Reserve your room today at the Hyatt Centric Nashville online (www.hyatt.com/en-US/group-booking/BNACT/G-ECRA) or by calling 615-645-6037 and referencing the Connecticut Bar Association.

Full agenda to follow but know this- it will be great! Reception to be held Sunday, May 7, followed by seminar sessions Monday and Tuesday mornings.

Case Comments

By Scott Carta

APPELLATE COURT DECISIONS

John J. Britto v. Bimbo Foods, Inc., Et, Al., No. AC 44844 (December 27, 2022)

Preclusion denied where employer never received Form 30C and was not at fault failing to receive the Form 30C.

This case arises out of a motion to preclude that was denied by the trial judge and affirmed by the Compensation Review Board. This appeal followed.

Factually, the plaintiff sent a Form 30C, by certified mail to the defendant at 328 Selleck Street #A, in Stamford, Connecticut. The premises is a building with a noticeable sign, which reads 328 Selleck Street A. On January 10, 2018, the envelope was returned to the plaintiff with a stamped marking that read "undeliverable as addressed, and unable to forward." Additional markings indicated that delivery was attempted on three occasions in December 2017. The plaintiff contends that the defendant never accepted the certified mail of the Form 30C and the Form 43 filed by the defendant on January 18, 2018 was untimely.

The plaintiff, relying on the "mailbox rule", contended that the Form 30C should have been presumed to be delivered and the burden should fall on the defendant to establish that it did not receive the Form 30C. Furthermore, the plaintiff relied on expert testimony from a retired postal worker, who opined that the envelope was handled correctly and was returned to the plaintiff because it was not delivered and not signed for by the recipient. He concluded that this demonstrated that the Form 30C was delivered to the defendant, but the defendant rejected it.

The appellate court noted that the trial judge did not find the testimony of the expert witness to be credible. The appellate court distinguished cases, cited by the plaintiff, namely, *Black vs. London & Egazarian Associates,* 30 Conn. App. 295 (1993). In *Black,* the postal worker delivered the Form 30C and attempted to obtain a signature, however, nobody with authority to sign for the employer was present, so it was simply left on the reception desk. The court found preclusion in that case since the employer did not attend to the letter once delivered, by its own actions. Unlike this case, the court found the facts in *Black* established that the notice of claim was delivered to the employer, but the employer's own actions prevented it from becoming privy to the notice of claim at the time of delivery.

The court also distinguished the case of *Morgan v. Hot Tomatoes, Inc.,* 4377 CRB 3-01-3 (January 30, 2002), which involved a situation where after five failed attempts to deliver the letter to the employer, the postal service returned the letter to the employee. The judge stated there was substantial evidence that the postal service attempted to obtain a signature from the employer on five occasions, such that the employee complied with the notice requirements. Furthermore, the employer may be held accountable for its failure to receive notice should the facts infer that the employer was at fault for the unsuccessful delivery. In this case, the trial judge did not find any fault on the employer.

The appellate court agreed with the trial judge's conclusion that there was no evidence that the employer refused to accept service and that the defendant did not receive the Form 30C via certified mail on December 12, 2017, but did so for the first time on January 18, 2018, and therefore, the Form 43 was timely.

COMPENSATION REVIEW BOARD DECISIONS

Edward A. Preece v. City of New Britain, 6468 CRB 6-22-2 (December 28, 2022)

COVID-19 case remanded for articulation on correct causation standard.

The issue in this case is whether the claimant's COVID-19 diagnosis was the result of workplace exposure. On December 30, 2020, a fellow firefighter informed the claimant, in person, that he had been exposed to COVID-19. The coworker and the claimant were not wearing masks nor were they vaccinated. The interaction lasted about five minutes and they were standing about four to five feet apart. The claimant tested positive for COVID-19 on January 7, 2021.

In dismissing the claim, the administrative law judge noted 1) that the claimant was out in the general community throughout December 2020; 2) the claimant's primary care physician declined to provide an opinion as to whether the infection was related to work exposure; and 3) that the exposure was outside of the executive order which created a rebuttable presumption for exposures between March 20, 2020, and May 20, 2020. The judge found further that there were not sufficient facts to convince him that the exposure was caused by work activities.

The claimant's appeal is based on the allegation that the administrative law judge applied the incorrect standard of causation and the claimant should not have needed to present a causation opinion from a medical professional. The claimant drew attention to the judge's citation of the executive order, and then, stating that the claimant would face a higher burden of establishing causation since the injury was outside the time frame of the presumption. Essentially, the judge asserted that any claim for a workplace injury due to COVID-19 would require a more elevated level of proof than an ordinary claim for a workplace injury, mandating the presentation of an expert opinion.

The board concluded, after review of the record, that they were unclear as to what standard of proof was imposed by the administrative law judge. As a result, the board remanded the matter to the administrative law judge to articulate, based on the appropriate standards of causation for chapter 568 claims, how he evaluated the causation standard given the executive order was inapplicable to this case; whether an expert opinion was necessary, and whether the claimant's injury was compensable.

David Eastwood v. Inco Painting, Inc., 6446 CRB 1-21-10 (October 14, 2022)

Awards for sanctions and attorney's fees must include the rationale for their findings.

The claimant suffered serious injuries to his low back, left hip, both legs, and both knees on October 21, 2020. The employer contended that the claimant was an independent contractor. However, the administrative law judge found that an employer-employee relationship existed as of the date of the injuries. Therefore, she ordered that the respondent accept the compensability of the injuries and pay for all medical treatment and total disability benefits owed.

In addition to those findings, the administrative law judge found that the respondent's refusal to approve medical treatment was unreasonable pursuant to C.G.S. §31–288. She did not, however, make any findings with respect to the unreasonableness of the respondent's jurisdictional defense of independent contractor, nor did she articulate the nature of the alleged undue delay. Those findings are subject to this appeal.

The respondents argued that they should not be liable for penalties as they had a jurisdictional defense, which was asserted in good faith. The compensation review board noted that the compensability of the claimant's case must be clear as to be indisputable by a reasonable person in order implicate sanctions and attorney's fees. They stated further that, as long as there is some evidence to

continued on page 10

support a requisite finding of unreasonable delay, the commissioner's decision to award attorney's fees based on the delay must be affirmed. Thus, it is necessary for the administrative law judge to articulate the basis for the finding of unreasonable contest.

The board concluded that since the administrative law judge did not specifically identify the rationale behind her findings of unreasonable contest and undue delay, those findings were insufficient to determine the appropriateness of her conclusion and the case was remanded for further findings and clarification.

Robert Berry v. Up Realty, LLC, et. al., 6460 CRB 8-21-12 (November 9, 2022)

Administrative law judge did not connect ankle injury to cardiovascular event and leg amputation.

The claimant was injured on May 11, 2018, when a piece of metal struck his left ankle. Over the next couple of days, the claimant suffered a series of serious medical problems, including abdominal pain, low blood pressure, and cardiac arrest. CPR was required to revive him. He was admitted to the hospital with acute respiratory failure, altered mental status, and septic shock. There was concern he might have rhabdomyolysis and renal failure, causing muscle death in the leg. Therefore, amputation above the knee was recommended due to ischemia and systemic toxicity.

The administrative law judge concluded that the claimant sustained a work-related injury to his left ankle, which resulted in immediate pain, which gradually increased, requiring the claimant to leave work early. However, it did not break the skin or cause a fracture. Additionally, although the claimant was in pain putting any weight on his foot the day of the injury, he was still able to fix something to eat and drink, take his medications, and tend to other personal needs. The judge concluded further that the cardiovascular crisis, which led to the hospitalization and amputation of his left leg, was an intervening and superseding event that severed the chain of causation between the work incident and any subsequent medical treatment or incapacity to work.

It is the claimant's contention that evidence was presented which demonstrated that he was healthy and able to perform his job as a laborer and worked up to fifty-five hours per week prior to the date of the accident. He testified that he did not have any prior history of vascular disease or vascular disorders. The claimant argued that the administrative law judge erred in relying upon the opinions of certain medical providers in concluding that the work-related injury to the claimant's left ankle was not a substantial contributing factor to the amputation of his left leg.

After review of the evidentiary record in this matter, the board found that nothing was revealed which would cause them to question the inferences and conclusions drawn by the administrative law judge, and therefore they declined to reverse the decision.

Tachica Callahan v. Healthcare Services Group-Meriden Care Center, 6453 CRB 8-21-11 (November 4, 2022)

Claimant did not meet burden of proving statutory grounds for opening a stipulation.

This appeal involves the claimant's motion to open a stipulation for full and final settlement. The stipulation approval hearing was held on the record on November 14, 2019 for a $20,000 settlement. On November 20, 2019, the claimant filed a motion to open the stipulation pursuant to C.G.S. §31–315, claiming that she had not received the considerations recited in the stipulation, that the agreement should be set aside for mutual mistake, and that she was "bombarded with settlement options" prior to agreeing to the stipulation.

At the formal hearing, the claimant testified that the respondent should not have been allowed to bring a $20,000 check to the November 14, 2019, hearing and that the judge told her that if she went to formal hearing on the merits, she would likely lose.

The trial judge found that the claimant did not meet her burden of proof of demonstrating she was fraudulently induced into accepting the settlement offer. He also found that she did not produce any evidence of duress, and in fact, had rejected prior settlement offers, which is evidence that she could not be intimidated into accepting a settlement.

On appeal to the compensation review board, the claimant argued further that her condition continued to worsen, and that changed circumstances warranted opening the award. The respondents argued that this was essentially an effort to undo a bargain the claimant subsequently regretted, which is not among the statutory grounds available to open an award or final stipulation.

The board noted that one may open a settlement if he or she can demonstrate that there was lack of consideration in the original agreement, or that there was some irregularity in the manner in which a settlement was approved. Additionally, if the parties agreed to reach a settlement due to a mistake, that may provide grounds to open the settlement, but a unilateral mistake by a party to a stipulation cannot satisfy the statutory grounds necessary to open the agreement, and the mistake must be mutual in nature.

In addressing the claimant's arguments, the board did not feel the claimant was coerced as the presentation of the settlement check at the November 8, 2019 hearing should not have constituted some form of ambush or surprise, rather, it could be interpreted as tangible evidence as to the respondent's willingness to accept the administrative law judge's recommendation. Additionally, the actual approval of the stipulation occurred six days later on November 14, 2019 and had the claimant had second thoughts as to whether she wished to settle, ample time had passed to allow her to make a decision as to how to proceed.

The board addressed the claimant's argument that her bargaining power was taken away due to the administrative law judge telling her that if she did not accept the stipulation, she would lose her claim at a formal hearing. The board found that the transcript reflected that the administrative law judge offered an accurate and dispassionate explanation as to the risk and rewards of going to a contested formal hearing on compensability as opposed to accepting a settlement of the claim. In support, the board stated that for a party to demonstrate duress it must prove a wrongful act or threat that left the victim with no reasonable alternative, and to which the victim in fact acceded, and the resulting transaction was unfair to the victim. The board felt that the judge had the right to offer the claimant an assessment of the risks of going forward with a formal hearing as opposed to the reward of a negotiated settlement and found that this did not constitute duress.

Regarding the claimant's argument that her condition has deteriorated since the approval of the stipulation, the board disagreed, noting that when such an agreement is intended to close out a case in totality, the motion to open must cite some form of unforeseeable development in order to be granted, and not cite to some condition the parties could have anticipated at the time the agreement was approved. The trial judge noted that the claimant's condition did not materially change over the five-day period, especially as the additional medical evidence she sought to present, predated the approval of the stipulation.

Ultimately, after fully reviewing the trial judge's decision and the record of the stipulation approval hearing, the board concurred that there was no error and affirmed the trial judge's decision to deny the motion to open the stipulation.

Editor's note: Scott A. Carta is a partner with the law firm of Leighton, Katz & Drapeau in Rockville, CT. He is also on the Board of Editors for Compensation Quarterly and a Board Certified Workers' Compensation Specialist.

Connecticut Bar Association Compensation Quarterly

Connecticut Bar Association
P.O. Box 350 • 30 Bank Street • New Britain, CT 06050 06051

PRSRT STD
U.S. POSTAGE
PAID
Permit No. 1048
Hartford, CT

Volume 32 • Number 4

Editorial Policy and Purpose

Compensation Quarterly (CQ) is an independent and non-partisan publication which tracks developments in the area of workers' compensation as practiced in the State of Connecticut. It is the purpose of CQ to foster the goals of the Workers' Compensation Section of the Connecticut Bar Association and it is provided to Section members as part of their dues. Individual, non-member and bulk subscriptions are available. Readers of CQ should refer to the complete decisions of case citations for full details. CQ and its authors do not render legal advice by means of this publication.

Publishing and editorial decisions are based on the editors' judgment of the quality and length of the writing, the timeliness of the article and the potential interest of the readers of CQ as well as the fair presentation of material consistent with professional standards.

From time to time, CQ will publish articles dealing with controversial issues. The statements, opinions or conclusions are those of the author and may not reflect the official policy of the Workers' Compensation Section and/or the Connecticut Bar Association. No endorsement of those views should be inferred unless specifically identified as the official policy of the Workers' Compensation Section or the Connecticut Bar Association.

Compensation Quarterly is a quarterly publication of the Workers' Compensation Section of the Connecticut Bar Association. To subscribe contact the Connecticut Bar Association, Compensation Quarterly, P.O. Box 350, 30 Bank St., New Britain, CT 06050. Annual Subscription Rates: Members of the Workers' Compensation Section - Free; CBA Members - $50.00 per year to join Section and subscribe; Non-CBA Members - $45.00 per year. Bulk Subscription Rates: available upon request.

The Connecticut Bar Association website is www.ctbar.org