CASE NO. 6531 CRB-1-24-2 : COMPENSATION REVIEW BOARD
CLAIM NO. 100228773

DUSCHAN MORGAN : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : JANUARY 22, 2025

SULZER PUMPS SOLUTIONS, INC.
EMPLOYER

and

TRAVELERS INDEMNITY COMPANY OF AMERICA
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Matthew C. Sacco, Esq., Cicchiello & Cicchiello, L.L.P., 364 Franklin Avenue, Hartford, CT 06114.

The respondents were represented by Katherine E. Dudack, Esq., Law Offices of Cynthia M. Garraty, P.O. Box 2903, Hartford, CT 06104.

This Petition for Review from the December 21, 2023 Finding and Award of William J. Watson III, Administrative Law Judge acting for the First District, was heard on June 28, 2024 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges David W. Schoolcraft and Zachary M. Delaney.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The respondents have petitioned for review from the December 21, 2023 Finding and Award of William J. Watson III, Administrative Law Judge acting for the First District (decision). The claimant has filed a motion to dismiss on the basis that the respondents' failure to file a timely notice of appeal in accordance with General Statutes § 31-301 (a)[1] deprived this board of subject matter jurisdiction to review the appeal.[2]

The administrative law judge, having identified as the issue for determination whether the claimant sustained a compensable injury to his right shoulder, made the following factual findings. On February 14, 2022, the claimant was employed by the respondent employer (employer) as a field service technician (technician). The employer sells wastewater pumps and high-speed turbo-compressors to national and international clients; technicians are responsible for traveling to clients in order to provide on-site installation and repair of the pumps and compressors.

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[1] General Statutes § 31-301 (a) provides in relevant part: "At any time within twenty days after entry of an award by the administrative law judge, after a decision of the administrative law judge upon a motion or after an order by the administrative law judge according to the provisions of section 31-299b, either party may appeal therefrom to the compensation review board by filing in the office of the administrative law judge from which the award or the decision on a motion originated an appeal petition and five copies thereof.… If a party files a motion subsequent to the finding and award, order or decision, the twenty-day period for filing an appeal of an award or an order by the administrative law judge shall commence on the date of the decision on such motion." It should also be noted that § 31-301-1 of the Regulations of Connecticut State Agencies provides in relevant part: "An appeal from an award, a finding and award, or a decision of the commissioner upon a motion shall be made to the compensation review board by filing in the office of the commissioner form which such award or such decision on a motion originated an appeal petition and five copies thereof. Such appeal shall be filed within twenty days after the entry of such award or decision and shall be in substantial conformity with the forms approved by said board…."

[2] The claimant filed his motion to dismiss referencing Practice Book § 10-30, which provides: "(a) A motion to dismiss shall be used to assert: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; and (4) insufficiency of service of process. (b) Any defendant, wishing to contest the court's jurisdiction, shall do so by filing a motion to dismiss within thirty days of the filing of an appearance. (c) This motion shall always be filed with a supporting memorandum of law and, where appropriate, with supporting affidavits as to facts not apparent on the record."

The employer provided the claimant with a cellular phone and computer for use in the field and when working remotely from home. The claimant reported to William Cochran and Timothy Fry. Technicians were notified of future travel assignments through a shared Microsoft Outlook calendar; once a trip was scheduled, the technician was responsible for purchasing round-trip airfare to the worksite as well as securing a hotel room and rental vehicle through a third-party travel agency. Generally, technicians departed for a trip on Monday and returned on Thursday or Friday; they were not required to work on weekends.

The claimant was notified, via the employer's Microsoft Calendar, that he was to travel to Laredo, Texas, on February 14, 2022, to work on one of the employer's pump assemblies. The claimant booked his trip accordingly, and the employer paid for the airfare, a rental vehicle, and the associated hotel expenses. On Friday, February 11, 2022, the claimant packed his equipment, including but not limited to his work tools, cell phone, and computer, and stored the suitcases in his personal vehicle in preparation for his departure on the following Monday. On Sunday, February 13, 2022, Cochran emailed the claimant at approximately 5:16 p.m. to notify him that the trip to Texas had been canceled.

On Monday, February 14, 2022, the claimant drove to Bradley International Airport (airport), checked his luggage, and prepared to board his flight, which was scheduled for departure at 11:54 a.m. Cochran texted the claimant at 6:39 a.m. and called the claimant several times thereafter. However, the claimant did not check his cell phone until after he had checked in and been authorized to proceed to the gate for his flight. At 10:55 a.m., the claimant called Cochran from his cell phone, at which time Cochran

informed him that the trip had been canceled. At trial, both Cochran and Fry, the employer's service manager, testified that they were not aware of a company policy which would have required the claimant to check his cell phone or his computer prior to departing for a business trip.

After speaking with Cochran, the claimant retrieved his checked baggage and began wheeling his two suitcases to his car which was parked in the airport's garage. The claimant was also carrying two smaller travel bags. While walking back to his car, the claimant tripped and fell on the paved walkway of the parking garage, landing on his right side. Later that same day, after returning to his residence, the claimant sent Fry an email informing him that he had fallen in the airport parking lot and injured his right shoulder.

On March 4, 2022, the claimant presented to Michael Zande, an orthopedic PA-C, for an assessment of his right shoulder injury. In his medical note of that date, Zande indicated that the claimant, while returning to his car from the airport terminal with two heavy suitcases, had slipped and fallen onto his right side. Radiographs taken at this office visit demonstrated "[r]ight shoulder strain and rotator cuff dysfunction" and "[r]ight shoulder acromioclavicular joint arthrosis and mild glenohumeral joint arthrosis." Claimant's Exhibit A [March 4, 2022 medical report, p. 2.] Zande recommended the claimant undergo an MRI to assess the integrity of the rotator cuff and to "evaluate for tear or possible acute versus chronic fracture anteriorly ...." Id.

On May 2, 2022, the claimant presented to Clifford G. Rios, an orthopedic surgeon, for a follow-up appointment. After reviewing the MRI, Rios opined that the claimant had sustained an injury to his right shoulder rotator cuff, and stated in his report

of May 5, 2022, that the claimant's "rotator cuff tendon pathology is more attributable to his work-related incident from February 14th." Id. [May 5, 2022 medical report, p. 1.] He recommended physical therapy, also indicating that if the claimant continued to experience "persistent dysfunction, surgical intervention would likely be recommended." Id. [Id., 2.] On July 27, 2022, the claimant underwent "a right shoulder repair of subscapularis and supraspinatus with a biceps tenotomy" with Rios. Findings, ¶ 34, *quoting* Claimant's Exhibit A [July 27, 2022 operative narrative].

On October 18, 2022, Kevin Shea, an orthopedic surgeon, performed a respondents' medical examination (RME). In the "history" portion of his report, Shea indicated that the claimant had slipped and injured his right shoulder while exiting an airplane. Shea opined that "the medical documentation and the claimant's history support a causal relationship between the unwitnessed described work event of February 14, 2022 and the claimant's right shoulder condition ...." Claimant's Exhibit D, p. 2. He diagnosed the claimant as suffering from an acute tear of the rotator cuff.

In light of a perceived discrepancy between the causation reports of Shea and Rios relative to the mechanism of injury, the respondents took Shea's deposition. After reviewing his October 18, 2022 RME report, Shea testified that he had questioned the claimant regarding the mechanism of injury but the inquiry did not "go anywhere." Claimant's Exhibit N, p. 15. Claimant's counsel presented Shea with the transcript of the claimant's deposition testimony taken on May 25, 2022, the history of the incident provided to Zande on March 4, 2022, and the claimant's February 14, 2022 email correspondence to Fry informing him about the incident. When queried by respondents' counsel as to whether the documentation provided to him by claimant's counsel had

refreshed his recollection concerning his discussion with the claimant about the mechanism of injury, Shea replied, "[n]o, not at all." Id., 23. Rather, having reviewed the claimant's email to Fry and Zande's report, Shea testified that he "[accepted] them as fact. That's probably what happened." Id., 24.

On the basis of the foregoing, the administrative law judge concluded that the claimant sustained a compensable injury to his right shoulder on that date when he tripped and fell onto his right side while returning to his vehicle in the airport garage. Noting that the claimant's recollection of the mechanism of injury remained consistent in his description of the incident to his treating physician as well as in his testimony at deposition and at trial, the trier found persuasive the medical reports from Zande and Rios opining that the claimant's right shoulder injury was causally related to the fall of February 14, 2022. The trier also found persuasive Shea's opinion, as presented in his deposition testimony and RME report, that the claimant's right shoulder injury was causally related to the February 14, 2022 incident.

In addition, the trier found credible Cochran's testimony that he attempted to alert the claimant regarding the canceled trip prior to the claimant's scheduled departure from the airport. He also found persuasive the testimony proffered by both Cochran and the claimant indicating they discussed the cancellation of the trip on February 14, 2022, in a telephone call while the claimant was still at the airport. The trier found credible the testimony proffered by Cochran and Fry indicating they were unaware of any company policy which would have required the claimant to check either his phone or his computer prior to departing for a scheduled work trip.

The trier concluded the claimant had satisfied his burden of proof that he sustained a physical injury on February 14, 2022 "arising out of or [sic] in the course of in the course of his employment …." Conclusion, ¶ K. Accordingly, he ordered the respondents to accept compensability for the claimant's right shoulder injury.

On January 3, 2024, the claimant filed a motion to correct, which was denied in its entirety on February 8, 2024, and the respondents subsequently filed a petition for review on February 27, 2024. On appeal, the respondents, noting that the trier had concluded the claimant sustained an injury "arising out of **or** in the course of his employment," (emphasis in the original), Appellants' Brief, p. 14, *citing* Conclusion, ¶ K, contend that "the administrative law judge did not properly apply the law in finding the claimant's right shoulder injury is compensable pursuant to [General Statutes § 31-275 (1)]."[3] Id. They further contend that the trier failed to make the requisite subordinate findings establishing that the claimant had sustained a compensable off-premises injury. As such, the respondents argue that the trier's finding of compensability was "inconsistent with the evidence presented at trial and does not comport with the law." Id., 15.

The standard of appellate review we are obliged to apply to a trial judge's findings and legal conclusions is well-settled. A trier'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

[3] General Statutes § 31-275 (1) provides in relevant part: "'Arising out of and in the course of his employment' means an accidental injury happening to an employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee's duty in the business or affairs of the employer upon the employer's premises, or while engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer …."

(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), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). Thus, "it is … immaterial that the facts permit the drawing of diverse inferences. The [trier] 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, *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

We begin our analysis with the claimant's motion to dismiss the appeal for lack of subject matter jurisdiction. It is axiomatic that the commission is a "creature of statute" and, as such, is "without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation." Castro v. Viera, 207 Conn. 420, 427-28 (1988), *quoting* Heiser v. Morgan Guaranty Trust Co., 150 Conn. 563, 565 (1963). Therefore, "once the question of lack of jurisdiction of a court is raised, '[it] must be disposed of no matter in what form it is presented;' and the court must 'fully resolve it before proceeding further with the case.'" (Internal citations omitted.) Id., 429.

Our review of the present matter indicates that the decision of the administrative law judge was issued on December 21, 2023. However, the respondents, who had not moved for either a correction to or an articulation of the finding, did not file their petition for review until February 27, 2024. It is therefore the claimant's position that because the respondents' appeal petition was filed more than twenty days after the issuance of the

administrative law judge's decision, it was untimely and, as such, this board lacks subject matter jurisdiction to review the appeal.

The claimant points out that prior to 2007, General Statutes § 31-301 (a) permitted an aggrieved party to file an appeal to this board "within twenty days after entry of an award by the commissioner."[4] The full text of § 31-301 (a) at that time was as follows:

> At any time within twenty days after entry of an award by the commissioner, after a decision of the commissioner upon a motion or after an order by the commissioner according to the provisions of section 31-299b, either party may appeal therefrom to the compensation review board by filing in the office of the commissioner from which the award or the decision on a motion originated an appeal petition and five copies thereof.

However, in 2007, the legislature added the following amendment: "If a party files a motion subsequent to the finding and award, order or decision, the twenty-day period for filing an appeal of an award or an order by the commissioner shall commence on the date of the decision on such motion."[5] It is the claimant's contention that the language in this amendment "is ambiguous with respect to whether a party that does not

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[4] Effective October 1, 2021, the Connecticut Legislature directed that the phrase "administrative law judge" be substituted when referencing a workers' compensation commissioner. See Public Acts 2021, No. 18, § 1.

[5] See Public Acts 2007, No. 31, § 2. In Stec v. Raymark Industries, Inc., 299 Conn. 346 (2010), our Supreme Court observed that, in amending General Statutes § 31-301 (a), the legislature sought to ameliorate a perceived statutory deficiency which had resulted in "needless appeals, decreased efficiency of the workers' compensation system, and unnecessarily postponed the finality of commissioner's decisions." Id., 361. However, the legislative history accompanying this amendment is rather terse. In proceedings before the Connecticut House of Representatives, Representative Kevin Ryan introduced the legislation as follows: "Another portion of the bill deals with a 20-day deadline to file an appeal to the compensation review board. Currently it begins when the motion has been filed but not yet ruled on. And this just extends that 20-day time to the point when the motion is actually ruled on. It begins the 20-day period at that point in time. I'd ask my colleagues to support this bill." 50 H.R. Proc., Pt. 7, 2007 Sess., p. 2166. It should be noted that Representative Ryan inadvertently misstated the requirements set forth in General Statutes § 31-301 (a) for filing an appeal to this board. In the absence of a post-judgment motion, the twenty-day statute of limitations for filing an appeal begins to run on the date the decision of the administrative law judge is issued.

file a post-judgment motion must file an appeal to the compensation review board within 20 days after a finding or 20 days after the decision on a counterparty's post-judgment motion." Claimant's Motion to Dismiss, pp. 3-4. The claimant further asserts that the amendment "is subject to multiple reasonable interpretations," id., 5, given that the statutory language is unclear as to whether the extension can be invoked by either party or solely by the party who filed the post-judgment motion.

The respondents disagree with the claimant's contentions, arguing instead that the plain language of § 31-301 (a) is "clear and unambiguous," Appellants/Respondents' Objection to Appellee/Claimant's Motion to Dismiss, p. 2, and reflects that once a post-judgment motion is filed, "*either party* may appeal to the compensation review board and the twenty-day period for filing an appeal of an order by the administrative law judge commences on the date of the decision of *a* party's motion." (Emphasis in the original.) Id. Given that the respondents' petition for review was filed within twenty days of the denial of the claimant's motion to correct, they assert that their petition was timely.

It is well-established that statutory interpretation in the workers' compensation forum is governed by the provisions of General Statutes § 1-2z, which require that:

> The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

In addition, a statute is generally considered "plain and unambiguous" when:

> the meaning ... is so strongly indicated or suggested by the [statutory] language ... that ... it appears to be *the* meaning and appears to preclude any other likely meaning. ... [I]f the text of the

> statute at issue ... would permit more than one likely or plausible meaning, its meaning cannot be said to be plain and unambiguous. (Emphasis in original; internal quotation marks omitted.)

Ledyard v. WMS Gaming, Inc., 338 Conn. 687, 698 n.6 (2021), *quoting* State v. Kalman, 93 Conn. App. 129, 134, *cert. denied*, 277 Conn. 915 (2006).

Having examined the text of § 31-301 (a), as amended, we are inclined to agree with the claimant that the statute is susceptible to more than one meaning, in view of the tension between the twenty-day time constraint imposed by the first sentence of the statute and the open-ended language of the 2007 amendment extending the filing deadline in the event a post-judgment motion is filed. Given that it is not clear whether the filing extension contemplated by the 2007 amendment was intended to apply to either party or only the party filing the post-judgment motion, we conclude that the amended statute is facially ambiguous.

In light of this ambiguity, § 1-2z permits the analysis of "extratextual evidence" in order to determine legislative intent. To that end, we note that the claimant relies inter alia on this board's prior analysis in Gonzalez v. Premier Limousine of Hartford, 5635 CRB-4-11-3 (April 17, 2012), in which the respondents contested the compensability of injuries sustained by the claimant in a motor vehicle accident. Following the issuance of a finding and award/finding and dismissal, the respondents filed a motion to correct, a motion to open the decision in order to submit additional evidence, and a timely petition for review. Formal proceedings were held to address the motion to open, and the commissioner issued a ruling affirming his original decision.

The claimant subsequently filed a petition for review from the ruling, contending that the commissioner had erred in the original decision by failing to award either temporary total or temporary partial compensation benefits and by failing to sanction the

respondents for undue delay in the provision of medical care.[6] On review, this board concluded that the claimant's notice of appeal was untimely, thereby depriving this board of subject matter jurisdiction. In so doing, we specifically noted that because the claimant had been aggrieved by the original decision, rather than the subsequent denial of the respondent's post-judgment motions, "the claimant could have filed an appeal within twenty days of that decision or filed a post-judgment motion seeking to have the trial commissioner undo elements of the factual findings and/or alter the relief ordered. The claimant did neither." Id.

In assessing the timeliness of the Gonzalez claimant's appeal petition, this board relied on our Supreme Court's analyses in Stec v. Raymark Industries, Inc., 299 Conn. 346 (2010), and Dechio v. Raymark Industries, Inc., 299 Conn. 376 (2010), both of which concerned appeals by the second injury fund following protracted litigation involving the same bankrupt self-insured employer. In Stec, the commissioner's October 3, 2005 award found that the decedent had suffered a compensable occupational disease for which the self-insured was liable, and found entitlement to benefits. He held, however, that notwithstanding a stay allowing him to litigate the liability of other parties, he could not issue a supplemental order against the fund pursuant to General Statutes § 31-355[7] without first issuing an order of payment against the bankrupt employer, which

[6] Internal records for the Workers' Compensation Commission reflect that the original finding and award/finding and dismissal in Gonzalez v. Premier Limousine of Hartford, 5635 CRB 4-11-3 (April 17, 2012), was issued on March 2, 2011. The respondents filed a motion to correct and a motion to open on March 14, 2011, and a petition for review on March 17, 2011. Following formal proceedings for the introduction of additional evidence held on April 11, 2011, the commissioner issued his ruling affirming the original decision on May 24, 2011. The claimant filed his petition for review on May 27, 2011.

[7] General Statutes § 31-355 (b) states in relevant part: "When an award of compensation has been made under the provisions of this chapter against an employer who failed, neglected, refused or is unable to pay any type of benefit coming due as a consequence of such award or any adjustment in compensation required by this chapter, and whose insurer failed, neglected, refused or is unable to pay the compensation,

was still under protection. The automatic stay as to Raybestos was subsequently lifted by the bankruptcy court and, in 2006, the commissioner issued a new finding and award ordering the employer to pay workers' compensation benefits in accordance with the original decision. When the employer did not pay the award, the commissioner issued an order against the fund for payment of benefits pursuant to the original 2005 decision, from which 2006 order the fund filed an appeal. On review, our Supreme Court reviewed inter alia precedent from this board interpreting § 31-301 (a) as well as the legislative history of Public Acts 2001, No. 22, § 1, which had amended § 31-301 (a) to extend the filing deadline for appeals to this board from ten to twenty days. Ultimately, the court held that "the failure to take an appeal within the twenty-day appeal limitation set forth in § 31-301 (a) deprives the board of subject matter jurisdiction, a defect that may be raised at any time." Id., 371.

Similarly, in Dechio, our Supreme Court reviewed an appeal involving the same employer wherein the commissioner issued a finding and award on the issues of compensability and survivor's benefits in 1988 and the employer entered involuntary bankruptcy shortly thereafter. For the next seventeen years, the employer repeatedly entered into and emerged from bankruptcy, although some sporadic litigation in the workers' compensation forum occurred during this time period, including the issuance of a second finding in September, 2005. However, as had been the case in Stec, the commissioner held he was precluded from issuing a supplemental order against the fund without first issuing the award against the bankrupt employer.

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such compensation shall be paid from the Second Injury Fund. The administrative law judge, on a finding of failure or inability to pay compensation, shall give notice to the Treasurer of the award, directing the Treasurer to make payment from the fund."

In 2005, the bankruptcy court granted a motion for relief from the automatic stay and, in 2006, the commissioner issued a third finding and award ratifying the prior two decisions. When the employer did not pay the award, the commissioner issued a supplemental order against the fund, from which the fund took an appeal. On review, the Dechio court held that because the fund had participated in the proceedings culminating in the 2006 finding and award, "the twenty-day appeal period of § 31-301 (a) began to run with the issuance of the September 30, 2005 order, which established a lack of other coverage and made clear the fund's probable liability for payment of the plaintiff's benefits." Id., 388. The court, in affirming this board's dismissal of the fund's appeal for lack of subject matter jurisdiction, further noted that "the September 30, 2005 award rendered the fund an aggrieved party for appellate purposes …." Id., 403. The court stated that:

> the fund was required to appeal, or preserve its appellate rights, following the commissioner's issuance of the September 30, 2005 finding and award, because that decision rendered the likelihood of its responsibility for the payment of the plaintiff's benefits far more than a speculative possibility, and the issue that the fund sought to challenge on appeal, namely, whether the other carriers were liable, had been determined therein.

Id.

As the claimant in the present matter accurately points out, both Stec and Dechio stand for the proposition that the twenty-day appeal period as set forth in § 31-301 (a) "begins to run when the appellant's aggrievement for appeal has been determined by way of finding, order, or decision." Claimant's Motion to Dismiss, p. 7. The claimant further asserts that this board's reasoning in Gonzalez reflects that "this principle, essential for determining the timeless of appeal, was not suddenly abrogated by Public Act 07-31 and

the resulting amendment to Section 31-301 (a)." Id., 8. As such, the claimant argues that § 31-301 (a) "does not allow a party to forego filing a motion to correct, then use the post-Public Act 07-31 language of Section 31-301 (a) to appeal a finding only after a decision on a counterparty's motion to correct." Id., 11.

We agree. In State v. Bradley, 341 Conn. 72 (2021), our Supreme Court articulated the standard for aggrievement as follows:

> The fundamental test for determining [classical] aggrievement encompasses a [well settled] twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the subject matter of the challenged action], as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]. ... *Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest ... has been adversely affected.* (Emphasis added; internal quotation marks omitted.)

Id., 80, *quoting* Wilcox v. Webster Ins., Inc., 294 Conn. 206, 214–15 (2009).

In view of this definition, there can be little doubt that the respondents were aggrieved by the December 21, 2023 finding, wherein the administrative law judge ordered them to accept compensability for the claimant's contested right shoulder injury. As such, we find little merit in the respondents' claim that:

> in the case at hand the administrative law judge's decision with regard to the appellee's motion to correct the finding and award was dispositive as to whether the appellants would file a petition for review to the compensation review board. Prior to the administrative law judge's decision on the appellee's motion to correct, the appellants were not in a position to make a reasoned, thorough analysis as to whether to file an appeal.[8]

[8] As the claimant points out, seven of the eight reasons for appeal advanced by the respondents implicated factual findings, for which no motion to correct was ever filed, and the remaining reason for appeal constituted a general challenge to the application of the law to the underlying facts.

March 28, 2024 Appellants/Respondents' Objection to Appellee/Claimant's Motion to Dismiss, p. 3.

On the contrary, given that none of the corrections proposed by the claimant sought to reverse the finding of compensability, the extent of the respondents' exposure following the denial of the motion was exactly the same as it had been before the claimant's motion was filed. We therefore conclude, consistent with this board's analysis in Gonzalez, that the respondents' failure to file a petition for review, or some other responsive pleading, during the statutory twenty-day window following the issuance of the decision deprived this board of subject matter jurisdiction to review the appeal.[9]

In view of our dismissal of this matter, we decline to examine its underlying merits, although we would note that the trier's findings appeared to be predicated in part on testimony, deemed credible by the trier, offered by the claimant and his supervisors which provided a reasonable basis for the inference that the claimant was "reasonably fulfilling the duties of the employment" at the airport when he was injured. Stakonis v. United Advertising Corporation, 110 Conn. 384, 389 (1930). It is well-settled that credibility findings are not generally subject to reversal on appeal. See Briggs v. McWeeny, 260 Conn. 296, 327 (2002). We would further note that the evidentiary record included reports from two medical experts attesting to causation; it is equally well-established that the trier retains the discretion to "accept or reject, in whole or in

[9] It should be noted that, subsequent to Gonzalez v. Premier Limousine of Hartford, 5635 CRB-4-11-3 (April 17, 2012), this board dismissed as untimely an appeal filed by a claimant twenty-seven days after the date of issuance of the finding but prior to a ruling on the respondents' motion to correct. We held that because "the claimant … was aggrieved by the … decision of the trial commissioner and took no responsive action within twenty days, we lack subject matter jurisdiction to consider the appeal." Charles v. Bimbo Foods, Inc., 5986 CRB-7-15-2 (November 30, 2016), *appeal dismissed*, A.C. 40036 (March 22, 2017).

part, the testimony of an expert." Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999).

However, as previously noted herein, the trier concluded in his decision that the claimant had satisfied "his burden of proof that he sustained a physical injury arising out of *or* in the course of his employment with the respondents …." (Emphasis added.) Conclusion, ¶ K. The claimant filed a timely motion to correct the finding, requesting inter alia that the trier amend this conclusion to reflect, consistent with the provisions of § 31-275 (1), that the claimant's injury arose out of *and* in the course of the employment.

Unfortunately, the administrative law judge denied the claimant's motion to correct in its entirety and, in so doing, "became wedded to the error." D'Amico v. Dept. of Correction, 73 Conn. App. 718, 731 (2002), *cert. denied*, 262 Conn. 933 (2003) (*Flynn, J.*, dissenting). We fail to comprehend why a proposed correction seeking to amend an obvious misstatement of the law was not granted. Our Supreme Court has observed that a motion to correct:

> is the proper vehicle to be used when an appellant claims that the commissioner's finding is incorrect or incomplete. We have long held that this motion is not merely a technical requirement and that the failure to file this motion justifies dismissal of an appeal, for "if an appellant claims that the finding is incorrect, the matter should first be called to the attention of the commissioner that he may have an opportunity to supply omitted facts or restate findings in view of the claims made in the motion."

Vanzant v. Hall, 219 Conn. 674, 679 (1991), *quoting* Guerra v. W.J. Megin, Inc., 130 Conn. 423, 425 (1943).

We acknowledge that 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). However, conspicuously absent from this recitation of rationales for properly denying a motion to correct is the refusal to address a glaring misstatement of black-letter law. Neither the interests of the litigants nor this commission were well-served by this unwarranted oversight.

Nevertheless, having examined the record in its entirety, we conclude that the respondents' failure to file a timely notice of appeal from the December 21, 2023 Finding and Award of William J. Watson III, Administrative Law Judge acting for the First District, deprived this board of subject matter jurisdiction to review the appeal. Accordingly, the claimant's motion to dismiss this matter is hereby granted.

Administrative Law Judges David W. Schoolcraft concurs in this Opinion.[10]

[10] As noted in the heading of this opinion, this matter was originally heard on June 28, 2024, by a panel consisting of three administrative law judges of the compensation review board that included Zachary M. Delaney, who has left the commission. Former Administrative Law Judge Delaney did not participate in the drafting or review of this written opinion and has had no involvement in the issuance of this decision.