

CASE NO. 6534 CRB-7-24-3 : COMPENSATION REVIEW BOARD  
CLAIM NOS. 700148677 & 700184036

STANLEY A. MASSENA : WORKERS' COMPENSATION  
CLAIMANT-APPELLANT COMMISSION

v. : FEBRUARY 21, 2025

CITY OF STAMFORD  
EMPLOYER

and

PMA MANAGEMENT CORPORATION  
THIRD-PARTY ADMINISTRATOR  
RESPONDENTS-APPELLEES

APPEARANCES: The claimant was represented by David J. Morrissey, Esq.,  
Morrissey, Morrissey & Rydzik, L.L.C., 203 Church Street,  
P.O. Box 31, Naugatuck, CT 06770.

The respondents were represented by Scott Wilson  
Williams, Esq., Williams Law Firm, L.L.C., 2 Enterprise  
Drive, Suite 412, Shelton, CT 06484.

This Petition for Review from the February 29, 2024  
Rulings on the Claimant's Motions to Preclude of Brenda  
D. Jannotta, Administrative Law Judge acting for the  
Seventh District, was heard on July 19, 2024 before a  
Compensation Review Board panel consisting of  
Administrative Law Judges David W. Schoolcraft, Zachary  
M. Delaney and Daniel E. Dilzer.<sup>1</sup>

---

<sup>1</sup> We note that one motion for extension of time was granted during the pendency of this appeal.

# OPINION

DAVID W. SCHOOLCRAFT, ADMINISTRATIVE LAW JUDGE. The claimant has petitioned for review from the February 29, 2024 rulings by Brenda D. Jannotta, Administrative Law Judge acting for the Seventh District, regarding two motions to preclude filed by the claimant in June and July of 2023. In the first motion, the claimant argues the respondents should be precluded from raising any defenses not specifically articulated in their timely disclaimers filed on March 28, 2008, April 11, 2008, and April 24, 2008.<sup>2</sup> Those disclaimers were filed in response to a claim for heart and hypertension benefits pursuant to General Statutes § 7-433c,<sup>3</sup> and the claimant specifically seeks to prevent the respondents from presenting evidence about his pre-employment physical performed on December 28, 1988, which examination respondents contend may have revealed evidence of hypertension or heart disease. The second motion seeks, more specifically, to exclude the testimony of Sean P. McGrade, the claimant's primary care physician, regarding the information contained in the

---

<sup>2</sup> The first motion to preclude was dated June 27, 2023, and filed on June 29, 2023.

<sup>3</sup> General Statutes § 7-433c states in relevant part: “(a) Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems....”

pre-employment physical.<sup>4</sup> In her February 29, 2024 rulings, the administrative law judge denied both motions, from which denials the claimant has appealed. We affirm the rulings.

The administrative law judge made the following factual findings pertinent to our review. The claimant was employed by the respondent employer as a firefighter from April 24, 1989, until his retirement on July 16, 2018. On November 10, 1988, and December 28, 1988, the claimant underwent pre-employment physicals as a condition of his employment. On February 27, 2008, the claimant presented to Danbury Hospital for medical treatment, at which time he was diagnosed with hypertension. On April 8, 2008, the claimant filed a form 30C for a heart and hypertension claim pursuant to § 7-433c with a date of injury of February 27, 2008.<sup>5</sup>

In the three disclaimers filed in this matter, the respondents denied the claim on the following basis:

No accident, illness, or personal injury arising out of and in the course of employment with the City of Stamford. No accident, injury, hypertension, high cholesterol or heart disease per section 31-275 or 7-433c. No medical documentation to substantiate existence of claim or causality. Claim was not timely filed and is barred by the statute of non-claim/statute of limitations. Medical records are currently incomplete or unavailable and any additional defenses that may be based upon such records, or further investigation based upon such records are specifically reserved.

Claimant's Exhibit B (June 7, 2023).

A formal hearing on the claimant's entitlement to benefits under § 7-433c began on June 7, 2023. At that hearing, the parties discussed the respondents' efforts to

---

<sup>4</sup> The second motion was dated July 14, 2023 and filed on July 17, 2023.

<sup>5</sup> "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).

establish that the pre-employment physical had shown evidence of hypertension through its own expert cardiologist, Martin Krauthammer, whom they intended to call to testify, and their intention to take McGrade's deposition. The claimant objected to these efforts, but the record was left open and another hearing scheduled for submission of medical testimony by the respondents.

On June 29, 2023, the claimant filed a motion to preclude the respondents from pursuing a defense based on the allegation that the claimant's pre-employment physical had revealed evidence of hypertension. The claimant argued that preclusion of that defense was applicable because it had not been specifically articulated in any of the respondents' disclaimers. The respondents objected to this motion and maintained their right to defend both on the basis of the statute of limitations and on the purported evidence of hypertension in the report of the claimant's pre-employment physical.

On August 16, 2023, the administrative law judge held a formal hearing on the June 29, 2023 motion to preclude. In the February 29, 2024 ruling that is the subject of this appeal, the administrative law judge determined that the respondents had filed a timely notice, pursuant to General Statutes § 31-294c (b),<sup>6</sup> of their intention to contest the

---

<sup>6</sup> General Statutes § 31-294c (b) provides in relevant part: "Whenever liability to pay compensation is contested by the employer, he shall file with the administrative law judge, 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 chairperson 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.... 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

claimant's heart and hypertension claim. She further found that the language of the disclaimers "revealed specific grounds that were sufficient to support a defense in their contest to the claimant's February 27, 2008 hypertension claim." Conclusion, ¶ B. The trier also concluded that the respondents were "entitled to pursue a jurisdictional defense as to whether the claimant successfully passed a pre-employment physical examination" as contemplated by § 7-433c. Conclusion, ¶ C.

The claimant filed a motion to correct, which was denied in its entirety, and this appeal followed. On appeal, the claimant contends that the provisions of § 31-294c (b) limit the respondents' defense of the claim to the grounds specifically articulated in their disclaimers and, as such, the administrative law judge erroneously denied the motion to preclude. The claimant further argues that a challenge to the sufficiency of the pre-employment physical does not constitute a jurisdictional defense because "the determination of whether a physical examination revealed any evidence of hypertension or heart disease is a factual issue committed to the trier's sound discretion." Hyatt v. Milford, 4127 CRB-3-99-9 (November 7, 2000).

The standard of appellate review we are obliged to apply to the findings and legal conclusions of a trial judge 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 (December 15, 2004), citing Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s

---

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.... 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...."

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 with the claim of error relative to the trier’s conclusion that the content of the respondents’ disclaimer was sufficient to defeat the motion to preclude. The claimant’s argument turns largely on the notion that he has been taken by surprise and that allowing this defense, at this late date, will lead to undue delay. The claimant contends that although the claim was the subject of numerous informal and preformal hearings over the years, “the only defense that was raised or pursued was the allegation by the City of Stamford that there was a statute of non-claim defense.”<sup>7</sup> Appellant’s Brief, p. 2.

At the formal hearing held on June 7, 2023, the respondents informed the administrative law judge that they intended to investigate whether the claimant’s pre-employment physical contained evidence of hypertension and would call Krauthamer as a witness on that issue. Here, as at the formal hearing before the trial judge, the claimant challenges the respondent’s basis for claiming late discovery of this potential

---

<sup>7</sup> It should be noted that the form 30C for this claim was filed before our Supreme Court issued its decision in Ciarlelli v. Hamden, 299 Conn. 265 (2010), wherein the court held “that the one-year limitation period for claims under § 7-433c begins to run only when an employee is informed by a medical professional that he or she has been diagnosed with hypertension.” *Id.*, 300.

basis for defense, including the respondents' assertion that the claimant, in filling out a questionnaire, had checked a box indicating he had high blood pressure.<sup>8</sup>

The claimant argues that the respondents' attempt to introduce a defense challenging the pre-employment physical has compromised the interests of judicial economy. Moreover, he argues he will be "unable to prepare for cross-examination as any testimony by Dr. Krauthamer will consist of new evidence being presented to the parties for the first time" and, as a result, at least one additional hearing and/or testimony from a rebuttal witness may be required. Appellant's Brief, p. 5. The claimant further asserts that the commissioner's notes from an informal hearing held on August 25, 2008, reflect that respondents' counsel had stated that the claimant's "pre-employment physical [was] clean," and the claimant "relied on that."<sup>9</sup> August 16, 2023 Transcript, p. 4. See also Appellant's Brief, pp. 3-4. The claimant therefore avers that "[t]o bring this up as an issue on the day of the formal hearing with no prior notice and indication of what Dr. Krauthamer may or may not say is completely unfair to the claimant and will cause undue and unnecessary delay." *Id.*, 9. We are not persuaded.

Section 31-294c (b) requires that a respondent's disclaimer contain inter alia "the specific grounds on which the right to compensation is contested." In Menzies v. Fisher, 165 Conn. 338 (1973), our Supreme Court reviewed an appeal brought by a claimant seeking survivor benefits for the death of her husband in an automobile mishap. The

---

<sup>8</sup> At a deposition held on January 8, 2009, the claimant acknowledged that when he completed the paperwork for an annual physical conducted by Concentra on June 13, 2007, he checked the box marked "yes" for high blood pressure. He further testified that he could not recall the reason for checking that box but indicated that any information regarding his blood pressure would probably have come from McGrade. See Claimant's Exhibit J, pp. 9, 12, 14. The pre-employment physicals were in 1988.

<sup>9</sup> Effective October 21, 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.

claimant, who was challenging the denial of her motion to preclude, contended that a disclaimer stating that the respondents “‘deny a compensable accident or injury’ was fatally deficient in failing to specify the grounds on which compensation was denied.”

Id., 341. In reviewing the matter, the court observed that when the statutory requirements for filing a claim were amended in 1967:

The object which the legislature sought to accomplish [was] plain. Section 31-297(b) [now codified at § 31-294c (b)] was amended to ensure (1) that employers would bear the burden of investigating a claim promptly and (2) that employees would be timely apprised of the specific reasons for the denial of their claim. These effects would, in turn, diminish delays in the proceedings, discourage arbitrary refusal of bona fide claims and narrow the legal issues which were to be contested.

Id., 343.

Ultimately, the Menzies court agreed with the claimant and, in reversing the decision of the lower court, stated, “[a] general denial that a claimant has a compensable injury reveals no specific defense or reason why the claim is contested.”<sup>10</sup> Id., 344.

Although the court conceded that the stated grounds for denial were arguably sufficient “from a strict, technical point of view,” id., it also observed that:

the sufficiency of the notice under the statute must be judged not by the technical meaning which a court might attach to it, nor by a meaning the defendant subsequently discloses at the hearing, but rather by the criterion whether it reveals to the claimant specific substantive grounds for the contest. The point of this criterion is to inform the claimant of the deficiencies of his claim after the defending party has had an opportunity to make a thorough investigation.

Id., 345.

---

<sup>10</sup> The appeal from the workers’ compensation commissioner’s decision in Menzies v. Fisher, 165 Conn. 338 (1973), was heard in Superior Court.

As such, the court held that “[t]he notice by the employer need not be expressed with the technical precision of a pleading, but it must, as required by the statute, reveal to the claimant ‘the specific grounds on which the right to compensation is contested.’” *Id.*, 347-48, *quoting* General Statutes § 31-297 (b) [now codified at General Statutes § 31-294c (b)]. See also Pereira v. State, 228 Conn. 535, 541 (1994).

Approximately sixteen years after Menzies, in Tovish v. Gerber Electronics, 19 Conn. App. 273, *cert. denied*, 212 Conn. 814 (1989), our Appellate Court reviewed an appeal challenging the granting of a motion to preclude filed by the widow of a worker who had suffered a fatal heart attack while shoveling snow at his residence. The respondents’ disclaimer merely stated that the injury had not arisen out of or in the course of employment and, as such, the commissioner and this board found that the disclaimer did not comply with the requirements of the notice statute as contemplated by Menzies. In reversing the commissioner’s decision to grant the motion to preclude, the Tovish court pointed out that:

A claimant for workers’ compensation benefits must prove five distinct elements in order to establish a prima facie claim: (1) the workers’ compensation commission has jurisdiction over the claim; (2) the claim has been timely brought by filing a notice of claim within the requisite time period or by coming within one of the exceptions thereto; (3) the claimant is a qualified claimant under the act; (4) the respondent is a covered employer under the act; and (5) the claimant has suffered a personal injury as defined by the act, arising out of and in the course of employment.

*Id.*, 275-76, *citing* J. Asselin, Connecticut Workers’ Compensation Practice Manual (1985) § 1.

Having assessed the merits of the respondents’ disclaimer, the Tovish court noted that because the denial “clearly [contested] the fifth element” of a prima facie claim, “the disclaimer was sufficient to apprise the plaintiffs that the defendants were challenging an

element the plaintiffs were obliged to prove in order to meet the prima facie threshold for their claim.” *Id.*, 276. The court concluded that the disclaimer satisfied “the statutory requirement of supplying specific grounds for denying the claim and [was] not the type of general denial rejected by the Supreme Court in Menzies. The defendants, therefore, were improperly denied their right to contest the claim on the merits.” *Id.*

As previously noted, in the matter at bar the respondents filed three timely disclaimers. In addition to claiming a lack of evidence and expressly claiming untimely notice of claim, they denied an “*accident, injury, hypertension, high cholesterol or heart disease per section 31-275 or 7-433c.*” (Emphasis added.) Claimant’s Exhibit B (June 7, 2023). The respondents argue that in Tovish, our Appellate Court held that “[i]t was enough that respondents apprised the claimant that they were challenging ‘an element’ that the claimant needs to prove to establish a prima facie case.” Appellees’ Brief, p. 5, *quoting* Tovish v. Gerber, *supra*, 19 Conn. App. at 276. The respondents further assert that the denial language in their disclaimers encompasses defenses predicated on both the statute of limitations and the evidence of hypertension in the pre-employment physical. They also point out that “the denial reserved all defenses that would be based on later review of medical records ....” *Id.*, 6.

The result in Tovish notwithstanding, it is the claimant’s contention that preclusion of additional evidence regarding the pre-employment physical is applicable in this matter because none of the respondents’ disclaimers specifically referenced a challenge to the sufficiency of the claimant’s pre-employment physical. In support of this argument, the claimant relies in part on Sartirana v. Winchester, 3 Conn. Workers’ Comp. Rev. Op. 67, 368 CRD-5-84 (July 15, 1986), wherein the claimant filed a motion

to preclude “for failure to file a timely, detailed answer under § 31-297 (b) even though answer was filed within twenty days.” Id. In its disclaimer, the respondent municipal employer stated that the “[a]lleged hypertension and heart disease did not occur within the course of employment.” Id. This board reversed the trial commissioner, granting the motion to preclude and limiting the respondent to the defense stated in its notice; i.e., the claimant had not sustained a compensable injury pursuant to General Statutes § 31-275 (1).<sup>11</sup>

Some fifteen years after issuing Sartirana, this board reviewed the denial of a motion to preclude brought by a claimant seeking to prevent the respondents from pursuing the affirmative defense of intoxication pursuant to General Statutes § 31-284 (a).<sup>12</sup> In Mason v. Dale Construction, Inc., 4354 CRB-3-01-1 (November 7, 2001), the respondent’s timely disclaimer had alleged the claimant was not an employee. The respondent later alleged the claimant’s injuries were due to intoxication, which defense the claimant sought to preclude on the grounds it had not been listed in the original disclaimer. While the question of employer/employee relationship was the “central” issue, the commissioner denied preclusion from the bench in the belief that intoxication implicated jurisdiction. Id. The claimant appealed. On appeal, the claimant argued that preclusion was appropriate given that this defense was

---

<sup>11</sup> 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 ....”

<sup>12</sup> General Statutes § 31-284 (a) provides in relevant part: “An employer who complies with the requirements of subsection (b) of this section shall not be liable for any action for damages on account of personal injury sustained by an employee arising out of and in the course of his employment or on account of death resulting from personal injury so sustained ... except that compensation shall not be paid when the personal injury has been caused by the willful and serious misconduct of the injured employee or by his intoxication....”

not jurisdictional and had not been specifically referenced in the respondents' disclaimer. Ultimately, this board vacated the ruling on the motion to preclude and remanded the matter for a determination of whether this commission had jurisdiction over the employment relationship. The trial commissioner was told that on remand he should assess "the respondent's due diligence in investigating the claim, and should decide whether the defense of intoxication was made in a timely manner ...." *Id.* We stated:

Because of the discretion provided to the trier under [General Statutes] § 31-298, we are not persuaded that any defense not listed in a form 43 may subsequently *never* be asserted by a respondent. Rather, the respondent is expected to make a diligent and timely investigation of the claim, and certainly during its investigation it may uncover evidence unknown to it which may support additional defenses. (Emphasis in the original.)

Mason v. Dale Construction, Inc., 4354 CRB-3-01-1 (November 7, 2001).

The claimant in the present matter case argues that the administrative law judge was obligated to grant the motion to preclude because of the respondents' "complete lack of due diligence." Appellant's Brief, p. 8. The claimant contends that the pre-employment physical report "was accessible to the respondent ... from the inception of this claim." *Id.* In addition, the claimant points out that respondents' counsel had previously asserted that the physical was "clean," *id.*, and the claimant relied upon that representation. The claimant avers that he also relied on the respondents' failure to cite the pre-employment physical as a defense in the ensuing fifteen years after the commencement of the claim, and Krauthamer had neither commented, nor been asked to comment, on the pre-employment physical following the issuance of his report on April 17, 2020. It is therefore the claimant's position that, in light of this purported lack of due diligence on the part of the respondents, preclusion of additional evidence

challenging the sufficiency of the pre-employment physical should have been granted. We are not persuaded.

Because most of the argument in this appeal centers on the alleged prejudice of allowing this defense to be raised at this late date, we will begin with the argument that the administrative law judge did not have the right to allow a new defense to be raised. It is undeniably true that the respondents' announcement, at formal proceedings, of their intention to claim the purported insufficiency of the pre-employment physical as an additional defense came many years after the filing of the claim. However, we note that at that formal hearing, claimant's counsel explained that the claim, although originally filed in 2008, had been "on hiatus" between 2009 and 2016, and counsel did not assume the prosecution of the claim until 2018. June 7, 2023 Transcript, p. 5. While it is clear that even this protracted litigation timeline allowed for the issue of the allegedly defective pre-employment physical to have been raised sooner than it was, we do find some merit in the respondents' observation that the claimant's accusations of undue delay on the part of the respondents ring somewhat hollow given that it took the claimant fifteen years to bring the claim to a formal hearing and the claim was inactive for ten of those years.

Moreover, the question of whether, under the circumstances, the delay in bringing up this issue warranted denying the respondents the right to explore this defense was a factor for the consideration of the trial judge. We recognize that, in her ruling in the present matter, the administrative law judge did not make specific findings as to whether the respondents' investigation of the pre-employment physical comported with the

somewhat amorphous standard for due diligence.<sup>13</sup> However, the trial judge made her ruling after the claimant had raised his objections to the admission of the pre-employment physical and Krauthamer's testimony at the June 7, 2023 proceedings. See June 7, 2023 Transcript, pp. 5-6. Further, the grounds for the claimant's objection to the introduction of this additional evidence were argued at length at the August 16, 2023 formal hearing. See August 16, 2023 Transcript, pp. 2-9, 12-18, 26-28. In sum, the trial judge was fully aware of the procedural history of the case and of the claimant's allegation that the respondents should have known of the contents of the pre-employment physical from the outset. We may therefore reasonably infer that the trier was duly apprised of the ramifications associated with the introduction of the respondents' additional evidence and was not persuaded that the respondents' effort to explore the sufficiency of the pre-employment physical was so dilatory as to warrant preclusion of that defense. Therefore, even if the language of the 2008 disclaimers was to be deemed insufficiently precise to encompass the defense in question, on the facts of this case, the trial judge was well within her rights to allow the addition of the "new" defense at the time of trial.

That brings us to the question of whether the trier erred in concluding that the wording of the 2008 disclaimers was legally sufficient to allow the respondents the right to challenge eligibility based on the pre-employment physical. Put another way, could the trial judge reasonably have concluded that that the disclaimers filed by the respondents satisfied the specificity standard set forth in Menzies and, as such, were

---

<sup>13</sup> It should be noted that the claimant neither requested an articulation on the issue of whether the administrative law judge had determined the respondents' actions relative to the pre-employment physical comported with the standard for due diligence nor proposed a correction to the findings in that regard.

sufficient to support a challenge by the respondents, albeit somewhat belated, to the sufficiency of the claimant's pre-employment physical?

Here, the trial judge concluded that because the disclaimers alleged the claimant did not sustain hypertension "per" §7-433c, they were sufficient notice. Given our Supreme Court's analysis in Tovish, we cannot say that the trial judge improperly concluded that the reference to § 7-433c in these disclaimers was sufficient to put the claimant on notice that he would have to prove all the necessary elements of a heart and hypertension claim, including a pre-employment physical which does not reveal any evidence of hypertension or heart disease.

Because §7-433c claims invariably arise many years, or decades, after the hiring, it is neither surprising nor uncommon that respondents, facing a deadline of twenty-eight days, assert a right to raise additional defenses that might come up. In this case, the respondents specifically wrote that "*[m]edical records are currently incomplete or unavailable, and any additional defenses that may be based on such records, or further investigation based upon such records are specifically reserved.*" (Emphasis added.) Claimant's Exhibit B (June 7, 2023). Because this bonus legislation provides a presumption of causation, once a firefighter is diagnosed with hypertension there are only two defenses that might be revealed by medical records discovered in the future: (1) evidence that the claimant had been given a diagnosis of hypertension so early that the claim is time barred, or (2) documentation that there was evidence of hypertension at the time of the pre-employment physical. Given that the respondents had specifically included "non-claim/statute of limitations" on the disclaimer, it would not be

unreasonable to conclude that evidence from the pre-employment physical would be included in this reservation.

Finally, the record in this matter is devoid of any indication that the claimant will suffer a due process deprivation if the respondents are afforded the opportunity to take Krauthamer's deposition. While any additional litigation required to rebut Krauthamer's testimony may prove to be inconvenient and/or time-consuming for the claimant, it is axiomatic that "[n]o case under [the Workers' Compensation 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. McMahan, 102 Conn. 234, 238 (1925). We are therefore persuaded that affirming the denial of the motion to preclude best comports with the legislative intent for this forum as set forth in § 31-298:

The administrative law judge ... shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of this chapter.

Having determined that the trial judge was within her rights to allow the respondents to address the pre-employment physical in their defense, we turn to the denial of the claimant's second motion, in which he sought to preclude the respondents from offering the testimony of Sean P. McGrade, his treating physician. In this motion, the claimant indicated that the respondents did not inform the claimant of their intention to depose McGrade until the formal hearing held on June 7, 2023, and the administrative law judge allowed the deposition to go forward over the objection of his counsel. The

claimant contends that at the deposition, respondents' counsel:

began to ask questions about 'evidence of hypertension' with the clear intention of trying to elicit an opinion about [the claimant's] pre-employment physical. Dr. McGrade was never provided a copy of said physical and this issue was never raised to either the claimant [or] to the attorney for Dr. McGrade.

Claimant's Exhibit B (August 16, 2023).

It is the claimant's position that the respondents' attempts to elicit an opinion from McGrade regarding the findings in the pre-employment physical, which the doctor was never given the prior opportunity to review, were untimely and improper.<sup>14</sup> For their part, the respondents point out that McGrade's testimony is potentially salient given that the claimant, at an informal hearing held on February 4, 2009, stated that McGrade had informed him that he suffered from high blood pressure. The respondents further contend that additional investigation over the years unearthed medical reports "which showed multiple instances of high blood pressure more than one year prior to the 2008 date of injury." July 21, 2023 Respondents' Objection to Motion to Preclude Defense and Doctor Testimony, p. 5. As such, the respondents claim they "are entitled to investigate all aspects of his case including the due process right to depose the treating physician and to provide records and testimony from their own expert." *Id.*, 6. Moreover, they argue, "[t]he doctor is an educated knowledgeable individual [who] treated the claimant and can handle answering questions about his treatment, the condition he diagnosed, and whether there was evidence of such in the pre-employment physical." *Id.*

We believe the trial judge was well within her authority to deny the claimant's motion. To begin with, there is nothing inherently prejudicial in a litigant seeking an

---

<sup>14</sup> The evidentiary record indicates that claimant's counsel suspended McGrade's deposition when respondents' counsel embarked on this line of inquiry. See August 16, 2023 Transcript, pp. 6, 13-14.

expert opinion from one physician relative to the medical opinion advanced by another. In the workers' compensation forum, it is actually quite common. Although the claimant is well within his rights to challenge the evidentiary weight of a medical opinion proffered in reference to a report that was not subject to prior review, it is axiomatic that the trier is ultimately the "sole arbiter of the weight of the evidence and the credibility of witnesses in workers' compensation cases ...." Keenan v. Union Camp Corp., 49 Conn. App. 280, 286 (1998). Moreover, as referenced previously herein, the high degree of discretion afforded to the fact-finder in this forum finds statutory confirmation in the provisions of § 31-298.

In addition, as was the case with the first motion to preclude, the evidentiary record is devoid of any indication that the claimant's due process rights have been or will be violated. The claimant has not asserted that he was denied the opportunity to cross-examine McGrade at deposition, and there is nothing to suggest that the claimant will be prevented from introducing rebuttal evidence to the testimony of either Krauthamer or, should he choose to offer an opinion, McGrade. While we appreciate the claimant's concerns for judicial economy, and are of the opinion that litigation of this claim has been unusually protracted, we are not persuaded that the preclusion of potentially relevant expert testimony at this juncture would serve the wider interests of the claimant, the respondents, or this commission. In reality, this second motion does not present a question of preclusion under § 31-294c (b) but, rather, a matter of trial management. Consistent with the broad powers granted the trial judge under § 31-298, we see no basis to second-guess the decision of the trial judge.

Finally, as previously noted, the claimant has also asserted that the assessment of whether a pre-employment physical satisfies the statutory requirements for entitlement to § 7-433c benefits is a factual, and therefore discretionary, inquiry which does not implicate subject matter jurisdiction.<sup>15</sup> We have affirmed the trial judge’s denial of the claimant’s motions on the basis of her conclusion that the respondents’ disclaimers were sufficiently specific to withstand a motion to preclude the taking of additional evidence relative to the adequacy of the pre-employment physical. We therefore decline to address the issue of whether a challenge to the findings in a pre-employment physical implicates a jurisdictional defense or, alternatively, constitutes an attack on an element of proof of the compensability of a heart and hypertension claim.

There is no error; the February 29, 2024 Rulings on the Claimant’s Motions to Preclude of Brenda D. Jannotta, Administrative Law Judge acting for the Seventh District, are accordingly affirmed.

Administrative Law Judge Daniel E. Dilzer concurs in this Opinion.<sup>16</sup>

---

<sup>15</sup> In Del Toro v. Stamford, 270 Conn. 532 (2004), our Supreme Court observed that “the compensability of a type of injury, the existence of the employer-employee relationship and the proper initiation of a claim, are all issues that implicate the threshold question of whether an entire category of claims falls under the scope of the act. By contrast, issues of causation typically are addressed only after the threshold question of jurisdiction has been established.” *Id.*, 544-45.

<sup>16</sup> As noted in the heading of this opinion, this matter was originally heard on July 19, 2024, by a panel consisting of three administrative law judges of the compensation review board that included Zachary M. Delaney. Subsequent to this oral argument, Administrative Law Judge Delaney left the Workers’ Compensation Commission; as such, he did not participate in the drafting or review of this written opinion and has had no involvement in the issuance of this decision.