

CASE NO. 6472 CRB-7-22-4 : COMPENSATION REVIEW BOARD
CLAIM NO. 700179324

PETER J. ZEZIMA : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : FEBRUARY 3, 2023

CITY OF STAMFORD/
BOARD OF EDUCATION
EMPLOYER

and

PMA MANAGEMENT CORPORATION
OF NEW ENGLAND
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES: The claimant was represented by Robert J. Sciglimpaglia, Jr., Esq., 101 Merritt Seven, Suite 300, Norwalk, CT 06851.

The respondents were represented by Brenda C. Lewis, Esq., Williams Law Firm, LLC, 2 Enterprise Drive, Suite 412, Shelton, CT 06484.

This Petition for Review from the March 22, 2022 Finding and Award by Jodi Murray Gregg, the Administrative Law Judge acting for the Seventh District, was heard September 30, 2022 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Daniel E. Dilzer and Carolyn M. Colangelo.¹

¹ We note that two motions for extension of time were granted during the pendency of this appeal.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The respondents have appealed from a Finding and Award (finding) issued to the claimant by Administrative Law Judge Jodi Murray Gregg, who determined the claimant's January 3, 2017 fall at home was the compensable sequelae of his December 7, 2016 work injury. The respondents argued that the administrative law judge drew unreasonable inferences from the claimant's evidence and that the claimant's narrative should not have been found credible. Upon review, we conclude that this appeal constitutes an effort to have an appellate panel reweigh the evidence presented to the trier of fact. Since we believe that there is a sufficient quantum of evidence that the administrative law judge found reliable and chose to credit, we affirm the Finding and Award.

The following facts are pertinent to our consideration of this appeal. We note that the parties stipulated to ten facts at the formal hearing.

1. On or about December 7, 2016, Peter Zezima, the Claimant, was an employee with the Employer/Respondent.
2. On or about December 7, 2016 Claimant was married with no minor children.
3. On or about December 7, 2016 the Claimant alleges injuries to his head when he was assaulted by a student while he was teaching a class.
4. On January 11, 2017 a Form 30C was filed in this matter, which was received by the Seventh District on January 13, 2017 and received by the employer on the same date.
5. On or about January 3, 2017, the Claimant fell at home.
6. On or about January 30, 2017, Respondents issued a Form 43 in this matter stating that the injuries sustained by the Claimant did not arise from the incident at school, but rather caused by a fall at home on January 3, 2017.
7. On or about December 13, 2017, Respondent authorized Dr. Steven Shaby at Stamford Hospital to undergo visual therapy for visual issues on a without prejudice basis.
8. Claimant has treated with Dr. Daniel Brooks of the Tully Center after he fell at home on January 3, 2017, and he also

treated with Dr. Michael Fusco, Dr. Shaby, Dr. Randy Schulman of EyeCare Associates, Dr. Jill Walker, a neuropsychologist, Dr. Jeffery Cohen, a clinical psychologist, Dr. Eric Kung, a neurologist and Jodi Rozanski, a physical therapist subsequent to the fall at home.

9. Claimant underwent an Independent Neuropsychological Examination on 5/7/18 and 6/4/18 with Dr. Caleb B. Peck.
10. Claimant continued receiving his wages which were paid by Respondent from December 7, 2016 to November 18, 2019.

Findings, ¶¶ 1-10.

The administrative law judge further reviewed the claimant's treatment following his fall at his home. She noted that the claimant had been examined on January 3, 2017, by Steven Brooks, a neurologist at Stamford Hospital. Brooks' notes indicate the claimant related that he had been experiencing dizzy spells for about a month, all subsequent to his assault at work. Brooks reported that the claimant "likely suffered a concussion" in December of 2016, disabled the claimant from work, and referred him to another neurologist, Eric Kung. Claimant's Exhibit B. Kung examined the claimant on January 27, 2017, and reported his narrative of having been assaulted at work. His notes report the claimant sustained a scalp hematoma after the incident at home, and also noted the Stamford Hospital MRI after the incident reported no brain abnormalities.

The claimant was also examined on February 16, 2017, by Jill Walker, a neuropsychologist from the Stamford Hospital Concussion Center. Walker noted, "I do believe that Peter sustained a cerebral concussion on December 7, 2016, which was likely exacerbated by his fall on January 3, 2017. He is reporting symptoms indicative of concussion and neurocognitive data today reveal significant deficits compared to expected baseline performance given his academic and developmental history."

Findings, ¶ 19. On September 20, 2017, Walker issued a letter regarding her treatment of

the claimant in which she stated that she was treating the claimant for a head injury that “he sustained from an assault at work in December 2016. He presents with symptoms and neurocognitive impairments of Post-Concussion Syndrome, most notably significant physical (e.g., headache, nausea, dizziness, balance problems, blurry/double vision)” Claimant’s Exhibit C; see also Findings, ¶ 20. Walker was deposed on April 10, 2019, at which time she explained her opinion that the claimant’s fall on January 3, 2017, was related to the claimant’s head injury on December 7, 2016. “They are temporally related in the sense that he had symptoms of dizziness following his injury in December. Could I say with absolute certainty what happened on the day? I can’t say.” Respondents’ Exhibit 2, p. 25; see also Findings, ¶ 23.

The respondents had their expert witness, Caleb P. Peck, a neuropsychologist, conduct a Respondents’ Examination on May 7, 2018, and June 4, 2018. After reviewing Peck’s September 18, 2018 report, the administrative law judge found that Peck reported that it is his professional opinion,

to a reasonable degree of medical probability, that Mr. Zezima, misattributed the reason for his fall on January 3, 2017 to the alleged concussion suffered several weeks earlier, rather than his longstanding heart issues and pre-existing syncope ... Mr. Zezima underwent heart valve replacement surgery. Faulty heart valves are a main contributor to syncope. Based on this information, it is clear that the fall suffered on January 3, 2017 was not medically connected to the alleged 12/7/2016 concussion.

Respondents’ Exhibit 1, p. 18, see also Findings, ¶ 22.

The administrative law judge also considered reports and opinions of the claimant’s long time treating physicians, Edward Schuster and Michael Fusco. Schuster, a cardiologist, authored a letter on November 5, 2020, to “Whom It May Concern” stating that “Mr. Zezima’s fall on January 3, 2017 was not caused by a heart condition

and was related to the concussion he sustained on December 7, 2016.” Findings, ¶ 25. Schuster was deposed on May 19, 2021, and testified that he had treated the claimant since 2013 for cardiovascular issues and that the claimant’s fall was not caused by a heart condition but was related to the concussion he sustained on December 7, 2016.

Because when a patient has multiple falls or syncopal events and you can’t find anything wrong with his heart or other causes, you may come to the conclusion that it’s related to the brain and difficulties with balance or walking, and then if a patient has a bad fall and has a concussion then after that falls down the stairs, you would come to the obvious conclusion that it’s related to the brain and the concussion that he just had and has nothing to do with his heart.

Respondents’ Exhibit 12, pp. 9, 18-19; see also Findings, ¶ 34.

Schuster further testified that “[w]ithin a reasonable degree of certainty it was my opinion in a patient with some neurologic problems such as memory loss who had fallen before that having a recent concussion would likely predispose him to fall again.” *Id.*, p. 22; see also Findings, ¶ 35.

The administrative law judge noted Fusco testified via deposition that he had treated the claimant for twenty years. He testified that the claimant had been using two drugs which could cause dizziness, Percocet and Dexedrine, for many years. Fusco stated he cannot say what caused the claimant’s dizziness on January 3, 2017, but also testified he agreed with Brooks that the claimant had post-concussive symptoms. Fusco further testified that it was his opinion that the claimant’s fall on January 3, 2017, was probably residual sequelae of what occurred initially with the head injury from school. While Fusco testified the claimant had a history of falls due to factors such as back pain and slips, after reviewing his office notes and the consultation with the neurologist, he testified that his opinion of February 7, 2019, that the claimant’s subsequent fall at home

was not due to a preexisting heart condition or syncope, rather post-concussion syndrome, had not changed. See Findings, ¶ 32.

The deposition testimony of Brooks was also cited by the administrative law judge. He testified that when he evaluated the claimant in the emergency room on January 3, 2017, he was not aware of his prior medical history. However, after reviewing some of the claimant's medical history at the deposition, the doctor maintained his opinion that the claimant has post-concussive syndrome as a result of the December 7, 2016 incident.

I think that the dizziness and unsteadiness of gait was a somewhat a chronic issue, but I don't see any notation in these notes that, you know, you've provided indicating light sensitivity and eye strain leading to headaches, that seems to be a new thing ... [a]nd that is a common complaint of people who have suffered a head injury in the past.

Respondents' Exhibit 13, pp. 32-33; see also Findings, ¶ 40.

Brooks stated that the claimant's complaints as to photosensitivity and eye strain appeared to have been new occurrences following the December 2016 incident. In response to a hypothetical question as to whether the claimant having prior eye strain symptoms might cause him to change his opinion, Brooks suggested it could, but might also:

indicate that he had had a prior mild TBI and then continued to suffer sort of multiple mild TBIs and that they might all be sort of related. You know, I guess you're specifically interested in the December 2016 event and that still would be contributing but might not be the sole causative factor.

Id., p. 36; see also Findings, ¶ 42.

Brooks further testified that:

I think that the trauma in the school seems to have been a factor. I don't know that I can say to what percentage it was the main factor. From what I can tell it still was the most recent event leading to newer symptoms and so I think that it is a factor. I don't know if it is the only one.

Id., pp. 36-37; see also Findings, ¶ 43. He also testified he did not know what specifically caused his dizziness which caused the claimant to fall, see id., p. 45, but “probably the weight of the evidence is in favor of post concussive.” Id., p. 50; see also Findings, ¶ 44.

Based on this record, the administrative law judge concluded that the totality of the evidence presented supported the claimant's position that there was a causal connection between the compensable December 7, 2016 assault at work and the claimant's subsequent fall at home on January 3, 2017. The administrative law judge found the medical reports and opinions of the claimant's treaters, Fusco, Walker, Schuster and Brooks, credible and persuasive, and that the claimant's fall on January 3, 2017, at home was the result of a post-concussive syndrome that resulted from the assault at work on December 7, 2016, and was not caused by a pre-existing heart condition or syncope. She did not find the report by the respondents' expert witness, Peck, to be persuasive or credible. Therefore, she found the claimant's January 3, 2017 injuries to be compensable.

The respondents filed a motion to correct seeking a number of corrections. These focused on alleged discrepancies in the claimant's narrative regarding his medical condition following the December 7, 2016 assault; a finding that the various medical witnesses could not say what caused the claimant's January 3, 2017 fall; a conclusion that

Peck's report was credible and persuasive; and a conclusion the claimant failed to meet his burden of proof. The administrative law judge denied this motion in its entirety and the respondents have pursued this appeal. The gravamen of their appeal is that the claimant should not have been found to have been a credible witness and that all the medical reports that relied upon his narrative should not have been credited. They further argued that, since his narrative in a prior claim did not persuade the trier, that his testimony must be deemed not to be credible in this claim. See Zezipa v. Stamford, 5918 CRB-7-14-3 (May 12, 2015) (Zezipa I). We are not persuaded by these arguments and affirm the administrative law judge.

We note that our tribunal has traditionally provided great deference to the fact-finding prerogatives of our administrative law judges. "As with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Daniels v. Alander, 268 Conn. 320, 330 (2004), quoting Burton v. Mottolese, 267 Conn. 1, 54 (2003). The Compensation Review Board cannot retry the facts of the case and may only overturn the findings of the administrative law judge if they are without evidentiary support, contrary to the law, or based on unreasonable or impermissible factual inferences. See Kish v. Nursing & Home Care, Inc., 248 Conn. 379, 384 (1999) and Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Nonetheless, while we must provide deference to the decision of an administrative law judge, we may reverse such a decision if the judge did not properly apply the law or reached a decision unsupported by the evidence on the record. See Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

We note that it is black-letter law that “[t]here are few principles of jurisprudence more fundamental than the principle that a trier of fact must be the one party responsible for finding the truth amidst conflicting claims and evidence.” O’Connor v. Med-Center Home Healthcare, Inc., 4954 CRB-5-05-6 (July 17, 2006). In particular, we note that evaluations of witness credibility are exclusively the province of the finder of fact, particularly when a witness offers live testimony at a formal hearing. See Burton, supra, 40 and Brockenberry v. Thomas Deegan d/b/a Tom’s Scrap Metal, Inc., 5429 CRB-5-09-2 (January 22, 2010), *aff’d*, 126 Conn. App. 902 (2011) (Per Curiam). As we pointed out in Tedesco v. City of Bridgeport - Board of Education, 6054 CRB-4-15-11 (September 14, 2016):

[t]he trial commissioner *may* discount medical evidence when he or she concludes it is based on an unreliable patient narrative, Ramirez-Ortiz v. Wal-Mart Stores, Inc., 5492 CRB-8-09-8 (August 25, 2010) but if the trial commissioner finds the claimant credible and persuasive despite alleged discrepancies in their narrative we must defer to the trial commissioner’s determination related to whether that narrative is consistent with the mechanism of injury. *Id.*, citing Berube v. Tim’s Painting, 5068 CRB-3-06-3 (March 13, 2007) and Arnott v. Taft Restaurant Ventures, LLC, 4932 CRB-7-05-3 (March 1, 2006). See also Wiggins v. Middletown, 5300 CRB-8-07-12 (January 15, 2009).

Id.

The respondents center their argument on the position that “[t]he Claimant-Appellee has a history of misrepresenting his medical history to treating physicians and offering testimony inconsistent with medical evidence.” Respondents’ Brief, p. 5, *citing* Zezipa I. We have examined Zezipa I, supra, and we find that case primarily hinged on the trier of fact in that case crediting the opinion of the respondents’ examiner who attributed the claimant’s condition to pre-existing degenerative factors. “The trial

commissioner, however, found the opinion of Dr. Robert Tross persuasive that the primary reason for surgical intervention was preexisting degenerative arthritis and that he was not persuaded the work-related injury was a significant cause in the need for treatment.” Zezima v. Stamford, 5918 CRB-7-14-3 (May 12, 2015). We note that in cross-examining the claimant at the December 14, 2020 formal hearing, the respondents did not raise the issue of alleged misstatements of facts he may have made in prior compensation claims. We also note that in Perun v. City of Danbury, 5650 CRB-7-11-5 (May 3, 2012), we affirmed a decision of an administrative law judge to find a witness credible and reliable who had previously not been found credible in an earlier proceeding. Therefore, we believe that the record should be reviewed solely on the basis as to whether a sufficient quantum of evidence exists to sustain the decision.

The respondents have challenged this finding on the basis that the evidence presented by the claimant was unreliable and based on unreasonable inferences, as were the opinions found deficient in DiNuzzo v. Dan Perkins Chevrolet Geo, Inc., 294 Conn. 132, 142-43 (2009). Having conducted a thorough review of the record we are not persuaded by this argument and find the administrative law judge could reasonably find the medical reports and opinions of the claimant’s treaters Fusco, Walker, Schuster and Brooks credible and persuasive. We note that Fusco, Brooks and Schuster were deposed and did not recant their written opinions in any material fashion. We will point to the most critical testimony to explain why we believe the finding should be affirmed.

The claimant’s primary care physician, Fusco, authored a February 7, 2019 letter attributing the claimant’s injury to “a post-concussive syndrome” and linked the claimant’s current conditions as being “a result of his injury sustained at The Stamford

High while teaching.” Claimant’s Exhibit A. At his deposition, Fusco testified that was still his opinion. See Respondents’ Exhibit 11, p. 31. Fusco further testified at his deposition that he believed Brooks was more qualified to assess the claimant’s condition than Peck. See *id.*, pp. 35-36.

Brooks examined the claimant immediately after the January 3, 2017 injury and his contemporaneous notes assessed that the claimant “likely suffered a concussion in December 2016 and has had post concussive symptoms which have been prolonged by attempting to return to normal activity too quickly.” Claimant’s Exhibit B, p. 3. At his deposition, Brooks continued to hold to this opinion.

Q: Has anything that you’ve heard today affected your opinion that you stated in the Assessment portion while you examined Mr. Zezima that day, and now we’re talking about five years later. Is there anything in there that affected your opinion?

A: I really don’t think so at this point. You know, I indicated in the Assessment section that I was -- you know, there is a differential diagnosis here that’s considering other things, but that given the dizziness, given the photosensitive, the photosensitivity, the eye strain that I probably thought and I think I continue to think it was probably due to post-concussive symptoms.

Respondents’ Exhibit 13, pp. 38-39.

Later in the deposition, after further inquiry by respondents’ counsel as to whether he held to his original diagnoses, Brooks said “[t]his is like the fifth time I’m being asked this question. I still think probably the weight of the evidence is in favor of post-concussive.” *Id.*, p. 50. While Brooks also testified at his deposition that although the claimant’s post-concussive syndrome was a factor in the claimant’s subsequent fall-down injury; he testified as well that “I don’t know if it is the only one.” *Id.*, p. 37. However, our precedent does not require a work injury to be the sole proximate cause of

a sequelae injury for the subsequent injury to be deemed compensable. See Sapko v. State, 305 Conn. 360, 391 (2012).

The respondents have advanced an alternative theory of causation for the claimant's January 3, 2017 fall-down injury at home: that it was the result of a syncopal episode unrelated to the assault at the workplace. Schuster specifically rejected this diagnosis in his November 5, 2020 letter. Schuster was challenged on this opinion and testified at his deposition that "in my medical judgment it was most likely that the fall down the stairs was related to the concussion he [the claimant] had sustained earlier." Respondents' Exhibit 12, p. 9. When asked if he could say within a reasonable degree of medical certainty why the claimant became dizzy on January 3, 2017, Schuster testified "[i]t was likely that he was post-concussion and recovering from a concussion that could lead to imbalance that likely caused his fall as opposed to a heart condition." *Id.*, p. 20. Schuster also testified that he valued and trusted Brooks' opinion and had no reason to disagree with his assessment of the claimant's neurological condition. See *id.*, p. 28.

The respondents filed a motion to correct the finding to remove any reliance upon the causation opinions of Fusco, Brooks or Schuster and to find Peck offered the superior opinion as to the etiology of the January 3, 2017 injury. The administrative law judge denied this motion, and pursuant to Brockenberry, *supra*, and Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008), *appeal withdrawn*, A.C. 30306 (September 29, 2009), she was permitted to deny such a motion if she did not find the proposed corrections grounded in evidence she deemed material or credible. She found the opinions of the treating physicians persuasive and credible and chose not to accept the opinion of the respondents' expert, Peck. Since she was the judge of what medical

evidence that was presented was worthy of reliance, we must affirm her decision. See Smith v. RegalCare of Waterbury, LLC, 6316 CRB-5-19-3 (March 10, 2020), *citing* Dellacamera v. Waterbury, 4966 CRB-5-05-6 (June 29, 2006). (Footnote omitted.) See also, Strong v. UTC/Pratt & Whitney, 4563 CRB-1-02-8 (August 25, 2003), “[i]f on review this board is able to ascertain a reasonable diagnostic method behind the challenged medical opinion, we must honor the trier’s discretion to credit that opinion above a conflicting diagnosis.” *Id.*

We note many parallels herein with a prior case where the claimant asserted a fall-down injury at home was the sequelae of a prior compensable injury and the respondents contested causation. See Nelson v. Revera, Inc., 5977 CRB-5-15-1 (September 21, 2015). In Nelson, we cited Marandino v. Prometheus Pharmacy, 294 Conn. 564 (2010), for the proposition that when a claimant’s testimony was deemed credible and was corroborated by medical evidence the award was affirmed. Both in Nelson, *supra*, and in this case, the claimant established a nexus between the prior injury and the subsequent injury which the trier of fact found persuasive. Since our Appellate Court noted in Estate of Haburey v. Winchester, 150 Conn. App. 699 (2014), *cert. denied*, 312 Conn. 922 (2014), our “law does not demand metaphysical certainty in its proofs” we believe there was a sufficient quantum of evidence herein to award the claimant benefits. *Id.*, 716 *quoting* Curran v. Kroll, 118 Conn. App. 401, 408 (2009), *aff’d*, 303 Conn. 845 (2012).

The administrative law judge heard the claimant’s testimony and found him credible. She heard the opinions of Peck at the hearing and after having done so, found his opinion unpersuasive as compared to the opinions of the claimant’s treaters that she

found persuasive and credible. Since these conclusions were based on her assessment of the evidence, see Krevis v. Bridgeport, 6321 CRB-4-19-4 (May 28, 2020), we must affirm her decision on appeal.

Accordingly, we affirm the Finding and Award of Jodi Murray Gregg, the Administrative Law Judge acting on behalf of the Fourth District.

Administrative Law Judges Daniel E. Dilzer and Carolyn M. Colangelo concur in this Opinion.