An Award for Temporary Partial Benefits, Attorney's Fees, Interest and Undue Delay Must Clearly Specify Time Periods and Amounts.

In Savvas v. Allegis Group/Maxim Health 6511 CRB-1-23-8 the ALJ found in the first of two Findings and Awards that the claimant's neck condition and subsequent surgery were compensable and ordered the respondents to pay "indemnity benefits related to the injury", without specifying periods of partial incapacity. The respondents failed to issue any payments following the first Finding and Award. Consequently, the claimant requested a second formal to assess penalties, including attorneys' fees and interest and a fine of $500.00 per day for unreasonable delay pursuant to CGS §31-288(b). Respondent's argument for failing to pay any amount following the first award was that it was incumbent upon claimant's counsel to request clarification from the trial judge for an award that was unclear.

The CRB rejected the respondent's argument that they were justified in failing to advance any indemnity payments when they had not filed a motion to correct, a request for articulation, or an appeal asserting that such a stance was inconsistent with the humanitarian spirit of the act. However, the CRB agreed with respondent's argument that the record was devoid of an evidentiary basis for some of the attorney's fees and that the record was ambiguous as to what the period of temporary partial disability compromised. Consequently, the case was reversed and remanded in part. Further, the CRB found that although there was a factual predicate for awarding 31-288(b) penalties for each instance of delay in this case, the CRB would not support the trial judge's determination that each day of delay constituted a separate instance of delay which $500.00 was due.

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Carmen Cruz v. Interim Healthcare
6480 CRB-2-22-7 (May 19, 2023)

The claimant sustained a compensable right knee injury which required surgery. Following surgery, the claimant filed a request for a scarring award, claiming that her right knee handicapped her from obtaining and continuing work. The treating orthopedist provided testimony that given the discomfort caused by the scar, the ability to get certain types of work would be hindered. The trial judge dismissed the claim for scarring benefits noting the claimant was employed and although she might not be able to kneel, bend, or stand for long periods of time, the scar did not hinder her from obtaining work. In affirming, the CRB reiterated its rationale in Duffy v. International Paper Co., 5860 CRB-2-13-17 (July 2, 2014) that where the proximate cause of a claimant's inability to work is the underlying knee injury, rather than the scar, then scarring benefits should be denied.

The claimant also argued that the trial judge's finding that the scar did not "prevent" the claimant from obtaining employment rather than the statutory definition of "handicaps" set forth in §31-308(c), was reversible error, but the CRB found that the judge could have reasonably derived the award based on the lesser "handicaps" standard.

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No Credit for Prior Compromised Rating In Subsequent Rating

Recinos v. State of Connecticut Department of Transportation
6483 CRB-4-22-9 (June 23, 2023)

In Recinos v. State of Connecticut Department of Transportation 6483 CRB-4-22-9 (June 23, 2023) the claimant suffered three compensable back injuries. For the first two, he had received a 3.75% compromised rating between the treating physician's 7.5% and the RME's zero percent. In addition, he received a 10% for a second injury, for a total of 13.75% paid. Subsequently he received a 20% impairment which was inclusive of all prior ratings. The trial judge found the claimant had been paid for 13.75% PPD and was entitled to an additional 6.25%, the difference between the 20% and the 13.75%.

The respondents claimed they were entitled to a credit of 17.5% of the claimant's present 20%, relying on C.G.S §31-349(a) which allows for a credit for all sums "paid or payable" arguing that the additional 3.75% was not paid but was payable. The CRB held that the respondent could only receive a credit for the amount of permanency actually paid, rejecting the respondent's "payable" argument. The CRB reasoned that since the prior impairment was contested, compromised and memorialized in a written agreement at a specific amount of 3.75%, the parties had, in effect, agreed to what was "payable" in any event. Further, the CRB noted that when the claimant had been paid the 10% after the second injury, respondents did not attempt to litigate the alleged credit from the first compromise.

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Angela Bell, v Hartford Healthcare at Home and Saint Paul Travelers
6473 CRB-8–22–4. (August 18, 2023)

The claimant argued that the trial commissioner's dismissal of her claim for a compensable shoulder injury was clearly erroneous based on the facts presented at the trial. Her claim was that her job as a licensed practical nurse required her to carry a blood pressure cuff, and an 18 pound backpack caused epicondylitis of her elbow, which in turn, caused an injury to her shoulder. Her treating physician, Dr. Randall Risinger, opined that the repetitive motions associated with carrying and applying the blood pressure cuff and the backpack caused her problem with her shoulder. The RME, Dr. Lena, did not support causation, and the commissioner's examiner, Dr. Jambor, provided a written report supporting causation based on the work history provided to him by the claimant. However, when he was deposed, and confronted with the medical records, he determined that there was no history of an acute shoulder injury, which would have been consistent with a SLAP tear; moreover, her use of the blood pressure cuff and putting on and taking off of the backpack did not constitute repetitive use. The CRB agreed with that there was evidence in the record to allow the trial judge to determine that the claimant had not met her burden of proof, and that it was not clearly erroneous for the trial judge to accept some, but not all of her CME's opinion, in this case finding Dr. Jambor's deposition testimony weightier than his written reports.

Further, the claimant had alleged that Dr. Lena was not a reliable witness, because his reports and notes were not actually generated by him, but were outsourced to, and prepared by, a third-party. The CRB ruled that because claimant's counsel did not object to the admission of Dr. Lena's reports at the formal hearing after he had been deposed, the administrative law judge was entitled to place whatever weight he believed was appropriate on Dr. Lena's opinions.

Britt v. Cos Cob TV
6481 CRB-7-22-9 (August 18, 2023)

The claimant sustained an injury to his back lifting a television at work on February 24, 2020. He treated on three occasions with an Urgent Care Center in the next few days and was disabled from work pending an orthopedic consult. On February 28, 2020, he saw an orthopedist who referred him for physical therapy, where he had two sessions. Neither the orthopedist nor the physical therapist commented upon the claimant's work status. Then on April 28, 2020, he saw another orthopedist who noted that the claimant was temporarily and totally disabled. He had no further treatment thereafter.

The trial judge found that all of the medical reports were credible and persuasive and held that while the case itself was compensable, the claimant had failed to prove that he was totally incapacitated. The respondents offered no medical testimony to contradict the claimant's evidence as to either compensability or to the claimant's work capacity. The claimant argued to the CRB that there was an inherent contradiction between the trial judge's findings that the claimant was credible as well as all of his medical providers and her holding that the claimant was not temporarily and totally disabled. Because the trial commission found that the entirety of the medical evidence was credible, as well as the claimant's testimony, it was an error for the judge to disregard those medical opinions for the purpose of establishing a period of disability. However, because there were no further reports after April 28, 2020 and because the claimant did not follow the orthopedist's instructions to seek an MRI and get additional therapy, the CRB found the claimant was not entitled to any temporary total benefits after that date.

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Offset Under §31-307(e) Does Not Apply Until Claimant Actually Receives Social Security Benefits.

In Rowe v. Bridgeport Hospital, 6485 CRB-4-22-9 (September 15, 2023) the CRB affirmed the trial judge's denial of the Respondent's Form 36 seeking a credit for the amount to which the 71-year-old claimant would have been entitled for her old age Social Security benefits either at age 66, the age of the eligibility for full social security retirement benefits, or age 70, the age at which she would have received her maximum Social Security benefits. The respondent filed the Form 36 when the claimant was already 71 years of age seeking a retroactive credit to the date at which the claimant turned either 66 years or 70 years of age. The trier found that the claimant who died before the formal hearing record was closed, never applied for Social Security retirement benefits during the course of her lifetime, and there was no evidence adduced at trial indicating that a claim for such benefits (at either full or maximum retirement age) is mandatory.

The CRB examined the legislative history of the repeal of 31-307(e) which articulated numerous instances in which an offset was applied to a claimant upon reaching the age of 62 irrespective of whether the claimant actually received benefits; the mere "eligibility" of the benefits triggered the offset. But there was also support in the legislative history stating that the offset was only applied for benefits "received". The CRB recognized this ambiguity in the legislative history, but were not persuaded that the history provided an adequate basis for concluding that the offset in §31-307(e) was based on eligibility rather than receipt of benefits.

Having determined that the Respondent was not entitled to an offset based on eligibility rather than receipt of benefits, the issue of whether a Form 36 can be effective prior to the date it was filed is rendered moot.

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Barros v. City of Bristol
6491 CRB-6-22-11 (October 6, 2023)

The claimant, a school teacher, suffered a compensable concussion on February 8, 2010, for which she sought treatment with a neurologist who found she was temporarily and totally disabled. While she was collecting salary continuation benefits pursuant to her union agreement, she was also actively practicing as a realtor, collecting commissions and assisting her husband who was in the business of flipping real estate properties. The respondents filed a Form 36 contesting further payment of benefits, which was granted at a hearing on November 12, 2019. During the hearing, respondents provided surveillance evidence inconsistent with claimant's testimony about her ability to engage in activities.

The neurologist continued to provide reports that the claimant was totally disabled, but at his deposition in November 2020, after he was shown the surveillance footage, he testified both that the claimant was "100% disabled from holding a job" and "not fit to be able to return to her job as a teacher."

The parties negotiated a separation agreement in May, 2021 at which time the Human Resources Director testified the claimant made it clear she was not able or willing to come back to work. Whether or not her departure from the school was voluntary or forced was a contested issue at trial. The agreement provided the claimant with pay and benefits through December 15, 2020, the date of her resignation.

At a formal, the claimant requested ongoing TT benefits as well as continued health coverage under §31-284(b). The trial judge dismissed her claim for ongoing temporary total benefits, but awarded her temporary partial benefits from the date of her injury through December 15, 2020.

Both parties filed a flurry of Motions to Correct which were dismissed in their entirety. Both parties filed appeals – the claimant arguing that she should have been awarded temporary total and medical benefits beyond her resignation date – the respondent arguing that the judge committed error by failing to address the issue of the approved Form 36, and by granting temporary partial benefits even though the claimant requested temporary total benefits.

The CRB affirmed the trial judge's decision, holding that the board may infer from the judge's denial of the Motions to Correct that he did not find the evidence submitted in the motions probative or credible. The trial judge was entitled to credit that part of the neurologist's opinion that indicated the claimant was light duty, and to discredit that part of his opinion that the claimant was temporarily and totally disabled. Further, there was evidence to support that the claimant voluntarily resigned on December 15, 2020, which allowed the judge to find that she was not willing to perform work under §31-308(a), and therefore, not entitled to temporary partial benefits.

The respondents argued that once the judge found that the claimant was not temporarily and totally incapacitated he could not find that the claimant was entitled to temporary partial benefits, because the Form 36 was not ruled out at trial. The CRB noted that many of the hearing notices, including the formal hearing notice, indicated that §31-308(a) was an issue, and that the judge made reasonable inferences from the supporting facts in the record. That, coupled with the principle that an administrative law judge may follow the evidence where it may lead allowed him to award temporary partial benefits.

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Rosenstein v. Hartford Distributors
6490 CRB-8-22-11 (October 20, 2023)

The claimant was shot in the course of his employment in 2010, when he was approximately 77 years of age. He returned to work after two years of convalescence. As a result of his abdominal injuries he was required to take laxatives every day that caused him to occasionally need to run to the bathroom very quickly. In June 2018, when he was 85 years old, he felt that he had "reached a point where he could no longer complete his job duties as he had prior to his injury because of his emergent bathroom needs which sometimes required him to go home to shower and change. He, therefore, turned in a voluntary resignation. The claimant proffered unrebutted medical evidence that he was temporarily and totally incapacitated as well as the testimony of a vocation expert, Kerry Skillen, that he was unemployable.

The trial judge found that the employer was willing to accommodate the claimant's restrictions and provide work to the claimant including the ability to work as much or little as he wished, and to allow him to go home to shower and change whenever he needed to do so. While the trial judge lauded the claimant for his heroism on the day of the injury, he could not reconcile the claimant's purported reasoning for not wishing to shortchange the employer by accepting a salary if he could not perform 100% with the claimant's willingness to collect indemnity benefits for doing nothing.

The CRB affirmed the trial judge's denial of benefits but employing a different legal basis. In fact, the CRB intimated that under Bode v. Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672, 681, *cert. denied*, 302 Conn 942 (2011) the CRB might have considered finding that the judge had drawn an unreasonable inference under the totality of evidence presented, to wit: there was an uncontroverted vocational opinion that the claimant could not work coupled with the claimant's testimony to the same. However, because of the ruling by the Appellate Court in Cochran v Department of Transportation, 220 Conn. App. 855 (2023), cert pending, S.C 203146 the CRB affirmed the denial of TT benefits. Specifically, in affirming the trial judge, the CRB tracked the language of the Cochran court which stated that a claimant "who elected to retire from employment and thereby received an incentivized early retirement benefits package and affirmatively conceded that he had no intention of returning to the workforce, was not entitled to temporary total disability benefits pursuant to the statute.: Id. at 868.

Patricia Buchanan, Surviving Spouse of Paul Buchanan, v Town of East Haven Police Department, 6488 CRB-6–22–10, (November 2, 2023)

In Buchanan v Town of East Hartford 6488 CRB 6-2-10 (November 2, 2023) the CRB reversed the trial judge who misapplied the law to the facts found in denying compensability to a police officer who committed suicide on the job. The surviving spouse, who was the claimant, hired Dr. Kenneth Selig who opined that although the decedent had previously suffered from unrelated depression and anxiety, the cumulative events that he had witnessed as a police officer had caused him to suffer from PTSD, which is what caused him to ultimately take his own life. Respondent's examiner found the decedent did not have PTSD and it was the preexisting depression and anxiety that caused him to commit suicide. The CRB determined that both the parties and the trial commissioner focused on the wrong issue; instead of focusing on whether the claimant suffered from PTSD or depression, because there was a physical injury the real issue was whether the employment was a significant contributing factor to the physical injury: i.e. was the gunshot (physical injury) causally related to the work-related PTSD.

The trial judge found that the decedent had suffered from PTSD as a result of multiple traumatic experiences on the job, and that PTSD was an occupational disease because under the Biasetti v. Stamford 250 Conn. 65 (1999) threshold, it is so distinctively associated with the employee's occupation that there is a distinct causal connection between the duties of employment and the disease contracted. But the trial judge then wrongly concluded, according to the CRB, that the decedent's suicide was caused by the major depressive disorder coupled with medication issues and sleep disturbance in accordance with the respondent's medical expert.

The CRB held that it was undisputed that the decedent's injury was physical since he committed suicide at work using his service revolver, thereby arising out of employment. Therefore, his death was not a mental/mental claim as respondents had propounded, but rather a mental/physical claim. The CRB analogized this injury to that of Chesler v. Derby 96 Conn. App 2017 (2006) in which the claimant died of a heart attack (physical injury) brought about by a contentious meeting with his superiors on his last day of work. Here the self-inflicted gunshot wound (the physical injury) was precipitated by the work that caused the PTSD. "Once it was established as described above, that the decedent had sustained a physical injury that stemmed from a self-inflicted gunshot at work that arose in and out of the course of employment, and that his employment was a significant contributing factor to his physical injury, it was unreasonable to conclude this was not a compensable claim." Therefore, the CRB reversed the trial judge's decision as clearly erroneous.

James Curran v. State of CT DOC
6492 CRB-1-22-12 (November 17, 2023)

In Curran v State of Connecticut, the claimant, a Department of Corrections officer, was escorting an inmate up the stairway when he felt a pop in his hip and his leg gave out. He immediately reported this incident to his supervisor, who referred him to the on-duty nurse at the facility. She examined his hip, took his blood pressure, provided him an ice pack, and Advil. He did not file a written notice of claim until ten years later. The respondents claim that this was insufficient to meet the standard for the "furnishing of medical treatment" exception to the notice statute, C.G.S §31-294(c).

The CRB affirmed the trial judge's determination that the facts in this case met the exception to the notice requirement. It further held that such a determination is necessarily a factual one, and they would not disturb the finding. Finally, the CRB indicated that it was of no consequence that the person furnishing the medical treatment was not an APRN but rather just an RN.

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Willie Hayes Jr v Lily Transportation Corporation
6500 CRB-1-23-4 (November 24, 2023)

The claimant was involved in a motor vehicle accident on November 17, 2014, which required two surgeries to his right little finger. The claimant testified that at the moment of collision he gripped the steering wheel with so much force that "he left fingerprints on it". There was testimony indicating that the respondents had delayed treatment, and although the claimant had noticed a "tingling sensation" in both of his wrists in the months following the motor vehicle accident, it was not significant. The claimant further testified that because it was so difficult to get an MRI for his finger authorized, he was discouraged about mentioning his wrists.

Following the two surgeries which occurred in January 2016 and July 2016, the claimant developed right and left wrist pain. The claimant did not seek medical treatment during 2017 through 2019 because the medication he had taken following the second surgery triggered a relapse into substance abuse and addiction. In 2020, the claimant then began treating with Dr. Daniel Mastella, who, based on the claimant's description of his injury, as well as the accident he was involved in, provided causation in a report to claimant's counsel. Dr. Richard Bernstein conducted an RME in which he concluded that there was absolutely no relationship of the wrist arthritis to the original injury in 2014.

During Dr. Mastella's deposition, he was confronted with medical reports from the first six months of the claimant's treatment in 2016 which were completely devoid of any mention of pain in either of his wrists. As a result, Dr. Mastella revised his opinion to state the contemporaneous reports would "certainly push me more towards saying it was not related..." However, Dr. Mastella stated that there was a radiological finding, within a month after the date of the accident, which demonstrated signs of instability at the wrists that might produce arthritis, albeit without any symptoms at that time. Further, Dr. Mastella agreed that if the claimant testified that he had experienced pain in the wrists during those first six months that he would be more inclined to find the arthritis in the claimant's wrists was substantially contributed to by the motor vehicle accident in 2014, although he thought it was unlikely that the claimant would not have reported it to anyone who treated him during that time period.

The trial judge chose to credit Dr. Mastella's opinion supporting causation prior to his deposition testimony rather than his equivocal testimony at the deposition. The respondents contended that the administrative law judge just drew improper inferences from the evidence, but the CRB held that the decision to credit Dr. Mastella's earlier reports and ignore his deposition testimony was well within her discretion, stating that "it is the quintessential function of the finder of fact to reject or accept evidence, and to believe or disbelieve any expert testimony... The trier may accept, or reject, in whole or part, the testimony of an expert," Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999). The CRB attached some significance to the fact that in the hypothetical posed to Dr. Mastella during his deposition, wherein he stated that if the claimant

testified that he had suffered from pain during the original six months after the date of injury, he would be inclined to support causation.

An interesting sidenote is that although claimant's counsel objected to the RME being admitted without Dr. Bernstein's deposition having been taken, the deposition transcript was referenced, and apparently attached as an exhibit during Dr. Mastella's deposition, and therefore, was allowed to be marked as a full exhibit. Perhaps the practice tip to be gleaned is not to allow respondent's counsel to mark the RME as an exhibit during treating physician's deposition.

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Wratchford v. Stop & Shop Supermarket
6504 CRB-3-23-5 (December 8, 2023)

The claimant filed an appeal of a May 19, 2023 Finding and Decision of her claim for temporary total disability benefits. Thereafter, the claimant filed with the CRB two motions to present additional evidence, the first of which included two disability forms completed by the claimant's treating physician and which had been included in the claimant's application to have her student loans discharged because of her disability. The second motion was filed after the claimant's loan service rendered its decision to discharge the claimant's student loan debt due to her disability. Neither of these forms existed at the time the formal record was closed.

The CRB relied on the precedent in Diaz v. Pineda, 117 Conn. App. 619 (2009) which required the movant to demonstrate to the Board in its motion (1) the nature of the new evidence (2) the basis of the claim that the evidence is material and (3) the reason why it was not presented to the Commissioner. Id., 628

The claimant argued that at the time of the formal hearing she had not yet applied for student loan relief and consequently the causation report could not have been presented as evidence. The CRB refused to grant the motion to submit additional evidence based primarily on three grounds. First, there was no "good cause" justification offered as to why the claimant could not have obtained a report on the issue of the claimant's disability from her treating doctor since she was able to get one subsequently for her loan debt forgiveness application. Second, the forms that the claimant sought to introduce in the workers' compensation case were related to another forum with different standards for establishing disability, arguing by way of analogy that the Social Security Administration's adjudication of a disability issue is not binding or even necessarily relevant to a trial judge's consideration. Bidoae v. Hartford Golf Club, 4693 CRB-6-03-7 (June 23, 2004) Third, as referenced in footnote 5, the CRB believed the evidence sought to be admitted was essentially cumulative in nature in so far as "neither the Hamilton (treating physician) letter nor the Firstmark (loan service) decision regarding the claimant's student loan discharge, deal with any issues substantially different than other evidence previously presented by the claimant."

The underlying appeal has not yet been decided by the CRB at the time these materials were submitted for publication.

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Richard Herrick, Jr. v I.P.C. Lydon, LLC
6496 CRB-2–23–2 (February 2, 2024)

The claimant originally sustained an injury to his left shoulder in 1987 that would result in three surgeries over the next six years while working for Electric Boat. After being out of work between 1993 and 1996 he found new employment with Welding Services as a boilermaker/journeyman welder where he performed very heavy manual labor for the next 21 years until 2017. His last two jobs were for Day & Zimmerman, where he worked for eight days (in April 2018) and I.P.C. Lydon where he worked for five days (in May 2018) replacing an expansion joint and gas valve.

In August 2018, he presented to an orthopedic surgeon complaining of bilateral shoulder pain. The treater attributed the need for treatment to his entire career as a welder, presumably including his last five days with I.P.C. Lydon, the 299b carrier. The RME, Dr. Jambor, and the CME, Dr. Rios, both opined that the five-day-stint at I.P.C. Lydon was not a substantial contributing factor to the need for medical treatment.

The trial judge found that the five days of injurious exposure constituted repetitive trauma and was compensable. The CRB affirmed on practical grounds stating that had the judge not held the respondent liable, the claimant would have been required to file a new 30C against Day & Zimmerman, the next-to-last employer. If that employer were not held responsible, the claimant would have to pursue the next chronologically closest respondent. Perhaps most importantly, the claimant would be time-barred from bringing any such claims more than one year after having last worked there.

The CRB recited, with approval, language reflecting the presumption as stated by the Supreme Court, that "in many cases involving repetitive trauma, the very nature of the injury will make it impossible to demarcate a specific date of injury. Thus, out of necessity, some other clear threshold had to be established as the start of the applicable limitation period. The last day of exposure to the relevant trauma is a logical choice, *as the process of injury from a repetitive trauma is ongoing until that point."* (Emphasis added.) Discuillo v Stone & Webster, 242 Conn. 570, 581 n.11 (1997). The CRB seems to be saying that the purpose of this statute is to allow the claimant to timely file a claim against the last employer, which would allow the claimant to "fashion a quick remedy in cumulative trauma claims" then let all of the prior employers fight out their extent of liability rather than requiring the claimant to sort it out.

John Mattera v. State of CT / Dept of Children & Families
6505 CRB-8-23-6 (March 1, 2024)

The claimant, a corrections officer, was injured on January 5, 2018, trying to break up an altercation. The claimant was paid temporary total benefits until his death from unrelated cancer on April 8, 2022. On March 29, 2022, claimant's counsel wrote to his treating psychiatrist, Dr. Mark Waynik, who had last seen the claimant on March 9, 2022, inquiring as to whether the claimant had reached MMI. On April 12, 2022, Dr. Waynik responded, indicating the claimant had reached MMI as of his last date of treatment (March 9, 2022). On May 12, 2022, Dr. Waynik completed a Form 42, assigning a 15% of the claimant's brain.

The trial judge dismissed the claim for PPD benefits because "the medical records were devoid of MMI as a consideration only a few weeks prior to Mr. Mattera's demise." The claimant appealed, arguing that the judge improperly inserted his own opinion in place of that of the expert. The CRB affirmed on the grounds that the trier had the discretion to assess the adequacy of the evidence, especially if the facts allow for diverse inferences. The CRB distinguished the Supreme Court's analysis in McCurdy v. State 227 Conn. 261 (1993) which held that permanency is vested at maximum medical improvement, whether or not paid or requested, and if there are no dependents, the award is due to the estate, and Churchville v. Bruce R. Daly Mechanical Contractor, 299 Conn. 185, 192 (2010), holding that a decedent, who had collected temporary total disability benefits until his death from unrelated causes was not required to make a formal request for his previously-received PPD rating in order for entitlement to his impairment to vest. The CRB held that while McCurdy, supra, and Churchville, supra, afforded the trier the authority to award PPD benefits to the decedent's estate even though the MMI and permanency were issued by the treating physicians posthumously, those cases were different because the sufficiency of medical evidence was not challenged by the trier in either case.

Finally, the CRB cited Brennan v. Waterbury, 331 Conn. 672 (2019) in which the Supreme Court grappled with the issue of when permanent partial disability benefits "mature" where the claimant had received three different ratings and had been paid some of the benefits during his lifetime, pursuant to §7-433c and 31-308b. In Brennan, supra, the Court held that "PPD benefits mature only after the degree of permanency has been fixed by way of an award or an agreement between the parties sufficient to establish a binding meeting of the minds." Id., 697. However, because this case dealt with benefits under §7-433c there is a strong argument to be made that the holding in this case should be limited to §7-433c cases (in which §7-433c benefits are payable only to a firefighter or police officer or to his dependents, but not his estate). In addition, since 31-308(d) specifically allows for posthumous awards, one is left wondering why a physician could not determine the MMI date posthumously? As stated in one Connecticut treatise "the necessity of finding a predeath agreement for 'matured' benefits under the Brennan decision is limited to benefits under C.G.S. §7-433 since many workers' compensation cases over many decades have awarded permanent

partial disability benefits to the estates of employees who have died, without requiring proof of a pre-death agreement to pay the benefits." R. Carter, D. Civitello, J. Dodge, J. Pomeranz and L. Strunk, Connecticut Workers' Compensation Law (Thompson West, Connecticut Practice Series, Vol 19, 2008) §8:92. Query whether the CRB has jumped the guardrail of §7-433 in applying the Brennan pre-death agreement to garden-variety cases. Relying on this precedent, the CRB held that because the claimant had not proven that there was either an award or a meeting of the minds, the judge didn't have to determine whether that permanency had vested. Practice note: If your client is on long-term temporary total, you need to have an agreement with opposing counsel as to the impairment rating for the permanency to vest.

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Bocchino v. Joseph's Auto Body
6532 CRB-8-24-2 (Conn. Workers' Comp. Rev. Bd. July 19, 2024)

The claimant, who was pro se at the formal hearing and did not appear for argument before the CRB, appealed the trial judge's award for a shoulder injury. The claimant asserted that the judge erred in failing to order payment of total and partial incapacity benefits, even though the judge found the injury was compensable and awarded specific benefits. The claimant used a shotgun array of motions to argue that: it was error not to award temporary total benefits since the Social Security Administration had adjudicated him unemployable; his prior counsel and respondent's counsel engaged in misconduct; the RME and the CME conspired against him; the court reporter had intentionally deleted portions of his deposition transcript; the trial judge should have recused himself from the proceedings; and the judge erred by not considering settlement discussions in his Findings and Award. The CRB found all the claims wide of their marks and affirmed the Finding and Award.

Of interest was the CRB's discussion about the general rule against allowing evidence of settlement negotiations to be admitted at administrative hearings because it is inconsistent with the public policy of encouraging settlements. Jutkowitz v. Dept. of Health Services, 220 Conn. 86, 596 A.2d 374 (1991). As to the collusion claims, the CRB found the trial judge's "cogent explanation" sufficiently parried the claimant's assertion that the judge should have addressed the issue in his decision. Similarly, the CRB found that there was no basis for the judge to have recused himself since there was no evidence that he had any personal knowledge of the case beyond the evidence

presented at the formal. Martinez v. McCord v. State/Judicial Branch, 5647 CRB-7-11-4 (Conn. Workers' Comp. Rev. Bd. Aug. 1, 2012), appeal withdrawn, No. A.C. 34935 (Conn. App. Ct. Apr. 4, 2013)

On the merits, the CRB reiterated the long-held principle that an award of Social Security benefits is not dispositive of whether a claimant is entitled to temporary total benefits. Bidoae v. Hartford Golf Club, 4693 CRB-6-03-7 (Conn. Workers' Comp. Rev. Bd. June 23, 2024), aff'd, 91 Conn. App. 470, 881 A.2d 539 (2005), cert. denied, 276 Conn. 921, 888 A.2d 88 (2005). Because the claimant failed to produce any other evidence of his claimed lack of work capacity, the CRB held that the trial judge did not err in denying temporary total benefits. Further, because the only evidence of his specific award of 5% was based on the CME, the judge did not err in awarding a 5% impairment. The trial judge's Finding and Award was affirmed on all bases.

Amie McKay v. Deepdale Emp.
6509 CRB-5-23-7 (the compensability appeal) & 6522 CRB-5-23-12 (the disfigurement appeal), (Aug. 9, 2024)

The claimant was a live-in estate manager at a 1000-acre farm in South Kent with her three-year-old son. Part of her job responsibilities was to resolve any internet problems within the 14 buildings on the estate property. On June 25, 2021, at approximately 9:51 p.m., the claimant received a text message regarding an internet problem on the property. Because she lived alone with her son, her supervisors were aware that if she was required to respond to an emergency call outside of normal hours of 9:00 a.m. to 5:00 p.m., she would necessarily need to bring her son along with her. Her supervisors testified that the respondent was aware that she was obliged to bring her son with her on other occasions outside of her regular working schedule, and that she was expected to respond to emergencies such as the one that occurred on the evening of June 25, 2021. The claimant tried to resolve the problem remotely but was unable to do so and prepared to leave her home with her son to drive to the residence on the property where the problem was occurring.

After putting on his shoes, the claimant's son went outside to begin making his way to the car. At the same time, the claimant received a text from her supervisor stating that the internet problem had been resolved. Within seconds, the claimant heard her son screaming from the backyard and ran outside to find him. The claimant fell into an open basement stairwell, sustaining physical injuries. The respondent denied the claim arguing that at the time she was injured the claimant was no longer acting as their employee. The Administrative Law Judge made factual assessments and concluded

that the claimant had been called out to address an emergency at work, and this injury would not have happened but for the fact that the claimant was responding to a work-related issue. The Administrative Law Judge determined, based on the claimant's testimony and the cell phone records, that the total length of time that elapsed between the time the respondent communicated that she was no longer needed and the time that she fell into the stairwell was a matter of seconds and the distance of about 20 feet from the back of the house.

The Administrative Law Judge found that the claimant's testimony was fully credible and persuasive, and the claimant was engaged by the respondent to respond to emergent issues on an on-call basis. Further, the Administrative Law Judge concluded that on the night of June 25, 2021, the claimant was fully engaged in the performance of her duties in trying to resolve an important and urgent issue regarding the respondent Wi-Fi system.

The Administrative Law Judge held that the claimant was engaged in a special errand at the respondent's request. The respondent argued that once the claimant had been texted that her services were no longer needed, the business purpose had ended, and that her injuries had happened after that occurred. The judge cited Loffredo v. Wal-Mart Stores, Inc., 4369 CRB-5-01-2 (Conn. Workers' Comp. Rev. Bd. Feb. 28, 2002) in which an employee was responding to an alarm late at night and set out from her house to turn off the alarm. She had left her home and was walking to her car in her yard when she fell, broke her ankle and subsequently died from an embolism resulting from the

injury. The CRB also cited the special errand rule in Larson's Workers' Compensation Law (2000 §14.05, p.14–15) which states "when an employee, having an identifiable time in space limits on the employment, makes an off premises journey, which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard, or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself." The Administrative Law Judge concluded that when the claimant was preparing to leave her residence to travel to the remote residence, she was engaged in a special errand at the respondent's direction and for the joint benefit of the respondent and the claimant, and further, even though the claimant knew at the time of the accident that the Wi-Fi problem had been resolved, she was still participating in the special errand at the direction of her employer because she was required to collect her son who had gone outside in furtherance of the respondent's implicit request to resolve the problem. Finally, the judge found that any deviation from the business route was minor, both in terms of time, a matter of seconds, and distance, a matter of 20 feet from her back door.

The second appeal dealt with the disfigurement award. During the pendency of the multi-hearing formal, the claimant requested a scarring/disfigurement award hearing that was held within the statutory period allowed by Connecticut General Statute §31–308(c), namely, more than one year after the date of the accident, but less than two years after the date of injury. At that hearing, the judge took measurements and made

copious notes about the claimant's injuries, and also made notes that the parties agreed that because the underlying compensability issue had not been decided yet, it would be premature to issue an award, and that the judge's notes and measurements regarding this scar/disfigurement award would effectively be held in abeyance until such a time as a compensability determination was made. The award in the compensability case was made approximately three weeks after the two-year anniversary of the injury.

The judge articulated his scarring/disfigurement award shortly thereafter in another formal hearing and the respondent appealed, claiming that the award was both too early and too late: it was too early because the claimant could conceivably request a scar revision in the future, which might ameliorate the scarring award; it was too late because the award was issued more than two years after the date of injury. The CRB stated "an award made prior to the adjudication of compensability would be deficient as a condition precedent to the award would not exist; and had the Administrative Law Judge delayed any consideration as to the claimant to scar until after compensability was fully litigated, the statutory window would lapse." Therefore, the CRB affirmed the trial judge's award in full.

Albertha Dafinice v. Senior Philanthropy of Newington
6513 CRB-7-23-8 (Conn. Workers' Comp. Rev. Bd. Aug. 9, 2024)

The claimant appealed the Administrative Law Judge's denial of the claimant's Motion to Preclude pursuant to C.G.S. §31–294c(b). A Form 30C was filed alleging injuries to the claimant's head, neck, shoulders, and upper back for which the claimant did not miss any work. The respondents failed to file a timely Form 43 but claimed that they had met their obligation under the safe harbor provision of the statute because they had commenced payment for medical treatment within 28 days of their receipt of the notice of claim. The Administrative Law Judge determined that the Motion to Preclude was denied because sufficient evidence had been introduced into the record to conclude that the respondents had commenced payment within the 28 days and no indemnity payments were due.

The claimant argued that Domeracki v. Dan Perkins Chevrolet, 5727 CRB-4-12-1 (Conn. Workers' Comp. Rev. Bd. May 1, 2013), appeal withdrawn, A.C. 35673 (Conn. App. Ct. Jan. 19, 2016) sets forth two prongs that need to be satisfied for a respondent to claim exemption within the safe harbor provision. The claimant acknowledges that the respondents' payment of the claimant's medical bill satisfied the first prong of the safe harbor for preserving the rights to contest. However, their failure to comply with the one-year deadline for advising the claimant that they were contesting the claim for medical treatment failed to satisfy the second prong. Therefore, the statutory safe harbor rights were not preserved.

The claimant also relied on the CRB's analysis in Mott's KMC Music, Inc., 6025 CRB-1-15-8 (Conn. Workers' Comp. Rev. Bd. Aug. 23, 2016) which affirmed the granting of a Motion to Preclude where the respondents had made sporadic payments of medical and indemnity benefits but failed to issue a disclaimer within one year of their receipt of the Form 30C. There, the respondents issued a Voluntary Agreement more than one year after the date that the 30C had been filed. The CRB in Mott distinguished their holding from Pagan v. Wiping Materials, Inc., 5829 CRB-6-13-4 (Conn. Workers' Comp. Rev. Bd. Mar. 28, 2014) in which a Voluntary Agreement was offered within the one-year time frame. Even if not accepted by the claimant, it was sufficient to preserve the safe harbor against preclusion.

The respondents cited Dubrosky v. Boehringer Ingelheim Corp., 145 Conn. App. 261, 74 A.3d 500, cert. denied, 310 Conn. 935, 79 A.3d 889 (2013) stating that the issuance of a Form 43 within one year would not have been appropriate considering their acceptance of the claim. The CRB distinguished Dubrosky because the claimant had neither lost time from work nor generated any medical bills within the statutory window of 28 days, which is why the Appellate Court determined it was not reasonably practical for the respondents to have complied with the safe harbor statute.

The respondents also contend that their payment of the medical expenses in this case was analogous to the facts in Quinones v. R.W. Thompson Co., 5953 CRB-6-14-7 (Conn. Workers' Comp. Rev. Bd. July 29, 2015), aff'd, 188 Conn. App. 93, 204 A.3d 730 (2019). There, the evidentiary record demonstrated that the respondents had made

substantial medical claim payments such that the trier was able to reasonably conclude that the respondents had acknowledged a compensable claim and immediately began paying benefits until a Form 36 was approved. Essentially, Quinones stands for the proposition that in the absence of filing a Voluntary Agreement within one year of the claimant filing a Form 30C, the respondent must persuade the trial judge that the claimant knew or should have known whether the respondents had acknowledged a compensable claim.

Ultimately, the CRB in the present case remanded this decision back to the Administrative Law Judge for a determination under the Quinones standard as to whether the respondents had acknowledged the compensability of the claim.

Antonio Vitti v. City of Milford
6515 CRB-7–23–9. (August 30, 2024)

In Vitti v. City of Milford, the CRB affirmed the Administrative Law Judge's denial of interest pursuant to C.G.S. §31–295 (c), §31–301c(b) or §31–300 due to an alleged delay in payment of permanent partial disability benefits. The claimant originally prevailed on the issue of compensability of a claim for a heart injury pursuant to C.G.S. §7–433c for which he underwent a heart transplant. The respondents contested this claim arguing that the claimant's giant cell myocarditis was unrelated to work. The Finding and Award was made in 2015, but it was not until September 11, 2019 the award was affirmed by the CRB and the Appellate Court and denied for certification by the Supreme Court.

While the final adjudication of the compensability issue was still pending, the parties commenced litigation on the claimant's eligibility for PPD benefits. Ultimately, on February 1, 2018, the commissioner concluded that the claimant had reached maximum medical improvement in November 2013 and sustained a 23% impairment to his transplanted heart, rather than 100% per the claimant. On March 14, 2018 claimant's counsel notified respondents that the claimant "did not wish to get paid until all the appeals are concluded." The claimant did not want to take the chance that in the event he lost the appeal on the issue of compensability he would be required to repay the PPD award along with the interest rate at 10%.

On September 11, 2019, the Supreme Court denied the respondents petition for certification on the issue of compensability. On September 23, 2019, the respondents issued a check representing full payment of the 23% PPD award. Then, on August 24, 2020, the Supreme Court affirmed the CRB's determination of the 23% impairment, as opposed to the 100% for which the claimant had argued.

The claimant then argued that he was due interest on the entire permanency award pursuant to §31–301c(b) for the period from February 1, 2018, the date of the finding as to permanency, through September 11, 2019, the date that the Supreme Court denied certification on the issue of compensability of the claim. In addition, the claimant argued that because the treating cardiologist had determined that the claimant was at maximum medical improvement in November 2013 when he awarded 23% and because the RME had awarded a 12% impairment, that the claimant was entitled to interest on a permanency award of 12% for the time period starting in November 2013 and continuing until the February 1, 2018 Finding and Award.

The CRB rejected the claimant's argument for interest under §31– 301c (b) because the factual predicate was not met: namely, the respondents' appealed only the compensability issue. It was the claimant who appealed the actual PPD award. The board also considered the claimant's express instructions not to be paid during this interim between the 2018 Finding and the date that the Supreme Court denied the petition in September 2019.

The claimant argued that under Brennan v. Waterbury, 331 Conn. 672, 697 (2019) a respondent must advance at least the lowest rating in a case where there are multiple ratings because there was a meeting of the minds for the lowest impairment rating i.e. even the Respondents' examiner opined there was an impairment rating and established the basement for what it might be, so there was no excuse for not paying that amount. However, this board distinguished Brennan, because in that case compensability had already been established. In the instant case, the underlying appeal of compensability had not been resolved until after the commencement of the litigation about the extent of impairment to the claimant's heart.

The CRB also focused on the claimant's instructions not to pay the impairment rating until after all of the appeals have been decided. The board specifically rejected the claimant's argument that once the compensability argument had been finally resolved, then the respondents' obligation to pay the permanency would be retroactively engaged.

Eileen Post v. Raytheon Technologies/Pratt and Whitney
6524 CRB-8-23-12. (September 6, 2024)

The issue for trial was whether the claimant sustained a compensable injury to her left lower extremity on February 14, 2022. In 1996 she had a total hip replacement followed by six additional surgeries, the last of which was performed in 2017. Approximately 15 years earlier, she suffered nerve damage following one of the surgeries and developed a foot drop. In the month or so prior to the work accident, the claimant had fallen as a result of her drop foot getting caught in a crack in the pavement.

On the date of the accident, the claimant had already clocked in after entering the building and was walking toward her department when her left foot slipped and caused her to fall. She stated that she had assumed that a piece of rock salt had become embedded in the sole of her shoe given the large quantity of rock salt outside of the building, and that she had seen a puddle of water on the floor near where she fell. Subsequently her supervisors investigated the scene and found no evidence of rock salt either in the hallway, on her shoe, or any water on the floor.

The RME, Dr. Raymond Sullivan, opined that the claimant's foot drop was substantially contributed to by the February 14, 2022 workplace fall, and the fact that she was not wearing a leg brace increased her chances of falling. The Administrative Law Judge concluded that neither rock salt nor water on the floor constituted substantial contributing factors to the claimant's fall, but rather that the incident was "caused solely

by her foot drop condition." As a result, the Administrative Law Judge denied and dismissed the claim for compensability from which this appeal emerged.

The respondents conceded that the claimant had proven the first part of the test of compensability, namely, that the incident had risen out of her employment in terms of time, place and circumstance. However, the argument focused on whether the claimant's injuries occurred in the course of her employment. That is to say, can the rational mind "trace the resultant personal injury to a proximate cause set in motion by the employment and not by some other agency..." Fair v. People's Savings Bank , 207 Conn. 535, 545 (1988).

The CRB closely analyzed Clements v. Aramark Corp., 339 Conn. 402 (2021) in which the court denied compensability in a case where the claimant had suffered from a syncopal episode at her place of employment, which caused her to fall backwards, strike her head on the ground and sustain injuries. The court noted that there are two types of idiopathic falls, those that result in injuries, unrelated to workplace conditions, and those in which workplace conditions contribute to the harm by causing the risk of resultant injuries. Id., 421. The Clements court held that: "if an employee is injured from a fall onto a level floor caused by a personal medical infirmity, unrelated to the employment, and the conditions of that employment did not increase the risk or severity of the injuries, so that the fall would've occurred in the same manner, and with a similar result, if it had occurred outside the employment, the causal relationship between the

employment and the injury is insufficient to support of finding that the latter arose out of the former." Id., 425–26.

The Clements court identified certain medical conditions, such as a non-occupational heart attack, epileptic fit, or fainting fit as elements which could cause an idiopathic fall, resulting in injury, which would be non-compensable. Here the claimant argued that her foot drop condition could be distinguished from all of the above-referenced medical conditions because each of those conditions alone could trigger a fall without the involvement of any work activity. The claimant here argued that the substantial employment contribution is the walking itself. The CRB apparently accepted the respondent's argument that if the claimant's rationale were given credence that all falls at work while walking in the course of work would be considered compensable.

The CRB also recited with approval the language in Clements reflecting the sentiment that workers' compensation law "knows the difference between something and nothing and it rightly requires that the employment contribute something to the risk, before pronouncing the injury one arising out of the employment." L. Larson & T. Robinson, Larson' Workers Compensation Law (2019) Sec. 9.01 [4] [b], p. 9–9. As a consequence, the CRB affirmed the trial court's dismissal.

Matthew Tartaglione v City of Derby
6529 CRB-7–24–2. (October 25, 2024)

In Tartaglione v. City of Derby, the Administrative Law Judge dismissed a claim for compensability of a back injury for a police officer after finding the RME and CME more credible than the treating physician. The police officer had a prior herniated disc in his low back, dating back to 2006, ten years before he began working for the police department. His claim was that his job as a police officer since 2016 required him to sit in a police cruiser with a bad seat wearing a heavy gear belt as well as a bulletproof vest. He began treating with a chiropractor and then with an orthopedist, Dr. Girasole, who had originally evaluated him for the herniated disc in 2006. Dr. Girasole provided an opinion that his current symptoms were not related to the injury of 2006. He then began treating with Dr. Kenneth Lipow, a neurosurgeon, who opined that the claimant's long shifts in his cruiser either created a new work-related injury or an aggravation of the pre-existing condition. The RME, Dr. Mushaweh, and the CME, Dr. Jambor, found the injuries were not related to the claimant's work as a police officer.

The CRB noted that claimant's counsel did not choose to depose either Dr. Jambor or Dr. Mushaweh and, therefore, the trier of fact could consider their reports "as is" citing Burube v Tims Painting, 5068 CRB 3–06–3 (March 13, 2007). As such, this was a battle of the experts and "all judgments of evidentiary credibility are left solely to the trial commissioner..." Prescott v. Community Health Center Inc., 4426 CRB 8–01–8 (August 23, 2002). Further, the trial judge noted that the claimant's recollections about

his early medical history involving his back were not credible. As such, the CRB affirmed the trial judge's dismissal.

Sabia v. Valerie Manor, Inc.
6520 CRB-5-23-12 (October 25, 2024)

The trial judge credited the opinions of the claimant's treater over the opinions presented by the RME and the Commission's Medical Examiner. The claimant had been employed for 24 years as a CNA when her right index finger froze while carrying a carafe of coffee. The treating physician, Dr. Douglas Wisch, performed a synovectomy surgery after he determined that the changes to her tendons before the acute rupture on April 21, 2021 were "most likely from just significant repetitive motion".

The Respondent's Medical Examiner, Dr. Duffield Ashmead, stated the claimant's work as a CNA "should not be considered a factor of relevance in this case". The CME, Dr. Eric Carlson, characterized the April 21, 2021 incident as a triggering one, but noted that the rupture could have happened anywhere, and, therefore, found the work event was not a causative factor.

In affirming the trial judge's decision, the CRB found that the judge "was under no obligation to give more credence to the physician who performed the CME than to the other experts' opinions," citing DeLonge v. Norwich, 6286 CRB-2-18-8 (August 5, 2019) which cited Madden v. Danbury Hospital, 5745 CRB-7-12-4 (April 22, 2013). It is worth noting that in Madden, the CRB stated "It is long standing precedent that when a trial commissioner does not rely on the opinions of a commissioner's examiner, the trial commissioner should generally explain in the text of their decision why they found another expert witness more persuasive." Id. However, no such cautionary language is

referenced in the instant decision, continuing a trend away from requiring a trial judge to state her reasons for deviating from a CME opinion.

John P. Killard v. Brock Indus. Servs.
6512 CRB-7-23-8 (Conn. Workers' Comp. Rev. Bd. Oct. 25, 2024)

The trial judge found that the claimant sustained compensable injuries to his cervical spine as a result of a work-related slip and fall in October 2019. She also determined that based on a combination of prior repetitive trauma, causing a hernia, and an aggravation of the hernia in the October 2019 injury, that the hernia was compensable, even though the claimant did not complain of a worsening of the hernia until several months after the date of the slip and fall. The trial judge did not find the claimant's alleged hip injury compensable because it was pre-existing, and the claimant did not complain of symptoms at the time of the slip and fall.

Eleven days before the commencement of the first formal hearing, Dr. Jambor conducted a records review of the claimant's hip injuries in which he provided an opinion that the slip and fall injury could not have caused an osteoarthritic condition in his hip. Claimant's counsel was unable to attend the hearing on such short notice, but Dr. Jambor's deposition was taken two days before the start of the trial. At trial, claimant's counsel objected to both Dr. Jambor's report and deposition testimony, so both were marked as exhibits for identification only, subject to the claimant's opportunity to cross examine Dr. Jambor before the next trial installment which took place over a month later. Claimant's counsel did not avail himself of this opportunity.

Both parties filed Motions to Correct which were denied in total. Therefore, the CRB inferred that the Administrative Law Judge did not find some evidence as probative

or reliable as other evidence that was presented. Vitti v. Richard's Conditioning Corp., 5247 CRB-7-07-7 (Conn. Workers' Comp. Rev. Bd. Aug. 21, 2008). The CRB found that the trial court relied on the claimant's experts on the neck and hernia issues as more probative than the respondent's doctors. However, the respondent's expert's opinion on the issue of the hip was more convincing than the claimant's argument. Further the CRB found that there was no deprivation of due process by records review and deposition on the eve of trial because the trial judge had given ample time for claimant's counsel to cross-examine Dr. Jambor. Therefore, the award and dismissal were upheld.

Tachica Callahan v. Icare Health Mgmt. d/b/a Silver Spring Care Ctr.
6525 CRB-2-23-12 (Nov. 22, 2024)

The CRB affirmed the Administrative Law Judge's dismissal of a claim filed by a pro se claimant who apparently missed the one-year statute of limitations for an acute injury. The claimant attempted to salvage her claim by arguing that her left hip osteoarthritis was the result of an occupational disease. The claimant originally injured her lumbar spine and left hip on June 19, 2017 because of a lifting incident while working for the respondent as a CNA.

The claimant filed eight Forms 30C after the one-year statute of limitations had expired. The claimant sought to avoid the statute of limitations preclusion by arguing that her injury was an occupational disease under C.G.S. § 31–275 (15). The Administrative Law Judge found that the claimant failed to produce any evidence at trial demonstrating that hip osteoarthritis was peculiar to the claimant's occupation as a CNA. In affirming the decision, the CRB cited with approval: "In interpreting the phrase occupational disease, we have stated that the requirement that 'the disease be peculiar to the occupation and in excess of the ordinary hazards of employment', refers to those diseases in which there is a causal connection between the duties of the employment and the disease contracted by the employee." Hansen v. Gordon, 221 Conn. 29, 35, 612 A.2d 119, 122 (1992). The CRB determined that while the claimant had provided reports showing an association between her injury and her employment, there was no proof offered to show that her employment as a CNA made her more susceptible to sustaining an arthritic hip.

The CRB offered examples of compensable occupational illnesses, such as hepatitis C, being an occupational disease peculiar to an EMT's employment such as in Woodmansee v. Milford, 5768 CRB-4-12-7 (Conn. Workers' Comp. Rev. Bd. Dec. 18, 2013). However, the CRB found this case was more like DiGiovanni v. Lombardo Bros. Mason Contractors, 5869 CRB-5-13-8 (Conn. Workers' Comp. Rev. Bd. Aug. 5, 2014) in which the CRB affirmed a dismissal of a case where there was no evidence demonstrating that heavy labor as a mason was peculiar to heavy labor in any other occupation.

Morgan v. Sulzer Pumps Solutions, Inc.
6531 CRB-1-24-2 (January 22, 2025)

In Morgan v. Sulzer Pumps Solutions, Inc., the CRB dismissed the respondents' appeal as untimely after respondents waited more than 20 days from the decision in the case, but fewer than 20 days from the judge's ruling on the claimant's Motion to Correct.

The trial judge found that the claimant had sustained a compensable injury when he had traveled to Bradley Airport to fly to Texas on a business trip, but realized just before boarding the plane that the trip had been cancelled. He was on his way back to his car in the parking garage when he fell, injuring his shoulder. Unfortunately, in his findings, the judge stated that the claimant's injury "arose out of or (sic) in the course of his employment..."

The trial judge issued his Finding and Award on December 21, 2023, and on January 2, 2024, claimant's counsel filed a Motion to Correct the misstatement of law asking for the word "or" to be changed to the word "and". The trial judge denied the Motion to Correct on February 8, 2024, some 49 days after the initial award. Then, on February 27, 19 days after the denial of the Motion to Correct but 68 days after the Finding and Award, the respondents' counsel filed their appeal.

The CRB framed the issue upon whether the 20-day period countenanced in §31-301(a) begins once the decision is published, or whether it is 20 days from the denial of the Motion to Correct. Claimant's counsel argued that the 2007 amendment to

the statute allowing the 20-day clock to start ticking only after the trial judge rules on a Motion to Correct was ambiguous as to whether only the aggrieved party filing the motion should get the benefit of the extra time or whether either party should receive the benefit. Respondent's counsel argued that there was no such ambiguity – that the amendment was clear; either party gets the extra time no matter which files the post-judgement motion.

The CRB agreed that §31-301(a) was susceptible of more than one meaning, given that it was not clear whether the amendment was intended to apply to either party or just the party filing the post-judgment motion. Because the statute is ambiguous, the CRB allowed extratextual evidence in order to determine legislative intent in accordance with §1-2z. The CRB relied on its analysis in Gonzalez v. Premier Limousine of Hartford, 5635 CRB-4-11-3 (April 17, 2012) which was informed by two Supreme Court decisions, Stec v. Raymark Industries, Inc. 299 Conn. 346 (2010) and Dechio v. Raymark Industries, Inc., 299 Conn. 376 (2010). In Gonzalez, the respondents filed post judgment motions, including a Motion to Correct as well as a Motion to Reopen to allow additional evidence, and a timely petition for appeal. Only after the commissioner affirmed his original decision after another formal hearing on the post judgment motion did the claimant file a Petition for Review claiming the commissioner had erred in the original decision. In Gonzalez, the CRB found the claimant's appeal was untimely because the claimant had been aggrieved by the original decision rather than the subsequent denial of the respondent's post-judgment motions, the functional equivalent of a "use it or lose it" approach to timely appeals.

Similarly, in Stec and Dechio, the commissioner found that the claimants had sustained compensable injuries and issued an order of payment against the bankrupt employer after proceedings in which the Second Injury Fund fully participated. Because of the stays in the ongoing bankruptcy proceedings, the commissioner could not issue an order against the Second Injury Fund until the stays had been lifted, the employer failed to pay the award, and until a supplemental order was issued against the Fund. The Fund appealed within 20 days of the supplemental order, but the Supreme Court held that it was incumbent upon the Fund to have filed an appeal within 20 days of the original award "because that decision rendered the likelihood of its responsibility for the payment of the plaintiff's benefits far more than a speculative possibility..." Stec, 403.

The CRB admonished the trial judge for having failed to correct a "glaring misstatement of black letter law," when he was asked to revise the scrivener's error by replacing the conjunctive "or" with "and" an error which was the only legal basis for the appeal, as the other seven reasons of appeal were all based on fact findings. While it may have served neither the "interests of the litigants or this commission" to crawl down this rabbit hole, it did clarify the amendment to §31-301(a) which in and of itself may have been worth the price of admission.

Stanley Massena v. City of Stamford
6534 CRB 7-24-3 (Conn. Workers' Comp. Rev. Bd. Feb. 21, 2025)

The claimant argued that the respondents should be precluded from raising any defenses not specifically articulated in the timely disclaimers filed in response to a claim for heart and hypertension benefits. Specifically, the claimant sought to preclude evidence about his pre-employment physical performed in 1988, which respondents claim may have shown evidence of hypertension (he checked a box on a questionnaire stating that he had hypertension). A second Motion to Preclude sought to exclude the testimony of the claimant's primary care physician as to the issue of whether the claimant suffered from hypertension in 1988.

The trial judge denied both motions, and the CRB affirmed. In the three disclaimers filed, the respondents did not specifically state that there was evidence of hypertension at the time of the pre-employment physical. Further, the claimant argued that the first time this defense had been asserted was on the day of the formal hearing 15 years after the Notice of Claim had been filed.

In affirming the trial judge's denials, the CRB noted that for 10 years out of the 15 year interval, there was no ongoing litigation. Additionally, although the language in the disclaimers did not explicitly state that the claimant had not passed his pre-employment physical, there was language sufficient "to apprise the plaintiffs that the defendants were challenging an element the plaintiffs were obligated to prove in order to meet the prima facie threshold for their claim," the standard established in Tovish v. Gerber

Electronics, 19 Conn. App. 273, 562 A.2d 76 (1989). The CRB was not swayed by claimant's arguments that the pre-employment physical report was accessible to the respondents for 15 years, or that respondents had represented to the commission at prior informal hearings that the claimant's pre-employment physical was "clean." Similarly, the CRB rebuffed the claimant's arguments that the birth of this new defense on the day of the formal hearing did not constitute undue delay because it took the claimant 15 years to bring the claim to a formal. There is an undercurrent in the opinion that the standard for due diligence in a workers' compensation proceeding is a "somewhat amorphous standard" (Tovish at 14) which allows the trial judge to deviate from the "ordinary common law or statutory rules of evidence or procedure" to render a just judgment. (Tovish at 16).

Finally, the CRB avoided the issue of whether the findings in a pre-employment physical implicate a jurisdictional defense in light of its ruling on the Motions to Preclude.

Quinn v. Pierce Builders, Inc.
6539 CRB-1-24-4 (April 25, 2025)

In this case, the CRB explored the distinction between an employee and independent contractor where the claimant, who owned his own detailing business, did work for the putative employer in the exact same truck detailing and driveway-salting business. There was evidence that cut in both directions in this case. The CRB noted that under the precedent established by Hanson v. Transportation General, Inc., 245 Conn. 613 (1998) the Administrative Law Judge (ALJ) was required, but failed to consider, the totality of evidence and evaluate the "totality of factors," using the right to control test. Id., 625 In Quinn, the ALJ considered and recited Findings of Fact that supported a finding of an employment relationship including the claimant working exclusively for the respondent, his work was supervised by the employer, the claimant was required to request time off, he was told where to buy materials and was reimbursed for the cost of the same. In addition, the claimant was allowed to introduce a conversation he recorded without the respondent's knowledge or consent in violation of Connecticut law, although nothing in the award references what, if any, consideration the ALJ accorded to this evidence.

The respondent presented abundant evidence that would have supported a determination that the claimant was an independent contractor; however, the Findings of Fact were bereft of any such evidence having been considered by the ALJ. Specifically, testimony was adduced at trial that the claimant received a 1099, he was not required to wear a uniform, he supplied his own tools, he was paid via invoices he

submitted to the respondent, he was not restricted from working other jobs with his own detailing company and he did not receive any benefits. While the ALJ probably would have been upheld based on these facts, the CRB found that the ALJ had failed to articulate why he had discounted the evidence offered by the respondents, or even if he had considered it. He simply found that the claimant was an employee.

Further, the CRB agreed with the respondent's argument that the ALJ should have barred the secret recording as it was in derogation of C.G.S §52-570d and 52-184a since the respondent had not consented to the recording and that although the rules of evidence do not strictly adhere in the workers' compensation forum, "we do not believe this latitude extends to acting in derogation of the statutes outside chapter 568." As such, the matter was remanded for a de novo hearing consistent with this opinion.