Ajdini v. Frank Lill & Son (SC 20836)

In Ajdini v. Frank Lill & Son, the Supreme Court had the chance to decide whether a Form 43 notice of intention to contest the plaintiff's right to compensation needed to be delivered within 28 days of the employer's receipt of a 30C, as the claimant argued, or whether the Form 43 merely had to be deposited in the mail (The mailbox rule) as urged by the respondent.

The Court applied plenary review and the established rules of statutory construction pursuant to C.G.S. §1-2z, namely construing the plain meaning of the statute and its relationship to other statutes. The relevant language in C.G.S. §31-294c (b) states: "Whenever liability to pay compensation is contested by the employer, he shall *file* with the administrative law judge*, on or before the twenty-eighth day* after he has received a written notice of claim, a notice in accord with a form prescribed by the chairperson of the Workers' Compensation Commission stating that the right to compensation is contested..." Because the word "file" has not been defined in the statute, the Court relied on the Black's Law Dictionary (6th Edition 1990) which defined the word file as "to *deliver* an instrument or other paper to the proper official..." The Court further noted that there are further "contextual clues" in the second sentence of C.G.S. §21-294c (b) which states that "The employer shall *send* a copy of the notice to the employer in accordance with Section 31-321." The Court turned again to Black's Law Dictionary which defines the word *send* as: "to cause something to be conveyed or transmitted by an agent to a destination." The Court concluded that "if the legislature had wanted, as the defendants argue, for an employer to satisfy its statutory obligation by simply mailing the notice, it could have used the word 'send' just as it did in the subsection with respect to providing notice to the employee." Based on this analysis, the Court affirmed the trial judge's granting of the motion to preclude and the CRB's affirmance of the same. Query whether this delivery standard, rather than the mailbox rule, should apply to the claimant's filing of a 30C.

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Louis Martinoli v. Stamford Police Department, Et Al., 348 Conn. 918, 303 A.3d 1195 (2023)

In Martinoli v. Stamford Police Dept., argued the same day as Cochran v. DOT, 350 Conn. 844, 327 A.3d 901 (2024), the 64 year-old claimant had retired from the Stamford police force in 1999, due to a compensable claim for coronary artery disease, hypertension, and congestive heart failure, pursuant to C.G.S. §7–433(c). At the time he retired, he had no intention of returning to work for the respondent police force, or for any other potential employer, a fact about which he was not reticent when discussing the same with his physician and others. Approximately 16 years later, when the claimant was 80 years of age, he developed atrial fibrillation and subsequently had a stroke. The claimant was awarded temporary total benefits by the trial commissioner. The case was appealed to the CRB, which affirmed the trial judge's award. The CRB stated that "finding precedent, interpreting the statute, has eliminated necessity to be available for work in order to be eligible for temporary total benefits." The CRB cited Laliberte v. United Security, 261 Conn. 181, 801 A.2d 783 (2002) where a claimant was awarded TT benefits following his incarceration, as authority for the proposition that there is no requirement for a claimant wanting to work to receive TT benefits.

The case was appealed to the Appellate Court where the court there found that "for the plaintiff to be paid, at age 80, temporary total disability benefits... For a loss of earnings from employment when he never planned or intended to be employed again... leads to a bizarre and unreasonable result." Martinoli, 220 Conn. App. At 880. The Supreme Court reversed the Appellate Court's decision relying on the holding in

Cochran, that the plain and unambiguous language of 31-307(a) required that an employee who voluntarily retires from employment is still entitled to TT benefits. The employee's retirement and lack of intent to return to the workforce does not render him ineligible to receive total incapacity benefits under the statute. The court remanded the case to the Appellate Court, with direction to consider the defendants' remaining two claims that were not addressed, and in its initial deliberations. Specifically, the defendant argued that the CRB erred in determining the TT benefits should be paid pursuant to a minimum compensation rate as of the date of total incapacity, as opposed to an earlier date of injury. The defendant's second argument was that the CRB failed to find that any temporary total benefits paid to the claimant after the date of maximum medical improvement would be a credit against the increase in the permanent partial impairment award.

Robert Esposito v. City of Stamford
350 Conn. 209, 323 A.3d 1066 (2024)

This case involves an appeal from a CRB decision affirming the trial court denial of posthumous permanency benefits to a decedent's spouse. In 1982, the decedent fell and struck the back of his head on a concrete floor, causing him to lose consciousness. The fall resulted in a permanent loss of vision leaving him with 20/200 vision in both eyes, and the claimant began receiving temporary total benefits. In 1995, the ophthalmologist found that the decedent suffered from a "hysterical component" that contributed to his inability to see, a condition known as "psychogenic blindness." There was disagreement as to what percentage of his blindness was caused by the psychological component versus the visual component.

In 1998, the respondents filed a Form 36 contesting the decedent's continued entitlement to temporary total incapacity benefits. The commissioner then denied the Form 36 finding that the decedent had suffered from a "total and permanent loss of sight or the reduction to 1/10 or less of normal vision in both eyes," thereby satisfying the standard for temporary total incapacity benefits under 31–307(c). The decedent's surviving spouse and sole presumptive dependent sought permanency benefits, pursuant to 31–308(b). The plaintiff claimed that the decedent's eye condition became permanent no later than 1998, following the Form 36 hearing, and that his right to permanency benefits vested once his condition became permanent. The Administrative Law Judge concluded that the decedent's entitlement to permanency benefits under 31–308(b) had vested no later than the date of the 1998 finding, entitling him to 235 weeks of benefits for each eye. However, the judge also concluded that the defendants

were entitled to a credit against any permanency award "for all indemnity benefits paid after the date of maximum medical improvement." Because the decedent lived for another 22 years, his permanency benefits were subsumed by the credit for the ongoing temporary total benefits. Therefore, the plaintiff's claim for permanency benefits was dismissed.

The defendants argued in this appeal that the 1998 finding did not satisfy the standard for payment of a specific award because there was no medical report addressing maximum medical improvement and the parties had never discussed a permanent partial disability rating during the decedent's lifetime. The Supreme Court agreed, relying on Churchville v. Bruce R. Daly Mechanical Contractor, 299 Conn. 185 8 A.3d 507 (2010) which stands for the proposition that permanency benefits automatically vest once maximum medical improvement is reached, even if the claimant has not affirmatively requested those benefits. However, it distinguished Churchville from the facts of the present case where the claimant had reached maximum medical improvement and had been assigned ratings prior to his death. The Supreme Court also looked to Brennan v. City of Waterbury, 331 Conn. 672, 207 A.3d 1 (2019) in which the Supreme Court found that permanent disability benefits can 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. at 697. The court disagreed with the plaintiff's interpretation of the 1998 commissioner's decision of the Form 36 hearing. The court found that, despite the language in the 1998 decision referencing a permanent loss of vision to both eyes, this was not a determination that

the decedent had reached maximum medical improvement. Further, the court found unavailing the plaintiff's argument that because the claimant had been receiving temporary benefits for decades that his loss of eyesight was total and permanent. The court held that there was no meeting of the minds as to either the decedent having reached maximum medical improvement or the degree of his permanency, especially considering the unresolved issue of the psychological "hysterical component" of his injuries. Accordingly, the Supreme Court affirmed the CRB's denial of the petition for permanency benefits. Further, the Supreme Court avoided a determination as to whether the respondent was entitled to a credit against permanency benefits for the temporary total benefits paid during his lifetime after he had reached MMI.

Cochran v. Department of Transportation
350 Conn. 844, 327 A.3d 901 (2024)

In the case of Cochran v. DOT, the CRB affirmed the trial court's determination that the long-retired claimant is entitled to temporary total benefits, following a relapse in his condition. The claimant was originally injured in June 1993, and after numerous surgeries, accepted a voluntary retirement from his job in April 2003, at the age of 54. At the time he retired, he had no intention of returning to the workforce upon leaving state service and taking his retirement. His wife testified that he was still "pretty functional" when he retired and was able to get up and go to work every day.

Following his self-proclaimed "golden handshake" retirement, which provided an incentivized, early-retirement benefits package, providing "more money", he did not try to find a less arduous job with the state DOT, or ask the state to accommodate him so he could continue to work.

In April 2013, the claimant underwent additional back surgery. A vocational rehabilitation expert provided testimony that as of December 30, 2017, he was unemployable. A neurosurgeon's report similarly opined that he had the "lightest of work capacity" only. As a consequence, the trial commission found that he was entitled to temporary total benefits thereafter, and the CRB affirmed this decision. The CRB determined that C.G.S. §31–307 "in its current form imposes no constraints on the claimant's ability to collect temporary total benefits due to retirement status; rather it mandates the injured claimant shall be paid a weekly compensation..." Further, the

CRB relied on Laliberte v. United Security, Inc., 261 Conn. 181, 801 A.2d 783 (2002) a case in which an incarcerated claimant was entitled to collect TT benefits.

The Appellate Court reversed the decision concluding that the plain and unambiguous language of C.G.S. §31–307 (a) requires that to be eligible for temporary total benefits, a claimant's "injury… results in total incapacity to work." The court reasoned that an employee's injuries must result in the inability of the employee to work at his customary calling, or any other occupation he might reasonably follow. The court found that it would be unreasonable to interpret the statute as allowing an injured employee to receive total incapacity benefits after his retirement, without having demonstrated any **intention** to return to the workforce.

The sole issue before the Supreme Court was whether an employee who has sustained a compensable injury under the Act is eligible to receive total incapacity benefits under C.G.S. §31–307(a) when the total incapacity occurred after the employee's voluntary retirement from the workforce. The relevant portion of the statute states: "if any injury for which compensation is provided under the provisions of this chapter results in total incapacity to work, the injured employee shall be paid a weekly compensation equal to seventy-five percent of the injured employee's average weekly earnings as of the date of the injury calculated pursuant to §31–310". The Supreme Court identified the crux of the parties' disagreement as their respective interpretations of the phrases "results in" and "total incapacity to work" in the statute.

The court began its analysis by reviewing the phrase "results in." The plaintiff construed this language as requiring a causal relationship between the original compensable injury, and the claimant's subsequent inability to work, regardless of whether the employee voluntarily removed himself from the workforce prior to total incapacity. The defendant employer characterized the voluntary, permanent retirement as an independent case of total incapacity arguing that the claimant's voluntary departure from the workforce cut off the causal connection between the original workplace injury, and the subsequent total incapacity to work.

The court examined the legal phrase "results in" by looking at the Black Law dictionary definition and determined that the meaning today was the same as when the statute was first enacted in 1913. Namely, "To be a physical, logical, or legal consequence..." Applying this definition to the statute, the court found that there had to be a causal nexus between a workplace injury that "results in" the total incapacity to work if that injury is a cause of the claimant's incapacity to work, citing Abrahams v. Young & Rubicam, Inc., 240 Conn. 300, 306, 692 A.2d 709 (1997). In other words, total incapacity benefits must be paid if the workplace injury is the proximate cause of the claimant's total incapacity to work.

The court buttresses this argument by referring to its prior holding in Laliberte, that if a claimant was rendered totally incapacitated by the initial work injury, incarceration would not "disrupt" the causal connection. In Laliberte, the court found the legislature responsible for determining whether there should be special exemptions

which might disrupt the causal connection. Further, the court held that the sole eligibility criterion in the statute was the compensable injury that resulted in total incapacity to work and stated, "it was his disability, and not his imprisonment, that precluded him from working." Id. at 184.

The court rejected the Appellate Court's rationale that Laliberte could be distinguished from the instant case because the claimant's compensable injury in Laliberte is what caused him to stop working, even though that claimant wanted to continue working. In other words, the defendants argued that because Mr. Laliberte wanted to continue working, and Mr. Cochran wanted to stay retired, Mr. Cochran should be denied temporary total benefits. The court found that the statute entitled all medically qualified claimants to receive total incapacity benefits, with no exception for claimants who had no intention of returning to the workforce. The court also rejected the other argument offered by the Appellate Court that Laliberte is distinguishable because it involved the discontinuance of benefits via a Form 36 rather than the initiation of benefits. The Supreme Court cited the Amicus curiae brief which noted that the Laliberte decision did not suggest that the court would have reached a different result if the claimant had been incarcerated immediately after sustaining his compensable workplace injury and subsequently sought his temporary total benefits.

The Supreme Court then analyzed the phrase "total incapacity to work" and referenced language in an older decision, Osterland v. State, 135 Conn. 498, 66 A.2d 363 (1949) which defines total incapacity to work as "the destruction of his capacity to

earn in that or any other occupation that he can reasonably pursue." Id at 505. The Supreme Court rejected the defendant's attempt to have the court construe the phrase "total incapacity to work" as the claimant's *willingness* to work. Accordingly, a claimant must be ready and willing, yet unable to work to establish total incapacity benefits. If the Osterlund court determined that the legislative intent of the statute was to include a volitional element, it would have explicitly included language to that effect. The court stated that "the legislature knows exactly how to impose such a requirement when it desires to do so..." because such a provision requiring a willingness to work is found in the temporary partial statute under C.G.S. §31–308 (a).

The Supreme Court also found unavailing the defendant's argument that the Osterland line of cases required a willingness to work requirement. The court found that in cases in which a claimant was not medically incapacitated, that claimant could still prove that they were nonetheless unemployable by virtue of showing a willingness to work demonstrated, in part, by work searches. The court held that the defendant had confused the statutory requirements of total incapacity, offered by these cases, with the evidentiary method for a claimant to prove their total incapacity (such as a production of fruitless job searches). Such an evidentiary requirement would be "nonsensical" in the instant case.

Further, the court fortified its argument of statutory construction by looking at C.G.S. §31–310c, which provides a wage calculation formula for occupational diseases that manifest "at a time when the worker has not worked during the 26 weeks

immediately preceding the diagnosis of such disease..." The court observed that it would make no sense for the legislature to have created a wage calculation formula for benefits that do not exist. The court also pointed to §7–433c under the heart and hypertension act allowing benefits for heart disease cases regardless of whether the claimant is still employed. The court found it persuasive that the language of the heart and hypertension statute would closely mirror the language in §31–307 (a) permitting receipt of benefits by workers whose injuries incapacitate them only after their voluntary retirement.

The court also identified the Appellate Court's flawed logic in stating that the purpose of §31–307 (a) is to compensate an injured worker for their wage loss, but that someone who is voluntarily retired from work has no wages to replace. The court emphasized that the purpose of total incapacity benefits is to provide compensation for wage loss, in addition to compensation for loss of earning power, citing Marandino v. Prometheus Pharmacy, 294 Conn. 564, 986 A.2d 1023 (2010). The court stated "awarding total incapacity benefits to a claimant who becomes incapacitated after retirement, and who, therefore cannot earn a living should they need or desire to return to the workforce, serves the purpose of compensating for loss of earning power." Correspondingly, the court found that the statute serves a dual purpose: to compensate for wage loss and loss of earning capacity.

The Supreme Court upheld the Appellate Court's finding that the language of the statute in 31–307 (a) was plain and unambiguous; however, the syllogism ended there.

The Supreme Court's reading of the plain and unambiguous language of the statute lead to its ineluctable conclusion that there is no requirement for a claimant to want to continue to work after voluntary retirement to collect TT. As for the concerns of employers and insurers that the requirement to pay TT after retirement will cause them financial hardship, and a windfall to retired claimants, the Supreme Court answered that such a change would need to be brought through the legislature.

Gardner v. Dep't of Mental Health & Addiction Servs.
351 Conn. 488, 330 A.3rd 1125 (2025)

The issue was whether an Administrative Law Judge has the discretion to award ongoing temporary partial benefits, pursuant to C.G.S. §31-308(a), once a claimant has reached maximum medical improvement. The state argued that an Administrative Law Judge has no such discretion in light of the legislative history surrounding the amendment to 31-308 in 1993 which limited a judge's discretion to post-specific temporary partial benefits after a claimant reaches maximum medical improvement. In addition, the state argued that 31-308(a) had to be read in harmony with C.G.S. §31-295(c) which provides in relevant part that a specific award "shall be paid to him beginning not later than thirty days following the date of the maximum medical improvement of the member or members and, if the compensation payments are not so paid..." the employer would also have to pay interest at 10% per annum.

The Appellate Court considered the text of the statute itself as well as its relationship to other statutes, in accordance with C.G.S. §1-2z and determined that the text and its relation to other statutes (31-295(c) in particular) were not plain and simple and yielded unworkable results. As such, the Appellate Court looked to extratextual evidence to interpret the statute. The language examined in 31-308(a) provides that temporary partial benefits "...shall continue during the period of partial incapacity, but no longer than five hundred twenty weeks." Further, 31-308(b) provides that a PPD award may be paid "...in addition to the usual compensation for total incapacity but in lieu of all other payments for compensation..." After finding this language susceptible to more

than one interpretation, and after finding that C.G.S. §31-295 seemingly required an employer to commence permanent partial disability benefits within 30 days after the claimant reached MMI, the Appellate Court then examined the legislative history of the statutes. The Appellate Court held that in 1967 the legislature amended §31-308 to expressly afford a commissioner the authority to award either ongoing temporary partial disability benefits or permanent partial disability payments after a claimant reached MMI. However, in 1993 subsection (d) of this statute was eliminated in a cost-cutting reform. The Appellate Court were unpersuaded by the argument that Osterlund v. State, 129 Conn. 591, 30 A.2d 393 (1943) is still good law, deciding apparently the legislature's removal of subsection (d) of the statute nullified Osterlund, at least as far as pre-specific temporary partial benefits are concerned.

The Supreme Court reversed the Appellate Court, finding that the lower court had erred in considering extratextual evidence in that "The language in §31-308(b) to which the plaintiff directs us is plain and unambiguous with respect to the question presented in this case and does not yield absurd or unworkable results." The Supreme Court clarified that it had never overhauled Osterlund or questioned its vitality: it is still good law. Further, the Supreme Court found that the Appellate Court's reliance on Rayhall v. Akim Co., 263 Conn. 328, 819 A.2d 803 (2003) is inapposite because that case only stands for the proposition that a claimant suffering with two injured limbs was not required to accept PPD as soon as he had reached MMI status for one of the limbs (but not for the second limb). Further, the Supreme Court dispelled the notion that C.G.S. §31-295(c) requires an employer to commence PPD benefits within 30 days of

getting rated; rather, the statute provides that a claimant's entitlement to 31-308(b) vests once the claimant has reached MMI, and that an employer has the obligation to pay §31-308 permanency benefits "sometime in the future," citing Esposito v. City of Stamford, 350 Conn. 209, 323 A.3d 1066 (2024).

The Supreme Court ruled that "the plain and unambiguous language of §31-308(b) gives an Administrative Law Judge discretion to award up to 520 weeks of ongoing temporary partial benefits up to the statutory maximum of 520 weeks." The court noted that this reading of the statute contemplates that there "might be, in case of partial loss of function, a great disproportion between the amount of specific compensation provided and the actual effect of the injury." Gardner citing Osterlund.

The following is an excerpt from a memorandum regarding proposals to enact legislation to overturn this decision, as drafted by Robert Carter and Donna Civitello for the purposes of illustrating the rarity with which these cases have appeared since Osterlund and presumably will appear in the future.

"Perhaps the over-reaction and hyperbole expressed by the opponents of the Gardner ruling can be understood in the context that such claims are as rare as hens' teeth, and they may never have encountered such claims themselves. As this memorandum documents, continuing temporary partial disability awards have been and will always be rare. Pursuing such a course only makes sense in a small number of cases, where the permanent partial disability benefits amount to only a few weeks, but

where the evidence supports a finding that impairment from a work injury prevents the claimant from continuing to do the same work and significantly affects the claimant's earning capacity. In the vast majority of cases, the injured employee prefers to take the statutory permanent partial disability benefits provided under Section 31-308(b), because the danger is that, after a formal hearing, the ALJ will decide, as in the Laneve case, that the claimant didn't prove his or her entitlement. There is also the possibility that an ALJ would award only a limited number of weeks, subject to credible job search efforts, or continued enrollment in a commission-approved vocational rehabilitation program. Most claimants, offered the alternative courses of action by their attorneys, opt for the simple and more certain benefit, permanent partial disability.

Therefore, there is nothing at all new in the Supreme Court's Gardner decision; it simply and properly confirms that the law remains the same as it has been since 1943, the only variation being that the duration of the availability of Section 31-308(a) benefits has varied under this statute; the present maximum number of 520 weeks was previously 780 weeks."