NUZZO & ROBERTS NEWSLETTER

May 2020

WORKERS' COMPENSATION UPDATE: FIRST QUARTER 2020

In recent months, the courts and the Compensation Review Board have issued several important decisions regarding workers' compensation law.

COVID-19 TEMPORARY RULES

Due to the COVID-19 health crisis many of the Connecticut regulations and statutes have been temporarily suspended. The changes focus on telephone informal and pre-formal hearings, video formal hearings, telemedicine, the waiver of job searches for temporary partial disability and Connecticut General Statutes §31-308a benefits, and the suspension of the statute of limitations, including the waiver of the requirement to pay settlements within 20 days of the approval of the Stipulation.

Please go to wcc.state.ct.us for a full listing of all the changes.

SUPREME COURT AND APPELLATE COURT DECISIONS

Principal Employer

In ***Dunkling v. Lawrence Brunoli, Inc.***, 195 Conn. App. 513 (2020), the Connecticut Appellate Court affirmed the ruling of the Compensation Review Board that Lawrence Brunoli, Inc. (Brunoli) was the principal employer pursuant to Connecticut General Statutes §31-291 and liable to pay benefits to the claimant.

The claimant was originally an employee of Connecticut Metal, a subcontractor. Brunoli was the general contractor hired by the Connecticut Department of Transportation for a construction project. Mr. Dunkling was laid off by Connecticut Metal. About a month later, the State contacted Brunoli about a leaking gutter and another subcontractor, Mid-State, was directed by Brunoli to fix the problem. Mid-State contacted the claimant and hired him to fix the leak. The next day the claimant was injured while working. On that date, Brunoli had workers' compensation insurance, but neither of the subcontractors had insurance.

Brunoli argued that on the date of injury, they were not at the worksite and the work was essentially completed. Therefore, Brunoli believed they did not control the worksite and could not be the principal employer pursuant to Connecticut General Statutes §31-291. However, the trial commissioner, the Compensation Review Board and the Connecticut Appellate

Court all concluded Brunoli was the principal employer. Specifically, Brunoli may not have been at the worksite on the date of injury, but they exercised control by directing Mid-State to fix the leak and informing Mid-State they would not get paid if they did not complete the work.

The purpose of the principal employer statute is to protect employees of minor contractors and to make the principal employer responsible for the worksite they controlled. The statute states, "When any principal employer procures any work to be done wholly or in part for him by a contractor, or through him by a sub-contractor, and the work so procured to be done is part or process in the trade or business of such principal employer, and is performed in, on or about premises under his control, such principal employer shall be liable to pay all compensation under this chapter to the same extent as if the work were done without the intervention of such contractor or subcontractor."

REVIEW BOARD DECISIONS

Whether The Commissioner's Sua Sponte Rulings Were Appropriate

In ***Saquipay v. All Seasons Landscaping of Ridgefield, L.L.C.***, 6332 CRB-7-19-5 (January 31, 2020), the Compensation Review Board reversed the trial commissioner's decision regarding whether an illegal alien can be permanently totally disabled pursuant to the Osterlund standard.

In this matter, the claimant suffered serious compensable injuries. At the time of his injury, Mr. Saquipay was an illegal alien who had lived in the United States for 14 years. A formal hearing was held to determine if the claimant was totally disabled from May 14, 2012 to January 23, 2014 and if he was permanently totally disabled pursuant to the Osterlund standard since January 23, 2014. At the formal hearing the parties submitted a stipulation of facts that included vocational evaluations from the claimant's expert, the respondent's expert, and the treating physician that all concluded the claimant did not have a functional work capacity.

The trial commissioner ruled the claimant was not totally disabled from May 14, 2012 to January 23, 2014 and he was not permanently totally disabled pursuant to the Osterlund standard. In reaching this conclusion, the trial commissioner stated the claimant's illegal alien status prevented him from receiving temporary total or permanent total disability benefits. Significantly, the trial commissioner addressed the illegal alien issue *sua sponte* without allowing the parties to brief the issue and she rejected the conclusions of the vocational experts and treating physician.

In reversing the trial commissioner, the Compensation Review Board stated the stipulation of facts from the parties accurately reflected the underlying evidentiary record, and thus the trial commissioner's reason for rejecting the stipulation of facts was incorrect. The

Board opined that "although a commissioner is not generally bound to accept any given factual stipulation presented by the parties," there should be a supportable reason for the rejection.

The Board also stated the trial commissioner can reject the testimony of experts, "however, a commissioner's decision to disregard expert opinion cannot be arbitrary. Under the particular circumstances of this matter, we believe the commissioner acted arbitrarily in rejecting the assessments provided by the vocational experts for both the claimant and the respondent: assessments that were essentially in agreement regarding the claimant's lack of earning capacity, consistent with the opinion of the claimant's treating physician, and fully consistent with the claimant's uncontroverted testimony regarding his limitations."

The trial commissioner concluded the claimant could not receive total disability benefits because he was not legally able to work in the United States. In rejecting the trial commissioner's finding the Board stated, "both vocational experts determined that the claimant was unemployable without even considering his immigration status. In other words, even if the claimant had been legally free to seek sedentary employment, both experts are convinced he would not have been able to find such work, given his restrictions, age, education, skills and limited knowledge of English. If a work injury renders a claimant totally incapacitated, the fact that other limiting factors may thereafter be discovered, or come into existence, does not automatically end his/her entitlement. See, e.g. ***Laliberte v. United Security, Inc.***, 261 Conn. 181, 183 (2002) (a claimant who was collecting total incapacity benefits and subsequently became incarcerated was still entitled to collect total incapacity benefits.) Therefore, given the vocational opinions, the question of whether the claimant was able to legally seek employment was irrelevant."

Finally, the Board held the trial commissioner incorrectly applied ***Dowling v. Slotnik***, 244 Conn. 781 (1998), which concluded the claimant's "undocumented status does not work to exclude him from receipt of benefits for temporary total disability under the Connecticut Workers' Compensation Act." Essentially, the undocumented worker is treated the same if temporarily totally disabled or permanently totally disabled under Osterlund. In citing to Dowling, the Board stated, "excluding such workers from the pool of eligible employees would relieve employers from the obligation of obtaining workers' compensation coverage for such employees and thereby contravene the purpose of the Immigration Reform Act by creating a financial incentive for unscrupulous employers to hire undocumented workers."

In this matter, "the commissioner's improper decision to view the issues through a public policy lens and her subsequent failure to afford the parties the

opportunity to provide supplemental briefs on the issues raised *sua sponte*, served to deprive the litigants of due process."

Did the Town Comply With §31-284b(a)?

In ***Petrone v. Town of Ridgefield***, 6313 CRB-4-19-3 (February 27, 2020), the Compensation Review Board reversed the trial commissioner's decision that the deceased claimant's estate was not entitled to life insurance benefits upon her death. The claimant was a teacher for the Town of Ridgefield and pursuant to Connecticut General Statutes §31-284b(a) the town was obligated to continue to pay for the claimant's life insurance policy while she collected workers' compensation benefits. However, the policy the town purchased did not apply to employees who were inactive, and the insurer did not payout on the policy upon the claimant's death.

Although the trial commissioner was correct, that the Workers' Compensation Commission did not have jurisdiction to rule whether the life insurance company acted properly in refusing to pay, in this matter the issue was whether the town had complied with Connecticut General Statutes §31-284b(a) by purchasing a policy that did not cover inactive employees.

Therefore, as a statutorily compliant life insurance policy was not purchased, the town was essentially self-insured for the claimant's life insurance policy and obligated to pay to the estate for the amount of the policy it should have purchased.

WHEN IN DOUBT, CALL US

We are only a phone call away. If you have any questions, call us!!

Contact David Weil at dweil@nuzzo-roberts.com, Jane Carlozzi at jcarlozzi@nuzzo-roberts.com, Jason Matthews at jmatthews@nuzzo-roberts.com, James Henke at jhenke@nuzzo-roberts.com, Kristin Mullins at kmullins@nuzzo-roberts.com, Michael Randall at mrandall@nuzzo-roberts.com or Evan Dorney at edorney@nuzzo-roberts.com

NUZZO & ROBERTS, L.L.C.
P.O. Box 747, One Town Center
Cheshire, CT 06410
Phone: (203) 250-2000
Fax: (203) 250-3131
or www.nuzzo-roberts.com