

NUZZO & ROBERTS

NEWSLETTER

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WORKERS' COMPENSATION UPDATE: FIRST QUARTER 2019

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

SUPREME COURT AND APPELLATE COURT DECISIONS

Motion to Preclude Properly Denied

In *Quinones v. R.W. Thompson Co.*, 188 Conn. App. 93 (2019), the Connecticut Appellate Court affirmed the trial commissioner and Compensation Review Board's decisions. The respondents did not contest the compensability of the claim with a Form 43, but they paid indemnity benefits and medical bills in a timely manner. After the respondents filed a Form 36 to discontinue benefits that was approved without contest, the claimant filed a Motion to Preclude for the failure to timely contest the underlying case.

A formal hearing regarding the Motion to Preclude was started with Commissioner Thompson, who died before the formal hearing could be completed. After the

parties were informed by the Workers' Compensation Commission they could have a hearing de novo with a new commissioner, the claimant objected. Although the respondents were willing to have a new commissioner issue a ruling based on the existing record, they also did not object to a hearing de novo.

Thereafter, a new formal hearing was scheduled with Commissioner Delaney, and the claimant objected to the new formal hearing. The objection to the formal hearing was denied. At the formal hearing, Commissioner Delaney recalled the claimant for further questioning and then denied the Motion to Preclude.

The Appellate Court has affirmed Commissioner Delaney's rulings. Specifically, there was no firm understanding between parties regarding the appropriateness of a de novo formal hearing and the type of hearing that was held was not a de novo formal hearing. Furthermore, even if there was a stipulation on this issue, the trial commissioner retains the discretion to recall a witness to properly decide the case. Finally, the Motion to Preclude was denied because as the respondents had paid all indemnity benefits owed and for all the medical treatment, they were not required to file a Form 43.

The Form 36 for Maximum Medical Improvement was Properly Approved

In *Rivera v. Patient Care of Connecticut*, 188 Conn. App. 203 (2019), the Connecticut Appellate Court affirmed the trial commissioner and Compensation Review Board's decisions. The trial commissioner approved a Form 36 stating that Ms. Rivera had reached maximum medical improvement for one of her three injuries. As the claimant remained temporarily totally disabled for her other two injuries, her work capacity was not changed. The respondents continue to pay the claimant temporary total disability benefits because of the two other injuries.

The claimant argued the respondents had the burden to prove she had a work capacity before a commissioner could rule she was at maximum medical improvement for any of her injuries. However, the Appellate Court points out that because "the commissioner limited his finding on the Form 36 to the issue of whether the [claimant] reached maximum medical improvement as to her partial disability to her right lower extremity, he did not need to address the issue of the work capacity. Consequently, the record does not support the [claimant's] contention that the commissioner improperly required her to prove that she lacked a work capacity."

REVIEW BOARD DECISIONS

Permanent Partial Disability for a Heart Transplant

In *Vitti v. City of Milford*, 6246 CRB-4-18-2 (January 17, 2019), the Compensation Review Board affirmed the finding of the trial commissioner that the claimant was not entitled to a 100% permanent partial disability payment for the loss of his native heart, but he was entitled to a 23% permanent partial disability for the transplanted heart.

The benefits for this matter were awarded pursuant to Connecticut General Statutes § 7-433c (Heart and Hypertension). Prior to having the heart transplant the board-certified cardiologist concluded Mr. Vitti had reached maximum medical improvement with a 100% permanent partial disability of the heart. However, after the heart transplant the same doctor stated the claimant had a stable cardiac function, but he has a 23% permanent partial disability for the transplanted heart because of deficits as compared to a healthy heart.

The claimant alleged the loss of the native heart is analogous to the amputation of a limb and cited to *Wreen v. Connecticut Brass Co.*, 96 Conn. 35 (1921) which stated, "The loss of the arm through amputation occurs when the amputation takes place. The complete and permanent

loss of the use of the arm occurs when no reasonable prognosis for complete or partial cure, and no improvement in the physical condition or appearance of the arm can be reasonably made. Until such time the specific compensation for the loss of the arm, or for the complete and permanent loss of its use, cannot be made.”

The Compensation Review Board stated that unlike the amputation of an arm, the heart transplant offered a “reasonable prognosis for complete or partial cure.” Additionally, the heart transplant improved the claimant’s condition and extended his life, although with some impairment. Please note the Compensation Review Board states the transplant of a human heart would be different from the implantation or the transplant of a mechanical or medical device.

Motion to Preclude

In *Lefevre v. TPC Associates, Inc.*, 6255 CRB-4-18-3 (March 26, 2019) the claimant suffered a heart attack and filed a Form 30c. The employer did not file a Form 43 contesting the compensability until three months later. The claimant then filed a Motion to Preclude which was granted because the Form 43 was not filed within 28 days of the receipt of the Form 30c.

The respondent-employer argued they had made a \$20,000 one-time donation to a GoFundMe set up on the claimant’s

behalf and the donation was made within 28 days of the receipt of the Form 30c. The Compensation Review Board has upheld the trial commissioner’s conclusion that the donation did not serve as the payment of indemnity benefits and the Motion to Preclude was properly granted.

Who Must Receive a Notice of a Connecticut General Statutes § 31-293 Lien?

In *Letaj v. ATMI, Inc.*, 6186 CRB-5-17-4 (January 11, 2019), the Compensation Review Board addressed the issue whether under Connecticut General Statutes § 31-293, a respondent’s “written notice of lien must be sent directly to the named defendant in a third-party lawsuit or whether sending such notice to a legal counsel representing the interests of the third-party defendant is also valid.”

The trial commissioner found the respondent failed to mail the notice of lien directly to the third-party defendant and therefore the respondent never perfected its lien. However, the Compensation Review Board reversed the trial commissioner and concluded sending notice to the third-party defendant’s attorney is sufficient to establish notice of the lien pursuant to Connecticut General Statutes § 31-293.

Editor’s Note - Despite the Compensation Review Board ruling, the proper approach is to send the notice of lien to the potential third-party defendant and the attorney.

WHEN IN DOUBT, CALL US

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

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