

# NUZZO & ROBERTS

## NEWSLETTER

July 2018

### WORKERS' COMPENSATION UPDATE: SECOND QUARTER 2018

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

### SUPREME AND APPELLATE COURT DECISIONS

#### The Claimant's Injuries Arose from her Employment

In *Clement v. Aramark Corp.*, 182 Conn. App. 224 (2018), the claimant became lightheaded at work, passed out, fell, and hit her head, causing a head injury, including a concussion. After going to the hospital, she suffered a cardiac arrest. The claimant had a history of cardiac disease and high blood pressure.

The trial commissioner concluded the head injury did not arise from the claimant's employment, but instead was the result of her heart related episode which had caused her to become lightheaded and fall. The Compensation Review Board affirmed the trial commissioner's conclusion, but the

Connecticut Appellate Court reversed the decision.

Specifically, the Connecticut Appellate Court concluded that although the claimant's pre-existing heart condition caused her to fall and hit her head and the heart condition did not arise from her employment, the injuries caused by striking her head did arise from her employment and are compensable.

Although the claimant's personal infirmity "that caused her to fall did not arise out of her employment, the resultant injuries that were caused by her head hitting the ground at her workplace did arise out of her employment."

### COMPENSATION REVIEW BOARD DECISIONS

#### Motion to Preclude

In *Cariello v. Home Health Care Services, Inc.*, 5959 CRB-8-14-9 (June 12, 2018), the Compensation Review Board affirmed the trial commissioner's granting of the claimant's Motion to Preclude because the respondents did not respond to a notice of claim within 28 days as required by Connecticut General Statutes §31-294c(b). The respondents did not argue they filed a timely denial,

but that the trial commissioner's finding was not supported by medical evidence.

However, in the trial commissioner's finding he also "directed the parties to proceed to a formal hearing if the respondents chose not to commence payment of benefits, at which point the claimant would be left to her proof regarding compensability, extent of disability and her entitlement to benefits."

The Compensation Review Board points out that the Connecticut Supreme Court decisions in *Harpaz v Laidlaw Transit, Inc.*, 286 Conn. 102 (2008) and *Donahue v. Veridiam, Inc.*, 291 Conn. 537 (2009), "bifurcated the issue of whether a respondent should be precluded from defending a claim from the issue of whether a claimant has met the burden of proof that benefits should awarded." Specifically, although the claimant must still prove there is probative evidence the injury is compensable, the respondent is precluded from presenting evidence to the contrary.

### **Was the Claimant Still Within her Employment When she was Injured?**

In *Bagley v. Gardner Heights Health Care Center, Inc.*, 6140 CRB-4-16-10 (June 28, 2018), the claimant injured her back while shoveling snow off her car in the employer's parking lot. The Compensation Review Board affirmed the trial commissioner's conclusion that the claimant's injury was compensable.

The respondents argued the claimant had finished her job for the day and clocked out. Additionally, the shovel she was using was for the employer's maintenance workers and she was not supposed to use the shovel. However, the Compensation Review Board noted that "agents of the claimant's employer had plowed in the claimant's car, thereby necessitating she remove the snow from her vehicle in order to leave the premises."

The Compensation Review Board concluded the employee should be allowed to leave the work premises once she was done with her shift, but in this matter her car had been plowed in by an agent of employer and she needed to shovel snow before she could leave. Therefore, she was still in the course of her employment and her back injury was compensable.

## **LEGISLATIVE UPDATE**

The Connecticut Legislature did not enact any new statutes in the recently completed 2018 legislative session.

## **WHEN IN DOUBT, CALL US**

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

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