

NUZZO & ROBERTS

NEWSLETTER

July 2019

WORKERS' COMPENSATION UPDATE: SECOND QUARTER 2019

In recent months the Connecticut Legislature has enacted new statutes and the Connecticut courts and the Compensation Review Board have issued several important decisions regarding workers' compensation law.

LEGISLATIVE UPDATE

PTSD Coverage for First Responders

In Public Act 19-17, the Connecticut Legislature amended Connecticut General Statutes § 31-275 to allow police officers, parole officers, and firefighters to receive limited workers' compensation benefits when they are diagnosed with post-traumatic stress disorder (PTSD) after witnessing an unnerving event in the line of duty. Prior to the enactment of this legislation, mental health injuries were essentially only covered when they resulted from physical injuries. This Public Act went into effect on July 1, 2019.

The diagnosis must be made by a board-certified mental health professional, psychiatrist or psychologist who has experience in the diagnosis and the

treatment of PTSD. To be eligible under the Act, the first responder must have experienced one of the following events:

1. Witness the death of a person;
2. Witness an injury that causes the death of an individual shortly thereafter;
3. Treats an injured person who dies shortly thereafter;
4. Carries an injured person who dies shortly thereafter;
5. Views a deceased minor;
6. Witnesses an incident that causes a person to lose a body part, to suffer a loss of function, or that results in permanent disfigurement.

The benefits are limited to temporary total disability or temporary partial disability benefits for no more than a combined 52 weeks from the date of diagnosis, but no benefits will be awarded beyond 4 years from the date of the qualifying event. There are no permanent partial disability benefits available under this amendment.

Connecticut General Statutes § 31-294c was simultaneously amended in conjunction with this Act. The respondents still have 28 days after receipt of notice to contest the claim, but if without prejudice payments are made within 28 days, the respondent has 180 days to contest the claim.

Task Force to Study Remedies and Potential Liability for Unreasonably Contested or Delayed Workers' Compensation Claims

The Connecticut Legislature in Special Act 19-10 created a task force to “(1) identify the extent of unreasonably contested or delayed workers’ compensation claims, (2) study methods to expand remedies regarding potential liability for unreasonably contested or delayed workers’ compensation claims, and (3) clarify the law regarding bad faith handling of workers’ compensation claims.”

The task force shall complete their findings and submit their recommendations to the joint standing committee of the General Assembly, no later than January 1, 2020.

SUPREME AND APPELLATE COURT DECISIONS

Can Concurrent Employment be as the Sole Member of a Limited Liability Corporation?

In *Gould v. Stamford*, 331 Conn. 289 (2019), the Connecticut Supreme Court overturned the Compensation Review Board’s ruling regarding whether a sole member of a limited liability corporation can have his earnings from the limited liability corporation considered concurrent employment wages pursuant to Connecticut General Statutes § 31-310.

The claimant was injured while working for the City of Stamford and he alleged he was concurrently employed with his limited liability corporation. Mr. Gould received a distribution of the profits and not a fixed salary for his work for the limited liability corporation. The trial commissioner and Compensation Review Board ruled the limited liability corporation had failed to opt into the Workers’ Compensation Act pursuant to a 2003 memorandum from the Workers’ Compensation Commission Chairman and was presumed to be excluded from workers’ compensation benefits.

The Connecticut Supreme Court ruled the Workers’ Compensation Commission Chairman was incorrect when he concluded in his 2003 memorandum that the limited liability corporation had to opt into provisions of the Workers’ Compensation Act. Instead, the limited liability corporation was presumed covered under the Workers’ Compensation Act unless they opted out. Furthermore, the claimant did not need to be paid a fixed salary to be considered to have concurrent employment under Connecticut General Statutes § 31-310. Therefore, Mr. Gould was concurrently employed by his limited liability corporation on the date of injury and his compensation rate should include the applicable earnings from the limited liability corporation.

Motion to Preclude

In *Woodbury-Correa v. Reflexite Corp.*, 190 Conn. App. 623 (2019), the trial commissioner denied the claimant's Motion to Preclude the respondents for failing to contest the claim within 28 days. The trial commissioner denied the Motion to Preclude because it was not possible for the respondents to comply with Connecticut General Statutes § 31-294c(b). Specifically, although the respondents did not properly file a Form 43 within 28 days of receiving the Form 30c, the claimant had not submitted any medical bills or made a request for benefits during the period. Therefore, it was not possible for the respondents to pay any medical bills or indemnity benefits.

However, the Connecticut Appellate Court remanded this case to the Compensation Review Board to reverse the trial commissioner's denial of the claimant's Motion to Preclude. The Appellate Court concluded the Compensation Review Board incorrectly affirmed the trial commissioner's conclusion and exceeded its authority by making a new factual finding.

The respondents served a Form 43 on the claimant's attorney within 28 days, but the Form 43 was not filed with the Workers' Compensation Commission within 28 days. Instead, 60 days after the filing of the Form 30c, the Form 43 was sent by facsimile to the Workers' Compensation Commission. The trial commissioner's

conclusion that the Form 43 was not properly filed was not contested with a Motion to Correct or specifically appealed to the Compensation Review Board.

Therefore, the Appellate Court ruled the Compensation Review Board exceeded its authority when it concluded a timely Form 43 was filed two months after the filing of the Form 30c. The Appellate Court reasoned the Compensation Review Board could not state the Form 43 was timely because the evidence the trial commissioner relied on to rule on the timeliness of the Form 43 was not clearly erroneous.

The Appellate Court then ruled the defense of impossibility was not applicable. The Form 43 that was filed did not contest the extent of disability, just compensability. Nothing prevented the respondents from contesting compensability within 28 days. Consequently, it was possible to contest compensability within 28 days of the filing of the Form 30c and the Motion to Preclude should have been granted.

The Claimant was not in the Course of Employment

In *Rausser v. Pitney Bowes, Inc.*, 190 Conn. App. 541, the Connecticut Appellate Court affirmed the trial commissioner's and Compensation Review Board's dismissal of the case because the claimant, who was socializing on a business trip, was not in the course of

his employment and therefore not entitled to workers' compensation benefits.

The claimant was on a business trip to Spokane, Washington. While there, a higher-ranking employee authorized the claimant and some co-workers to go out for dinner and drinks. The employees were directed to keep the restaurant tab open until 8:00 p.m. Sometime after 8:00 p.m. the claimant and co-workers went to another establishment and drank until midnight. Upon leaving the second establishment the claimant was assaulted and suffered severe injuries.

The trial commissioner ruled the employer could only have been liable for the activities until 8:00 p.m. Thereafter, the claimant's activities were a deviation from his employment and any injuries suffered after 8:00 p.m. could not be compensable under the Workers' Compensation Act.

In affirming the trial commissioner and Compensation Review Board, the Connecticut Appellate Court also noted that the claimant's deviation from his employment had not ended when he was assaulted.

Heart and Hypertension

The Connecticut Supreme Court and Connecticut Appellate Court recently issued a series of decisions addressing Connecticut General Statutes § 7-433 (Heart and Hypertension Act).

In *Brennan v. Waterbury*, 331 Conn. 672 (2019), the decedent claimant was the police chief of the City of Waterbury. He suffered a heart attack in 1991. The decedent claimant filed a compensable claim for Heart and Hypertension benefits pursuant to Connecticut General Statutes § 7-433c. The parties attempted to negotiate an agreement regarding the payment of benefits, during which time the decedent claimant retired. In 2006, the decedent claimant died.

In 2013, the executrix of the estate (who was also the claimant's widow) sought to finalize a permanent partial disability claim pursuant to Connecticut General Statutes § 7-433c. She also moved to substitute herself as both the executrix of the estate and in her individual capacity.

In this appeal, the Connecticut Supreme Court was asked to determine "whether Heart and Hypertension benefits under General Statutes § 7-433c for (permanent partial disability) are paid to a deceased claimant's estate if such benefits vested and were payable (matured) during the claimant's lifetime but were not paid to the claimant before his death." The Court stated they needed to address whether *Morgan v. East Haven*, 208 Conn. 576 (1988), and the legislative response to that decision, requires the payment of permanent partial disability benefits to the claimant's dependents or nondependent children.

The executrix of the estate appealed from the decision of the Compensation Review Board that the executrix was improperly substituted as a claimant because a claimant's estate cannot receive vested benefits under Connecticut General Statutes § 7-433c that were unpaid. The Connecticut Supreme Court ruled that "neither Morgan nor any other legal authority barred the substitution to the extent that the executrix sought payment of matured benefits." However, pursuant to the record, the Court could not "determine that the permanent disability benefits matured prior to the death," of the decedent claimant. Therefore, the Court reversed the Compensation Review Board and stated the motion to substitute the executrix was appropriate. The Court otherwise upheld the ruling that the permanent partial disability benefits can be paid to the estate but remanded the case to determine if the permanent partial disability benefits vested prior to the claimant's death.

In *Brocuglio v. Thompsonville First District #2*, 190 Conn App. 718 (2019), the Connecticut Appellate Court reversed and remanded the trial commissioner and Compensation Review Board rulings. Specifically, the Court concluded the claimant did not file a timely Heart and Hypertension claim pursuant to Connecticut General Statutes § 7-433c.

Thirteen years prior to filing a Heart and Hypertension claim for coronary artery disease that required a mitral valve replacement, the claimant had been

informed he suffered from heart disease (pericarditis). The trial commissioner concluded the coronary artery disease that required a mitral valve replacement was distinct from the pericarditis and therefore a new injury.

In reversing this decision, the Appellate Court concluded the trial commissioner lacked jurisdiction over this matter as the filing was not timely. Although several conditions constitute heart disease, Connecticut General Statutes § 7-433c does not make a provision for filing multiple claims for the various forms of heart disease. Therefore, if the claimant does not file a claim within one year of being informed he has heart disease, his claim is not timely.

In *Vitti v. Milford*, 190 Conn. App. 398 (2019), the Connecticut Appellate Court concluded that the 2010 version of Connecticut General Statutes § 7-433c was applicable to this Heart and Hypertension claim. Additionally, there was sufficient evidence to support the trial commissioner's conclusion that Mr. Vitti's giant cell myocarditis is a compensable heart disease pursuant to Connecticut General Statutes § 7-433c.

COMPENSATION REVIEW BOARD DECISIONS

Heart and Hypertension

The Compensation Review Board also issued decisions addressing

Connecticut General Statutes § 7-433 (Heart and Hypertension Act).

In *Contanzo v. City of Stamford*, 6274 CRB-7-18-5 (May 3, 2019), the Compensation Review Board affirmed the trial commissioner's conclusion that widows' benefits are allowed pursuant to Connecticut General Statutes § 7-433c (Heart and Hypertension Act). Specifically, the "pertinent case law stands for the proposition that once a respondent accepts an injury as compensable, death because of that injury creates an entitlement for dependent benefits pursuant to Connecticut General Statutes § 31-306(a)."

In this matter, kidney disease was accepted as a compensable injury while the decedent claimant was still employed as a police officer. When the claimant later died of the same condition, the widow was entitled dependent benefits.

In *Martinoli v. City of Stamford Police Dept.*, 6271 CRB-7-18-5 (April 24, 2019), the Compensation Review Board affirmed the trial commissioner's conclusion that the stroke the claimant suffered after retirement, was compensable pursuant to Connecticut General Statutes § 7-433c (Heart and Hypertension Act) as a direct consequence of the previously-determined compensable cardiac condition.

The respondents argued the stroke was not compensable because it did not occur until after the officer retired. In affirming the

trial commissioner's conclusion and rejecting the respondents' arguments, the Board noted that any interpretation of the provisions of Connecticut General Statutes § 7-433c which does not allow for injuries deemed the sequelae of prior compensable injuries to be treated in the same manner as injuries sustained under the Workers' Compensation Act would lead to a "variety of absurd results."

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