

# NUZZO & ROBERTS

## NEWSLETTER

November 2019

### WORKERS' COMPENSATION UPDATE: THIRD QUARTER 2019

In recent months the Compensation Review Board has issued several important decisions regarding workers' compensation law.

### COMPENSATION REVIEW BOARD DECISIONS

#### Cause of Death and Alcohol Abuse

In *Woodmansee v. Electric Boat Corporation*, 6252 CRB-8-18-3 (September 11, 2019), the Compensation Review Board affirmed the trial commissioner's ruling that the dependent spouse of a deceased shipyard worker was entitled to widow benefits pursuant to Connecticut General Statutes §31-306. The respondent's appeal was based on the argument that Connecticut General Statutes §31-275(1)(C) bars an award of benefits when an injury or death is due to the use of alcohol.

In this matter, the trial commissioner ruled the claimant's exposure to asbestos at work was a significant cause of the worker's fatal colon cancer. The claimant's death certificate listed the cause of death as colon cancer, with significant conditions leading to his

death as "cirrhosis, COPD/asbestosis." Claimant's counsel obtained a Records Review opinion that the claimant's colon cancer was caused by exposure to asbestos at Electric Boat. One of the respondents' two experts concluded asbestos exposure was a factor in causing the decedent's cancer and alcohol was also a significant factor.

The trial commissioner "rejected the respondents' argument that §31-275(1)(C) barred an award, determining that this statute was limited only to injuries from accidental injuries and was inapplicable to occupational disease claims." The Compensation Review Board decision states the respondents "had every opportunity to present a defense that the decedent's death was non-compensable as the result of alcohol abuse. It is black-letter law that when a non-compensable injury becomes an intervening cause of an injured worker's death that his or her dependents cannot recover surviving benefits." Here the trial commissioner "did not accept the respondents' argument that alcohol abuse was the sole significant causation factor."

#### Can Kidney Disease be a Sequela of a Compensable Heart and Hypertension Claim?

In *Arlio v. Town of Trumbull*, 6284 CRB-4-18-8 (July 25, 2019), the

Compensation Review Board affirmed the trial commissioner's conclusion that the claimant's kidney disease was a sequela of the claimant's compensable hypertension and compensable under Connecticut General Statutes §7-433c (Heart and Hypertension Act). Specifically, the treating nephrologist concluded the claimant had many years of untreated hypertension of which the predominant etiology is renal failure. Furthermore, the doctor stated the "major factor contributing to [the claimant's] chronic kidney disease was hypertension."

Although the Respondent's Record Reviewer did not agree with the treating nephrologist, the trial commissioner found the treating nephrologist's conclusions "fully credible and persuasive."

In affirming the trial commissioner, the Compensation Review Board noted that, "pertinent case law suggests that once a jurisdictionally valid claim has been filed, not only are flow-through injuries compensable but survivorship claims arising from deaths due to the compensable injuries have also vested." In this matter, the flow-through injury is the kidney failure.

### **Repetitive Trauma and the Cause of the Need for a Total Knee Replacement**

In *Malinowski v. Sikorsky Aircraft Corporation*, 6216 CRB-8-17-8 (August 26, 2019), the Compensation Review Board affirmed the trial commissioner's conclusion regarding the claimant's repetitive trauma during his

employment at Sikorsky from 1984 to 2012 being a substantial contributing factor that caused the claimant to need left total knee replacement surgery.

The claimant also suffered a 1972 injury to the same knee when he slipped on oil while working. The treating physician concluded that both the 1972 injury to the left knee and the work at Sikorsky substantially contributed to the need for total knee replacement surgery. The Respondent's Examiner concluded the 1972 injury was a substantial contributing factor to the cause of the need for left total knee replacement surgery, but the work at Sikorsky was only a contributing factor.

The trial commissioner ruled the treating physician's conclusions were more persuasive than those of the Respondent's Examiner. Additionally, the trial commissioner concluded the claimant failed to file a timely claim for the 1972 injury.

In affirming the trial commissioner, the Compensation Review Board noted the trial commissioner could rely on the claimant's testimony regarding "the extent and frequency of his employment activities" that led to a physician concluding repetitive trauma caused the injury. Furthermore, the evidentiary record indicated the trial commissioner's conclusions were well supported.

"Once it had been established, through expert testimony, that the claimant's medical history rendered him susceptible to arthritis, it was then within the

commissioner's discretion to infer that the claimant's work activities 'acted in substantially and permanently aggravating his underlying and preexisting left-knee condition, resulting in the need for a total left-knee replacement on February 19, 2015'."

### **The Trial Commissioner Accepted the Conclusions of the Respondent's Examiner**

In *Shelesky v. Community Systems, Inc.*, 6263 CRB-5-18-4 (July 3, 2019), the Compensation Review Board affirmed the trial commissioner's finding that the claimant did not sustain a disabling injury at work. The Board stated the trial commissioner's reliance on the conclusions of the Respondent's Examiner over the conclusions of the treating psychological physicians was reasonable.

In this matter the claimant was struck in the head with a water bottle by an agitated client. Although the claimant alleged she informed the initial medical provider that she was confused, had head pain, dizziness, and difficulty speaking, the contemporaneous medical reports did not reference any of those problems. The subsequent CT scan of the brain, MRI of the brain and neurological examination revealed no problems. The claimant also had a history of pre-existing anxiety and depression.

In short, the trial commissioner chose to accept the conclusions of the

Respondent's Examiner over the conclusions of some of the claimant's treating physicians.

## **WORKERS' COMPENSATION COMMISSION MEMORANDUM**

Pursuant to a September 10, 2019 memorandum from Workers' Compensation Commission Chairman, Stephen Morelli, effective September 15, 2019 the base fee for a Commissioner's Examination has increased to \$900.00.

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

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

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