

NUZZO & ROBERTS

NEWSLETTER

December 2018

WORKERS' COMPENSATION UPDATE: FOURTH QUARTER 2018

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

COMPENSATION REVIEW BOARD DECISIONS

Motion to Preclude

In Salerno v. Lowe's Home Improvement Center, 6101 CRB-6-16-5 (November 14, 2018), the Compensation Review Board affirmed the trial commissioner's conclusion the Form 43 was filed more than one year after the date of injury and the respondents' safe harbor to contest the extent of disability had lapsed. Therefore, the respondents were precluded from defending the claim pursuant to Donahue v. Veridien, Inc., 291 Conn. 537 (2009).

The Board stated they were "not willing to extend the 'safe harbor' provision, as contemplated by General Statutes §31-294c(b), to [a] case in which there is no evidence that the respondents ever accepted the compensability of the claim,

either through their course of conduct or through written documentation."

In this matter, the Form 43 was filed 18 months after receipt of the claimant's Form 30C. During the 18 months, the respondents did not pay any indemnity benefits or medical bills. In theory, the payment of indemnity benefits or medical bills could have created a safe harbor to contest the case. Additionally, the respondents did not issue a Voluntary Agreement accepting the case.

Trial Commissioner's Formal Hearing Discretion

In Hankard v. State of Connecticut Division of Criminal Justice, 6226 CRB-8-17-10 (October 17, 2018), the claimant had an accepted hypertension claim that resulted in a stroke. At a formal hearing, the trial commissioner concluded the claimant had a permanent partial disability of the brain because of his stroke. The trial commissioner then levied sanctions against the respondents due to the respondents delays in issuing benefit payments and completing the formal hearing. The trial commissioner also concluded the respondents could not enter their Respondent's Medical Examination (RME) into evidence because they failed to comply with

Commissioner Schoolcraft's Order to initiate an RME within fifteen days.

The Compensation Review Board affirmed the trial commissioner's conclusions and rulings as reasonably based on the evidence before him.

Specifically, the respondents could provide no evidence they tried to initiate the RME within fifteen days or by October 21, 2016 and the RME was not completed until more than three months after Commissioner Schoolcraft issued his Order. Furthermore, the Respondents waited an additional three months before they attempted to depose the RME doctor (one month after the formal hearing). The Board concluded it was within the trial commissioner's discretion to keep the RME out of the formal hearing evidence.

Regarding the permanent partial disability rating, in his report the treating physician stated the claimant had a rating of between 20% and 30%. However, at his deposition, the doctor stated the rating was 25%. Therefore, it was proper for the trial commissioner to accept the 25% permanent partial disability of the brain as the appropriate rating.

Jurisdiction

In DeJesus v. R.P.M. Enterprises, Inc., 6201 CRB-1-17-7 (November 8, 2018), the Compensation Review Board affirmed the trial commissioner's conclusion he had jurisdiction to award benefits. Specifically, on the date of injury there

was an employer-employee relationship and the statutory requirements for the medical care exception of notice were satisfied pursuant to Connecticut General Statutes §31-294c(c).

Although the claimant did not file a Form 30c within one year of the date of injury, the trial commissioner concluded the employer was aware that co-workers had transported the claimant to the hospital immediately after he was crushed under a car and the employer paid the claimant \$500 a week after the injury. The employer also purchased the claimant an electric wheelchair and built a wheelchair ramp.

The trial commissioner then concluded "based on the totality of the evidence" the claimant was an employee and not an independent contractor because he was subject to the control and direction of R.P.M. and/or its owner. The Compensation Review Board ruled the testimony and evidence provided a sufficient basis for the trial commissioner's conclusion that the employer exercised a right of general control over the claimant's work activities to establish the employer-employee relationship. The claimant worked a set schedule, he was paid cash daily, he did not use his own tools and he often traveled with the owner to pick up cars.

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