

NUZZO & ROBERTS

NEWSLETTER

July 2022

WORKERS' COMPENSATION UPDATE: FIRST AND SECOND QUARTERS 2022

In recent months, the Connecticut Supreme Court, Connecticut Appellate Court, and the Compensation Review Board have issued several important decisions regarding workers' compensation law. Additionally, several new statutes have been enacted by the Connecticut Legislature.

LEGISLATIVE UPDATE

Cancer Relief Benefits for Firefighters

In Public Act 22-139, the Connecticut Legislature addressed recommendations of the task force that studied cancer relief benefits for firefighters. Specifically, by July 1, 2023, the Joint Counsel of the Connecticut Fire Service Organization and the Connecticut State Firefighters' Association will develop a joint plan for the maintenance and remediation of toxic substances on firefighters' turnout gear.

The Workers' Compensation Commission is required to maintain a record of all workers' compensation claims filed by firefighters with a cancer diagnosis. The Commission will then provide a report

summarizing these records to the Joint Standing Committee of the Connecticut General Assembly.

Additionally, Connecticut General Statutes §7-313i (Cancer Relief Fund statute) has been amended to state the payment of wage replacement benefits to a firefighter does not create a presumption the cancer is work related.

Technical Changes to the Workers' Compensation Act

Public Act 22-89, as signed by Governor Lamont on May 24, 2022, made several minor technical changes in the Workers' Compensation Act.

The Chairman of the Workers' Compensation Commission (currently Stephen Morelli) is now called the Chairperson.

Furthermore, notice pursuant to Connecticut General Statutes §31-275 asking to be included or excluded under the Workers' Compensation Act, shall be filed with the Chairperson's office and not with the individual workers' compensation district.

Finally, notices filed under the Act shall be filed by registered or certified mail.

SUPREME COURT AND APPELLATE COURT DECISIONS

Remand for the Judge's Failure to Cite Medical Evidence to Support a Ruling

In *Arrico v. Board of Education of the City of Stamford*, 212 Conn. App. 1 (2022), the Appellate Court affirmed the Compensation Review Board's conclusion the claimant had reached maximum medical improvement, and they affirmed the Board's order to remand the case to the Administrative Law Judge to address issues of causation of the need for medical treatment and whether Mr. Arrico had a work capacity.

The claimant suffered two compensable lower back injuries resulting in a cumulative 21% permanent partial disability to the lumbar spine. Mr. Arrico also had pre-existing colitis, hypertension, acid reflux, a seizure disorder, and epilepsy. In addition to the Trial Judge approving the Form 36 for maximum medical improvement and the permanent partial disability rating, she ruled the claimant's current condition was not work related and the need for additional medical treatment was not the responsibility of the respondents. However, the Judge did not cite to a medical expert who supported her conclusion that the need for additional medical treatment was unrelated to Mr. Arrico's employment.

The Compensation Review Board stated the issue of medical treatment was not an issue

noticed for the formal hearing and they remanded the matter to the Trial Judge to address the causation of the need for medical treatment and whether the claimant had a work capacity.

In affirming the Compensation Review Board's decision, the Appellate Court agreed the issue of medical treatment should not have been addressed as it was not an issue for the formal hearing. Furthermore, there is no workers' compensation rule stating that medical treatment after maximum medical improvement per se is palliative.

Finally, the Appellate Court stated, Connecticut General Statutes §51-183c requiring a trial de novo with a new Judge does not apply to workers' compensation cases.

COMPENSATION REVIEW BOARD DECISIONS

Connecticut General Statutes §31-308a Benefits

In *Chalifoux v. Crossing East Health & Rehab Center*, 6422 CRB-2-21-5 (April 4, 2022), the Compensation Review Board affirmed the Administrative Law Judge's ruling that Ms. Chalifoux was entitled to Connecticut General Statutes §31-308a benefits following the payment of a 26% permanent partial disability of the lumbar spine after she voluntarily stopped working at the commencement of the COVID-19 pandemic.

After her injury, the claimant held two jobs for short periods until March 2020. However, she had difficulty finding work due to her job restrictions that included the need for frequent breaks and the inability to stand or sit for extended periods.

Ms. Chalifoux quit the job she held in March 2020 to avoid having extensive contact with the general public, which would have caused her to endanger her husband's compromised health. However, the claimant testified that she was still willing to work. This included the desire to work at her sister's summer camp in the Summer of 2020, if it had not been closed due to the COVID-19 pandemic. Therefore, the Judge found she complied with Connecticut General Statutes §31-308a by being ready, willing, and able to perform work.

The Compensation Review Board also noted, the Trial Judge has broad discretion in the assignment of Connecticut General Statutes §31-308a benefits. Furthermore, the Governor and the Workers' Compensation Commission issued several Orders and Memorandum during the COVID-19 pandemic waiving the obligation to perform job searches to be entitled to receive Connecticut General Statutes §31-308a benefits.

Is a Firefighter's Injury at Home Compensable?

In *White v. City of Waterbury*, 6441 CRB-5-21-9 (May 31, 2022), the claimant firefighter was injured while

carrying his 50-pound gear bag in his house. The Administrative Law Judge concluded his injury was not compensable because it did not fall within the "portal-to-portal rule" pursuant to Connecticut General Statutes §31-275 (1)(A)(i) for first responders. Specifically, the bag being in the claimant's home did not serve a mutual benefit for both the claimant and the employee.

In affirming the Judge's ruling, the Compensation Review Board first stated the "portal-to-portal" rule did not apply because the claimant was in his abode and not on a public way, which is a jurisdictional requirement of the statute.

The Board also rejected the mutual benefit argument. Specifically, although the employer was aware firefighters often brought their gear bag home, the claimant was not required to have it in his home. Furthermore, having the gear bag at home saved time for the claimant when going to work, but it served no benefit to the employer. Finally, the claimant was not required to respond to fires when he was off duty. The gear bag was in the claimant's home solely for his convenience.

Collateral Estoppel

In *Tinnerello v. Electric Boat Corporation*, 6437 CRB-2-21-7 (June 16, 2022), the Compensation Review Board affirmed the finding of the Administrative Law Judge that she was collaterally estopped from relitigating "the nature of the causal connection between the decedent's work-related back injury and his death."

Specifically, the Judge in the federal Longshore case concluded the respondents had provided sufficient evidence to rebut the presumption of causation. Thereafter, the federal Judge looked at all the evidence and concluded the “totality of the evidentiary record” proved the injury was a substantial cause of the claimant’s death.

In affirming the workers’ compensation Judge’s ruling that she was collaterally estopped from relitigating the issue of causation, the Board reviewed the federal judge’s decision and concluded that although the phrase “substantial contributing factor” did not appear in the ruling, the Judge relied on expert opinions that addressed the “substantial contributing factor” standard.

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WHEN IN DOUBT, CALL US

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

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