

NUZZO & ROBERTS

NEWSLETTER

February 2023

WORKERS' COMPENSATION UPDATE: FOURTH QUARTER 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.

SUPREME COURT AND APPELLATE COURT DECISIONS

Motion to Preclude

In *Britto v. Bimbo Foods, Inc.*, 217 Conn. App. 134 (2022), the Connecticut Appellate Court affirmed the Administrative Law Judge and Compensation Review Board's decision denying the claimant's Motion to Preclude the respondent employer from contesting the alleged bilateral knee injuries.

On December 12, 2017, claimant's counsel sent a Form 30c by certified mail to the respondent employer. On January 10, 2018, the envelope was returned to claimant's counsel marked "undeliverable as addressed" and "unable to forward." The markings on the envelope indicated the mail carrier attempted to deliver the

Form 30c on three occasions in December 2017. At a hearing on January 18, 2018, claimant's counsel hand-delivered a copy of the Form 30c to respondent's counsel. On January 18, 2018, the respondents filed a Form 43 contesting compensability of the bilateral knee injuries.

The claimant subsequently filed the Motion to Preclude stating the respondent employer chose to not accept the certified mail Form 30c and the Form 43 was untimely pursuant to Connecticut General Statutes §31-294c(b) because it was not filed within 28 days of the receipt of the Form 30c or, in this case, when the mail carrier attempted to deliver the Form 30c.

The Administrative Law Judge denied the Motion to Preclude because the Form 30c was not delivered to the respondents by the mail carrier despite having the proper address and the Form 43 was filed on the same day it was received by the employer respondent. There was also no evidence the employer respondent refused service of the certified mail. Thus, the employer respondent filed a timely Form 43 and they were not precluded from contesting compensability.

COMPENSATION REVIEW BOARD DECISIONS

Attorney's Fees and Costs

In *Eastwood v. ICNO Painting, Inc.*, 6446 CRB-1-21-10 (October 14, 2022), the Administrative Law Judge concluded after a formal hearing the claimant suffered a compensable injury. The Judge also ruled the claimant was an employee and not an independent contractor. The respondents did not appeal this part of the Judge's Order.

Additionally, the Judge ruled the "respondents' refusal to approve medical treatment was unreasonable pursuant to Connecticut General Statutes §31-288 and that the respondents should pay the claimant's attorney's fees and costs for undue delay as set forth in §31-300." However, the judge "did not make any findings with respect to the unreasonableness of the respondents' jurisdictional defense nor did she articulate the nature of the alleged undue delay."

On appeal, the respondents argued their jurisdictional defense that the claimant was an independent contractor was asserted in good faith and penalties for unreasonable contest should not be assessed against them. Furthermore, the Judge is required to "articulate the basis for the finding of unreasonable contest."

The Compensation Review Board concluded the Judge did not clearly state if the jurisdictional defense raised by the respondents that Mr. Eastwood was an independent contractor, "was frivolous or unreasonable." Furthermore, the Judge did not articulate the nature of the undue delay. Therefore, the matter was remanded to

the Judge for "further consideration, articulation, and clarification with respect to the findings of the unreasonable contest and undue delay pursuant to §§31-300 and 31-288."

Causation Standard

In *Preece v. City of New Britain*, 6468 CRB-6-22-2 (December 28, 2022), the Administrative Law Judge concluded the claimant, a lieutenant with the New Britain Fire Department, had not proven he contracted COVID-19 in late December 2020 as the result of exposure during the course of his employment. The Compensation Review Board has remanded the case to the Judge for articulation.

On December 30, 2020, a fellow firefighter informed the claimant he had been exposed to COVID-19. During this conversation neither Mr. Preece nor the fellow firefighter were wearing masks or vaccinated. The conversation lasted 5 minutes and the parties were standing 4 to 5 feet apart. A January 3, 2021, test indicated the claimant had contracted COVID-19.

In ruling against Mr. Preece, the Judge stated the claimant was unable to obtain a medical report indicating he contracted COVID-19 from his work as a firefighter. Additionally, Governor Lamont's Executive Order creating a rebuttable presumption for any employee diagnosed with COVID-19 between March 20, 2020, and May 20, 2020 did not apply. The Judge stated "as per the Executive Order,

injuries falling within this rebuttable period did not require a medical expert to provide an opinion on compensability, whereby injuries falling outside the rebuttable presumption period would need a medical opinion [addressing] compensability. Thus, the claimant would face a higher burden of establishing causation.”

In remanding this matter the Board stated the Judge’s reference to a “higher burden” is ambiguous because the Board could not ascertain whether the Judge was speaking to a higher burden for standard claims or only regarding the Executive Order.

Specifically, the Judge “must ascertain if the evidence presented by the claimant establishes that an incident or exposure in the workplace is a substantial contributing factor behind the claimant’s injury. This incident does not need to be the sole contributing factor. In addition, a totality of the circumstances paradigm may obviate the need for the claimant to present expert testimony on causation.” Therefore, the cause of the claimant’s injury could be determined by “common knowledge and ordinary human experience.” Conversely, in certain cases the Judge can conclude facts of a case “make expert testimony necessary to establish causation.”

Although the record of this case does not persuade the “claimant’s evidence was so compelling as mandate an award as a matter of law,” the case is remanded to the Judge to articulate “how he evaluated the causation standard given that the Executive Order was applicable to this case; whether

an expert opinion was necessary; and whether the claimant’s injury herein was compensable.”

ADMINISTRATIVE UPDATES

As of January 1, 2023, the mileage reimbursement rate increased to 65.5 cents per mile.

As of January 1, 2023, the funeral expense benefit increased to \$13,454.70.

WHEN IN DOUBT, CALL US

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

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