CASE NO. 6093 CRB-8-16-5 : COMPENSATION REVIEW BOARD
CLAIM NO. 800162864

LORENZO PITRUZZELLO
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: MARCH 24, 2017

STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLEE

and

GALLAGHER BASSETT SERVICES
ADMINISTRATOR

APPEARANCES:

The claimant was represented by Barbara J. Collins, Esq., Law Office of Barbara J. Collins, 557 Prospect Avenue, First Floor, Hartford, CT 06105.

The respondent was represented by Lawrence G. Widem, Esq., Assistant Attorney General, Office of the Attorney General, 55 Elm Street, Hartford, CT 06141-0120.

This Petition for Review[1] from the April 18, 2016 Finding and Dismissal of David W. Schoolcraft, the Commissioner acting for the Eighth District, was heard October 28, 2016 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Nancy E. Salerno and Christine L. Engel.

[1] We note that extensions of time were granted during the pendency of this appeal.

# OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. It is black letter law in our system of workers' compensation that in a contested proceeding the claimant bears the burden of proof that he or she is entitled to benefits. The claimant in this matter believes that he sustained a neurological injury in the workplace which has rendered him totally disabled. After weighing all the evidence that was submitted on the record the trial commissioner, David Schoolcraft, was not persuaded and denied this claim. The claimant has appealed but we have concluded that this was a reasonable conclusion based on the evidence on the record, including a prior formal hearing and findings. Therefore, we affirm the Finding and Dismissal.

Commissioner Schoolcraft reached the following factual findings at the conclusion of the formal hearing. He noted that the issue in dispute was whether the claimant is entitled to total incapacity benefits and medical treatment for an alleged brain injury he claims results from a November 14, 2007 work injury. He also noted that there had been a prior hearing and Finding on that issue, and the issues of res judicata and/or collateral estoppel impacted the consideration of the claim. He also noted that to the extent there was a concern as to issue preclusion, that the provisions of § 31-315 C.G.S.[2]

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[2] The text of this statute is as follows:
**"Sec. 31-315. Modification of award or voluntary agreement.** Any award of, or voluntary agreement concerning, compensation made under the provisions of this chapter or any transfer of liability for a claim to the Second Injury Fund under the provisions of section 31-349 shall be subject to modification in accordance with the procedure for original determinations, upon the request of either party or, in the case of a transfer under section 31-349, upon request of the custodian of the Second Injury Fund, whenever it appears to the compensation commissioner, after notice and hearing thereon, that the incapacity of an injured employee has increased, decreased or ceased, or that the measure of dependence on account of which the compensation is paid has changed, or that changed conditions of fact have arisen which necessitate a change of such agreement, award or transfer in order properly to carry out the spirit of this chapter. The commissioner shall also have the same power to open and modify an award as any court of the state has to open and modify a judgment of such court. The compensation commissioner shall retain

could allow the matter to be opened to offer relief to the claimant. While the claimant did not testify at the formal hearing, documentary evidence was presented including medical records, a 2013 Social Security Disability ruling in the claimant's favor, the transcript of a deposition of a neurologist, Dr. Stephen R. Conway, and the record of the 2010 Finding and Dismissal ("2010 Finding") reached by Commissioner Ernie Walker.

The trial commissioner noted that the claimant had worked for the Connecticut Department of Transportation and had sustained two compensable injuries on the job. On September 22, 2005 the claimant suffered an injury to his right shoulder while shoveling asphalt. The claim was accepted as compensable but the claimant did not become disabled at that time. The claimant sustained an additional injury at work on November 14, 2007, when the hardhat he was wearing was struck by a piece of equipment. There is no evidence the claimant sought any medical attention after this incident. The claimant kept working for the respondent until May 22, 2008 when he became disabled due to his 2005 shoulder injury. The respondent issued a voluntary agreement and accepted the surgery as compensable. The respondent filed a Form 36 on July 22, 2008 seeking to end total incapacity benefits and have the claimant returned to modified duty with the respondent employer, which was approved by the Commission. On October 13, 2008, the claimant was seen by Christopher Sinclair, MD, a neurologist. The claimant complained of "consistent pronounced head pain," and said that perhaps once a week he had severe headaches. Findings, ¶ 6. He also said that he felt "out of it" at times, having periods of "blanking out" during the daytime, and that he sometimes said "strange things" that he does not recall. Id. By history, the claimant tied these symptoms back to the

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jurisdiction over claims for compensation, awards and voluntary agreements, for any proper action thereon, during the whole compensation period applicable to the injury in question."

work accident in 2007. He also noted that he had been taking Vicodin on account of his shoulder injury.

Subsequent to being examined by Dr. Sinclair the claimant filed a Form 30C notice of claim for compensation regarding the November 14, 2007 incident. The notice alleged that the claimant had been "[h]it on head with payloader bucket denting helmet." He alleged the incident resulted in injuries as follows: *"Head injury, headaches, concussion, Traumatic Brain Injury."* Findings, ¶ 7. On November 14, 2008, the respondent filed a Form 43 notice of contest. The claimant continued to treat with Dr. Sinclair during 2009. Dr. Sinclair's assessment was that the head pain was "likely the result of postconcussive syndrome from hitting his head." He added that the reported memory lapses "could" also be a result of the post-concussive syndrome. Findings, ¶ 8. He ordered an MRI of the head. On February 2, 2009 Dr. Sinclair wrote a letter indicating he understood the claimant to have been injured at work "7-8 months ago." He noted the complaints of continuing headaches, memory lapses and "difficulty with speech and word finding," though he said the latter had been more apparent when he first saw the claimant in October 2008. He noted his formal diagnosis of post-concussive syndrome and recommended the claimant not go back to "the same type of work environment" so as to avoid the risks attendant to repeated concussions. Findings, ¶ 9.

The claimant reached the point of maximum medical improvement for his shoulder injury on February 4, 2009 and received a permanent partial disability award. Commissioner Walker also awarded the claimant § 31-308a benefits at various periods during 2009. The claimant, meanwhile, alleged that he was entitled to lost wage benefits on account of his 2007 work injury. The respondent, however, continued to maintain its

denial of liability relative to the claimed November 14, 2007 accident and had the claimant examined by its expert, Dr. Conway, on October 12, 2009. While Dr. Conway did not rule out the possibility the claimant had suffered a concussion on November 14, 2007, he did not believe the claimant had post-concussive syndrome at the time of his 2009 exam and, indeed, he opined that the claimant did not have that condition in October 2008 when he first sought treatment with Dr. Sinclair. Dr. Conway noted that the claimant had mentioned to Dr. Sinclair that he felt he had trouble finding words and had been spacing out, but that Dr. Sinclair had not, himself, observed those things. Dr. Conway also opined that the headaches the claimant said he was suffering in October 2009 were unrelated to what he deemed a "very minor" incident" in 2007 and could be due to the effects of narcotic medication. Dr. Conway further opined that the claimant had no impairment of the brain and could perform full-time work. Dr. Conway did not agree that the claimant was disqualified from his prior employment because, while there is risk of permanent injury associated with repeat concussions, he did not understand the claimant's job to be a high risk for such injuries. On November 29, 2009 the claimant returned to see Dr. Sinclair and Dr. Sinclair reviewed Dr. Conway's report. The claimant's treater questioned the assumptions and conclusions reached by the respondent's expert witness.

On February 10, 2010 Commissioner Walker held a formal hearing concerning both the 2005 and 2007 injuries. Issues noticed for the hearing were: Sec. 31-275, compensability/causation; Sec. 31-294c, contest of liability; Sec. 31-294d, medical treatment; Sec. 31-313, transfer to suitable alternative work; Sec. 31-308a, additional post-specific lost wage benefits; and Sec. 31-315, motion to modify voluntary agreement

or award. The claimant had parted ways with his counsel prior to the hearing and did not attend the hearing, but had received proper notice. Commissioner Walker ruled on the record present at that time, including the transcript of a deposition of Dr. Conway and a 2008 MRI of the claimant's brain. On July 1, 2010 Commissioner Walker issued a finding and dismissal (the "2010 Finding"). In his finding, the commissioner summarized the issues simply as the compensability of the two work accidents, i.e., the September 22, 2005 shoulder injury and the November 14, 2007 brain/head injury. He found the claimant had a compensable shoulder injury from the 2005 incident and had received both permanency benefits and § 31-308a C.G.S. benefits for this injury. Commissioner Walker determined the 2007 incident caused the claimant to have "suffered a minor head trauma . . . ." Findings, ¶ 26. He found that this was "a self-limiting head trauma incident" that resolved within several weeks of the incident with no substantial findings thereafter. Id. He also concluded the claimant "did not suffer any head pain or post concussive syndrome," citing the fact that he had shown "no objective findings of post-concussive syndrome and no indication of permanent partial disability related to the incident of November 14, 2007." Findings, ¶ 27. He specifically held that any symptoms related to the November 14, 2007 work accident "had resolved within weeks of that injury. . . ." Id. Therefore, Commissioner Walker did not authorize further medical treatment for this incident nor did he find the claimant sustained any permanent impairment.

The claimant initially appealed from the 2010 Finding but later withdrew his appeal. The claimant resumed treating with Dr. Sinclair, who opined on August 30, 2010 that the claimant was still complaining of "severe headaches, difficulty with memory and

difficulty with speech." Findings, ¶ 30. On November 20, 2010 Dr. Sinclair reached this opinion as to the claimant's condition.

> Though the patient's neurologic exam is grossly normal, I do note him stammering at times and hesitant in his word finding. It is true that a concussion or postconcussive syndrome can last a very long time. Indeed, the residual effects need not resolve at all. It is certainly possible for a person to have permanent cognitive effects after a head injury. So, though his issues are "postconcussive," at this point it seems that they are essentially permanent as it has been approximately 3 years since the injury.

Findings, ¶ 31.

In an undated letter to the claimant's present counsel prepared prior to August 11, 2014, Dr. Sinclair wrote that he understood the claimant's injury had occurred in May of 2008 and that to the best of his knowledge the claimant had been totally disabled from that time on. He added *"[t]he reason he was disabled is because of chronic persistent headache along with difficulty with memory and focus as a result of the head injury."* Findings, ¶ 40.

In 2011 the claimant applied for social security disability benefits and was examined by a psychologist, Marc Hillbrand, Ph.D. Dr. Hillbrand observed that the claimant was able to manage his own finances and help with household chores. He exhibited good attention and concentration, as well as intake short-term memory. Nevertheless, he said testing showed borderline intellect with specific deficits in verbal skills, something the doctor suggested might be reflective of a "lifelong pattern" such as a learning disability. Findings, ¶ 35. He also opined that there was significant weakness in processing speed, "where he appears slowed down by his perseverative tendencies." Id. Dr. Hillbrand noted the claimant "appears to distort reality very significantly" and that he had significant deficits "in the interpersonal realm that are consistent with his having

lived at home all his life." Ultimately, the doctor said his testing was "consistent with neurological impairment." His Axis-I diagnosis was: "Cognitive disorder, NOS (not otherwise specified)." Findings, ¶ 36. While Dr. Hillbrand had noted the claimant had the ability to manage his finances he still suggested any Social Security benefit payments be made to a "representative," rather than directly to the claimant, because his cognitive impairments were significant enough "that he is unable to perform even simple tasks reliably." Findings, ¶ 37. Dr. Hillbrand offered no opinion as to the causation of the claimant's impairments. Based on Dr. Hillbrand's report the claimant was awarded social security disability benefits on April 19, 2013.

Commissioner Schoolcraft noted that Commissioner Peter Mlynarczyk ordered a Commissioner's examination for the claimant in April 2015 before John A. Crouch, Ph.D. Dr. Crouch reviewed a number of records, interviewed the claimant at length, and performed a battery of psychological, intelligence and neurological tests. He found the claimant generally cooperative in the testing but often uncooperative during interviews, refusing to discuss some subjects and becoming hostile at times. The doctor noted the claimant seemed to have had trouble in school, having to repeat a grade, but noting that he had no academic records to review for further information. He also felt the claimant had a tendency to deny or under-report mental health complaints; and he also noted the claimant had neurocognitive deficits that negatively impact various aspects of his life, and that would likely prevent him from performing the duties of the job he had previously performed with the State. While Dr. Crouch did believe the claimant had "a Mental/Nervous Permanent Partial Disability Rating of 15%" he was equivocal on the cause of this disability.

> The causes or contributors to Mr. Pitruzzello's current impairments are unclear, but likely multifactorial. For example, pre-accident factors likely include his history of academic intelligence, learning/memory, and speech/language functions. Unfortunately, academic records were unavailable to clarify these issues. Other contributions include physical issues including his peripheral motor difficulties and ongoing pain symptoms. Such issues, although unlikely a primary cause, could result in distraction and emotional distress that could exacerbate his cognitive capabilities. Finally, and as stated previously, it is possible that the claimant sustained an MTBI [minor traumatic brain injury] in the 11/14/07 incident. However, in this examiner's opinion, Mr. Pitruzzello's post-accident functioning and ability to live independently for many years indicate that it had little, if any, significant functional impact on him to date.

Findings, ¶ 44.

Prior to the instant formal hearing the claimant was evaluated by Alfred Herzog, MD, a psychiatrist in Hartford. In his September 28, 2015 report to the claimant's attorney, Dr. Herzog opined that the claimant's *"diagnosis is consistent with that of Traumatic Brain Injury, moderately severe, with behavioral changes (DSM 5) 507.0, 294.11 and ICD 10 S06.29S, F02.81."* Findings, ¶ 47. Dr. Herzog said he reviewed medical reports and had spoken to a family friend who said the claimant's behavior had changed after the 2007 accident. Dr. Herzog further opined the he believed the claimant "has developed ongoing behavioral changes since this injury" and also opined that he had reached maximum medical improvement, did not have a work capacity and would probably never have a work capacity. Findings, ¶ 49. Dr. Herzog offered treatment recommendations but while the respondent offered to provide treatment on a "without prejudice" basis the claimant did not avail himself of this opportunity.

Based on these subordinate facts Commissioner Schoolcraft reached 16 conclusions. They may be summarized as follows. The trial commissioner found that the

2010 Finding reached by Commissioner Walker yielded a decision on the merits as to both the 2005 and 2007 injuries the claimant sustained and the determination therein was the impact of the claimant's 2007 head trauma was minor, self-limiting and did not include post-concussive syndrome. In Conclusions, ¶¶ E thru I, Commissioner Schoolcraft concluded that the relief sought by the claimant was barred by the doctrine of res judicata and collateral estoppel, as the issues concerning a traumatic brain injury could have been addressed at that juncture. Therefore, only the application of § 31-315 C.G.S. to open the prior judgment could offer the claimant the relief that he sought. The trial commissioner, however, concluded the claimant's evidence did not establish a change in circumstances since the 2010 Finding. Commissioner Schoolcraft also did not find any elements of fraud, accident or mutual mistake in the proceedings before Commissioner Walker, and further concluded that evidence presented by Dr. Herzog was less persuasive than the evidence presented by Dr. Crouch, which was unsupportive of opening the 2010 Finding. Finally, in Conclusion, ¶ P, the trial commissioner reached this conclusion as to the claimant's argument that advances in medical science now made him eligible for disability benefits for the 2007 injury.

> Regarding the claimant's allegation that "knowledge and understanding of the effects of a head injury" have advanced in recent years, this proposition, even if true, provides no legal basis for me to open the 2010 dismissal and revisit Commissioner Walker's determination that the claimant had no brain injury as of 2010. In any event, there is no evidence in this case that any intervening scientific advances have been made that would make recognition of a long-term brain injury likely now than it was in 2010.

The claimant filed a Motion to Correct which was denied in its entirety. He has now pursued this appeal. In his appeal, he focuses not on Commissioner Schoolcraft's

determination that the 2010 Finding was entitled to the force of *res judicata*; but stresses that since that time his disability has increased and probative evidence links this condition to the 2007 injury. As a result, he believes that the commissioner failed to properly apply the terms of § 31-315 C.G.S. and the medical evidence was compelling enough, as a matter of law, to compel opening the 2010 Finding and award him temporary total disability benefits. In part, the claimant believes advances in medical knowledge linked to the National Football League's concussion crisis since the 2010 Finding argues in favor of opening the prior decision.

The respondent disagrees. As they view the case the claimant is merely seeking a "second bite of the apple" after failing to receive the relief he sought at the hearing that yielded the 2010 Finding. They urge this tribunal to affirm Commissioner Schoolcraft's Finding and Dismissal.

On appeal, we generally extend deference to the decisions made by the trial commissioner. "As with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Daniels v. Alander, 268 Conn. 320, 330 (2004). The Compensation Review Board cannot retry the facts of the case and may only overturn the findings of the trial commissioner if they are without evidentiary support, contrary to the law, or based on unreasonable or impermissible factual inferences. Kish v. Nursing and Home Care, Inc., 248 Conn. 379 (1999) and Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Nonetheless, while we must provide deference to the decision of a trial commissioner, we may reverse such a decision if the commissioner did not properly apply the law or reached a decision unsupported by

the evidence on the record. Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

After reviewing the claimant's brief and the oral argument before this tribunal we believe there are two potential directions wherein the claimant could have received benefits at this juncture. He could have proved that notwithstanding the 2010 Finding his condition had materially worsened and therefore, he was now entitled to § 31-307 C.G.S. benefits. In the alternative, he could argue that the advances in medical science since 2010 now established that his condition was the result of the 2007 compensable injury. Upon review we conclude that the evidence on the record did not, as a matter of law, compel the trial commissioner to grant the relief sought by the claimant based on either approach.

Our review starts with the applicable precedent on this issue that dealt with a claimant arguing prior Findings and Awards inadequately compensated him for alleged psychic injuries. In Sellers v. Sellers Garage, Inc., 110 Conn. App. 110 (2008) the claimant argued that a trial commissioner improperly dismissed his claim citing the doctrines of collateral estoppel and res judicata. The Appellate Court affirmed the dismissal. In doing so they noted that this tribunal had stated that "the alleged worsening of a noncompensable condition [could not] be elevated to the status of compensable." Id., 114. The Appellate Court further pointed out the need to link a claimant's condition to causation of the initial injury to obtain a recovery, "[t]he rational mind must be able to trace resultant personal injury to a proximate cause set in motion by the employment and not be some other agency or there can be no recovery." Id., 116. Finding the issue of

proximate cause was previously litigated and resolved in a manner adverse to the claimant the Appellate Court affirmed the dismissal of the claim.

In the present case Commissioner Walker determined in the 2010 Finding that the claimant had sustained minor head trauma as a result of the 2007 work incident but as of the date of the formal hearing it had been self limiting. The claimant therefore had the burden of establishing his future medical condition was the sequalae of the 2007 work injury to obtain benefits under Chapter 568 for that injury. The precedent in Schenkel v. Richard Chevrolet, Inc., 5302 CRB-8-07-12 (November 21, 2008) outlines the standard requisite for a claimant to recover under a scenario where his or her disability increases after initially being denied benefits. We rejected the respondent's argument in Schenkel that the denial of § 31-307 C.G.S. benefits for an earlier time period served as an absolute bar to the claimant potentially receiving future § 31-307 C.G.S. benefits, citing Bailey v. Stripling Auto Sales, Inc. d/b/a Willimantic Dodge/Nissan, 4516 CRB-2-02-4 (May 8, 2003).

> If a claim covering a certain period of time is denied based on a lack of proof that a compensable injury led to total disability during that period, that decision need not be reopened pursuant to § 31-315 before a claimant may seek benefits for a later time period. Valletta v. State/Dept. of Mental Retardation, 4543 CRB-5-02-6 (March 26, 2003). The two claims are legally distinct, even though they may stem from the same compensable injury, and even though the initial dismissal order may contain relevant findings of fact whose preclusive effect under the collateral estoppel doctrine would make it harder for a claimant to later prove that his condition has worsened enough to establish total disability. See, e.g., Calderoni v. B&T Contractors, 4207 CRB-5-00-3 (May 4, 2001)(previous finding that total disability was due to heart disease and not to compensable injuries was adopted by trier, who found no substantial change in medical condition with regard to compensable injuries, and denied subsequent total disability claim).

Id.

The claimant in Schenkel presented probative evidence that the trial commissioner found persuasive and credible that he was now totally disabled and that the disability was linked to his compensable injury. As a result the trial commissioner awarded him temporary total disability benefits and we affirmed this decision on appeal, as "[w]e find the decision herein consistent with prior cases where a claimant who failed to prove temporary total disability at one point in time proffered sufficient evidence at a later date that he or she was then entitled to § 31-307 C.G.S. benefits. See Howard v. CVS Pharmacy, Inc., 5063 CRB-2-06-3 (April 4, 2007)." Id.

Therefore, the claimant had the right to seek temporary total disability benefits for a period subsequent to the 2010 Finding. However, to obtain an award he needed to present persuasive expert evidence to Commissioner Schoolcraft. The claimant argues that the evidence he presented from Dr. Herzog and Dr. Sinclair substantiate that his condition has deteriorated subsequent to the 2010 Finding, link this condition to the 2007 incident and should have been credited by the trial commissioner. However, Commissioner Schoolcraft did not credit this evidence and instead, credited the opinion of Dr. Crouch that the symptoms of the claimant's concussion had resolved long before 2010, and were not a significant factor in his current condition. We note it is the trial commissioner's responsibility "to assess the weight and credibility of medical reports and testimony. . . ." O'Reilly v. General Dynamics Corp., 52 Conn. App. 813, 818 (1999). We also note a reasonable person would need to determine there was a link of proximate cause between the claimant's 2007 injury and his current condition to award benefits. See Madden v. Danbury Hospital, 5745 CRB-7-12-4 (April 22, 2013), citing Sapko v.

State, 305 Conn. 360 (2012). After reviewing the totality of the Finding and Dismissal, we conclude that Commissioner Schoolcraft was left unpersuaded that the claimant's present cognitive issues were the result of the 2007 injury.

This conclusion also impacts the second avenue of relief potentially available to the claimant; arguing that improved medical knowledge available today and unavavilable as of 2010 now would cause a fact finder today to determine that his condition was the sequaelae of the 2007 injury. We find precedent in Coppola v. L.G. DeFelice, Inc., 3850 CRB-3-98-6 (August 30, 1999) which offers insight into the standard of proof that would be required to prevail on this theory. In Coppola, we affirmed a trial commissioner's decision to reopen a stipulation when the claimant presented evidence the trial commissioner found persuasive that a radiologist had misread an MRI report subsequent to a traumatic injury, and subsequent evidence was presented indicating the claimant had actually sustained extensive brain damage or atrophy as a result of his injuries. The trial commissioner determined the parties were operating under a mutual mistake of fact at the time of the stipulation and granted a motion to reopen, which this tribunal affirmed.

We find Coppola instructive in analyzing Commissioner Schoolcraft's Conclusion, ¶ P. Had advances in medical science since 2010 cast a new light on the medical evidence submitted to Commissioner Walker prior to the 2010 Finding, a present trial commissioner could clearly reevaluate the supportive foundation of the prior decision to ascertain if it were still sustainable in light of current scientific standards. In addition, if some new investigatory tests were now available concerning post concussive trauma that were unavailable prior to the 2010 Finding, we would anticipate such evidence would be presented to the trial commissioner and given due consideration.

However, while this evidence could provide grounds to establish the requisite link of causation so as to award the claimant benefits, the trial commissioner would still need to find it persuasive. In the present case the additional reports submitted do not include any new objective tests which the claimant can identify were unavailable in 2010, or any claim that the witnesses who offered evidence at the earlier hearing misread the available objective tests, or applied what would now be an obsolete standard in evaluating those tests.[3] We may thus distinguish this case from Coppola. While the door is always open at our commission to consider new evidence which is reliant on new medical standards, the record herein did not break sufficient new ground from the record available at the time of the 2010 Finding so as to compel a different result as a matter of law.[4] A trial commissioner can only render an opinion on what evidence actually says, Ben-Eli v. Lowe's Home Improvement Center, 5006 CRB-3-05-10 (November 16, 2006) and the evidence herein did not compel granting the relief the claimant sought.[5]

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[3] The additional evidence presented from Dr. Sinclair and Dr. Herzog constituted essentially narrative observations as to the claimant's condition and opinions drawn from such observations, and were not new objective tests such as an MRI scan, CT scan, or PET scan; nor does the claimant point to these experts applying any scientific standards in their reports which were not in use prior to 2010.

[4] We have reviewed the cases cited in the claimant's brief asserting legal error in this case and find that none would compel this tribunal to reverse the Finding and Dismissal. In Vonella v. Rainforest Café, 4788 CRB-6-04-2 (March 16, 2005) the trial commissioner awarded the claimant temporary total benefits after a pan had fallen on her head, but stopped those benefits once a medical expert the commissioner found persuasive determined the claimant was no longer totally disabled. The claimant appealed, and we affirmed the commissioner's decision. In the present case the trial commissioner concluded the medical evidence he found persuasive did not warrant the award of § 31-307 C.G.S. benefits for any period. In Garcia v. Legare Plumbing & Heat, 3856 CRB-2-98-7 (September 23, 1999) the claimant was awarded benefits subsequent to traumatic head injuries sustained after falling off a ladder. The trial commissioner found credible the testimony of a treating neurologist that the claimant's headaches and depression were due to the compensable injury, and awarded the claimant benefits. We affirmed this decision based on the fact a trial commissioner has the prerogative to weigh contested evidence. The commissioner in the present case reached a different decision after reviewing the evidence and we must respect it.

[5] We affirm the trial commissioner's denial of the appellant's Motion to Correct. A trial commissioner is not obligated to adopt a litigant's view of the evidence presented on the record. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003); Brockenberry v. Thomas

The claimant failed to persuade the trial commissioner either that his condition had materially deteriorated since the 2010 Finding, as a result of the compensable injury, or that improved medical science since the prior Finding would establish his cognitive problems were the result of the 2007 compensable injury.

Therefore, we affirm the Finding and Dismissal.

Commissioners Nancy E. Salerno and Christine L. Engel concur in this opinion.

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Deegan d/b/a Tom's Scrap Metal, Inc., 5429 CRB-5-09-2 (January 22, 2010), *aff'd*, 126 Conn. App. 902 (2011)(Per Curiam); and Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006).