



STRUNK • DODGE • AIKEN • ZOVAS
ATTORNEYS AT LAW

CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas (SDAZ)** provides you with our **Spring 2022 WORKERS' COMPENSATION UPDATE**. Please feel free to share this update with your colleagues. If someone inadvertently has been left off our email list and would like to receive future updates they can contact **Jason Dodge** at jdodge@ctworkcomp.com or 860-785-4503.

The Connecticut Workers' Compensation Commission through the leadership of Chief Administrative Law Judge Morelli has remained open for business during the Covid-19 pandemic. At this time all hearings are being held in person. Masks are being required to be worn at the Commission offices.

STRUNK DODGE AIKEN ZOVAS NEWS

Attorney Richard Aiken of SDAZ has been named the recipient of the Pomeranz-O'Brien award from the Connecticut Bar Association. The Pomeranz-O'Brien Award is presented to a practitioner who has, over the course of a career, exhibited excellence in the practice of workers' compensation law, and/or made outstanding and extraordinary contributions to the practice. It is named for Edward Pomeranz, an early pioneer in the practice of workers' compensation law and Ed O'Brien, Sr., an accomplished practitioner who also served the state as workers' compensation commissioner. Attorney Aiken is a former Chair of the Connecticut Bar Association's Workers' Compensation Section and runs the CBA Golf Event every year that donates generously to Food Share. Congratulations to Rick!

Strunk Dodge Aiken Zovas is pleased to announce that **Attorney Courtney C. Stabnick** has joined the firm as a Senior Associate and Manager of the Subrogation Department. Attorney Stabnick is a graduate of Colby College (BA 1995) and Suffolk University School of Law. Attorney Stabnick handles employer's subrogation, personal injury and civil defense claims, as well as workers' compensation claims. She has appeared before the Connecticut Appellate and Supreme Courts. She is a member of the American Bar Association, Massachusetts Bar Association, Connecticut Bar Association, as well as the Hartford County Bar Association and the Boston Bar Association. She is also admitted to practice in Massachusetts. Attorney Stabnick has written articles on the subject of workers' compensation subrogation. She has also presented seminars on

workers' compensation subrogation to clients, insurance carriers and third party administrators. Attorney Stabnick is a member of the National Association of Subrogation Professionals and has been a repeat guest lecturer at their annual conventions. Attorney Stabnick was named a "Rising Star" in the New England Super Lawyers list in 2010 and 2013 in the area of civil litigation defense and was named to Hartford Magazine's best lawyer list in personal injury litigation since 2014. In 2022, she was named to Hartford Magazine's best lawyer list in the areas of insurance law, civil litigation, both plaintiff and defense, and worker's compensation on both the Connecticut and New England's Best Lawyers list. Prior to joining our firm, Attorney Stabnick was a partner at Pomeranz, Drayton & Stabnick, where she focused her practice on employer's subrogation, personal injury and civil defense claims, as well as workers' compensation claims from 2001 to 2022.

Strunk Dodge Aiken Zovas is also pleased to announce that **Attorney Richard Stabnick** will be joining SDAZ in an Of Counsel position. Attorney Stabnick was born in Memphis, Tennessee and is a graduate of Wesleyan University; he received his J.D. at the University of Connecticut. He is admitted to practice law in the State of Connecticut. Attorney Stabnick has practiced the defense of workers' compensation claims for over forty years representing employers, insurance carriers and third-party administrators. He has appeared before the Compensation Review Board and the Connecticut Appellate and Supreme Courts on many occasions throughout his career. Attorney Stabnick is a member of the American Bar Association, Hartford County Bar Association, Connecticut Bar Association and the Connecticut Defense Association. Attorney Stabnick has been recognized and rated AV by Martindale Hubbell and has been previously selected for the Best Lawyers in America, where he continues to be recognized. He has been a repeat lecturer for the Connecticut Business and Industry Association, as well as the Connecticut Bar Association. He has been included on the list of Super Lawyer for New England and Connecticut since 2010. Prior to joining our firm, Attorney Stabnick was a senior partner at the law firm of Pomeranz, Drayton & Stabnick for over 40 years, which was one of the leading workers' compensation defense firms in Connecticut. Attorneys Strunk, Dodge, Aiken, Zovas, Porto and Berdon have previously practiced law with Attorney Stabnick at Pomeranz, Drayton & Stabnick.

The annual Cassidy Memorial Road Race to benefit the Hartford County Bar Foundation took place on May 7. The proceeds of the 5K run/walk and kids run are given to the poor, disabled and disadvantaged in the Hartford area by way of grants from the Foundation. **Attorney Anne Zovas of SDAZ**, a member of the Foundation Board, chairs the race and **Attorney Phil Markuszka of SDAZ** was a member of the race committee. Administrative Assistants Mary Fitzgerald and Sarahdyne Moise of SDAZ provided support and participated in the event. Photos are posted on the SDAZ Facebook page!

The 2021 Edition of the *U.S. News – Best Lawyers* “Best Law Firms” rankings were publicly announced. **Strunk Dodge Aiken Zovas has been recognized as a Tier 1 “Best Law Firm” for the 2021 edition.**

Attorneys Jason Dodge and Lucas Strunk of SDAZ attended the 2022 Workers’ compensation Retreat sponsored by the Connecticut Bar Association in Stowe, Vermont on March 20-March 22. Attorney Strunk provided a legislative update to the group. A medical presentation was made by Orthopedic Specialty Group, PC and Dr. Brittis, Dr. Griffith, and Dr. Backe. Attorney Greg Lisowski present a seminar regarding Medicare and MSA issues.

At the upcoming June 2022 Connecticut Legal Conference of the Connecticut Bar Association **Attorney Lucas Strunk of SDAZ** will provide a legislative update to the Workers’ Compensation Section of the CBA. **Attorney Jason Dodge of SDAZ** will present a review of important Supreme and Appellate Court decisions that have been issued in 2021-2022 to the Section.

Attorneys Lucas Strunk, Richard Aiken, and Jason Dodge of SDAZ have been named *Best Lawyers 2021* in New England and Connecticut. Best Lawyers is the oldest and most respected lawyer ranking service in the world. For 40 years, *Best Lawyers* has assisted those in need of legal services to identify the lawyers best qualified to represent them in distant jurisdictions or unfamiliar specialties.

Attorney Philip Markuszka of SDAZ was accepted to the Board of Directors of the Hartford County Bar Association on May 18, 2021 for a three year term.

Partners Anne Zovas, Richard Aiken, Jason Dodge, and Lucas Strunk of SDAZ have been named to Connecticut Super Lawyers for 2021. **Attorneys Philip Markuszka and Christopher D’Angelo of SDAZ** have again been named Connecticut ‘Rising Stars’ for Super Lawyers 2021.

Attorney Christopher Buccini of SDAZ has been named to the Connecticut Bar Association’s Workers’ Compensation Section Executive Committee. **Attorneys Aiken, Strunk, and Dodge of SDAZ** are already on the Committee.

Attorney Buccini has also been appointed as an Editor to the Compensation Quarterly, a publication of the Workers’ Compensation section of the Connecticut Bar Association which reviews topics and case law regarding workers’ compensation in Connecticut.

Save the date! Kids’ Chance of Connecticut will be having its annual Golf Event on Monday September 26, 2022 at Glastonbury Hills Country Club in Glastonbury, Connecticut. **Attorneys Jason Dodge and Philip Markuszka of SDAZ** are Board members of Kids’ Chance of Connecticut. The mission of Kids’ Chance of Connecticut is to provide educational scholarships to the children of Connecticut workers who have been seriously or fatally injured in work-related accidents. If you or your organization wish to become involved in this worthy charity please contact Jason or Phil. For the

2022-2023 academic year KCOC has given out scholarships totaling \$35,000. If you are aware of a child who may qualify for a scholarship to a college or technical school please go to the following website for an application www.kidschanceofct.org.

The 2021-2022 supplement to the Connecticut workers' compensation treatise **Connecticut Workers' Compensation Law** published by Thomson Reuters was issued in December 2021. This two-volume treatise co-authored by **Attorneys Jason Dodge and Lucas Strunk of SDAZ**, and Attorneys James Pomeranz, Robert Carter and Donna Civitello provides a broad and historical view of Connecticut Workers' Compensation Law and discusses current issues, both in decisional law and in legislative trends. Topics addressed in the treatise include: arising out of and in the course of employment, causation, statute of non-claim, filing notices to contest liability, Motions to Preclude, third party lien rights, and Medicare and Social Security interplay with Connecticut Workers' Compensation claims. The treatise can be purchased online at:

<https://store.legal.thomsonreuters.com/law-products/Treatises/Connecticut-Workers-Compensation-Law-Vols-19-and-19A-Connecticut-Practice-Series/p/100006513>

You can now follow us on Facebook at <https://www.facebook.com/Strunk-Dodge-Aiken-Zovas-709895565750751/>

SDAZ can provide your company with free seminars regarding Connecticut Workers' Compensation issues. Please contact us about tailoring a seminar to address your particular needs.

We do appreciate referrals for workers' compensation defense legal work. When referring new files to SDAZ for workers' compensation defense please send them to one of the attorneys' email: azovas@ctworkcomp.com, raiken@ctworkcomp.com, lstrunk@ctworkcomp.com, jdodge@ctworkcomp.com, HPorto@ctworkcomp.com, nberdon@ctworkcomp.com, cstabnick@ctworkcomp.com, cbuccini@ctworkcomp.com, pmarkuszka@ctworkcomp.com, cdangelo@ctworkcomp.com, rstabnick@ctworkcomp.com or by regular mail. We will respond acknowledging receipt of the file and provide you with our recommendations for defense strategy.

Please contact us if you would like a copy of our laminated "Connecticut Workers' Compensation at a glance" that gives a good summary of Connecticut Workers' Compensation law to keep at your desk.

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CONNECTICUT WORKERS' COMPENSATION COMMISSION NEWS

Administrative Law Judge News:

New Administrative Law Judge Zachary Delaney of West Hartford has begun presiding in the Fifth District in Waterbury.

Attorney Nancy Bonuomo has been presiding as interim Administrative Law Judge.

Former Connecticut Workers' Compensation Administrative Law Judge Rhoda Loeb passed away in early March at the age of 100. She attended the University of Michigan as an undergraduate and Yale Law School. Judge Loeb presided in the Third District in New Haven. Our condolences are extended to Judge Loeb's family.

Eighth District Move:

The Eighth District Workers' Compensation Commission office in Middletown moved on December 17, 2021. The Middletown office's new location and contact information is:

Workers' Compensation Commission
Eighth District Office
649 South Main Street
Middletown, CT 06457
Phone: (860) 344-7453
Fax: (860) 344-7487

Voluntary Agreements:

We have confirmed that while voluntary agreements are preferred to be on green paper they can be submitted on white paper.

Mileage rates:

As on January 1, 2022 the mileage rate has increased to 58.5 cents per mile.

Burial Fees:

As of January 1, 2022, the burial fee for deaths covered under the Workers' Compensation Act is \$12,516.00 based on the overall 2021 CPI-W increase for the northeast of 4.3%. Connecticut General Statutes Section 31-306 was amended in 2021 to reflect that the compensation for burial benefits will be adjusted by the percentage increase in the consumer price index for urban wage earners and clerical workers in the Northeast as defined in the United States Department of Labor's Bureau of Labor Statistics.

CRB Appointments:

Chief Administrative Law Judge Morelli has appointed Administrative Law Judges Daniel Dilzer and Carolyn Colangelo to sit as panel members on appeals before the Compensation Review Board for the calendar year beginning January 1, 2022.

Memorandum 2022-02

This Memorandum discusses the way an employer opts out of coverage:

Connecticut General Statutes §31-275(10) sets forth the procedure to be used by an employer who opts in and/or out of coverage under the Workers' Compensation Act. On July 17, 2013, and pursuant to the authority granted to the Chairman by C.G.S. §31-321, Forms 6B, 6B-1, and 75 were amended to include the instructions that all such documents should be submitted to the office of the Chairman at 21 Oak Street, Hartford, CT 06106.

Public Act 21-76 §17(b) has further clarified the manner in which these forms may be filed. Although §1-268(d) of Chapter 15, the Connecticut Uniform Electronic Transactions Act, states that it does "not apply to any of the rules of court practice and procedure under the Connecticut Practice Book," the filing of Forms 6B, 6B-1, and 75 are administrative in nature and not legal pleadings. As such, notwithstanding the language in C.G.S. §31-275(10) that requires these documents to be sent certified mail, return receipt requested, they may now be delivered to the office of the Chairman by electronic means with proof of a delivery receipt. The email address to be used for electronic submissions of these forms is WCC.Forms@ct.gov.

Memorandum 2021-09

This Memorandum advises the public that the title "Commissioner" has now been changed to "Administrative Law Judge." The forms and publications from the commission to the extent that they refer to a Commissioner "shall be interpreted and/or understood to mean "Administrative Law Judge."

Memorandum 2021-06:

Memorandum 2021-06 has been issued by Chief Administrative Law Judge Morelli regarding maximum compensation rates. The Chairman has ordered that the maximum total disability rate for injuries occurring after October 1, 2021 is \$1,446 (based on the estimated average weekly wage of all employees in Connecticut). The maximum

temporary partial/permanent partial disability rate for accidents after October 1, 2021 is \$1,140 (based on the average weekly earnings of production and related workers in manufacturing in Connecticut).

<https://wcc.state.ct.us/memos/2021/2021-06.htm>

Exam Charges:

Commission Medical Exam (CME) fee has increased to \$900; Respondent Medical Exam (RME) fee is still \$750.

The Commission does have a website where you can look up such information as to whether a hearing is assigned, list of all claims for an employee, status of a Form 36, and interested parties. This is quite a useful site and is a different website than the Commission's main site. It can be found at:

<http://stg-pars.wcc.ct.gov/Default.aspx>

WORKERS' COMPENSATION PRACTICE TIP

In a difficult case where Medicare is involved the parties may wish to consider using the provisions of Section 4.1.4 of the WCMSA reference Guide, Version 3.5, to settle the claim. Section 4.1.4 provides:

Because the CMS prices based upon what is claimed, released, or released in effect, the CMS must have documentation as to why disputed cases settle future medical costs for less than the recommended pricing. As a result, when a state WC judge or other binding party approves a WC settlement after a hearing on the merits, Medicare generally will accept the terms of the settlement, unless the settlement does not adequately address Medicare's interests. This shall include all denied liability cases, whether in part or in full. If Medicare's interests were not reasonably considered, Medicare will refuse to pay for services related to the WC injury (and otherwise reimbursable by Medicare) until such expenses have exhausted the entire dollar amount of the entire WC settlement. Medicare may also assert a recovery claim, if appropriate. If a court or other adjudicator of the merits (e.g., a state WC board or commission) specifically designates funds to a portion of a settlement that is not related to medical services (e.g., lost wages), then Medicare will accept that designation.

Based on the above, if the parties reach agreement on a settlement amount and want to make sure to protect the interests of Medicare, they can do it through a hearing on the merits where the Administrative law Judge assesses the amount of the settlement that should be allocated for future Medicare-covered treatment. This process is designed to avoid submission of the MSA to CMS for approval but still make sure that Medicare's interests are protected.

It is important to note that the Judge must issue his/her decision based on the evidence presented at a hearing on the merits. Administrative Law Judge Barton from the Fifth District in Waterbury at a recent CBA seminar stated that he has issued Findings in the past based on this section of the reference guide.

CASE LAW

LAZU V. STATE OF CONNECTICUT/DEPARTMENT OF CHILDREN AND FAMILIES, 6433 CRB-8-21-6 (February 18, 2022)

In this case Administrative Law Judge Mylnarczyk's Finding that the claimant was not totally disabled was affirmed by the CRB. The claimant was a retired social worker with the State of Connecticut; he had worked with the State from 1991 to 2017. When he retired he was in a managerial position. He frequently used computers in the course of his work and was fluent in English and Spanish. He had a Master's degree in social work. As a result of his work he sustained bilateral hand and elbow injuries which required numerous surgeries. The claimant testified that he had difficulty holding a pencil and had pain, numbness and tingling in his hands. He asserted that he could not do household chores or use a keyboard. The claimant contended that he was permanently and totally disabled; in support of that claim were his treating doctor, Dr. Linburg, a CME, Dr. Alleyne, and a vocational specialist, Mr Lerner. The State defended the claim based on a RME with Dr. Straznicky who gave a 10 pound limitation and a vocational specialist, Erin Bailey. Importantly, the State also presented surveillance evidence that showed the claimant with bags in his hand, carrying shovels, operating a snowblower, typing into a cell phone, and pulling a slot machine at a casino with his injured hand. The ALJ concluded that the claimant's testimony re his physical limitations were "almost entirely false or misleading." Ms. Bailey's testimony was in part based on her review of the surveillance; she determined that there were jobs available that the claimant could perform. The ALJ found Ms. Bailey's testimony persuasive especially since she had reviewed the surveillance. The CRB affirmed the decision stating that when deciding issues of disability status a Judge has to engage in "a holistic determination of work capacity." The Board rejected the claimant's contention that the case of *Bode v. Connecticut Mason Contractors*, 130 Conn. App. 672, cert denied, 302 Conn. 942 (2011) (reversal of trial decision of work capacity since Commissioner had

not credited the undisputed documentary evidence) should control. The CRB distinguished *Bode* and concluded that the ALJ here had properly weighed all the evidence. A different result likely would have occurred in this case if there had been no surveillance evidence.

NORMAN BEAULIEU V. JONES AUTOMOTIVE SERVICES, INC., ET AL

In this formal hearing decision the claimant who alleged employment as the caretaker maintained that he had sustained injuries to his shoulder and teeth as a result of being assaulted while protecting his employer's property. The Administrative Law Judge, however, after considering all the evidence, highlighted the claimant's very independent nature and the bartering system that he put in place with a variety of individuals, ultimately concluding that his independence failed to establish an employment relationship. Moreover, the claimant's injuries were found to result from his taunting of individuals who were using drugs at the time of the altercation in question. The Judge cited the CRB case of Paul Setterstrom v. CR Klewin, Inc. The Judge was clearly troubled with the claimant's inconsistent testimony throughout series of formal hearings, finding that the claimant lacked credibility and/or persuasiveness. Proceedings were defended by **Attorney Lucas D. Strunk of SDAZ** in concert with Attorney David Zipfel who represented the potentially uninsured employer.

DAHLE v. STOP & SHOP COMPANIES, INC., 6435 CRB-6-21-7 (April 1,2022)

In this case, the Compensation Review Board affirmed the denial of a Motion to Open a 2008 formal hearing decision regarding medical treatment. The claimant sustained compensable injuries to her left hip and right shoulder. In a 2008 decision former Administrative Law Judge Walker had granted 31–308a benefits but denied medical treatment because it was palliative and not curative. At the time of the 2008 decision the claimant was represented by counsel. The 2008 decision was appealed to the CRB where it was affirmed. Subsequently, the claimant was disabled due to the compensable right shoulder injury and benefits paid; a decision by Administrative Law Judge Delaney in 2015 regarding the application of the Social Security offset pursuant to Connecticut General Statutes Section 31–307(e) was appealed by the claimant all the way up to the Appellate Court. **Dahle v. Stop & Shop Companies., 185 Conn. App. 71 (2018), cert denied, 330 Conn. 953 (2018).** In 2020, the claimant sought to open the 2008 decision regarding medical treatment based on her contention that Workers' Compensation Commission had continuing jurisdiction, there were mistakes regarding the evidence submitted at the 2008 formal hearing, there had been changed conditions of fact, her incapacity had increased, and the Workers' Compensation Commission was careless and/or negligent in the handling of her claim. The respondent's objected to the motion to open, contending, in part, that the 2008 decision was a final judgment and

that the claimant had failed to timely move to open the decision pursuant to Practice Book Section 17-4. Administrative Law Judge Driscoll denied the claimant's Motion to Open, referring to the 2008 decision as "a picture, a snapshot in time, if you will, showing the observer the historical facts and circumstances of this case as of the time the decision was rendered. The claimant's request to undo the Walker decision as a steppingstone to prove her total disability claim is misplaced, and the claimant's attempt to open the award is tantamount to a request to retry an issue lost on appeal." The CRB affirmed the Judge's denial of the Motion to Open noting that the 2008 decision was a final judgment. The Board noted that it "reiterates the long-standing policy against parties having multiple bites at the apple after failing to meet their burdens in the original proceedings."

CHALIFOUX v. CROSSINGS EAST HEALTH & REHAB CENTER, 6422 CRB-2-21-5 (APRIL 4, 2022)

In this case the Compensation Review Board affirmed an award of Connecticut General Statutes Section 31–308a benefits. The claimant was age 59 and worked in a nursing home. In the course of her work she had to lift heavy boxes. She had two years of college education. The claimant sustained a compensable back injury on August 25, 2015. She underwent two lumbar surgeries with the last surgery in 2017 being a fusion at L5-S1. The claimant received a permanent impairment award of 26%. The claimant was terminated from her employment in March 2017 due to her job being eliminated. The claimant sought payment of Section 31–308a benefits as of June 4, 2017. The claimant testified that she had sought work at approximately 100 employers without any success. She did indicate that she had worked at a youth camp in 2019 for her sister, however, that job was not available in 2020 due to the pandemic. The claimant worked at Dunkin Donuts from December 2019 through March 2020 making approximately \$12 per hour over 18 hours per week. In March 2022 she voluntarily left this job due to the pandemic; the claimant stated that her husband had health issues and that she did not want to expose him to Covid-19 and therefore went into quarantine. The claimant had significant work restrictions including a lifting restriction of 10 pounds, avoidance of bending and prolonged sitting, frequent breaks and no more than six hours per day of work. The respondents contested the claim asserting that the claimant had voluntarily left work and that there was insufficient evidence to support a 31–308a order. Ultimately, the Administrative Law Judge ordered 97.24 weeks of benefits at a reduced rate of \$300 per week; the claimant's basic compensation rate was \$358.07. The Board affirmed the award and stated: "we find that the award of section 31–308a benefits is highly discretionary especially in light of the extraordinary circumstances created by the pandemic which caused numerous Commission procedures to be relaxed or waived." The Board noted that notwithstanding the claimant's leaving work it was within the discretion of the judge to award benefits. The CRB also found that the award of benefits at the reduced rate was in the Judge's discretion based on the facts in the case.

JANET BRENNAN, EXECUTRIX OF THE ESTATE OF THOMAS BRENNAN v. CITY OF WATERBURY, 6430 CRB-5-21-6 (APRIL 11, 2022)

In this heart and hypertension case under Connecticut General Statutes Section 7-433(c), the Compensation Review Board affirmed that an estate was entitled to payment of a permanent partial disability award of 77.5% of the heart, however, the Board remanded the case for further findings regarding mandatory interest under Connecticut General Statutes Section 31 – 295(c) and order for penalties for undue delay in violation of Connecticut General Statutes Sections 31–288 and 31–300. This case had previously been heard by the Connecticut Supreme Court, Brennan v. City of Waterbury, 331 Conn. 672 (2019). The Supreme Court dealt with the issue as to whether the estate of a decedent was entitled to a permanent partial disability award. The Supreme Court had found that “**matured** section 7–433c benefits-those that accrued during the claimant’s lifetime-properly passed to the claimant’s estate.” (Emphasis supplied.) Id., 693. The case had been remanded to the Administrative Law Judge for further findings regarding the permanent impairment award. At the formal hearing, evidence was presented that the parties had a meeting of the minds regarding an award for permanent impairment of the heart for 77.5% with a maximum medical improvement date of October 13, 1993. The evidence revealed that the claimant had received two advances totaling 77,182.32 against the award; there was also some evidence that the claimant may have received weekly advances against permanency from the date of maximum medical improvement until his retirement in 1995. The former risk manager for the municipal employer, testified that there was an agreement as to the permanent impairment award. Additionally, documentary evidence between the parties confirmed this. Notwithstanding this agreement between the parties, no written award was ever approved by the Commission. After the rating had been issued the parties had discussed settlement of the case but no agreement had ever been reached. Apparently the claimant’s condition deteriorated and during the period February 19, 2003 through his death on April 20, 2006 the claimant received total disability payments. At the trial level, the Administrative Law Judge concluded that there was an agreement for 77.5% of the heart which was owed to the estate of the decedent; additionally, the Administrative Law Judge determined that mandatory interest was owed under Section 31–295(c) and that there had been undue delay in violation of Sections 31–288 and section 31–300. No specific monetary award was issued either for the interest or undue delay penalty. The Compensation Review Board exhaustively reviewed the facts in the case and determined that there was an agreement for 77.5% of the heart, that it had matured, and that the estate was entitled to the award. On the other hand, the Board stated that it was unclear as to when interest would have been owed under Section 31 – 295(c) and therefore remanded the case to the Trial Judge for determination as to when the mandatory interest would be triggered. Regarding the penalties for undue delay, the CRB also remanded that to the Administrative Law Judge for further findings. The Board noted that the issue of undue delay had not been listed as an issue for the formal hearing and that the Trial Judge had not ordered a specific amount to be paid.

STEPHEN COCHRAN V. STATE OF CONNECTICUT/DEPARTMENT OF TRANSPORTATION, 6425 CRB-3-21-5 (May 6, 2022)

The claimant had a compensable back injury on January 2, 1994. Prior to that he had undergone two non-compensable back surgeries. He underwent further compensable surgeries under the care of Dr. Taylor in 1994 and 1995 and was thereafter awarded a voluntary agreement for 29.5%. The claimant retired in 2003 and began to receive a pension. In that same year he was seen by Dr. Thimineur, a pain specialist, who concluded that he was totally disabled. In 2003 the claimant was also put on SSDI. On April 23, 2013 the claimant had further low back surgery in New York with an unauthorized doctor; the respondents were not aware of this surgery and had not authorized it. In 2015 Dr. Girardi, the New York surgeon, opined the claimant was totally disabled. A RME with Dr. Calderon was held in 2016; he concluded that the claimant could work, that the surgery in 1994 was unrelated to the January 1994 work accident and that the claimant would have been totally disabled three months post the 2013 New York surgery. A functional capacity examination in 2017 determined the claimant to be totally disabled. Dr. Sabella, a vocational specialist, found the claimant to be unemployable in a report in December 2017. A CME by Dr. Dickey in 2017 found that the claimant had the lightest of work capacities, that the January 1994 accident was a substantial factor in the back injury, and that the claimant had a permanent impairment of 40%. The Administrative Law Judge ruled that the claimant was entitled to total disability benefits for three months after the 2013 surgery although she did not comment on whether the surgery was reasonable or necessary. The Judge denied claims for 31-308a benefits because the claimant did not establish that he was willing to perform work; she also denied the total disability claim for the period April 1, 2003 through December 30, 2017 due to lack of medical support. The claimant was awarded an increase of permanency up to the 40% rating. Finally, the Judge ordered total disability to be paid subject to offset for Social Security retirement payments per Connecticut General Statutes Section 31-307(e) beginning on December 30, 2017, the date of Dr. Sabella's vocational analysis. The CRB affirmed the Finding. In doing so, the Board determined that it can be reasonably inferred from the Judge's decision that she found the 2013 surgery to be reasonable and necessary. Also, The CRB rejected the respondents contention that a retiree cannot receive total disability benefits, citing Green v. General Dynamics, 245 Conn. 66,79 (1998).