STRUNK·DODGE·AIKEN·ZOVAS
ATTORNEYS AT LAW

CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas (SDAZ)** provides you with our **WINTER 2023 WORKERS' COMPENSATION LAW 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.

STRUNK DODGE AIKEN ZOVAS NEWS

We are starting the new year with some exciting news about our legal staff:

We are pleased to announce that **Attorney Nancy Berdon** has become a partner at SDAZ. Attorney Berdon has been with SDAZ since the law firm was established in 2014 and has been an integral part in the success of the firm. Attorney Berdon's direct line is 860-785-4507 and her email is nberdon@ctworkcomp.com Please follow this link to Attorney Berdon's bio:

https://www.ctworkcomp.com/attorneys/attorney-nancy-e-berdon/

Attorney Nancy Berdon

Attorney Colette Griffin has also joined SDAZ as a partner as of January 1, 2023. Attorney Griffin has over thirty years of experience defending employers in workers'

compensation claims in Connecticut. She was the Chair of the Connecticut Bar Association's Workers' Compensation Section during the Covid Pandemic and, in that role, assisted the Workers' Compensation Commission in Connecticut in keeping the system running smoothly. Attorney Griffin is Board Certified as a Workers' Compensation Specialist by the Connecticut Bar Association. Attorney Griffin also has a special interest in animal advocacy and in the past has been the Co-Chair of the CBA Animal law Section. Attorney Griffin's email is cgriffin@ctworkcomp.com

Attorney Colette Griffin

Attorney Ariel MacPherson joined SDAZ as an attorney on January 1, 2023. Attorney MacPherson graduated from the University of Connecticut School of Law in 2013 and defends employers and municipalities in workers' compensation claims in Connecticut. Attorney MacPherson's email is amacpherson@ctworkcomp.com

Attorney Ariel MacPherson

Attorney Melissa (Missy) Bailey joined SDAZ as an attorney as of October 2022. Attorney Bailey received her Bachelor of Arts degree in political science, Magna Cum Laude, from Franklin Pierce University in 2018.. She graduated from Western New England University School of Law and passed the Connecticut Bar in 2022. Missy has been with the firm as a legal assistant/law clerk since June 2016 prior to becoming an associate in October 2022. Attorney Bailey represents municipalities and self-insurers as well as insured employers before the Connecticut Workers' Compensation Commission. Attorney Bailey can be reached at 860-785-4500 x4527. Her email is mbailey@ctworkcomp.com

Attorney Missy Bailey

Congratulations to **Attorney Richard Aiken of SDAZ** for being named a Fellow of the College of Workers' Compensation Lawyers. The College of Workers' Compensation Lawyers is a national organization established to honor those attorneys who have distinguished themselves in their practice in the field of workers' compensation. The induction ceremony for Attorney Aiken will take place in New York City on May 6, 2023. **Attorneys Lucas Strunk and Jason Dodge** are also Fellows in the College.

Attorney Jason Dodge of SDAZ has been named by Best Lawyers as the **2023 "Lawyer of the Year"** for workers' compensation law-employers in the Hartford region.

Attorneys Lucas Strunk, Richard Aiken, Heather Porto and Courtney Stabnick of SDAZ have been selected by their peers for recognition of their professional excellence in the 29th edition of *The Best Lawyers in America*.

Super Lawyers have issued their rankings for 2022. **Attorney Jason Dodge of SDAZ** was named to the "Top 50" lawyers for Connecticut in all fields of law in the 2022 Connecticut Super Lawyers nomination, research and Blue Ribbon process. **Attorney**

Richard Aiken was also named a Super Lawyer in the field of workers' compensation law. **Attorneys Christopher D'Angelo and Philip Markuszka** were named "Rising Stars" in workers' compensation law.

Strunk Dodge Aiken Zovas has been named by Best Lawyers as a 2023 Tier 1 "Best Law Firm." Best Lawyers is the oldest and most respected lawyer ranking service in the world. The U.S. News – Best Lawyers® "Best Law Firms" rankings are based on a rigorous evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys in the field, and review of additional information provided by law firms as part of the formal submission process.

Strunk Dodge Aiken Zovas has been named the Connecticut representative of the National Workers' compensation Defense Network. The NWCDN is a nationwide network of workers' compensation defense law firms that partner with other attorneys to provide clients with expertise, education, and guidance in the field of workers' compensation. Only one firm per state is selected for this prestigious organization. If representation is needed in a state outside of Connecticut, the NWCDN network provides a vetted list of law firms that can provide excellent legal assistance to clients of **SDAZ**.

Attorney Philip Markuszka of SDAZ was approved on October 25, 2022 unanimously by the Glastonbury Town Council to serve on the Town Plan and Zoning Commission.

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. 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 2022-2023 supplement to the Connecticut workers' compensation treatise "Connecticut Workers' Compensation Law" published by Thomson Reuters was issued in December 2022. 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, statue 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-WorkersCompensation-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 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, cgriffin@ctworkcomp.com, nberdon@ctworkcomp.com, cstabnick@ctworkcomp.com, cbuccini@ctworkcomp.com, pmarkuszka@ctworkcomp.com, cdangelo@ctworkcomp.com, amacpherson@ctworkcomp.com, rstabnick@ctworkcomp.com, mbailey@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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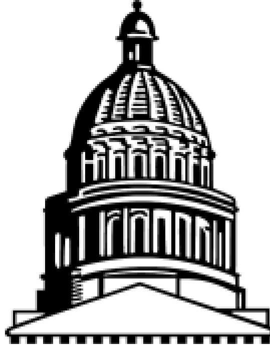
LEGISLATIVE UPDATE



2022 LEGISLATIVE REPORT

Our 2022 legislative report can be found in the link below for our Summer 2022 update:

https://www.ctworkcomp.com/wp-content/uploads/2022/08/Summer-2022-work-comp-update.pdf

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CONNECTICUT WORKERS' COMPENSATION COMMISSION NEWS

NEW ADMINISTRATIVE LAW JUDGE APPOINTMENTS:

The Judiciary Committee of the Legislature on February 15, 2022, confirmed the new appointments of Shanique Fenlator and Benjamin Blake to be Administrative Law Judges in the Workers' Compensation Commission. The Judiciary Committee also confirmed the re-appointments of: Chief Administrative Law Judge Stephen M. Morelli, Hon. Carolyn M. Colangelo, Hon. Daniel E. Dilzer, Hon. Maureen E. Driscoll, Hon. Jodi Murray Gregg, Hon. David W. Schoolcraft, and Hon. William J. Watson, III. The full House and Senate still need to confirm the appointments which likely will take place in March 2023. Best wishes to all the Administrative Law Judges on their appointments.

RETIREMENT NEWS

The Honorable Michelle D. Truglia who was presiding in the Fourth District in Bridgeport is retiring as an Administrative Law Judge. We extend our congratulations to Judge Truglia for her retirement and thank her for her many years of dedication to the Connecticut Workers' Compensation Commission; Judge Truglia was an Assistant Attorney General for the State of Connecticut before being appointed as a Judge.

MEMORANDUM 2022-09:

Memorandum 2022-09 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, 2022 is $1,509 (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, 2022 is $1,108 (based on the average weekly earnings of production and related workers in manufacturing in Connecticut).

Please note that the TP/PPD maximum rate went down from $1,140 in 2021 to $1,108 in 2022.

https://portal.ct.gov/WCC/Workers-Compensation-News/Commission-Memorandums/2022-Memos/Memorandum-No-2022-09

MEMORANDUM 2022-12

The Workers' Compensation Commission has developed an online filing Form 6B for officers of a corporation or a member of a limited liability company who wishes to be excluded from workers' compensation coverage. That link will be available at the commission website as of December 15, 2022.

https://portal.ct.gov/WCC/Workers-Compensation-News/Commission-Memorandums/2022-Memos/Memorandum-No-2022-12

MILEAGE RATES:

On January 1, 2023 the mileage rate increased to 65.5 cents per mile. The rate had been at 62.5 cents per mile since July 1, 2022

REVISIONS TO FORMS 30C AND 30D:

MEMORANDUM 2022-04 has been issued which states:

Pursuant to Public Act 22-139, the Workers' Compensation Commission (WCC) is required to maintain and report a record of all workers' compensation cancer claims made by firefighters. In order to accurately collect and record this data, WCC Form 30C "Notice of Claim for Compensation" and Form 30D "Dependents' Notice of Claim" have been revised. The revision of WCC Form 30C also includes a change to reflect post-traumatic stress injuries made pursuant to C.G.S. Section 31-294k. Please use the most

recent revisions of Forms 30C and 30D and check the appropriate box(es) when filing new claims.

BURIAL FEES:

As of January 1, 2023, the burial fee for deaths covered under the Workers' Compensation Act is $13,454.70 based on the overall 2022 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 Toni M. Fatone and Soline M. Oslena to sit as panel members on appeals before the Compensation Review Board for the calendar year beginning January 1, 2023.

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**.

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

Often medical providers will not provide medical treatment unless written authorization for treatment is given by the insurance carrier. Delay in medical treatment sometimes occurs when the insurance carrier sends written authorization to the medical provider but somehow it is misplaced or ignored by the provider. If the claimant or their representative is not carbon copied on the written authorization, they are not aware that the authorization has been provided and they cannot follow up with the medical provider to obtain the treatment. SDAZ recommends that when issuing written authorization to medical providers that the claimant or their attorney be sent a copy of the authorization in order avoid delay in treatment and unnecessary hearings. It has been our experience that sometimes hearings are assigned specifically to address authorization for medical treatment that has already been authorized unbeknownst to the claimant.

CASE LAW

BRITTO V. BIMBO FOODS, INC., 217 CONN. APP. 134 (2022)

The Appellate Court affirmed the CRB decision which denied a Motion to Preclude in a bilateral knee injury case. Initially the claimant filed a Form 30C for a specific injury to the left knee alleged to have occurred on January 21, 2017; this Form 30C was filed with the Commission on February 21, 2017 and a timely Form 43 was issued by the respondents. Subsequently, the claimant filed a further Form 30C for bilateral knee injuries based on a repetitive trauma theory. The claimant filed the second notice with the commission in December 2017 and attempted to send certified mail directly to the employer. The claimant asserted that the postal service attempted to serve the mail on three occasions, December 14, 2017, December 15, 2017, and December 30, 2017. Eventually, claimant's counsel received from the post office the envelope with the Form 30C marked "undeliverable as addressed and unable to forward." The employer contended that they did not receive the new notice of claim until their counsel was hand-delivered the notice at a hearing on January 18, 2018; immediately thereafter a Form 43 was filed. Testimony was provided by the employer as to how certified mail was received generally; the testimony indicated that there was a buzzer to be rung and an employee would meet the carrier at an exterior door. The Administrative Law Judge determined that there was a "very noticeable sign on the building" pointing to where the office of the employer was. The Judge determined that the second Form 30C was not properly served until it was hand-delivered to the respondent's attorney in 2018 and therefore denied the Motion to Preclude. The Compensation Review Board affirmed, noting that Connecticut General Statutes Section 31–321 requires notice to be served by registered or certified mail or in person. In affirming the denial of the Motion to Preclude, the Appellate Court rejected the claimant's argument that the "mailbox rule"

should have been applied and that delivery must be presumed to have been made to the employer at the address listed on the notice; the Court noted that even if the mailbox rule applied it was not sufficient to overcome the Judge's factual conclusion that the notice was never received by the employer. The Appellate Court stated that the Judge had not accepted the claimant's expert testimony by a former postal worker that the notice had been delivered; rather, the Judge relied on the marking on the envelope that it was "undeliverable." The Appellate Court also did not agree with the claimant's contention that the finding of the CRB had essentially required the claimant to prove that the employer refused service of the notice of claim. A petition for certification to the Connecticut Supreme Court will likely be filed in the case.

PREECE V. CITY OF NEW BRITAIN, 6468 CRB-6-22-2 (December 28, 2022)

In what is believed to be the first appellate decision regarding a Covid-19 claim, the Compensation Review Board remanded the case back to the Trial Judge for further determination of the standard of causation that was applied in his dismissal of the case. The claimant was a firefighter for the municipal employer. He supervised three firefighters, had administrative duties and commanded a crew at emergency scenes. On December 30, 2020 the claimant met in person (unmasked) with a fellow firefighter who believed that he was exposed to Covid 19 (it appears this other firefighter eventually tested positive). On January 3, 2021 the claimant tested positive for Covid-19 based on a routine test administered by the employer; this test was reported to him on January 7, 2021. The claimant also tested positive on January 6, 2021 based on a rapid molecular test. The claimant's primary medical provider, a APRN, was unable to provide a report establishing a causal relationship between the work and the Covid-19 diagnosis. It appears that the claimant did not present any medical opinion regarding causation at the formal hearing. The Trial Judge dismissed the claim and concluded that the claimant had not met his burden of proof; he also noted that the claim did not qualify for the rebuttable presumption per Governor Lamont's Executive Order 7JJJ since the claimant was not diagnosed between March and May 2020. The Trial Judge stated that since no rebuttable presumption was in place "the claimant would face a higher burden of establishing causation." The claimant appealed contending that the Trial Judge determined that since the rebuttable presumption did not apply to the claimant then he had a higher burden of establishing causation than an ordinary claim for a workplace injury. The claimant also questioned whether medical evidence was necessary to establish causation in the case given the exposure at work and subsequent diagnosis. The CRB reviewed the applicable substantial factor causation test for workers' compensation claims in Connecticut. Ultimately, the CRB determined that the Judge's reference to a "higher burden" was "ambiguous." Accordingly, the Board remanded the case to the Trial Judge for further findings regarding the legal causation standard that

he applied and whether expert testimony was necessary in the case to determine causation based on this set of facts.

NASSER V. PREMIER LIMOUSINE OF HARTFORD, 6463 CRB-6-21-12 (December 30, 2022)

The claimant alleged neck and knee injuries in a motor vehicle accident. There was a video of the motor vehicle accident. The treating doctor testified that the video of the motor vehicle accident was inconsistent with claimant's history of injury. The Trial Judge dismissed the claim because "the video evidence was inconsistent with the claimant's narrative and that the claimant's testimony was not persuasive or credible." The claimant was represented by counsel at the formal hearing and counsel filed an appeal but thereafter the claimant pursued the appeal on his own. The claimant did not file any appellate pleadings such as reasons of appeal or a motion to correct. At argument the claimant did not dispute the Judge's findings but contended he had problems with the evidence that his attorney presented. The CRB granted a Motion to Dismiss that was filed by the respondents on appeal pursuant to Practice Book 85-1 since the claimant had not filed any appellate documents. The Board in granting the Motion to Dismiss also stated that if they reached the merits of the appeal they would have affirmed the Finding of the Judge since there was sufficient evidence in the record to support the dismissal.

MIKULSKI V. A. DUIE PYLE, INC., 6448 CRB-7-21-11 (January 11, 2023)

In this case the CRB affirmed a finding by the Administrative Law Judge that an approved stipulation should not be reopened. The claimant was pro se and had a compensable injury. He settled the indemnity claim for $781,000 in 2017. The claimant sought to open that settlement after payment had been made. Further settlement negotiations were held and another settlement was negotiated for a payment of an additional $39,500, $500 for a general release and a MSA for $129,426 seed money and $24,069 yearly payments for 27 years. The medical was settled with the second settlement. CMS approved the structured payout of the MSA. By the terms of the second settlement, AMETROS was to administer the MSA. Judge Jannotta, on the record, approved the settlement at a hearing on February 20, 2020. Judge Jannotta was meticulous in canvassing the claimant regarding the terms of the settlement and the claimant acknowledged that he understood and wanted to proceed with the settlement. The claimant after approval of the second settlement sought again to reopen that award claiming that he wanted to self-administer the MSA, that some providers would not accept the payments from AMETROS, that he was not competent when the stipulation was approved, and that he did not see the settlement until the eve of the approval hearing. No medical evidence was submitted by the claimant that he was not medically competent at the time of the settlement approval although his wife testified that he was suffering from a mental illness at the time of approval. Evidence

was presented by the respondents that the claimant's medical providers would accept AMETROS payments. Judge Cohen at the trial level denied the Motion to Open finding that the claimant was not credible and that there was no evidence of mistake of fact or fraud; this was affirmed on appeal by the CRB which concluded that the request to open the settlement did not meet the standards required in Connecticut General Statutes Section 31-315.

LEMAIRE V NEW ENGLAND INDUSTRIAL TRUCK, ET AL, 6466-CRB-3-22-1 (January 26, 2023)

The claimant worked for the same company with different carriers for three dates of accident regarding his low back. He sustained a compensable injury on November 24, 2010; due to this injury he underwent surgery and was paid 10% of the back. He subsequently had another injury on November 23, 2015 which was accepted as compensable. For the 2015 claim he underwent extensive fusion procedure. Following the surgery, he was told by the treating physician that he may have pseudoarthrosis and could require additional surgery. Subsequently, on October 12, 2018, the claimant was working in a seated position breaking down boxes at work when he twisted and felt something in his back. The 2015 carrier contended that this was a new accident and their liability in the claim had ended. The 2018 carrier denied the claim. A RME with Dr. Becker did not address causation; a RME with Dr. Lantner concluded that the 2018 incident was only an exacerbation. A CME, Dr. Strugar, concluded that there was no new injury in 2018 and that the 2015 claim was a substantial factor in the injury to the back. Based on this, the Administrative Law Judge found the 2015 carrier liable for TT benefits and medical treatment. Motions to Correct and Articulate were denied. The CRB reviewed the case law regarding intervening/superseding accidents, Sapko v. State, 305 Conn. 360 (2012), and determined that there was sufficient evidence in the record to affirm the Finding. Judge Driscoll had this interesting comment in her decision below: "I find that any testimony or evidence in the record suggesting that the claimant had an increase in pain or symptoms on October 12, 2018 does not in and of itself lead me to the conclusion that what happened on that date was either a new injury caused by the claimant's work or an aggravation of an old injury within the meaning of the workers' compensation act."

ZEZIMA V. CITY OF STAMFORD, 6472 CRB-7-22-4 (FEBRUARY 3, 2023)

The claimant sustained a compensable December 7, 2016 head injury as a result of an assault by a student while the claimant was teaching a class. On January 3, 2017 the claimant fell at home due to dizziness. Issues arose as to whether the claimant's fall at home on January 3, 2017 was due to pre-existing health conditions including heart problems and pre-existing syncopal condition or whether it was substantially related to the December 7, 2016 incident. Conflicting medical evidence was presented regarding the cause of the claim. A number of doctors opined that the December 7, 2016 work

accident was the cause of the January 3, 2017 subsequent fall at home. The respondents presented the opinion of a neuropsychologist, Dr. Peck, that the claimant's prior well-documented heart and syncopal conditions were the cause of the fall at home. The Administrative Law Judge did not find the respondent's expert credible and determined that the December 7, 2016 work injuries were the cause of the fall at home. On appeal the Compensation Review Board determined that there was sufficient evidence in the record to support the trial commissioners finding and affirmed the decision.

ESPOSITO V. CITY OF STAMFORD, 6470 CRB-7-22-4 (FEBRUARY 6, 2023)

The claimant sustained a head injury when he fell at work and struck a concrete floor on April 24, 1982; because of the head injury the claimant developed vision problems. The respondents did not dispute that the vision problems were related to the head injury. It was determined that the claimant had profound visual loss in both eyes. The respondents agreed that the claimant was entitled to total disability benefits pursuant to Section 31–307(c)(1); that statute provides that a claimant is entitled to totally incapacity benefits if he sustained "total and permanent loss of sight of both eyes, or the reduction to 1/10 or less of normal vision."

On April 1, 1998 the respondents filed a Form 36 questioning whether the claimant was entitled to total disability benefits. In a 1998 decision, Commissioner Paoletta determined that the claimant was entitled to ongoing benefits for total disability. The Commissioner ordered temporary total benefits to be paid pursuant to pursuant to Section 31–307(c)(1).

The claimant continued receiving total disability benefits until his death on November 7, 2020. Upon his death, the claimant's spouse sought permanent partial disability award for loss of vision of the eyes pursuant to section 31–308(b). The statute in effect as of the date of claimant's date of accident allowed for a permanency award up to 235 weeks per eye.

The claimant was initially married to his spouse on July 4, 1974, divorced in 1992, and remarried to the same spouse in 2010. The claimant was married as of the date of death in 2020.

An issue arose as to whether the spouse was entitled to benefits for permanency post the demise of the claimant. At the trial level, the Administrative Law Judge found that maximum medical improvement had been attained by June 9, 1998, the date of the decision by Commissioner Paoletta, and that the permanency award of 235 weeks for each eye was owed. While the Judge determined that there was an award for permanency owed to the spouse, she also found that the respondents were entitled to credit for benefits paid since June 9, 1998 up until the date of claimant's demise in

November 2020. Since the payment of total disability from 1998 to 2020 exceeded the amount of the permanency award, there was no additional money owed to the spouse.

The claimant appealed the decision to the Compensation Review Board contending that the Judge erred in allowing a credit for total disability paid against the permanency due. The claimant contended that while maximum medical improvement may have occurred, there was no request for permanency benefits and therefore credit against the permanency award should not be given for the total disability benefits that were paid to the claimant.

On appeal, the Compensation Review Board determined that no permanent partial disability award was owed, but its reasoning was different from that of the Trial Judge. The Board stated "entitlement to permanent partial disability benefits cannot be established in the absence of proof that the claimant has reached maximum medical improvement along with the concomitant assignment or award of a permanent partial disability rating or an agreement between the parties sufficient to establish a binding meeting of the minds." (Internal quotes omitted.)

The CRB went on to state "we are therefore unable to conclude that the decedent established the entitlement to permanent partial disability benefits during his lifetime such that any permanency benefits due and owing would have been payable to his estate or representative after his death." The Board determined that "in light of the foregoing analysis, we are not persuaded that either the date of maximum medical improvement or the date of an affirmative request for permanency benefits in lieu of temporary total disability benefits constitute the exclusive basis for calculating the commencement date for a permanency credit. Rather, applicable precedent would appear to suggest that the calculations for when a permanency credit starts to run are more appropriately determined by the specific circumstances of the claim along with consideration of the prohibition against double recovery." The Board concluded that "no entitlement to permanency was established during this decedent's lifetime." This case provides a thorough analysis of many of the cases which deal with the contention that permanency benefits are due post the death of a claimant. We expect that this case will be appealed to the Appellate Court.

ASBERRY V BUNKER HILL PROPERTIES, INC., 6469 CRB-1-22-3 (February 21, 2023)

The claimant alleged a right shoulder injury on July 2, 2020 while moving refrigerators in his maintenance job. The respondents contested liability raising issues as to whether the claim was immediately reported and that there was conflicting history in the medical regarding a work accident (one of the records had a history that the claimant hurt his shoulder reaching out for salt at a dinner). Eventually, the claimant came under the care of Dr. Miranda who diagnosed a full thickness rotator cuff tear and related the injury to the alleged work accident. The Administrative Law Judge found the claimant credible and concluded that the shoulder injury was compensable. The respondents

appealed the Finding solely regarding the Judge’s conclusion that the claimant was owed total disability benefits; the respondents contended there was no support for total disability in the record. Dr. Miranda had testified in response to questions posed by respondent’s counsel that the claimant had a light or sedentary work capacity; on the other hand, Dr. Miranda stated that a sedentary capacity was “not consistent with his work position” in maintenance. The Board stated that when considering a claim for total disability benefits the Judge should consider the “totality of the factors” in determining whether TT is owed citing *Romanchuk v. Griffin Health Services*, 5515 CRB-4-09-12 (October 20, 2010). In this case the claimant did not have a high school diploma, had never held a desk job and had only done physical labor in the past. Given these factors the CRB affirmed the Finding that the claimant was entitled to total disability benefits. The treatise “Connecticut Workers’ Compensation Law,” co-authored by **Attorneys Strunk and Dodge of SDAZ,** and Attorneys Robert Carter, Donna Civitello and James Pomeranz was cited in the case.