STRUNK·DODGE·AIKEN·ZOVAS
ATTORNEYS AT LAW

CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas (SDAZ)** provides you with our **SUMMER 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.

***See below important Appellate Court decisions in *Cochran* and *Martinoli* cases dealing with denial of payment of TT to retirees in certain situations.

STRUNK DODGE AIKEN ZOVAS NEWS

Courtney Stabnick of SDAZ has been named **2024 "Lawyer of the Year"** by Best Lawyers for litigation-Insurance in the Hartford region**.**

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, Philip Markuszka, Courtney Stabnick, Jason Dodge and Richard Stabnick of SDAZ have been selected by their peers for recognition of their professional excellence in Workers' Compensation-Employers in the 30th edition of *The Best Lawyers in America*.

Attorney Heather Porto of SDAZ authored an article for the Compensation Quarterly regarding former Administrative Law Judge Randy Cohen. The Compensation Quarterly is a publication regarding workers' compensation in Connecticut published by the Connecticut Bar Association. The article was based on a discussion with Judge Cohen and reviewed her legal background, how she became involved in workers' compensation claims, and her career as an ALJ. Judge Cohen's advice to those who go to hearings in the workers' compensation forum is to be prepared for the hearing and know all the facts in your case.

On May 6, 2023 **Attorney Richard Aiken of SDAZ** was inducted to the College of Workers' Compensation Lawyers at a ceremony held at the Marriot Marquis Hotel in New York City. 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. **Attorneys Lucas Strunk and Jason Dodge** are also Fellows in the College and they attended the induction ceremony to honor Attorney Aiken. Only fifteen attorneys in Connecticut have ever received this honor.

Attorney Christopher Buccini of SDAZ has been named the new Vice-Chairman of the Workers' Compensation Section of the Connecticut Bar Association. In 2024 he will be in line to be the Chairman of the Section. Congratulations to Chris!

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, Ariel MacPherson and Philip Markuszka of SDAZ** 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**.

Attorneys Anne Zovas, Richard Aiken, Lucas Strunk, Jason Dodge and Richard Stabnick of SDAZ have received an AV rating by Martindale-Hubbell. Martindale-Hubbell states that the AV rating is "The highest peer rating standard. This is given to attorneys who are ranked at the highest level of professional excellence for their legal expertise, communication skills, and ethical standards by their peers."

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. Kids' Chance of Connecticut will have its annual Golf Event on Monday

September 25, 2023 at the Glastonbury Hills Country Club. Go to this website for golf and sponsorship opportunities:

https://www.kidschanceofct.org/events/golf-tournament/

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.

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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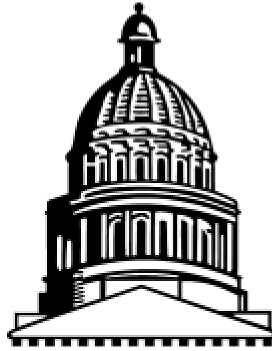
LEGISLATIVE UPDATE



2022 LEGISLATIVE REPORT

Our 2022 legislative report can be found in the link below:

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:

Shanique Fenlator and Benjamin Blake have been confirmed as Administrative Law Judges in the Connecticut Workers' Compensation Commission. Also 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 have been confirmed.

MEMORANDUM 2023-04

The Official Connecticut Practitioner Fee Schedule was issued by the Connecticut Workers' Compensation Commission effective July 15, 2023.

MEMORANDUM 2023-03

The Connecticut Workers' Compensation Commission effective June 10, 2023 has amended subsection F of Section VII of the *Professional Guide for Attorneys, Physicians and Other Health Care Practitioners Guidelines for Cooperation.* The subsection now reads:

Exception for Psychiatrists, Psychologists, Neuropsychologist, and Neuropsychiatrists

Due to the particular nature of these fields, there are some exceptions to Commission rules, regulations and guidelines granted to providers in these disciplines. Please note the following:

1. *Most Commission rules and regulations, including deposition fees and formal hearing testimony fees,* ***do apply***
2. *Fees as listed in the Official Connecticut Practitioner Fee Schedule, which encompasses most office visit/treatment fees,* ***do apply*** *unless there is a contract indicating otherwise*
3. *Fees for Commission Medical Exams and Employer/Respondent Exams* ***DO NOT*** *apply. The provider may charge a maximum of $2500 for these types of exams without prior approval. Any fee above $2500 for a CME must be approved by the ALJ* ***prior*** *to the exam taking place. In the case of an RME, the provider may request the higher fee from the respondent. If the provider and respondent cannot agree on a fee, the respondent may choose another provider or request a hearing with an ALJ to determine a reasonable fee.*

MEMORANDUM 2023-02:

RME charges have now been increased to $850.

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.

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.

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 TIP

A claimant's internist records can provide helpful information to assist in the defense of a workers' compensation claim. The PCP records can include history of prior personal injury or workers' compensation claims, ratings for permanent impairment, surgical history, or diagnostic testing that may be relevant to the present claim. Any workers' compensation claim investigation should include an inquiry regarding the name and contact information for the claimant's internist.

CASE LAW

IMPORTANT RETIREE DECISIONS IN *COCHRAN* AND *MARTINOLI* CASES

COCHRAN V. DEPARTMENT OF TRANSPORTATION, 220 Conn. App. 855 (August 8, 2023)

In this important decision, the Appellate Court held that a worker who is retired and took himself out of the workforce was not entitled to a claim for total disability benefits made post-retirement.

The claimant sustained a compensable back injury in 1994. Surgery was performed in June 1994; a further back surgery was performed in April 1995. A voluntary agreement was issued and approved in 1995 for 29.5% of the lumbar spine.

On April 1, 2003 the claimant, at age 54, took an incentivized early retirement from the employer. The plaintiff had no intention of returning to work. In 2013 the claimant had back surgery with an allegedly unauthorized New York physician. A CME by Dr. Dickey in 2017 gave the "lightest" work capacity to the claimant. Dr. Sabella, a vocational

specialist, found the claimant unemployable. The trial judge found the 2013 back surgery related and ordered a three month period of total disability following the 2013 surgery and ongoing total disability beginning on December 30, 2017. The CRB affirmed the decision. The Appellate Court reversed the Board decision; in doing so, the Court stated it had plenary review over the case (meaning that they did not have to defer to the CRB below regarding the application of the law).

The Court's decision stated that: "he elected to remove himself from the workforce where he had no intention of returning and more than 10 years later sought to obtain Section 31–307(a) benefits. We cannot conclude the plaintiff is entitled to Section 31–307(a) benefits when he removed himself from the workforce with no intention of returning." The Appellate Court found this to be an issue of first impression before the Court.

This decision likely will be appealed to the Supreme Court.

The holding of this case has the potential to reduce the settlement value of claims involving retirees. For example, if a claimant with a compensable injury retires and takes himself/herself out of the workforce but then subsequently needs a further surgery due to the compensable injury, based on this case total disability benefits may not be owed.

MARTINOLI V. STAMFORD POLICE DEPARTMENT, ____Conn. App. ___(August 8, 2023)

The claimant sustained a compensable heart condition in January 1999. He retired at age 64 in October 1999. In 2015, at age 80, he sustained a stroke and claimed entitlement to total disability at that time. The Judge CRB found the stroke related to the initial claim and awarded total disability benefits to the retiree. The Appellate Court, however, reversed and said a retiree was not entitled to claim total disability benefits post-retirement. The Court cited the companion case of *Cochran V. Department of Transportation*, 220 Conn. App. 855 (August 8, 2023)

It is likely that this decision will be appealed to the Connecticut Supreme Court

CRUZ V. INTERIM HEALTHCARE 6480 CRB-2-22-7 (May 19, 2023)

The claimant sustained a compensable and significant knee injury. She underwent knee replacement procedure and was awarded 45% of the leg. She received all 31-308a benefits, albeit at a reduced rate. She asserted that she should be entitled to a scarring award pursuant to Connecticut General Statutes Section 31-308(c). The statute allows a scarring award for disfigurement on the face, head or neck or "any other area

of the body which handicaps the employee in obtaining or continuing to work." Although the scar was not on her face, neck or head, the claimant contended that she was entitled to a scarring award because the knee scar handicapped her ability to work. The scar was 7inches by ½ inch. Dr. Zimmerman, the treating physician, issued a report that stated the scar affected the claimant's ability to kneel or squat. The claimant testified that the scar was sensitive and because of that she could only wear shorts; she claimed that she would not feel comfortable at work wearing shorts. The Trial Judge dismissed the claim concluding that while the scar was hypersensitive and uncomfortable it did not handicap the claimant getting work. The claimant contended that the Judge erred in dismissing the scarring claim, asserting that the Judge was bound to accept Dr. Zimmerman's medical opinion since it was uncontradicted. The CRB affirmed the dismissal noting that the Judge is the sole judge of credibility and, in this case, did not find the claimant persuasive. The Board affirmed the denial of the claimant's Motion to Correct, noting that in the corrections sought the Judge was asked to accept Dr. Zimmerman's opinion re the scar and its impact on the claimant's ability to work. The CRB noted that there was no evidence showing that the claimant had lost a job due to her scar.

CLARK V. TOWN OF WATERFORD COHANZIE FIRE DEPARTMENT, ET AL, ___Conn. ___ (June 20, 2023)

The Supreme Court reversed a finding of compensability in this Heart and Hypertension claim based on the part-time status of the claimant. The claimant was initially hired by the Town of Waterford as a part-time firefighter in 1992; he passed a pre-employment physical examination. In 1997 the claimant was hired as a full-time firefighter. Importantly, the Heart and Hypertension Act, Connecticut General Statutes Section 7-433c, was ended for firefighters hired after July 1, 1996. The claimant suffered a myocardial infarction on June 24, 2017 while he was still a firefighter and he sought benefits under Section 7-433c. The trial Judge and the CRB both held that the claimant was entitled to benefits under the statute notwithstanding the defense raised by the Town that the claimant did not qualify for benefits since General Statutes Section 7-425(5) defined a member of the fire department to be someone who works more than 20 hours per week. The CRB essentially concluded that there is no difference for purposes of Section 7-433c whether the claimant is a full or part-time member of the fire department. The Appellate Court affirmed the Board decision. The Appellate Court rejected the Town's argument that the definition of a member of the fire department was found in General Statutes Section 7-425(5) when determining if a firefighter qualified for benefits under Section 7-433c. In an impressive victory for the Town of Waterford, the Connecticut Supreme Court reversed the Appellate Court decision and concluded that Section 7-425(5) does affect eligibility for Heart and Hypertension benefits under Section 7-433c. The Supreme Court stated that in amending and creating statutes they want to create a harmonious body of law. The Court noted that just because there was a similarity in job functions between part and full-time workers that did not require the Town to pay them the same. The Court remanded the case to the Administrative Law

Judge for further determination of whether the claimant worked more than twenty hours per week as defined in Section 7-425(5). Judge Ecker did issue a dissenting opinion.

https://www.jud.ct.gov//external/supapp/Cases/AROcr/CR346/346CR33.pdf

dissent

https://www.jud.ct.gov//external/supapp/Cases/AROcr/CR346/346CR33E.pdf

BASSETT v. TOWN OF EAST HAVEN, 219 Conn. App. 866 (2023)

The Appellate Court affirmed a dismissal in a claim where the employee sustained a traumatic amputation of his hand after igniting an explosive device which he found in the course of his work. The claimant was a 29-year-old supervisor of a summer youth program for a municipality. In the course of this job the claimant would supervise and assist teenage workers in cleaning up areas of East Haven. During the course of picking up an area outside a school the claimant found a "small brown sphere with paper wrapped around it, foil stuck on it, and the wick attached thereto." The claimant had a lighter which he used to light the wick; the sphere exploded causing serious injuries and an amputation of the hand. The respondent Town acknowledged that the claimant's injuries occurred during the course of his work but did not arise out of his work. The Administrative Law Judge concluded that "his intentional lighting of the wick broke the chain of causation with respect to the scope of his employment and that the claimant's resulting injuries did not "arise out of" his employment." The Judge did not accept the claimant's contention that he had lit the wick to protect other employees. There was no finding of serious and willful misconduct. The Appellate Court concluded that the injury did not arise out of the employment and the Judge's decision below was logically and legally correct.

WICKSON V. A.C. MOORE, 6478 CRB-2-22-6 (May 1, 2023)

The claimant had a prior hearing loss and TBI before being hired by the employer. Initially the job was light duty but the claimant contended that the work over time became more difficult including stacking merchandise and unloading pallets. She worked with the employer sixteen years. On September 17, 2015 she alleged an injury to her left shoulder at work; she reported it to her supervisor but he did not fill out a report of injury for her. When she initially sought medical treatment there was no specific history provided regarding a work injury. She came under the care of an orthopedic surgeon, Dr. Anbari, who recommended reverse left shoulder arthroplasty. The claimant also began to develop right shoulder problems; she underwent a reverse right shoulder arthroplasty. The claimant sought workers' compensation benefits both

on a theory that she had a specific injury at work and repetitive trauma. Dr. Anbari supported compensability both due to the specific accident in 2015 and repetitive trauma during the course of her work. A RME, Dr. Jambor, questioned causation of the bilateral shoulder injury to work. A CME, Dr. Barnett, suggested that the 2015 incident was not well-documented; while he stated the cause of the shoulder claim was multi-factorial he could not state with any certainty the degree of contribution due to the work. The ALJ concluded that the claim was compensable based on a repetitive trauma theory and found that Dr. Anbari's opinion credible in that regard. The ALJ concluded that while the claimant did have a 2015 incident at work it was not the cause of her bilateral shoulder injury; rather, the Judge determined that her shoulder injuries were due to the repetitive nature of her work. The CRB affirmed the decision on appeal pointing out that there was sufficient evidence in the record to support the Finding. The Board noted that the Judge could choose to accept all or a portion of an opinion by the doctors.

RECINOS V. STATE OF CONNECTICUT/DEPARTMENT OF TRANSPORTATION, 6483 CRB-4-22-9 (June 23, 2023)

The claimant sustained a number of work-related back injuries in 2006, 2008 and 2017 with the same employer. For an August 3, 2006 accident the claimant received a rating of 7.5% from Dr. Lewis, the treating physician; Dr. Brown, the RME, rated at 0%. The parties agreed to a compromise voluntary agreement at 3.75% that was approved and paid. In 2009 the new treating physician, Dr. Opalak rated at 10% and a va was issued, approved and paid for an additional increased rating of 10% (there is no discussion in the case whether Dr. Opalak commented, at that time, whether the 10% rating was in addition to or inclusive of the prior ratings). Surgeries to the low back were subsequently performed in 2018 and 2020 and a rating of 20% was issued by Dr. Opalak "inclusive of all prior ratings." The respondents acknowledged the rating of 20% but asserted that a credit was due against the 20% rating of 17.5% (10% from the 2009 award and 7.5% from the rating of Dr. Lewis notwithstanding that the award was compromised at 3.75%). The claimant agreed to a credit of only 13.75%. The trial Judge concluded that the credit was 13.75% based on the initial 3.75% that was paid and the subsequent 10% award. The CRB affirmed the award and rejected the respondents' argument that pursuant to Connecticut General Statutes Section 31-349(a) that they were entitled to a credit for the initial rating of Dr. Lewis since it was "payable" even though it was not paid. In reaching their decision the Board considered the seemingly conflicting cases of *Ouellette v. New England Masonry Company, 5424 CRB -7-09-2 (January 14, 2010)*(credit for full 20% rating in stipulation to date given although the claimant was not paid the entire 20% rating in a compromise agreement), and *Peralta-Gonzalez v. First Student, 6160 CRB-7-16-12 (November 16, 2017)*(compromise payment of 18.5 credited against subsequent award and not the entire 20% rating). Based on the facts as presented one wonders why the respondents

did not address the issue of credit from the first permanency claim at the time that the second va for the additional 10% was issued.

HERBERT V. WINDHAM COMMUNITY MEMORIAL HOSPITAL, 200197006 (July 25, 2023)

In this matter, the Respondents were successful in obtaining a Finding and Dismissal on the issue of whether the claimant is permanently totally disabled due to a January 5, 2017 compensable lumbar injury.

Ms. Herbert, who was 67 at time of trial, was hired in 2005 as a housekeeper for Windham Hospital. Ms. Herbert did not graduate from high school and worked in unskilled job positions throughout her employment history.

In 2017 she injured her lumbar back while lifting heavy linens. She treating conservatively, reached MMI, received a compromised 8% PPD impairment and 31-308a based on searches.

She claimed she is a permanent total under the Osterlund theory, and to support her claim she had Kerry Skillin, CRC provide a vocational assessment, who found the claimant unemployable with no earning capacity. Ms. Skillin testified as to the standardized testing results which she administered and opined the claimant had no transferable skills. She also found that Ms. Herbert would have trouble concentrating at any job due to her diminished cognitive ability.

Dennis King performed a vocational assessment on behalf of the respondents and found that the claimant was employable. He testified as to the standardized testing he used which included CAPS, COPS and COPES. He also performed 2 labor market surveys and identified several jobs for Ms. Herbert available in the current job market.

He testified that a high school diploma is not a gatekeeper in getting a job. He also testified that there was nothing in the claimant's employment history or medical record which would suggest cognitive or diminished mental capacity as found by Ms. Skillin.

Mr. King testified that if the claimant wanted to consistently do poorly on the standardized testing administered by Ms. Skillin, then the testing results would be consistently incorrect.

Mr. King testified that the only thing that would prevent Ms. Herbert from getting one of the jobs identified in his labor market survey is her lack of desire to actually get a job.

ALJ Oslena found Dennis King's testimony more persuasive that Kerri Skillin's and dismissed the claimant's claim that she is permanently totally disabled.

Attorney Nancy Berdon of SDAZ defended this claim.

ANGELA BELL N/K/A ANGELA FIASCONARIO V. HARTFORD HEALTHCARE AT HOME, 6473 CRB-8-22-4 (AUGUST 18, 2023)

The claimant, a LPN since 2014, alleged an injury to her right elbow and shoulder because of repetitive heavy work including wearing a backpack weighing 18 pounds which contained a blood pressure cuff. Conflicting medical testimony was presented from the treating physician, RME and CME. The claimant also alleged a specific accident at work on August 5, 2020, however, this was after surgery to the shoulder had already been recommended. The trial judge found the claimant's "testimony and actions were inconsistent, unreliable and unpersuasive." and dismissed the claim. On appeal, the Board affirmed the decision, noting that it was the claimant's burden of proof to establish compensability. The claimant also contended that her attorney at trial did a poor job pursuing the claimant; the CRB declined to address that issue. The Board noted that the Judge's conclusion regarding causation is conclusive so long as it is supported by competent evidence.

BRITT V. COS COB TV AND AUDIO, 6481 CRB-7-22-9 (August 18, 2023)

The claimant alleged a work injury to the low back on February 24, 2020 allegedly due to lifting a television. The claim was disputed (there was a prior low back condition). The claimant was seen by Dr. Brady on February 28, 2020 and then Dr. Katz on April 28, 2020. Dr. Katz established causation to the work accident, recommended a MRI study and disabled the claimant. The CRB found that the last medical record in the file was Dr. Katz' report of April 28, 2020 although the Judge's finding referenced an April 28, 2022 report. The Judge found the claim for back injury compensable but dismissed the TT claim that was made through April 28, 2021. On appeal the claimant contended that TT was supported by medical evidence and should have been ordered through April 28, 2021. The CRB affirmed the finding of compensability of the back and reversed, in part, the TT dismissal concluding that there were two medical reports confirming TT up to April 28, 2020 and therefore TT should be paid from the date of injury to April 28, 2020. The dismissal of TT was affirmed post April 28, 2020. A reading of this decision makes one think the parties/Judge had somehow confused the dates of April 28 in 2020, 2021 and 2022. If the Judge incorrectly referenced an April 28, 2022 report of Dr. Katz in her finding it is a mystery why a motion to correct was not filed.

JOHN DOE V. XYZ CO., (trial decision August 29, 2023)

On March 5, 2022 the claimant was a sales associate for the respondent working at a small convenience store. At that time the claimant was robbed by two masked individuals. The claimant testified that one of the robbers held a gun to his rib cage and also touched his right shoulder with the gun. The claimant was directed to go outside the store which he did, however, he was able to quickly enter the store again and lock the door with the two robbers outside. The claimant hit a panic button and called 911. The medical records that the claimant produced made no reference to a physical injury sustained on March 5, 2022. The claimant acknowledged that he never received any medical treatment for his neck, shoulders, or rib cage. The claimant stated that he went to AFC Urgent Care for issues regarding anxiety and psychological treatment. The claimant sought authorization for medical treatment for PTSD. The Trial Judge determined that there was no medical evidence to support the claimant sustained any type of physical injury or occupational disease at the time of March 5, 2022 robbery. The respondents contended that the claimant could not have a compensable PTSD claim since he did not sustain a physical injury at the time of the robbery and, even if he did, there was no evidence that the PTSD was substantially related to the alleged physical injuries. In support of their defense the respondent cited Biasetti v. City of Stamford, 123 Conn. App. 372, 377 (2010), cert. denied, 298 Conn. 929 (2010). The Judge held that the claimant failed to sustain his burden of proof that he had a psychological injury arising out of in the course of his and employment that was due to a physical injury and dismissed the claim. **Attorney Jason Dodge of SDAZ** successfully defended the claim for the respondents. The claimant's and respondents' names have been changed in this review given the sensitive nature of the claimant's injuries.