SUPPLEMENT TO
BULLETIN No. 46

STATE OF CONNECTICUT

Workers' Compensation

ANNOTATIONS TO
COMPENSATION REVIEW BOARD OPINIONS

Annotations to
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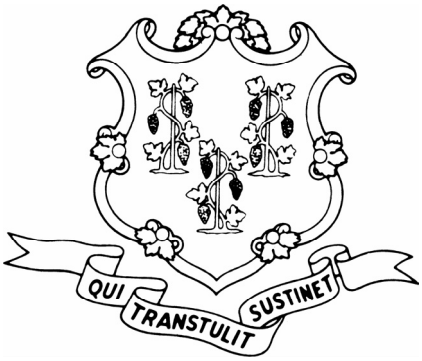

ISSUED BY
THE WORKERS' COMPENSATION COMMISSION
DECEMBER 31, 2004

Annotations of Compensation Review Board Opinions

The following annotated list of Compensation Review Board Opinions includes decisions issued through December 31, 2004, formerly published by Michie in Connecticut Workers' Compensation Review Opinions, Volume 1 through 16, Issue No. 3.

Since our publication of Bulletin 42, Michie has ceased to publish the Compensation Review Board opinions. However, the opinions of the Compensation Review Board from 1994 to the present are available through the Workers' Compensation Commission's website at http://wcc.state.ct.us .

This list is intended as an aid in the reader's research of Compensation Review Board decisions. As always, the full texts of opinions and statutes should be consulted, and all citations and references fully researched, by the reader.

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Sec. 31-275(1). Arising out of and in the course of employment.

Blakeslee v. Platt Brothers & Co., 4761 CRB-5-03-12 (October 8, 2004).
CRB affirmed trier's determination that claimant's injury was not causally connected to claimant's employment. Claimant was injured because of first aid applied by co-workers while the claimant experienced a seizure caused by a medical condition. The seizure was not caused by any condition of employment.

Dobson v. Thames Valley Sanitation, 4645 CRB-6-03-3 (July 22, 2004).
CRB affirmed trial commissioner's award of 35% loss of use of knee. Also held respondents not entitled to apportionment under § 31-275(1)(D) as the 26.25% loss of use of the knee related to a pre-existing injury and, under Cashman v. McTiernan School, Inc., 130 Conn. 401 (1943) apportionment only permitted where the pre-existing disease is a pre-existing occupational disease. See also, **Dobson**, § 31-300.

Rampulla v. Fox Hill Nursing & Rehabilitation Center, 4696 CRB-1-03-7 (June 24, 2004).
CRB reversed commissioner's finding claimant's injury was causally connected to claimant's employment. Claimant left employer's premises to pick up food during unscheduled second shift.

Jacobson v. General Dynamics/Electric Boat Div., 4642 CRB-2-03-3 (March 12, 2004).
CRB affirmed trier's failure to apportion decedent's asbestosis and ultimate lung cancer with decedent's pre-existing lung disease and smoking history. Section 31-275(1)(D) requires that the pre-existing disease be occupational.

Sullivan v. H.W. Sandora & Sons, Inc., 4603 CRB-3-02-12 (December 29, 2003).
See, **Sullivan**, § 31-301. Factual findings (concerning mechanics of slip-and-fall injury being caused by severe pain attributable to earlier compensable arm injury), See also, **Sullivan**, § 31-308a.

Strong v. UTC/Pratt & Whitney, 4563 CRB-1-02-8 (August 25, 2003).
Claimant did not allege that either his work-related asbestosis or his smoking-related emphysema were occupational diseases. No application of provision that allows apportionment for aggravation of pre-existing occupational disease. Board went on to find that there was evidence to show that emphysema indeed pre-existed the development of asbestosis symptoms. However, even if separately identifiable lung damage from asbestosis and emphysema began manifesting concurrently, both conditions contribute to overall lung impairment, and law does not allow apportionment of responsibility. See, **Strong**, § 31-308(b) (trier had discretion to credit report of physician who was within AMA guidelines in diagnosing claimant with 48% lung impairment, despite evidence that could have supported a lower rating), see also, **Strong**, § 31-275(15); § 31-301. Factual findings, § 31-349.

Ciarci v. Niro Brothers/Mason Enterprises, 4536 CRB-1-02-6 (June 17, 2003).
CRB affirmed trier's conclusion claimant's cardiac surgery did not arise out of and in the course of employment. Expert medical opinion supported trier's finding. See also, **Ciarci** § 31-301.

Labadie v. Norwalk Rehabilitation Services, Inc., 4529 CRB-7-02-5 (June 3, 2003), **rev'd**, 84 Conn. App. 220 (2004), **cert. granted**, 271 Conn. 925 (2004).
Following remand, CRB reversed trier's finding that claimant's apartment was equivalent to satellite office, and that she was in the course of her employment when she was injured en route from the apartment of Atrium Homecare client to client of Norwalk Rehabilitation Services. Insufficient evidence to substantiate legal conclusion that claimant maintained established home workplace. Prior to leaving her apartment, claimant did not engage in any activity that was directly related to her NRS job duties, thereby triggering the start of her workday. Also, claimant would no longer have been in course of employment with NRS once she began tending to Atrium client. Claimant's entire apartment building could not be deemed premises of employer, as neither claimant nor employer controlled said building. Appellate Court **reversed**, holding that travel was a substantial part of the home health care service that NRS provided to its clients, thereby putting claimant in the course of an activity integral to her employment at the time of injury. Prior decision at Labadie, 4254 CRB-7-00-6 (June 21, 2001).

Hayes v. Total Fulfillment Services, Inc., 4482 CRB-4-02-1 (February 5, 2003).
CRB affirmed trier's dismissal of claim where claimant wounded her hand while rolling up her car window in employer's parking lot on a cold day. Board held that "personal comfort" doctrine did not mandate finding that injury arose out of employment, as neither of the factors contributing to claimant's injury (weather and fragile condition of window handle) was attributable to a risk incident to conditions of employment.

Alling v. Davis & Geck, 4483 CRB-7-02-1 (December 20, 2002).
CRB affirmed trier's finding that workplace incident in which claimant was pushed by a co-worker arose out of employment. Trier reasonably credited claimant's testimony that he did not say anything that was calculated to instigate an altercation with co-worker, and found that critical remarks uttered by claimant prior to shoving incident were related to employment. See also, **Alling**, § 31-301. Factual findings.

Morneault v. D M & M Restaurants, 4389 CRB-3-01-5 (March 27, 2002).
Trier's conclusion that waitress' back injury resulted from lifting box of ketchup affirmed by CRB. Conclusion rested on weight and credibility accorded to testimony. See also, **Morneault,** § 31-301. Factual findings.

Drivas v. Fair Auto Park, 4383 CRB-7-01-4 (March 1, 2002).
Board affirmed trier's decision that claimant's estate was unable to meet minimum burden of proof to show that work stress, or any other work factors, caused decedent's myocardial infarction that occurred at work. Standard of causation in heart attack cases reviewed, which requires that work factors constitute a substantial cause. Prior decision at Drivas, 2279 CRB-7-95-1 (June 28, 1996), § 31-294c.

Loffredo v. Wal-Mart Stores, Inc., 4369 CRB-5-01-2 (February 28, 2002).
CRB affirmed trier's conclusion that decedent's slip and fall injury, which occurred on her own walkway, arose out of and in the course of her employment, as she was responding to an emergency call from respondent employer after being alerted by store alarm. Board looked to Larson's treatise and other states' cases, and concluded that under the emergency call exception to the "coming and going" rule, there is portal-to-portal coverage. Additionally, Public Act 95-262 regarding preliminary acts at the claimant's place of abode did not apply, as that legislation was enacted in response to the growing number of home offices, and was not intended to affect established exceptions to "coming and going" rule.

Green v. United Illuminating Co., 4361 CRB-3-01-2 (February 28, 2002).
Board affirmed trier's determination that claimant's alleged Lyme disease was not caused by her employment, as claimant was not aware of any tick bite which occurred at work, and medical evidence was conflicting. Evidence was also conflicting as to whether claimant actually had Lyme disease. See also, **Green**, § 31-298.

Nunes v. State/Dept. of Motor Vehicles, 4360 CRB-2-01-2 (January 16, 2002).
Claimant's disability due to post-traumatic stress disorder was not caused by alcohol abuse or illegal drug use; rather, symptoms of extreme anxiety led claimant to use such substances, and there was no evidence that such actions contributed to his psychological state. See also, **Nunes**, § 31-275(16), § 31-301. Factual findings.

El Ayoub v. Special Testing Laboratories, 4251 CRB-3-00-6 (September 13, 2001).
Claimant fractured knee in motor vehicle accident while driving to construction job site. He contended that accident occurred while he was enroute to the job site after having returned home to pick up a beeper which he had earlier forgotten, and argued that retrieval of the beeper was an act in furtherance of his employment, and that the employer furnished transportation. Commissioner concluded otherwise on both arguments. CRB affirmed trier, further holding that Ballester v. K &D Auto Body Inc., 5 Conn. Workers' Comp. Rev. Op. 35, 528 CRD-3-86 (April 6, 1988), infra, was not dispositive of this matter.

Cimmino v. Hospital of St. Raphael, 4230 CRB-3-00-5 (September 13, 2001).
Trier found claimant's injuries compensable where he was hit by a car during his lunch break while crossing a public street en route from the hospital to his employer-maintained parking garage. Facts were stipulated by parties, so CRB applied less deferential standard of review. CRB independently determined that claimant, who was walking to the parking garage in order to give a bracket to a repairman who was fixing his car window, was within the course of his employment when he was injured. Public street was constructively considered part of employer premises based on prior case law and fact that claimant had to cross street to get to parking lot. Failure to use crosswalk did not *per se* place him in an unreasonable location. As per Mazzone v. Connecticut Transit Co., 240 Conn. 788 (1997), claimant's presence on employer premises on lunch break kept him within course of employment. Act of delivering part to repairman who was fixing car window was incidental to employment, particularly where claimant used car daily for work-related purposes.

Owen v. Diversified Hospitality Group, 4204 CRB-3-00-3 (July 25, 2001).
Decedent's automobile accident arose out of and in course of employment even though he was apparently on pace to miss scheduled meeting at employer's restaurant. Decedent had driven 10-12 hours to reach meeting, which employer wanted him to attend; no other purpose for decedent's trip was alleged. He was driving company car, and travel was significant component of his job. See also, **Owen**, § 31-275(9), § 31-278.

Labadie v. Norwalk Rehabilitation Servs., 4254 CRB-7-00-6 (June 21, 2001).
Home health care worker was injured while traveling from her apartment building, where she had been caring for an Atrium Homecare patient, to the home of an NRS patient. NRS normally reimbursed claimant for travel between homes of NRS patients, but not from her own home to that of her first daily patient. CRB reversed trier's conclusions that claimant's work required her to use public highways, and that her bus trip was to the benefit of employer. "Benefit" test by itself cannot justify finding of compensability in standard "coming and going" case. Exception for jobs that require travel on roadways applies to occupations that heavily involve such travel; home health care workers who travel between clients' homes cannot invoke this exception to "coming and going" rule. Also, trier found that claimant's home was tantamount to satellite office of NRS. CRB saw insufficient evidence in record to support this finding, analyzed criteria needed to establish home workplace, and warned against subtle, case-by-case abrogation of "coming and going" rule through expansion of boundaries of workplace. Case remanded for further findings regarding degree of work activities at home, and possible interruption of NRS employment by claimant's undertaking of duties for Atrium on morning of accident. See also, **Labadie**, § 31-301. Factual findings. Subsequent decision at Labadie, 4529 CRB-7-02-5 (June 3, 2003), rev'd, 84 Conn. App. 220 (2004), cert. granted, 271 Conn. 925 (2004).

Davis v. State/University of Connecticut, 4212 CRB-2-00-3 (June 8, 2001).
CRB declined to reconsider issues discussed in prior Davis decision, 3822 CRB-2-98-5 (August 17, 1999), infra; see also, **Davis**, § 31-301-4; where CRB had concluded that entire UConn campus constituted employer's premises as matter of law. Trier faithfully adhered to remand instructions in finding credible claimant's testimony regarding employer's knowledge of and acquiescence to her lunchtime habit of walking to on-campus fast-food restaurant, and ruling that injury thereby occurred in course of employment. Also, trier properly found that state's jaywalking argument had no merit. Evidence showed that university created walkway in median for pedestrians to use in crossing street, and no proof was adduced that school or local police force considered it illegal or dangerous to cross Fairfield Road at spot where claimant fell.

Criscio v. State/Southern Conn. State Univ., 4271 CRB-3-00-7 (June 1, 2001).
Respondent sought re-consideration and reversal of our Supreme Court's holding in Cashman v. McTernan School, 130 Conn. 401 (1943). In Cashman the Court read the language now codified at § 31-275(1)(D) so as to permit apportionment for pre-existing occupational disease, although plain language of statute provides for apportionment for any pre-existing disease. CRB held that it lacked authority to adopt respondent's

position on the basis of stare decisis and the existence of binding case law. Additionally, CRB denied Respondent's Motion to Reserve. See also, **Criscio,** § 31-324.

Smith v. Connecticut Light & Power, 4135 CRB-5-99-10 (March 29, 2001), **aff'd**, 73 Conn. App. 619 (2002).
See, **Smith**, § 31-275(16).

Daubert v. Borough of Naugatuck, 4189 CRB-5-00-2 (February 22, 2001), **rev'd**, 71 Conn. App. 600 (2002), **rev'd**, 267 Conn. 583 (2004).
Claimant was a police officer whose cruiser hit a tree while he was on duty. Trier noted numerous contradictions in his testimony regarding accident. Claimant argued on appeal that, as accident occurred while he was on duty, it *must* be deemed to have arisen out of and in the course of employment. CRB disagreed, as it is *claimant's burden* to prove that injury arose out of and in course of employment. Board cited trier's findings that claimant was motivated to intentionally crash his police cruiser into tree, and that he drove straight into tree. Findings thus supported inference that his collision was intentional. Appellate Court **reversed**, holding that findings and conclusions (as opposed to the subordinate findings of fact) did not support inference that claimant failed to sustain burden of proof. Finding logically suggested that accident arose out of and in course of employment. Testimony regarding claimant's mental condition was irrelevant, and it was not suggested that he was engaged in activities unrelated to his duties. Finding that claimant had been involved in motor vehicle "accident" precluded wilful misconduct as being a cause of the crash. As respondents had failed to plead wilful misconduct as an affirmative defense, CRB should not have held that such a defense was implied from testimony, or that it was supported by findings and evidence. Supreme Court **reversed** Appellate Court and reinstated trial commissioner's finding. Finding that collision arose out of employment did not mandate inference that it occurred while claimant was performing work-related duties. Trier was entitled to find that injury did not occur in the specific manner alleged by claimant, and to conclude that claimant failed to meet burden of proof. See also, **Daubert**, § 31-301. Factual findings.

Smeraglinolo v. Cardinal Sheehan Center, 4117 CRB-4-99-9 (October 30, 2000).
CRB affirmed trial commissioner's conclusion that decedent remained in the course of his employment as a supervisor and physical education instructor for the Center while officiating basketball games that were being held at the Center during the evening. Though all referees were paid $15 per game, decedent retained additional duties involving supervision of Center that were not applicable to outside referees. Employer benefit found.

Kay v. Hubbard-Hall, Inc., 4092 CRB-5-99-7 (October 20, 2000).
CRB affirmed trier's determination that decedent's myocardial infarction was not compensable where neither employment stress nor his activities during an employer-sponsored golf outing were substantial causes of his injury. Issue was one of fact, and was supported by the medical evidence. See also, **Kay**, § 31-275(16), § 31-300.

DiCocco v. E.I. DuPont Denemours & Co., 4099 CRB-4-99-8 (August 29, 2000).
The board affirmed the trial commissioner's conclusion that the claimant did not sustain a compensable injury. None of the physicians seen by the claimant wrote a report that, within a reasonable degree of medical probability, connected her right arm and shoulder condition to the incident that occurred on February 20, 1996.

Adams v. Leisure Limousine, LLC, 4054 CRB-4-99-6 (August 9, 2000).
Claimant argued on appeal that the undisputed medical evidence indicated that he sustained injuries as a result of an automobile accident. Although the trial commissioner determined that an accident occurred, he nevertheless concluded that the claimant did not sustain any injuries therefrom. CRB affirmed the trier's decision, explaining that the trier may reject medical evidence as unworthy of belief or find that the opinion was based on subordinate facts that were not proven. Because it was the claimant's burden to prove a compensable injury, and he did not do so, it is of no moment that the respondents did not present any medical evidence.

Simmons v. Temporary Labor Corp., 3975 CRB-6-99-2 (May 25, 2000).
See, **Simmons**, § 31-300, § 31-301. Factual findings.

Lafayette v. General Dynamics Corporation/Electric Boat Division, 3943 CRB-8-98-12 (April 18, 2000), **rev'd**, 255 Conn. 762 (2001).
Claimant failed to persuade trial commissioner that doctrine of collateral estoppel should be invoked to prevent respondents from contesting causal connection between her late husband's death due to lung cancer and asbestos exposure at his workplace. CRB affirmed. Though claimant prevailed on that issue in Longshore and Harbor Workers' Compensation Act proceedings, her burden of proof there was eased due to the presumption of compensability in 33 U.S.C. § 920. No similar advantage is given to a claimant by § 31-275(1). CRB could not tell how much influence said "benefit of the doubt" had on administrative law judge's findings, and upheld trier's decision to require a full hearing on the merits. Supreme Court reversed, holding that issue of causal relationship between decedent's death and his employment was fully litigated, actually decided, and necessarily determined in the federal longshore action; contrary to respondents' claim, the ALJ there imposed on claimant the burden to prove causal connection by a preponderance of the evidence, without the aid of any presumption allegedly available under the federal act. See also, **Lafayette**, § 31-298.

Gartrell v. State/Dept. of Correction, 3991 CRB-1-99-3 (March 23, 2000), **aff'd**, 259 Conn. 29 (2002).
CRB affirmed trial commissioner's determination that claimant's psychiatric condition was compensable, as it was aggravated by a compensable heart condition. CRB explained law making an employer liable for the sequelae of a compensable injury. In an earlier decision, Gartrell v. Dept. of Correction, 258 Conn. 137 (2001), the Supreme Court remanded the case in order to limit the compensation for the psychiatric condition to that proportion of the disability due to the aggravation of the pre-existing disease that reasonably may be attributable to the work-related injury, as required under § 31-275(1)(D). That decision was superseded on January 15, 2002, and the CRB was affirmed. See also, **Gartrell**, § 31-275(16).

Russo v. Stop & Shop Co., 4002 CRB-6-99-3 (March 22, 2000).
Board affirmed trial commissioner's conclusion that claimant's injury was compensable. Claimant tripped while walking to her car, which was parked on premises contiguous to Stop & Shop supermarket where claimant worked, in a common parking lot used by other retailers. Under Stop & Shop's lease, the landlord maintained the parking lots as common areas for all tenants. Trier concluded that the area where claimant parked was the customary parking place for claimant, other employees, and management, that this was known to the employer, and was an incidental part of claimant's employment. Moreover, commissioner found that employer benefited by claimant's practice of parking in this area because her car did not then take up space in front of the store where customers would park.

Bogrette v. Merriam Motors, 4011 CRB-8-99-3 (February 9, 2000).
CRB affirmed trial commissioner's conclusion that decedent's fatal injury arose out of and during the course of his employment. Decedent was fatally injured while he was using the employer's forklift to help a neighboring business. The accident occurred during the period of the decedent's employment in an area which was under the care, custody and control of respondent employer. Although trier did not find that employer granted decedent explicit permission to use the forklift, the trier was entitled to infer that decedent had a right to use the forklift to help the neighboring business, or that he had done so with the implied permission or acquiescence of the employer. Prior decision at Bogrette, 3538 CRB-8-97-2 (July 22, 1998), infra.

Student v. Corometrics Medical Systems, Inc., 3980 CRB-8-99-2 (February 9, 2000).
Board affirmed trial commissioner's determination that claimant's psychiatric condition was caused by a compensable train accident. Trial commissioner had discretion to rely on claimant's treating psychiatrist regarding the issue of causation, even though the trier found the psychiatrist's treatment of the claimant to be unreasonable. See also, **Student**, § 31-294d, § 31-298, § 31-308(c).

Lemelin v. New Britain General Hospital, 3978 CRB-6-99-2 (February 1, 2000).
Board affirmed trial commissioner's determination that claimant's injury was compensable, where claimant was injured as a result of a hepatitis B vaccination performed during a post-offer, pre-employment physical examination. The board noted that the offer of a hepatitis B vaccination was required by OSHA regulation, and that the employer, a hospital, would benefit by having its employees inoculated against communicable diseases.

Riebe v. Ralph Silvestro, Jr., 3886 CRB-4-98-9 (November 30, 1999).
Claimant was struck by an automobile while driving lawn equipment from a trailer to be stored in a yard at a work site. CRB affirmed trial commissioner's determination that this injury occurred in the course of claimant's employment. It was not necessary for the trier to determine the exact instructions given to the claimant, because the trier found that he acted with the reasonable belief that he was protecting his employer's property by moving it off the trailer into the yard. See also, **Riebe**, § 31-288.

Desrosins v. Stop & Shop, Inc., 3860 CRB-7-98-7 (November 18, 1999).
CRB affirmed trial commissioner's conclusion that claimant sustained a compensable injury when he fell in the employer's parking lot at the end of his shift while running to his car to avoid a fellow employee. The trial commissioner found that the claimant's conduct constituted a minor and inconsequential deviation, and did not find it to be horseplay, as argued by the employer.

DeMooy v. Easter Seal Society of CT., Inc., 3852 CRB-4-98-7 (November 2, 1999).
CRB affirmed trial commissioner's holding that claimant, a young man from Holland who was living on-premises at a summer camp in Hebron while working as a camp counselor, suffered a compensable injury. The claimant felt ill at a time when, though arguably not yet on duty, he was required to be on the premises of the campground. The camp director drove him to the emergency room; on the way back, they were involved in a serious automobile accident. CRB ruled that the trier reasonably concluded that the claimant's injury arose out of and in the course of his employment. Camp Hemlocks accepted responsibility for providing medical care for employees, and absence of on-premises medical personnel required director to take claimant to hospital.

Valentine v. State/Dept. of Correction, 3862 CRB-1-98-7 (September 3, 1999).
CRB affirmed trial commissioner's decision that claimant's heart condition requiring surgical procedures in 1993 and 1994 was a direct result of the claimant's earlier accepted heart condition. Additionally, board affirmed conclusion that avascular necrosis in claimant's hips was compensable because it was caused by steroids needed after the compensable heart surgery. Panel held that respondent was seeking to retry the facts of its case by arguing that the claimant's heart condition subsequent to 1992 was not caused by his prior heart attack, but rather was caused by his personal lifestyle. See also, **Valentine**, § 31-308(b).

Vizzini v. Norwalk, 3874 CRB-4-98-8 (August 30, 1999).
CRB affirmed trier's decision that claimant's slip and fall at a Route 95 McDonald's rest area occurred in the course of his employment. The claimant had made arrangements to have his car dropped and serviced while he was en route to a meeting. Due to wintry weather, the meeting was cancelled after the claimant arrived at the dealership to drop off his car. Claimant began return trip to his place of employment, stopping at a rest area to telephone for alternate route directions as the main thoroughfare was highly congested. Trial commissioner concluded that the claimant was doing something incidental to his employment at the time of the injury.

Davis v. State/University of Connecticut, 3822 CRB-2-98-5 (August 17, 1999).
Claimant injured on unpaid lunch break while walking (as she often did) from Whetten building on UConn campus to Jonathan's restaurant, also on UConn campus. Trier found that injury did not arise in course of employment, because claimant was not on employer's premises at time of injury, and there was no risk incidental to her employment that led to this injury. CRB reversed, holding that entire UConn campus constituted employer's premises as a matter of law, and remanded case for findings concerning whether or not employer approved or acquiesced to claimant's lunchtime walks across campus to Jonathan's restaurant. Mazzone v. Connecticut Transit Co., 240

Conn. 788 (1997), held to be controlling. (*Frankl, C.,* **dissenting**) This case more closely resembles Spatafore v. Yale University, 239 Conn. 408 (1996), and Renckowski v. Yale University, 11 Conn. Workers' Comp. Rev. Op. 48, 1292 CRD-3-91-9 (March 18, 1993) than it does Mazzone, and was properly ruled noncompensable. Injury did not occur on employer's premises under facts of this case. See also, **Davis**, § 31-301-4. Correction of finding. Subsequent decision at Davis, 4212 CRB-2-00-3 (June 8, 2001), supra.

Diluciano v. State/Military Department, 3839 CRB-2-98-6 (June 28, 1999), **aff'd**, 60 Conn. App. 707 (2000), **cert. denied**, 255 Conn. 926 (2001).
CRB affirmed trial commissioner's conclusion that claimant's injury, which was suffered during his trip to work, did not occur during the course of his employment. Trial commissioner specifically found that the claimant was not a "policeman" as that term is used in § 31-275(1)(A). The determination of whether the claimant was a "policeman" pursuant to § 31-275(1)(A) was a factual determination for the trial commissioner, which the CRB did not disturb, as it was fully supported by the findings.

Hannon v. Independent Office Installations, 3781 CRB-6-98-12 (June 28, 1999).
CRB affirmed trial commissioner's decision that claimant's motorcycle accident, which occurred on his trip from his home to the job site, did not occur in the course of his employment. Claimant contended that he was paid for his travel time. CRB explained that employer had no control over claimant's movements, and did not affect the hazards of the claimant's trip from his home to the job site. As none of the four exceptions to the "coming and going" rule applied in the instant case, the trier's decision was affirmed.

Card v. Gateway Community, 3745 CRB-3-97-12 (February 23, 1999).
CRB reversed trial commissioner's conclusion that claimant's injury did not arise out of and in the course of her employment. Because the employer required its employees to use the coat rack in a certain room, and the claimant's injury occurred while hanging her coat immediately prior to the start of her work day, the CRB concluded as a matter of law that the injury arose out of and in the course of her employment.

LeBlanc v. Aramark Corp., 3693 CRB-2-97-9 (November 24, 1998).
CRB affirmed trial commissioner's finding that claimant's injury arose out of and in course of her employment. Injury occurred while claimant was smoking a cigarette in a designated smoking area outside a Coast Guard dormitory building. Her employer was the food service subcontractor for the residence hall. CRB ruled that trial commissioner reasonably found that injury occurred on employer's premises, adopting the definition of "premises" discussed in Larson's treatise. Smoking is "personal comfort" activity incident to employment, and employer essentially directed the claimant to smoke in that area, as the Coast Guard banned smoking in the building.

Cramer v. Cramer, 3710 CRB-4-97-10 (November 9, 1998).
Trial commissioner found that decedent's attendance at insurance seminar was for personal rather than business reasons, and ruled that fatal car accident that occurred while decedent was driving home from that seminar was not a compensable injury that occurred within the scope of his law practice. CRB affirmed. As the trier of fact, the commissioner was entitled to determine that the evidence supported findings contrary to

the testimony of the claimant and a former associate of the decedent. CRB also denied Motion to Submit Additional Evidence, as the claimant sought to introduce testimony of two witnesses who could have been summoned for the formal hearing. However, trier failed to address the applicability of the "dual purpose" doctrine, and did not make findings as to whether the decedent was returning home for work reasons (he had an office there) or personal reasons when he was killed. Case may fall within exception of Dombach v. Olkon Corp., 163 Conn. 216 (1972). Remanded. See also, **Cramer**, § 31-301. Factual findings, § 31-301-4. Correction of Finding, § 31-301-9. Additional evidence.

Luciana v. New Canaan Cemetery Assn., 3644 CRB-7-97-7 (August 12, 1998).
CRB affirmed trial commissioner's dismissal of claim where claimant was injured chopping wood during his lunch break on employer's premises. Claimant's woodcutting was permitted by employer, but was part of a separate business endeavor with which he was involved. Not an "activity" within meaning of the discussion in McNamara v. Hamden, 176 Conn. 547 (1979), concerning activities incidental to employment.

Setterstrom v. C.R. Klewin, Inc., 3643 CRB-2-97-7 (August 12, 1998).
CRB affirmed the trial commissioner's decision that the claimant's fall from a ladder after being pushed by a co-worker did not arise out of his employment. The record supported the trial commissioner's determination that the assault upon the claimant was for reasons personal to the assailant and the claimant, and was unconnected with the claimant's employment.

Bogrette v. Merriam Motors, 3538 CRB-8-97-2 (July 22, 1998).
Claimant sustained fatal injury when forklift rolled over while he was helping a neighboring business. Trial commissioner found that the claimant was in the course of his employment, and that helping promote good will between businesses was a benefit to the employer. CRB remanded matter to the trial commissioner to determine whether claimant was authorized to drive forklift to help the neighboring business. Subsequent decision at Bogrette, 4011 CRB-8-99-3 (February 9, 2000), supra.

Roche v. Danbury Hospital, 3592 CRB-7-97-5 (July 13, 1998).
Footnote briefly discusses respondents' argument that claimant, a secretary, acted outside scope of her employment in preventing injury to elderly hospital patient. See also, **Roche**, § 31-294c, § 31-301. Factual findings.

Tartaglino v. State/Dept. of Correction, 3519 CRB-5-97-1 (June 15, 1998), **aff'd**, 55 Conn. App. 190 (1999), **cert. denied**, 251 Conn. 929 (1999).
Claimant's mental stress claim was not compensable where it was caused by the closing of the correctional facility and his resultant impending transfer. The cause of the claimant's injury was not conduct regularly engaged in as an incident to the claimant's employment.

D'Onofrio v. Orange, 3564 CRB-3-97-3 (June 1, 1998).
Commissioner found that disc herniation suffered while claimant was lifting a bag of light trash in his garage was caused by the effects of three compensable back injuries

that occurred a few years earlier. CRB affirmed. Doctor's opinion supported this finding explicitly, and "trivial incidents" need not be deemed the legal cause of injuries. See also, **D'Onofrio**, § 31-301. Factual findings.

Ferri v. Double A Transportation, Inc., 3503 CRB-8-96-12 (April 29, 1998).
Trial commissioner's finding that claimant's injury was compensable affirmed by CRB. Accident occurred while employee, with permission of employer, was driving from her home in a company van to the school where she had to pick up students. Use of company vehicle with permission of employer affords exception to general rule that injuries occurring while traveling to or from work are not compensable.

Greco v. Greco Auto Parts, 3402 CRB-4-96-8 (February 4, 1998).
Claimant was injured while driving to a doctor's appointment after running two work-related errands. Trial commissioner found injury not compensable, as trip to doctor's office was personal without benefit to employer, and he did not believe she intended to return to work that day. CRB affirmed. Dombach v. Olkon Corp., 163 Conn. 216 (1972), is distinguishable, because claimant there got into a car accident at a point en route to both the business and personal locations associated with his trip. Here, the work portion of the trip was completed, and the claimant would not have been where she was if she had not been conducting a personal errand. Other exceptions also not applicable.

Eaton v. Main Heating & Cooling, 3473 CRB-3-96-11 (January 30, 1998).
CRB affirmed trial commissioner's determination that claimant's accident, which occurred on his way home after his last assignment, arose out of and in the course of his employment. The employer had provided the claimant with a company vehicle for the joint benefit of claimant and employer, and therefore the use of the vehicle was incidental to the employment. No evidence that claimant deviated from approved usage of vehicle.

Gerke v. F.A. Bartlett Tree Expert Co., 3426 CRB-5-96-9 (January 27, 1998).
CRB affirmed the trial commissioner's conclusion that the claimant's injury did not occur in the course of his employment. The claimant's injury occurred on a Sunday, a day he was not scheduled to work, at a park which was not owned or controlled by the employer. Although the employer encouraged the claimant to learn to climb trees, the trial commissioner did not find that the claimant's act of rappelling down a ninety-foot rock ledge was done with the employer's knowledge or consent.

Beaubien v. Chesebrough Ponds, U.S.A., 3386 CRB-3-96-7 (January 22, 1998).
CRB affirmed the trial commissioner's determination that the claimant's injury was compensable and was not the result of horseplay. Specifically, the trial commissioner found that the claimant was performing her job duties on a production line when her co-worker hit her knee with a hammer; that the claimant did not provoke the co-worker; and that there were no arguments between the claimant and the co-worker which preceded the incident.

Pothier v. Stanley-Bostitch/The Bostitch Company, 3411 CRB-3-96-8 (January 21, 1998).
See, **Pothier**, § 31-275(16), see also reference in § 31-301. Factual findings.

Kolomiets v. Syncor International Corp., 16 Conn. Workers' Comp. Rev. Op. 234, 3251 CRB-7-96-1 (June 23, 1997), **rev'd**, 51 Conn. App. 523 (1999), **aff'd**, 252 Conn. 261 (2000).
Claimant, a driver who delivered pharmaceutical products, was involved in a car accident while returning to his home to pick up his driver's license after making a delivery. Pursuant to its license to transport radioactive materials, Syncor maintains a drivers' manual prescribing written directions as to the manner in which deliveries are made, including routes that should be followed to various facilities. The trier found that the claimant believed he might be assigned to more deliveries that day, and was acting in the best interest of both himself and Syncor in retrieving his license. He concluded that the claimant's deviation was not so unreasonable as to preclude him from collecting benefits for his accident. The CRB reversed on appeal, as none of the three exceptions to the "coming and going" rule discussed in Dombach v. Olkon Corporation, 163 Conn. 216 (1972) specifically apply to this case. When he had his accident, the claimant was not "on call," he was not traveling pursuant to express employment duties, and Syncor did not approve and have knowledge of his deviation from his work routine beforehand. Legally, none of those exceptions can apply to these facts. (*Wilson, C.*, **dissenting**) This case is legally identical to Kish v. Nursing and Home Care, 3068 CRB-2-95-6 (November 12, 1996), aff'd, 47 Conn. App. 620 (1998), aff'd, 248 Conn. 379 (1999) and should not be reversed. Appellate Court reversed CRB decision, stating that the commissioner's decision had an adequate foundation in the facts, and that the CRB misapplied the law by making employer consent to minor deviations on "joint benefit" trips a prerequisite to compensability. See also, **Kolomiets**, § 31-301. Factual findings. See subsequent decision at Kolomiets, 4578 CRB-7-02-11 (July 8, 2003).

Richard v. Olsten Temporary Services, 16 Conn. Workers' Comp. Rev. Op. 204, 3250 CRB-7-96-1 (May 22, 1997), **aff'd**, 47 Conn. App. 939 (1998)(per curiam), **cert. denied**, 244 Conn. 925 (1998).
CRB affirmed trial commissioner's determination that the claimant's motorcycle accident did not arise out of or during the course of his employment. The trial commissioner found that the claimant was on an unpaid lunch break at the time of the injury and thus was not within the period of his employment. In addition, the trial commissioner found that accident occurred on a private road which was not part of the employer's premises.

Herman v. Sherwood Industries, Inc., 16 Conn. Workers' Comp. Rev. Op. 183, 3228 CRB-6-95-12 (May 12, 1997), **rev'd**, 244 Conn. 502 (1998).
Claimant was injured while picking up his toolbox from a loading dock on the business premises immediately after being fired by his employer. Trier found this act was within the course of his employment, and ruled injury compensable. Held: injury occurred after employment contract was terminated, and legislative policy favoring narrower construction of scope of employment period is evident from recent legislative

amendment to definition of personal injury. Trial commissioner reversed. (*Vargas, C.*, **dissenting**) This is a physical injury, not an emotional injury, and is not governed by Fulco v. Norwich Roman Catholic Diocesan Corp., 27 Conn. App. 800 (1992). Trier reasonably found that retrieval of toolbox while leaving premises was within period of employment. Reversed by Supreme Court, which held that the claimant's period of employment did not end abruptly at the instant of discharge, and that he was in the course of his employment when he was injured. Moreover, as keeping personal tools at the work site was a benefit to both the claimant and the employer, and the claimant was directed by the employer to retrieve his tools, the retrieval of the tools was incidental to his employment.

Evans v. Shelton, 16 Conn. Workers' Comp. Rev. Op. 155, 3108 CRB-4-95-6 (May 2, 1997), **dismissed for lack of final judgment**, A.C. 17196 (January 14, 1998).
No automatic separation between repetitive trauma and occupational disease. Claimant's asthma could have satisfied either or both definitions, depending on whether her asthma fell within the legal definition of those injuries. Trier did not improperly "fuse" the two definitions. See also, **Evans**, § 31-301. Appeal procedure, § 31-301. Factual findings, notes on Rules of Professional Conduct.

Benlock v. New Haven Terminal/Cilco Terminal, 3034 CRB-4-95-4 (April 25, 1997), **aff'd**, 48 Conn. App. 250 (1998)(per curiam).
Discusses stress-related heart attack claim. See also, **Benlock**, § 31-301. Factual findings.

Leonard v. Danbury, 3159 CRB-7-95-9 (April 14, 1997).
Trier dismissed claim of claimant firefighter who suffered disabling head injuries when he fell in his driveway. He had been given a ride to an auto repair garage after his work shift ended, where he picked up his car. He was injured after driving the car home and stepping out onto the icy driveway. Commissioner ruled injury did not occur "in the course of a direct return from the place of duty to the place of abode." Affirmed; statutory exception to "coming and going" rule for firefighters and police officers does not encompass every departure during the trip to and from work. Trier is entitled to decide whether a diversion is significant enough to take claimant outside the statute based on the nature of the intervening events and the route traveled.

Fusco v. J.C. Penney Company, 1952 CRB-4-94-1 (March 20, 1997).
CRB affirmed the trial commissioner's conclusion that the claimant failed to sustain her burden of proof that she suffered any injuries that were causally related to her employment. Record, including report by IME, supported trial commissioner's determination. It was within the discretion of the trial commissioner, as the trier of fact, to accord greater weight to the opinion of the IME. See also, **Fusco**, § 31-301. Appeal procedure.

Masko v. Wallingford Board of Education, 3225 CRB-6-95-12 (January 24, 1997), **aff'd**, 48 Conn. App. 515 (1998).
During arbitration hearing between decedent's union and respondent board of education, decedent collapsed and died from heart attack. Commissioner found causal link between

stress of hearing and heart attack, and awarded benefits. Respondent argued on appeal that decedent attended hearing as union representative and for his personal benefit, and that he was not acting in scope of employment when stricken. CRB affirmed award. Arbitration hearing was part of negotiations between employer and union, rather than a members-only union meeting, and decedent was allowed to attend during paid employment hours. Commissioner's findings were sufficient to support conclusion that heart attack was work-related. Subsequent decision at Masko, 4076 CRB-8-99-7 (July 11, 2000), aff'd, 67 Conn. App. 276 (2001), § 31-349.

Parsons v. Parsons Buick, 3129 CRB-6-95-7 (January 22, 1997).
CRB affirmed the trial commissioner's conclusion that the decedent was not in the scope of his employment or doing something incidental thereto when he was killed in a motor vehicle accident. The trial commissioner's conclusion was a factual determination that was dependent upon the weight and credibility of the evidence.

Vallier v. Distinctive Stationery, Inc., 3176 CRB-6-95-10 (January 16, 1997).
CRB affirmed the trial commissioner's conclusion that the claimant's injury, which occurred while he was shoveling snow, arose out of and in the course of his employment. The employer contended that it did not expressly ask the claimant to shovel said snow. Section 31-275(1) definition of injury includes an injury which occurs *"while engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer . . . .*" (emphasis added).

Deoliveira v. Ross & Roberts, Inc., 3033 CRB-4-95-4 (December 13, 1996), **aff'd**, 47 Conn. App. 919 (1997)(per curiam), **cert. denied**, 243 Conn. 965 (1998).
Claimant suffered a compensable back injury, which was unreasonably contested by respondent. However, commissioner denied compensation for claimant's emotional and psychological problems allegedly stemming from the delays in resolving his claim. Affirmed. In order for an injury to be work-related, employment must be a proximate cause of the injury. Although CRB is opposed to an employer's use of dilatory tactics in contesting claim, the conduct that led to the claimant's psychological distress was not a direct result of his back injury. Human actions intervened. Thus, the compensable back injury was not legally a substantial factor in causing the claimant's psychological problems. CRB also noted that § 31-300 prescribes a remedy for unreasonable contest by an employer or insurer, and that it would be inappropriate to infer that an alternative remedy is also available in cases of unusual detrimental effects. See also, **Deoliveira**, § 31-300.

Sutton v. State/Dept. of Motor Vehicles, 16 Conn. Workers' Comp. Rev. Op. 88, 3066 CRB-2-95-5 (November 13, 1996).
The trial commissioner concluded that the claimant's injury, which occurred at the end of her workday when she reached for her pocketbook, arose out of and in the course of her employment. In support of its appeal, the employer contends that the injury did not arise out of and in the course of the claimant's employment as it occurred during the act of reaching for her pocketbook, a personal belonging, which was not incidental to her job duties. CRB agreed with respondents' argument and reversed the trial commissioner.

(*Frankl, C.,* **dissenting**) (trial commissioner's decision as to whether the claimant's conduct was incidental to her job duties was an issue of fact, and should be affirmed).

Kish v. Nursing and Home Care, 16 Conn. Workers' Comp. Rev. Op. 83, 3068 CRB-2-95-6 (November 12, 1996), **aff'd**, 47 Conn. App. 620 (1998), **aff'd**, 248 Conn. 379 (1999).
Claimant, a home health care specialist, was en route to pick up a commode for a patient when she saw a postal vehicle and pulled over to the side of the road to mail a greeting card to a friend. While crossing the street, she was struck by an oncoming car. Commissioner found that, despite unwritten agency policy against picking up items for patients, the claimant was acting in the course of her employment in getting the commode, and that her momentary diversion to mail the card did not remove her from acting in the course of her employment. CRB affirmed; Motion to Correct was properly denied, and claimant's actions in picking up commode did not amount to willful misconduct despite employer policy. Mailing of letter was a deviation from employment duties, but trial commissioner reasonably found that it was inconsequential. (*Waldron, C.,* **dissenting**) (actions in mailing letter were primary cause of accident, and were unrelated to claimant's employment).

Mazzone v. Connecticut Transit, 15 Conn. Workers' Comp. Rev. Op. 383, 2246 CRB-3-94-12 (August 6, 1996), **rev'd and remanded**, 240 Conn. 788 (1997).
The CRB affirmed the trial commissioner's conclusion that the claimant's injury which occurred while he was eating lunch on an off-duty bus parked on the employer's premises did not arise out of and in the course of his employment. The employer provided a lunchroom for employees to eat their lunches. The claimant was not doing anything while on his lunch break in furtherance of the employer's business or incidental to it. Supreme Court reversed CRB and held claimant had satisfied the first and third parts of the "in the course of employment" test. See, McNamara v. Hamden, 176 Conn. 547 (1979) and Spatafore v. Yale University, 239 Conn. 408 (1996). A lunchtime injury sustained on the employer's premises may be said to have occurred in the course of employment and eating lunch, a necessary element to an employee's health and comfort, is incidental to employment. Remanded for further articulation by trial commissioner with respect to whether claimant, at the time of his injury, was at a place where he reasonably might have been.

Prescott v. Echlin, Inc., 15 Conn. Workers' Comp. Rev. Op. 339, 2242 CRB-3-94-12 (June 25, 1996), **appeal dismissed**, A.C. 16150 (February 5, 1997).
Claimant bears burden of proving causal relation of injury to employment; commissioner's decision that claimant did not establish injury by sufficient evidence affirmed. Room for doubt certainly existed, as claimant's case was based largely on her own testimony. Prior decision at, Prescott, 14 Conn. Workers' Comp. Rev. Op. 191, 2029 CRB-3-94-4 (July 13, 1995).

Janeiro v. State/DMR Region I, 15 Conn. Workers' Comp. Rev. Op. 282, 2234 CRB-6-94-12 (June 20, 1996).
The claimant, a mental retardation worker, injured her ankle on the driveway of a client's home which she had been visiting as part of her job duties. The CRB found the

commissioner's conclusion that the claimant's injury did not arise out of and in the course of her employment to be amply supported by the record, including the trial commissioner's finding that the claimant had completed her work assignment for the day prior to her injury; the finding that she was not reimbursed for travel expenses; and the trial commissioner's determination that the evidence did not support a finding that the driveway was under the control of the employer.

Thompson v. State/Dept. of Special Revenue, 15 Conn. Workers' Comp. Rev. Op. 178, 2206 CRB-6-94-11 (March 22, 1996), **aff'd**, 44 Conn. App. 924 (1997)(per curiam).
To establish a stress-related heart claim, a claimant must prove that his employment was a substantial factor in causing his condition by a reasonable medical probability. Here, trial commissioner was not required to credit testimony of physician linking work stress to myocardial infarction. Dismissal affirmed.

Durso v. Colonial Toyota, Inc., 15 Conn. Workers' Comp. Rev. Op. 69, 2141 CRB-3-94-9 (December 6, 1995).
Claimant's flag football injury found compensable by trial commissioner. Affirmed; evidence existed to support conclusion that employer derived benefit from sponsorship of team in the form of advertising and an employee morale boost. (Injury occurred before 1993 amendment took effect.) (*Tracy, C.,* **dissenting**) (no concrete evidence of benefit from flag football).

Hanzlik v. James Freccia Auto Body, 15 Conn. Workers' Comp. Rev. Op. 2, 1984 CRB-7-94-3 (November 1, 1995), **aff'd**, 43 Conn. App. 908 (1996)(per curiam).
Trial commissioner found that claimant suffered relapse when he herniated disc picking up three-ounce piece of car molding. Later, correction granted stating that claimant herniated disc at that time. Held, correction not inconsistent with outcome of case. Reference to Colas, 9 Conn. Workers' Comp. Rev. Op. 86, 939 CRD-7-89-11 was misleading; legal causation of injury occurs at time of last event in causation chain, and commissioner was attempting to explain that herniation would have occurred regardless of bending incident. Evidence supports conclusion that bending incident was too minor to be a legal cause.

Rondeau v. General Dynamics Corporation/Electric Boat Division, 14 Conn. Workers' Comp. Rev. Op. 380, 2073 CRB-2-94-6 (October 5, 1995).
Medical report established that primary cause of pulmonary disease was smoking, with asbestosis in an early, mild stage; permanent partial disability of lungs not based on asbestos exposure. Mere presence of minor asbestosis did not entitle claimant to benefits. Affirmed.

Han v. Amgraph Packaging, Inc., 14 Conn. Workers' Comp. Rev. Op. 369, 2074 CRB-2-94-6 (September 26, 1995).
Trial commissioner found that claimant permanently aggravated hip condition while standing up from a bending position at work. Respondents argued alleged injury did not arise out of employment as a matter of law. Held, cause of injury is question of fact. Doctor's opinion that injury affected the course of claimant's disease supported

commissioner's finding. Although some circumstances are so minor in leading to injury that the law can't recognize them as causes, when the commissioner decides that an incident did play a causal role, we must defer to that factual decision.

Senoski v. Corometrics, Inc., 14 Conn. Workers' Comp. Rev. Op. 344, 1906 CRB-8-93-11 (September 22, 1995), **appeal dismissed**, A.C. 15289 (April 30, 1996).
CRB affirmed commissioner's determination that the claimant's tendonitis was not caused by her use of a glass-pulling machine at work. Commissioner found claimant's testimony was not credible when compared with a video showing the use of the machine. See also, **Senoski**, § 31-298.

Ferrigno v. Buffalo Specialty, 14 Conn. Workers' Comp. Rev. Op. 303, 1953 CRB-2-94-1 (September 14, 1995).
CRB affirmed commissioner's conclusion that physical assault on claimant, which occurred in the course of her employment, did not arise out of her employment. Commissioner found that the assault was imported into claimant's employment from her private life. Discussion of case law, including Fair v. People's Savings Bank, 207 Conn. 535 (1988). See also, **Ferrigno**, § 31-301. Factual findings.

Spatafore v. Yale University, 14 Conn. Workers' Comp. Rev. Op. 310, 2011 CRB-3-94-4 (September 14, 1995), **aff'd**, 239 Conn. 408 (1996).
Claimant was injured while walking back from union meeting on lunch break; injury did not occur on Yale property, although meeting was held in a Yale building. Commissioner found mutual benefit for Yale and claimant in her attendance at the meeting, and found injury compensable. Held, no evidence supported conclusion that meeting was for benefit of employer; independent evidence of such benefit must be shown before such a conclusion may be reached. Also, injuries occurring off-premises during unpaid lunch break are not normally compensable. Special hazard and personal comfort exceptions inapplicable. See also, **Spatafore**, § 31-301 for discussion of commissioner's attempt to vacate award.

Kaplan v. State/Dept. of Health Services, 14 Conn. Workers' Comp. Rev. Op. 296, 2012 CRB-1-94-4 (September 11, 1995).
State employee tripped on off-premises sidewalk during unpaid afternoon lunch break and fractured her ankle. Difficulty of distinguishing whether this case falls into "coming and going" category or "personal comfort" category irrelevant; case is almost identical to Renckowski v. Yale University, 11 Conn. Workers' Comp. Rev. Op. 48 (March 18, 1993), except claimant was not getting paid at time of injury. Commissioner's dismissal of claim affirmed.

Cotton v. Bartlett Nuclear, Inc., 14 Conn. Workers' Comp. Rev. Op. 231, 1929 CRB-2-93-12 (August 10, 1995).
Commissioner found that claimant fell at work, sustaining injuries to his face and left cheek and the loss of fourteen teeth. CRB remanded issue of causation because there was no medical opinion in record indicating that claimant's dental extractions were caused by his fall. See also, **Cotton**, § 31-307.

Maglieri v. Incorporated Construction, Ltd., 14 Conn. Workers' Comp. Rev. Op. 149, 1947 CRB-1-94-1 (June 20, 1995).
CRB affirmed commissioner's conclusion that claimant's shoulder injury did not occur in the course of his employment, relying upon commissioner's credibility determination against claimant's testimony. Medical notes are not always determinative when as in the instant matter, the trial commissioner found that the claimant did not sustain an injury on the date in question, the medical report was based on claimant's oral history and the medical reports were admitted into evidence for identification only.

Peters v. Corporate Air, Inc., 14 Conn. Workers' Comp. Rev. Op. 91, 1679 CRB-5-93-3 (May 19, 1995).
CRB affirmed commissioner's denial of benefits where commissioner concluded that claimant failed to sustain burden of proving that back injury occurred in the course of employment. Commissioner found that claimant lacked credibility due to inconsistencies in his testimony and in evidence. See also, **Peters**, § 31-301. Factual findings, and § 31-298. Conduct of hearings. Evidence.

Epps v. Beiersdorf, Inc., 14 Conn. Workers' Comp. Rev. Op. 57, 1733 CRB-7-93-5 (May 11, 1995), **rev'd**, 41 Conn. App. 430 (1996).
Commissioner accepted doctor's opinion that workplace exposure did not cause claimant's condition, but was an "aggravating factor" on pre-existing lung condition. Commissioner also found that claimant's symptoms did not decrease when he left work and could be triggered by household products as well. Held, commissioner could reasonably interpret doctor's testimony as supporting conclusion that claimant's disease was not aggravated within the meaning of § 31-275(1)(D). Distinction drawn between a worsening of a claimant's condition caused by workplace exposure, which would be compensable, and a tendency of chemicals present at work to irritate a pre-existing condition without causing further permanent damage, as in this case. (*Brouillet, C.,* **dissenting**) (employer takes employee as it finds him; chemical exposure was causal factor which aggravated pre-existing respiratory condition. Employer liable for entire disability, as apportionment not appropriate here). Appellate Court reversed CRB and held statute expressly provides for compensation for proportion of disability caused by aggravation. Facts of case and uncontradicted medical testimony clearly support a finding that claimant's respiratory condition was aggravated by constant exposure to chemicals.

Niebler v. Waldbaum's Foodmart, 14 Conn. Workers' Comp. Rev. Op. 61, 1851 CRB-3-93-9 (May 11, 1995).
CRB affirmed commissioner's determination that claimant's back injury was caused by repetitive heavy lifting of lobster crates. Respondents contended that proximate cause of disc herniation was a bending incident at home. After discussing "proximate cause" and "substantial cause" CRB concluded that bending incident at home was too trivial to break the chain of causation between work activities and herniation.

Fantasia v. Tony Pantano Mason Contractors, 14 Conn. Workers' Comp. Rev. Op. 36, 1819 CRB-5-93-8 (May 4, 1995), **dismissed for lack of jurisdiction**, A.C. 16088 (October 3, 1996), **cert. denied**, 239 Conn. 947 (1996).
Automobile accident on way home from workers' compensation hearing did not arise out of employment. "Coming and going" rule discussed in Dombach v. Olkon Corp., 163 Conn. 216 (1972), applies; highway use exceptions in McKiernan v. New Haven, 151 Conn. 496 (1964), inapplicable. No evidence presented by claimant that the ride home from the hearing was made for the employer's benefit with its knowledge and approval. Trier's decision reversed and matter was remanded for further proceedings. Appeal to the Appellate Court was dismissed for lack of jurisdiction. Further proceedings were held below and supplemental findings by the trial commissioner were appealed directly to the Appellate Court. That court found they lacked subject matter jurisdiction as an appeal from the trier's finding on remand lies with the Compensation Review Board. The Compensation Review Board needs to determine whether the proceedings below were consistent with their opinion. Parties cannot agree to remove the review and appeal directly to the Appellate Court. See, Fantasia v. Tony Pantano Mason Contractors, Inc., 54 Conn. App. 194 (1999), cert. denied, 250 Conn. 927 (1999).

Senatro v. Royal Insurance Co., 14 Conn. Workers' Comp. Rev. Op. 44, 1890 CRB-8-93-11 (May 4, 1995).
Claimant's psychiatric condition did not arise out of her employment where depression was caused by respondent's elimination of claimant's job and inability to arrange a suitable replacement job. See, Fulco v. Norwich Roman Catholic Diocesan Corp., 27 Conn. App. 800 (1992). Conduct relating to actual or potential termination of employment differs from conduct relating to duties of employment or incidental to employment. CRB noted that amendment to § 31-275(16) definition of "personal injury" would exclude this kind of claim in the future.

Bell v. U. S. Home Care Certified of Connecticut, 13 Conn. Workers' Comp. Rev. Op. 294, 1792 CRB-1-93-8 (April 21, 1995), **aff'd**, 40 Conn. App. 934 (1996)(per curiam).
Claimant, a home health care aid, fell during errand to beauty store en route from home of one patient to another. Commissioner found claimant was doing a personal errand and purchased lipstick for patient as an afterthought. Held: commissioner was not required to conclude that trip to beauty store satisfied dual purpose doctrine in Dombach v. Olkon Corp., 163 Conn. 216 (1972), based on his findings. "Personal comfort" doctrine of Lovallo v. American Brass Company, 112 Conn. 635 (1931), similarly not satisfied by findings of commissioner. See also, **Bell**, § 31-301. Appeal procedure.

Paternostro v. Turner Construction Co., 13 Conn. Workers' Comp. Rev. Op. 251, 1723 CRB-5-93-5 (April 18, 1995).
In occupational disease cases in which it is difficult to determine relationship of disease to employment, expert medical opinion is necessary. See, Metall v. Aluminum Company of America, 154 Conn. 48 (1946). See also, **Paternostro**, § 31-301. Factual findings.

Simmons v. Philip Bonhotel, d/b/a Bonhotel's Lawn Maintenance, 13 Conn. Workers' Comp. Rev. Op. 234, 1778 CRB-5-93-7 (April 13, 1995), **aff'd**, 40 Conn. App. 278 (1996).
CRB affirmed denial of benefits where alleged injury at work occurred due to horseplay initiated by claimant. See also, **Simmons**, § 31-298, § 31-294c, and § 31-284(a).

Baccielo v. Business Products, Inc., 13 Conn. Workers' Comp. Rev. Op. 163, 1732 CRB-4-93-5 (March 9, 1995).
Faced with conflicting medical reports, commissioner determined that claimant's bodybuilding activities, rather than his 1987 compensable injury, likely caused his herniated disc. Held, commissioner's conclusion supported by report of commissioner's examiner, which he was entitled to credit as the fact finder, and consistent with claimant's testimony. CRB will not substitute its conclusions for those of the commissioner. See also, **Baccielo**, § 31-294f and § 31-301. Appeal procedure.

Conetta v. Stamford, 13 Conn. Workers' Comp. Rev. Op. 68, 1491 CRB-7-92-8 (December 29, 1994).
Remanded where trier's denial of police officer's claim for psychiatric disability fails to disclose whether dismissal was based on claimant's failure to prove causation or whether claim was time barred. See also, **Conetta**, § 31-294c and § 31-301. Factual findings. See also, Conetta v. Stamford, 16 Conn. Workers' Comp. Rev. Op. 228, 3231 CRB-7-95-12 (June 23, 1997), appeal dismissed, 246 Conn. 281 (1998).

Smith v. Capiezello, 13 Conn. Workers' Comp. Rev. Op. 37, 1712 CRB-2-93-4 (November 8, 1994).
CRB affirmed finding claimant's alleged back injury, for which treatment was not sought until several years after the accepted compensable head injury, did not arise out of and in the course of employment. See also, **Smith** § 31-301. Factual findings and Appeal procedure.

Lee v. Norwalk, 13 Conn. Workers' Comp. Rev. Op. 23, 1626 CRB-7-93-1 (November 7, 1994).
Trier erred in basing the dismissal of claimant's claim for depression and anxiety, as the result of striking a coworker while operating a sanitation truck, on an IME report improperly entered into evidence. See also, **Lee** § 31-294f and § 31-298.

Plitnick v. Knoll Pharmaceuticals, 13 Conn. Workers' Comp. Rev. Op. 26, 1699 CRB-8-93-4 (November 7, 1994).
Respondents claimed injury merely coincidental with employment. Held, question of fact for trial commissioner as to whether injury arose out of and in course of employment. Discusses definitions of both terms. Sufficient evidence existed to find injury work-related here. Failure of physician to specifically use the term "reasonable medical probability" did not preclude said finding; "in best medical probability" was adequate. See also, **Plitnick**, § 31-301. Factual findings, § 31-301. Appeal procedure.

Searles v. West Hartford Board of Education, 12 Conn. Workers' Comp. Rev. Op. 414, 1617 CRB-1-93-1 (September 28, 1994), **aff'd**, 40 Conn. App. 902 (1996)(per curiam).
Auto accident on public highway did not arise out of employment. Schoolteacher was not required nor requested to drive lesson plan to school after calling in sick. See also, **Searles**, § 31-294c, § 31-301. Factual findings and § 31-301-9. Additional evidence.

Zullo v. Caron Roofing Company, Inc., 12 Conn. Workers' Comp. Rev. Op. 357, 1634 CRB-4-93-2 (August 2, 1994).
Injury sustained when chair collapsed while attending class at an approved Division of Workers' Rehabilitation school arose out of and in the course of employment. CRB affirmed trier's finding which ordered respondent employer to pay benefits for subsequent injury. See, Cole v. Norwalk Wilbert Vault Co., 4 Conn. Workers' Comp. Rev. Op. 155, 330 CRD-2-84 (February 26, 1988). See also, **Zullo**, § 31-283a.

Conroy v. Keri Corporation, 12 Conn. Workers' Comp. Rev. Op. 321, 1534 CRB-3-92-10 (July 5, 1994).
Medical evidence supported finding that a causal connection existed between heart attack, pre-existing arterial blockage, and later angioplasty surgery which caused decedent's death. See also, **Conroy**, §. 31-301. Factual findings and § 31-306.

Fusciello v. Ronnie Demeo, Inc., 12 Conn. Workers' Comp. Rev. Op. 283, 1535 CRB-6-92-10 (June 7, 1994).
Record supports trier's findings and conclusions regarding cause of injuries sustained, not as a result of prior injuries with other employers, but during the course of his present employment. See also, **Fusciello**, § 31-275(16)[formerly 31-275(8)] and § 31-307.)]. Subsequent decision at **Fusciello**, 3406 CRB-8-96-8 (February 4, 1998), § 31-307, § 31-301. Appeal procedure and Fusciello, 4340 CRB-6-01-1 (January 7, 2002), § 31-301. Factual findings, § 31-307.

Clark v. Gates GMC Truck, Inc., 12 Conn. Workers' Comp. Rev. Op. 263, 1528 CRB-8-92-10 (June 2, 1994).
Claimant, a car salesman injured in a motor vehicle accident after work hours, was found not to be performing a duty which could be considered as a benefit to the employer. Claimant was on a personal recreational trip and therefore his injuries did not arise out of or in the course of his employment.

O'Connor v. Connecticut Light & Power Company, 12 Conn. Workers' Comp. Rev. Op. 265, 1536 CRB-8-92-10 (June 2, 1994).
Claimant's depression was not caused by work stress but by interpersonal stressors in his life. See also, **O'Connor**, § 31-301. Factual findings.

Flowers v. Benny's of Connecticut, 12 Conn. Workers' Comp. Rev. Op. 162, 1527 CRB-2-92-10 (April 26, 1994).
Based on conflicting testimony, mental stress claim as a result of sexual harassment and verbal abuse by a supervisor dismissed. See also, **Flowers**, § 31-298, § 31-301. Appeal procedure and Factual findings.

Spindler v. Med-Center Home Health Center, 12 Conn. Workers' Comp. Rev. Op. 130, 1474 CRB-7-92-7 (February 28, 1994).
Based on credibility, trier properly concluded that claimant's automobile accident did not arise out of and during the course of her employment. The claimant, a home health care aide, was not credible regarding her testimony that she was driving between two work assignments when the accident occurred. See also, **Spindler**, § 31-275(16)[formerly 31-275(8)].

Moffett v. Tighe Williams Salon, 12 Conn. Workers' Comp. Rev. Op. 83, 1489 CRB-4-92-8 (February 9, 1994).
Injury which occurred when claimant slipped and fell on ice as she stepped from the parking lot onto a curb in front of employer's premises held not compensable. Trier found injury occurred on property which was neither owned, leased or controlled by the employer. Further, claimant's injury was not connected to the employment by application of the special hazard doctrine. See also, **Moffett**, § 31-301. Factual findings.

Peddle v. Finish Line Cafe, 12 Conn. Workers' Comp. Rev. Op. 27, 1396 CRB-2-92-2 (January 18, 1994).
No employer-employee relationship existed at the time claimant sustained injuries to her knee, neck, elbow and head, despite testimony from both claimant and employer that the claimant was an employee when injury occurred. See also, **Peddle**, § 31-294c, § 31-284(a), § 31-301-9. Additional evidence.

Nolan v. Brennan Concrete Corporation, 11 Conn. Workers' Comp. Rev. Op. 224, 1362 CRD-7-91-12 (November 4, 1993), **dismissed for lack of final judgment**, A.C. 13041 (January 5, 1994).
Reversed and remanded. Claimant sustained an injury to his right master hand as a result of an altercation with a coworker at his place of employment. Trier failed to address the reason or cause of the altercation in determining claimant's injury did not arise out of his employment. Discussion of personal injury and Connecticut's rule in determining whether a workplace assault between fellow employees is considered to arise out of the employment. See also, **Nolan**, § 31-275(16)[formerly 31-275(8)] and § 31-284(a).

Beninato v. Specialty Framing, Inc., 11 Conn. Workers' Comp. Rev. Op. 200, 1306 CRD-8-91-9 (September 24, 1993), **aff'd**, 36 Conn. App. 911 (1994).
Evidence supports trier's conclusion that claimant's psychiatric condition and resulting disability were unrelated to the compensable work incident wherein claimant suffered a neck sprain when pushed by a co-worker. See also, **Beninato**, § 31-301. Factual findings.

Anderson v. State/UConn Health Center, 11 Conn. Workers' Comp. Rev. Op. 197, 1318 CRD-6-91-10 (September 23, 1993).
CRB affirmed trier's finding that claimant's work environment and accompanying job-related stress was a substantial contributing factor to claimant's psychiatric disability. Note: Psychiatric disability predates effective date of P.A. 93-228. See also, **Anderson**, § 31-301. Appeal procedure.

Lane v. J. Copperfield LTD, 11 Conn. Workers' Comp. Rev. Op. 153, 1293 CRD-2-91-8 (August 23, 1993).
Claimant sustained injuries when a co-worker picked her up, proceeded to carry claimant across kitchen floor of restaurant, slipped, and dropped claimant. Trier determined claim was compensable. Although activity was arguably horseplay, claimant did not provoke, induce or initiate the act. Further, management was aware of horseplay activities and such activity was considered essential to employee morale. CRB affirmed trier's finding.

Dumont v. State/Southern Connecticut State University, 11 Conn. Workers' Comp. Rev. Op. 122, 1320 CRD-3-91-10 (June 16, 1993).
Trier found based on medical evidence, that decedent, a French professor, while leading a study tour in Europe, suffered a fatal heart attack caused by stress and physical activity. Trier's conclusion that decedent's death arose out of and in the course of employment will not be disturbed as medical testimony refers to the standard of reasonable medical probability. Award to dependent widow for benefits pursuant to § 31-306 affirmed. See also, **Dumont**, § 31-306 and § 31-301c(b).

Boynton v. American Cyanamid, 11 Conn. Workers' Comp. Rev. Op. 58, 1267 CRD-8-91-8 (April 6, 1993).
See, **Boynton** § 31-301. Factual findings, and § 31-301-9. Additional evidence.

Renckowski v. Yale University, 11 Conn. Workers' Comp. Rev. Op. 48, 1292 CRD-3-91-9 (March 18, 1993).
Reversed. Trier erred in finding that claimant's injury sustained while getting coffee during a paid coffee break off the employer's premises arose out of and in the course of employment. CRB held while claimant was arguably in the course of her employment she was not fulfilling the duties of the employment or doing something incidental to it.

Moore v. M & L Building, 11 Conn. Workers' Comp. Rev. Op. 23, 1238 CRD-8-91-5 (February 23, 1993).
Trier found claimant, a plumber's apprentice, alleged back injury did not arise out of and in the course of employment.

Brewer v. National Theatre of the Arts, 11 Conn. Workers' Comp. Rev. Op. 1, 1237 CRD-4-91-5 (January 28, 1993).
Claimant, a stage actress, in a traveling theatre company, injured her knee while climbing a fence around a closed pool at a motel. Trier found that the activity was a frolic and detour and was not part of the employment duties or incidental to the employment. CRB affirmed, as the question of whether an employee has so departed from his employment that the injury did not arise out of it is a factual determination.

Muldoon v. Homestead Insulation, 10 Conn. Workers' Comp. Rev. Op. 255, 1226 CRD-4-91-5 (January 13, 1993), **rev'd**, 33 Conn. App. 695 (1994), **rev'd**, 231 Conn. 469 (1994), **aff'd on remand**, 37 Conn. App. 266 (1995)(per curiam).
See, **Muldoon**, § 31-275(15), § 31-299b, § 31-315 and § 31-284(a). Subsequent decisions.

Pereira v. State/Dept. of Children & Youth Services, 10 Conn. Workers' Comp. Rev. Op. 229, 1209 CRD-7-91-4 (January 7, 1993), **aff'd**, 228 Conn. 535 (1994).
CRB affirmed trier's finding that work place stress was not a substantial factor in producing claimant's mental disability. See also, **Pereira**, § 31-301. Factual findings and Pereira, 9 Conn. Workers' Comp. Rev. Op. 9, 906 CRD-7-89-8 (January 8, 1991), dismissed for lack of final judgment, A.C. 9884 (March 20, 1991).

Crochiere v. Enfield/Board of Education, 10 Conn. Workers' Comp. Rev. Op. 165, 1069 CRD-1-90-7 (August 27, 1992), **aff'd**, 227 Conn. 333 (1993).
Evidence supports trier's finding that claimant's mental injury arose out of and in the course of employment and was not the result of willful misconduct. The claimant had been a music teacher accused of inappropriately touching a student. Resultant publicity and proceedings were alleged to have resulted in claimant's severe emotional stress. See also, **Crochiere**, § 31-284(a), § 31-294c, § 31-298, § 31-301. Factual findings and Appeal procedure.

Neal v. UTC/Pratt & Whitney, 10 Conn. Workers' Comp. Rev. Op. 163, 1199 CRD-8-91-3 (August 5, 1992).
CRB affirmed trial commissioner's finding that claimant failed to prove claimed back injury was the result of a slip and fall from a forklift as there was evidence proffered that claimed back injury was the result of a non-work related softball game.

Prisco v. North & Judd, 10 Conn. Workers' Comp. Rev. Op. 154, 1190 CRD-8-91-3 (June 30, 1992).
As trier found claimant sustained an aggravation of his underlying lung disease, and found the pre-existing impairment was not due to occupational disease, respondent employer is liable for the entire resultant disability and apportionment under § 31-275(12)(D) (now § 31-275(1)(D)) not applicable. See also, **Prisco**, § 31-294c.

Tovish v. Gerber Electronics, 10 Conn. Workers' Comp. Rev. Op. 133, 1143 CRD-4-90-12 (June 4, 1992), **aff'd**, 32 Conn. App. 595 (1993), **cert. improvidently granted**, 227 Conn. 930 (1993), **cert. dismissed**, 229 Conn. 587 (1994).
CRB affirmed trier's finding that decedent's (salesman's) heart attack while shoveling snow from his driveway arose in and out of the course of his employment. (*Frankl, C.*, **dissenting**) Evidence does not support trier's conclusion. Trier erred in failing to grant portions of motion to correct.

Davidowski v. Commercial Painting Co., Inc., 9 Conn. Workers' Comp. Rev. Op. 225, 1082 CRD-7-90-7 (October 21, 1991).
Claimant's injury sustained while exiting parking lot on his motorcycle found not compensable as parking area was not found to be part of the premises of the employer. Also, claimant contended that since the employer furnished a travel allowance, all travel to and from work arose in and out of the employment. CRD disallowed as transportation allowance is part of wages and paid regardless of manner of transportation chosen. See, Orsinie v. Torrance, 96 Conn. 352 (1921).

Biondi v. West Haven, 9 Conn. Workers' Comp. Rev. Op. 203, 1024 CRD-3-90-5 (September 3, 1991).
Trier's factual finding that police officer's gunshot injury while removing his service revolver from its holster at home upon returning from duty did not arise out of or during the course of his employment will not be disturbed on appeal. The CRD may not review de novo the facts as found but can only determine if the conclusions drawn from the facts were contrary to law, without evidence or based on impermissible or unreasonable factual inferences. See, Fair v. People's Savings Bank, 207 Conn. 535 (1988).

Cellupica v. Highland Manufacturing, 9 Conn. Workers' Comp. Rev. Op. 206, 969 CRD-5-90-1 (September 3, 1991).
CRD affirmed trier's factual finding claimant's leg injury sustained while participating in an employer sponsored softball game arose in and out of the course of employment.

Benham v. Edgerton, Inc., 9 Conn. Workers' Comp. Rev. Op. 169, 977 CRD-4-90-2 (July 17, 1991).
Trier's finding that claimant suffered a compensable injury which accelerated or triggered an aseptic necrosis of the right hip will not be disturbed where issues raised on appeal concern conflicting evidence and corrections which would not alter the legal outcome.

Tomkus v. Upjohn Company, 9 Conn. Workers' Comp. Rev. Op. 163, 972 CRD-3-90-1 (June 28, 1991).
Commissioner's finding that claimant's myocardial infarction arose in and out of the course of his employment will not be disturbed as there was sufficient medical evidence and testimony to satisfy proximate causation requirements. See also, **Tomkus**, § 31-294c and § 31-298.

Rivera v. B & D Molded Products, 9 Conn. Workers' Comp. Rev. Op. 76, 912 CRD-4-89-9 (February 20, 1991).
Where claimant accepts alternative ride to work other than company van and employer had no knowledge of the ride and did not authorize alternative means of transportation, injuries sustained while on the way to work held not compensable.

Zane v. Danbury, 9 Conn. Workers' Comp. Rev. Op. 7, 949 CRD-7-89-11 (January 4, 1991).
Injury sustained by police officer, when his gun discharged while dressing at home, found not compensable.

Smeriglio v. Froelich Transportation, 8 Conn. Workers' Comp. Rev. Op. 166, 872 CRD-7-89-6 (October 26, 1990).
Questions of causal relationship are questions of fact and findings on such factual issues will not be set aside unless resulting from an incorrect application of the law, based on illegal or unreasonable factual inferences, or without evidence. See also, **Smeriglio**, § 31-301. Factual findings.

Belanger v. Bechtel Construction Co., 8 Conn. Workers' Comp. Rev. Op. 72, 768 CRD-8-88-9 (April 25, 1990).
Affirmed finding of no work related injury. See also, **Belanger**, § 31-301. Factual findings.

Connell v. Long Line Trucking Co., Inc., 8 Conn. Workers' Comp. Rev. Op. 54, 801 CRD-2-88-12 (March 21, 1990).
See, **Connell**, § 31-301. Factual findings.

Johnson v. West Haven, 8 Conn. Workers' Comp. Rev. Op. 56, 792 CRD-3-88-12 (March 21, 1990), **aff'd**, 23 Conn. App. 818 (1990)(per curiam).
Injuries sustained to a police officer while assigned to a special service job found compensable. See also, **Johnson**, § 31-284(a).

Spataro v. Mattioli Construction, 8 Conn. Workers' Comp. Rev. Op. 41, 784 CRD-4-88-10 (February 21, 1990).
See, **Spataro**, § 31-294d.

Kroczewski v. Old Fox Chemical, Inc., 8 Conn. Workers' Comp. Rev. Op. 13, 730 CRD-1-88-5 (January 5, 1990).
See, **Kroczewski**, § 31-301. Factual findings.

Polier v. Colt Industries, 8 Conn. Workers' Comp. Rev. Op. 7, 763 CRD-1-88-8 (December 21, 1989).
Whether the claimant's medical treatment was related to his previous compensable injury is a question of causation which must be determined by the trial commissioner.

Golymbieski v. GTE Sylvania, 7 Conn. Workers' Comp. Rev. Op. 87, 704 CRD-5-88-3 (September 25, 1989).
Trial commissioner's findings that claimant's disabling illnesses resulted from personal problems which pre-existed employment and not from stress in the employment must stand where there is evidence to support such findings.

Polizzi v. Orange, 7 Conn. Workers' Comp. Rev. Op. 56, 675 CRD-3-87 (August 10, 1989), **no error**, 21 Conn. App. 815 (1990)(per curiam).
Injury sustained by suspended police officer while leaving a disciplinary hearing to which he was summoned arose in and out of the course of employment.

Lombardo v. Harris Graphics, 7 Conn. Workers' Comp. Rev. Op. 33, 639 CRD-2-87 (July 25, 1989).
Injury sustained by claimant, a volunteer fireman, arose in and out of course of employment where employer paid daily wages pursuant to a collective bargaining agreement during claimant's absence from employment in order to fight fires.

Jagush v. Litton-Winchester Electronics, 7 Conn. Workers' Comp. Rev. Op. 1, 609 CRD-7-87 (June 9, 1989).
See, **Jagush**, § 31-301, Factual findings.

Bruce v. Lynch, Traub, Keefe & Snow, P.C., 6 Conn. Workers' Comp. Rev. Op. 99, 587 CRD-4-87 (January 26, 1989).
Claimant's injuries sustained while horseback riding on a company sponsored trip upheld as compensable.

Cruz v. Consolidated Industries, 6 Conn. Workers' Comp. Rev. Op. 92, 580 CRD-5-87 (January 20, 1989). Claimant failed to meet burden of proof.
Besade v. Interstate Security Services, 6 Conn. Workers' Comp. Rev. Op. 83, 593 CRD-2-87 (January 13, 1989), **no error**, 212 Conn. 441 (1989).
Claimant's disability due to TMJ and mononucleosis held causally connected to work related exposure to ammonia fumes. See later decision at Besade, 16 Conn. Workers' Comp. Rev. Op. 103, 1383 CRB-2-92-2 (February 28, 1994), aff'd, 37 Conn. App. 903 (1995), § 31-301. Factual findings.

Gallagher v. Edmunds Manufacturing Co., 5 Conn. Workers' Comp. Rev. Op. 133, 494 CRD-6-86 (June 30, 1988).
See, Hebert, infra.

Ricigliano v. American Freight Systems, 5 Conn. Workers' Comp. Rev. Op. 121, 556 CRD-3-87 (June 24, 1988).
Claimant's auto accident which occurred late at night after dinner meeting with customer and while driving employer provided vehicle held compensable. However, remanded for determination of whether subsequent noncompensable accident was an intervening event in the chain of causation.

Davis v. Electrolux Corp., 5 Conn. Workers' Comp. Rev. Op. 109, 217 CRD-5-84 (June 20, 1988).
Trial commissioner found that claimant-assistant sales manager's automobile accident which occurred while claimant was returning home after picking up a bracelet to be used as a sales contest prize arose in and out of course of employment.

Ballester v. K & D Auto Body, Inc., 5 Conn. Workers' Comp. Rev. Op. 35, 578 CRD-3-86 (April 6, 1988).
Dependent's death due to motor vehicle accident was found compensable when trip was occasioned by need to return home to pick up keys to employer's premises.

Bernier v. Enfield, 5 Conn. Workers' Comp. Rev. Op. 25, 358 CRD-1-84 (March 29, 1988).
Police officer's fall in driveway held compensable as driveway was not place of abode.

Chavarriaga v. Pathmark, 5 Conn. Workers' Comp. Rev. Op. 16, 363 CRD-7-84 (March 24, 1988).
Assault to claimant in parking garage held compensable where parking area was held to be an annex of employer's premises.

Hutchinson v. State, 5 Conn. Workers' Comp. Rev. Op. 10, 292 CRD-2-84 (March 23, 1988).
Trial commissioner's conclusion that claimant's heart attack was not causally related to job stress will not be disturbed where based on conflicting medical evidence and expert medical opinion relied on was based on reasonable medical probability.

Sager v. GAB Business Services, Inc., 5 Conn. Workers' Comp. Rev. Op. 12, 430 CRD-3-85 (March 23, 1988).
Held testimony of physician that job stress was an important factor was the legal equivalent of substantial factor. See also earlier CRD decision re: Sager, 430 CRD-3-85 (April 9, 1986), error, further proceedings, 11 Conn. App. 693 (1987), § 31-301. Appeal procedure.

Cole v. Norwalk Wilbert Vault Co., 4 Conn. Workers' Comp. Rev. Op. 155, 330 CRD-2-84 (February 26, 1988).
Held injury sustained by claimant while in training school program pursuant to DWR placement arose in and out of the course of employment.

Hebert v. New Departure Hyatt Bearings, 4 Conn. Workers' Comp. Rev. Op. 94, 300 CRD-6-84 (June 12, 1987), **no error**, 14 Conn. App. 819 (1988)(per curiam).
Cervical surgery found causally connected to back injury which resulted in herniation of disc at the L-1 level.

Fair v. People's Savings Bank, 4 Conn. Workers' Comp. Rev. Op. 71, 289 CRD-4-83 (May 21, 1987), **rev'd**, 207 Conn. 535 (1988).
CRD held resultant death of employee from attack on employer's premises by an estranged lover compensable. Reversed by Supreme Court. See also, **Fair**, § 31-301. Factual findings.

Parandes v. Hartford, 4 Conn. Workers' Comp. Rev. Op. 56, 222 CRD-1-83 (April 20, 1987).
Pre-existing psychiatric condition was not aggravated by a work-related head injury.

Irving v. Hoyland, 4 Conn. Workers' Comp. Rev. Op. 25, 249 CRD-7-83 (March 4, 1987).
Employer's payment of an allowance for transportation did not constitute furnishing of transportation.

Parizeau v. State, 3 Conn. Workers' Comp. Rev. Op. 137, 194 CRD-2-83 (January 22, 1987).
Full pay awarded under § 5-142(a) where member of University of Connecticut police force was injured while walking from his patrol car to the office.

McDonough v. Connecticut Bank & Trust, 3 Conn. Workers' Comp. Rev. Op. 46, 184 CRD-2-82 (April 1, 1986), **no error**, 204 Conn. 104 (1987).
Claimant's heart condition held to have arisen from on the job stress.

Zipoli v. Watertown, 3 Conn. Workers' Comp. Rev. Op. 23, 215 CRD-5-83 (January 17, 1986).
Teacher who suffered mental disability resulting from stress at work awarded benefits.

Duncan v. Waterbury, 3 Conn. Workers' Comp. Rev. Op. 1, 168 CRD-5-82 (August 14, 1985).
Off-duty police officer's intervention in an altercation held compensable even though officer may have had a personal motive in altercation.

Allen v. Northeast Utilities, 2 Conn. Workers' Comp. Rev. Op. 120, 216 CRD-5-83 (February 22, 1985), **no error**, 6 Conn. App. 498 (1986).
Where claimant was found dead near work site, presumption that death arose in and out of the course of employment must be considered with other facts.

Fusco v. John J. Brennan Construction Co., 2 Conn. Workers' Comp. Rev. Op.107, 280 CRD-5-83 (October 19, 1984).
Injury to claimant which occurred while jump starting employer's vehicle which co-worker was required to drive to work, held compensable.

DiManno v. Pompei's Lounge, 2 Conn. Workers' Comp. Rev. Op. 90, 108 CRD-1-81 (July 27, 1984).
Waitress's injury which was incurred when patron struck her with his car in parking lot on employer's premises found compensable.

Carafano v. Hamden, 2 Conn. Workers' Comp. Rev. Op. 53, 122 CRD-3-82 (May 30, 1984).
Death due to travel on highway where claimant was traveling from one work premises to another held compensable where travel was incidental to employment.

Luddie v. Foremost Insurance Co., 2 Conn. Workers' Comp. Rev. Op. 30, 220 CRD-6-83 (September 9, 1983), **no error**, 5 Conn. App. 193 (1985).
Claimant's car accident held not compensable as facts showed claimant was on a personal frolic at the time of the accident.

Bushey v. Iseli Co., 2 Conn. Workers' Comp. Rev. Op. 20, 120 CRD-5-82 (May 23, 1983), **aff'd**, 3 Conn. App. 370 (1985), **cert. denied**, 196 Conn. 803 (1985).
Public roadway adjacent to employment parking lot was not a reasonable extension of employment premises.

Tosun v. Uniroyal Footwear, 2 Conn. Workers' Comp. Rev. Op. 10, 104 CRD-5-81 (May 13, 1983).
Claim for additional benefits due to increased hearing loss dismissed.

Emhoff v. State, 2 Conn. Workers' Comp. Rev. Op. 7, 139 CRD-2-82 (May 11, 1983).
Commissioner rejected employer's claim that cause of death was horseplay when claimant fell over the railing of an open stairwell.

Gecewicz v. Sealtest Foods Div., 1 Conn. Workers' Comp. Rev. Op. 195, 77 CRD-1-81 (October 21, 1982).
Heart attack while in the course of employment does not require unusual activity or exertion.

Papageorge v. Bela Magyari & Sons, 1 Conn. Workers' Comp. Rev. Op. 191, 84 CRD-7-81 (September 15, 1982).
Burden of proof as to the issue of employment rests with claimant.

Luddie v. Foremost Insurance Co., 1 Conn. Workers' Comp. Rev. Op. 187, 90 CRD-6-81 (September 13, 1982).
Remanded. Absence of evidence to support claimant's car accident was in vehicle furnished by employer.

Coppola v. New Haven, 1 Conn. Workers' Comp. Rev. Op. 160, 75 CRD-3-81 (August 11, 1982).
Death of employee due to fight with co-worker was causally connected to employment.

Tusman v. Spiegel & Zemicnik, Inc., 1 Conn. Workers' Comp. Rev. Op. 153, 63 CRD-3-81 (August 3, 1982).
Employee sustained a compensable injury while assisting an outside salesman in transporting machine.

Perruccio v. Connecticut Employees Union Independent, Inc., 1 Conn. Workers' Comp. Rev. Op. 67, 34 CRD-6-80 (October 30, 1981).
Union president on 24-hour call shot due to union rivalry entitled to benefits.

Donato v. Pantry Pride, 1 Conn. Workers' Comp. Rev. Op. 21, 2 CRD-4-79 (January 26, 1981), **aff'd**, 37 Conn. Sup. 836 (1981).
Heart attack brought on by job-related stress held compensable.

Sec. 31-275(4). Compensation.

Kelly v. Bridgeport, 3761 CRB-4-98-1 (March 11, 1999), **rev'd**, 61 Conn. App. 9 (2000), **cert. denied**, 255 Conn. 933 (2001).
See, **Kelly**, § 31-284b, § 7-433c.

Sec. 31-275(9). Employee.

Degnan v. Employee Staffing of America, Inc., a/k/a Labor Force of America, 4580 CRB-3-02-10 (October 27, 2003).
CRB affirmed trier's finding that claimant was employee of temporary employment agency, whom he had worked for over the course of many years. In light of § 31-292 lent employee statute, findings allowed for legal conclusion that claimant was still an employee of LFA while working at Olympic Steel job site. See also, **Degnan**, § 31-292, § 31-348, § 31-355(b).

Netto v. Derby, 4535 CRB-4-02-6 (July 2, 2003).
CRB affirmed trier's finding that part-time trainee for supernumerary police officer position was employee of city at time of injury. Claimant had been offered job, and completion of training was a necessary prerequisite. Though claimant was not being paid, he was receiving benefit of training itself, and had been provided with equipment by city, which had the right to control means and methods of training. Compensation rate should have been calculated pursuant to § 31-310a, as underlying employment relationship had commenced. See also, **Netto**, § 31-310a.

Beedle v. Don Oliver Home Improvement, 4491 CRB-3-02-2 (February 28, 2003).
CRB affirmed trier's finding that claimant was employee of respondent on date of fall from ladder. Credibility determination; trier had discretion to accept testimony of claimant over conflicting testimony by three other witnesses. See also, **Beedle**, § 31-301-4.

Malchik v. State/Div. of Criminal Justice, 4455 CRB-2-01-11 (October 23, 2002), **aff'd**, 266 Conn. 728 (2003).
Board affirmed trier's finding that claimant was no longer a state employee during a post-retirement time period when he helped state's attorney's office with its preparation for a criminal trial. Testimony established that there was no agreement between parties to pay claimant for his services, nor was claimant under direction and control of state after his retirement date. See also, **Malchik**, § 31-275(15), § 31-294c(a).

Smith v. Yurkovsky, 4324 CRB-3-00-12 (December 12, 2001), **aff'd and remanded with direction**, 265 Conn. 816 (2003).
Trier interpreted exclusion for workers who are "not regularly employed by the owner or occupier over twenty-six hours per week" by construing "regularly" to mean the "tax season" in which claimant (a home health care worker) was employed many more hours per week than during other times of year. CRB reviewed purpose of exclusion, and concluded that "regularly" refers to average number of hours worked weekly during 26 weeks preceding the injury. (*Metro, C.,* **dissenting**) ("Regularly" should encompass 52, rather than 26, weeks preceding the injury.) Supreme Court affirmed board's opinion however, remanded for further proceedings to determine whether claimant was regularly employed more than twenty-six hours per week during the majority of the fifty-two weeks immediately preceding the injury.

Owen v. Diversified Hospitality Group, 4204 CRB-3-00-3 (July 25, 2001).
Claimant was initially hired by respondent DHG, who subsequently entered into restructuring scheme whereby certain employment liabilities would be assumed by Flex-Staff, a Texas company with lower costs of doing business. Contract took effect October 1, 1990, though trier found that during initial stage of "phasing-in" period, Flex-Staff merely acted as payroll service while DHG retained control over means and methods of decedent's work. Decedent died in work-related automobile accident on November 27, 1990. Held: Collateral estoppel doctrine did not apply to determination of Texas Workers' Compensation Commission that decedent was employed by Flex-Staff at time of injury. Decision was subsequently set aside by Texas Court as part of compromise settlement, in which all liability was expressly denied. Also, no "identity of issues"

existed, because joint employment relationship was possible in this case; one could find that both Flex-Staff and DHG exercised significant control over decedent's work activities. See also, **Owen**, § 31-275(1), § 31-278.

Balogh v. F.J. Dahill Company, 4267 CRB-7-00-7 (July 2, 2001).
Board affirmed trier's conclusion that claimant was an employee at the time of his injury. Respondent employer argued that it lacked sufficient control or supervision over claimant's work. However, trier found that employer controlled claimant's work, having told him how to safely use his ladder following a meeting on the topic that was held outside of claimant's presence.

Merritt v. Nacom, 4098 CRB-3-99-8 (October 16, 2000).
CRB affirmed trier's determination that claimant was acting as an employee, rather than an independent contractor, when he was injured while working for the respondent employer. Employer argued on appeal that claimant had signed a contract indicating that he was a "subcontractor," had purchased his own disability insurance, and that the employer did not withhold taxes from his pay. However, numerous other factors indicated that claimant was under the direction and control of employer.

Stalker v. Derby, 4093 CRB-4-99-7 (August 10, 2000).
CRB affirmed trier's finding that claimant was acting as an independent contractor rather than an employee of the Connecticut Post. The board thus affirmed the trier's conclusion that the concurrent wage benefits provided under § 31-310 did not apply to the claimant's concurrent employment with the Post. See also, **Stalker**, § 31-310, § 31-279-3.

Samuels v. Coconut Enterprises, 4078 CRB-1-99-7 (July 27, 2000).
Trial commissioner concluded that claimant failed to sustain his burden of proof that he was an employee of respondent. Claimant contended that trier erred by inferring that he was the *operator* of respondent business. Based on all of the evidence, including testimony of a witness, it was not unreasonable to infer that claimant operated business at the time of accident. Even without this inference, the record amply supports the conclusion that the claimant was not under the direction or control of the respondent at the time of his accident, and thus he may have been an independent contractor but not an employee. Board noted that claimant failed to provide any documentary evidence, such as his alleged employment application, time sheets, or payroll records, to indicate that he was acting as an employee.

Davis v. Edward J. Corrigan, 4024 CRB-2-99-3 (July 20, 2000).
Board concluded that the findings fully supported the trial commissioner's conclusion that the claimant was acting as an employee rather than an independent contractor. The claimant was hired by the employer (a real estate developer who would purchase dilapidated buildings and refurbish them) to do repair work on a house in Connecticut. The trier's findings supported the conclusion that the employer had the right to direct and control the claimant in the performance of her work. The board briefly found no merit to the argument that the claimant was not covered under the Act because she was

allegedly not a citizen of this state, as the claimant was hired to do work "primarily in this state" under § 31-275(9)(B)(iv). See also, **Davis**, § 31-301. Appeal procedure.

Burroughs v. Jameson, 4019 CRB-1-99-4 (July 18, 2000).
CRB concluded that the evidence in the record fully supported the trier's conclusion that the claimant was acting as an independent contractor.

Nadeau v. J.H. Scelza, Inc., 3903 CRB-6-98-9 (January 13, 2000).
CRB affirmed the trier's conclusion that the claimant was acting as an employee of the respondent when he was injured. Although the claimant owned his own siding business and chose not to be covered under his workers' compensation policy, he was injured while working outside the scope of his business. Specifically, the claimant was assisting the respondent with the removal of a window and was under the direction and control of the respondent for that project. See also, **Nadeau**, § 31-292.

Merlin v. Labor Force of America, Inc., 3920 CRB-4-98-10 (December 22, 1999), **aff'd**, 62 Conn. App. 906 (2001)(per curiam), **cert. denied**, 256 Conn. 922 (2001).
CRB affirmed trial commissioner's conclusion that the claimant was an employee of the carpenter whom he was assisting on the day of his accident, rather than the employee referral agency that placed him at that job. Trier based decision on who had actual control over the means and methods of the claimant's work, and permissibly exercised his discretion in ignoring evidence that LFA had represented that it would act as the employer for the purpose of administering employee benefits.

Murray v. Black Tie Limousine, 3899 CRB-3-98-9 (November 4, 1999).
CRB affirmed the trier's decision that the claimant was an employee rather than an independent contractor. The findings and the record supported the trier's determination that the respondent had the right to direct and control the claimant in his performance of his work. See also, **Murray**, § 31-294d, § 31-307. Prior decision at Murray, 3306 CRB-3-96-3 (August 21, 1997), § 31-315.

Johnson v. Braun Moving, Inc., 3861 CRB-7-98-7 (November 2, 1999).
CRB affirmed trier's decision that claimant was an employee of moving company rather than contractor who had been hired by company to provide services on its behalf. Commissioner was not required to rely upon terms of contract between company and contractor, as other evidence supported finding that moving company controlled the means and methods of the claimant's job duties on the date of injury. See also, **Johnson**, § 31-294d, § 31-298.

Puchala v. Connecticut Abatement Technologies, 3859 CRB-4-98-7 (September 27, 1999).
CRB affirmed trial commissioner's finding that claimant was employee of uninsured asbestos removal company, and that he was injured in the course of his employment with them. Factual findings supported legal conclusion, and in turn were themselves supported by evidence in the record. Appellant had unsuccessfully attempted to argue that claimant was actually working for a demolition/land contracting company owned by

the director of Connecticut Abatement. See also, **Puchala**, § 31-291. Subsequent decision at Puchala, 4232 CRB-4-00-4 (January 30, 2002), § 31-301. Appeal procedure.

Palaez v. Richard A. Nau, 3905 CRB-7-98-9 (June 3, 1999).
CRB affirmed trial commissioner's decision that claimant was an employee rather than an independent contractor where the trier found that the respondent directed and controlled the work activities of the claimant.

Spiwak v. Peter Gassner d/b/a DGC, 3760 CRB-4-98-1 (April 5, 1999).
CRB affirmed trier's conclusion that claimant, who performed framing and roofing work, was an independent contractor. Trial commissioner found that claimant accomplished his job without direction, that no taxes were withheld from his pay, that he came and went from job sites at will, and that he used his own tools.

Altieri v. R & M Builders, 3647 CRB-5-97-7 (December 18, 1998).
CRB affirmed the trial commissioner's conclusion that the claimant was an independent contractor. The findings of fact supported the conclusion that the employer did not have control over the means and methods of the claimant's work. Moreover, the trier's decision was also bolstered by the facts that the claimant held himself out as a fully insured home improvement contractor, and that no taxes were withheld from his pay.

Mitchell v. J. B. Retail Inventory Specialists, 3458 CRB-2-96-10 (March 31, 1998).
Claimant was a Rhode Island resident who was injured in Rhode Island. Her employer's office was located in Connecticut. The trial commissioner found that the place of her employment relation was in Connecticut, and that of the 29 days she worked, she was in Connecticut for at least part of 19 of those days, though she was not in this state for 50% or more of her total work hours. As a traveling inventory specialist, she worked throughout New England and New York. The trial commissioner dismissed her claim, ruling that such a result was compelled by the CRB decision in Giordano v. Morganti, Inc., 15 Conn. Workers' Comp. Rev. Op. 21, 3023 CRB-7-95-3 (November 9, 1995). The CRB disagreed, holding that the phrase "at least fifty per cent of his employment time" in § 31-275(9)(B)(vi)(I) should be interpreted broadly to include cases where the claimant has worked in Connecticut for at least a part of 50% or more of the various days worked. Policy behind the statute and its relationship with general jurisdictional principles of the Act discussed.

Covillion v. Plante Brothers, Inc., 3364 CRB-7-96-6 (December 11, 1997), **aff'd**, 51 Conn. App. 901 (1998)(per curiam).
CRB affirmed the trial commissioner's conclusion that the claimant was self-employed as a sole proprietor when he was injured. Also, § 31-291 does not apply where claimant is not an employee and thus no employment relationship exists. See also, **Covillion** § 31-291.

Kogut v. J&C Building Renovation Co., 3484 CRB-7-96-12 (September 8, 1997).
See, **Kogut**, § 31-291.

Dowling v. Slotnik, 3062 CRB-4-95-5, 3277 CRB-4-96-2 (February 5, 1997), **aff'd, rev'd and remanded in part**, 244 Conn. 781 (1998)(with dissenting opinion).
Definition of "employee" does not exclude illegal aliens. Federal criminalization of illegal alien employment does not preclude state from awarding workers' compensation, as Chapter 568 is not punitive and does not relate to Immigration Reform and Control Act policies. Claimant's falsification of information in job application does not affect existence of employment relationship or compensability of injury. Supreme Court affirmed holding that illegal aliens are not barred from receiving workers' compensation benefits. Court reversed the trial commissioner's imposition of a $10,000 fine for failure to carry insurance, as evidence did not support the imposition of the maximum fine, and remanded for determination of a lesser fine. See also, **Dowling**, § 31-288, § 31-301. Appeal procedure, and § 31-307. Subsequent decision at Dowling, 3468 CRB-4-96-11 (May 6, 1998), § 31-290, § 31-296, § 31-301. Appeal procedure, § 31-301(f).

Morrissey v. Lannon-Norton Associates, 3085 CRB-4-95-6 (December 23, 1996).
Trial commissioner found that claimant was an employee rather than an independent contractor. Corrections sought by respondent were primarily based on testimony of claimant and employer's officers, and did not have to be granted by commissioner, as other inferences could properly be drawn from that testimony as well. No one factor is controlling in employment determination, including claimant's reporting in tax return amounts realized from work with respondent as profits by personal contracting business. Right to control, not tax filing strategy, is ultimate legal issue.

Ogdon v. Treemasters, Inc., 3071 CRB-4-95-6 (December 20, 1996).
Claimant was hit by felled tree while operating noisy wood chipper. Commissioner found injury compensable. Affirmed. Failure of respondent to withhold deductions from claimant's pay, as well as claimant's not seeking unemployment benefits during time prior to accident, were not necessarily material to employment status. Sufficient evidence existed to support determination of employee status, e.g. control over work environment by employer and ownership of tree removal equipment. Burden on employer to establish both prongs of affirmative defense of intoxication under § 31-284(a). Not done here.

Downes v. Sica-Cohen, 2259 CRB-4-95-1 (December 13, 1996).
Trial commissioner found that nurse/ecologist was not an employee of medical practitioner. Affirmed; requested corrections to findings reflecting that much of claimant's practice required direct supervision by physician, etc., were based on testimony that at best ambiguously supported her assertions. Commissioner had discretion to interpret testimony differently, or ignore it altogether. Also, language of § 20-87a(a) defining nursing practice as being under a physician's direction does not translate into a legal requirement that the claimant must be an employee rather than an independent contractor.

Hanson v. Transportation General, Inc., 16 Conn. Workers' Comp. Rev. Op. 57, 3001 CRB-3-95-2 (October 18, 1996), **aff'd**, 45 Conn. App. 441 (1997), **aff'd**, 245 Conn. 613 (1998).
Commissioner found that decedent taxi driver was an independent contractor rather than an employee of Metro Taxi. Affirmed. Commissioner was not required to use "relative nature of the work" test instead of "control" test to determine if employment relationship existed. Neither the legislature nor the courts of Connecticut have strayed from the "right to control" test in these cases, and it was properly applied to the facts here. Employment status is a factual issue, and is subject to certain deference on review. Findings offered sufficient support for finding that decedent was an independent contractor.

Kramer v. Johnson, 16 Conn. Workers' Comp. Rev. Op. 43, 2217 CRB-6-94-11 (October 16, 1996).
Trier failed to make any factual findings or conclusions as to whether the putative employer had control over the alleged employee's work activities relating to a roofing project. Further, the finding lacks evidentiary support concerning payment for services and is unclear as to whether respondent and claimant had an employment agreement. Remanded.

Pepin v. Carvalho, 15 Conn. Workers' Comp. Rev. Op. 350, 3012 CRB-1-95-3 (June 26, 1996), **aff'd**, 44 Conn. App. 931 (1997)(per curiam).
The CRB affirmed the trial commissioner's conclusion that the claimant was an independent contractor rather than an employee. The trial commissioner found that the claimant and Carvalho agreed that the claimant would keep track of his hours; that Carvalho would pay the claimant upon completion in a cash lump sum; that Carvalho would not make any deductions or withholdings from the lump sum payment; that Carvalho left up to the claimant when to report to work; that Carvalho left up to the claimant to decide how many hours to work per day; and that Carvalho did not instruct the claimant in the manner he did the paint job.

Thornton v. Kabel, 15 Conn. Workers' Comp. Rev. Op. 353, 3027 CRB-4-95-3 (June 26, 1996).
Trier found respondent directed claimant to perform certain activities related to the felling of trees. Claimant fell while descending from a tree, when the clip of his safety harness to the rope broke. Claimant sustained various injuries. Trier's factual finding that claimant was an employee of the respondent affirmed on appeal. See also, **Thornton**, § 31-301. Appeal procedure.

Nelson v. Deb's Inc., 15 Conn. Workers' Comp. Rev. Op. 274, 2228 CRB-3-94-12 (June 20, 1996), **aff'd**, 45 Conn. App. 909 (1997)(per curiam), **dismissed**, 244 Conn. 349 (1998).
Trial commissioner ruled that escort-masseuse was not an employee of the escort service. CRB affirmed. Commissioner had authority as fact finder to determine existence of employment relationship; he also had authority under § 31-298 to admit a signed, undated document entitled "Agreement" into evidence. Corrections urged by claimant depended on credibility of conflicting testimony, and were not erroneously denied;

evidence in record supported decision that claimant controlled results and methods of her work. (*Tracy, C.,* **dissenting**) (terminology of agreements irrelevant; escort service had authority to control appearance, conduct, and clientele of escorts, etc.). See also, **Nelson**, § 31-298.

Marandino v. Marandino's d/b/a John Marandino, 3130 CRB-6-95-7 (June 4, 1996).
The trial commissioner found that the decedent was a sole proprietor at the time he suffered a fatal heart attack on May 20, 1992, and thus was not covered under the Workers' Compensation Act. The trial commissioner further found that the claimant had not elected to be covered under the workers' compensation system pursuant to § 31-275(10). See also, **Marandino**, § 31-301-9. Subsequent decision at, Marandino v. Marandino's, 3130 CRB-6-95-7 (March 20, 1997), § 31-275(10) and § 31-294c notes.

Tavares v. Noel, 15 Conn. Workers' Comp. Rev. Op. 172, 2010 CRB-7-94-3 (March 8, 1996).
CRB affirmed trial commissioner's award of benefits for compensable injury sustained by an illegal alien. An employee who is an illegal alien is not barred from receiving workers' compensation benefits.

Carrier v. Voisine, 15 Conn. Workers' Comp. Rev. Op. 105, 2093 CRB-3-94-7 (January 11, 1996).
Trial commissioner found claimant generally acted as independent contractor, but absence of signed agreement left respondent in control of claimant's work activities, thus making claimant an employee. Reversed; not enough evidence to support decision. Commissioner inappropriately focused on fact that subcontracting agreement had not been properly signed, instead of studying respondent's actual right to control the means and method of claimant's work.

Giordano v. Morganti, Inc., 15 Conn. Workers' Comp. Rev. Op. 21, 3023 CRB-7-95-3 (November 9, 1995).
See, **Giordano**, § 31-278. Jurisdiction/Disqualification.

Zawadski v. Zaleski, 14 Conn. Workers' Comp. Rev. Op. 322, 1973 CRB-1-94-2 (September 15, 1995), **aff'd**, 43 Conn. App. 909 (1996)(per curiam).
CRB affirmed commissioner's determination that claimant was an employee rather than an independent contractor. The employer was a general contractor who hired a laborer who brought the claimant to work at the job site at the request of the employer. The employer had the right to control the claimant's work.

Fassano v. D'Addario Industries, 14 Conn. Workers' Comp. Rev. Op. 147, 1937 CRB-4-93-12 (June 20, 1995).
CRB affirmed commissioner's conclusion that claimant was an independent contractor rather than an employee. The claimant's alleged acceptance of additional job duties without additional pay is not a determinative factor.

Dupree v. Masters, 13 Conn. Workers' Comp. Rev. Op. 316, 1791 CRB-7-93-7 (April 25, 1995), **aff'd**, 39 Conn. App. 929 (1995)(per curiam).
Commissioner found that employer did not withhold social security or federal income tax payments from claimant's wages; tax forms showed that claimant paid his own taxes at self-employment rates. Work could have been performed either as employee or independent contractor. Commissioner's ruling that claimant was not an employee supported by facts; affirmed.

Muniz v. Koteas, 13 Conn. Workers' Comp. Rev. Op. 284, 1720 CRB-4-93-5 (April 21, 1995).
Despite language of rental agreement labeling claimant as independent contractor, commissioner was entitled to base his conclusion that taxi driver was employee of respondent on his findings regarding the actual operation of the business. Findings satisfied definition of employee in statute. See also, **Muniz,** § 31-298.

Phelan v. Soda Construction Co., 13 Conn. Workers' Comp. Rev. Op. 53, 1583 CRB-3-92-12 (December 20, 1994).
Sufficient evidence existed to find claimant was employee of respondent despite absence of tax withholding in wages. See also, **Phelan,** § 31-291, § 31-301. Factual findings, and § 31-355(b). See subsequent Phelan, § 31-310.

Calamari v. Durham-Middlefield Interlocal Advisory Board, 12 Conn. Workers' Comp. Rev. Op. 397, 1577 CRB-8-92-11 (September 8, 1994).
CRB majority opinion supports trier's finding claimant, who performed gate guard services for respondent employer, received no control or direction as to the means and method of his work and was therefore an independent contractor. (*Waldron, C.*, **dissenting**) Evidence indicates employer had sufficient control over how claimant performed his work to establish an employer-employee relationship.

DaSilva v. Danbury Publishing Co., 12 Conn. Workers' Comp. Rev. Op. 360, 1647 CRB-7-93-2 (August 2, 1994), **aff'd**, 39 Conn. App. 653 (1995), **cert. denied**, 235 Conn. 936 (1995).
Newspaper carrier not an employee under the Act. (*Miles, C.*, **dissenting**).

Pichardo v. East-West Theatre Productions, 12 Conn. Workers' Comp. Rev. Op. 186, 1553 CRB-3-92-11 (May 2, 1994).
Finding that claimant, an aspiring actor, was not an employee but an independent contractor who engaged in a joint venture to perform in a theatrical performance supported by evidence.

Halliday v. Daw's Critical Care Registry, Inc., 10 Conn. Workers' Comp. Rev. Op. 187, 1196 CRD-7-91-3 (September 14, 1992), **dismissed for lack of final judgment**, A.C. 11770, **cert. denied**, 225 Conn. 905 (1993).
Trier's finding claimant an employee of Darien Convalescent Center supported by evidence. Remanded on § 31-297(b) (now § 31-294c) issue. See also, **Halliday**, § 31-294c.

Chute v. Mobil Shipping and Transportation, 10 Conn. Workers' Comp. Rev. Op. 183, 1321 CRD-7-91-10 (September 1, 1992), **aff'd**, 32 Conn. App. 16 (1993), **cert. denied**, 227 Conn. 919 (1993).
CRB affirmed trier's ruling denying claimant widow's Motion to Preclude. Trier found no employer/employee relationship existed between decedent and respondent employer. Employer's right to discharge decedent is not the equivalent of the employer's right to control. The employer's right to discharge and the tasks performed by decedent, are not the only factors to be considered in determining the requisite control necessary to establish the existence of an employer/employee relationship. See also, **Chute**, § 31-294c and § 31-301. Appeal procedure.

Russell v. R.N. Russell Welding, Inc., 10 Conn. Workers' Comp. Rev. Op. 174, 1173 CRD-5-91-2 (September 1, 1992), **aff'd**, 226 Conn. 508 (1993).
CRB affirmed trier's finding that decedent, President and Treasurer of R.N. Russell Welding, Inc. agent for service of process as well as sole shareholder, elected to be excluded from coverage. The mere fact that decedent did not serve the exclusion form upon himself pursuant to § 31-275(6)(D) (now § 31-275(10)(D)) does not make notice ineffective. Hence, fatal injury found not compensable under the workers' compensation act.

Reale v. Carducci, 10 Conn. Workers' Comp. Rev. Op. 158, 1205 CRD-5-91-3 (June 30, 1992).
CRB's review of issues on appeal after remand does not change resulting disposition. Factual finding supports trier's conclusion claimant was an employee at the time of his injury.

Keefe v. Flynn, 10 Conn. Workers' Comp. Rev. Op. 98, 1169 CRD-2-91-1 (April 23, 1992).
Trier's finding claimant, a truck driver, was an employee of respondent-employer will not be disturbed where findings and conclusions are supported by evidentiary record. The evidence showed the respondent directed the route of each trip, and paid gas, insurance and licensing fees.

Hynd v. General Electric Company, 10 Conn. Workers' Comp. Rev. Op. 77, 1151 CRD-4-90-12 (April 3, 1992).
Remanded so that further factual findings may be made on the issue of the putative employer's control over the claimant's work activities. No findings to support legal conclusion claimant, a proofreader for respondent employer, was an independent contractor. The fact that claimant was a professional in and of itself does not make her an independent contractor.

Zawadzki v. Kochanowicz, 10 Conn. Workers' Comp. Rev. Op. 62, 1120 CRD-5-90-10 (February 26, 1992).
CRB review of record below indicates trial commissioner relied on the credibility of the witnesses in finding claimant was an employee and not an independent contractor. Also, as evidence could suggest an employer/employee relationship and trier found such existed, CRB cannot say trier's conclusion arose from an unreasonable factual inference

or that his conclusion was so unreasonable as to justify appellate interference. See also, **Zawadzki**, § 31-301. Factual findings.

Hart v. National Academy of Hairdressing, 10 Conn. Workers' Comp. Rev. Op. 10, 945 CRD-6-89-11 (April 15, 1991).
Trier's determination claimant was not an employee will not be disturbed on appeal where factual finding is supported by evidence.

Reale v. Carducci, 9 Conn. Workers' Comp. Rev. Op. 31, 901 CRD-1-89-8 (January 17, 1991).
Remanded as trial commissioner failed to make specific findings to support conclusion claimant was an employee. See also, **Reale**, supra.

Clark v. Armando Massini, 9 Conn. Workers' Comp. Rev. Op. 14, 857 CRD-2-89-4 (January 9, 1991).
Trier's factual finding claimant was employee of Massini and not TRA Contractors, Inc., a solely owned corporation of Massini, will not be disturbed.

Milliron v. Armando Massini, 9 Conn. Workers' Comp. Rev. Op. 14, 858 CRD-2-89-4 (January 9, 1991).
See, Clark, above.

Vanzant v. Hall, 8 Conn. Workers' Comp. Rev. Op. 122, 820 CRD-1-89-1 (July 6, 1990), **rev'd**, 219 Conn. 674 (1991).
Sufficient evidence before the trial commissioner to conclude respondent had the requisite control over the claimant necessary to establish an employment relationship. Section 31-275(5)(B) (casual employee). Whether claimant's employment by respondent was (1) casual and (2) not for employer's trade or business is a factual question. Further both requirements under the statute must be satisfied. Section 31-275(5)(D). Construction of a barn is not the type of service in or about a private dwelling contemplated by the statute. Supreme Court reversed CRB and held claimant was not an employee within the meaning of the act.

Rogers v. Mitchell, 8 Conn. Workers' Comp. Rev. Op. 90, 803 CRD-7-88-12 (May 14, 1990).
Trial commissioner's finding claimant was an independent contractor will not be disturbed where it was found respondent did not have the right to control the means and methods of work performed. See also, **Rogers**, § 31-301-9. Additional evidence.

Halliday v. Daw's Critical Care Registry, 8 Conn. Workers' Comp. Rev. Op. 74, 797 CRD-7-88-12 (April 27, 1990).
See, **Halliday**, **§** 31-291. Later decision in Halliday, 1196 CRD-7-91-3 (September 14, 1992), supra.

Pisani v. Messore, 8 Conn. Workers' Comp. Rev. Op. 11, 753 CRD-3-88-7 (December 28, 1989), **aff'd**, 23 Conn. App. 806 (1990)(per curiam).
Whether a claimant is an employee or an independent contractor is a question of fact.

Kinney v. State, 786 CRD-3-88-11 (1989), 213 Conn. 54 (1989).
Superior court judge not an employee under the Act. See, **Kinney**, § 31-324.

Velez v. Richard Zappone, 7 Conn. Workers' Comp. Rev. Op. 79, 693 CRD-5-88-2 (September 14, 1989), **no error**, 21 Conn. App. 812 (1990)(per curiam).
Casual employee. Employment was occasional or incidental and not for the purpose of respondent's trade or business. No employment relationship to support jurisdiction over the res. See also, Castro v. Viera, 207 Conn. 420 (1988).

Lindholm v. Moscowitz, 6 Conn. Workers' Comp. Rev. Op. 7, 527 CRD-7-86 (August 18, 1988).
CRD affirmed trial commissioner's finding as to casual employee status.

Bernier v. Cunningham Reporting Associates, 5 Conn. Workers' Comp. Rev. Op. 137, 502 CRD-1-86 (July 15, 1988).
Trial commissioner's finding that claimant was an employee was supported by evidence. Failure to withhold social security or unemployment taxes does not preclude finding of employment.

Tyson v. Southport Manor, 5 Conn. Workers' Comp. Rev. Op. 84, 475 CRD-4-86 (May 12, 1988).
Employee listed with a Nurses' Registry as a Home Health Aide but employed by a patient in a convalescent home is not an employee of the convalescent home.

Ukers v. Brook, 5 Conn. Workers' Comp. Rev. Op. 51, 372 CRD-7-85 (April 7, 1988).
Trial commissioner's ruling that claimant was an employee of respondents as individuals would not be disturbed as payment to claimant from corporate funds is only a factor to be considered in determining employment status.

Chillington v. Spenard's Roofing, 4 Conn. Workers' Comp. Rev. Op. 102, 389 CRD-7-85 (June 15, 1987).
Where claimant filed a tax return in which he stated he was engaged in business under the name of Twin Ridge Roofing, accepted checks from general contractor made out to same, and had a general liability policy of the business, evidence supported conclusion he was a subcontractor.

Barnett v. Stafford, 4 Conn. Workers' Comp. Rev. Op. 7, 219 CRD-1-83 (March 2, 1987).
Assistant dog warden held public official.

Gadacy v. Busk, 4 Conn. Workers' Comp. Rev. Op. 1, 431 CRD-4-85 (February 26, 1987).
Claimant who performed tasks of a carpenter among other tasks found to be an employee.

Sec. 31-275(10). Employer.

Marandino v. Marandino's d/b/a John Marandino, 3130 CRB-6-95-7 (March 20, 1997), **aff'd**, 48 Conn. App. 916 (1998)(per curiam), **cert. denied**, 245 Conn. 919 (1998).
Claimant was self-employed as sole proprietor of Marandino's. Statute allows sole proprietor to accept provisions of Act by notifying commissioner in writing of his intent to do so. Here, form was not filed with commissioner, so claimant was not covered. Insurance company's form providing that sole proprietor may elect to be covered could not reasonably be read to bind insurer to cover claimant. See also, **Marandino**, § 31-294c. Previous decision on motion to submit additional evidence at, Marandino, 3130 CRB-6-95-7 (June 4, 1996), in § 31-275(9) and § 31-301-9 notes.

Lowe v. General Dynamics Corporation/Electric Boat Division, 14 Conn. Workers' Comp. Rev. Op. 118, 1746 CRB-2-93-5 (June 5, 1995).
Commissioner's determination that Navy Yard exposure to asbestos affected development of claimant's asbestosis did not amount to a finding that Navy Yard was an "employer" within the meaning of Workers' Compensation Act. See also, **Lowe**, § 31-299b.

Russell v. R.N. Russell Welding, Inc., 10 Conn. Workers' Comp. Rev. Op. 174, 1173 CRD-5-91-2 (September 1, 1992), **aff'd**, 226 Conn. 508 (1993).
See, **Russell**, § 31-275(9).

Altieri v. B.K.S. Excavating, Inc., 10 Conn. Workers' Comp. Rev. Op. 83, 1146 CRD-3-90-12 (April 10, 1992).
Reversed. Trier failed to allow S.I.F. the opportunity to litigate whether a potential principal employer liability claim existed pursuant to § 31-291. The fact that the trial commissioner found B.K.S. Excavating the uninsured employer does not eliminate the need to fully litigate and hear evidence regarding a possible § 31-291 principal employer claim. See also, **Altieri**, § 31-301. Factual findings, § 31-291 and § 31-355(b).

Chodkowski v. UTC/Pratt & Whitney, 8 Conn. Workers' Comp. Rev. Op. 4, 736 CRD-3-88-5 (December 18, 1989).
The federal government is not an employer under the Act. See also, **Chodkowski**, § 31-310.

McCully v. Kratzer, 5 Conn. Workers' Comp. Rev. Op. 29, 396 CRD-3-85 (March 29, 1988).
Trial commissioner did not err in finding respondent was the claimant's employer where respondent was the sole shareholder of corporation doing business under an assumed name and said corporation issued paychecks and W-2 forms to claimant in corporation's name. Higdon v. James O'Connell Moving Service, 4 Conn. Workers' Comp. Rev. Op. 5, 392 CRD-2-85 (February 27, 1987). Remanded for further proceedings to determine if wife cloaked with authority to re-hire claimant while husband, former employer, was incarcerated.

Sec. 31-275(15). Occupational disease.

Strong v. UTC/Pratt & Whitney, 4563 CRB-1-02-8 (August 25, 2003).
See, **Strong**, § 31-275(1), § 31-308(b), § 31-301. Factual findings, § 31-349.

Malchik v. State/Div. of Criminal Justice, 4455 CRB-2-01-11 (October 23, 2002), **aff'd**, 266 Conn. 728 (2003).
CRB affirmed trier's finding that claimant's alleged stress-related coronary artery disease was not an occupational disease. Claimant did not introduce any evidence to show that this type of stress is distinctively associated with his previous profession. See also, **Malchik**, § 31-275(9), § 31-294c(a).

Doe v. State/Dept. of Correction, 4401 CRB-4-01-6 (May 16, 2002), **rev'd and remanded**, 268 Conn. 753 (2004).
CRB affirmed trier's factual finding that HIV did not constitute an occupational disease for correction officers. Testimony from doctors supported finding that HIV transmission was unlikely to occur via spattered blood on skin and via the other types of contact with human secretions most often experienced by such officers. Fact that HIV is unusually prevalent in prison population did not itself demonstrate that guards were at high risk of being exposed to the immune deficiency virus. Supreme Court reversed, holding that HIV is peculiar to and distinctively associated with the job of correction officer in an emergency response unit, as claimant was required to interact with inmates with high HIV infection rate in ways that increased risk of contracting HIV. See also, **Doe**, § 31-294c and, § 31-275(16).

Keegan v. Aetna Life & Casualty, 13 Conn. Workers' Comp. Rev. Op. 340, 1793 CRB-1-93-8 (April 27, 1995), **aff'd,** 42 Conn. App. 803 (1996), **cert. denied**, 239 Conn. 942 (1996).
Claimant suffered a hip injury when struck with a piece of luggage. Said injury exacerbated a formerly quiescent synovial chondromatosis condition in her left hip. Held, the commissioner correctly concluded that said condition was not an occupational disease, as the synovial chondromatosis itself had no connection with the claimant's employment. The work-related injury here was an accidental injury. See also, **Keegan**, § 31-294c.

Nanni v. Rhone-Poulenc Chemical Co., Inc., 13 Conn. Workers' Comp. Rev. Op. 200, 1709 CRB-4-93-4 (March 30, 1995).
Claimant suffered panic disorder and depression due to confined work space, which the trial commissioner found to be an occupational disease. CRB concluded injury was not an occupational disease, as claimant did not demonstrate that confined work space was distinctively associated with the claimant's profession as a transportation specialist. CRB remanded for determination of whether claim was filed within one year as required by § 31-294c. See also, **Nanni**, § 31-294c.

Freeman v. Hull Dye & Print, 12 Conn. Workers' Comp. Rev. Op. 259, 1516 CRB-5-92-9 (June 2, 1994), **rev'd on other grounds**, 39 Conn. App. 717 (1995).
Evidence supports trier's findings and conclusion within reasonable medical probability that decedent was exposed to Benzedrine in the workplace during his employment which exposure was a substantial factor in causing his bladder cancer and subsequent death. See also, **Freeman**, § 31-294c and § 31-301. Appeal procedure.

Sellew v. Northeast Utilities, 12 Conn. Workers' Comp. Rev. Op. 135, 1422 CRB-8-92-5 (April 7, 1994), **dismissed for lack of final judgment**, A.C. 13541, 13542 (June 14, 1995).
Long-term exposure to asbestos was a major causative role of decedent's lung cancer and subsequent death. See also, **Sellew**, § 31-294c, § 31-310 and § 52-572r.

Castelvetro v. Gravymaster, Inc., 12 Conn. Workers' Comp. Rev. Op. 210, 1463 CRB-3-92-7 (March 15, 1994).
See, Fritz, infra.

Fritz v. Gravymaster, Inc., 12 Conn. Workers' Comp. Rev. Op. 208, 1462 CRB-3-92-7 (March 15, 1994).
Trier found claimant suffered a compensable injury, specifically "Tight Building Syndrome," caused by exposure to poor air exchange at place of employment. However, trier rejected claimant's claim that she suffered a work-related injury or occupational disease known as "Multiple Chemical Sensitivity Syndrome," finding instead that those symptoms were not caused by her employment.

Cloutier v. C.N. Flagg, 11 Conn. Workers' Comp. Rev. Op. 304, 1352 CRD-2-91-11 (December 23, 1993).
Claimant, a sheet metal worker for a number of construction companies, was exposed to asbestos. It was found that the asbestos exposure was a substantial contributing factor to claimant's lung cancer. See also, **Cloutier**, § 31-299b.

Gargano v. General Dynamics Corporation/Electric Boat Division, 11 Conn. Workers' Comp. Rev. Op. 287, 1285 CRD-2-91-8 (December 7, 1993).
Trier found decedent's work exposure to asbestos was a substantial factor in the development of his gastrointestinal cancer and apportioned liability accordingly. CRB remanded matter as trier must determine if claim against insurer should be dismissed where there is no evidence presented showing decedent was exposed to asbestos during period where said insurer covered employer for workers' compensation purposes. See also, **Gargano**, § 31-299b.

Muldoon v. Homestead Insulation, 10 Conn. Workers' Comp. Rev. Op. 255, 1226 CRD-4-91-5 (January 13, 1993), **rev'd**, 33 Conn. App. 695 (1994), **rev'd**, 231 Conn. 469 (1994), **aff'd on remand**, 37 Conn. App. 266 (1995)(per curiam).
Continued exposure to asbestos in the workplace subsequent to stipulation caused claimant's condition to worsen, and subsequent increased impairment was a new injury which arose out of and in the course of employment. Therefore, increased disability due to asbestos exposure was not barred by prior stipulation. Affirmed finding that

Cummings Insulation was the last employer subjecting claimant to asbestos exposure. See also, **Muldoon**, § 31-275(1), § 31-296, § 31-299b, § 31-315 and § 31-284(a). Subsequent decisions.

Hansen v. Robert Gordon, D.D.S., 8 Conn. Workers' Comp. Rev. Op. 181, 856 CRD-1-89-4 (December 14, 1990), **aff'd**, 221 Conn. 29 (1992).
Hepatitis Type B contracted by dental hygienist found to be an occupational disease. See also, **Hansen**, § 31-308(a).

Bergin v. Waterbury, 5 Conn. Workers' Comp. Rev. Op. 156, 537 CRD-5-86 (August 2, 1988).
CRD held malignant mesothelioma resulting from school principal's exposure to asbestos could be compensable as an occupational disease. Matter remanded for further hearings.

Cortes v. Allegheny Ludlum Steel Corp., 1 Conn. Workers' Comp. Rev. Op. 173, 61 CRD-3-81 (August 18, 1982).
Resultant lung cancer stemming from claimant's exposure to asbestos was an occupational disease.

Sec. 31-275(16). Personal injury.

Bilsky v. Ansonia Copper & Brass, 4703 CRB-5-03-8 (August 23, 2004).
Claimant was accosted and slapped by supervisor, with whom he may have had history of horseplay, based on witness testimony. Claimant proceeded to have supervisor arrested, and became disabled due to acute stress disorder and post-traumatic stress disorder. Trier found that slap and hypertensive symptoms immediately afterward did not require medical care and did constitute personal injury under § 31-275(16), and dismissed claim as not arising from physical injury. CRB reversed and remanded for further findings, as onset of stress disorder would potentially be compensable if caused by slap and/or hypertension, even though slap itself did not produce much physical damage, and elevated blood pressure may have been transitory. A conclusion was also necessary regarding role of horseplay in incident, if trier believed it was relevant. See also, **Bilsky**, § 31-284(a).

Walker v. Hartford, 4605 CRB-1-03-1 (December 30, 2003).
CRB affirmed trier's finding claimant sustained a compensable personal injury when exposed to conjunctivitis at her workplace. See also, **Walker**, § 52-174. Admissibility of records.

Brown v. State/Dept. of Correction, 4609 CRB-1-03-1 (December 17, 2003).
CRB upheld commissioner's finding claimant's injury which occurred while playing basketball at a charity event located on respondent's property was not causally connected to claimant's employment. See also, **Brown**, § 31-301-4. Correction of Finding.

Del Toro v. Stamford, 4515 CRB-7-02-4 (March 31, 2003), **motion for summary affirmance granted**, (A.C. 24150)(July 10, 2003), **rev'd**, 270 Conn. 532 (2004).
See, **Del Toro**, § 31-278; also see prior decision at Del Toro, 3731 CRB-7-97-11 (October 22, 1999), rev'd, 64 Conn. App. 1 (2001), cert. denied, 258 Conn. 913 (2001), § 31-294c, see also, **Del Toro**, infra this section.

Sprague v. Lindon Tree Service, Inc., 4460 CRB-2-01-11 (November 15, 2002), **aff'd**, 80 Conn. App. 670 (2003).
Compensability may be established without being able to identify precise moment that back injury occurred during the course of a day of physically grueling work, as one may deduce the origin of the injury due to the onset of back pain the following morning. See also, **Sprague**, § 31-301. Factual findings.

Anderton v. Waste Away, 4435 CRB-4-01-9 (August 12, 2002).
Trier ruled that claimant's participation in basketball game was not voluntary, and was part of his employment on date of injury. CRB reversed; finding was based upon claimant's subjective impression that failure to play basketball could have negative consequences, without evidence that employer made any concrete statement or engaged in any act that would lead a reasonable person to think that participation in basketball game was necessary to avoid negative employment-related consequences. Case did not satisfy exceptions to § 31-275(16)(B)(i).

Doe v. State/Dept. of Correction, 4401 CRB-4-01-6 (May 16, 2002), **rev'd and remanded**, 268 Conn. 753 (2004).
See, **Doe**, § 31-294c notes (re: assertion that claimant's death within two years of last date of employment preserved HIV infection claim under accidental injury theory). See also, **Doe**, § 31-275(15).

Nunes v. State/Dept. of Motor Vehicles, 4360 CRB-2-01-2 (January 16, 2002).
Claimant suffered post-traumatic stress disorder after being involved in a physical struggle with an armed customer, who eventually shot himself in the face. Later threat from a different customer triggered symptoms of PTSD. CRB affirmed trier's finding that mental trauma arose from a physical injury, and was therefore compensable under § 31-275(16)(B)(ii). CRB discussed legislative history of P.A. 93-228, § 1, and Driscoll v. General Nutrition Corp., 252 Conn. 215 (2000). Board held that involvement in a serious physical altercation constitutes a physical injury, even if only minor physical trauma is sustained. See also, **Nunes**, § 31-275(1), § 31-301. Factual findings.

Thompson v. State/ University of Conn. Health Center, 4355 CRB-8-01-2 (January 15, 2002).
Trier held claimant's mental injuries non-compensable under § 31-275(16)(B) absent any physical injury. Claimant contended that exclusion of mental injuries in § 31-275(16)(B) is unconstitutional, as it violates her rights under state constitution. CRB declined to consider merits of appeal, as issues concerning the constitutionality of statutes are not justiciable by either a trial commissioner or this board.

Saunders v. UTC/Pratt & Whitney, 4323 CRB-8-00-12 (November 2, 2001).
Claimant argued that post-traumatic stress disorder and alleged brain damage were caused by exposure to toxic gases at workplace. CRB affirmed trier's dismissal, as medical evidence supported finding that claimant proved neither a harmful chemical exposure nor a physical injury of any kind. CRB noted that perception of stress from abnormal responses to ordinary workplace incidents is not a valid basis for recovery of benefits under Chapter 568, consistent with the rule in most jurisdictions.

Pasquale v. UTC/Pratt & Whitney, 4325 CRB-8-00-12 (November 2, 2001).
CRB affirmed trier's finding that claimant did not sustain physical injury following alleged toxic exposure to hydrogen sulfide at work. Though much debate centered on whether transitory symptoms such as headaches, nausea and eye irritation constitute physical injuries under statute, potentially making claimant's post-traumatic stress disorder compensable despite the "mental-mental" exclusion of § 31-275(16)(B)(ii), no objective evidence of toxic gas was found during numerous plant inspections. Trier relied on report of doctor who doubted that claimant was exposed to any harmful toxic gas, and who opined that claimant was incorrectly attributing his anxiety disorder to that alleged physical stimulus.

Franco v. Dependable Motors, Inc. d/b/a Branford Dodge, 4281 CRB-3-00-8 (July 17, 2001).
As record fully supported trier's determination regarding lack of causation, CRB did not address claimant's argument that his angina condition constituted a mental-physical injury rather than a mental-mental injury under § 31-275(16)(B)(ii), or whether the claimant's claim was precluded by § 31-275(16)(B)(iii). See also, **Franco**, § 31-301. Factual findings.

Smith v. Connecticut Light & Power, 4135 CRB-5-99-10 (March 29, 2001), **aff'd**, 73 Conn. App. 619 (2002).
Board affirmed trier's dismissal of "mental-mental" claim that predated 1993 statutory revision. Trier found that claimant was not subjected to stimuli different than those in everyday employment life, but misperceived the actions of his employer as discriminatory, leading to depression and post-traumatic stress disorder. CRB discussed "subjective causal nexus standard" rejected by most other states, and addressed Connecticut law in related area of emotional distress in tort. See also, **Smith**, § 31-275(1).

Kay v. Hubbard-Hall, Inc. 4092 CRB-5-99-7 (October 20, 2000).
CRB affirmed finding that decedent's myocardial infarction was not compensable where trier found that neither his employment stress nor his activities during an employer sponsored golf outing substantially caused his injury. Issue was one of fact. Board declined to discuss whether § 31-275(16)(B)(i) also bars the claim, and noted that trier did not make a specific finding of fact as to whether the golf outing was an activity "the major purpose of which [was] social or recreational." Such a finding is necessary to determine whether § 31-275(16)(B)(i) applies. See also, **Kay**, § 31-275(1), § 31-300.

Burke v. Wal-Mart Stores, Inc., 4037 CRB-2-99-4 (July 11, 2000).
Board affirmed trial commissioner's determination that claimant sustained a compensable accidental injury when she was exposed to pine and other materials, which caused permanent reactive airways disease/asthma. Panel did not accept respondents' argument that the claimant's asthmatic condition, in order to be compensable, must meet the definition of an occupational disease. See also, **Burke**, § 31-301-4.

Gartrell v. State/Dept. of Correction, 3991 CRB-1-99-3 (March 23, 2000), **aff'd**, 259 Conn. 29 (2002).
CRB affirmed trier's conclusion that claimant's psychiatric condition was compensable, as it was aggravated by a compensable heart condition. Board explained law making employer liable for the sequelae of a compensable injury. Here, the claimant sustained a compensable cardiac condition, which aggravated his pre-existing psychiatric condition. In an earlier decision, the state Supreme Court in Gartrell v. Dept. of Correction, 258 Conn. 137 (2001) remanded the case in order to limit the compensation for the psychiatric condition to that proportion of the disability due to the aggravation of the pre-existing disease that reasonably may be attributable to the work-related injury, as required under § 31-275(1)(D). That decision was later superseded on January 15, 2002, and the CRB was affirmed. See also, **Gartrell**, § 31-275(1).

Sendra v. Plainville Board of Education, 3961 CRB-6-99-1 (January 20, 2000).
Teacher appealed from trial commissioner's decision that the injury he suffered during a meeting of the school's mountain biking club was not compensable. CRB affirmed. Injuries resulting from voluntary participation in social or recreational activities are outside the definition of "personal injury." The exception in § 31-275(16)(B)(iv) concerning participation in school-sponsored activities was enacted subsequent to the claimant's injury, and did not retroactively apply to existing cases. See also, **Sendra**, § 31-301. Factual findings.

Reaves v. Brownstone Construction, 3930 CRB-4-98-11 (November 30, 1999).
See, **Reaves**, § 31-294c.

Del Toro v. Stamford, 3731 CRB-7-97-11 (October 22, 1999), **rev'd**, 64 Conn. App. 1 (2001), **cert. denied**, 258 Conn. 913 (2001).
See, **Del Toro**, § 31-294c; subsequent decision at Del Toro, 4515 CRB-7-02-4 (March 31, 2003), motion for summary affirmance granted, (A.C. 24150)(July 10, 2003), rev'd, 270 Conn. 532 (2004), § 31-278, see also, **Del Toro**, supra this section.

Biasetti v. Stamford, 3632 CRB-7-97-6 (September 8, 1998), **aff'd**, 250 Conn. 65 (1999)(dissenting opinion).
Claimant (a police officer) developed post-traumatic stress disorder after becoming involved in a gun battle with a suspect. He developed headaches, an upset stomach, and a pressure sensation in his leg as well; further, the PTSD led to his suffering a blackout two years later. Trial commissioner ruled that the "personal injury" exclusion for mental or emotional impairments in § 31-275(16)(B)(ii) precludes the claimant's claim. CRB held that the claimant has not alleged a physical injury in this case, and that his PTSD cannot constitute an occupational disease under the statute because § 31-275(16)(B)(ii)

requires that all personal injuries, including occupational diseases, have a physical component, even though the PTSD is intrinsic to the occupation of police officer within the meaning of § 31-275(15). (*Vargas, C*., **dissenting**) Humanitarian purpose of Act requires a broader reading of the statutory language, which can be read to allow "mental-mental" claims as occupational diseases. Further, the symptoms alleged by the claimant such as headaches and leg pain constitute a physical injury.

O'Day v. New Britain General Hospital, 3580 CRB-6-97-4 (June 5, 1998).
CRB affirmed the trial commissioner's decision that § 31-275(16)(B)(i) did not bar the claimant's claim for an injury which occurred while returning to work from a birthday luncheon. Specifically, the trial commissioner found that the claimant's attendance at the luncheon was *not voluntary* and that the major purpose of the luncheon was *not social*.

Sanford v. Clinton Public Schools, 3446 CRB-3-96-10 (March 5, 1998), **aff'd**, 54 Conn. App. 266 (1999), **cert. denied**, 251 Conn. 917 (1999).
The "date of injury rule" regarding new legislation applies to claims of repetitive trauma. Where claimant's alleged mental injury was caused by repetitive trauma and he was not disabled or diagnosed until *after* July 1, 1993, we will apply P.A. 93-228 (which became effective July 1, 1993). The claimant's claim for mental injuries was disallowed pursuant to P.A. 93-228, which limited the definition of "personal injury" in § 31-275 C.G.S. so as to exclude a "mental or emotional impairment, unless such impairment arises from a physical injury or occupational disease."

Reynolds v. Architectural Steel, 3434 CRB-3-96-9 (February 18, 1998).
See, **Reynolds,** § 31-294c.

Pothier v. Stanley-Bostitch/The Bostitch Company, 3411 CRB-3-96-8 (January 21, 1998).
Claimant was playfully poked in the sides by a co-worker, which apparently aggravated a prior injury and caused him tremendous pain. Trier found that the squeeze was an injury, and ordered the insurer on the risk at that time to pay benefits. CRB affirmed: whether this constituted an injury was a factual decision for the trial commissioner. Epps v. Beiersdorf, 41 Conn. App. 430 (1996), discussed and compared to this case. See also, **Pothier**, § 31-275(1), § 31-301. Factual findings.

Forster v. Pitney Bowes, 3293 CRB-4-96-3 (November 18, 1997).
No error in trier's dismissal of psychiatric claim. Although statutory definition of "personal injury" had not yet been amended to exclude "mental-mental" claims at the time of the events at issue here, the law still required proof of causal relationship within a reasonable degree of medical probability. Trier was entitled to credit testimony of doctor who felt that claimant would have "ended up the way he did" regardless of the work incidents mentioned.

Evans v. Shelton, 16 Conn. Workers' Comp. Rev. Op. 155, 3108 CRB-4-95-6 (May 2, 1997), **dismissed for lack of a final judgment,** A.C. 17196 (January 14, 1998).
No automatic separation between repetitive trauma and occupational disease. Claimant's asthma could have satisfied either or both definitions, depending on whether her asthma

fell within the legal definition of those injuries. Trier did not improperly "fuse" the two definitions. See also, **Evans**, § 31-275(1), § 31-301. Appeal procedure, § 31-301. Factual findings, notes on Rules of Professional Conduct.

Cunningham v. Stamford, 3112 CRB-7-95-7 (December 16, 1996).
Doctor diagnosed claimant with stress-related vocal disorder. Commissioner found that "spasmodic dysphonia" was a physical impairment, and granted the claimant's Motion to Preclude because the respondents had failed to file a timely notice to contest. Held, neither party introduced any evidence to establish the nature of spasmodic dysphonia, as all proceedings focused on notice issue. Claimant must adduce evidence sufficient for commissioner to conclude that subject matter jurisdiction over claim exists, including the presence of a personal injury. Reversed and remanded.

Doe v. Stamford, 16 Conn. Workers' Comp. Rev. Op. 32, 2282 CRB-7-95-1 (October 9, 1996), **rev'd**, 241 Conn. 692 (1997).
The claimant, a police officer, was exposed to two infectious life threatening diseases on separate occasions during the course of employment, but as of the formal hearing had not tested positive for either of the diseases nor had he missed any time from work. The trial commissioner ruled that mere exposure to a disease does not constitute a viable claim under the Workers' Compensation Act, and the CRB affirmed; (*Vargas, C.,* **dissenting**) The Supreme Court reversed, holding that the claimant did sustain compensable injuries and was entitled to recover expenses for reasonable testing and treatment. The Court explained that it was undisputed that the claimant's exposures were definitely located as to time and place and occurred during his employment. Section 31-275(16)(A) which defines "injury" does not require a pathological manifestation, and indeed it would be contrary to the humanitarian and remedial purpose of the Act to require that an employee who sustains actual exposure to a potentially fatal infectious disease must await the onset of the disease before he can recover expenses associated with necessary and possibly lifesaving medical intervention.

Troske v. Wolcott View Manor, 13 Conn. Workers' Comp. Rev. Op. 323, 1687 CRB-5-93-4 (April 26, 1995).
Claimant could not remember specific date of her injury, the injury was reported to her supervisor when it happened and a timely Form 30C was later filed. Held, definition of "accidental injury" in statute is meant to distinguish accidental injuries from repetitive trauma injuries and occupational diseases; "definitely located as to the time when and the place where the accident occurred" does not create a strict jurisdictional barrier. See also, **Troske**, § 31-294c.

Britt v. Fiskars/Wallace Manufacturing, 12 Conn. Workers' Comp. Rev. Op. 375, 1503 CRB-1-92-9 (August 17, 1994).
Remanded. No findings as to last date of exposure or last date of employment for claim for back injury due to repetitive trauma. See, Seymour v. Bleich, 12 Conn. Workers' Comp. Rev. Op. 312, 1484 CRB-6-92-8 (June 24, 1994). See also, **Britt**, § 31-294c.

Duncan v. Dow Chemical Company, 12 Conn. Workers' Comp. Rev. Op. 276, 1442 CRB-2-92-6 (June 7, 1994).
Trier's finding that claimant's disability i.e. organic brain syndrome, allegedly caused by exposure to chemicals was not the result of a workplace incident supported by evidence. See also, **Duncan**, § 31-301. Factual findings.

Fusciello v. Ronnie Demeo, Inc., 12 Conn. Workers' Comp. Rev. Op. 283, 1535 CRB-6-92-10 (June 7, 1994).
See, **Fusciello**, § 31-275(1) and § 31-307. Subsequent decision at Fusciello, 3406 CRB-8-96-8 (February 4, 1998), § 31-307, § 31-301. Appeal procedure and Fusciello, 4340 CRB-6-01-1 (January 7, 2002), § 31-301. Factual findings, § 31-307.

O'Connor v. Connecticut Light & Power Company, 12 Conn. Workers' Comp. Rev. Op. 265, 1536 CRB-8-92-10 (June 2, 1994).
See, **O'Connor**, § 31-275(1) and § 31-301. Factual findings.

Greenwood v. Perkin Elmer Corporation, 12 Conn. Workers' Comp. Rev. Op. 160, 1517 CRB-7-92-9 (April 26, 1994), **aff'd**, 39 Conn. App. 907 (1995)(per curiam).
Trier concluded claimant suffered a traumatic brain injury in addition to previously approved back and neck injuries. See also, **Greenwood**, § 31-301. Factual findings.

Castelvetro v. Gravymaster, Inc., 12 Conn. Workers' Comp. Rev. Op. 210, 1463 CRB-3-92-7 (March 15, 1994).
See, § 31-275(15), Occupational disease and Fritz v. Gravymaster, 12 Conn. Workers' Comp. Rev. Op. 208, 1462 CRB-3-92-7 (March 15, 1994).

DeLucia v. Modena, 12 Conn. Workers' Comp. Rev. Op. 212, 1471 CRB-3-92-7 (March 15, 1994).
Hairdresser sustained right shoulder injury due to repetitive trauma caused by years of employment in the same profession. See also, **DeLucia**, § 31-299b and § 31-301. Appeal procedure.

Fritz v. Gravymaster, Inc., 12 Conn. Workers' Comp. Rev. Op. 208, 1462 CRB-3-92-7 (March 15, 1994).
See, **Fritz**, § 31-275(15).

Martinez v. Connecticut Rental Center, 12 Conn. Workers' Comp. Rev. Op. 115, 1437 CRB-8-92-6 (February 28, 1994).
Evidence supports finding that claimant's pre-existing lower back injury was aggravated by continuous daily heavy lifting which constituted repetitive trauma. Respondent insurer was liable for period during which claimant did heavy lifting even though claimant did not exhibit any symptoms at that time.

Spindler v. Med-Center Home Health Center, 12 Conn. Workers' Comp. Rev. Op. 130, 1474 CRB-7-92-7 (February 28, 1994).
See also, **Spindler**, § 31-275(1).

Nolan v. Brennan Concrete Corporation, 11 Conn. Workers' Comp. Rev. Op. 224, 1362 CRD-7-91-12 (November 4, 1993), **dismissed for lack of final judgment**, A.C. 13041 (January 5, 1994).
See, **Nolan**, § 31-275(1) and § 31-284(a).

Hall v. McLean Home, 6 Conn. Workers' Comp. Rev. Op. 80, 577 CRD- 5-87 (January 9, 1989).
Remanded for articulation of precise theory of liability; several specific incidents or the result of repetitive trauma.

Leary v. A & P Groceries, 6 Conn. Workers' Comp. Rev. Op. 76, 582 CRD-5-87 (January 5, 1989).
Remanded for further hearings on possibility of repetitive trauma.

Henderson v. Brink's Inc., 5 Conn. Workers' Comp. Rev. Op. 115, 466 CRD-4-86 (June 21, 1988).
Claimant awarded benefits for work related stress.

Boutin v. Industrial Components, 4 Conn. Workers' Comp. Rev. Op. 19, 237 CRD-6-83 (March 3, 1987).
Granted award for carpal tunnel syndrome. See also, **Boutin**, § 31-294c.

Zipoli v. Watertown, 3 Conn. Workers' Comp. Rev. Op. 23, 215 CRD-5-83 (January 17, 1986).
Mental disability held compensable.

Gecewicz v. Sealtest Foods Div., 1 Conn. Workers' Comp. Rev. Op. 195, 77 CRD-1-81 (October 21, 1982).
Heart attack while in the course of employment does not require unusual activity or exertion.

Cable v. Torrington Special Products, 1 Conn. Workers' Comp. Rev. Op. 168, 82 CRD-5-81 (August 18, 1982).
Rotator cuff tear was result of repetitive trauma.

Cortes v. Allegheny Ludlum Steel Corp., 1 Conn. Workers' Comp. Rev. Op. 173, 61 CRD-3-81 (August 18, 1982).
Lung cancer causally connected to asbestos exposure held compensable.

Moore v. West Haven, 1 Conn. Workers' Comp. Rev. Op. 103, 31 CRD-3-80 (January 25, 1982).
Police officer whose heart attack was the result of exposure to severe weather and work-related emotional stress awarded benefits.

McGrath v. New London, 1 Conn. Workers' Comp. Rev. Op. 32, 14 CRD-2-80 (May 14, 1981), **aff'd**, 38 Conn. Sup. 324 (1982).
Claimant failed to meet burden of proof in alleging compensability of neurosis.

Donato v. Pantry Pride, 1 Conn. Workers' Comp. Rev. Op. 21, 2 CRD-4-79 (January 26, 1981), **aff'd**, 37 Conn. Sup. 836 (1981).
Heart attack brought on by job-related stress held compensable.

Sec. 31-275(17). Physician defined.

Harris v. UTC/Pratt & Whitney, 15 Conn. Workers' Comp. Rev. Op. 357, 3143 CRB-5-95-8 (June 26, 1996).
Fact that "physician" is not defined by § 20-1 to include psychologists does not preclude introduction of their reports into evidence. See also, **Harris**, § 31-298. Subsequent decision at Harris, 3762 CRB-1-98-1 (February 23, 1999), aff'd, 56 Conn. App. 912 (2000)(per curiam), cert. denied, 253 Conn. 907 (2000), § 31-294f, § 31-301-9, § 31-315.

Sec. 31-278. Jurisdiction/Disqualification.

Byrd v. Bechtel/Fusco, 4656 CRB-2-03-4 (July 14, 2004).
See, **Byrd**, § 31-279(c), § 31-280.

Audi v. Blakeslee Arpaia Chapman, 4624 CRB-3-03-12, 4311 CRB-3-00-1 (February 10, 2004).
Trial commissioner did not have authority to levy sanctions and penalties under § 31-288 and § 31-300 against third-party administrator rather than self-insured employer, even though culpable conduct was that of administrator's employee. No separate jurisdiction over administrator in workers' compensation forum. Law permits principal to assume responsibility for negligent or unauthorized acts of agent where public policy places duty on principal to protect another's interests, such as the duty of a self-insured employer to ensure that its injured workers are properly compensated. See also, **Audi**, § 31-284b, § 31-288, § 31-300. See prior decision Audi, 3418 CRB-3-96-9 (August 4, 1997), § 31-349 and Audi, 4151 CRB-3-99-1, 4234 CRB-3-00-5 (June 26, 2001), § 31-296, § 31-298, § 31-301-9, § 31-307, § 31-315.

Hammick v. Hartford, 4608 CRB-1-03-1 (December 29, 2003).
Trial commissioner has jurisdiction to consider collective bargaining agreement or payments already made pursuant to said agreement in order to determine whether respondents have met obligations to pay benefits under Workers' Compensation Act, as § 31-314 requires due allowance to be made for sums paid on account of injury. However, Commission lacks jurisdiction to interpret collective bargaining agreement for purpose of determining whether claimant qualifies for 18 or 24 weeks of salary continuation benefits under union contract; benefit exists independently of Workers' Compensation Act, and question belongs in another forum. See also, **Hammick**, § 31-314.

Matey v. Dember, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), **appeal dismissed for failure to comply with Supreme Court's directive**, 85 Conn. App. 198 (2004).
Trier's order of biannual hearings in future to ascertain claimant's disability status is an appropriate exercise of the commissioner's authority. See also, **Matey,** § 31-307, 31-307a, 31-300, 31-303. See, Matey v. Dember, 256 Conn. 456 (2004).

Del Toro v. Stamford, 4515 CRB-7-02-4 (March 31, 2003), **motion for summary affirmance granted**, (A.C. 24150)(July 10, 2003), **rev'd**, 270 Conn. 532 (2004).
CRB affirmed trial commissioner's adherence to remand order of Appellate Court in Del Toro v. Stamford, 64 Conn. App. 1 (2001), cert. denied, 258 Conn. 913 (2001), as it is not the place of this board or a trial commissioner to ignore the law as set forth by a court of appeal in an earlier proceeding in the same matter. Following summary affirmance by Appellate Court, Supreme Court granted cert. on appeal and reversed holding of earlier Appellate Court decision. Compensability of injury is a jurisdictional fact, and if a claimed injury does not meet the definition of "personal injury" under § 31-275(16), commissioner lacks subject matter jurisdiction over claim. See also, **Del Toro**, § 31-275(16); prior decision in Del Toro, 3731 CRB-7-97-11 (October 22, 1999), rev'd, 64 Conn. App. 1 (2001), cert. denied, 258 Conn. 913 (2001), § 31-294c; see also, **Del Toro**, § 31-275(16).

Krajewski v. Atlantic Machine Tool Works, Inc., 4500 CRB-6-02-3 (March 7, 2003).
Basic principle of res judicata discussed and applied where pro se claimant raised numerous issues that were/could have been raised in earlier trials. See also, **Krajewski**, § 31-284b, § 31-290a, § 31-301. Appeal procedure, § 31-301. Factual findings, § 31-301-9, § 31-312, § 31-313, § 31-315; prior decisions at Krajewski, 15 Conn. Workers' Comp. Rev. Op. 44, 2120 CRB-6-94-8 (November 28, 1995), § 31-308a; Krajewski, 11 Conn. Workers' Comp. Rev. Op. 54, 1387 CRD-6-92-2 (April 1, 1993), § 31-290a.

Rinaldi v. Enfield, 4459 CRB-1-01-11 (December 27, 2002), **aff'd**, 82 Conn. App. 505 (2004).
Board discussed relation of collateral estoppel and "law of the case" doctrines to 1995 finding that held § 7-433b(b) cap inapplicable to claimant's non-disability retirement pension, which was inconsistent with a subsequent Supreme Court decision. Circumstances favored application of "law of the case" doctrine, which allowed modification of earlier finding given subsequent change in law as per Carriero v. Naugatuck, 243 Conn. 747 (1998), and required application of § 7-433b(b) cap to combined pension and § 31-308a benefit award. See also, **Rinaldi**, § 7-433c, § 31-308a.

Regan v. Torrington, 4456 CRB-5-01-11 (October 25, 2002).
Respondents argued that trier lacked jurisdiction to decide whether claimant should be awarded total disability benefits in lieu of "sick pay" that was paid to him under collective bargaining agreement, as Commission lacks jurisdiction over contractual issues such as reinstatement of sick time. CRB disagreed with respondents' characterization of issue, as real question before trier was whether claimant was entitled to total disability benefits as result of compensable injury. Because he was so entitled, trier had authority to order their payment under § 31-307, and to ensure that they were

paid properly (i.e., as non-taxable income) as mandated by law. Issue does not center around interpretation of collective bargaining agreement. See also, **Regan**, § 31-300, § 31-307.

Napolitano v. Bridgeport, 4388 CRB-4-01-5 (September 6, 2002).
Pro se claimant sought to argue on appeal that trier should have recused himself. As this point was not raised until after claimant received trier's decision, CRB refused to consider argument, as issue could have been raised at trial. See also, **Napolitano**, § 31-301. Factual findings, § 31-301-9, § 31-308(b).

Demarest v. Stamford, 4370 CRB-7-01-3 (March 14, 2002).
CRB held that trier had jurisdiction to set forth procedural guidelines for calculating future versions of § 7-433b(b) cap, where permanency benefits would continue to be payable for several years following issuance of award. See also, **Demarest**, § 7-433b.

Rayhall v. Akim Co., Inc., 4321 CRB-2-00-12 (November 5, 2001), **aff'd**, 263 Conn. 328 (2003).
CRB lacks jurisdiction to consider constitutionality of Social Security offset requirement in § 31-307(e). See also, **Rayhall**, § 31-295, § 31-298, § 31-307 and, § 31-308(b).

Owen v. Diversified Hospitality Group, 4204 CRB-3-00-3 (July 25, 2001).
Decedent's office was temporarily relocated to Connecticut headquarters of employer during the six weeks before his death. Employment relation must have a legal situs under choice-of-law rule enunciated in Cleveland v. U.S. Printing Ink, Inc., 218 Conn. 181 (1991), and largest percentage of employer-employee contacts occurred in Connecticut at time of injury. "Place of contract" test also discussed in footnote. See also, **Owen**, § 31-275(1), § 31-275(9).

Schreiber v. Town & Country Auto Service, 4239 CRB-3-00-5 (June 15, 2001).
CRB affirmed dismissal of shoulder injury claim on ground that res judicata precluded the claimant from relitigating that matter. Claim had been raised at earlier formal hearing, and evidence had been offered that made it ripe for determination, even though it was not explicitly decided in the earlier award. Distinctions between res judicata, collateral estoppel and "law of the case" discussed. See also, **Schreiber**, § 31-297.

Melendez v. Valley Metallurgical¸ 4178 CRB-2-00-1 (May 1, 2001), **appeal dismissed**, A.C. 23921 (May 14, 2003), **cert. denied**, 266 Conn. 904 (2003).
Workers' Compensation Commission has jurisdiction to consider due process issues, though CRB may not decide constitutionality of statutes. See also, **Melendez**, § 31-298, § 31-300, § 31-303; and see May 24, 2001 ruling on motion to correct/articulate CRB decision in **Melendez**, § 31-301. Appeal procedure. Related decision in **Melendez**, 4178 CRB-2-00-1 (November 19, 2003), rev'd, 86 Conn. App. 880 (2005)(no jurisdiction to rule on motion to reopen CRB decision), § 31-301. Appeal procedure.

Kelley v. Venezia Transport Services, 4184 CRB-2-00-2 (March 8, 2001).
CRB affirmed denial of Motion to Preclude and dismissal of claim for lack of subject matter jurisdiction. Trier's findings established that the claimant's employment contract was executed in Pennsylvania, which was the site of all significant employer-employee

contacts following his hire. No Motion to Correct was filed, and CRB could not independently interpret testimony of parties that set forth the nature of the understanding between claimant and employer when job was offered over telephone. Whether or not parties intended to form a binding agreement at that time was a question of fact. No evidence that alleged circulatory damage due to repetitive trauma from long-distance driving substantially occurred in Connecticut or any other specific state, so trier did not need to make a formal finding that Connecticut was not the situs of the injury. See also, **Kelley**, § 31-301. Appeal procedure, § 31-294c.

Schiano v. Bliss Exterminating Co., 4104 CRB-4-99-8 (February 21, 2001), **rev'd**, 260 Conn. 21 (2002).
CRB determined that trier had subject matter jurisdiction to issue decision on § 31-303 penalties where parties failed to notify him that settlement had been reached before he prepared and issued his ruling. Resolution of pending issues via mutual agreement must be ratified by commissioner once the case has begun. Supreme Court affirmed reasoning of CRB regarding jurisdiction, but reversed on the underlying issue of § 31-303's applicability to late payments of attorney's fee awards. See also, **Schiano**, § 31-303, **Schiano**, § 31-300. Prior decisions at Schiano, 3436 CRB-4-96-10 (April 8, 1998), and Schiano, 1852 CRB-4-93-9 (December 7, 1994), aff'd, 57 Conn. App. 406 (2000), both discussed at § 31-293 and, with regard to the 1994 decision, § 31-301. Appeal procedure as well, and Schiano, 3315 CRB-4-96-4 (May 16, 1997), § 31-301. Appeal procedure.

Bell v. Thomas Lombardo & Charles Holt d/b/a N&E Private Investigation & Security, 4065 CRB-2-99-6; 4152 CRB-2-99-11 (November 27, 2000).
CRB reversed trial commissioner's granting of motion to dismiss all claims against respondent insurer Travelers for lack of subject matter jurisdiction. Trier was empowered to go beyond computer records of commission to consider whether payment of premiums following apparent cancellation date of policy established an insurance contract under common-law principles, as claimant's compensation was still at issue, as was the possibility of fining the employer for not having insurance. DiBello, infra, this section, and Stickney v. Sunlight Construction Inc., 248 Conn. 754 (1999), discussed. See also, **Bell**, § 31-348.

Moran v. Continental Field Machine, 3990 CRB-2-99-3 (March 7, 2000).
Workers' Compensation Commission has continuing jurisdiction over claims. Where previous trial commissioner found claimant totally disabled for a certain timespan, but failed to order the payment of total disability benefits, a subsequent trier had the authority to make that order. See, **Moran**, § 31-308a.

DiBello v. Barnes Page Wire Products, 3970 CRB-7-99-2 (March 2, 2000), **aff'd**, 67 Conn. App. 361 (2001), **cert. granted**, 260 Conn. 915 (2002), **appeal withdrawn** (June 26, 2002).
CRB ruled that trial commissioner had jurisdiction to consider whether common-law agency and contract principles establish an insurance contract between employer and prospective insurer on date of injury where no other insurer was on the risk, and the claimant's compensation had not yet been fully determined and collected. Stickney v. Sunlight Construction, Inc., 248 Conn. 754 (1999), discussed. See also, **DiBello**, § 31-

294c, § 31-301. Appeal procedure, § 31-301-9, § 31-348. Subsequent decision at DiBello, 4290 CRB-7-00-9 (September 25, 2001), § 31-300, § 31-308a.

Rodriguez v. Seal Rite Mfg., 3954 CRB-4-98-12 (January 20, 2000).
See, **Rodriguez**, § 31-294d.

Prioli v. State/Connecticut State Library/Arts Commission, 3955 CRB-6-98-12 (January 13, 2000), **aff'd**, 64 Conn. App. 301 (2001), **cert. denied**, 258 Conn. 917 (2001).
In a footnote, CRB discussed the decisions of two panel members to recuse themselves from hearing the appeal at the request of the appellant. One such request was made over a month before oral argument, while the other was made at oral argument itself. With respect to the latter request, though no violation of the Code of Ethics for Workers' Compensation Commissioners was apparent, the panelist agreed to recuse himself to expedite the resolution of this case. See also, **Prioli**, § 31-290a, § 31-301. Appeal procedure, § 31-301-9, § 31-315, § 31-327. Subsequent ruling in Prioli, 3955 CRB-6-98-12 (October 16, 2000), § 31-301c.

Pascarelli v. Moliterno Stone Sales, 3925 CRB-4-98-11 (December 22, 1999).
Commission lacked jurisdiction to interpret collective bargaining agreement once it was determined that the claimant was not entitled to benefits under § 31-284b. See also, **Pascarelli**, § 31-284b, § 31-287. Prior decision at Pascarelli, 14 Conn. Workers' Comp. Rev. Op. 328, 2115 CRB-4-94-8 (September 15, 1995), aff'd, 44 Conn. App. 397, 400 (1997), See also, **Pascarelli**, § 31-287, § 31-310.

Kuban v. Bridgeport Hospital, 3926 CRB-7-98-6 (September 23, 1999), **appeal dismissed**, A.C. 20100 (January 5, 2000).
Though substantive issues of appeal (constitutionality of § 31-349c) were not within scope of board's review, fact that appeal was from a Finding and Dismissal made it cognizable by CRB, allowing board to consider reserving case to Appellate Court under § 31-324. See also, **Kuban**, § 31-324, § 31-349.

Fish v. Caldor, Inc., 3840 CRB-7-98-6 (May 11, 1999).
CRB lacks jurisdiction over appeal taken directly from the opinion of a § 31-349 medical panel. Board also lacks authority to decide constitutionality of statutes. When considering issues of constitutional magnitude, CRB may only interpret existing statutes and cases in the manner most consistent with constitutional guarantees. See also, **Fish**, § 31-349.

Kluttz v. Estate of Glenn Howard, 3738 CRB-4-97-12 (February 18, 1999).
Second Injury Fund argued that trial commissioner erroneously entered award against estate of deceased individual. CRB held that jurisdiction was established over employer prior to his death, and remedial purpose of Act is better served by holding that substitution of estate/administrator as respondent is automatic process. CRB relied on Matey v. Dember, 5 Conn. Workers' Comp. Rev. Op. 104, 516 CRD-5-86 (June 14, 1988), aff'd in part and rev'd in part, 256 Conn. 456 (2001), in its decision. See also, **Kluttz**, § 31-308(b) and (c). Prior decision at Kluttz, 10 Conn. Workers' Comp. Rev.

Op. 195, 1199 CRD-4-91-3 (November 5, 1992), aff'd, 228 Conn. 401 (1994), § 31-278, § 31-355.

Bass v. Chesebrough-Ponds, USA, 3709 CRB-3-97-10 (November 27, 1998).
CRB lacks jurisdiction to decide constitutionality of § 31-349 as revised by P.A. 95-277. See also, **Bass**, § 31-349.

Baribault v. Harben Flooring Co, Inc., 3579 CRB-7-97-3 (June 4, 1998).
CRB does not have jurisdiction to consider the constitutionality of workers' compensation statutes, in this case § 31-288. See also, **Baribault**, § 31-288, § 31-301-4. Correction of finding.

Genden v. American Airlines, 3419 CRB-5-96-9 (February 9, 1998).
Trial commissioner found that claimant, a Connecticut resident who was injured at LaGuardia Airport in New York, had an office in his home and flew most of his routes out of Bradley Airport in Windsor Locks. He concluded that the place of the employment relation was Connecticut, and thus ruled this Commission had jurisdiction to entertain the instant claim. Affirmed. Facts were not challenged, and sufficed to support the trier's conclusion, which satisfied the test enunciated in Cleveland v. U.S. Printing Ink, Inc., 218 Conn. 181 (1991). Subsequent decision at Genden, 3912 CRB-5-98-10 (July 22, 1999), rev'd, 257 Conn. 520 (2001), § 31-349.

Burse v. American International Airways, Inc., 3480 CRB-2-96-12 (November 7, 1997), **dismissed for lack of a final judgment**, A.C. 17825 (January 14, 1998), **rev'd**, 262 Conn. 31 (2002).
Claimant, a Connecticut resident, was injured while piloting a jet over Ohio airspace. AIA is based in Michigan. Trier found that Connecticut had jurisdiction over claim because employment contract was formed in Connecticut and this state was the place of the employment relationship. CRB affirmed. Sufficient evidence existed (particularly testimonial evidence) to support the trier's findings. Supreme Court reversed the decision on jurisdictional grounds, in the process also reversing this board's subsequent decision in Burse, cited below. Court reasoned that the "jurisdictional" issue was more correctly characterized as a conflict of laws question, and clarified the test set forth in Cleveland v. U.S. Printing Ink, Inc., 218 Conn. 181 (1991), by explaining that "place of" employment contract and employment relation require, at a minimum, a showing of a *significant* relationship between Connecticut and either the employment contract or the employment relationship. Based on the facts found, no such relationship existed here. Subsequent decision in Burse, 3986 CRB-2-99-3 (March 3, 2000), rev'd, 262 Conn. 31 (2002), § 31-284(a), § 31-301. Factual findings.

Spears v. Spears, 2082 CRB-2-94-6 (October 30, 1997), **dismissed for lack of a final judgment,** A.C. 17819 (January 15, 1998).
Claimant, a Narragansett Indian and resident of Rhode Island, claims to have fallen off a roof while working for a business operated out of the home of Lake and Keri Spears, a married couple living on the Mashantucket Pequot Indian Reservation. The reservation is a sovereign nation under the laws of Connecticut and the United States. Trial commissioner concluded that the claimant was not an employee under the Workers'

Compensation Act because he was not a state resident, did not suffer an injury in Connecticut, and worked for an alleged employer whose principal place of business was not in Connecticut. CRB, which has power to determine its own jurisdiction, analyzed the statute prescribing federal recognition of the tribe, and our Supreme Court's decision in State v. Spears, 234 Conn. 78 (1995). After a detailed analysis of several statutes and case law, the majority ultimately determined that jurisdiction indeed existed under 40 U.S.C. § 290, which gives the authority charged with enforcing each state's workers' compensation law the power to apply such laws to all lands and premises owned by the United States. Indian reservations are held in trust by the United States. Therefore, the situs of the alleged injury creates subject matter jurisdiction in this Commission over the claim. (*Frankl, C.*, **dissenting**) 40 U.S.C. § 290 should not be read as broadly as the majority concludes, as said law was intended to protect laborers and mechanics working on federal lands. Tribe may have other remedies for personal injuries, and without clear indication from Congress or the tribe itself, the Act should not be read to apply to work-related injuries occurring on a recognized reservation. See also, **Spears**, § 31-298.

Altamura v. Altamura Landscaping, 15 Conn. Workers' Comp. Rev. Op. 427, 2170 CRB-7-94-10 (September 3, 1996).
Where 1990 injury was at issue, but compensability of 1992 injury was not before commissioner at formal hearing, "finding" that latter injury was unrelated to former injury was construed as mere advisory statement that no conclusion was reached regarding relationship of 1992 injury to 1990 injury. See also, **Altamura**, § 31-294c, and § 31-301. Appeal procedure.

Bailey v. Stripling Auto Sales, 15 Conn. Workers' Comp. Rev. Op. 369, 3095 CRB-2-95-6 (June 28, 1996).
Claimant attempted to introduce additional evidence regarding competency of commissioner. Sufficient information was not offered to make a § 31-301-9 ruling; moreover, CRB does not have authority to determine the competency of commissioners. See also, **Bailey**, § 31-298, and § 31-308a. See subsequent decision Bailey, 3461 CRB-3-96-11 (April 9, 1998), § 31-315 and Bailey, 4516 CRB-2-02-4 (May 8, 2003), § 31-298, § 31-307a.

Nicolett v. Alimak Elevator Co., 15 Conn. Workers' Comp. Rev. Op. 322, 2203 CRB-4-94-11 (June 24, 1996).
CRB affirmed trial commissioner's conclusion that Connecticut lacked subject matter jurisdiction where trier found Tennessee was the place of the employment contract, the place of the employment relation and the place of the claimant's injury.

Casagrande v. Federal Express Corp., 15 Conn. Workers' Comp. Rev. Op. 300, 2247 CRB-5-94-12 (June 20, 1996).
CRB affirmed the trial commissioner's determination that Kentucky, rather than Connecticut, properly has jurisdiction over the claim, as Kentucky has "the most significant relationship to the contract of employment" pursuant to the Restatement Second of Conflict of Laws. The undisputed facts in this case indicate that the claimant's injury occurred in Kentucky, that the employer's place of business was in Kentucky, and that the claimant was residing in Kentucky when the injury occurred. The only

significant connection to Connecticut was the claimant's acceptance of the offer of employment from Connecticut. CRB noted that this board had previously stated: "When the contract of employment between the parties was entered into in this state, our Workers' Compensation Act is available to determine the compensability of the employee's injury, regardless of the place of the employment relationship or the place of injury." Casagrande v. Federal Express, 12 Conn. Workers' Comp. Rev. Op. 170, 172, 1561 CRB-5-92-11 (April 29, 1994). However, due to the reconsideration of the legal analysis regarding the place of contract as it relates to jurisdiction as set forth in Quinn, infra, the CRB declined to follow a strict place of contract analysis.

Costelli v. Blakeslee Arpaia Chapman, Inc., 15 Conn. Workers' Comp. Rev. Op. 113, 2159 CRB-3-94-9 (January 11, 1996).
Claimant's attorney instructed treating physician not to answer questions at deposition based on patient/physician privilege. Respondents then sought to preclude use of his testimony or medical reports as evidence. Trial commissioner found deposition was not ordered pursuant to § 31-278, as subpoena was issued by respondents' attorney. He ruled that respondents' remedy was to proceed under § 51-85 if subpoena was being ignored. Held, although no order was issued under § 31-278, commissioner was not prevented by § 51-85 from ruling on treating physician's refusal to testify on the basis of patient-physician privilege. Sec. 51-85 makes use of superior court optional if witness fails to comply with subpoena. As for merits of objection, patient-physician privilege does not apply where someone makes a workers' compensation claim and chooses a particular doctor as treating physician. Exclusion of evidence is a permissible sanction for failure to allow discovery.

Quinn v. Mid-South Industries, 15 Conn. Workers' Comp. Rev. Op. 34, 2020 CRB-2-94-4 (November 28, 1995).
CRB reversed commissioner's decision which found jurisdiction over the claimant's claim. Claimant was an Alabama resident, employed by an employer in Alabama, who was injured in Alabama. CRB held that the mere fact that the claimant entered into the employment contract while he was still a resident of Connecticut was not sufficient to allow Connecticut jurisdiction over the claim. Discussion of jurisdiction and case law.

Giordano v. Morganti, Inc., 15 Conn. Workers' Comp. Rev. Op. 21, 3023 CRB-7-95-3 (November 9, 1995).
Claimant was a Virginia resident employed by a Connecticut corporation. Contract was signed in Virginia. Claimant resided in Connecticut for two-week training session, and was then sent to West Africa to assume his supervisory duties. Claimant contracted serious illness in Africa. Trial commissioner concluded that Connecticut was place of employment relationship, but 1993 amendment to § 31-275 regarding non-resident employees precluded basing jurisdiction on that alone. Held, affirmed. 1993 amendment affects non-resident employees suffering out-of-state injuries by implication, even though it specifically addresses in-state injuries only. Unreasonable dichotomy in law would result otherwise. See also, **Giordano**, § 31-275(9).

Dixon v. United Illuminating Co., 14 Conn. Workers' Comp. Rev. Op. 215, 1996 CRB-4-94-3 (August 4, 1995).
See, **Dixon**, § 31-298 for discussion of jurisdiction over appeal from denial of motion to order deposition.

Crouch v. Hayner Hoyt Corp., 14 Conn. Workers' Comp. Rev. Op. 143, 1824 CRB-1-93-8 (June 20, 1995).
Claimant injured in 1987 at West Hartford job site. Neither claimant nor respondent corporation was domiciled in Connecticut. Claimant was hired in New York and performed most of his job services there. He received workers' compensation under New York law. Commissioner found no jurisdiction existed under interest analysis theory. Held, Cleveland v. U.S. Printing Ink, Inc., 218 Conn. 181 (1991), applies to this injury; 1993 amendment to § 31-275 definition of "employee" not intended to apply retroactively. Under conflict of laws rule in Cleveland, jurisdiction exists because Connecticut was place of injury.

Giardino v. Roberts Express, Inc., 14 Conn. Workers' Comp. Rev. Op. 131, 1863 CRB-6-93-10 (June 9, 1995).
Trial commissioner properly ruled that Connecticut lacked jurisdiction over case under test in Cleveland v. U.S. Printing Ink, Inc., 218 Conn. 181 (1991), the applicable test at the time of injury. Injury did not occur in Connecticut, employment contract was entered into out-of-state, and alleged in-state employer was found to be neither the agent of Roberts nor the employer at time of injury.

Gonzalez v. Electric Transport (PENSKE), 13 Conn. Workers' Comp. Rev. Op. 6, 1729 CRB-1-93-5 (October 13, 1994).
Medical provider has the same right to a hearing and award as the claimant. See also, **Gonzalez**, § 31-315.

Stickney v. Sunlight Construction Co., 12 Conn. Workers' Comp. Rev. Op. 364, 1738 CRB-6-93-5 (August 2, 1994), **rev'd**, 48 Conn. App. 609 (1998), **aff'd**, 248 Conn. 754 (1999).
Trier erred in holding he lacked subject matter jurisdiction to resolve dispute between two insurance carriers where cancellation of one policy and effective coverage date of the other was not furnished to the workers' compensation commission. Reversed by Appellate Court, which held that the trial commissioner lacked subject matter jurisdiction. See also, **Stickney**, § 31-315 See later, Stickney, 3205 CRB-6-95-11 (April 25, 1997), § 31-315, § 31-348.

Casagrande v. Federal Express, 12 Conn. Workers' Comp. Rev. Op. 170, 1561 CRB-5-92-11 (April 29, 1994).
Remanded with direction for trial commissioner to apply the rules of contract formation (offer and acceptance) where trier found claimant entered a new contract of employment upon transferring to Kentucky. Trier must determine when and where the contract between the claimant and the employer was made. But see later decision, Casagrande, supra.

Santucci v. Remodeling Consultants, Inc., 12 Conn. Workers' Comp. Rev. Op. 118, 1438 CRB-7-92-6 (February 28, 1994).
Trier properly dismissed claim where, on remand, trier found the place of the employment relationship at the time of claimant's injury had shifted from Connecticut to New York. See, Santucci, 10 Conn. Workers' Comp. Rev. Op. 66, 1140 CRD-7-90-11 (March 23, 1992).

Gibson v. Keebler Company, 12 Conn. Workers' Comp. Rev. Op. 77, 1466 CRB-1-92-7 (February 4, 1994), **aff'd**, 37 Conn. App. 392 (1995).
Trial commissioner properly determined Connecticut was not the place of injury, place of the employment contract nor place of the employment relationship. Trier found claimant's employment relationship indicated that although he had an office at his home in Connecticut, claimant had an Illinois office and initially accepted Illinois workers' compensation benefits, and was responsible for sales in the employer's Atlantic region.

Currier v. Retail Express, 11 Conn. Workers' Comp. Rev. Op. 234, 1344 CRD-6-91-11 (November 8, 1993).
Trier found claimant, a long haul truck driver, did not have sufficient contacts with Connecticut to establish Connecticut jurisdiction. CRB remanded matter as trier failed to apply our Supreme Court's ruling in Cleveland v. U.S. Printing Ink, Inc., 218 Conn. 181 (1991) to the facts found to determine if Connecticut was the place of the employment relation.

Schick v. Windsor Airmotive Division, 11 Conn. Workers' Comp. Rev. Op. 17, 1033 CRD-1-90-6 (February 16, 1993), **motion to dismiss appeal for lack of final judgment denied**, 31 Conn. App. 819 (1993), **aff'd**, 34 Conn. App. 673 (1994).
CRB does not have the authority to compel a commissioner who has resigned to act on unfinished matters relating to a claim. See also, **Schick**, § 31-301. Appeal procedure.

Kluttz v. Howard, 10 Conn. Workers' Comp. Rev. Op. 195, 1188 CRD-4-91-3 (November 5, 1992), **aff'd**, 228 Conn. 401 (1994).
See, **Kluttz**, § 31-355.

Romeo v. H & L Chevrolet, Inc., 10 Conn. Workers' Comp. Rev. Op. 72, 1149 CRD-7-90-12 (March 31, 1992).
Where claimant's request that trial commissioner should have recused himself in the proceedings below and the request for recusal was not an issue below or mentioned in claimant's Reasons of Appeal but mentioned for the first time in appellant's brief before the CRB; such request will not be considered for the first time on appeal. Also, as commissioner below was obligated to perform administrative functions and found no record of a notice of claim being timely filed nor did the commissioner's actions result in claimant being denied his due process right to an impartial arbiter; CRB upheld trier's decision. See also, **Romeo**, § 31-294c and § 31-301. Appeal procedure.

Santucci v. Remodeling Consultants, Inc., 10 Conn. Workers' Comp. Rev. Op. 66, 1140 CRD-7-90-11 (March 23, 1992).
Remanded. Trier found he lacked subject matter jurisdiction as Connecticut was not the place of injury or the place of hire. However, trier must address whether Connecticut was the place of employment relation according to Supreme Court's rationale in Cleveland v. U.S. Printing Ink, 218 Conn. 181 (1991).

Chute v. Mobil Shipping and Transportation Company, 9 Conn. Workers' Comp. Rev. Op. 135, 1007 CRD-7-90-4 (May 22, 1991).
Matter reversed and remanded as trier failed to determine whether an employer-employee relationship existed at the time of decedent's injury. The Supreme Court in Cleveland v. U.S. Printing Ink, Inc., 218 Conn. 181 (1991) prescribed a new rule for conflicts of law issues and held the Connecticut Workers' Compensation Act should be applied when Connecticut is the place of injury, the place of the employment contract or the place of the employment relation. The court relied on Castro v. Viera, 207 Conn. 420 (1988) and its holding that in order for subject matter jurisdiction to be obtained, it must be found that an employer-employee relationship existed.

Taylor v. New Penn Motor Express, 9 Conn. Workers' Comp. Rev. Op. 116, 950 CRD-2-89-11 (April 24, 1991).
Trial commissioner's finding claimant was hired in Connecticut thereby satisfying Cleveland criterion is a factual finding which will not be disturbed on appeal. See, Cleveland v. U.S. Printing Ink, Inc., 218 Conn. 181 (1991).

Trantolo v. Trantolo & Trantolo, 8 Conn. Workers' Comp. Rev. Op. 69, 823 CRD-6-89-2 (April 17, 1990).
Commission lacks jurisdiction to decide constitutional issues. See also, **Trantolo**, § 31-294c, § 31-300, § 31-301. Appeal procedure.

Cleveland v. U.S. Printing Ink, Inc., 7 Conn. Workers' Comp. Rev. Op. 51, 680 CRD-2-88-1 (August 10, 1989), **no error**, 21 Conn. App. 610 (1990), **aff'd**, 218 Conn. 181 (1991).
Where trial commissioner finds employer-employee relationship exists and there were significant contacts with this jurisdiction, Motion to Preclude will lie. Allegation of improper venue incorrect as § 31-278 and § 31-294 permit notice and jurisdiction of claims with any commissioner. Supreme Court held jurisdiction under this act applies where Connecticut is the place of injury or the place of hiring or the place of employment relation. See also, **Cleveland**, § 31-294c.

Lustig v. C.N. Flagg Co., 7 Conn. Workers' Comp. Rev. Op. 38, 658 CRD-1-87 (July 25, 1989).
Commissioner does not have jurisdiction to decide constitutional issues. See also, **Lustig**, § 31-284b.

Ramos v. General Dynamics Corporation/Electric Boat Division, 7 Conn. Workers' Comp. Rev. Op. 17, 538 CRD-2-86 (June 26, 1989).
Remanded to conform with the Supreme Court's ruling in McGowan v. General Dynamics Corporation/Electric Boat Division, 210 Conn. 580 (1989)(per curiam) with respect to overlapping jurisdictions involved, Connecticut Workers' Compensation Act and federal Longshore and Harbor Workers' Compensation Act.

Brennan v. General Dynamics Corporation/Electric Boat Division, 6 Conn. Workers' Comp. Rev. Op. 155, 460 CRD-2-86 (April 28, 1989).
Remanded to conform with the Supreme Court's ruling in McGowan v. General Dynamics Corp./Electric Boat Division, 210 Conn. 580 (1989)(per curiam). Overlapping jurisdictions, Conn. Workers' Comp. Act and federal Longshore and Harbor Workers' Comp. Act.

Falcigno v. Joseph Feldman, Inc., 6 Conn. Workers' Comp. Rev. Op. 88, 733 CRD-3-88-5 (January 13, 1989).
See also, **Falcigno**, § 31-294c. Remanded. Jurisdictional issues raised.

Todd v. Jazlowiecki, 6 Conn. Workers' Comp. Rev. Op. 9, 493 CRD-6-86 (August 26, 1988), **no error**, 20 Conn. App. 805 (1989)(per curiam).
Recusal denied where both sides alleged previous contacts with the trial commissioner. See also, **Todd**, § 31-294d, § 31-298.

Faraci v. Connecticut Light and Power Co., 5 Conn. Workers' Comp. Rev. Op. 160, 508 CRD-2-86 (August 10, 1988), **no error**, 211 Conn. 166 (1989).
Commissioner had no jurisdiction to hear matter alleging the unconstitutionality of § 31-308(d)'s prohibition of awards for scars resulting from spinal surgery.

Matey v. Dember, 5 Conn. Workers' Comp. Rev. Op. 104, 516 CRD-5-86 (June 14, 1988), **appeal dismissed**, 210 Conn. 626 (1989)(per curiam), **aff'd in part and rev'd in part**, 256 Conn. 456 (2001).
Commissioner lacks jurisdiction to decide whether a claim was timely filed against an estate where conclusion dependent upon probate law. Appeal to Supreme Court initially dismissed as premature pending resolution of further evidentiary proceedings. Supreme Court later held that, though workers' compensation claims are categorically subject to § 45a-395 C.G.S. (the probate nonclaim statute), a commissioner has jurisdiction under § 31-355 to enter an award against an employer's estate *for the purpose of establishing the Second Injury Fund's liability* even if the claim is barred by the nonclaim statute. CRB thus had jurisdiction to enter award against estate as prerequisite to ordering fund to make payments. Subsequent decisions at Matey, 1189 CRD-5-91-3 (April 5, 1991), § 31-301. Appeal procedure, Matey, 3153 CRB-5-95-8 (January 10, 1997), aff'd in part and rev'd in part, 256 Conn. 456 (2001), § 31-301. Appeal procedure, § 31-315, § 31-355(a), Matey, 3848 CRB-7-98-6 (July 7, 1999), aff'd in part and rev'd in part, 256 Conn. 456 (2001), § 31-355(b), Matey, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), appeal dismissed for failure to comply with Supreme Court's directive, 85 Conn. App. 198 (2004).

DeLorenzo v. United Autoworkers, 5 Conn. Workers' Comp. Rev. Op. 31, 400 CRD-1-85 (April 6, 1988).
Subject matter jurisdiction will not be determined solely on whether there was a Connecticut contract of employment.

Austin v. Roy Brothers, Inc., 4 Conn. Workers' Comp. Rev. Op. 115, 342 CRD-6-84 (October 19, 1987).
In determining jurisdiction other factors besides the place of employment contract should be considered.

Repasi v. Jenkins Brothers, 4 Conn. Workers' Comp. Rev. Op. 82, 227 CRD-4-83 (June 11, 1987), **dismissed on other grounds**, 16 Conn. App. 121 (1988), **cert. denied**, 209 Conn. 817 (1988).
Commissioners do not have jurisdiction to determine constitutionality of statutes.

Thomas v. Carpenter Technology Corp., 2 Conn. Workers' Comp. Rev. Op. 127, 247 CRD-4-83 (May 13, 1985), **cert. denied**, 198 Conn. 804 (1986).
Commissioner vested with broad powers to carry out act including powers to secure evidence.

Sullivan v. Northwind Energy Insulators, Inc., 2 Conn. Workers' Comp. Rev. Op. 12, 146 CRD-4-82 (May 16, 1983), **no error**, 2 Conn. App. 689 (1984), **cert. denied**, 195 Conn. 801 (1985).
Where commissioner issued a finding and award after claimant initiated a writ of mandamus seeking a hearing on his motion to disqualify the commissioner, the issuance of the award was construed as a denial of the motion.

Baker v. Colt Industries, 2 Conn. Workers' Comp. Rev. Op. 4, 106 CRD-1-81 (May 13, 1983).
Compensation Review Division has no jurisdiction to rule on a negligence claim that employer failed to provide prompt medical attention.

Sec. 31-279(c). Employer sponsored plan for medical care and treatment.

Byrd v. Bechtel/Fusco, 4765 CRB-2-03-12 (December 17, 2004).
Claimant had compensable ankle injury. Medical care plan physicians recommended treatment for back, knee, hips due to effects of injury. Respondent contested liability for treatment. Held: Trial commissioner had jurisdiction to decide whether other symptoms were compensable sequelae of ankle injury. Issue of whether other body parts were related to ankle injury goes beyond utilization review process of Admin. Reg. § 31-279-10(e). See, **Byrd**, § 31-301. Appeal procedure, § 31-301. Factual findings.

Figueroa v. Rockbestos Co., 4633 CRB-1-03-2 (July 20, 2004).
CEO of medical care plan denied surgery pursuant to dispute resolution review under § 31-279-10(f). On review of that decision, trial commissioner found it unreasonable. CRB reversed and remanded for further proceedings. Trier had improperly considered additional medical evidence that had not yet been submitted to utilization review

process, and had relied on CEO's lack of medical training as basis for finding decision unreasonable. Board explained that regulations do not require CEO to have medical training. However, trier may consider CEO's relationship with employer or insurer, along with his track record in reviewing decisions, in determining whether CEO may be predisposed to particular outcomes. Board expressed concern that CEO/decision-maker here had been previously involved in case as advocate for employer.

Byrd v. Bechtel/Fusco, 4656 CRB-2-03-4 (July 14, 2004).
Claimant who had suffered compensable ankle injury alleged that medical care plan administrators did not comply with applicable law and regulations, and sought finding by trial commissioner that such noncompliance led to denial of treatment. Trier bifurcated proceedings, splitting issue of compensability of back, hip and knee symptoms off for separate resolution, while noting that claimant was neither seeking the specific medical treatment that had been denied pursuant to the utilization review process, nor was he appealing decision of a medical plan CEO pursuant to Admin. Reg. § 31-279-10(f). Trier held that request for review of respondents' conduct in administering medical care plan encroached on chairman's statutory authority to approve medical care plans. Proper avenue for relief was to submit allegations in writing to chairman for review and investigation. CRB affirmed. Medical care plan statute and regulations do not suggest that trial commissioner should become involved in oversight of medical care plan's operation. As respondents were entitled to contest compensability of alleged injuries to additional body parts, claimant could not yet allege that treatment for those injuries had been denied due to malfunctions in plan. Trial commissioner lacks jurisdiction to consider remaining complaint regarding operation of plan, which lies with chairman under § 31-279, § 31-280 and § 31-279-10. Board also explained in dicta that general procedures set forth in Administrative Procedure Act (§ 4-182 C.G.S.) would apply to such complaints filed with chairman. See also, **Byrd**, § 31-278, § 31-280 C.G.S.

Doherty-Clements v. Yale-New Haven Hospital, 4548 CRB-3-02-7 (October 27, 2003).
Medical care plan provided that eligible employees (i.e., employees who have suffered injuries arising out of and in course of employment) who resided at least fifteen miles outside of Connecticut had option of treating outside plan network. CRB held that this provision applied to claimant, who had moved to Texas prior to seeking out-of-network care. Thus, trial commissioner had jurisdiction to determine whether claimant's treatment was reasonable and necessary pursuant to § 31-294d. Utilization review procedures of Admin. Reg. § 31-279-10 did not apply. As plan did not specify that claimant must notify employer when making choice to treat outside plan, she could not be penalized for having failed to do so. Trier's determination that surgery was reasonable and his retroactive authorization of payment was affirmed by CRB.

Gonzalez v. Coca-Cola Bottling Co. of New York, 4284 CRB-8-00-8 (September 13, 2001).
Where employer refused to authorize initial treatment at Industrial Health Care due to claimant's failure to report injury to employer in writing, trier had authority under § 31-279(c) to authorize payment of compensation to claimant even though he initially treated

with a doctor outside the medical plan. Moreover, medical care plans do not begin to play a role in claimant's choice of treaters until the subscribing employer accepts responsibility for providing initial treatment. See also, **Gonzalez**, § 31-294d.

Trimachi v. State/Workers' Compensation Commission, 3749 CRB-1-97-12 (August 25, 1999).
See also, **Trimachi**, § 31-294d, § 31-307.

Coles v. Star, Inc., 16 Conn. Workers' Comp. Rev. Op. 67, 3239 CRB-7-95-12 (October 25, 1996).
On appeal to CRB, respondents contested the trial commissioner's decision to authorize the claimant to treat with a physician who was not in the approved medical care plan's list of authorized treaters. CRB remanded the matter to the trial commissioner for a formal hearing and decision because without a transcript or findings of fact, it was unable to engage in meaningful review and could not properly consider this appeal in accordance with § 31-301 C.G.S. See also, **Coles**, § 31-301. Appeal procedure.

Sec. 31-279-2. Attendance at hearings.
[Administrative Regulation]

Rindos v. J.F. Barrett & Sons, 3188 CRB-3-95-8 (February 27, 1997).
The trial commissioner dismissed claimant's request for benefits due to her failure to appear at a scheduled formal hearing and prosecute her claim. Claimant alleged that she notified her attorney that she could not attend the hearing because she had to report to work the day of the scheduled hearing, claimant's counsel notified opposing counsel the day before the scheduled hearing and claimant's counsel requested a continuance at the start of the formal hearing. CRB held it was within the trial commissioner's discretion to deny the claimant's request for a continuance.

Sec. 31-279-3. Request for continuance.
[Administrative Regulation]

Rodrigues v. American National Can, 4329 CRB-7-00-12 (January 2, 2002).
Board found no error in trier's denial of claimant's request for continuance, where claimant (acting pro se) requested it during formal hearing in order to procure medical reports to counter independent medical examiner's opinion that he was capable of light duty work and had reached MMI. Claimant should have procured such reports prior to formal hearing. See also, **Rodrigues**, § 31-301-9, § 31-296. Voluntary agreements (discontinuance of payments); 31-298. Prior decision at Rodrigues, 4043 CRB-5-99-4 (July 26, 2000), § 31-301. Appeal procedure, Factual findings, § 31-308a.

Stalker v. Derby, 4093 CRB-4-99-7 (August 10, 2000).
Trier did not err in denying claimant's request for continuance of formal hearing to allow time to subpoena records from an alleged concurrent employer, specifically copies of all of the checks paid to the claimant. Board found no merit to the contention that the

denial of the continuance constituted error, as it has consistently held that it is within the broad discretion of the commissioner to grant or deny a continuance, and such a decision is virtually unreviewable. Plus, CRB noted that claimant had ample opportunity to obtain said evidence prior to the close of the formal hearing, and that said evidence would not be likely to affect the trial commissioner's determination on the merits. See also, **Stalker**, § 31-310.

Saleh v. Poquonock Giant Grinder Shop, 4005 CRB-1-99-3 (March 13, 2000).
Board found no merit to respondent's contention that the trial commissioner improperly denied its request to continue the formal hearing so that it could depose claimant's treating physician. CRB has consistently held that it is within the broad discretion of the commissioner to grant or deny a continuance, and such a decision is virtually unreviewable. Respondent had ample opportunity to depose the doctor prior to the formal hearing. See also, **Saleh**, § 31-298, § 31-300, § 31-301-9, § 31-315.

Flemmings v. Waveny Care Center, Inc., 3963 CRB-7-99-1 (March 2, 2000).
CRB found no abuse of discretion in trial commissioner's granting of claimant's request for continuance in order to procure supporting medical documentation. (*Frankl, C*., **dissenting**) It was an abuse of discretion to grant the continuance where claimant had ample opportunity to prepare her case regarding a 1995 injury prior to the formal hearing in 1998. See also, **Flemmings**, § 31-301, Factual findings.

Martinez v. Gordon Rubber & Packaging Co., 3828 CRB-5-98-6 (July 22, 1999).
Board found no abuse of discretion on the part of the trial commissioner in denying the respondent's request for a continuance in order to depose the claimant's treating physician. Prior decision at Martinez, 3348 CRB-4-96-6 (May 4, 1998), § 31-307b.

Grimes v. State/Dept. of Mental Health and Addiction Services, 3832 CRB-4-98-6 (July 22, 1999).
Board dismissed claimant's late appeal, and noted that even if it were to consider the merits of the appeal, it was within the broad discretion of the trial commissioner to deny the claimant's request for a continuance of the formal hearing. See also, **Grimes**, § 31-301. Appeal procedure.

Liano v. Bridgeport, 3199 CRB-4-95-10 (March 25, 1997).
It is within the broad discretion of the commissioner to grant or deny a continuance, and such a decision is virtually unreviewable. CRB found neither an abuse of discretion on the part of the trial commissioner in denying the claimant's request for a continuance, nor that the claimant was denied due process. See, **Liano**, § 31-298, § 31-307, § 31-296 Voluntary agreements (discontinuance of payments). Subsequent decisions at Liano, 3561 CRB-4-97-3 (June 3, 1998), rev'd in part, 55 Conn. App. 75 (1999), cert. denied, 252 Conn. 909 (1999), § 31-300; Liano, 3447 CRB-4-96-10 (January 6, 1998), aff'd, 51 Conn. App. 905 (per curiam), cert. denied, 248 Conn. 907 (1999), § 7-433c; companion decision at Liano, 3299 CRB-4-95-10 (March 25, 1997), § 31-294c, § 31-297, § 31-301. Factual findings. Prior decision at Liano, 14 Conn. Workers' Comp. Rev. Op. 201, 2033 CRB-4-94-5 (July 25, 1995), appeal and cross appeal dismissed, lack of final judgment,

A.C. 15082 (June 6, 1996), cert. denied, 238 Conn. 906 (1996), § 7-433b, § 31-300, § 31-310.

Hirth v. United Parcel Service, 12 Conn. Workers' Comp. Rev. Op. 353, 1497 CRB-1-92-8 (August 2, 1994).
Trier's refusal to grant continuance so that respondents would have the opportunity to depose physician and admit deposition into evidence upheld on appeal. Decision to grant or deny a request for a continuance is discretionary. CRB held respondents' due process was not violated as there existed sufficient time for discovery prior to the trial date which notice indicated the trial would conclude on that scheduled date. See also, **Hirth**, § 31-298 and § 31-301. Appeal procedure.

Sec. 31-279-9. Obligations of attending physician.
[Administrative Regulation]

Stonkus v. Foster Wheeler, 4194 CRB-4-00-2 (May 1, 2001).
CRB affirmed trier's denial of claimant's request for payment for medical report fee. It was within commissioner's discretion to determine under § 31-279-9 whether medical report constituted a "routine progress" report, or whether it constituted a detailed report requiring a significant expenditure of time. See also, **Stonkus**, § 31-308(b).

Sec. 31-280. Chairman's powers and duties.

Byrd v. Bechtel/Fusco, 4656 CRB-2-03-4 (July 14, 2004).
See, **Byrd**, § 31-279(c), **Byrd**, § 31-278.

Rogers v. C.N. Flagg Power, 3809 CRB-6-96-5 (June 23, 2000).
Claimant appealed to CRB from Chairman's transfer of his case from the Third District to the Sixth District. Respondents had requested transfer on the basis that the two commissioners acting for the Third District had heard evidence in the case. The Chairman explained his reasons for the transfer, specifically that the two commissioners in question had already presided over informal hearings and/or pre-formal hearings in claimant's case. CRB concluded that respondents' request for transfer necessarily involved a possible claim of bias. Therefore, board explained that it was necessary that individual commissioners decide whether to recuse themselves. See also, **Rogers**, § 31-301. Appeal procedure.

Connair v. City of New Haven, 3450 CRB-3-96-10 (February 13, 1998), **aff'd**, 55 Conn. App. 129 (1999), **cert. denied**, 251 Conn. 922 (1999).
Medical practitioner sought hearing before commissioner on medical bill disputes for services provided between July 1, 1990 and April 1, 1994. Trier denied respondent's Motion to Dismiss that action. Held: By Resolution and Order, and consistent with the powers granted to the Chairman in § 31-280(11), (23), and (26), as well as Admin. Regs. § 31-280-2 and -3, the Chairman implemented an alternate resolution procedure for such prior claims. The doctor was not entitled to disregard that procedure, as the intent behind

the amendments to § 31-280 supports the passage of that Resolution, which was not complied with here. Denial of Motion to Dismiss reversed. Appellate Court affirmed, stating that chairman acted pursuant to lawful delegation of power, and change could be retroactively applied, as it was merely procedural.

Cummings v. Twin Tool Manufacturing, 3395 CRB-1-96-8 (July 15, 1997), **aff'd**, 48 Conn. App. 914 (1998)(per curiam).
The Chairman has the statutory authority to assign the claimant's request for an emergency pre-formal hearing to another district based upon administrative considerations. Thus, CRB dismissed claimant's appeal from Chairman's letter regarding assignment of hearing. See subsequent decision at Cummings, 3641 CRB 1-97-6 (August 4, 1997), aff'd, 48 Conn. App. 915 (1998)(per curiam).

Baigert v. Fosdick Corporation, 13 Conn. Workers' Comp. Rev. Op. 78, 1784 CRB-8-93-7 (January 20, 1995).
Chairman's directive postponing medical provider's request for an informal hearing indefinitely was proper where there was no evidence an underlying workers' compensation claim existed. (*Arcudi, C.,* **dissenting**) (Chairman does not have statutory power to deny medical provider due process. Chairman's administrative powers may have been expanded by 1991 amendments to the workers' compensation act, however, adjudicatory powers were left undisturbed). See also, **Baigert**, § 31-294d, and § 31-297.

Cookson v. G.R. Cummings Company, 13 Conn. Workers' Comp. Rev. Op. 76, 1796 CRB-8-93-7 (January 20, 1995).
Chairman, acting for the Eighth District, erred in ordering an indefinite postponement of medical provider's request of an informal hearing where it appears a workers' compensation claim exists. See also, **Cookson**, § 31-294d, and § 31-297.

Dixon v. United Illuminating Co., 2026 CRB-3-94-4, 36 Conn. App. 150 (1994), **order of transfer vacated and matter remanded**, 232 Conn. 758 (1995).
Legislature in 1980 and 1991 increased administrative powers and duties of the chairman. Pursuant to § 31-280 the chairman directed the transfer of this claim from one district to another following a verbal request by a representative of respondent employer who claimed the employer was being treated unfairly in the district where proceedings were being held. Following the chairman's directive the claimant filed a Motion for Hearing on Order of Transfer and Motion to Stay. The chairman denied said Motion. The CRB reserved questions of law to the Appellate Court; thereafter, the Appellate Court reserved the matter to the Supreme Court. Supreme Court acted on CRB's reservation of questions and held: (1) The chairman has the power to transfer cases from one district to another without a hearing under his authority set out in § 31-280. However, that authority is not unlimited where that power was exercised on the basis of a claim of bias; the chairman's transfer of the case was improper. The party claiming bias should have raised the issue of disqualification by moving that the trial commissioner disqualify himself and if that motion was denied, appeal to the CRB. (2) The CRB lacks appellate jurisdiction over appeals concerning the exercise of the chairman's administrative powers under § 31-280. See also, **Dixon**, § 31-324, Reservation to appellate court.

Sec. 31-280-3. Practitioner Fee Schedule/Dispute Resolution Panel.
[Administrative Regulation]

Hall v. UTC/Pratt & Whitney, 15 Conn. Workers' Comp. Rev. Op. 103, 2146 CRB-8-94-9 (December 22, 1995).
The medical care provider filed a petition for review from the decision of the Ad Hoc Dispute Resolution Panel regarding a determination of disputed medical fees. The panel's decision did not contain any findings of fact, nor did it state a reason for the conclusion that only seven of the sixteen office visits were reasonable and customary. Accordingly, as the CRB is unable to properly review the panel's decision, the case was remanded in order for a *de novo* formal hearing to be held by a new panel pursuant to § 31-280-3.

Sec. 31-283a. Division of Workers' Rehabilitation.

Zullo v. Caron Roofing Company, Inc., 12 Conn. Workers' Comp. Rev. Op. 357, 1634 CRB-4-93-2 (August 2, 1994).
See, **Zullo**, § 31-275(1).

Shallcross v. New London, 8 Conn. Workers' Comp. Rev. Op. 150, 935 CRD-2-89-10 (September 20, 1990).
Section 31-283a benefits payable under § 7-433c. See, Felia v. Westport, 214 Conn. 181 (1990), aff'd, 7 Conn. Workers' Comp. Rev. Op. 84, 703 CRD-4-88-3 (September 25, 1989) and Deschnow v. Stamford, 214 Conn. 394 (1990), aff'd, 7 Conn. Workers' Comp. Rev. Op. 86, 706 CRD-7-88-3 (September 25, 1989). Claimant entitled to same benefits as available under Chapter 568. See also, **Shallcross**, § 31-308(c), § 31-284b.

Cole v. Norwalk Wilbert Vault Co., 4 Conn. Workers' Comp. Rev. Op. 155, 330 CRD-2-84 (February 26, 1988).
See, **Cole**, § 31-275(1).

Sec. 31-283b. Financing of Division of Workers' Rehabilitation.

Mazzone v. Norwalk, 5 Conn. Workers' Comp. Rev. Op. 111, 482 CRD-7-86 (June 21, 1988).
DWR must determine if repayment of subsistence stipend should be ordered where stipend was paid while claimant was receiving temporary total benefits.

Sec. 31-284(a). Defense(s) to liability. (Wilful and serious misconduct.)

Bilsky v. Ansonia Copper & Brass, 4703 CRB-5-03-8 (August 23, 2004).
See, **Bilsky**, § 31-275(16) (possible role of horseplay in workplace slapping incident).

Rego v. A1 Auto Detailing, 4704 CRB-8-03-7 (August 5, 2004).
CRB affirmed trial commissioner's determination that when claimant moved a dangerous vehicle this act did not constitute horseplay. See also, **Rego** § 31-301. Factual findings.

St. Germaine v. Buckingham Restaurant & Pizza, Inc., 4343 CRB-8-01-1 (January 10, 2002).
Board affirmed trier's conclusion that claimant's accident was caused by intoxication, and non-compensable. While employed as a chef, claimant became intoxicated and fell while carrying a vat of hot oil across a slippery kitchen floor. In his appeal, he argued that he was not guilty of wilful and serious misconduct. Board explained that wilful misconduct exclusion is separate from intoxication exclusion, and therefore an injury caused by intoxication need not amount to wilful and serious misconduct.

Mason v. Dale Construction, Inc., 4354 CRB-3-01-1 (November 7, 2001).
Trier denied claimant's motion to preclude, which sought to keep respondents from presenting evidence regarding his alleged intoxication at time of alleged injury on ground that intoxication defense had not been listed on Form 43. Trier ruled that question of intoxication at time of injury implicated Commission's jurisdiction, and thus concluded that the issue should be presented and decided. However, CRB observed that another pending issue was whether there existed an employer-employee relationship (i.e. whether the claimant was acting as an independent contractor), which must be decided first as it implicates subject matter jurisdiction. In contrast, intoxication issue did not involve subject matter jurisdiction, but rather raised an affirmative defense. CRB further explained that issue of whether respondents could present evidence of intoxication was not one of preclusion. See also, **Mason**, § 31-298, § 31-301. Appeal procedure, § 31-294c. Subsequent decision at Mason, 4476 CRB-3-01-2 (April 28, 2003).

Burse v. American International Airways, Inc., 3986 CRB-2-99-3 (March 3, 2000), **rev'd**, 262 Conn. 31 (2002).
CRB affirmed trier's finding that claimant, who suffered serious injuries from decompression sickness, did not commit willful misconduct by increasing the altitude of the unpressurized aircraft he was piloting above 10,000 feet, and ordering the crew to continue on to their scheduled destination wearing oxygen masks. Primary issue was a question of fact, and the commissioner found the claimant's testimony most credible. CRB was not in a position to find as a matter of law that the claimant's decision-making as a pilot was so egregious as to constitute misconduct. Supreme Court ultimately reversed decision for lack of subject matter jurisdiction over claim. Prior decision at Burse, 3480 CRB-2-96-12 (November 7, 1997), dismissed for lack of a final judgment, A.C. 17825 (January 14, 1998), rev'd, 262 Conn. 31 (2002)(Supreme Court held that CRB and trial commissioner improperly found that subject matter jurisdiction over claim existed in Connecticut, as contacts were legally insufficient), § 31-278.

King v. New Britain, 3703 CRB-6-97-10 (January 12, 1999).
Respondent offered no evidence to support affirmative defense of willful misconduct. See also, **King**, § 7-433, § 31-294c.

Paternostro v. Arborio Corp., 3659 CRB-6-97-8 (September 8, 1998), **aff'd**, 56 Conn. App. 215 (1999), **cert. denied**, 252 Conn. 928 (2000).
Trial commissioner found that decedent was intoxicated and was attempting to cross limited access highway on foot against employer's rules when he was struck by a car and killed. Trier ruled that this constituted willful and serious misconduct, and dismissed dependents' claim for benefits. CRB affirmed. Toxicological analysis of decedent showed that his blood alcohol content was .18 at time of death, which occurred shortly after the accident. Expert testified that this constitutes intoxication pursuant to AMA guidelines. Commissioner was entitled to find that these circumstances amounted to willful misconduct. Trier did not need to find that decedent's misconduct or intoxication was the sole proximate cause of the accident; Connecticut law uses substantial factor test to determine necessary causal connection in workers' compensation cases.

Hurd v. United Methodist Homes, 3358 CRB-4-96-5 (April 1, 1998).
CRB affirmed trial commissioner's determination that claimant's depression and attempted suicide were compensable because they were caused by her prior compensable back injury. The trial commissioner's rejection of the respondents' defense of willful misconduct indicates that he did not accept as a factual matter that the claimant's conduct constituted willful misconduct. It was within the discretion of the trial commissioner to determine as a factual issue whether the claimant's conduct constituted willful misconduct; he was certainly not required to find as a matter of law that such actions amounted to willful and serious misconduct under § 31-284(a). (*Frankl, C.*, **dissenting**) Claimant's conduct constituted willful misconduct and thus should not have been found compensable. See also, **Hurd**, § 31-301. Factual findings.

Swaggerty v. Mattie's Service Station, 3378 CRB-6-96-7 (February 3, 1998).
See, **Swaggerty**, § 31-298.

Ogdon v. Treemasters, Inc., 3071 CRB-4-95-6 (December 20, 1996).
See, **Ogdon**, § 31-275(9).

Kish v. Nursing and Home Care, 16 Conn. Workers' Comp. Rev. Op. 83, 3068 CRB-2-95-6 (November 12, 1996), **aff'd**, 47 Conn. App. 620 (1998), **aff'd**, 248 Conn. 379 (1999).
See, **Kish**, § 31-275(1).

Federchuck v. UTC/Pratt & Whitney, 15 Conn. Workers' Comp. Rev. Op. 476, 2298 CRB-2-95-2 (September 16, 1996).
Willful and serious misconduct is an affirmative defense, and respondents had burden of proving those allegations. Where commissioner rejected corrected findings offered by respondents on that issue, it indicated that he did not believe that the claimant's conduct, although questionable, was of a sufficiently grave character to warrant a finding of willful misconduct. See also, **Federchuck**, § 31-301. Factual findings and Appeal procedure.

Simmons v. Philip Bonhotel, d/b/a Bonhotel's Lawn Maintenance, 13 Conn. Workers' Comp. Rev. Op. 234, 1778 CRB-5-93-7 (April 13, 1995), **aff'd**, 40 Conn. App. 278 (1996).
CRB affirmed denial of benefits where alleged injury at work occurred due to horseplay initiated by claimant. See also, **Simmons**, § 31-298, § 31-294c, and § 31-275(1).

Colon v. Savin Brothers, Inc., 12 Conn. Workers' Comp. Rev. Op. 299, 1574 CRB-1-92-11 (June 13, 1994), **aff'd**, 37 Conn. App. 912 (1995)(per curiam), **cert. denied**, 234 Conn. 903 (1995).
Compensation denied where claimant's injuries to his shoulders were the result of his intentional interference with a police officer which constituted willful and serious misconduct.

Peddle v. Finish Line Cafe, 12 Conn. Workers' Comp. Rev. Op. 27, 1396 CRB-2-92-2 (January 18, 1994).
Trier found claimant's involvement in a fight at a cafe where she sustained injuries to her knee, neck, elbow and head were the result of her own intentional acts. Further, trier found no employer-employee relationship existed at the time claimant sustained her injuries. See also, **Peddle**, § 31-294c, § 31-275(1), § 31-301-9. Additional evidence.

Nolan v. Brennan Concrete Corporation, 11 Conn. Workers' Comp. Rev. Op. 224, 1362 CRD-7-91-12 (November 4, 1993), **dismissed for lack of final judgment**, A.C. 13041 (January 5, 1994).
Reversed and remanded. Trier's conclusion claimant's injury was the result of willful and serious misconduct failed to address the mental state or intent of the injured employee (claimant) in engaging in the misconduct. Discussion of personal injury and Connecticut's rule in determining whether a workplace assault between fellow employees is considered to arise out of the employment and whether recovery will be denied pursuant to § 31-284(a) because the injury was caused by willful and serious misconduct. See also, **Nolan**, § 31-275(1) and § 31-275(16)[formerly 31-275(8)].

Muldoon v. Homestead Insulation, 10 Conn. Workers' Comp. Rev. Op. 255, 1226 CRD-4-91-5 (January 13, 1993), **rev'd**, 33 Conn. App. 695 (1994), **rev'd**, 231 Conn. 469 (1994), **aff'd on remand**, 37 Conn. App. 266 (1995)(per curiam).
Alleged willful misconduct in continuing to work where there was asbestos exposure after being diagnosed with pulmonary asbestosis due to employment related asbestos exposure dismissed. See also, **Muldoon**, § 31-275(1), § 31-275(15), § 31-296, § 31-299b, § 31-315. Subsequent decisions.

Crochiere v. Enfield/Board of Education, 10 Conn. Workers' Comp. Rev. Op. 165, 1069 CRD-1-90-7 (August 27, 1992), **aff'd**, 227 Conn. 333 (1993).
Accusation that claimant, a music teacher, inappropriately touched a female student which resulted in his being terminated from employment does not prove willful misconduct where trier found and evidence supports mental stress claim arose out of and in the course of employment and was not the result of willful misconduct. Also, CRB dismissed respondent's claim that the trial commissioner was collaterally estopped from inquiring into claimant's alleged willful misconduct on the basis that respondent

employer's termination proceedings had decided that issue. Additionally, as a collateral estoppel defense was not raised at the trial level the issue need not be considered an appealable issue. See also, **Crochiere**, § 31-275(1), § 31-294c, § 31-298, § 31-301. Factual findings and Appeal procedure.

Richard v. Catholic Mutual Relief Society of America, 9 Conn. Workers' Comp. Rev. Op. 272, 1067 CRD-1-90-7 (December 6, 1991).
Trier's conclusion that respondents failed to sustain their burden of proof as to the affirmative defense of intoxification affirmed as there were facts found from which the trier could have concluded that intoxification did not cause the automobile accident. See, Corcoran v. Corcoran Moving and Storage, Inc., 9 Conn. Workers' Comp. Rev. Op. 237, 1030 CRD-5-90-6 (October 31, 1991) reviewing Liptak v. State, 176 Conn. 320, 322 (1978). See also, **Richard**, § 31-301. Appeal procedure.

Corcoran v. Corcoran Moving and Storage, Inc., 9 Conn. Workers' Comp. Rev. Op. 237, 1030 CRD-5-90-6 (October 31, 1991).
CRD affirmed trier's factual finding that claimant's vehicular accident while trying to avoid striking a deer, which accident rendered claimant a paraplegic, was not caused by claimant's intoxication. Claimant was within the scope of his employment at the time of the accident.

Johnson v. West Haven, 8 Conn. Workers' Comp. Rev. Op. 56, 792 CRD-3-88-12 (March 21, 1990), **no error**, 23 Conn. App. 818 (1990).
Where evidence below is conflicting, we will not disturb the commissioner's finding that injuries sustained to police officer were not a result of his own willful and serious misconduct. See also, **Johnson**, § 31-275(1).

Daniels v. Hartford, 5 Conn. Workers' Comp. Rev. Op. 7, 459 CRD-1-86 (March 23, 1988), **no error**, 17 Conn. App. 819 (1988)(per curiam), **cert. denied**, 210 Conn. 809 (1989).
Burden of proof that injury was the result of intoxication is an affirmative defense and is on the respondents.

Sec. 31-284(b). Self-insurance.

Audi v. Blakeslee Arpaia Chapman, 4624 CRB-3-03-12, 4311 CRB-3-00-10 (February 10, 2004).
Trial commissioner did not have authority to levy sanctions and penalties under § 31-288 and § 31-300 against third-party administrator rather than self-insured employer, even though culpable conduct was that of administrator's employee. Self-insured employer has special duty to ensure injured workers are properly compensated. Independent contract with claims administrator to manage cases does not relieve self-insured employer of accountability for undue delay in payment of claims. Privilege to self-insure brings with it responsibility to properly compensate employees. If employer believes administrator should be liable for damages caused by breach of contract, claim must be brought via civil suit. See also, **Audi**, § 31-278, § 31-288, § 31-300. See prior

decision Audi, 3418 CRB-3-96-9 (August 4, 1997), § 31-349 and Audi, 4151 CRB-3-99-11, 4234 CRB 3-00-5 (June 26, 2001), § 31-296, § 31-298, § 31-301-9, § 31-307, § 31-315.

Anderson v. Colt Manufacturing Co., Inc., 14 Conn. Workers' Comp. Rev. Op. 240, 1930 CRB-1-93-12 (August 15, 1995).
Self-insured Coltec sold Firearms Division, which subsequently became Colt's; Colt's agreed to assume administration of Coltec workers' compensation claims. Colt's (not self-insured) subsequently went bankrupt; Coltec argued that liability for claims had been validly transferred to Colt's, and should now pass to Second Injury Fund in light of bankruptcy. Coltec also made estoppel argument based on involvement of state Treasurer in purchase of Firearms Division. Held: self-insureds cannot permanently relieve themselves of liability for existing claims. Commission does not take self-insurance privilege lightly, and safeguards regarding financial security of self-insureds would be compromised if transfers of liability were allowed. Although contract may be valid as between Coltec and Colt's, Coltec is not completely exonerated from liability under these circumstances. Other arguments of Coltec regarding estoppel, bankruptcy are moot.

Sec. 31-284b. Continued insurance benefits.

Scott v. Bridgeport, 4637 CRB-4-03-2 (February 24, 2004).
CRB remanded award of out of pocket medical expenses for further proceedings regarding adequateness of award. See also, **Scott** § 31-294c.

Weymouth v. East Windsor-Police Department, 4550 CRB-1-02-7 (April 3, 2003).
See, **Weymouth**, § 31-306 (survivors' benefits include entitlement to continued health insurance under § 31-284b).

Krajewski v. Atlantic Machine Tool Works, Inc., 4500 CRB-6-02-3 (March 7, 2003).
Statute inapplicable to claimant who worked for private employer, and who sought reimbursement for premiums paid by his wife. See, **Krajewski**, § 31-278, § 31-290a, § 31-301. Appeal procedure, § 31-301. Factual findings, § 31-301-9, § 31-312, § 31-313, § 31-315; prior decisions at Krajewski, 15 Conn. Workers' Comp. Rev. Op. 44, 2120 CRB-6-94-8 (November 28, 1995), § 31-308a; Krajewski, 11 Conn. Workers' Comp. Rev. Op. 54, 1387 CRD-6-92-2 (April 1, 1993), § 31-290a.

Wilson v. Stamford, 4506 CRB-7-02-3 (March 5, 2003), **aff'd**, 81 Conn. App. 339 (2004), **cert. denied**, 268 Conn. 918 (2004).
CRB reversed the trial commissioner's award of benefits pursuant to § 31-284b during period claimant was receiving medical treatment. CRB relied on its prior opinion in Graham v. State/Univ. of Conn. Health Center, 4418 CRB-6-01-7 (July 23, 2002) in which it held that § 31-284b benefits need only be paid during eligibility for indemnity benefits. Prior decision at Wilson, 3268 CRB-7-96-2 (November 7, 1997).

Graham v. State/Univ. of Conn. Health Center, 4418 CRB-6-01-7 (July 23, 2002).
Trier ruled that claimant who was injured in 1993 was entitled to continuing insurance benefits as long as he was receiving medical treatment for compensable wrist injury, despite no longer being entitled to weekly compensation benefits, based on definition of "compensation" in § 31-275(4). CRB reversed. In light of Appellate Court decisions in Kelly v. Bridgeport, 61 Conn. App. 9 (2000), cert. denied, 255 Conn. 933 (2001), and Auger v. Stratford, 64 Conn. App. 75 (2001), along with legislative history indicating that Public Act 91-32 was not intended to affect substantive law, board ruled that insurance coverage need only be continued during the period of time that a claimant is eligible to receive weekly compensation benefits.

Auger v. Stratford, 3944 CRB-4-98-12 (January 14, 2000), **rev'd**, 64 Conn. App. 75 (2001).
Claimant suffered 1990 compensable injury which was accepted by voluntary agreement. Specific award paid. Claimant was then awarded disability pension as a result of his injury and his inability to continue performing job as police officer. Respondent, which had been providing insurance under § 31-284b, unilaterally discontinued claimant's dental insurance, and began deducting health insurance premiums from his pension checks. Commissioner ruled that, as claimant's case remains open and active, he remains *eligible* to receive workers' compensation benefits, and thus remains entitled to § 31-284b coverage. CRB affirmed. Though trier misconstrued the law by suggesting that it was unnecessary to decide whether claimant continued to receive medical care, respondent never filed a Form 36 to discontinue claimant's insurance benefits as required by § 31-296. Thus, trier correctly ruled that claimant was entitled to coverage through the formal hearing date. (*Frankl, C.,* **dissenting**) Trier should have made factual findings regarding continued receipt of medical care. Form 36 procedure irrelevant in this case; matter should be remanded. Appellate Court followed its recent decision in Kelly v. Bridgeport, 61 Conn. App. 9 (2000), and ruled that "compensation payments" as used in § 31-284b(a) does not include payments for medical care. See also, **Auger**, § 31-300, § 7-433c, § 31-296 Voluntary agreements (discontinuance of payments).

Pascarelli v. Moliterno Stone Sales, 3925 CRB-4-98-11 (December 22, 1999).
Trier properly declined to award claimant § 31-284b benefits for retroactive period between date of injury and date of Supreme Court decision preempting statute's application to private employers. Law was essentially declared void ab initio by Court, and cannot be used as basis for an award even if claimant would have (incorrectly) received benefits prior to the Supreme Court's decision had his claim been administered without delay. Application of law to pension benefit and health insurance plans precluded. See also, **Pascarelli**, § 31-278, § 31-287. Prior decision at Pascarelli, 14 Conn. Workers' Comp. Rev. Op. 328, 2115 CRB-4-94-8 (September 15, 1995), aff'd, 44 Conn. App. 397, 400 (1997), cited at § 31-287, § 31-310.

Bailey v. State/Greater Hartford Community College, 3922 CRB-2-98-10 (November 30, 1999), **aff'd in part, rev'd in part**, 65 Conn. App. 592 (2001).
See, **Bailey**, § 31-300, § 31-307, § 31-294d, § 31-301. Factual findings. Prior decisions at Bailey, 3694 CRB-1-97-9 (January 12, 1999), aff'd in part, rev'd in part, 65 Conn. App. 592 (2001), § 31-298, § 31-301. Appeal procedure; Bailey, 15 Conn. Workers' Comp. Rev. Op. 433, 3152 CRB-5-95-8 (September 3, 1996), § 31-301, Appeal procedure, § 31-301, Factual findings.

Sansone v. Enfield, 3885 CRB-1-98-9 (November 18, 1999).
See, **Sansone**, § 31-306 (discussing applicability of § 31-284b to survivors receiving § 31-306 benefits); see also, **Sansone**, § 31-298.

Kelly v. Bridgeport, 3761 CRB-4-98-1 (March 11, 1999), **rev'd**, 61 Conn. App. 9 (2000), **cert. denied**, 255 Conn. 933 (2001).
Claimant suffered myocardial infarction in 1991, and received weekly benefits as per § 7-433c through March 1995. Claimant took disability retirement effective on date of injury, and continues to have prescription medication and semi-annual doctor's visits on account of heart condition paid by employer. Employer cancelled group health insurance in 1996, arguing that claimant no longer qualified under § 31-284b. Trial commissioner found that claimant was still receiving compensation benefits, and ordered respondent to reinstate insurance. CRB affirmed. Definition of "compensation payments" in § 31-284b includes medical benefits, based on definition of "compensation" in § 31-275(4), and fact that the taking of medication constitutes disability under § 7-433c for purpose of § 31-294c statute of limitations. Appellate Court reversed board on theory that definition of compensation in § 31-275(4) should not have been applied to this case, as at the time of the injury, said definition was located in § 31-293, and only applied to that particular statute. Court ruled that this case was controlled by Crocetto v. Lynn Development Corp., 223 Conn. 376 (1992). See also, **Kelly**, § 7-433c, § 31-275(4).

Zisk v. Consolidated School District/City of New Britain, 3705 CRB-6-97-10 (December 11, 1998).
CRB affirmed commissioner's ruling that the employer was not entitled to reimbursement from the Second Injury Fund for any sums paid to the claimant under § 31-284b after July 1, 1995, the effective date of P.A. 95-277 § 3. (*Miles, C.,* **dissenting**) For all the reasons stated in dissenting opinion in Badolato. See, Badolato v. New Britain, infra.

Badolato v. New Britain, 3704 CRB-6-97-10 (November 24, 1998), **aff'd**, 250 Conn. 753 (1999).
CRB affirmed commissioner's ruling that the legislature's repeal of § 31-349(e) in P.A. 95-277 § 3 repealed § 31-284b(d). Sec. 31-284b(d) permitted the Second Injury Fund's reimbursement of employers for payment of a claimant's group health, etc., benefits under § 31-284b. Section 31-349(e) (§ 31-349(b) at the time of claimant's injury) was the statute enabling the Fund to reimburse employers for § 31-284b payments after a claimant was on temp. total for a period of 104 weeks and was the procedural mechanism for reimbursement from the Fund. CRB held that P.A. 95-277 § 3's repeal of § 31-349(e) impliedly repealed the Fund's obligation to reimburse employers and that

the retrospective application of P.A. 95-277 § 3 was consistent with the intent of the legislature. (*Miles, C.,* **dissenting**) Date of injury rule should be applied and thus, the Fund's obligation to reimburse the employer should continue.

O'Neill v. Danbury, 3510 CRB-7-97-1 (March 31, 1998).
CRB affirmed commissioner's ruling that claimant was only entitled to the amount of life insurance benefits that he was receiving on the date of his injury rather than the amount that police officers were currently receiving under the collective bargaining agreement. Date of injury controls the extent of a claimant's benefits. Claimant's potential entitlement to a greater amount of life insurance under his disability retirement pension is outside the jurisdiction of this Commission. See also, **O'Neill**, § 7-433c.

Luce v. UTC/Pratt & Whitney, 3080 CRB-1-95-6 (December 16, 1996), **aff'd**, 47 Conn. App. 909 (1997)(per curiam), **aff'd**, 247 Conn. 126 (1998).
See, **Luce**, § 31-310.

Distiso v. Southington, 16 Conn. Workers' Comp. Rev. Op. 93, 3073 CRB-6-95-6 (November 13, 1996).
Trial commissioner held that the employer was required pursuant to § 31-284b to maintain continuing group health and life insurance for the claimant, a retired police officer, at the same amount and in the same manner as had been provided at the time of the injury. In support of its appeal, the employer contended that the employer should only be required to provide group health insurance coverage in an amount equivalent to that currently provided for active employees (employer had new policy requiring contribution from employees). CRB affirmed the trial commissioner's decision.

Hodgkins v. Southington, 16 Conn. Workers' Comp. Rev. Op. 96, 3074 CRB-6-95-5 (November 13, 1996).
Trial commissioner held that the employer was required pursuant to § 31-284b to maintain continuing group health and life insurance for the claimant, a retired fire fighter, at the same amount and in the same manner as had been provided at the time of the injury. In support of its appeal, the employer contended that the employer should only be required to provide group health insurance coverage in an amount equivalent to that currently provided for active employees (employer had new policy requiring contribution from employees). CRB affirmed the trial commissioner's decision.

Rodriguez v. Devcon Enterprises, Inc., 15 Conn. Workers' Comp. Rev. Op. 362, 2244 CRB-3-94-12 (June 28, 1996).
See, **Rodriguez**, § 31-310.

Shimko v. Ferro Corp., 13 Conn. Workers' Comp. Rev. Op. 255, 1744 CRB-7-93-5 (April 18, 1995), **rev'd**, 40 Conn. App. 409 (1996).
Because claimant worked for private employer, statute would be unconstitutional if applied to this case under Luis v. Frito-Lay, Inc., Supreme Court, Docket No. SC 14536 (order, April 27, 1993). See, Civardi v. Norwich, 231 Conn. 287, 298-99 n.14 (1994). See also, **Shimko**, § 31-308(a).

Haugh v. Leake & Nelson, 12 Conn. Workers' Comp. Rev. Op. 201, 1421 CRB-2-92-5 (March 15, 1994).
CRB lacks authority to modify trier's order denying payment of annuity and pension plan contributions as § 31-284b is preempted by federal ERISA legislation. See also, **Haugh**, § 31-300, § 31-301. Appeal procedure and § 31-307.

Civardi v. Norwich, 12 Conn. Workers' Comp. Rev. Op. 100, 1376 CRB-2-92-1 (February 28, 1994), **aff'd**, 231 Conn. 287 (1994).
Where claimant is a government employee, § 31-284b benefits are not pre-empted by ERISA. See also, Civardi, infra, and § 31-308a and § 31-349.

Civardi v. Norwich, 11 Conn. Workers' Comp. Rev. Op. 103, 1376 CRB-2-92-1 (May 17, 1993).
CRB initially reversed trier's award of § 31-284b benefits pursuant to Connecticut Supreme Court Order dated April 27, 1993, Luis v. Frito-Lay, Inc.; Almeida v. Frito-Lay, Inc.; Turcotte v. Frito-Lay, Inc., S.C. (14536). However, by Order issued May 20, 1993 the CRB vacated its May 17, 1993. Order and reinstated respondent's appeal.

Arsenault v. General Dynamics Corporation/Electric Boat Division, 11 Conn. Workers' Comp. Rev. Op. 92, 1579 CRB-2-92-12 (May 7, 1993).
See, Faria, infra.

Gramolini v. Ford, Bacon & Davis, 11 Conn. Workers' Comp. Rev. Op. 91, 1552 CRB-3-92-11 (May 7, 1993).
See, Defrancesco, infra.

Stiwinter v. Wyre Wynd, Inc., 11 Conn. Workers' Comp. Rev. Op. 90, 1547 CRB-2-92-10 (May 7, 1993).
See, Defrancesco, infra.

Dimitropolis v. Thomas O'Connor, 11 Conn. Workers' Comp. Rev. Op. 89, 1525 CRB-1-92-9 (May 7, 1993).
See, Faria, infra.

Bolduc v. Willington Framer's, 11 Conn. Workers' Comp. Rev. Op. 88, 1494 CRB-2-92-8 (May 7, 1993).
See, Faria, infra.

Benoit v. Frito-Lay, Inc., 11 Conn. Workers' Comp. Rev. Op. 87, 1473 CRB-2-92-7 (May 7, 1993).
See, Faria, infra.

Casolo v. Fairfield Electric, Inc., 11 Conn. Workers' Comp. Rev. Op. 86, 1456 CRB-7-92-7 (May 7, 1993).
See, Defrancesco, infra.

Stanton v. Waterbury Hospital, 11 Conn. Workers' Comp. Rev. Op. 85, 1409 CRB-5-92-4 (May 7, 1993).
See, Faria, infra.

Alves v. The Atlas Construction Company, 11 Conn. Workers' Comp. Rev. Op. 84, 1402 CRB-7-92-4 (May 7, 1993).
See, Faria, infra.

Diaz v. Miller Stephenson Chemical Company, Inc., 11 Conn. Workers' Comp. Rev. Op. 83, 1385 CRB-7-92-2 (May 7, 1993).
See, Defrancesco, infra.

Defrancesco v. Copes Rubbish Removal, Inc., 11 Conn. Workers' Comp. Rev. Op. 82, 1356 CRD-5-91-12 (May 7, 1993).
Trier's denial of § 31-284b benefits affirmed by CRB pursuant to April 27, 1993 Connecticut Supreme Court Order which held § 31-284b is preempted by ERISA. See, Faria, infra.

Porrello v. Hamden Salvage, Inc., 11 Conn. Workers' Comp. Rev. Op. 81, 1314 CRD-3-91-10 (May 7, 1993).
See, Faria, infra.

Faria v. Frito-Lay, Inc., 11 Conn. Workers' Comp. Rev. Op. 80, 1287 CRD-2-91-8 (May 7, 1993).
Trier's award of § 31-284b benefits reversed and set aside pursuant to the April 27, 1993 Connecticut Supreme Court Order, Luis v. Frito-Lay, Inc.; Almeida v. Frito-Lay, Inc.; Turcotte v. Frito-Lay, Inc., S.C. 14536 and the U.S. Supreme Court decision District of Columbia v. Greater Washington Board of Trade, 506 U.S. 125,113 S.Ct. 580, 121 L. Ed2d 513 (1992). Connecticut Supreme Court held § 31-284b is preempted by ERISA.

Mulligan v. Uniroyal, Inc., 11 Conn. Workers' Comp. Rev. Op. 73, 1200 CRD-5-91-3 (May 3, 1993).
See, Zullo v. Paul S. Yoney, Inc., 11 Conn. Workers' Comp. Rev. Op. 71, 1234 CRD-7-91-5 (May 3, 1993) infra.

Kushi v. Tenax Corporation, 11 Conn. Workers' Comp. Rev. Op. 72, 1295 CRD-7-91-9 (May 3, 1993).
Trier's denial of § 31-284b benefits affirmed pursuant to April 27, 1993 Connecticut Supreme Court Order which held § 31-284b is preempted by ERISA.

Zullo v. Paul S. Yoney, Inc., 11 Conn. Workers' Comp. Rev. Op. 71, 1234 CRD-7-91-5 (May 3, 1993).
CRB reversed and set aside seventh district award of § 31-284b benefits as Supreme Court in a April 27, 1993 Order, Luis v. Frito-Lay, Inc.; Almeida v. Frito-Lay, Inc.; Turcotte v. Frito-Lay, Inc., (SC 14536) ruled § 31-284b is preempted by ERISA pursuant to District of Columbia v. Greater Washington Board of Trade, 506 U.S. 125,113 S.Ct. 580, 121 L.Ed2d 513 (1992).

McCarty v. Consolidated Freightways, 10 Conn. Workers' Comp. Rev. Op. 178, 1243 CRD-3-91-6 (September 18, 1992).
Claimant's injury occurred prior to the effective date of § 31-284b. CRB previously held statute has no retroactive application. However, claimant contends employer must

continue to pay into claimant's welfare fund as claimant was not a member of a collective bargaining agreement and the dispositive case Stone & Webster Engineering Corp. v. Ilsley, 690 F.2d 323 (1982) was not applicable. CRB disagreed and affirmed trier's finding and dismissal. Ilsley cannot be distinguished on the basis of non-membership in a labor union.

Battista v. New Haven Boys & Girls Club, 10 Conn. Workers' Comp. Rev. Op. 138, 1184 CRD-3-91-2 (June 5, 1992).
Claimant claims entitlement to continuation of § 31-284b benefits as third party settlement created a contractual obligation. CRB affirmed trier's ruling denying said claim as our jurisdiction is limited. Further, claimant's injury occurred in 1978. Sec. 31-284b took effect in 1982. Employer had no obligation to continue group insurance coverage as § 31-51h, the statute in effect on the date of injury, was declared unconstitutional.

Barlow v. Charlotte Hungerford Hospital, 9 Conn. Workers' Comp. Rev. Op. 274, 1076 CRD-5-90-7 (December 13, 1991).
Remanded as trier failed to give notice to respondent insurer of formal hearing below. Respondent's participation essential as issue as to whether claimant is entitled to benefits pursuant to § 31-308a will determine whether employer must continue health coverage under § 31-284b. See also, **Barlow**, § 31-301. Appeal procedure.

McKenna v. Best Cleaners, 9 Conn. Workers' Comp. Rev. Op. 247, 1012 CRD-6-90-5 (November 19, 1991).
Claimant's failure to complete necessary health insurance forms according to time requirements set by respondents in order to continue health insurance coverage does not relieve employer of his statutory obligation. Remanded for determination on how trier arrived at amount of medical bills employer must pay as there was no evidentiary record for the CRD to review.

Smith v. General Dynamics Corporation/Electric Boat Division, 9 Conn. Workers' Comp. Rev. Op. 210, 994 CRD-2-90-3 (September 13, 1991).
Remanded as trier failed to make specific findings as to whether claimant was eligible to receive benefits pursuant to chapter 568 while receiving U.S. Longshore benefits.

Crocetto v. Lynn Development Corporation, 9 Conn. Workers' Comp. Rev. Op. 194, 979 CRD-5-90-2 (August 29, 1991), **rev'd**, **further proceedings**, 223 Conn. 376 (1992).
CRB held all chapter 568 benefits including § 31-283a vocational rehabilitation benefits are to be included in the § 31-284b formula "eligible to receive or is receiving workers' compensation payments." See, Shallcross v. New London, 8 Conn. Workers' Comp. Rev. Op. 150, 935 CRD-2-89-10 (September 20, 1990); Felia v. Westport, 214 Conn. 181 (1990); Deschnow v. Stamford, 214 Conn. 394 (1990). Also, statute requires employer to continue health insurance for claimant's family. See, Tufaro v. Pepperidge Farm, Inc., 24 Conn. App. 234 (1991). However, Supreme Court reversed, holding § 31-283a subsistence benefits did not satisfy statutory criteria as "workers' compensation payments."

Raccio v. Townsend Industries, 10 Conn. Workers' Comp. Rev. Op. 12, 946 CRD-3-89-11 (April 16, 1991).
CRD remanded matter as statute in effect at time of claimant's injury, i.e. § 31-51h, was declared unconstitutional; therefore trier lacked jurisdiction to order employer to continue paying medical insurance premiums even though stipulation language was unclear and § 31-284b was in effect at the time the stipulation was approved.

Leroux v. United Parcel Service, 9 Conn. Workers' Comp. Rev. Op. 101, 937 CRD-7-89-11 (March 7, 1991).
Where claimant suffers a recurrence of a compensable injury during period when she is laid off employer is obligated to provide health benefits provided by statute as fixed at the time of claimant's injury.

Griffin v. General Dynamics Corporation/Electric Boat Division, 8 Conn. Workers' Comp. Rev. Op. 159, 868 CRD-2-89-5 (September 27, 1990).
Remanded to determine if claimant was receiving or was eligible to receive benefits under Connecticut law while receiving federal Longshore benefits.

French v. General Dynamics Corporation/Electric Boat Division, 8 Conn. Workers' Comp. Rev. Op. 161, 869 CRD-2-89-5 (September 27, 1990).
Remanded to determine if claimant was eligible to receive benefits under Connecticut law while receiving federal Longshore benefits. If claimant is eligible to receive benefits under Connecticut law he is entitled to payment of health insurance pursuant to § 31-284b.

Shallcross v. New London, 8 Conn. Workers' Comp. Rev. Op. 150, 935 CRD-2-89-10 (September 20, 1990).
Section 31-284b benefits payable under § 7-433c. See, Felia v. Westport, 214 Conn. 181 (1990), aff'd, 7 Conn. Workers' Comp. Rev. Op. 84, 703 CRD-4-88-3 (September 25, 1989) and Deschnow v. Stamford, 214 Conn. 394 (1990), aff'd, 7 Conn. Workers' Comp. Rev. Op. 86, 706 CRD-7-88-3 (September 25, 1989). Claimant entitled to same benefits as available under Chapter 568. See also, **Shallcross**, § 31-283a and § 31-308(c).

Hadjuk v. J.C. Penney Co., 8 Conn. Workers' Comp. Rev. Op. 111, 818 CRD-1-89-2 (June 19, 1990).
Employer must continue health coverage benefits. Also, CRD lacks jurisdiction to decide constitutionality of § 31-284b. See, Ferrillo v. O & G Industries, Inc., 8 Conn. Workers' Comp. Rev. Op. 44, 783 CRD-3-88-10 (February 21, 1990) and Tufaro v. Pepperidge Farms, Inc., 8 Conn. Workers' Comp. Rev. Op. 103, 802 CRD-7-88-12 (May 25, 1990), aff'd, 24 Conn. App. 234 (1991).

Tufaro v. Pepperidge Farms, Inc., 8 Conn. Workers' Comp. Rev. Op. 103, 802 CRD-7-88-12 (May 25, 1990), **aff'd**, 24 Conn. App. 234 (1991).
Section 31-284b requires that employer must maintain health and dental insurance coverage for not only employee but spouse and dependents of employee as well. Further the CRD lacks jurisdiction to decide constitutionality of § 31-284b.

Ferrillo v. O & G Industries, Inc., 8 Conn. Workers' Comp. Rev. Op. 44, 783 CRD-3-88-10 (February 21, 1990).
See, Lustig v. C.N. Flagg Co., infra.

Gagnon v. Liberty Oil Equipment, 7 Conn. Workers' Comp. Rev. Op. 81, 696 CRD-1-88-2 (September 15, 1989).
Employer obligated to provide employee with equivalent insurance coverage to that existing at the time of injury. When group carrier is changed and benefit package altered, coverage is no longer equivalent. Any disputes arising over interpreting the new group policy is a contractual question and not within our jurisdiction.

Lustig v. C.N. Flagg Co., 7 Conn. Workers' Comp. Rev. Op. 38, 658 CRD-1-87 (July 25, 1989).
Section 31-284b was not preempted by ERISA. See also, **Lustig**, § 31-278. Commissioner does not have jurisdiction to decide constitutional issues.

Nazario v. Martec, Inc., 6 Conn. Workers' Comp. Rev. Op. 33, 539 CRD-8-86 (September 29, 1988).
Statute will not be applied retroactively.

McGee v. General Electric Company, 5 Conn. Workers' Comp. Rev. Op. 102, 490 CRD-4-86 (June 14, 1988).
See, Munroe v. Dunham-Bush, Inc., infra.

Munroe v. Dunham-Bush, Inc., 4 Conn. Workers' Comp. Rev. Op. 123, 324 CRD-1-84 (November 19, 1987).
Statute not to be applied retroactively.

Sec. 31-284c. Complaints of violations. Hearings. Findings and award. Appeal.

Simeone v. Pace Motor Lines, Inc., 12 Conn. Workers' Comp. Rev. Op. 149, 1518 CRB-4-92-9 (April 13, 1994).
Penalty imposed pursuant to § 31-284c for employer's alleged failure to maintain workers' compensation insurance misplaced. Remanded with direction to provide notice and conduct a hearing wherein employer will be allowed the opportunity to be heard on issue of noncompliance. Any resulting penalty will be imposed pursuant to § 31-288(c). See also, **Simeone**, § 31-288.

Sec. 31-287. Enforcement of claim against insurer.

Pascarelli v. Moliterno Stone Sales, 3925 CRB-4-98-11 (December 22, 1999).
CRB ruled that Chapter 568 did not entitle claimant to compensation for fringe benefits allegedly provided by his collective bargaining agreement. Thus, any claim based upon an interpretation of that contract must be maintained in another forum, regardless of any arguable effect that § 31-287 may ultimately have on this case. See also, **Pascarelli**,

§ 31-278, § 31-284b. Prior decision at Pascarelli, 14 Conn. Workers' Comp. Rev. Op. 328, 2115 CRB-4-94-8 (September 15, 1995), aff'd, 44 Conn. App. 397, 400 (1997), cited infra and at § 31-310.

Pascarelli v. Moliterno Stone Sales, 14 Conn. Workers' Comp. Rev. Op. 328, 2115 CRB-4-94-8 (September 15, 1995), **aff'd**, 44 Conn. App. 397 (1997).
Where employer filed a Chapter 11 bankruptcy petition, commissioner dismissed claimant's request for modification of wage rate. Held, automatic stay under 11 U.S.C. § 362 excludes actions to enforce a governmental unit's police or regulatory power, including workers' compensation proceedings; bankruptcy court grant of relief from stay would not be needed for such matters. Distinction made between government actions aimed at advancing pecuniary interest against debtor and those serving a valid regulatory purpose. Here, insurer had accepted compensability of injury, and § 31-287 provides that insurer is directly liable for payment of benefits to claimant. Thus, it is possible to proceed directly against insurer without obtaining relief from bankruptcy stay. Nevertheless, authority of commissioner to schedule and conduct hearings gave him discretion to honor automatic stay, and CRB did not reverse. See also, **Pascarelli**, § 31-310.

Sec. 31-288. Additional liability. Penalty for undue delay. Penalty for noncompliance with insurance requirements.

Audi v. Blakeslee Arpaia Chapman, 4624 CRB-3-03-12, 4311 CRB-3-00-10 (February 10, 2004).
See, **Audi**, § 31-278, § 31-284(b)(self-insured employer is responsible for fines associated with undue delay in administering claims, even if delay was attributable to allegedly unauthorized acts of agent), § 31-300. See prior decisions Audi, 3418 CRB-3-96-9 (August 4, 1997), § 31-349 and Audi, 4151 CRB-3-99-11, 4234 CRB-3-00-5 (June 26, 2001), § 31-296, § 31-298, § 31-301-9, § 31-307, § 31-315.

Chung v. Wal-Mart, 4474 CRB-2-02-1 (November 13, 2002).
Respondents appealed from trier's imposition of fine for failure to appear at formal hearing as per § 31-288(b)(2). Respondents argued that hearing notice did not comply with § 31-297, as it did not provide ten days notice. Also, they claimed notice was received after hearing took place. As fine was imposed at an informal hearing, CRB remanded matter in order to provide parties opportunity for a formal hearing. However, CRB noted that § 31-297 vests commissioners with the authority to waive the 10-day notice requirement when emergency circumstances exist. See also, **Chung**, § 31-301. Appeal procedure, § 31-297.

McCurrey v. Nutmeg Express, 4342 CRB-5-01-1 (January 3, 2002).
Respondent Nutmeg Express was a sole proprietorship through May 3, 2000, at which time it became incorporated. Claimant was injured in June 2000, and employer had no insurance for workers' compensation liability. Commission notified "Nutmeg Express" of pending action and upcoming hearing on sanctions, but did not separately notify the

sole proprietor of the unincorporated incarnation of Nutmeg Express. At formal hearing, trier indicated to respondents' counsel that he would allow another hearing at which testimony could be taken regarding employer's understanding of coverage requirements. No hearing had yet been held when trier issued order individually fining both sole proprietor and Nutmeg Express, Inc. for failure to maintain required insurance coverage for a total of six employees from January 1, 2000 forward. CRB reversed imposition of sanctions under § 31-288(b) and (c), and ordered that another hearing be held for which sole proprietor must be individually notified. See also, **McCurrey**, § 31-300, § 31-310.

Riebe v. Ralph Silvestro, Jr., 3886 CRB-4-98-9 (November 30, 1999).
CRB noted that the facts indicated the respondent did not have workers' compensation insurance. Board thus remanded the case for findings pursuant to § 31-288(c), which requires a trial commissioner to assess a civil penalty against an employer who has failed to comply with the insurance requirements of § 31-284(b). See also, **Riebe**, § 31-275(1).

Melendez v. Warner'**s**, 3772 CRB-4-98-2 (April 23, 1999).
Respondents appealed § 31-288(b) fine for delay of proceedings, arguing that there was no delay, and trier had improperly ordered them to begin cross-examination of the claimant. Because final adjudication of underlying proceedings had not been reached, CRB ruled that practical review was impossible, and consideration of the appeal was premature. See also, **Melendez**, § 31-301. Appeal procedure.

Duntz v. Ales Roofing & Caulking Co., 3771 CRB-6-98-2 (December 22, 1998).
Trier found that claimant was employee of respondent, who appears to have had no workers' compensation insurance. Appeal was dismissed, but case remanded for hearing on penalties under § 31-288, which are mandatory. See also, **Duntz**, § 31-301. Appeal procedure.

Baribault v. Harben Flooring Co, Inc., 3579 CRB-7-97-3 (June 4, 1998).
Trial commissioner imposed $15,000 fine against employer for failure to carry workers' compensation insurance. CRB explained why regulations regarding fines had not been published, and enumerated the factors that were included in guidelines that chairman distributed to commissioners. No findings had been made regarding basis for fine, so CRB remanded matter for new hearing as to amount of fine. See also, **Baribault**, § 31-278, § 31-301-4. Correction of finding.

Potts v. Stamford, 3539 CRB-7-97-2 (May 4, 1998).
CRB reversed commissioner's order fining claimant's counsel $100 for failing to appear at hearings without a request for postponement. Counsel in fact sent a fax to the Commissioner the day before the hearings. Further, no hearing was held on the issue of the fine, thus making a meaningful appeal impossible.

State v. Champagne, 16 Conn. Workers' Comp. Rev. Op. 245, 3269 CRB-8-96-1 (June 24, 1997).
Business owner did not have workers' compensation insurance in effect when Second Injury Fund investigator visited construction site, even though owner said he had three

employees. Investigator issued citation for failure to comply with § 31-284(b). At hearing, respondent testified that he had no insurance currently, but also had no employees. He admitted that there had been people working for him the day he was cited, but said he thought they had their own insurance. The trial commissioner issued no written findings, but made oral findings that he believed that the respondent did not willfully ignore the law, and that he had no jurisdiction over the case because the respondent currently had no employees, and there was no alleged injury. Held: § 31-288(c) provides that a commissioner *shall* assess a civil penalty whenever he finds an employer is not in compliance with § 31-284(b)'s insurance requirements. The element of knowledge and willful noncompliance is only relevant to the question of whether the employer has committed a class D felony under § 31-288(b). As there are no written findings or conclusions here, this board cannot determine whether there is a factual basis for a civil penalty. CRB cannot make its own findings based on testimony in the record. Remanded so that findings can be made and law applied as discussed. See also, **Champagne**, § 31-300.

Dowling v. Slotnik, 3062 CRB-4-95-5, 3277 CRB-4-96-2 (February 5, 1997), **aff'd, rev'd and remanded**, 244 Conn. 781 (1998)(with dissenting opinion).
Unawareness of law requiring workers' compensation insurance is not a valid reason for failure to obtain it, and does not prevent trial commissioner from imposing maximum fine. Supreme Court reversed the trial commissioner's imposition of a $10,000 fine for failure to carry insurance, as evidence did not support the imposition of the maximum fine, and remanded for determination of a lesser fine. See also, **Dowling**, § 31-275(9), § 31-288, § 31-301. Appeal procedure, and § 31-307. Subsequent decision at Dowling, 3468 CRB-4-96-11 (May 6, 1998), § 31-290, § 31-296, § 31-301. Appeal procedure, § 31-301(f).

Proto v. Kenneth Grant d/b/a Kenney G's Irish Pub, 16 Conn. Workers' Comp. Rev. Op. 129, 3030 CRB-8-95-3 (November 26, 1996).
The employer contended that the fine imposed by the trial commissioner of $3,407.35 for failure to have insurance was excessive, as the employer is a small family-run business, and its failure to carry insurance was due to ignorance. CRB affirmed the trial commissioner's fine which was within the statutory limits of § 31-288(c). See also, **Proto**, § 31-297.

Park v. New York State Insurance Fund, 16 Conn. Workers' Comp. Rev. Op. 8, 2216 CRB-1-94-11 (October 3, 1996), **rev'd**, 46 Conn. App. 596 (1997).
Claimant sustained a compensable injury to his eye while removing asbestos at a job site in Connecticut. The employer was insured for workers' compensation liability by the New York Fund at the time of the injury. Accordingly, the trial commissioner ordered the employer and its insurer to pay the workers' compensation award. In addition, the trial commissioner stated that if the employer and its insurer failed to pay the award within ten days, the Second Injury Fund must pay the award pursuant to § 31-355. In support of its appeal, the New York Fund contends that the insurance policy only covered injuries which occurred in New York, and that it is legally inconsistent for the trial commissioner to impose a penalty on the employer for failure to carry insurance

pursuant to § 31-288(c) while ordering the New York Fund to pay the claim. CRB held that trial commissioner's order against both the employer and its insurer was supported by the language of § 31-343. CRB further ruled that 31-288(c) penalty should be held in abeyance until another forum decides whether the employer's insurance policy provides proper coverage. Reversed and remanded by Appellate Court, which held that the insurance policy clearly limited coverage to injuries which occurred in New York, and thus § 31-343 does not apply. See also, **Park**, § 31-355(b) and § 31-343.

Simeone v. Pace Motor Lines, Inc., 12 Conn. Workers' Comp. Rev. Op. 149, 1518 CRB-4-92-9 (April 13, 1994).
Penalty imposed under § 31-288(b) where trier found employer failed to pay compensation and had delayed hearing process. Additionally, matter remanded with direction to provide notice and conduct a hearing wherein employer will be allowed the opportunity to be heard on issue of noncompliance where penalty imposed by trier pursuant to § 31-284c was misapplied. Applicable statute for imposing this type of penalty is § 31-288(c). See also, **Simeone**, § 31-284c.

Conrad v. Herbert Fuel, 11 Conn. Workers' Comp. Rev. Op. 119, 1486 CRB-7-92-8 (June 11, 1993).
CRB considered and granted claimant's motion pursuant to § 31-288 as respondents failed to comply with previous CRB order issued pursuant to § 31-301(a).

Sec. 31-290. Obligations not to be evaded.

Dowling Considine v. Slotnik, 3468 CRB-4-96-11 (May 6, 1998).
Claimant and respondent cannot create binding settlement without approval of trial commissioner. Letter from claimant's attorney to respondents indicating that the claimant would not seek compensation under Act even if stipulation was not approved does not operate to bargain away claimant's rights under the Act. See, **Dowling**, § 31-296, § 31-301. Appeal procedure. See also, **Dowling**, § 31-301(f). Prior decision at Dowling, 3062 CRB-4-95-5, 3277 CRB-4-96-2 (February 5, 1997), aff'd, rev'd and remanded in part, 244 Conn. 781 (1998)(with dissenting opinion), § 31-275(9), § 31-288, § 31-301. Appeal procedure, § 31-307.

Sec. 31-290a. Discharge or discrimination prohibited.

Mele v. City of Hartford, **rev'd**, 270 Conn. 751 (2004).
Trial commissioner's Sec. 31-290a Finding reversed. Supreme Court held there was insufficient evidence to support discrimination under Sec. 31-290a. There was no evidence presented by the claimant that she was exercising any rights afforded to her under the Workers' Compensation Act. In addition, there was insufficient evidence to prove the employer intended to discriminate against the claimant.

Bazon v. ABF Freight Systems, Inc., 4736 CRB-4-03-9 (November 3, 2003).
Finding pursuant to § 31-290a awarded lost wages, reimbursement of medical and insurance costs, attorney's fees and costs. Earlier finding ordered reinstatement of employment. Respondents' appeal dismissed as jurisdiction over appeal lies with the Appellate Court.

Burke v. Systematic Automation, Inc., **aff'd**, 80 Conn. App. 901 (2003)(per curiam).
Appellate Court affirmed trial commissioner's finding claimant was discharged as a result of filing a workers' compensation claim in violation of § 31-290a.

Martin v. Town of Westport, **aff'd**, 80 Conn. App. 901 (2003)(per curiam).
Appellate Court affirmed trial commissioner's finding claimant failed to meet his burden of proof in regard to his claim for discrimination pursuant to § 31-290a.

Cable v. Bic Corp., aff'd, 79 Conn. App. 178 (2003), aff'd, 270 Conn. 433 (2004).
Reinstatement of employment and permanent partial disability benefits awarded where trial commissioner acting for the Fourth District found claimant's termination from employment violated § 31-290a, despite employer's claimed nondiscriminatory reason for laying off the claimant. Appellate Court affirmed factual findings of the trial commissioner. Appellate Court found claimant satisfied both her burden of proof and her burden of persuasion sufficient to support the findings and conclusions of the trial commissioner. Appellate Court found, although the trial commissioner failed to specifically reference the burden shifting analysis stated in Ford v. Blue Cross & Blue Shield of Connecticut, Inc., 216 Conn. 40 (1990) in his finding and award and should have, the analysis was clearly set forth in the briefs before the trial commissioner. Further, the respondents' challenge that the trial commissioner failed to articulate the basis of his conclusion, would not be reversed as it was being presented for the first time on appeal. The respondents failed to file either a motion to correct or motion to articulate and thus, did not preserve the issue for appellate review. Finally, the commissioner's finding is fully supported by the evidence. The Supreme Court granted certification limited to the question of whether the Appellate Court properly affirmed the commissioner's decision. However, upon hearing the claims at oral argument and on the basis of legal argument and the evidentiary record, the Supreme Court rephrased the certified question as: Did the Appellate Court properly conclude that the commissioner had applied the correct legal standard despite the fact that the finding and award did not expressly recite that relevant legal standard? The Supreme Court held that the Appellate Court's holding that the trial commissioner should have recited the Ford burden shifting analysis in the finding and award was incorrect. The reference to the Ford burden shifting analysis should not be set out in a finding and award but should be expressed in a memorandum of decision accompanying the finding and award. The Supreme Court affirmed the Appellate Court's conclusion that there was nothing on which it could base a conclusion that the trial commissioner did not apply the Ford burden shifting analysis. Further, the respondents, in order to preserve the issue as to the trier's basis for his conclusion, should have sought an articulation. Supreme Court held that a motion to correct is not synonymous with a motion for articulation.

Krajewski v. Atlantic Machine Tool Works, Inc., 4500 CRB-6-02-3 (March 7, 2003).
Claimant had litigated discrimination/discharge claim in prior proceeding. Circumstances surrounding layoff had been determined, and CRB declined to reconsider that or related issues ten years later. See, **Krajewski**, § 31-278, § 31-284b, § 31-301. Appeal procedure, § 31-301. Factual findings, § 31-301-9, § 31-312, § 31-313, § 31-315; prior decisions at Krajewski, 15 Conn. Workers' Comp. Rev. Op. 44, 2120 CRB-6-94-8 (November 28, 1995), § 31-308a; Krajewski, 11 Conn. Workers' Comp. Rev. Op. 54, 1387 CRD-6-92-2 (April 1, 1993), § 31-290a.

Kenyon v. General Dynamics Corp./Electric Boat Division, 4521 CRB-1-02-4 (June 4, 2002).
See, **Kenyon**, § 31-301. Appeal procedure. Prior decision at Kenyon, 4497 CRB-1-02-3, infra.

Kenyon v. General Dynamics Corp./Electric Boat Division, 4497 CRB-1-02-3 (March 13, 2002).
Commissioner granted respondent's Motion to Dismiss claim for § 31-290a benefits. Trier found claimant was discharged in 1985 and entered into a full and final award by stipulation in 1987. Claimant's right to bring a § 31-290a action was effectively foreclosed by this stipulation, which did not except a § 31-290a claim. Claimant, acting pro se, filed an appeal with the CRB. Jurisdiction over § 31-290a appeals lies with Appellate Court, and not with CRB. Appeal dismissed. Subsequent decision at Kenyon, 4521 CRB-1-02-4 (June 4, 2002), § 31-301. Appeal procedure.

Somsky v. Bridgeport Hospital Foundation, Inc., 4336 CRB-4-01-1 (November 15, 2001).
See **Somsky**, § 31-301. Appeal procedure (dismissal of unprosecuted appeal from § 31-290a and attorney's fee order, partly on jurisdictional grounds and partly due to dilatory prosecution).

Johnson v. Rainbow Rentals, 4295 CRB-1-00-9 (January 18, 2001).
CRB dismissed claimant's petition for review, as board does not have jurisdiction over § 31-290a appeals.

Knoblaugh v. Daniel Marshall, M.D., 4174 CRB-1-00-1 (February 4, 2000).
CRB lacks jurisdiction over claimant's appeal. Statute requires that appeal proceed to Appellate Court. See, Knoblaugh v. Daniel Marshall, aff'd, 64 Conn. App. 32 (2001). Appellate Court affirmed trial commissioner's finding that claimant failed to sustain her burden of proof that her employer had terminated her employment for filing a workers' compensation claim.

Prioli v. State/Connecticut State Library/Arts Commission, 3955 CRB-6-98-12 (January 13, 2000), **aff'd**, 64 Conn. App. 301 (2001), **cert. denied**, 258 Conn. 917 (2001).
Attorney procured finding that claimant was discharged in retaliatory manner, and claimant received a substantial award. Issue later arose regarding proper amount of attorney's fee due. CRB noted trial commissioner's ruling that this commission has

jurisdiction to determine attorney's fees in a § 31-290a action, as claimant chose this forum in which to try case. Although CRB lacks jurisdiction over merits of a § 31-290a appeal, a dispute over the correct amount of attorney's fees that arises out of a § 31-290a case and spawns a separate award may still be appealed to the review board, as such fee amounts are regulated by this commission. Remedies under § 31-290a may not be a standard part of the overall workers' compensation benefits package, but they still fall within the penumbra of the Act. See also, **Prioli**, § 31-278, § 31-301. Appeal procedure, § 31-301-9, § 31-315, § 31-327. Subsequent ruling in Prioli, 3955 CRB-6-98-12 (October 16, 2000), § 31-301c.

Hall v. Residence Inn By Marriott, 4145 CRB-3-99-11 (December 14, 1999).
Board lacks jurisdiction over claimant's appeal. Statute requires that appeal proceed to Appellate Court.

Brett v. Pratt & Whitney, 4137 CRB-1-99-10 (October 29, 1999).
CRB lacks jurisdiction over claimant's appeal. Statute requires that appeal proceed to Appellate Court.

Bylo v. Pepsi Cola Company, 4058 CRB-3-99-6 (July 13, 1999).
CRB lacks jurisdiction over respondent's appeal. Statute requires that appeal proceed to Appellate Court.

Chernovitz v. Preston Trucking Co., aff'd, 52 Conn. App. 570 (1999).
Appellate Court affirmed on appeal trier's determination that the respondent employer had discriminated against the claimant by delaying his return to regular duties when he was released from work restrictions by his treating physician.

McKnight v. Dept. of Correction, aff'd, 52 Conn. App. 902 (1999).
Trier found claimant failed to establish that he was discharged or discriminated against for filing a workers' compensation claim. In addition claimant filed a voluntary resignation with respondent employer. Affirmed on appeal.

Rapuano v. Yale University, 3868 CRB-3-98-7 (August 24, 1998).
The board lacks jurisdiction over appeals relating to § 31-290a, as that statute specifically provides: "Any party aggrieved by the decision of the commissioner may appeal the decision to the Appellate Court." Accordingly, the board dismissed the claimant's appeal.

Williams v. Shawmut Mortgage Co., rev'd, 49 Conn. App. 114 (1998).
Commissioner acting for the First District had dismissed claim before conducting a full hearing on the merits of the case. Trier found in accordance with Rondini v. Tectonic Industries, 10 Conn. Workers' Comp. Rev. Op. 210, 1231 CRD-6-91-5 (December 4, 1992), that the stipulation in and of itself ended all rights to compensation. Appellate Court reversed the trier's finding of no subject matter jurisdiction and remanded the matter for further proceedings on the preclusive effect, if any, of the stipulation. If the stipulation is found not to be preclusive, then a full hearing should be conducted on the merits of the case.

Loftus v. Vincent, rev'd in part, 49 Conn. App. 66 (1998).
Commissioner acting for the Fourth District found claimant was wrongfully discharged. Appellate Court affirmed trier's finding. However, trier's award of back wages was reversed, as trier failed to make due allowance for payments made by respondent during the period of claimant's disability resulting from his injury.

Gilberto v. Colonial Sanitation, aff'd, 48 Conn. App. 907 (1998)(per curiam).
Appellate Court affirmed decision of trial commissioner dismissing § 31-290a claim.

Mikishka v. Meriden, 16 Conn. Workers' Comp. Rev. Op. 178, 3574 CRB-8-97-3 (May 2, 1997).
See, Rondini v. Tectonic Industries, 10 Conn. Workers' Comp. Rev. Op. 210, 1231 CRD-6-91-5 (December 4, 1992). Subsequent decision at Mikishka v. Meriden, 3869 CRB-8-98-7 (September 3, 1999).

Young v. SVG Lithography Systems, Inc., 3927 CRB-7-97-11 (November 18, 1998).
The trier dismissed the claimant's § 31-290a complaint, finding insufficient proof that he had been terminated in retaliation for pursuing his rights under Chapter 568. Board dismissed appeal, as jurisdiction over § 31-290a appeals lies with the Appellate Court.

Czekala v. United Technologies Corp., 15 Conn. Workers' Comp. Rev. Op. 287, 3325 CRB-4-96-4 (June 20, 1996).
Compensation Review Board lacks jurisdiction over appeals relating to § 31-290a. See, Rondini, 10 Conn. Workers' Comp. Rev. Op. 210, 1231 CRD-6-91-5 (December 4, 1992).

Pacheco v. Housing Authority of Willimantic, 15 Conn. Workers' Comp. Rev. Op. 170, 2140 CRB-2-94-9 (March 6, 1996), **aff'd**, 40 Conn. App. 907 (1996)(per curiam).
The trial commissioner ruled that the claimant was discharged in violation of § 31-290a C.G.S and ordered the reinstatement of the claimant. The commissioner's decision was based on a formal hearing held on July 27, 1994 at which only the claimant and her union representative were present. On August 24, 1994, the respondent filed a motion to open the award, arguing that the respondent's representative was unable to attend the hearing at the scheduled time due to an emergency, and that the proceedings should have been delayed until his arrival. The trial commissioner denied the respondent's motion to reopen after holding a formal hearing on the motion. As the Appellate Court has reviewed these issues and has found no error on the part of the trial commissioner, we will thus dismiss the respondent's appeal to this board as moot.

Morales v. Bridgeport, 14 Conn. Workers' Comp. Rev. Op. 190, 3087 CRB-4-95-6 (July 11, 1995).
Appeal dismissed. See, Rondini, infra.

O'Brien v. X-Pect Discount, 42 Conn. App. 905 (1996)(per curiam).
Appellate Court affirmed trial commissioner's conclusion that the employer did not violate § 31-290a when it reduced claimant's hours of work. The trier found that the claimant's excessive absences from work served as a legitimate basis to reduce claimant's hours.

Morales v. Hydro Conduit Corp., 13 Conn. Workers' Comp. Rev. Op. 10, 2155 CRB-6-94-9 (October 17, 1994).
CRB lacks jurisdiction to hear and decide § 31-290a appeals. See, Carreira v. Data Mail, 11 Conn. Workers' Comp. Rev. Op. 268, 1391 CRB-6-92-3 (November 18, 1993); Rondini v. Tectonic Industries, 10 Conn. Workers' Comp. Rev. Op. 210, 1231 CRD-6-91-5 (December 4, 1992).

Dexter v. Anchor Glass Container, Inc., 11 Conn. Workers' Comp. Rev. Op. 273, 1889 CRB-5-93-11 (November 18, 1993).
Respondents' motion to dismiss filed on the basis that the CRB lacks jurisdiction to hear and decide § 31-290a claims granted. See, Rondini, infra.

Carreira v. Data Mail, 11 Conn. Workers' Comp. Rev. Op. 268, 1391 CRB-6-92-3 (November 18, 1993).
Claimant's appeal dismissed for lack of jurisdiction. See, Rondini v. Tectonic Industries, 10 Conn. Workers' Comp. Rev. Op. 210, 1231 CRD-6-91-5 (December 4, 1992).

Zienka v. New Britain, 11 Conn. Workers' Comp. Rev. Op. 143, 1407 CRB-6-92-4 (August 2, 1993), **aff'd**, 34 Conn. App. 913 (1994), **cert. denied**, 230 Conn. 905 (1994).
CRB lacks jurisdiction over § 31-290a claims. See, Rondini, infra. See also, **Zienka**, § 31-313.

Erisoty v. Merrow Machine Company, 11 Conn. Workers' Comp. Rev. Op. 131, 1639 CRB-6-93-2 (June 25, 1993), **aff'd**, 34 Conn. App. 708 (1994), **motion for reargument denied** (July 20, 1994), **cert. denied**, 231 Conn. 908 (1994).
CRB lacks jurisdiction over § 31-290a claims. See, Rondini v. Tectonic Industries, 10 Conn. Workers' Comp. Rev. Op. 210, 1231 CRD-6-91-5 (December 4, 1992).

Ayres v. United Methodist Homes of Connecticut, Inc., 11 Conn. Workers' Comp. Rev. Op. 113, 1670 CRB-4-93-3 (June 9, 1993).
CRB lacks jurisdiction over § 31-290a claims. See, Rondini v. Tectonic Industries, 10 Conn. Workers' Comp. Rev. Op. 210, 1231 CRD-6-91-5 (December 4, 1992).

Parmanand v. Cushman Industries Co., 11 Conn. Workers' Comp. Rev. Op. 64, 1283 CRD-1-91-8 (April 21, 1993).
See, Rondini v. Tectonic Industries, 10 Conn. Workers' Comp. Rev. Op. 210, 1231 CRD-6-91-5 (December 4, 1992).

Jones v. Middletown Manufacturing, 11 Conn. Workers' Comp. Rev. Op. 56, 1296 CRD-8-91-9 (April 5, 1993).
See, Rondini v. Tectonic Industries, 10 Conn. Workers' Comp. Rev. Op. 210, 1231 CRD-6-91-5 (December 4, 1992).

Krajewski v. Atlantic Aerospace, 11 Conn. Workers' Comp. Rev. Op. 54, 1387 CRD-6-92-2 (April 1, 1993).
CRB lacks jurisdiction to hear § 31-290a claims. See, Rondini v. Tectonic Industries, 10 Conn. Workers' Comp. Rev. Op. 210, 1231 CRD-6-91-5 (December 4, 1992).). Subsequent decisions on other issues at Krajewski, 15 Conn. Workers' Comp. Rev. Op.

44, 2120 CRB-6-94-8 (November 28, 1995) and Krajewski, 4500 CRB-6-02-3 (March 7, 2003).

Thorpe v. Ducci Electric Co., 10 Conn. Workers' Comp. Rev. Op. 245, 1235 CRD-6-91-5 (January 7, 1993), **aff'd**, 33 Conn. App. 922 (1994)(per curiam).
See, Rondini v. Tectonic Industries, 10 Conn. Workers' Comp. Rev. Op. 210, 1231 CRD-6-91-5 (December 4, 1992).

Rondini v. Tectonic Industries, 10 Conn. Workers' Comp. Rev. Op. 210 , 1231 CRD-6-91-5 (December 4, 1992).
CRB has no statutory authority or jurisdiction to hear or decide § 31-290a matters. Prior rulings as to the jurisdiction of the CRB to review § 31-290a appellate claims overruled. See, Anderson v. State, 9 Conn. Workers' Comp. Rev. Op. 153, 958 CRD-5-89-12 (June 5, 1991) and Hill v. Pitney Bowes, Inc., 8 Conn. Workers' Comp. Rev. Op. 98, 832 CRD-7-89-3 (May 17, 1990). Also, a stipulation is a binding award which bars a further claim for compensation including a § 31-290a claim unless the requirements of § 31-315 allowing for modification are satisfied.

Anderson v. State/Correctional Dept., 9 Conn. Workers' Comp. Rev. Op. 153, 958 CRD-5-89-12 (June 5, 1991).
Trial commissioner affirmed where evidence below supports trier's conclusion claimant's dismissal was not in retaliation for claimant's exercising his workers' compensation rights but the result of unauthorized absences.

Hill v. Pitney Bowes, 8 Conn. Workers' Comp. Rev. Op. 98, 832 CRD-7-89-3 (May 17, 1990).
Determination of whether employer was guilty of discriminatory discharge is a question of fact. See also, **Hill**, § 31-301. Factual findings, § 31-313.

Sec. 31-290c. Fraudulent claim or receipt of benefits.

Secola v. State/Comptrollers Office, 13 Conn. Workers' Comp. Rev. Op. 121, 1703 CRB-5-93-4 (January 31, 1995).
Respondents contend that claimant violated § 31-290c by failing to disclose that she suffered from terminal cancer, which was unrelated to her compensable injury, when voluntary agreement was made. CRB would not interpret § 31-290c to require claimant to voluntarily offer all potentially relevant information to insurance company. In absence of specific inquiry, claimant's silence did not constitute fraudulent nondisclosure. See also, **Secola**, § 31-296, Voluntary Agreements (approval of). See subsequent decision, Secola, 3102 CRB-5-95-6 (February 26, 1997).

Tessier v. Kogut Florist and Nurseryman, Inc., 9 Conn. Workers' Comp. Rev. Op. 276, 1088 CRD-8-90-7 (December 13, 1991).
Trier has no criminal jurisdiction to declare claimant committed a Class A misdemeanor. See also, **Tessier**, § 31-301. Factual findings and Appeal procedure, § 31-307. Total disability.

Sec. 31-291. Principal employer, contractor and subcontractor.

Brown v. Freedom Express Delivery, 4584 CRB-6-02-11 (November 14, 2003).
CRB reversed trial commissioner's finding respondent was a principal employer. Claimant worked for a delivery company that was subcontracted by respondent to deliver furniture. The injury occurred on a private premise neither owned nor controlled by respondent.

Quesada v. T.J. Germaine Tree Service, 4471 CRB-7-01-12 (January 15, 2003).
See, **Quesada**, § 31-315 (CRB affirmed trier's denial of motion to reopen finding, which sought to introduce further evidence on principal employer issue).

Puchala v. Connecticut Abatement Technologies, 3859 CRB-4-98-7 (September 27, 1999).
Trier did not err by declining to address § 31-291 principal employment issue, as she was within her authority to bifurcate proceedings. CRB remanded case for scheduling of hearing on possible principal employer liability. See also, **Puchala**, § 31-275(9). Subsequent decision at Puchala, 4232 CRB-4-00-4 (January 30, 2002), § 31-301. Appeal procedure.

Covillion v. Plante Brothers, Inc., 3364 CRB-7-96-6 (December 11, 1997), **aff'd**, 51 Conn. App. 901 (1998)(per curiam).
Section 31-291 does not apply where claimant is not an employee, and thus no employment relationship exists. See also, **Covillion**, § 31-275(9)(10).

Kogut v. J&C Building Renovation Co., 3484 CRB-7-96-12 (September 8, 1997).
Trier ordered that "the respondent, Cesary Bartosiewicz and Elite Contracting, Inc., pay Claimant all monetary and medical benefits due. . . ." Bartosiewicz was found to be the claimant's employer, while Elite Contracting was the general contractor. CRB reversed. Trier failed to distinguish the legal grounds for each party's liability. As the award did not establish an employee-employer relationship between the claimant and Elite Contracting, the conditions of § 31-291 had to be satisfied before liability as a principal employer might be imposed. Trier did not discuss all three criteria of the "principal employer" test, and a remand was necessary for further findings. See also, **Kogut**, § 31-275(9).

Hebert v. RWA Inc., 16 Conn. Workers' Comp. Rev. Op. 169, 3128 CRB-2-95-7 (May 2, 1997), **aff'd**, 48 Conn. App. 449 (1998), **cert. denied**, 246 Conn. 901 (1998).
CRB affirmed the trial commissioner's conclusion that Hansen was the principal employer pursuant to § 31-291 when the claimant sustained a compensable injury while working on a roofing job for RWA Inc. Decision includes a discussion of case law and requisites for finding a principal employer relationship. CRB was not persuaded by Hansen's contention that in the absence of a claim by the claimant against him it was not proper for the Second Injury Fund to claim that he was the principal employer.

Jones v. Lillibridge, 16 Conn. Workers' Comp. Rev. Op. 143, 3149 CRB-2-95-6 (November 27, 1996).
Commissioner found that Second Injury Fund failed to establish that third party was a principal employer. Whether elements of principal employer statute have been satisfied is a question of fact; however, commissioner appears to have applied test for existence of employment relationship rather than principal employer-subcontractor relationship. Findings that were on point support conclusion that third party was a principal employer. Remanded for further findings. See also, **Jones**, § 31-301. Appeal procedure.

Adams v. Jodar Blasting, Inc., 15 Conn. Workers' Comp. Rev. Op. 122, 1943 CRB-2-93-12 (January 17, 1996).
CRB reversed commissioner's decision that Rocky Hill Enterprises was not a principal employer, and thus CRB held Rocky Hill Enterprises liable for an accident which occurred to a claimant who worked for Jodar Blasting. CRB concluded that the blasting and rock removal performed by Jodar was indeed a necessary and expected part of the construction of a residential subdivision which was being done by Rocky Hill Enterprises. Accordingly, CRB concluded that as a matter of law the rock removal function was a "part or process" of the construction of residential subdivision. Discussion of requirements of § 31-291.

Walton v. Hector Trucking, 13 Conn. Workers' Comp. Rev. Op. 239, 1835 CRB-1-93-9 (April 13, 1995).
Where trial commissioner found that truck driven by claimant had been leased by employer to third party contractor at time of injury, sufficient evidence existed to require further findings as to potential liability of third party as principal employer under § 31-291. Remanded. See also, **Walton**, § 31-355(b).

Phelan v. Soda Construction Co., 13 Conn. Workers' Comp. Rev. Op. 53, 1583 CRB-3-92-12 (December 20, 1994).
Record contained evidence of all three conditions necessary under statute to find liability as principal employer. Respondent also argued that § 31-355 requires Second Injury Fund to pay award because subcontractor uninsured, and statute in conflict with § 31-291. Held, statutes not in conflict; inconsistent with purpose or language of either statute to require principal employer to pay where subcontractor is uninsured. See also, **Phelan**, § 31-275(9), § 31-301. Factual findings, and § 31-355(b). See subsequent Phelan, 14 Conn. Workers' Comp. Rev. Op. 389, 1979 CRB-3-94-3, 2107 CRB-3-94-7 (October 17, 1995), § 31-310.

Hebert v. RWA Roofing & Sheet Metal, 13 Conn. Workers' Comp. Rev. Op. 43, 1750 CRB-2-93-6, 1899 CRB-2-93-11, 2129 CRB-2-94-8 (December 6, 1994).
Further proceedings below are necessary for determination of principal employer status where no record or transcript of evidence exists. See also, **Hebert**, § 31-301. Appeal procedure.

Smith v. Boland, 12 Conn. Workers' Comp. Rev. Op. 234, 1502 CRB-7-92-9 (March 28, 1994).
CRB affirmed trier's finding that at the time of claimant's injury no relationship of general contractor and subcontractor existed, thereby concluding uninsured employer, Boland, liable absent a principal employer relationship. See also, **Smith**, § 31-301. Appeal procedure.

Altieri v. B.K.S. Excavating, Inc., 10 Conn. Workers' Comp. Rev. Op. 83, 1146 CRD-3-90-12 (April 10, 1992).
Reversed. Trier failed to allow Second Injury Fund the opportunity to litigate whether a potential principal employer liability claim existed pursuant to § 31-291. The fact that the trial commissioner found B.K.S. Excavating the uninsured employer does not eliminate the need to fully litigate and hear evidence regarding a possible § 31-291 principle employer claim. See also, Altieri, § 31-275(10), § 31-301. Factual findings and § 31-355(b).

Pina v. Leitkowski Construction Co., 9 Conn. Workers' Comp. Rev. Op. 38, 907 CRD-2-89-8 (February 1, 1991).
Trial commissioner's decision as to principal employer status will not be disturbed on appeal where totality of evidence and factual findings were sufficient to conclude work performed was delegated by Leitkowski, was under the control of Leitkowski, and was a part or process in Leitkowski's trade. Where statutory elements are met the assessment of liability does not require a finding of a contractual relationship per se. See also, **Pina**, § 31-301. Factual findings.

Munoz v. Richard Surface Construction, 9 Conn. Workers' Comp. Rev. Op. 11, 875 CRD-4-89-6 (January 8, 1991), **aff'd**, 27 Conn. App. 906 (1992)(per curiam).
Sufficient facts were found to conclude employer, Richard Surface, had control over the premises claimant was working at the time of his injury so as to conclude Surface was the principal employer.

Powers v. Savage, 8 Conn. Workers' Comp. Rev. Op. 178, 892 CRD-4-89-7 (November 30, 1990).
CRD remanded for further proceedings in order to provide S.I.F. an opportunity to litigate issue of principal employer. See also, **Powers**, § 31-355(a).

Halliday v. Daw's Critical Care Registry, 8 Conn. Workers' Comp. Rev. Op. 74, 797 CRD-7-88-12 (April 27, 1990).
Remanded. Trial commissioner's finding that claimant was not an employee of subcontractor inconsistent with finding and conclusion that respondent was the principal employer. See also, **Halliday**, § 31-301. Factual findings, § 31-301. Appeal procedure. See later case, Halliday, 10 Conn. Workers' Comp. Rev. Op. 187, 1196 CRD-7-91-3 (September 14, 1992), dismissed lack of final judgment, A.C. 11770 (January 7, 1993), cert. denied, 225 Conn. 905 (February 18, 1993), § 31-275(9).

Sec. 31-292. Liability for worker lent.

Degnan v. Employee Staffing of America, Inc., a/k/a Labor Force of America, 4580 CRB-3-02-10 (October 27, 2003).
CRB affirmed conclusion that temporary worker was employee of staffing agency, as application of § 31-292 to trier's factual findings allowed such a conclusion. See also, **Degnan**, § 31-275(9), § 31-348, 31-355(b).

Kearse v. Labor Force of America, 3968 CRB-3-99-1 (February 1, 2000).
CRB affirmed trial commissioner's conclusion that claimant entered into a contract of service with LFA which subsequently lent him to Tait Moving Company. LFA was thus liable to pay compensation for the claimant's compensable injury pursuant to § 31-292. See also, **Kearse**, § 31-301-9.

Nadeau v. J.H. Scelza, Inc., 3903 CRB-6-98-9 (January 13, 2000).
CRB affirmed the trier's conclusion that the claimant was acting as an employee of the respondent when he was injured. Although the claimant owned his own siding business and chose not to be covered under his workers' compensation policy, he was injured while working outside the scope of his business. Specifically, the claimant was assisting the respondent with the removal of a window and was under the direction and control of the respondent for that project. CRB found no merit to the respondents' argument that the claimant was a loaned employee, as the claimant was not under a contract of employment with an employer which could loan him to another employer within the meaning of § 31-292. See also, **Nadeau**, § 31-275(9).

Grebla v. Timely Temps, Inc., 3950 CRB-4-98-12 (December 22, 1999).
CRB affirmed trier's ruling that § 31-292 did not apply to the instant case because there was no "contract of service" between the claimant and the employment agency (Timely Temps). Aside from his receipt of his weekly checks via mail, the only other connection between the claimant and Timely Temps was a telephone call to the claimant from Timely Temps instructing him to return to the employer (Robohand) to fill out an application for Timely Temps *after he had already applied and interviewed* at Robohand.

Minuit v. P.D.F. Construction Co., 16 Conn. Workers' Comp. Rev. Op. 133, 3145 CRB-3-95-7 (November 26, 1996).
The CRB in Minuit v. P.D.F. Construction Co., 13 Conn. Workers' Comp. Rev. Op. 1, 1551 CRB-3-92-11 (October 7, 1994), held that the trial commissioner had improperly concluded that Shoreline had lent the claimant to P.D.F. pursuant to § 31-292, and thus remanded the matter to the trial commissioner. On remand, the trial commissioner concluded that the claimant was an *employee* of P.D.F. Construction. CRB discussed the meaning of lent employee under § 31-292, and concluded that trial commissioner properly determined that Shoreline did not lend the claimant to P.D.F. but rather that claimant was an employee of P.D.F.

Velez-Ramos v. Labor Force of America, 16 Conn. Workers' Comp. Rev. Op. 119, 3070 CRB-4-95-5 (November 25, 1996).
Claimant worked at Contract Plating plant, for whom LFA performed payroll servicing. Commissioner found no contract of service between claimant and LFA, and rejected Contract Plating's argument that claimant was a lent employee of LFA. Affirmed; key factor in establishing employment relationship is employer's authority to control means and methods of employee's work. Only connection commissioner drew between claimant and LFA was mailing of paychecks, in accordance with agreement between LFA and Contract Plating. LFA had no input into performance of claimant's work, and had no direct contact with claimant before he was injured. CRB declined to base its decision on policy considerations regarding temporary employment agencies.

Minuit v. P.D.F. Construction Co., 13 Conn. Workers' Comp. Rev. Op. 1, 1551 CRB-3-92-11 (October 7, 1994).
Facts found by commissioner did not support legal conclusion that claimant was lent by Shoreline Masonry to PDF Construction. Commissioner made implicit finding that claimant was an employee of Shoreline based on sufficient evidence at time of injury, and did not make findings consistent with the conclusion that Shoreline parted with claimant's services. CRB did note that PDF Construction may be liable as principal employer under § 31-291. Remanded.

Daly v. Amalgamated Transit Union, 8 Conn. Workers' Comp. Rev. Op. 144, 855 CRD-1-89-4 (August 20, 1990).
Trial commissioner's finding that claimants were temporarily lent by the employer to the respondent union and therefore were employees of the respondent union at the time of accident will not be disturbed. See, Lucarelli v. Earle C. Dodds, Inc., 121 Conn. 640 (1936).

Sec. 31-293. Reimbursement and third party suits.

Williams v. Merestone Construction, 4436 CRB-4-01-9 (July 3, 2002), **appeal dismissed**, A.C. 23281 (October 24, 2002), A.C. 24164 (March 25, 2004), **cert. denied**, 269 Conn. 905 (2004).
See, **Williams**, § 31-301. Appeal procedure, § 31-355(b).

Bilodeau v. Bristol Assn. for Retarded Citizens, 4245 CRB-6-00-5 (May 29, 2001).
Claimant received settlement in third-party action, and respondent insurer was entitled to credit of $33,562.63 against future benefits. Compensation for temporary partial disability benefits was presently terminated. Claimant then underwent surgery on cervical spine. Respondents initially declined to accept liability, and after finally doing so over a year later, declined to offset medical costs in order to shorten moratorium. Instead, insurer applied full value of credit against award of cervical spine permanency benefits. Trier found that, pursuant to Pokorny v. Getta's Garage, 219 Conn. 439 (1991), credit could not be reduced by neck surgery payments that had been made by claimant's group health carrier, and that had not been repaid to group insurer by respondents. CRB

affirmed. Claimant's strategy for reducing moratorium presumed group health insurer could be made to assume ultimate liability for neck surgery. Health insurer possesses reimbursement rights under § 31-299(a) and § 38a-470 against employer or workers' compensation insurer when it pays benefits pursuant to health insurance policy for medical treatment later shown to be related to compensable injury. Under Pokorny, issues regarding obligations to pay for such bills lie between respondents and medical insurance carrier. If all parties availed selves of their rights, no one party would be left with a windfall. See also, **Bilodeau**, § 31-300, § 31-299a.

Schreck v. Stamford, 3322 CRB-7-96-4 (May 17, 2001), **rev'd on other grounds**, 72 Conn. App. 497 (2002).
Trier found that respondent's failure to strictly adhere to § 31-293's provisions was due to reliance on representations of claimant's counsel, and held that it still held a right to a credit against third-party proceeds. CRB affirmed. Factual grounds existed to establish basis for respondent's belief that counsel was keeping it apprised of third-party action. As claimant had already paid respondent over $50,000 as reimbursement for lien, respondent had reason to expect that the remainder of its credit/moratorium right would also be honored. See Longo v. Leibovitz, 3464 CRB-3-96-11 (Jan 15, 1998), infra. Employer retains continuing right to credit for present worth of probable future payments, either known or unknown, to extent that there are excess proceeds from third party recovery. CRB also held that respondent was not entitled to take credit for an amount that claimant collected pursuant to an underinsured motorist policy owned by the company whose vehicle he was driving at the time of his automobile accident, following Matteo v. Alvarez, 53 Conn. App. 452, 454-55 (1999). See also, **Schreck**, § 31-300, § 31-301. Appeal procedure. Prior decision at Schreck, 3322 CRB-7-96-4 (September 23, 1997) (dismissal order), rev'd, 51 Conn. App. 92 (1998), rev'd on different grounds, 250 Conn. 592 (1999), appeal reinstated, 3322 CRB-7-96-4 (July 21, 2000), § 31-301. Appeal procedure.

Lesco v. Glass Crafters, 3915 CRB-3-98-10 (January 19, 2000).
Motion for Reconsideration *granted* February 14, 2000. Board affirmed trial commissioner's decision that the Fund was entitled to a credit for the claimant widow's settlement of a third party suit, and that said credit applied to the widow's recovery for wrongful death but not to her recovery for loss of consortium. CRB discussed claim for loss of consortium and policy of preventing double recovery. Additionally, board found that trier erroneously failed to allow credit under § 31-293 for wrongful death recovery which was paid to children, as the children were to be recipients of benefits under § 31-306. In support of her Motion for Reconsideration, the claimant argued that the entire wrongful death recovery allocated to the children is not appropriately a credit because the children's interest will soon terminate under § 31-306(5). The board agreed with the claimant's argument that the trial commissioner upon remand should reconsider the credit, taking into account the children's entire wrongful death recovery.

Short v. Connecticut Bank & Trust, 3816 CRB-4-98-5 (August 16, 1999), **aff'd**, 60 Conn. App. 362 (2000).
Trier found that respondents were entitled to credit for future compensation benefits against claimant's portion of third-party settlement. Claimant argued that language of release between respondents and third-party defendants waived right to reimbursement. CRB affirmed. Release was drafted for signature of civil suit defendants, not claimant, and its language did not necessarily waive entitlement to an offset.

Schiano v. Bliss Exterminating, 3436 CRB-4-96-10 (April 8, 1998), **aff'd**, 57 Conn. App. 406 (2000).
No error in commissioner's finding that the claimant did not prove that the amount of the respondents' moratorium should be reduced because a third party settlement was made on account of wife's loss of consortium claim rather than claimant's lawsuit for personal injuries. Much of claimant's argument was addressed in a prior CRB decision, and panel refused to readdress those matters. Subsequent decision in Schiano, 4104 CRB-4-99-8 (February 21, 2001), rev'd, 260 Conn. 21 (2002), § 31-278 ,§ 31-303, § 31-300. Prior decisions at Schiano, 3315 CRB-4-96-4 (May 16, 1997), § 31-301. Appeal procedure; Schiano, 1852 CRB-4-93-9 (December 7, 1994), aff'd, 57 Conn. App. 406 (2000), § 31-293, § 31-301. Appeal procedure.

Longo v. Herbert Leibovitz, 3464 CRB-3-96-11 (January 15, 1998).
The board affirmed the trial commissioner's conclusion that the insurer did not forfeit its right to reimbursement pursuant to § 31-293. Where the claimant specifically negotiated with the insurer regarding reimbursement from a $100,000 settlement, it would not be reasonable to expect that insurer to file its own cause of action against the third party tortfeasor when the claimant's attorney had *agreed* that the insurer had a right to reimbursement from said settlement. A reasonable inference is that the insurer's failure to strictly adhere to the provisions of § 31-293 resulted from its reliance on the agreement which was signed by the claimant.

Kelly v. General Dynamics Corporation/Electric Boat Division, 3137 CRB-8-95-7 (July 29, 1997).
Trial commissioner ruled that respondents were entitled to offset against widow's benefits any amounts recovered by claimant as a result of third party claims against asbestos manufacturers. Held: § 52-572r(c) was in effect on the date of the injury (12/14/90), and Krampetz v. Uniroyal Chemical, 11 Conn. Workers' Comp. Rev. Op. 293, 1367 CRD-5-92-1 (December 8, 1993), held that that statute prohibits an employer from having a lien on any judgment received in a product liability claim, or a corresponding right of subrogation. No reason to overrule that doctrine here. Also, no evidence was offered regarding the parties' compliance with the requirements of § 31-293.

Petraroia v. City News & Tobacco, 15 Conn. Workers' Comp. Rev. Op. 268, 2211 CRB-5-94-11 (June 14, 1996).
Second Injury Fund need not receive notice before liability accrues for benefits. See, **Petraroia**, § 31-352 for complete discussion of case.

Libby v. Goodwin Pontiac, 13 Conn. Workers' Comp. Rev. Op. 182, 1637 CRB-2-93-2 (March 21, 1995), **aff'd**, 42 Conn. App. 200 (1996), **aff'd**, 241 Conn. 170 (1997).
Employer accepted injury as compensable; subsequently, claimant reached settlement with third party tortfeasor. Respondents were not involved in settlement, were not promised money from recovery, and did not file suit against third party under § 31-293. Held, employer forfeited right to reimbursement by failing to enforce its rights as prescribed by statute.

Schiano v. Bliss Exterminating, 13 Conn. Workers' Comp. Rev. Op. 45, 1341 CRD-4-91-11, 1852 CRB-4-93-9 (December 7, 1994), **aff'd**, 57 Conn. App. 406 (2000).
Where claimant recovers an amount in a third party action that is less than an employer's lien, the employer may still take credit for the amount of the settlement against future payments due to the claimant. Testimony supported commissioner's finding that Second Injury Fund and claimant agreed to a "moratorium" amounting to a credit rather than a postponement of benefits, which is consistent with § 31-293. No authorization in statute for commissioner to enforce credit against permanent partial disability benefits rather than temporary total disability benefits, however. Commissioner improperly found that moratorium applied to entire recovery made by claimant and his wife without first determining how much, if any, of the settlement was received for loss of consortium claim. Statute does not extend to settlements for consortium claims. Remanded. See also, **Schiano**, § 31-301. Appeal procedure. Subsequent decisions in Schiano, 3315 CRB-4-96-4 (May 16, 1997), § 31-301. Appeal procedure; Schiano, 3436 CRB-4-96-10 (April 8, 1998), aff'd, 57 Conn. App. 406 (2000), § 31-293; Schiano, 4104 CRB-4-99-8 (February 21, 2001), rev'd, 260 Conn. 21 (2002), § 31-278, § 31-303, and § 31-300.

Casman v. Lego Systems, 12 Conn. Workers' Comp. Rev. Op. 178, 1520 CRB-3-92-10 (May 2, 1994).
Claimant is bound by the rules which govern proceedings within the workers' compensation act where employer intervenes in third party tort claim in superior court. Both actions proceed independent of each other. See also, **Casman**, § 31-294f.

Mulligan v. N.C.H. Corporation, 12 Conn. Workers' Comp. Rev. Op. 223, 1499 CRB-7-92-8 (March 22, 1994).
Although respondent employer timely intervened in a third party action and that action was settled, employer must file a Form 36 and obtain commissioner approval before discontinuing benefits. See, Mulligan v. Hall, 32 Conn. App. 203 (1993). See also, **Mulligan**, § 31-296.

Krampetz v. Uniroyal Chemical, 11 Conn. Workers' Comp. Rev. Op. 293, 1367 CRD-5-92-1 (December 8, 1993).
CRB affirmed trier's finding that decedent's date of injury of December 7, 1981 controls whether § 52-572r applies. (Note: § 52-572r(c) was in effect from October 1, 1979 through July 1, 1993). As § 52-572r applies and § 31-293 does not, respondent employer had no right to an offset against any third party product liability recovery. See also, **Krampetz**, § 52-572r.

Sauer v. The Day Publishing Company, 9 Conn. Workers' Comp. Rev. Op. 182, 1021 CRD-2-90-5 (August 19, 1991).
Remanded in accordance with Supreme Court's ruling in Love v. J.P. Stevens & Co., 218 Conn. 46 (1991) and Enquist v. General Datacom, 218 Conn. 19 (1991) whereby the Supreme Court held an employer could receive credit for future compensation payments against a third party tort recovery.

O'Donal v. West Hartford, 10 Conn. Workers' Comp. Rev. Op. 6, 917 CRD-1-89-9 (April 15, 1991).
Discussion of § 31-293(a) language. Section 31-293(a) does not allow reimbursement from a third party damage settlement for § 31-284b benefits paid. Also, even though collective bargaining agreement obligated the town to pay full pay during police officer's period of disability, statute does not require reimbursement to the town beyond the two-thirds wages amount required under chapter 568.

Libertino v. Lerner Laboratories, Inc., 8 Conn. Workers' Comp. Rev. Op. 152, 838 CRD-8-89-3 (September 21, 1990).
Remanded to determine validity of insurer's lien. Trial commissioner has jurisdiction under § 31-293 to determine if lien is proper.

Enquist v. General Datacom, 7 Conn. Workers' Comp. Rev. Op. 8, 623 CRD-7-87 (June 20, 1989), **error**, **remanded**, 21 Conn. App. 270 (1990), **rev'd**, 218 Conn. 19 (1991).
Employer who properly intervenes in a third party suit pursuant to § 31-293 is entitled to reimbursement for workers' compensation benefits and a credit for future payments. See also, Love v. J.P. Stevens & Co., infra.

Love v. J.P. Stevens & Co., Inc., 6 Conn. Workers' Comp. Rev. Op. 56, 378 CRD-7-85 (November 10, 1988), **rev'd**, 21 Conn. App. 9 (1990), **rev'd**, 218 Conn. 46 (1991).
CRD held trial Commissioner had authority to order credit for future payments made pursuant to Act from third party suit settlement. Note: Appellate Court reversed and held that respondents not entitled to credit as they failed to preserve their right for the present value of future probable payments under § 31-293. Supreme Court reversed ruling of Appellate Court.

Pokorny v. Getta's Garage, 6 Conn. Workers' Comp. Rev. Op. 161, 716 CRD-7-88-3 (June 2, 1989), **rev'd**, 22 Conn. App. 539 (1990), **rev'd**, 219 Conn. 439 (1991).
CRD disallowed claimant payment of medical expenses paid by private health insurer but for which no lien was filed. See also, **Pokorny**, § 31-300.

Latham v. Jim & Joe General Contractors, 4 Conn. Workers' Comp. Rev. Op. 51, 304 CRD-2-84 (April 13, 1987), **error**, **remanded**, 16 Conn. App. 138 (1988).
Trial commissioner's determination that he lacked jurisdiction to decide a Motion for Reimbursement was error. CRD held reimbursement from settlement with third party auto insurer should not be granted as neither the claimant nor the respondent instituted suit. Remanded by Appellate Court.

Conard v. Haggerty Pool Service, 3 Conn. Workers' Comp. Rev. Op. 96, 174 CRD-7-82 (November 19, 1986).
Where employer pays benefits for surgery stemming from a work related injury and said surgery results in malpractice which necessitates additional surgery, employer is entitled to reimbursement of benefits and a credit against future benefit payouts from third party settlement.

Skitromo v. Meriden Yellow Cab Co., 3 Conn. Workers' Comp. Rev. Op. 37, 326 CRD 6-84 (February 26, 1986), **no error**, 204 Conn. 485 (1987).
Where carrier fails to intervene in employee's third party suit, no right to reimbursement or reduction against future benefits.

Sec. 31-294c. Notice of injury. Preclusion of compensation defenses to liability.

Stevenson v. Edward W. Stevenson & Sons, 4710 CRB-5-03-8 (December 17, 2004).
Dependent spouse sought § 31-306 benefits. Claim found untimely under § 31-294c(a) where decedent died Aug. 3, 1995 and claimant learned of causal relationship between decedent's death and employment on May 6, 1996 but did not file a written notice of claim until May 26, 1998, more than 2 years from the date of the claimant's knowledge as to the first manifestation of symptom. See also, Stevenson, 4480 CRB-8-02-1 (January 3, 2003), infra.

DelConte v. State/Dept. of Correction, 4766 CRB-8-03-12 (December 8, 2004).
CRB affirmed trier's factual determination that the Notice of Claim was untimely and did not meet the medical care exception. Claimant had no expectation of medical care from nurse whose only duty was to fill out injury report. Furthermore, there was no evidence the respondent-employer was aware the injury took place where injury report could not be located and claimant should have forwarded such to his superior. See also, **DelConte**, § 31-301-9.

Distassio v. HP Hood, Inc., 4592 CRB-4-02-11 (May 5, 2004).
CRB affirmed ruling respondent received constructive notice of claim within one year based on claimant's medical treatment, completion of First Report of Injury, and respondent's payment for medical treatment. See also, **Distassio** § 31-301. Factual findings.

Panasci v. Waterbury, 4666 CRB-5-03-5 (March 29, 2004), **appeal dismissed**, A.C. 25329 (July 21, 2004).
Respondent's Form 43 that specifically contested an element of the claimant's prima facie case was held to be sufficient to withstand the Motion to Preclude.

Harkins v. State/DMR, 4650 CRB-5-03-3 (March 4, 2004), **appeal dismissed for lack of final judgment**, A.C. 25256 (September 14, 2004).
CRB affirmed trier's ruling denying claimant's Motion to Preclude. Respondent's disclaimer language was sufficiently specific.

Scott v. Bridgeport, 4637 CRB-4-03-2 (February 24, 2004).
CRB remanded dismissal of claim for head/traumatic brain injury claimant alleged occurred on the same date as original leg injury. Once trial commissioner determined leg injury was compensable, no additional notice of claim was necessary for the head/traumatic brain injury. See also, **Scott** § 31-284b.

Hunt v. Borough of Naugatuck, 4607 CRB-5-02-12 (February 9, 2004), **appeal dismissed for lack of final judgment,** A.C. 25129 (April 21, 2004), **cert. granted**, 269 Conn. 916 (2004).
CRB held incorrect date of injury on Notice of Claim a defect rather than bar to the claim. Informal hearings held within one year of date of injury provided respondents with constructive notice of claim. See also, **Hunt** §§ 7-433a, 7-433b & 7-433c.

Paige v. Hartford Insurance Co. 4594 CRB-2-02-12 (January 9, 2004).
Motion to Preclude is used to challenge a respondent's right to contest liability. Failure to file a timely Form 43 does not preclude respondent from contesting extent of the disability. See also, **Paige**, §§ 31-298, 31-301. Factual findings.

Conerly v. IBM, 4619 CRB-7-02-12 (December 29, 2003).
CRB affirmed trier's dismissal of claimant's repetitive trauma claim filed in excess of one year from last date of employment where none of the statutory exceptions set forth in § 31-294c(a) were met. See prior decision at Conerly, 4567 CRB-7-02-9 (November 17, 2002). See also, **Conerly**, § 31-301. Appeal procedure.

Masucci v. Ray's Auto Body, Inc., 4598 CRB-6-02-12 (November 10, 2003).
CRB affirmed trial commissioner's determination that notice of claim for repetitive emotional stress was untimely. Commissioner based his decision in finding the last date claimant actually performed job duties was February 15, 1999, triggering the one year notice period for repetitive trauma injuries; notice was not filed until February 16, 2000. Although claimant appeared at his place of employment after February 15, 1999, he performed no job duties on those dates that could have exposed him to occupational stress as to extend the notice period.

West v. Heitkamp, Inc., 4587 CRB-5-02-11 (October 27, 2003), **appeal dismissed for lack of final judgment**, A.C. 24805 (February 11, 2004).
Trier erred by granting Motion to Preclude where respondents listed correct date of injury and body part, and stated that "alleged injury did not occur in the course and scope of employment." Notice was sufficient to inform claimant of specific basis for contest.

Rawlings v. Carolton Chronic & Convalescent Hospital, Inc., 4538 CRB-4-02-6 (June 13, 2003).
CRB affirmed trier's denial of claimant's Motion to Preclude where claimant failed to file a written notice of claim consistent with § 31-321. Respondents furnishing of medical care does not satisfy the legal prerequisites for precluding the respondents from asserting a defense to a particular body part.

Carlson v. United Technologies Int'l, 4533 CRB-1-02-6 (June 3, 2003).
Where insurer had unwittingly processed two years' worth of prescription medications for hypertension, trier found that "medical care" exception in § 31-294c(c) was satisfied. CRB affirmed. Medical evidence showed that hypertension was related to underlying chest injury that had already been accepted by respondents, so no separate notice of claim was necessary. Moreover, submission of prescriptions to workers' compensation insurer was sufficient to qualify under medical care exception. Insurer could have learned that it was paying for hypertension medication had it carefully checked documents submitted by claimant. See also, Carlson, § 31-301-9.

Salerno v. Mount Sinai Hospital, 4518 CRB-1-02-4 (April 9, 2003).
CRB affirmed trier's conclusion that the claimant did not carry his burden of proof as to whether the employer furnished medical care for an injury to claimant's mouth that he alleged occurred some 13 years prior. The constructive notice provision of § 31-294c(c) obviating the need for a written notice of claim is not satisfied where the medical care provided at the time of alleged injury is not such that the employer would know that the injury may be the basis of a workers' compensation claim. See also, **Salerno,** § 31-301. Factual findings.

Bartlett v. J.B. Williams Soap Factory, 4511 CRB-8-02-3 (March 3, 2003).
CRB affirmed trier's ruling that dependent spouse's claim was untimely under § 31-294c(a), which states that where death of decedent occurs within two years of date of accident or first manifestation of symptom of occupational disease, notice must be filed within two-year period or one year from date of death, whichever is later. Board concluded that the language of the statute was not ambiguous and thus, must be applied as written. See also, **Bartlett**, § 31-306.

Bastek v. Camco Fittings Co., 4487 CRB-3-02-2 (February 25, 2003).
See, **Bastek**, § 31-301. Factual findings (imprecise finding as to date of injury did not require dismissal, nor did respondents allege prejudice).

Culver v. Cyro Industries, 4444 CRB-7-01-10 (February 21, 2003).
CRB affirmed trier's findings and conclusion that claimant's frequent treatment for back ailments with employer's on-site medical facility failed to satisfy medical treatment exception in § 31-294c(c). Claim was for repetitive trauma spanning 1959-1991, while last date of treatment was 1983, and last mention of possible work connection between back injury and employment was 1972. (*Miles, C.,* **dissenting**)(remand for articulation would be best, as evidence shows claimant received medical treatment for back pain due to heavy work of same sort that substantially factored into causing current back condition).

Tucker v. Connecticut Winpump, 4492 CRB-5-02-2 (February 21, 2003).
It was within trier's power to find that claimant's lung condition was not attributable to compensable injury, even though respondents were precluded from contesting compensability by virtue of having failed to contest liability or to begin making payments within 28 days. Barron v. City Printing Co., 55 Conn. App. 85 (1999), distinguished.

Stevenson v. Edward W. Stevenson & Sons, 4480 CRB-8-02-1 (January 8, 2003).
Claimant was the dependent spouse of decedent, and sought benefits pursuant to § 31-306 due to husband's death on August 13, 1995 as a result of asbestosis. Trier assumed for sake of argument that first manifestation of symptoms occurred May 6, 1996; as claim was not filed until May 26, 1998, it was untimely. CRB remanded for a determination of the date of first manifestation, as trier's assumption regarding that material fact was inappropriate. See also, **Stevenson**, § 31-301. Appeal procedure, § 31-306. Subsequent decision, Stevenson, 4710 CRB-5-03-8 (December 17, 2004), supra.

Malchik v. State/Div. of Criminal Justice, 4455 CRB-2-01-11 (October 23, 2002), **aff'd**, 266 Conn. 728 (2003).
Insufficient evidence to show that claimant was incapacitated and incompetent to file claim at the time one-year anniversary of last date of exposure to repetitive trauma elapsed. Further, no authority cited in support of proposition that Commission's jurisdiction can be expanded beyond one-year limit where claimant is legally incapacitated during last several days of notice period. See also, **Malchik**, § 31-275(9), § 31-275(15).

Doe v. State/Dept. of Correction, 4401 CRB-4-01-6 (May 16, 2002), **rev'd and remanded**, 268 Conn. 753 (2004).
Claimant's death occurred within two years of last date of employment, so counsel raised argument (on appeal) that claim for HIV exposure should be deemed timely. Aside from fact that this argument was not made at trial, or in claimant's brief, thus making it a poor candidate for review, CRB noted that use of "accidental injury" theory of Doe v. Stamford, 241 Conn. 692 (1997) to show infectious HIV exposure would be problematic due to long incubation period of virus and claimant's manifestation of symptoms more than two years before HIV was finally diagnosed and claim was filed. Supreme Court reversed CRB's dismissal of appeal on ground that HIV constituted occupational disease (with three-year statute of limitations for filing). See also **Doe**, § 31-275(15), § 31-275(16).

Morgan v. Hot Tomato's, Inc. DIP, 4377 CRB-3-01-3 (January 30, 2002).
CRB affirmed trier's granting of Motion to Preclude where employer did not receive certified letter containing Form 30C despite five delivery attempts by post office. Though sufficiency of claim notice to trigger employer's investigative responsibilities is a legal question, factual inferences may be drawn concerning procedures that were followed in attempting delivery of certified letter. Evidence indicated that absence of numbered street address on envelope did not affect post office's attempts to deliver letter to restaurant. CRB distinguished Kudlacz v. Lindberg Heat Treating Co., 250 Conn. 581 (1999) [see § 31-301. Appeal procedure] and similar cases, as policy behind preclusion statute differs from that regarding rights of appeal, and no showing was made that restaurant was not at fault for failure to receive letter. Claimant need only demonstrate that adequate Form 30C had been sent by certified mail to employer's place of business in order to satisfy general notice requirements of § 31-321. See also, **Morgan**, § 31-321.

Chaney v. Riverside Health Care Center, 4270 CRB-1-00-7 (December 17, 2001).
Board affirmed trier's conclusion that claim was not time barred. Trier had discretion to decide that employer's provision of a back brace satisfied medical care exception of § 31-294c(c) under these circumstances, including that it was given to claimant under auspices of a supervisor and registered nurse, that her use of the brace was monitored, and that employer had notice of injury.

Mason v. Dale Construction, Inc., 4354 CRB-3-01-1 (November 7, 2001).
See, Mason, § 31-284(a) (intoxication defense does not involve subject matter jurisdiction, and cannot be raised or precluded before existence of employment relationship is decided). See also, **Mason**, § 31-298, § 31-301. Appeal procedure. Subsequent decision at Mason, 4476 CRB-3-01-2 (April 28, 2003).

Jones v. New Haven Child Development, 4316 CRB-3-00-11 (October 29, 2001).
CRB affirmed trier's decision to grant motion to preclude. Respondents did not raise jurisdictional issue by arguing claimant was performing an errand for a second employer during her lunch break, which is when her claimed accident and injury occurred. No dispute that there was an existing employer-employee relationship between the parties at the time of the injury; rather, it was a dispute over causal connection, which is not a jurisdictional matter under Del Toro v. Stamford, 64 Conn. App. 1 (2001). Also, initial notice of claim was not legally defective, and respondents' duty to respond to claim was triggered.

Merenski v. Greenwich Hospital Assn., 4292 CRB-7-00-9 (September 12, 2001).
CRB affirmed trier's ruling that surviving spouse's September 1997 notice of claim was timely, following her late husband's heart attack and death on November 29, 1995. Claimant had two years from date of injury/death to file her notice under the plain language of § 31-294c(a). Construction of statute by reference to legislative history was unnecessary, as no exception is made for death that occurs on same day as injury itself.

Kuba v. Michael's Landscaping & Lawn Service, 4266 CRB-4-00-7 (August 29, 2001).
Claimant, a landscaper, allegedly contracted Lyme Disease from tick bite during his employment sometime before May 17, 1994. Lyme Disease symptoms were claimed prior to that date, but claimant could not specifically recall a previous tick bite. Doctors noted symptoms that appeared to be consistent with Lyme Disease, and opined that illness was related to employment. Respondents initially contested injury on grounds that "The claimant's Lyme Disease did not occur in and out of the course of employment" and "no medical substantiation to prove work injury." Four years later, independent medical examiner opined that claimant did not have Lyme Disease. Claimant moved to preclude respondents from raising this defense. Trier denied this motion, and relied on doctor's opinion in holding that claimant had failed to prove that he had Lyme Disease, or that he had been infected by a deer tick. CRB affirmed. Respondents validly contested claim under § 31-294c, and listed defenses placing claimant on notice that he would need medical evidence showing that he (a) had Lyme Disease (b) which was causally connected to workplace tick bites. Although respondents deserved criticism for waiting four years to actively contest, claimant still retained

burden of proving that he had a compensable illness in the first place. See also, **Kuba**, § 31-298.

Rourke v. Summit Tree Service, L.L.C., 4297 CRB-8-00-9 (August 22, 2001).
CRB affirmed granting of Motion to Preclude where Form 30C was sent via certified mail to employer's house rather than to post office box, and was enclosed in envelope with return address of claimant's doctor. Notice substantially complied with requirements of § 31-294c(a). Parties adequately adhered to Admin. Reg. § 31-297(b)-1 in presenting and defending Motion to Preclude.

Kuehl v. Z-Loda Systems Engineering, 4172 CRB-7-00-1 (July 12, 2001), **aff'd**, 265 Conn. 525 (2003).
Board affirmed trier's determination that dependent widow failed to file timely notice of claim for benefits as required by § 31-294c. Whether respondents' pleadings in third party lawsuit demonstrated substantial compliance with notice requirements of § 31-294c was a factual issue. Additionally, board was unpersuaded by claimant's argument that her knowledge of husband's death and of potential claim for widow's benefits should be imputed to employer and insurer on basis that claimant widow ran day-to-day operations of the respondent employer business. See also, **Kuehl**, § 31-306.

Christoforo v. Christoforo's Northford Gardens, 4260 CRB-3-00-6 (July 2, 2001).
Board briefly addressed claimant's contention that respondents waived right to deny compensability of his knee injury pursuant to § 31-294c(c) because they paid medical bills and temporary total disability benefits after his surgery. Board explained that reliance upon § 31-294c(c) was misplaced, as it is a "savings provision" that aids claimants by allowing for alternatives to strict requirement that written notice of claim be filed within one year of accidental injury or three years of occupational disease. Board noted that claimant did not argue that respondents were precluded from defending claim pursuant to § 31-294c(b), presumably because he did not file timely written notice of claim for knee injury. See also, **Christoforo**, § 31-301. Appeal procedure, § 31-301. Factual findings, § 31-301-4.

Surowiecki v. UTC/Pratt & Whitney, 4233 CRB-8-00-5 (May 24, 2001).
Trier concluded that claimant failed to provide timely notice pursuant to § 31-294c in re: left knee injury of December 22, 1997, as notice of claim incorrectly listed December 29, 1997 as date of injury. The claimant contended on appeal that he provided timely notice under § 31-294c(c), with its defect being harmless because respondents alleged no prejudice due to incorrect date. Board explained that one-year statute of limitations would be satisfied if the incorrect date were construed as a "defect or inaccuracy" under § 31-294c(c) rather than an invalidation of notice. Therefore, board remanded matter for trier to address the statutory provision that inaccuracy in a notice of claim shall not bar proceedings "unless the employer shows that he was ignorant of the facts concerning the personal injury and was prejudiced by the defect or inaccuracy of the notice…."

Scott v. Wal-Mart Stores, Inc., 4185 CRB-4-00-2 (April 10, 2001).
CRB affirmed trier's granting of Motion to Preclude. Respondents were unable to authenticate Form 43 sufficiently to get it into evidence at trial, and without it, Form

30C was not properly challenged. Confusion regarding date of injury did not render notice insufficient to support preclusion, as trier accepted claimant's testimony that accidental injury occurred on the date alleged by the claimant—which was the same date cited in the notice of claim. See also, **Scott**, § 31-301-9.

Kelley v. Venezia Transport Services, 4184 CRB-2-00-2 (March 8, 2001).
See, **Kelley**, § 31-278 (Motion to Preclude denied and case dismissed for lack of jurisdiction), § 31-301. Appeal procedure.

Bond v. Stratford, 4167 CRB-4-99-12 (March 7, 2001).
One-year notice period from last date of employment or exposure to incidents of repetitive trauma applied, as claimant's heart condition was reasonably found to be attributable to workplace activities. Description of injury as "heart and hypertension" resulting from repetitive trauma rather than "progression of heart and hypertension" due to repetitive trauma is not a significant distinction, and does not amount to a prejudicial defect in notice. See also, **Bond**, § 31-301. Factual findings.

Maginnis v. U.S. Airways, 4116 CRB-1-99-8 (February 21, 2001), **appeal dismissed**, A.C. 21666 (March 28, 2001).
Board affirmed trier's dismissal of claim as untimely, where trier disagreed that hearing loss constituted an occupational disease and thus applied one-year statute of limitations. CRB noted that in Discuillo v. Stone & Webster, 242 Conn. 570, 579 (1997), it was stressed that repetitive trauma injuries are not automatically categorized as "accidental injuries" rather than "occupational diseases" for purposes of determining jurisdiction under § 31-294c, and that trier must make factual determination as to whether a repetitive trauma injury should be treated as an occupational disease for jurisdictional purposes. The trier below did precisely that when he considered, but was not persuaded by, evidence presented by claimant that his hearing loss should be deemed an occupational disease.

Cruz v. State/Department of Correction, 4168 CRB-1-00-1 (February 9, 2001).
Board affirmed trier's determination that claimant did not file timely notice of claim for a 1993 injury, and did not satisfy medical care exception. Claimant argued that respondent provided medical care for his injury. However, fact-finder determined that this medical care was for a separate compensable injury, and that respondent did not have knowledge of alleged 1993 injury. Existence of medical care exception is based upon premise that, if employer furnishes medical treatment, it must know that an injury has been suffered which might be the basis of a workers' compensation claim.

Wierzbicki v. Federal Reserve Bank of Boston, 4147 CRB-1-99-11 (December 19, 2000).
Where claimant failed to file a written Form 30C, she could not attempt to invoke preclusion remedy in § 31-294c(b). See also, **Wierzbicki**, § 31-300, § 31-307.

Tardy v. Abington Constructors, Inc., 4105 CRB-2-99-8 (October 30, 2000), **aff'd**, 71 Conn. App. 140 (2002).
CRB affirmed decision of trial commissioner granting Motion to Preclude. Notice provisions of § 31-294c apply to dependents seeking benefits following death of claimant whose compensation claim has been previously accepted. Both case law and language of § 31-306b favor separate notice requirements. Thus, respondents are required to file notice of intention to contest liability. Here, absence of place of death and inclusion of claimant's name and date of original injury were consistent with the instructions on the Form 30C, and did not constitute significant inaccuracies that would prevent triggering of obligation to file disclaimer. Respondents could have timely investigated claim based on information in Form 30C. CRB also affirmed trier's conclusion that claimant's attorney did not "fish for preclusion" by misleading respondent insurer into believing no claim had been filed, and rejected respondents' argument that the Form 36 they filed to discontinue total disability benefits following the decedent's death operated jointly as a notice of intention to contest liability under § 31-294c(b). See also, **Tardy**, § 31-306.

Devito v. Stamford, 4062 CRB-7-99-6 (July 27, 2000).
CRB affirmed trier's conclusion that claimant failed to provide sufficient notice of knee injury claim where his notice listed as the date of injury the date of a prior compensable injury that had occurred nine years prior. Even under the totality of the circumstances, claimant's notice did not "substantially comply" with the notice content requirements of § 31-294c. Specifically, claimant's incident report (filed on the date of the alleged injury) did not in any manner indicate that he intended to file a workers' compensation claim for this injury.

Tower v. Miller Johnson, Inc., 3946 CRB-8-98-12 (March 22, 2000), **aff'd**, 67 Conn. App. 71 (2001).
CRB affirmed the trier's granting of the claimant's Motion to Preclude. Notice of claim listed the date of diagnosis of the decedent's pancreatic cancer, which was alleged to be an occupational disease on said notice. The claimant had stopped working for the respondent employer two days prior. Respondents were incorrect in their argument that the claimant had to prove causation in order for preclusion to lie.

Passarelli v. Norwalk, 3984 CRB-7-99-2 (March 22, 2000).
CRB affirmed trial commissioner's decision to grant Motion to Preclude. Description of injury as "Fibromyalgia/Myofacial pain due to repetitive nature of job" provided employer with sufficient information to trigger investigative responsibilities. A specific body part did not have to be cited in lieu of the illness itself, given the nature of claimant's condition.

Cifarelli v. Pitney Bowes, **Inc.**, 3994 CRB-8-99-3 (March 8, 2000).
CRB affirmed trier's granting of Motion to Preclude respondents from contesting compensability. Notice of claim satisfied the requirements of § 31-294c(a), triggering respondents' obligation to file a timely disclaimer. Delivery of letter to corporate headquarters' payroll office was proper under § 31-321, and letter contained essence of

warning to employer that preclusion would result if it did not file a notice of contest within 28 days.

DiBello v. Barnes Page Wire Products, 3970 CRB-7-99-2 (March 2, 2000), **aff'd**, 67 Conn. App. 361 (2001), **cert. granted**, 260 Conn. 915 (2002), **appeal withdrawn** (June 26, 2002).
Insurer did not waive defense that no policy was in effect with the employer on the date of injury by failing to clearly mention that issue in its Form 43, as notice of intent to contest liability is intended to apprise claimant of employer's reasons for contest. See also, **DiBello**, § 31-278, § 31-301. Appeal procedure, § 31-301-9, § 31-348. Subsequent decision at DiBello, 4290 CRB-7-00-9 (September 25, 2001), § 31-300, § 31-308a.

Khazzaka v. Torrington Co., 3966 CRB-5-99-1 (March 2, 2000).
Trier determined on remand that claimant's right and left hand injuries arose from the same repetitive trauma that had caused an earlier right thumb injury, which was an accepted claim. Absence of timely notice for later injuries thus not fatal to case, as separate notice was unnecessary for those injuries. Respondents' issues on appeal were essentially raised in prior Khazzaka decision, 3508 CRB-5-96-12 (May 26, 1998) (cited infra), and CRB declined to readdress them.

Reaves v. Brownstone Construction, 3930 CRB-4-98-11 (November 30, 1999).
CRB reversed trier's granting of Motion to Preclude where notice of claim alleged a mental injury, but alleged no physical injury. Board held that trial commissioner lacked subject matter jurisdiction because the alleged injury was excluded from the definition of personal injury under the Act. See also, **Reaves**, § 31-301. Appeal procedure.

Del Toro v. Stamford, 3731 CRB-7-97-11 (October 22, 1999), **rev'd**, 64 Conn. App. 1 (2001), **cert. denied**, 258 Conn. 913 (2001).
Claimant alleged repetitive trauma injury with July 1995 date of injury, and described injury as "officer injured shooting 11-30-85." Respondents failed to file timely disclaimer. Trier denied Motion to Preclude on ground that notice did not allege a compensable injury under § 31-275(16)(B)(ii), which excludes mental and emotional impairments from definition of personal injury unless they arise from physical trauma or occupational disease. CRB affirmed. Following Supreme Court ruling in Biasetti v. Stamford, 250 Conn. 65 (1999), under § 31-275(16)(B)(ii) no remedy lies within the Workers' Compensation Act for emotional or mental impairment unless it *arises from* a personal injury or occupational disease. Biasetti is factually indistinguishable from this matter and thus there is no subject matter jurisdiction. (*Delaney, C*., **concurring**) Binding precedent requires affirmance, but Supreme Court's ruling in Biasetti is disturbing. (*Miles, C.* **dissenting**) Supreme Court's ruling in Biasetti runs afoul of purpose of Act. Claimant's notice did not exclude physical injury as cause of stress claim on its face, thereby triggering employer's obligation to file disclaimer. Ambiguity must be resolved in claimant's favor. Appellate Court ruled that motion to preclude should have been granted, as compensability of an injury under § 31-275(16)(B)(ii) does not implicate this Commission's subject matter jurisdiction over a claim. See also, § 31-275(16). This holding was reversed following CRB's subsequent decision at Del Toro, 4515 CRB-7-02-4 (March 31, 2003), motion for summary affirmance granted, (A.C.

24150)(July 10, 2003), rev'd, 270 Conn. 532 (2004), § 31-278, also cited at Del Toro, § 31-275(16). Supreme Court held that a claimed injury must fall within scope of definition of "personal injury" under Act in order for trial commissioner to have subject matter jurisdiction over claim.

Pernacchio v. New Haven, 3911 CRB-3-98-10 (September 27, 1999), **aff'd**, 63 Conn. App. 570 (2001).
CRB affirmed trial commissioner's conclusion that claimant provided timely notice of hypertension claim, even though he did not file a timely Form 30C. Specifically, the claimant's First Report of Injury and the employer's investigation form drafted in response thereto were adequate to fulfill the notice requirements set forth in § 31-294c. Medical care exception was met where employer's paramedic took claimant's blood pressure and accompanied him to hospital in employer's emergency vehicle.

Pacheco v. State/Dept. of Correction, 3870 CRB-1-98-8 (August 16, 1999).
Respondents accepted back injury caused by a 1993 assault on claimant, but contested alleged foot injury. Trier found foot injury compensable. In support of appeal, respondents argued that claimant did not file a timely notice of claim for his foot injury. Board explained that a claimant who provides timely written notice of claim is not required to file a *second* notice of claim for another injury that arose from the same incident. Case remanded to trial commissioner for findings regarding initial notice of claim.

Ryan v. VIC Insulation, 3798 CRB-3-98-4 (June 30, 1999).
CRB affirmed trial commissioner's conclusion that claimant failed to file timely notice of claim for upper respiratory condition which was allegedly caused by airborne particles at work. Trier found that claimant's condition did not constitute an occupational disease, and thus, in order to be timely, notice of claim had to have been filed within one year following last date of injurious exposure. See also, **Ryan**, § 31-301. Appeal procedure.

Ouellet v. State/Dept. of Correction, 3796 CRB-1-98-4 (June 21, 1999).
Claimant, a prison guard, was cursorily examined by on-site medic following attack by inmate. Employer supplied her with information regarding a peer counseling session that was offered to all employees who were involved in inmate-related incidents. Claimant participated in that meeting, and expressed her belief that by doing so, she was receiving medical care. Trier found that totality of these circumstances satisfied the medical care exception to late notice in § 31-294c(c). CRB reversed and remanded, explaining that the direct or indirect participation of a physician is necessary because such care is required by § 31-294d. Claimant's perception of the nature of her treatment is immaterial given that the statute specifically defines "medical treatment." Trier did not state whether a physician either participated in or supervised the initial treatment or the group counseling session, so CRB remanded for further findings.

King v. New Britain, 3703 CRB-6-97-10 (January 12, 1999).
See, **King**, § 7-433c, § 31-284(a).

Horn v. State/Dept. of Correction, 3727 CRB-3-97-11 (December 16, 1998).
Nurse instructed claimant to seek medical attention after he complained of chest pain at work. Doctor at hospital diagnosed dyspepsia. Eight days later, claimant had myocardial infarction. Trier found that first incident was manifestation of coronary insufficiency rather than dyspepsia in accordance with medical report, and held that claimant met medical care exception of § 31-294c(c). CRB affirmed. Case similar to Gesmundo v. Bush, 133 Conn. 607 (1947); trier had reasonable basis upon which to conclude that respondent was aware of claimant's condition and the possibility that he would file a workers' compensation claim. See also, **Horn**, § 5-145a (remanded). Subsequent decision at Horn, 4177 CRB-3-00-1 (February 22, 2001), supra, § 5-145a, § 31-301. Factual findings.

Pekar v. Warnaco, Inc./Warner's Division, 3611 CRB-4-97-5, 3721 CRB-4-97-10 (October 16, 1998).
Trial commissioner found claimant's cryptococcal meningitis was contracted during the course of his employment, and ruled claim compensable. CRB held that medical reports supported factual finding that, within a reasonable degree of medical probability, the claimant's exposure to pigeon droppings at work caused him to become infected with the fungus. However, CRB remanded case for further findings regarding notice, as trial commissioner did not specify whether this condition constituted an accidental injury or an occupational disease for purposes of notice under § 31-294c. See also, **Pekar**, § 31-301. Factual findings.

Shea v. Pfizer Inc., 3667 CRB-2-97-8 (September 17, 1998).
Claimant was exposed to asbestos from 1950 until he retired in 1987. Claimant was diagnosed with asbestosis prior to 1987, but never missed any time from work due to asbestosis. CRB affirmed the trial commissioner's conclusion that the claimant's date of injury for purposes of § 31-294c was November 27, 1997, the date on which there was sufficient medical evidence to establish asbestosis. However, the relevant date for purposes of calculating the claimant's weekly benefit rate hinges on incapacity rather than diagnosis, and thus the CRB remanded the matter for a determination of the claimant's date of incapacity. See also, **Shea**, § 31-310.

Demello v. Cheshire, 3633 CRB-8-97-6 (August 26, 1998).
Trial commissioner ruled that notice, which specified that claimant was pursuing a § 7-433c claim, was insufficient to provide adequate notice of a workers' compensation claim under § 31-294c. Commissioner pointed out that notice did not specify place of injury as well. CRB reversed. Despite difference between § 7-433c claim (which does not require proof of causal connection) and a chapter 568 claim, notice still contained the basic requisite elements of notice under § 31-294c. Employer must show that it was ignorant of the circumstances of injury and that it was prejudiced by the defects in the notice under § 31-294c(c). (*Frankl, C.*, **dissenting**) By specifying that he was proceeding under § 7-433c, claimant did not inform his employer that he proposed to claim benefits under the Workers' Compensation Act. Commissioner reasonably concluded notice was insufficient. See also, **Demello**, § 7-433c.

Marshall v. UTC/Pratt & Whitney, 3623 CRB-1-97-6 (August 20, 1998), **aff'd**, 55 Conn. App. 902 (1999)(per curiam), **cert. denied**, 252 Conn. 904 (1999).
The trial commissioner concluded that the claimant failed to prove that his chronic obstructive pulmonary disease was caused by toxic exposure at his workplace rather than by cigarette smoking. In support of his appeal, the claimant contends that his Motion to Preclude should have been granted because the respondents' disclaimer was legally insufficient. The board declined to rule on that issue, as it had already issued a decision regarding the Motion to Preclude in Marshall v. UTC/Pratt & Whitney, 11 Conn. Workers' Comp. Rev. Op. 204, 1317 CRD-1-91-10 (September 27, 1993) (see notes infra and at § 31-301. Appeal procedure). Thus, the September 27, 1993 decision by the board became the law of the case, subject to a right of appeal to the Appellate Court.

Roche v. Danbury Hospital, 3592 CRB-7-97-5 (July 13, 1998).
Comparison of instant case with Troske v. Wolcott Manor, 13 Conn. Workers' Comp. Rev. Op. 323, 1687 CRB-5-93-4 (April 26, 1995), insofar as claimant could not identify specific date of compensable injury. CRB affirmed finding that injury was compensable. See also, **Roche**, § 31-275(1), § 31-301. Factual findings.

Storey v. Hendel Petroleum Co., 3581 CRB-1-97-4 (June 10, 1998).
CRB affirmed the trial commissioner's granting of the claimant's Motion to Preclude. The claimant's notice of claim accurately listed the date of the claimant's alleged cardiomyopathy as the date he was rushed to the hospital and diagnosed with congestive cardiomyopathy. Also, although respondents contend that claimant was on the payroll of Hendel, Inc., the claimant was hired by Hendel Petroleum Co., worked under the control of Hendel Petroleum Co., and was never advised that the payor of his wages had been changed.

Gaudino v. Chromium Process, 3585 CRB-4-97-4 (June 5, 1998).
Employer #1 claimed that responsibility for disability should be apportioned with employer #2, and requested an informal hearing within one year of the date of last exposure to repetitive trauma. Commissioner apportioned liability for permanency. Employer #2 appealed, claiming that first employer did not have standing to request a hearing pursuant to Figueroa v. C&S Ball Bearing, 237 Conn. 1 (1996). CRB affirmed. Figueroa states that a claimant must initiate workers' compensation proceedings where a claim has not been filed. Once a claim has been filed, however, an insurer or employer may seek apportionment by the commissioner for its liability, where appropriate. Also, CRB held that the medical evidence sufficiently demonstrated that the claimant's subsequent employment with Employer #2 exacerbated his back condition, which began with his injury while working for Employer #1. See also, **Gaudino**, § 31-301. Factual findings.

Augeri v. UTC/Pratt & Whitney, 3591 CRB-8-97-4 (June 3, 1998).
CRB affirmed trial commissioner's denial of claimant's Motion to Preclude. The claimant contended that the respondent's Form 43 was insufficient because it named the claimant's deceased husband rather than the claimant dependent widow. CRB held that

respondent's Form 43 was sufficient, as it was sent to the correct address and listed the reasons the respondent contested the claim.

Francis v. State/Connecticut Valley Hospital, 3566 CRB-8-97-3 (June 3, 1998), **aff'd**, 56 Conn. App. 90 (1999).
CRB affirmed the trial commissioner's decision that the claimant's notice of claim filed on May 29, 1987 was timely where the claimant's date of injury was February 10, 1987 (her last date of employment). The employer contended that the trial commissioner failed to address the issue of whether the claimant's notice was timely in light of the employer's argument that the claimant was aware of her lung injury in 1979. No error, as date of knowledge is not relevant in determining statute of limitations in repetitive trauma cases.

Pelosi v. Anchor Fasteners, 3542 CRB-5-97-2 (June 2, 1998).
CRB affirmed trial commissioner's decision to dismiss repetitive trauma claim for hearing loss. Trier's finding that claimant had not established his condition to be an occupational disease was not contradicted by material, undisputed facts, so one-year statute of limitations applied. Also, claimant's annual hearing tests did not constitute medical treatment under § 31-294c(c) sufficient to trigger the exception to the notice requirement. Employer provided tests to all employees, and was not reacting to a claimed injury or a potential workers' compensation claim by requiring claimant to see audiologist every year.

Khazzaka v. Torrington Company, 3508 CRB-5-96-12 (May 26, 1998).
CRB reversed trial commissioner's finding of timely notice based on claimant's lack of knowledge of relationship between injury and employment. Discuillo v. Stone & Webster, 242 Conn. 570 (1997), establishes that there is no knowledge-based exception for accidental injury claims. No evidence presented of occupational disease here, so claim had to be treated as an accidental injury for jurisdictional purposes. CRB also determined that case should be remanded for finding as to whether or not the repetitive trauma that caused the instant claims also caused the claimant's right thumb injury, which was accepted in 1993. If so, Landrette v. Bristol, 11 Conn. Workers' Comp. Rev. Op. 149, 1279 CRD-6-91-8 (August 19, 1993), applies, and no separate notice of claim would have been necessary in the first place. Prior decision at Khazzaka, 3330 CRB-5-96-4 (June 18, 1996). Also see subsequent decision at Khazzaka, 3966 CRB-5-99-1 (March 2, 2000).

Taylor v. Stamford, 3515 CRB-7-97-1 (May 6, 1998).
CRB affirmed trial commissioner's denial of Motion to Preclude, where the Form 30C was incomplete and did not provide sufficient notice to the employer regarding any claim for hypertension.

Barron v. City Printing, Inc., 3497 CRB-3-96-12 (April 29, 1998), **aff'd**, 55 Conn. App. 85 (1999).
Decedent worked for numerous printing companies, where he was allegedly exposed to toxic fumes that contributed to his death from lung cancer. None of the respondents contested liability, and the claimant filed a successful Motion to Preclude in 1988

against the decedent's last employer and the insurer most recently on the risk. Later, they attempted to apportion liability among prior employers and insurers, but trial commissioner denied their request. CRB affirmed. Issue of whether or not causation was proved is a question of fact and evidentiary credibility for trial commissioner, and there were doctor's reports that held the claimant's smoking habit to be totally responsible for his lung cancer rather than his chemical exposure. Failure to apportion claim with the other insurer who allegedly was on the risk during claimant's employment with City Printing is also not erroneous. Claimant's Motion to Preclude did not address a second insurer for the claimant's alleged term of employment with City Printing, and it was not contemplated at that time that the Motion to Preclude concerned any parties other than City Printing and Chubb & Son, Inc. See also, **Barron**, § 31-299b, § 31-301. Factual findings.

Reynolds v. Architectural Steel, 3434 CRB-3-96-9 (February 18, 1998).
The CRB affirmed the trial commissioner's determination that the claimant failed to file a timely notice of claim for a seizure disorder caused by an accident in which the claimant was hit in the head with a crow bar. The claimant did not file a notice of claim until eight years later, contending that he did not know that his seizure disorder was caused by the incident at work. Held that because the injury was an accidental injury locatable as to time and place, the claimant was required to file a notice of claim within one year regardless of his alleged lack of knowledge. Furthermore, a co-worker's application of a bandage to the claimant's head did not satisfy the "furnishing medical care" exception of § 31-294c.

Rice v. Craft Works/Genovese, 3665 CRB-3-97-8 (February 13, 1998).
CRB affirmed the trial commissioner's decision granting the claimant's Motion to Preclude. The claimant sent a notice of claim by certified mail to the employer's address where she worked. The respondents contended that the notice of claim was insufficient, arguing that it listed both the employer's name and the date of injury (for repetitive trauma) incorrectly, and that it was sent to the wrong address. The notice of claim was legally sufficient pursuant to § 31-294c(b).

Jones v. Bussman Cooper Industries, 3204 CRB-8-95-11 (February 2, 1998).
Based on Supreme Court decision in Discuillo v. Stone & Webster, 242 Conn. 570 (1997), CRB reversed trial commissioner's ruling that claimant's lack of knowledge of relationship between employment and carpal tunnel syndrome until fall 1992 made March 1993 notice of injury timely. (Last date of employment was March 15, 1991). Claimant would not be allowed to raise occupational disease argument, either, as nothing was ever alleged concerning that possibility. However, trier had not made a finding regarding sufficiency of 1986 notice of claim for tendonitis in middle finger of right hand; case remanded for findings regarding relationship of carpal tunnel symptoms to 1986 tendonitis symptoms.

Algiere v. General Dynamics Corporation/Electric Boat Division, 3466 CRB-8-96-11 (January 27, 1998).
Claimant, the decedent's spouse, sought benefits pursuant to § 31-306 for the death of her husband. The decedent was exposed to asbestos in the workplace, and developed a

lung disability. However, the decedent also received various diagnoses, treatments, and opinions as to causation. The decedent was treated with high doses of steroids and immunosuppressing agents. Consequently, the decedent developed leukemia and in 1991, died. In 1988 the decedent filed a claim for benefits under the federal Longshoremen's and Harbor Workers' Compensation Act, and stopped working due to his lung disability. On the actual LHWCA claim form the decedent noted that he was making a claim for benefits under the LHWCA and the State of Connecticut's Workers' Compensation Act. The decedent, however, never pursued his rights under chapter 568. Shortly, after the decedent's death the claimant filed her claim for widow's benefits. The respondents contended that the claimant's claim was untimely because, although the surviving spouse's claim was filed within one year of the date of death, the claim filed by the decedent was legally insufficient and untimely. The trial commissioner held that the claimant's claim was timely. The CRB affirmed and held that while the filing of a claim pursuant to the federal Longshore Harbor Workers' Compensation Act is not legally sufficient notice per se under Connecticut's Workers' Compensation Act, under the instant circumstances, the notice was sufficient to apprise the employer that a potential claim may be pending. The CRB referred to its analysis in Buck v. General Dynamics Corp./Electric Boat Division, 3324 CRB-2-96-4 (January 21, 1998) as to the timeliness of the widow's claim. See also, **Algiere**, § 31-296, § 31-301. Appeal procedure.

Buck v. General Dynamics Corporation/Electric Boat Division, 3324 CRB-2-96-4 (January 21, 1998).
The CRB reversed the trial commissioner's determination that the dependent spouse's claim for benefits was timely. In this instance, the decedent suffered a heart attack in 1975 and filed a claim under the federal Longshoremen's and Harbor Workers' Compensation Act. The decedent received benefits pursuant to that act. The decedent died in 1986 due to a heart attack which was alleged to be causally related to the 1975 work-related heart attack. The claimant filed her claim for survivor's benefits within one year of the decedent's death but more than a decade after the decedent's heart attack, which was alleged to be the causal nexus. The CRB dismissed on the basis of failure to file a timely notice. The CRB noted that, in this case, the notice under the LHWCA was not notice under Connecticut's Workers' Compensation Act. There was nothing in the LHWCA form which would have put the employer on notice that the decedent was also seeking benefits pursuant to chapter 568, particularly because this alleged compensable event occurred some years prior to the U.S. Supreme Court's ruling in Sun Ship, Inc. v. Pennsylvania, 417 U.S. 713, 100 S.Ct. 2432 (1980), permitting concurrent state and federal jurisdiction. The CRB also found the trier's conclusion that the decedent was rendered medical treatment to be without legal support. Prior decision, Buck, 12 Conn. Workers' Comp. Rev. Op. 96, 1374 CRB-2-92-1 (February 28, 1994), infra.

Holmes v. G.A. Masonry, 3338 CRB-8-96-5 (December 16, 1997).
CRB reversed trier's conclusion that claimant provided timely notice of claim for a repetitive trauma injury. The trial commissioner concluded that, because a hearing was held within one year following the date that the claimant *first had knowledge* of the repetitive trauma injury, an exception to the one-year statute of limitations was thus

applicable pursuant to § 31-294c. However, recent Supreme and Appellate Court decisions hold that the claimant's lack of knowledge is not a legally sufficient basis for allowing more than one year to file a repetitive trauma claim. Subsequent decision at Holmes, 4027 CRB-5-99-4 (November 7, 2000) and, Holmes, 4375 CRB-6-01-4 (March 4, 2002), aff'd, 76 Conn. App. 563 (2003), § 31-349. Prior decision at Holmes, 12 Conn. Workers' Comp. Rev. Op. 369, 1588 CRB-5-92-12 (August 11, 1994), infra, § 31-299b, § 31-301. Factual findings.

Crabb v. N.B. Jon-Son, Inc., 3296 CRB-1-96-3 (November 19, 1997).
Trier did not err by assuming claimant alleged repetitive trauma injury rather than occupational disease, as Form 30C described injury as repetitive trauma, and there were no findings or proposed corrections tending to establish that hearing loss is a disease peculiar to the occupation of construction worker. Issue of "knowledge exception" to one-year statute of limitations for repetitive trauma injuries was irrelevant, as the claimant was aware of the connection between injury and employment 1½ years before he filed a notice of claim. **Concurrence:** there is no knowledge-based exception to one-year repetitive trauma notice period.

Allingham v. Burns International Security, 3347 CRB-1-96-5 (November 4, 1997).
New York injury, Massachusetts-based decedent (including business office), Connecticut employer. Trier concluded that notice of claim was untimely. Letter to employer's human resources manager requesting forms for filing workers' compensation claim was insufficient to notify employer that claimant sought relief under Chapter 568. The letter did not indicate that the attorney represented the decedent's wife, did not specify in which state, if any, a claim was being filed, and did not state that an action was definite. Affirmed.

Funaioli v. New London, 3346 CRB-1-96-5 (November 4, 1997), **rev'd**, 52 Conn. App. 194 (1999).
Trial commissioner improperly found that employer's first report of injury amounted to timely notice of claim. CRB explained that the Form 15 filed by the claimant with this Commission would not be treated like a notice of claim, and would not signal a Commission employee that someone was filing a claim for compensation, even if it referred to the injured worker as "claimant" and contained other elements required by § 31-294c. Appellate Court reversed board and held commissioner's conclusions were based on and supported by factual findings. Therefore, trier's conclusion that documents submitted by the claimant met the notice requirement should be affirmed on appeal. See also, **Funaioli**, § 31-316. Subsequent decision at Funaioli, 3814 CRB-2-98-5 (June 16, 1999), aff'd, 61 Conn. App. 131 (2000), § 31-301. Factual findings.

Russell v. Mystic Seaport Museum, 3274 CRB-2-96-2 (October 24, 1997), **aff'd**, 52 Conn. App. 255 (1999), **rev'd**, 252 Conn. 596 (2000).
CRB affirmed trier's denial of Motion to Preclude. Date of injury listed as "9/23/94," which was not the last date of the claimant's exposure to incidents of repetitive trauma, nor was it the date of a particular shoulder separation. Trier could reasonably have determined that that date did not give the respondents legally sufficient notice to allow a proper investigation of the claim. The respondents' Forms 43 also may have been

adequate notice of intent to contest, as the 5/2/91 date of injury listed there was the date of the initial shoulder separation, and the trier found that this was a recurrent injury situation, not repetitive trauma. CRB also held that first report of injury did not constitute a notice of claim under § 31-294c. Following affirmance of CRB's decision by Appellate Court, Supreme Court reversed, reasoning that the notice of claim was sufficient to support preclusion because it provided adequate information as to period of time over which injury occurred, and there were no other defects. Respondents had failed to file a sufficient notice contesting liability because none of its notices listed the date of the alleged injury or provided specific substantive grounds for contesting compensability. See also, **Russell**, § 31-316.

McKenna v. Thorne & Cleaves, Inc., 3365 CRB-7-96-6 (July 29, 1997).
Notice was sent by the claimant to the district office and, apparently, to the statutory agent for service listed at the secretary of state's office, rather than to the employer's address. CRB held that, although minor defects in notice will be overlooked as long as a respondent is not prejudiced in investigating claims, service of a Form 30C upon a statutory agent is not likely to inform an employer that there is a claim pending. Furthermore, § 31-321 prescribes a different procedure. Certain corrections should have been made, and the trier's granting of the Motion to Preclude was reversed. However, the commissioner also addressed the merits of the case, and he reasonably credited the testimony of the claimant and his brother in support of the instant claim. CRB cannot reassess his credibility determinations. Affirmed on the merits. See also, **McKenna**, § 31-321.

Cirioli v. Yale University, 16 Conn. Workers' Comp. Rev. Op. 219, 3318 CRB-3-96-4 (June 18, 1997).
CRB affirmed trial commissioner's decision that claimant failed to file a timely notice of claim for a repetitive trauma knee injury. CRB explained that it need not reach the legal issue of whether lack of knowledge may extend the statute of limitations period for repetitive trauma injuries. This is because the trial commissioner specifically found that the claimant knew or should have known that his right knee condition was related to his masonry work when he stopped working for the respondent employer.

Perrelli v. Stack, Inc., 16 Conn. Workers' Comp. Rev. Op. 211, 3243 CRB-3-95-12 (June 6, 1997).
As there was no timely written notice of claim for the injuries at issue, the trial commissioner properly denied the claimant's motion to preclude. The trial commissioner found that pursuant to an approved voluntary agreement, the respondents substantially accepted all of the injuries as set forth in the claimant's original notice of claim. The claimant later filed a notice of claim for additional alleged injuries. The trial commissioner found that the claimant did not file a timely notice of claim within one year of the date of injury for said additional injuries. See also, **Perrelli**, § 31-301. Subsequent decision at Perrelli, 3546 CRB-3-96-1 (June 4, 1998), § 31-301. Appeal procedure.

Roy v. UTC/Pratt & Whitney, 16 Conn. Workers' Comp. Rev. Op. 179, 3131 CRB-1-95-7 (May 12, 1997), **aff'd**, 48 Conn. App. 904 (1998)(per curiam), **cert. denied**, 245 Conn. 906 (1998).
Form 43's reference to date of injury as May 17, 1993 instead of May 3, 1993 did not require that the claimant's Motion to Preclude be granted. A Form 43 need not be technically perfect as long as specific substantive grounds for contesting a claim are stated. Trier correctly determined that intent to disclaim the alleged stress-induced heart attack was clear, as the description of the respondents' objections was specific enough to compensate for the incorrect date. See also, **Roy**, § 31-301. Factual findings.

Poulin v. West Hartford, 3203 CRB-6-95-11 (April 4, 1997).
Trial commissioner erred by granting claimant's Motion to Preclude the respondents from contesting the circumstances of her injury. As long as substantive grounds for contest are stated, a Form 43 need not be technically perfect. Here, the Form 43 listed five separate grounds for contest, including "any injury to lower back did not arise out of or in the course of employment," and "no causal connection between the lower back injury and the claimant's employment." As claimant must show proof that an incident occurred during her employment in order to prove a causal connection, the respondents' disclaimer framed this issue as one in dispute. Reversed.

Liano v. Bridgeport, 3299 CRB-4-95-10 (March 25, 1997).
Motion to Preclude properly denied where claimant had failed to file a timely notice of claim. See, **Liano**, § 31-297, § 31-301. Factual findings. See, **Liano**, § 31-297, § 31-307, § 31-296 Voluntary agreements (discontinuance of payments). Subsequent decisions at Liano, 3561 CRB-4-97-3 (June 3, 1998), rev'd in part, 55 Conn. App. 75 (1999), cert. denied, 252 Conn. 909 (1999), § 31-300; Liano, 3447 CRB-4-96-10 (January 6, 1998), aff'd, 51 Conn. App. 905 (per curiam), cert. denied, 248 Conn. 907 (1999), § 7-433c; companion decision at Liano, 3199 CRB-4-95-10 (March 25, 1997), § 31-279-3, § 31-298, § 31-307. Prior decision at Liano, 14 Conn. Workers' Comp. Rev. Op. 201, 2033 CRB-4-94-5 (July 25, 1995), appeal and cross appeal dismissed, lack of final judgment, A.C. 15082 (June 6, 1996), cert. denied, 238 Conn. 906 (1996), § 7-433b, § 31-300, § 31-310.

Marandino v. Marandino's, 3130 CRB-6-95-7 (March 20, 1997), **aff'd**, 48 Conn. App. 916 (1998)(per curiam), **cert. denied**, 245 Conn. 919 (1998).
In order to entertain Motion to Preclude, trier had to first determine whether subject matter jurisdiction over claim existed. No error in considering whether claimant had elected to be covered as sole proprietor. See also, **Marandino**, § 31-275(10).

Bonin v. Thames Valley Steel, 1492 CRB-2-92-8 (February 14, 1997), **dismissed for lack of final judgment**, A.C. 16963 (May 28, 1997).
Respondents failed to file timely disclaimer to Form 30C, but commissioner denied Motion to Preclude because of five-day discrepancy in date of injury on notice of claim for repetitive trauma injury. Commissioner then granted claimant's Motion to Correct in light of Quinn v. Knapp, 12 Conn. Workers' Comp. Rev. Op. 334, 1470 CRB-8-92-7 (July 8, 1994), and granted Motion to Preclude because it substantially complied with

§ 31-297b. CRB affirmed; five-day discrepancy not likely to mislead employer as to nature of injury under circumstances of this case. See also, **Bonin**, § 31-321.

Roman v. Eyelets for Industry, 3040 CRB-5-95-4 (February 14, 1997), **aff'd**, 48 Conn. App. 357 (1998).
Form 30C and voluntary agreement only referred to left leg and ankle injuries. Claimant subsequently made a back injury claim arising from same incident 19 months after the accidental injury occurred. Held: once trial commissioner determined that back injury was related to compensable injury, no additional notice of claim was necessary. See, Landrette v. Bristol, 11 Conn. Workers' Comp. Rev. Op. 149, 1279 CRD-6-91-8 (August 19, 1993).

Uttenweiler v. General Dynamics Corporation/Electric Boat Division, 3110 CRB-8-95-6 (January 8, 1997).
The determination of when the claimant had sufficient knowledge to commence the running of the three-year statute of limitations period for occupational disease claims is normally a question of fact for the trial commissioner. CRB affirmed trial commissioner's determination that claimant's notice of claim for asbestosis timely filed. See also, **Uttenweiler**, § 31-308(b).

Cunningham v. Stamford, 3112 CRB-7-95-7 (December 16, 1996).
See, **Cunningham**, § 31-275(16) notes on personal injury.

Lamberti v. Children's Discovery Center, 3210 CRB-5-95-2 (December 10, 1996).
Denial of Motion to Preclude included no findings of facts, and thus no specific reasons for denying preclusion. Review impossible. Remanded.

Britt v. Wallace Manufacturing, 16 Conn. Workers' Comp. Rev. Op. 147, 2284 CRB-1-95-2 (November 29, 1996), **aff'd**, 47 Conn. App. 902 (1997)(per curiam).
CRB affirmed commissioner's dismissal of claim on ground of untimely notice. Law allowed trier to find that last day of exposure to incidents of repetitive trauma predated last date of employment. (*Wilson, C.,* **concurring**) (awareness of causal relationship between injury and employment is always irrelevant for purpose of repetitive trauma injury one-year notice period).

Jones v. Nuclear Energy Services, 16 Conn. Workers' Comp. Rev. Op. 109, 3022 CRB-7-95-3 (November 20, 1996).
CRB reversed trial commissioner's determination that claimant had filed a timely notice of claim for carpal tunnel. Citing Dorsey v. UTC/Norden Systems, 15 Conn. Workers' Comp. Rev. Op. 447, 2268 CRB-7-95-1 (September 6, 1996), aff'd, 45 Conn. App. 707 (1997), remanded to Appellate Court in light of Supreme Court's decision in Discuillo, 242 Conn. 570 (1997), aff'd on remand, 47 Conn. App. 810 (1998), the CRB held that the claimant's lack of knowledge does not extend the time period for filing a timely notice of claim for repetitive trauma. (*Frankl, C.,* **dissenting**) (the dissenting opinion explained that a lack of knowledge should extend the time period for filing a timely claim).

Tobin v. Kimberly-Clark Corp., 16 Conn. Workers' Comp. Rev. Op. 39, 2045 CRB-7-94-5 (October 18, 1996).
CRB affirmed commissioner's conclusion that notice of carpal tunnel claim was untimely. Commissioner based his decision on finding that claimant knew or should have known of causal link between employment and injury on March 17, 1989, triggering one-year notice period for repetitive trauma injuries; notice was not filed until May 24, 1990. Testimony supported that finding; fact that claimant was not completely certain of diagnosis until June or July did not reduce awareness of causal link to a mere suspicion. Moreover, date of injury in repetitive trauma case is last date of exposure; findings indicated that exposure to incidents of repetitive trauma ceased in 1980, when claimant was promoted. Thus, operative last date of employment was much earlier. Recent decisions overrule doctrine that delayed running of non-claim statute until claimant did/should have realized causal link between employment and injury. (*Frankl, C.,* **concurring**) (doctrine delaying running of statute of non-claim based on lack of knowledge of causal link should not be overruled).

White v. General Electric Co., 16 Conn. Workers' Comp. Rev. Op. 50, 3132 CRB-6-95-7 (October 16, 1996).
Claimant sent letter enclosing Form 30C to employer, who responded by filing a Form 43 stating that "employee's allegations of cancer relating to original incident appear to be non-work related, liability and medical denied. Non-claim statu[t]e." Form 43 referenced a 1979 date of injury, however, which was for a chemical exposure incident unrelated to the claimant's kidney cancer claim. Trial commissioner ruled that Form 43 sufficiently conformed with specificity requirements of § 31-294 to withstand Motion to Preclude. Affirmed; remedial purpose of Workers' Compensation Act mandates that CRB overlook minor defects in notice as long as party is not prejudiced in ability to investigate claims. Similar policy applies here, as employer's notice clearly contested both elements of claimant's prima facie workers' compensation case. Reference of 1979 date of injury not necessarily misleading to claimant, especially since Form 43 mentioned cancer.

Cislo v. Shelton, 16 Conn. Workers' Comp. Rev. Op. 14, 2291 CRB-4-95-2 (October 4, 1996).
Claimant sent letter to chief of police informing him of claimant's ongoing treatment for hypertension and asking him to take "any necessary steps." Commissioner ruled that said letter provided timely notice of injury under statute. Reversed: documents submitted by claimant did not strictly comply with § 31-294c, nor did they substantially comply with the statute's purpose. Claimant's letter did not indicate that claimant was seeking workers' compensation benefits, and employer had no way of knowing that a claim was being pursued and that it should commence an investigation of the claim.

Felix v. Merriam Manufacturing Co., 15 Conn. Workers' Comp. Rev. Op. 466, 2288 CRB-3-95-2 (September 12, 1996) (corrected September 16, 1996).
Claimant began developing carpal tunnel symptoms in 1989, had surgery on left wrist in August 1990. Claimant filed Form 30C in December 1991, listing date of injury as August 22, 1990 (the surgery date), and stating that she was unaware her repetitive

trauma injury was work-related until September 1991. In three separate opinions, the CRB affirmed the commissioner's decision that medical bills associated with the August 1990 surgery should not be the respondents' responsibility, but that the claimant's last date of employment was September 27, 1991, thus making notice timely with respect to carpal tunnel in her right hand and potential post-surgery trauma to her left hand. (*Frankl, C.*). Repetitive trauma injury occurs on last date of exposure to incidents of trauma, which is usually last date of employment. Only exception is where claimant is unaware that disabling condition is work-related until after she leaves employment. Here, commissioner found that claimant should have known August 1990 surgery was related to employment. Surgery marked close of trauma period to left hand, so notice would have been due within one year from that date. However, notice was sufficient to preserve claim for potential exposure to right hand, or post-surgery exposure to left hand. (*Santos, C.,* **dissenting in part**) (no finding that claimant ceased being exposed to incidents of repetitive trauma during course of her employment; no legal basis to establish that trauma period was somehow broken by August 1990 surgery. Whole claim should be compensable). (*Wilson, C.,* **dissenting in part**) (whole claim should be dismissed; claimant could have introduced evidence of repetitive trauma following her return to work after surgery, but did not do so. Piecemeal presentation of cases is not allowed in workers' compensation proceedings. Also, trial commissioner's finding that claimant "knew or should have known" August 1990 surgery was work-related was not relevant, as § 31-294c only allows one year from the date of last exposure to file a claim. The knowledge-based exception for late manifestation of symptoms only applies to occupational diseases).

Dorsey v. UTC/Norden Systems, 15 Conn. Workers' Comp. Rev. Op. 447, 2268 CRB-7-95-1 (September 6, 1996), **aff'd**, 45 Conn. App. 707 (1997), **remanded to Appellate Court in light of Supreme Court's decision in Discuillo**, 242 Conn. 570 (1997), **aff'd on remand**, 47 Conn. App. 810 (1998).
The trial commissioner found that the claimant retired from the respondent employer on March 11, 1990, but did not become aware that he had suffered a hearing loss which may have been connected to his work until he went to a doctor on January 5, 1993. The commissioner thus found the claimant's January 14, 1993 notice of claim to be timely. CRB reversed, holding that the claimant's lack of knowledge regarding his hearing loss does not extend the time period for filing a timely notice of claim for repetitive trauma. CRB thus reversed Boutin v. Industrial Components, 4 Conn. Workers' Comp. Rev. Op. 19, 237 CRD-6-83 (March 3, 1987). (*Frankl, C.,* **dissenting**) (the dissenting opinion, citing legislative histories of related statutes and development of case law, explained that a lack of knowledge should extend the time period for filing a timely claim).

Altamura v. Altamura Landscaping, 15 Conn. Workers' Comp. Rev. Op. 427, 2170 CRB-7-94-10 (September 3, 1996).
Trial commissioner dismissed claim for late notice. Affirmed. Claimant had forwarded reports of medical care and bills to insurance company, but had not filed a Form 30C with this Commission or his employer. Also, there was confusion surrounding the exact date of injury. Commissioner reasonably concluded that § 31-294c was not substantially complied with. A Motion for Reconsideration was filed contending the board failed to

consider one of claimant's appellate arguments - the insurer in this case set up a claim file at least one day prior to the date the statute of limitations expired. CRB noted issue was considered. Knowledge of the place of accident and nature of injury are not conveyed by assigning a claim number and claim file. Motion denied. See, Altamura, 16 Conn. Workers' Comp. Rev. Op. 1, 2170 CRB-7-94-10 (October 1, 1996). See also, **Altamura**, § 31-301. Appeal procedure, § 31-278 Jurisdiction/Disqualification.

Drivas v. Fair Auto Park, 15 Conn. Workers' Comp. Rev. Op. 366, 2279 CRB-7-95-1 (June 28, 1996).
Commissioner properly denied Motion to Preclude. Where date of heart attack was one day off in notice of claim, notice could not be presumed legally sufficient to notify employer that injury occurred a day earlier. Where there is doubt, decision to proceed on merits is a wise one. Subsequent decision at Drivas, 4383 CRB-7-01-4 (March 1, 2002), § 31-275(1).

Riccio v. Windsor, 15 Conn. Workers' Comp. Rev. Op. 279, 2232 CRB-1-94-12 (June 20, 1996).
The commissioner found that the claimant, a police officer, failed to give notice of his claim for heart and hypertension benefits as required by § 31-294c C.G.S., and therefore dismissed the claim. CRB noted that the Appellate Court recently held that a § 7-433c hypertension claim is not presumed to be an occupational disease. Zaleta v. Fairfield, 38 Conn. App. 1, 7 (1995), cert. denied, 234 Conn. 917 (1995). The commissioner specifically found that the employer-provided routine medical examination, along with a referral for an echocardiogram, did not constitute the furnishing of medical treatment so as to obviate the need for filing a proper notice of claim. See also, **Riccio**, § 7-433c.

Gaffney v. Stamford, 15 Conn. Workers' Comp. Rev. Op. 257, 2219 CRB-7-94-11 (May 24, 1996).
Claimant did not file a notice of claim within one year of her 1/25/89 injury; although claimant filed accident report with employer, she did not seek treatment for eye injury until 1/2/90, and did not file Form 30C until 3/9/90. Held, none of the exceptions under § 31-294 was met, oral request for hearing on 1/23/90 at district office was insufficient to apprise employer of the existence of a claim, and no exception can be created for filing of Form 43 by respondents. CRB cannot broaden express language of statute, especially where subject matter jurisdiction is implicated. There is no knowledge-based exception to the one-year requirement, either. (*Vargas, C.,* **dissenting**) (employer clearly had notice of injury immediately following incident, as first report of injury and Form 43 demonstrate. Substantial compliance with the notice content requirements tolls running of statutory period). See, Hayden-Leblanc, infra. Humanitarian purpose of Act also favors allowing claimant to pursue the merits of her claim.

Belletto v. Wilson Motors, Inc., 15 Conn. Workers' Comp. Rev. Op. 223, 2257 CRB-4-95-1 (April 29, 1996).
Commissioner erred in granting Motion to Preclude. Although rule of strict compliance has been modified by CRB pursuant to Pereira v. State, 228 Conn. 535, 542-43 n.8 (1994), the basic elements of a notice of claim must still be present to trigger an

employer's investigative responsibility. Here, claimant did not describe time and circumstances of injury with sufficient accuracy.

Orzechowski v. Echlin, Inc., 15 Conn. Workers' Comp. Rev. Op. 58, 2086 CRB-3-94-6 (December 5, 1995).
CRB affirmed trial commissioner's dismissal of claim for myocardial infarction which was filed more than one year following the heart attack. CRB has consistently ruled that a heart attack is an injury which may be definitely located as to the time when and the place where the accident occurred and not as an injury which is the direct result of repetitive trauma or occupational disease.

Bennings v. State/New Haven Community Correctional Inst., 14 Conn. Workers' Comp. Rev. Op. 350, 2105 CRB-3-94-7 (September 22, 1995).
Motion to Preclude is final judgment for purposes of appeal to CRB. Where claimant filled out report of injury for employer, but did not file Form 30C, commissioner was entitled to deny Motion to Preclude that was based on late filing of employer's Form 43. Documents filed by claimant did not necessarily provide sufficient notice to investigate claim, as no claim for compensation was actually filed. Clarity of date, time, place of injury are not the only considerations.

Denicola v. State/State Police, Department of Public Safety, 14 Conn. Workers' Comp. Rev. Op. 356, 1983 CRB-3-94-2 (September 22, 1995).
The commissioner found that on November 5, 1992, the claimant, a state police trooper, filed a timely notice of claim for post-traumatic stress disorder (PTSD) which was initially caused by an August 19, 1988 shooting incident. The determination of whether a claimant is exposed to repetitive trauma up until his last date of employment is a question of fact to be made by the trial commissioner. The commissioner concluded that the claimant's notice was timely because the claimant had been subjected to repetitive trauma until his last day of employment on October 22, 1992. As there were no findings of fact on the continued repetitive trauma, CRB remanded the case to commissioner. (*D'Oyen, C.,* **dissenting**) (claim was not timely as it was not filed within one year from the August 19, 1988 incident, and as that was the only work related cause of the PTSD, the claim should have been filed within one year of that date).

Smith v. Aetna Life & Casualty, 14 Conn. Workers' Comp. Rev. Op. 336, 2006 CRB-1-94-3 (September 20, 1995), **aff'd**, 43 Conn. App. 910 (1996)(per curiam).
Claimant's exposure to repetitive trauma ceased after he left the workplace; notice of claim filed over 15 months later was thus untimely. Commissioner disregarded claimant's testimony that he did not realize injury was work-related until four months after he left work, thus Boutin, 4 Conn. Workers' Comp. Rev. Op. 19, 237 CRD-6-83 (March 3, 1987), infra, does not apply. See also, **Smith**, § 31-298, and § 31-301. Factual findings.

Knapp v. New London, 14 Conn. Workers' Comp. Rev. Op. 325, 2002 CRB-2-94-3 (September 15, 1995), **aff'd**, 44 Conn. App. 465 (1997).
The commissioner properly dismissed the claimant's claim for hearing loss due to failure to file notice within one year pursuant to § 31-294c(a). The claimant filed his

claim for workers' compensation on October 25, 1991, alleging that he sustained permanent partial binaural hearing loss. The commissioner found that the claimant's hearing loss occurred prior to 1985, and that subsequent to 1985, because he was promoted to foreman, he was no longer exposed to repetitive trauma in the form of noise exposure.

Fleming v. New Haven Register, 14 Conn. Workers Comp. Rev. Op. 263, 1945 CRB-3-94-1 (September 6, 1995).
Commissioner properly denied Motion to Preclude; notice of claim was untimely on its face as to one date of injury, and the other date of injury for repetitive trauma claim postdated last day of employment, thus failing to sufficiently notify respondent of details of injury. Also, Motion to Preclude was premised on failure to send Form 43 by certified mail; spirit of Pereira v. State, 228 Conn. 535, 542-43 n.8 (1994), requires CRB to consider fact that notice was in fact received by both claimant and commissioner.

Adams v. American Cyanimid Co., 14 Conn. Workers' Comp. Rev. Op. 237, 1995 CRB-7-94-3 (August 11, 1995).
CRB affirmed commissioner's decision that claimant's notice of claim for asthma, an occupational disease, was timely filed. Statute of limitations begins to run when symptoms are manifested, which is a factual question.

Murphy v. General Dynamics Corporation/Electric Boat Division, 14 Conn. Workers' Comp. Rev. Op. 162, 1654 CRB-2-93-2 (June 29, 1995).
CRB found that claimant filed a late notice of claim for occupational lung disease, thus reversing commissioner's decision. CRB found that statute of limitations period began running when claimant's physician told him that his lung disease was related to his employment.

Blackman v. Connecticut Natural Gas Corp., 14 Conn. Workers' Comp. Rev. Op. 155, 1857 CRB-1-93-9 (June 27, 1995).
Dismissal for lack of timely notice affirmed. Fact that claimant told her supervisor of her accident is not the equivalent of filing a workers' compensation claim under Connecticut law. None of the exceptions under § 31-294(b) were met, either; medical treatment paid for by group health policy, not employer. Circumstances of injury (car accident) did not automatically put employer on notice that injury was employment-related.

Duni v. UTC/Pratt & Whitney, 14 Conn. Workers' Comp. Rev. Op. 137, 2052 CRB-1-94-5 (June 12, 1995), **aff'd**, 239 Conn. 19 (1996).
Given virtual identity of facts surrounding Form 43 with those in Walter, infra, denial of Motion to Preclude affirmed. Also, § 31-294c gives claimant one year from date of death to file claim in all cases. See, Capen v. General Dynamics Corp., 38 Conn. App. 73 (1995). See also, **Duni**, § 31-306.

Solonche v. UConn Health Center, 14 Conn. Workers' Comp. Rev. Op. 134, 1987 CRB-5-94-3 (June 9, 1995).
Similar facts as Walter decision below, except defective notice was sent to decedent employee in care of law firm rather than at claimant's address. Held: since lawyer did

receive notice, and did file a timely Motion to Preclude on claimant's behalf, and considering our decisions in Walter, infra and in Robinson, infra, equity and justice would not be served by precluding employer from contesting this case. Reversed.

Walter v. State/Services for the Blind, 14 Conn. Workers' Comp. Rev. Op. 107, 1694 CRB-2-93-4 (June 2, 1995), **aff'd**, 63 Conn. App. 1 (2001).
State failed to include names of claimants on Form 43s; instead, forms were addressed to deceased employee. Commissioner granted claimants' Motion to Preclude. Held, in light of emphasis in Pereira v. State, 228 Conn. 535, 542-43 n.8 (1994), and other recent decisions on remedial purpose of Workers' Compensation Act, rule of strict compliance must be relaxed. Question is now whether notice to contest substantially complied with § 31-294c(b) and sufficiently apprised claimants of reasons for denying compensability. CRB also noted that Form 43 did not instruct preparer to specify name of claimant rather than name of employee. Here, state substantially complied with statute, and claimants did not suffer prejudice from deficiency. Reversed and remanded. See also, **Walter**, § 31-301-9 Additional evidence. Subsequent decision at Walter, 3785 CRB-2-98-3 (June 18, 1999), aff'd, 63 Conn. App. 1 (2001), § 31-301. Appeal procedure.

Discuillo v. Stone & Webster, 14 Conn. Workers' Comp. Rev. Op. 95, 1935 CRB-2-93-12 (May 19, 1995), **aff'd,** 43 Conn. App. 224 (1996), **aff'd**, 242 Conn. 570 (1997).
CRB reversed the trial commissioner's finding that claimant's September 1984 notice of claim for a heart attack which occurred November 1982 was compensable. The CRB noted that such injuries are considered as accidental injuries and not the result of repetitive trauma. Thus, the claim should have been filed within one year from the date of claimant's heart attack.

Giovino v. West Hartford, 14 Conn. Workers' Comp. Rev. Op. 74, 1912 CRB-1-93-12 (May 12, 1995).
Claimant alleged repetitive trauma due to exposure to gunfire. Issue was whether notice of claim was timely filed. CRB cited Borent v. State, 33 Conn. App. 495 (1994), and held that last date of exposure is usually but not necessarily the last date of employment. Respondents contended that claimant was not exposed to gunfire during the end of his employment period. CRB remanded for determination of date of last exposure to gunfire. See also, **Giovino**, § 31-298 and § 31-310.

Magarian v. Open Hearth Mission, 14 Conn. Workers' Comp. Rev. Op. 63, 1895 CRB-1-93-11 (May 11, 1995).
Claimant, a workfare recipient, sent notice of claim to Mission instead of City of Hartford. Held, § 17b-689(g) provides that workfare employees are employees of the town for purpose of the Workers' Compensation Act. Fact that Mission may have had control over claimant's employment within meaning of § 31-275(10) irrelevant given language of workfare statute. Also, no agency relationship shown between City and Mission for purpose of receiving notice. Commissioner properly dismissed claim; employer was not made party to proceedings.

Knapp v. UTC Sikorsky Aircraft, 14 Conn. Workers' Comp. Rev. Op. 9, 2016 CRB-4-94-4 (April 28, 1995).
CRB affirmed commissioner's denial of claimant's motion to preclude, even though employer had filed an untimely disclaimer. Claimant's notice of claim was not sufficient to support preclusion under the test in Pereira v. State, 228 Conn. 535, 542-43 n.8 (1994). Specifically, notice of claim was insufficient to allow for timely investigation of claim by employer because it directly contradicted the claimant's prior acknowledgment of physical defect.

Keegan v. Aetna Life & Casualty, 13 Conn. Workers' Comp. Rev. Op. 340, 1793 CRB-1-93-8 (April 27, 1995), **aff'd**, 42 Conn. App. 803 (1996), **cert. denied**, 239 Conn. 942 (1996).
Statute is jurisdictional in nature; one-year time limit for filing claims not ambiguous. Claimant's accidental hip injury was not an occupational disease; see § 31-275(15); and thus the one-year statute of limitations applied. Notice untimely. (*Santos, C.,* **dissenting**) (claimant assumed injury was a minor bump on her hip; purpose of Workers' Compensation Act is not to require an employee to file a claim for every minor injury. Date of incapacity should be applied under Mulligan v. F.S. Electric, 231 Conn. 529 (1994), where immediate disability did not occur). See also, **Keegan**, § 31-275(15).

Troske v. Wolcott View Manor, 13 Conn. Workers' Comp. Rev. Op. 323, 1687 CRB-5-93-4 (April 26, 1995).
Where claimant could not remember and did not allege exact date of injury, claimant's notice defective. Notice otherwise timely. Commissioner should have given employer opportunity to demonstrate prejudice as result of defect; further proceedings necessary. See also, **Troske**, § 31-275(16).

Otero v. Bridgeport, 13 Conn. Workers' Comp. Rev. Op. 248, 1713 CRB-4-93-4 (April 17, 1995).
Claimant followed police procedure in reporting injuries to employer, which consisted of filling out accident and personal injury reports signed by superior officer and directed to Board of Police Commissioners. Notice of claim not filed with Workers' Compensation Commission until almost five years later. Held, claimant did not give timely notice of existence of claim to his employer or this commission by simply reporting his injury to the police department. Thus, commission has no jurisdiction over claim.

Simmons v. Philip Bonhotel, d/b/a Bonhotel's Lawn Maintenance, 13 Conn. Workers' Comp. Rev. Op. 234, 1778 CRB-5-93-7 (April 13, 1995), **aff'd**, 40 Conn. App. 278 (1996).
Because notice of claim was defective (incorrect date of injury), commissioner denied claimant's motion to preclude the respondents from asserting the defense of "horseplay." CRB affirmed denial of preclusion, citing Pereira v. State, 228 Conn. 535, 542-43 n.8 (1994). See also, **Simmons**, § 31-275(1), § 31-298 and § 31-284(a).

Santry v. Fermont Division, 13 Conn. Workers' Comp. Rev. Op. 230, 1768 CRB-4-93-6 (April 13, 1995).
Where connection between employment and injury is not initially apparent, statute of limitations begins running on date that employee knew or should have known that disabling condition arose out of and in course of employment. Here, testimony of claimant supported commissioner's conclusion that claimant's suspicion of injury did not rise to level of known manifestation of symptom until 11/29/91. See also, **Santry**, § 31-301. Factual findings. NB: But see later cases, such as Dorsey, supra, (this section).

Nanni v. Rhone-Poulenc Chemical Co., Inc., 13 Conn. Workers' Comp. Rev. Op. 200, 1709 CRB-4-93-4 (March 30, 1995).
One-year rather than three-year limitation on filing a claim applies where the claimant's psychiatric condition was not shown to be an occupational disease. See also, **Nanni**, § 31-275(15).

Griffith-Patton v. State/Dept. of Agriculture, 13 Conn. Workers' Comp. Rev. Op. 177, 1888 CRB-1-93-11 (March 10, 1995), **aff'd**, 41 Conn. App. 911 (1996)(per curiam), **cert. denied**, 237 Conn. 930 (1996).
One-year notice exception for employer-furnished medical care not applicable where claimant's psychiatric treatment was paid for in part by claimant and in part by health insurance policy. Commissioner could determine that employer not aware of potential workers' compensation claim within meaning of Gesmundo v. Bush, 133 Conn. 607 (1947). See also, **Griffith-Patton**, § 31-301. Factual findings.

York v. General Dynamics Corporation/Electric Boat Division, 13 Conn. Workers' Comp. Rev. Op. 166, 1770 CRB-2-93-6 (March 9, 1995).
Notice of claimant's claim for benefits timely, as Form 30C filed within three years of date claimant became aware of occupational disease. Dependent widow's failure to file Form 30C was not fatal to her claim because hearing on her entitlement to death benefits was held within one year of the date of claimant's death. See also, **York**, § 31-298.

Campbell v. Manchester Memorial Hospital, 13 Conn. Workers' Comp. Rev. Op. 157, 1754 CRB-1-93-6 (March 8, 1995), **dismissed for lack of final judgment**, A.C. 14611 (May 24, 1995).
Repetitive trauma injury cannot be definitely located as to time and place, so last day of exposure or employment is date of injury as a matter of law, and date notice period begins to run. The fact that the claimant was aware of her condition and its relation to her work prior to that date is irrelevant. See also, **Campbell**, § 31-301. Factual findings. Prior decision at Campbell, 10 Conn. Workers' Comp. Rev. Op. 151, 1182 CRD-5-91-2 (June 30, 1992), infra.

Peters v. State/Southern Conn. State Univ., 13 Conn. Workers' Comp. Rev. Op. 131, 1616 CRB-5-92-12 (February 1, 1995).
Though sufficiency of notice is a question of subject matter jurisdiction, the respondent was not entitled to raise questions as to timeliness that could have been raised in a prior appeal to this board. See, Peters I, 10 Conn. Workers' Comp. Rev. Op. 32, 1103 CRD-3-

90-8 (January 13, 1992). As the same issue was considered before, CRB declined to reconsider it in interest of finality. See also, **Peters**, § 31-308(b)(c).

Bell v. Dow Corning STI, Inc., 13 Conn. Workers' Comp. Rev. Op. 109, 1777 CRB-4-93-7 (January 31, 1995).
Claimant insisted injury occurred on 11/4/91, although commissioner found injury occurred on 10/29/91. Thus, Motion to Preclude denied even though employer failed to file Form 43. Held, Motion to Preclude is a final judgment and can be appealed under § 31-301(a). Rule that strict compliance with notice requirements of § 31-294c is necessary before preclusion can lie abandoned in light of Supreme Court decision in Pereira v. State**,** 228 Conn. 535, 542-43 n.8 (1994); question is now whether notice sufficient to allow investigation of claim. Also, commissioner should not have made finding as to incorrect injury date; Motion to Preclude should have instead been granted as to 11/4 date of injury, with employer retaining right to litigate compensability of injuries in fact occurring on other dates.

Conetta v. Stamford, 13 Conn. Workers' Comp. Rev. Op. 68, 1491 CRB-7-92-8 (December 29, 1994).
See, **Conetta**, § 31-275(1) and § 31-301. Factual findings. See also, Conetta v. Stamford, 16 Conn. Workers' Comp. Rev. Op. 228, 3231 CRB-7-95-12 (June 23, 1997), appeal dismissed, 246 Conn. 281 (1998).

Searles v. West Hartford/Board of Education, 12 Conn. Workers' Comp. Rev. Op. 414, 1617 CRB-1-93-1 (September 28, 1994), **aff'd**, 40 Conn. App. 902 (1996)(per curiam).
Notice of claim filed in 1988 for a 1982 aneurysm filed beyond time prescribed by statute. See also, **Searles**, § 31-275(1), § 31-301. Factual findings and § 31-301-9. Additional evidence.

Denicola v. Stop & Shop Companies, Inc., 12 Conn. Workers' Comp. Rev. Op. 393, 1919 CRB-3-93-12 (September 6, 1994), **aff'd**, 40 Conn. App. 916 (1996).
Notice of claim need not state claimant's home as the place of injury in order to comply with statute. Also, notice of claim mailed to employer at various addresses excluding employer's corporate insurance department address complied with § 31-321. Therefore, trier's finding granting claimant's motion to preclude affirmed where employer failed to disclaim within twenty-eight (28) days and notice of claim satisfied statutory requirements.

Britt v. Fiskars/Wallace Manufacturing, 12 Conn. Workers' Comp. Rev. Op. 375, 1503 CRB-1-92-9 (August 17, 1994).
Remanded where trier failed to make specific findings as to claimant's last date of exposure to repetitive trauma in determining claim was untimely filed. See also, **Britt**, § 31-275(16)[formerly 31-275(8)].

Holmes v. G. A. Masonry Corp., 12 Conn. Workers' Comp. Rev. Op. 369, 1588 CRB-5-92-12 (August 11, 1994).
Remanded where trier failed to make necessary findings with respect to timeliness of claim. See also, **Holmes**, § 31-299b and § 31-301. Factual findings. Subsequent decision at Holmes, 3338 CRB-8-96-5 (December 16, 1997), supra, 4027 CRB-5-99-4 (November 7, 2000), § 31-349, Holmes, 4375 CRB-6-01-4 (March 4, 2002), aff'd, 76 Conn. App. 563 (2003).

Quinn v. Standard Knapp, 12 Conn. Workers' Comp. Rev. Op. 334, 1470 CRB-8-92-7 (July 8, 1994), **dismissed for lack of final judgment**, 40 Conn. App. 446 (1996).
Motion to Preclude granted for work related stress claim. CRB previously held in repetitive trauma cases the last day worked is the date of injury. Here, claimant's notice of claim stated the date of injury as being one day after the last day worked, the date of claimant's incapacity, an insignificant inaccuracy which will not prevent preclusion. Discussion of importance of date of injury in notice of claim for accidental injury and repetitive trauma cases.

Seymour v. Charles A. Bleich, D.D.S., 12 Conn. Workers' Comp. Rev. Op. 312, 1484 CRB-6-92-8 (June 24, 1994).
CRB affirmed trier's ruling granting claimant's motion to preclude. Notice of claim filed in January 1990 for a repetitive trauma low back injury which occurred from January 2 to June 30, 1989, the last day worked, complies with jurisdictional time limitation prescribed by statute. Additionally, claimant is only required to show an employer/employee relationship existed at the time of the injury, not at a later time when the notice of claim was filed.

Micklos v. Iseli Company, 12 Conn. Workers' Comp. Rev. Op. 302, 1450 CRB-5-92-7 (June 17, 1994).
Trier erred in denying Motion to Preclude where claim for hearing loss was timely filed. Nevertheless, trier's inquiry as to the extent of disability permitted and his conclusion that claimant's hearing loss was not worsened by work related noise incidents affirmed. See, Borent v. State, 33 Conn. App. 495 (1994). See also, **Micklos**, § 31-301. Appeal procedure.

Busak v. Stamford, 12 Conn. Workers' Comp. Rev. Op. 291, 1562 CRB-7-92-11 (June 8, 1994), **aff'd**, 39 Conn. App. 919 (1995)(per curiam).
Notice of claim filed in 1990 for a 1988 injury time-barred where trier found no specific injury or repetitive trauma. See also, **Busak**, § 31-301. Factual findings.

Freeman v. Hull Dye & Print, 12 Conn. Workers' Comp. Rev. Op. 259, 1516 CRB-5-92-9 (June 2, 1994), **rev'd on other grounds**, 39 Conn. App. 717 (1995).
Widow's claim for dependent's benefits dismissed where trier found widow failed to file a timely claim or request a hearing regarding dependent's benefits within statutory time period. See also, **Freeman**, § 31-275(15) and § 31-301. Appeal procedure.

Sellew v. Northeast Utilities, 12 Conn. Workers' Comp. Rev. Op. 135, 1422 CRB-8-92-5 (April 7, 1994), **dismissed for lack of final judgment**, A. C. 13541, 13542 (June 14, 1994).
Remanded for determination whether widow's notice of claim was timely filed absent a factual finding as to whether a timely informal hearing satisfies exception to § 31-294 notice requirements. See also, **Sellew**, § 31-275(15), § 31-310 and § 52-572r.

Buck v. General Dynamics Corporation/Electric Boat Division, 12 Conn. Workers' Comp. Rev. Op. 96, 1374 CRB-2-92-1 (February 28, 1994).
Remanded as timeliness of notice of claim is a jurisdictional requirement which must be satisfied. Trier's decision lacked a factual finding on this issue. See subsequent decision Buck, 3324 CRB-2-96-4 (January 21, 1998), supra.

Zaleta v. Fairfield, 12 Conn. Workers' Comp. Rev. Op. 125, 1453 CRB-4-92-7 (February 28, 1994), **rev'd**, 38 Conn. App. 1 (1995), **cert. denied**, 234 Conn. 917 (1995).
CRB found claimant's request for a hearing within three years from the date of diagnosis of hypertension satisfied notice of claim requirement. Court reversed CRB's conclusion that firefighter's hypertension was presumptively an occupational disease. Because there was no evidence that the hypertension was an occupational disease, three-year statute of limitation did not apply. See also, **Zaleta**, § 7-433c.

Schena v. State/Connecticut Correctional Institute, 12 Conn. Workers' Comp. Rev. Op. 75, 1530 CRB-8-92-10 (February 3, 1994).
Notice to contest liability must be filed within statutorily prescribed time to the workers' compensation commissioner. Employer is not required to send notice to employee within the same period. See also, **Schena**, § 31-301. Appeal procedure.

Seymour v. Southington Dental Associates, P.C., 12 Conn. Workers' Comp. Rev. Op. 30, 1477 CRB-6-92-8 (January 20, 1994).
CRB held disclaimer language does not appreciably differ from the language held sufficiently specific by the appellate court in Tovish v. Gerber Electronics, 19 Conn. App. 273 (1989).

Peddle v. Finish Line Cafe, 12 Conn. Workers' Comp. Rev. Op. 27, 1396 CRB-2-92-2 (January 18, 1994).
Motion to Preclude denied where it was found claimant was not an employee of the respondent employer and claimant's injuries were the result of her own intentional acts. See also, **Peddle**, § 31-275(1), § 31-284(a), § 31-301-9. Additional evidence.

Mingrone v. Burndy Corporation, 12 Conn. Workers' Comp. Rev. Op. 19, 1403 CRB-7-92-3 (January 13, 1994).
Respondents' attempt, after remand, to raise additional non-jurisdictional grounds before trier in opposition to claimant's Motion to Preclude where CRB previously rendered a decision in Mingrone, 9 Conn. Workers' Comp. Rev. Op. 252, 1109 CRD-7-90-9 (November 21, 1991) properly rejected. Additionally, any new grounds raised in

opposition to Motion would allow an unreasonable delay of the ultimate determination of the claim. See also, **Mingrone**, § 31-301. Appeal procedure.

Paresi v. American Cruise Lines, 12 Conn. Workers' Comp. Rev. Op. 15, 1378 CRB-8-92-1 (January 13, 1994).
Medical care received by claimant at the expense of the employer within one year of the injury constituted the furnishing of medical care where employer had knowledge of circumstances surrounding the injury. See also, **Paresi**, § 31-340, § 31-343.

Velazquez v. Dresser Industries, 12 Conn. Workers' Comp. Rev. Op. 6, 1423 CRB-4-92-5 (January 6, 1994).
CRB affirmed trier's ruling granting claimant's Motion to Preclude. Claimant's date of injury occurred prior to the effective date of the warning requirement language of P.A. 90-116 § 9 which required notices of claim to contain a provision as to the preclusive effects of failing to timely disclaim liability. Even though notice was not served until after the effective date of P.A. 90-116 § 9, CRB held § 9 is not applicable where the date of injury proceeds the effective date of P.A. 90-116 § 9, October 1, 1990.

Hayden-Leblanc v. New London Broadcasting, 12 Conn. Workers' Comp. Rev. Op. 3, 1373 CRD-2-92-1 (January 5, 1994).
Written group medical form and group insurer's written rejection constituted written notice within one year where employer advised claimant that the time for filing a claim had lapsed when in fact the time had not passed and claimant later filed a claim. CRB held under the totality of circumstances notice requirements of § 31-294 were substantially complied with.

Capen v. General Dynamics Corporation/Electric Boat Division, 11 Conn. Workers' Comp. Rev. Op. 326, 1394 CRB-2-92-3 (December 30, 1993), **aff'd**, 38 Conn. App. 73 (1995).
Trier properly concluded that widow's claim for dependency benefits filed within one year of the death of the decedent was timely thereby satisfying the requirements of § 31-294c (formerly § 31-294). See also, **Capen**, § 31-306, § 31-299b.

Bayne v. Laidlaw Transit, Inc., 11 Conn. Workers' Comp. Rev. Op. 310, 1361 CRD-7-91-12 (December 23, 1993).
CRB affirmed trier's finding that claimant's back injury was the result of years of repetitive trauma at work rather than one single lifting incident. Claimant's notice of claim was timely filed.

Crute v. Arthur Fletcher Fuel Oil Company, 11 Conn. Workers' Comp. Rev. Op. 283, 1390 CRB-2-92-3, 1685 CRB-2-93-3 (December 2, 1993).
Claimant's notice of claim listed a number of injuries which allegedly arose out of and during the course of employment. Respondents' first disclaimer was valid however it only contested the carpal tunnel syndrome. A subsequent disclaimer contesting the rest of the injuries alleged in claimant's notice of claim was untimely filed for § 31-294c purposes. Trier found, and CRB affirmed, trier's ruling granting claimant's Motion to

Preclude as to other injuries and limiting respondents' contest to whether claimant's carpal tunnel syndrome arose out of and in the course of employment.

Marshall v. UTC/Pratt & Whitney, 11 Conn. Workers' Comp. Rev. Op. 204, 1317 CRD-1-91-10 (September 27, 1993).
CRB affirmed trier's ruling denying claimant's Motion to Preclude as respondent's disclaimer language was sufficiently specific applying appellate court's standard in Tovish v. Gerber Electronics, 19 Conn. App. 273 (1989). See also, **Marshall**, § 31-301. Appeal procedure. Subsequent decision at Marshall, 3623 CRB-1-97-6 (August 20, 1998), aff'd, 55 Conn. App. 902 (1999)(per curiam), cert. denied, 252 Conn. 904 (1999), supra.

Lilley v. Larry's Sales & Repair, 11 Conn. Workers' Comp. Rev. Op. 188, 1408 CRB-2-92-4 (September 16, 1993).
When calculating twenty-eight day period for contesting a claim for compensation, calculation begins on the day after receipt of a notice of claim for compensation. CRB affirmed trier's ruling that respondents' disclaimer was timely filed. Further, CRB held disclaimer language sufficiently specific, applying the standard accepted by the court in Tovish v. Gerber Electronics, 19 Conn. App. 273 (1989).

Magram v. Middletown, 11 Conn. Workers' Comp. Rev. Op. 167, 1348 CRD-8-91-11 (September 1, 1993).
Trier's ruling granting claimant's Motion to Preclude reversed. Respondents' notice to contest liability was timely filed with the compensation commissioner. Statute does not require claimant receive notice to contest within time prescribed. See, Vachon v. General Dynamics Corp., 29 Conn. App. 654 (1992).

Rice v. Vermilyn Brown, Inc., 11 Conn. Workers' Comp. Rev. Op. 156, 1300 CRD-2-91-9 (August 23, 1993), **aff'd**, 232 Conn. 780 (1995).
[Note: J. Berdon, Dissenting] CRB reversed trial commissioner. CRB held trier failed to apply the statute of limitations provision of § 1330e pertaining to occupational disease claims as it existed in 1942. Additionally, application of statute is substantive and may not be applied retrospectively. CRB relied on Niedzwicki v. Pequonnoch Foundry, 133 Conn. 78 (1946) as directly on point.

Landrette v. Bristol, 11 Conn. Workers' Comp. Rev. Op. 149, 1279 CRD-6-91-8 (August 19, 1993).
CRB affirmed trier's finding that police officer's mouth injury was causally related to an altercation wherein claimant suffered an accepted compensable injury to his ankle. Respondents contended claimant's written notice of claim failed to identify the mouth injury and therefore written notice was untimely. CRB held once trier determined the mouth injury was causally related to a work injury the need for any further notice was unnecessary. See, Hebert v. New Departure Hyatt Bearings, 4 Conn. Workers' Comp. Rev. Op. 94, 300 CRD-6-84 (June 12, 1987), no error, 14 Conn. App. 819 (1988).

St. Amour v. General Dynamics Corporation/Electric Boat Division, 11 Conn. Workers' Comp. Rev. Op. 146, 1286 CRD-2-91-8 (August 10, 1993).
Remanded. Trier made no factual finding concerning timeliness of widow's claim for benefits due to decedent's asbestos exposure and CRB was unable to determine whether a timely notice was filed. Record below lacks reviewable evidence in order for CRB to make a proper determination. See also, **St. Amour**, § 31-301. Appeal procedure.

Galgano v. Torrington, 11 Conn. Workers' Comp. Rev. Op. 133, 1280 CRD-5-91-8 (June 30, 1993).
Absent a timely notice of claim, an independent medical examination does not constitute the furnishing of medical care.

Meaney v. State/Dept. of Mental Retardation Region 1, 11 Conn. Workers' Comp. Rev. Op. 99, 1284 CRD-7-91-8 (May 17, 1993).
As notice failed to properly identify employer, the technical requirements of § 31-294 were not satisfied. See, Pereira v. State, 9 Conn. Workers' Comp. Rev. Op. 9, 906 CRD-7-89-8 (January 8, 1991), aff'd, 228 Conn. 535 (1994). Additionally, even if the prior forwarding of two Reports of Accident or Occupational Disease (First Report of Injury) satisfied the technical requirements of § 31-294, claimant failed to serve these documents in accordance with § 31-321. CRB affirmed trier's denial of claimant's Motion to Preclude.

Litke v. Crowell Builders, 11 Conn. Workers' Comp. Rev. Op. 77, 1215 CRD-5-91-4 (May 4, 1993).
Remanded as trier failed to determine whether an employer-employee relationship existed. This requisite relationship must be established before a Motion to Preclude can lie.

Niles v. Autac, Inc., 11 Conn. Workers' Comp. Rev. Op. 45, 1261 CRD-3-91-7 (March 18, 1993).
Section 31-297(b) does not preclude an employer from contesting extent of disability. Claimant filed a notice of claim August 16, 1990 for injuries sustained January 23, 1990. Respondent accepted initial liability, however, their disclaimer although filed late, disputed extent of disability and not compensability. Therefore, CRB affirmed trier's denial of claimant's Motion to Preclude.

Kari v. Wallingford, 11 Conn. Workers' Comp. Rev. Op. 25, 1242 CRD-8-91-6 (February 23, 1993).
Disclaimer in response to notice alleging emotional disorder, physical and mental stress, anxiety and depression, found sufficiently specific to avoid statutory presumption of liability.

Borent v. State/Dept. of Transportation, 10 Conn. Workers' Comp. Rev. Op. 219, 1302 CRD-2-91-9 (December 17, 1992), **aff'd**, 33 Conn. App. 495 (1994).
CRB reversed trier's ruling denying claimant's motion to preclude as claimant's notice of claim for hearing loss was filed within one year from the last day worked. CRB relied on previous decisions that hearing loss results from repetitive trauma and the date of

injury is the last day of exposure. Medical treatment received prior to last day worked does not start the clock running for statute of limitation purposes in repetitive trauma claims.

Pickard v. Manchester Gardens Condominium Association, Inc., 10 Conn. Workers' Comp. Rev. Op. 216, 1331 CRD-1-91-9 (December 17, 1992).
CRB affirmed trier's finding claimant's notice of claim failed to comply with technical requirements of § 31-294. Claimant failed to sufficiently establish a date of injury for his alleged back trauma claimed as work related, although CRB noted that, ordinarily, a trial commissioner need not inquire beyond the face of the documents submitted on a Motion to Preclude.

Halliday v. Daw's Critical Care Registry, Inc., 10 Conn. Workers' Comp. Rev. Op. 187, 1196 CRD-7-91-3 (September 14, 1992), **dismissed lack of final judgment**, A.C. 11770 (January 7, 1993), **cert. denied**, 225 Conn. 905 (February 18, 1993).
Remanded. CRB held it was not improper for trial commissioner to grant preclusion without an evidentiary hearing once jurisdiction was no longer an issue. However, record below fails to disclose whether claimant actually filed a Motion to Preclude in accordance with Adm. Reg. § 31-297(b)-1. Therefore, trier's granting of said Motion violated respondent's due process right to oppose such Motion by filing opposing affidavits, further documentation and memoranda of law. See also, **Halliday**, § 31-275(9).

Wald v. Hitchcock Chair Co., 10 Conn. Workers' Comp. Rev. Op. 192, 1281 CRD-5-91-8 (September 14, 1992).
Language in notice does not require a medical diagnosis nor does claimant need to prove compensability. See, Shira v. National Business Systems, 8 Conn. Workers' Comp. Rev. Op. 140, 840 CRD-6-89-4 (August 16, 1990).

Chase v. State/Dept. of Motor Vehicles, 10 Conn. Workers' Comp. Rev. Op. 181, 1305 CRD-2-91-9 (September 1, 1992), **rev'd**, 45 Conn. App. 499 (1997).
CRB held Pereira v. State, 9 Conn. Workers' Comp. Rev. Op. 9 (January 8, 1991) directly on point. Notice of claim failed to identify employer as State of Connecticut, Department of Motor Vehicles. See, Chase, 15 Conn. Workers' Comp. Rev. Op. 292, 2185 CRB-2-94-9 (June 20, 1996), in notes on § 31-301. Appeal procedure.

Chute v. Mobil Shipping and Transportation, 10 Conn. Workers' Comp. Rev. Op. 183, 1321 CRD-7-91-10 (September 1, 1992), **aff'd**, 32 Conn. App. 16 (1993), **cert. denied**, 227 Conn. 919 (1993).
Motion to Preclude denied where trier found no employer/employee relationship existed as decedent was an independent contractor. See also, **Chute**, § 31-275(9) and § 31-301. Appeal procedure.

Crochiere v. Enfield/Board of Education, 10 Conn. Workers' Comp. Rev. Op. 165, 1069 CRD-1-90-7 (August 27, 1992), **aff'd**, 227 Conn. 333 (1993).
In repetitive trauma cases the last day worked is the last day of exposure. The last day of claimant's exposure to the work related mentally traumatizing events was October 21,

1987, the last day worked. Notice of claim was filed September 22, 1988. Clearly, a repetitive trauma claim was timely filed. For occupational disease cases, the time of injury is the date of total or partial incapacity to work. A three-year limit is set by statute for filing a claim for occupational disease. Claimant's psychotic breakdown for which he was hospitalized occurred December 25, 1987. Therefore, the first day of disability, December 25, 1987, and a September 22, 1988 notice clearly fall within § 31-294's occupational disease limits. See also, **Crochiere**, § 31-275(1), § 31-284(a), § 31-298, § 31-301. Factual findings and Appeal procedure.

Campbell v. Manchester Memorial, 10 Conn. Workers' Comp. Rev. Op. 151, 1182 CRD-5-91-2 (June 30, 1992).
Remanded as trier made no factual finding as to when claimant knew or should have known that her right shoulder disability (i.e. repetitive trauma injury) was causally related to work. See, Edmounds v. Machlett Laboratories, 9 Conn. Workers' Comp. Rev. Op. 241, 1119 CRD-7-90- 10 (October 31, 1991). See also, **Campbell**, § 31-301. Appeal procedure. Subsequent decision at Campbell, 13 Conn. Workers' Comp. Rev. Op. 157, 1754 CRB-1-93-6 (March 8, 1995), supra.

Prisco v. North & Judd, 10 Conn. Workers' Comp. Rev. Op. 154, 1190 CRD-8-91-3 (June 30, 1992).
Occupational disease claim timely filed. Respondents failed to set out the specific parts of the evidentiary record which support their claim that claimant should have known in 1984 and possibly as early as 1981 that his symptoms were occupationally related. See also, **Prisco**, § 31-275(1).

McGowan v. Robin Michaels Beauty Center, 10 Conn. Workers' Comp. Rev. Op. 121, 1246 CRD-3-91-6 (May 15, 1992).
Notice of claim complied with technical requirements of § 31-294. CRB affirmed trier's finding that Robyn Michaels Beauty Center is an entity against whom liability may attach and was claimant's employer despite the fact that no trade name certificate had been filed.

Rodriguez v. Bruce Manufacturing, 10 Conn. Workers' Comp. Rev. Op. 118, 1268 CRD-6-91-7 (May 15, 1992), **dismissed for lack of final judgment**, 30 Conn. App. 320 (1993).
CRB unpersuaded by respondents' argument that claimant's notice fails to state in simple language but rather provides too much information and that the notice of claim was merely a request for information.

Paccadolmi v. Newtown, 10 Conn. Workers' Comp. Rev. Op. 116, 1270 CRD-4-91-8 (May 13, 1992).
CRB affirmed trier's finding claimant knew or should have known he had heart disease as early as 1985 when medical treatment was rendered. Claim filed in 1989 does not meet § 31-294's statutory limitations. See also, **Paccadolmi**, § 7-433c.

Polleto v. New Milford Septic, 10 Conn. Workers' Comp. Rev. Op. 105, 1174 CRD-7-91-2 (May 6, 1992).
Disclaimer sent to address listed on claimant's driver's license properly filed as claimant's address, i.e., a P.O. Box, is the equivalent of his residence. CRB affirmed trier's finding disclaimer was timely filed and sufficiently specific.

Murach v. New Britain, 10 Conn. Workers' Comp. Rev. Op. 89, 1172 CRD-6-91-2 (April 20, 1992).
CRB reversed trier's finding awarding claimant § 7-433c benefits. Trier found 1988 notice of claim timely as hypertension was controlled by medication from 1978 through claimant's first manifestation of a symptom, an aortic aneurysm in 1988. CRB found first manifestation was in 1978 as claimant's condition was then disabling as claimant required medication to continue to work. Therefore, notice in 1988 was untimely filed. See also, **Murach**, § 7-433c, § 31-301-9. Additional evidence.

Romeo v. H & L Chevrolet, Inc., 10 Conn. Workers' Comp. Rev. Op. 72, 1149 CRD-7-90-12 (March 31, 1992).
CRB affirmed trier's decision dismissing claimant's claim where claimant failed to prove notice was given within one year of the injury as district had no record of such notice being filed. See also, **Romeo**, § 31-278 and § 31-301. Appeal procedure.

Vachon v. General Dynamics Corporation/Electric Boat Division, 10 Conn. Workers' Comp. Rev. Op. 53, 1137 CRD-2-90-11 (February 19, 1992), **rev'd**, 29 Conn. App. 654 (1992), **cert. denied**, 224 Conn. 927 (1993).
CRB held as respondent failed to serve disclaimer on the claimant within twenty days upon receipt of claimant's notice of claim, motion to preclude granted. Public Act 90-116, § 9, which requires notices of claim contain a warning provision as to the preclusive effects of § 31-297(b), affects a substantive right and should not be applied retroactively. Appellate Court reversed and remanded. Appellate Court held employer not required to send notice to employee within 20 days as § 31-297(b) does not contain language specifically directing the sending of a disclaimer notice to employee within 20 days.

Yankus v. Post College, 10 Conn. Workers' Comp. Rev. Op. 56, 1159 CRD-5-91-1 (February 19, 1992).
Reversed trier's ruling granting claimant's motion to preclude as disclaimer filed timely, properly addressed to the trial commissioner and sent to the chairman's office was properly served. At the time the disclaimer was filed the trial commissioner was a commissioner at large assigned to the chairman's office. Also, § 31-280 as it existed gave the chairman statewide jurisdiction.

Peters v. State/Southern Connecticut State University, 10 Conn. Workers' Comp. Rev. Op. 32, 1103 CRD-3-90-8 (January 13, 1992).
Whether a claim is timely filed is a jurisdictional question which can be raised at any time. See, Pelletier v. Caron Pipe Jacking, Inc., 13 Conn. App. 276 (1988). Evidence supports trier's conclusion statute began to run when claimant became aware of the possible link between his work place and his cancer. Therefore notice satisfies

jurisdictional and technical prerequisites for an occupational disease notice of claim. Additionally, as respondents previously withdrew their appeal in an earlier decision granting claimant's Motion to Preclude, contention as to whether notice met all the technical requirements of § 31-294 was waived. See also, **Peters**, Remanded on § 31-308(c) issue, § 31-301. Appeal procedure.

Black v. London & Egazarian, 10 Conn. Workers' Comp. Rev. Op. 25, 1098 CRD-7-90-8 (December 30, 1991), **rev'd**, 30 Conn. App. 295 (1993), **cert. denied**, 225 Conn. 916 (1993).
CRD affirmed trier's finding dependent widow failed to sustain her burden of proof that decedent's cardiac arrest and death arose in and out of the course of his employment as factual finding was based on the weight and credibility he gave to the evidence and medical testimony presented. Appellate Court found commissioner improperly denied Motion to Preclude, thereby reversing CRD's ruling. Appellate Court found claimant's notice complied with § 31-321 in that the notice was in fact properly deposited as certified mail. Postal worker's unsuccessful attempt to obtain a signed receipt does not constitute non-compliance. Also, claimant's letter included all the information necessary under § 31-294 to satisfy notice requirements. Furthermore, intend to file language in claimant's letter apprised employer of an imminent claim under the Workers' Compensation Act. Prior decision at Black, 5 Conn. Workers' Comp. Rev. Op. 126, 483 CRD-7-86 (June 29, 2988), infra.

DeAlmeida v. M.C.M. Stamping Corporation, 10 Conn. Workers' Comp. Rev. Op. 21, 1097 CRD-7-90-8, 1139 CRD-7-90-11 (December 30, 1991), **aff'd**, 29 Conn. App. 441 (1992).
Public Act 90-116 provided notices of claim must be properly served and include a warning to the employer they shall be precluded from contesting liability unless a notice contesting liability is filed within the time prescribed. Respondent's contention P.A. 90-116 should be applied retroactively is erroneous as P.A. 90-116 affects substantive rights. Further, issues of causation are not jurisdictional and cannot be raised if respondent is precluded from asserting defenses to a claim pursuant to § 31-297b. See, Marchesseault v. Guerrera, 7 Conn. Workers' Comp. Rev. Op. 104, 850 CRD-5-89-4 (November 9, 1989).

Carvalko v. Bassick Company, 9 Conn. Workers' Comp. Rev. Op. 258, 767 CRD-4-88-9 (December 2, 1991).
CRD affirmed trial commissioner's finding that claimant's date of injury for hearing loss claim was the last date of exposure to the noisy environment. Further, where notice of claim set out specific period of time for which hearing loss was attributed and evidence during proceedings below indicates exposure at a different period, and trial commissioner finds that subsequent period to be the date of injury, statute of non-claim satisfied. Notice was filed within one year from the date of injury, i.e. date of last exposure. See also, **Carvalko**, § 31-301. Factual findings.

Mingrone v. Burndy Corporation, 9 Conn. Workers' Comp. Rev. Op. 252, 1109 CRD-7-90-9 (November 21, 1991).
Remanded as CRD disagreed with trier's interpretation of § 31-294 concerning statute of limitations for occupational disease and surviving widow's claim for compensation. A possibility or mere suspicion does not satisfy statutory intent when a symptom should plainly appear. CRD also found surviving widow's notice of claim for compensation met all the statutory requirements under § 31-294. Trier erred in concluding notice was insufficient. CRD found notice did in fact state surviving widow's name (Mrs. Bruno Mingrone), her address, identified her claim properly and reason why a claim was being filed. Place of accident as used in § 31-294 does not pertain to occupational disease notice requirements. No need to include address of deceased person.

Edmounds v. Machlett Laboratories, 9 Conn. Workers' Comp. Rev. Op. 241, 1119 CRD-7-90-10 (October 31, 1991).
Remanded as CRD unable to determine on what legal basis the trier concluded that § 31-294's exception to a written notice of claim was not satisfied. Here claimant suffered from carpal tunnel syndrome. It is not clear when the claimant knew or should have known of the disabling condition. CRD opinion also discussed § 31-294's provision of furnishing medical care as interpreted by case law.

Collins v. Jiffy Auto Radiator, Inc., 9 Conn. Workers' Comp. Rev. Op. 232, 993 CRD-3-90-3 (October 30, 1991).
Medical bills paid by group health insurance does not constitute furnishing of medical care. See, Clapps v. Waterbury Iron Works, Inc., 38 Conn. Sup. 644 (1983).

Tomkus v. Upjohn Company, 9 Conn. Workers' Comp. Rev. Op. 163, 972 CRD-3-90-1 (June 28, 1991).
Where company nurse performs an EKG and subsequently drives claimant to the hospital the statutory requirements of furnishing medical care are met. See also, **Tomkus**, § 31-301. Factual findings and § 31-298.

Dubois v General Dynamics Corporation/Electric Boat Division, 9 Conn. Workers' Comp. Rev. Op. 160, 1095 CRD-2-90-8 (June 25, 1991), **aff'd**, 222 Conn. 62 (1992).
Notice of claim under § 31-294 does not require address of deceased employee where name and address of the person in whose interest compensation is claimed appears on the notice. Also, statutory language of § 31-297(b) makes it clear that the twenty day window for filing a disclaimer begins when the employer receives the notice of claim not when the commissioner receives the notice of claim.

Lorusso v. State/Southbury Training School, 9 Conn. Workers' Comp. Rev. Op. 158, 1059 CRD-5-90-6 (June 13, 1991).
CRD affirmed trier's denial of claimant's Motion to Preclude as disclaimer contained even more specificity than that in Tovish v. Gerber Electronics, 19 Conn. App. 273 (1989).

Greger v. State/Southbury Training School, 9 Conn. Workers' Comp. Rev. Op. 156, 1016 CRD-5-90-5 (June 10, 1991).
CRD affirmed trier's denial of claimant's Motion to Preclude as disclaimer was sufficiently specific under Tovish v. Gerber Electronics, 19 Conn. App. 273 (1989).

Marchesseault v. J.P. Guerrera, 9 Conn. Workers' Comp. Rev. Op. 133, 982 CRD-5-90-2 (May 22, 1991).
CRD affirmed trier's ruling denying claimant's Motion to Preclude as disclaimer language was sufficiently specific under Tovish v. Gerber Electronics, 19 Conn. App. 273 (1989).

Deangelo v. Allegheny Ludlum Corp., 9 Conn. Workers' Comp. Rev. Op. 126, 970 CRD-8-90-1 (May 16, 1991).
Statute of limitations as to occupational disease begins to run from the first manifestation of symptoms which plainly appear, not when suspected or doubtful.

Melvin v. Mattatuck Manufacturing Co., 9 Conn. Workers' Comp. Rev. Op. 131, 964 CRD-5-89-12 (May 16, 1991).
CRD reversed trier's ruling granting claimant's Motion to Preclude as disclaimer language was sufficiently specific under Tovish v. Gerber Electronics, 19 Conn. App. 273 (1989).

Synnott v. Waterbury, 9 Conn. Workers' Comp. Rev. Op. 129, 962 CRD-5-89-12 (May 16, 1991).
CRD affirmed trier's ruling denying claimant's Motion to Preclude as disclaimer was sufficiently specific under Tovish v. Gerber Electronics, 19 Conn. App. 273 (1989).

Dattillo v. Yale University, 9 Conn. Workers' Comp. Rev. Op. 118, 1074 CRD-3-90-7 (April 26, 1991).
CRD held notice of claim met statutory requirements of § 31-294. Employer failed to serve disclaimer in accordance with § 31-321, therefore any objections to causation are irrelevant and preclusion must lie.

Hushin v. Hawthorne Inn, Inc., 9 Conn. Workers' Comp. Rev. Op. 98, 931 CRD-6-89-10 (March 5, 1991).
CRD remanded matter as trier's conclusion that respondents mailing of a disclaimer to claimant's attorney's address published in a then current telephone directory therefore satisfying § 31-321 was not supported by the evidence in the record below.

Colas v. Marriott Food Services, 9 Conn. Workers' Comp. Rev. Op. 86, 939 CRD-7-89-11 (February 26, 1991).
Trier's failure to admit document into evidence or take administrative notice of it would not have affected the result of the decision. One respondent sought to admit a letter (notice of claim) from claimant's counsel in order to support a Motion to Preclude. CRD held that while the letter which purported alternative theories for the basis of the compensation claim was sufficient notice under § 31-294, the letter would not support the preclusive effects of § 31-297(b) as it was not a direct assertion of a claim against the other respondents. See also, **Colas**, § 31-298, and § 31-307b.

Baldoni v. St. Mary's Hospital, 9 Conn. Workers' Comp. Rev. Op. 43, 916 CRD-5-89-9 (February 1, 1991).
Where two timely disclaimers are filed and trier fails to consider one disclaimer which satisfies the specificity requirements of § 31-297(b) as held in Tovish v. Gerber Electronics, 19 Conn. App. 273 (1989), trier's decision reversed and remanded for further proceedings.

Pereira v. State/Dept. Children & Youth Services, 9 Conn. Workers' Comp. Rev. Op. 9, 906 CRD-7-89-8 (January 8, 1991), **dismissed for lack of final judgment**, A.C. 9884 (March 20, 1991).
Notice failed to properly identify employer for § 31-297(b) purposes when employer was designated as Dept. Children & Youth Services and no reference was made to State of Connecticut. But see, Pereira, 10 Conn. Workers' Comp. Rev. Op. 229, 1209 CRD-7-91-4 (1993), aff'd, 228 Conn. 535 (1994), § 31-275(1) and § 31-301. Factual findings. Supreme Court noted that CRB's strict compliance with notice requirements was inappropriate. See, **Pereira**, supra at 542-43, note 8.

Hveem v. State, 9 Conn. Workers' Comp. Rev. Op. 5, 897 CRD-5-89-7 (January 4, 1991).
Reversed decision of trial commissioner. Disclaimer language sufficiently specific. See, Tovish v. Gerber Electronics, 19 Conn. App. 273 (1989). See, **Hveem**, § 31-321.

DiBenedetto v. State/University of Connecticut Health Center, 9 Conn. Workers' Comp. Rev. Op. 1, 862 CRD-6-89-5 (January 3, 1991).
Remanded to establish compensability as proper disclaimer filed before proper notice of claim does not render it deficient. See, Gelinas v. St. Mary's Hospital, 7 Conn. Workers' Comp. Rev. Op. 65, 705 CRD-5-88-3 (August 16, 1989); Lopez v. Peerless Aluminum Foundry, 6 Conn. Workers' Comp. Rev. Op. 46, 654 CRD-4-87 (October 18, 1988); Elmassri v. Vinco, Inc., 5 Conn. Workers' Comp. Rev. Op. 96, 584 CRD-7-87 (June 2, 1988); Skorupski v. Commercial Union Insurance Co., 2 Conn. Workers' Comp. Rev. Op. 133, 338 CRD-3-84 (April 1, 1985). See also, **DiBenedetto**, § 5-142(a), § 5-145a.

Rogers v. General Dynamics Corporation/Electric Boat Division, 8 Conn. Workers' Comp. Rev. Op. 163, 878 CRD-2-89-6 (September 27, 1990).
Proper disclaimer filed before written notice of claim satisfies § 31-297(b) requirements. See, Elmassri v. Vinco, Inc., 5 Conn. Workers' Comp. Rev. Op. 96, 584 CRD-7-87 (June 2, 1988); Lopez v. Peerless Aluminum Foundry, 6 Conn. Workers' Comp. Rev. Op. 46, 654 CRD-4-87 (October 18, 1988).

Shira v. National Business Systems, 8 Conn. Workers' Comp. Rev. Op. 140, 840 CRD-6-89-4 (August 16, 1990), **remanded**, **lack of final judgment**, 25 Conn. App. 350 (1991).
Notice of claim need only state the nature of injury in simple language. The only defenses which survive an elapsed disclaimer are jurisdictional ones. If they are satisfied, preclusion must lie.

Orcutt v. Ohmweave Co., 8 Conn. Workers' Comp. Rev. Op. 125, 822 CRD-2-89-2 (August 2, 1990).
Law which governs is the law at the time of the injury. For occupational disease the time of injury is the date of first known manifestation. See also, **Orcutt**, § 31-307.

Fleming v. New Haven Register, 8 Conn. Workers' Comp. Rev. Op. 108, 827 CRD-5-89-2 (June 19, 1990).
Remanded where trial commissioner failed to state specific reasons for denying preclusion.

Dorsett v. General Dynamics Corporation/Electric Boat Division, 8 Conn. Workers' Comp. Rev. Op. 77, 805 CRD-2-88-12 (May 8, 1990), **aff'd**, 23 Conn. App. 827 (1990)(per curiam), **cert. denied**, 218 Conn. 901 (1991).
Statute does not require address of deceased employee. Address of dependent widow claiming benefits pursuant to § 31-306 sufficient to satisfy notice requirements. Notice filed within limitation period, therefore complied with jurisdictional prerequisite.

Trantolo v. Trantolo & Trantolo, 8 Conn. Workers' Comp. Rev. Op. 69, 823 CRD-6-89-2 (April 17, 1990).
Respondent's attack on constitutionality of § 31-297(b) requirement that disclaimer be filed within 20 days could not be decided by commission as it lacks jurisdiction over such issues. See also, **Trantolo**, § 31-300, § 31-301. Appeal procedure.

Deck v. Groton, 8 Conn. Workers' Comp. Rev. Op. 1, 745 CRD-2-88-6 (December 12, 1989).
Motion to Preclude denied where notice of claim for heart attack failed to meet one year statute of limitation under § 31-294. Further evidentiary hearings necessary to determine if claimant's § 7-433c claim for hypertension met 3 year statute of limitation for occupational disease.

Delos v. United Illuminating, 7 Conn. Workers' Comp. Rev. Op. 111, 751 CRD-4-88-7 (November 30, 1989).
For hearing loss, the date of injury is last date of exposure to repetitive trauma.

Marchesseault v. Guerrera, 7 Conn. Workers' Comp. Rev. Op. 104, 850 CRD-5-89-4 (November 9, 1989).
Remanded. Commissioner's jurisdictional analysis as to the applicability of § 31-297(b) was incorrect. Employer-employee relationship existed at the time of injury, however, whether injury arose out of or during the course of employment requires a separate determination.

Cousins v. Hartford, 7 Conn. Workers' Comp. Rev. Op. 101, 676 CRD-1-87 (November 8, 1989).
Employer's treatment of claimant's nosebleed, eye infection and thrombosis of the retinal blood vessels was not the furnishing of medical care sufficient to toll statute of limitations where claimed disability was for heart and hypertension. See also, **Cousins**, § 7-433c.

Guinan v. Direct Marketing Association, Inc., 7 Conn. Workers' Comp. Rev. Op. 93, 734 CRD-7-88-5 (October 4, 1989), **dismissed for lack of final judgment**, 21 Conn. App. 63 (1990), **appeal reinstated**, 22 Conn. App. 515 (1990), **aff'd**, 23 Conn. App. 804 (1990)(per curiam).
Due process does not require notice of claim inform respondents as to possible preclusion of defenses under § 31-297(b). If notice provides an address where mail or other communications will be received, that address is sufficient. See also, Robinson v. Miller, 7 Conn. Workers' Comp. Rev. Op. 69, 686 CRD-1-88-1 (August 28, 1989). Note: See, P.A. 90-116.

Velez v. Richard Zappone, 7 Conn. Workers' Comp. Rev. Op. 79, 693 CRD-5-88-2 (September 14, 1989), **no error**, 21 Conn. App. 812 (1990)(per curiam).
Motion to preclude cannot lie where Commission lacked jurisdiction over the res as there was no employment relationship. See, Castro v. Viera, 207 Conn. 420 (1988). See also, **Velez**, § 31-275(9).

Paul v. Perkin Elmer Corp., 7 Conn. Workers' Comp. Rev. Op. 75, 684 CRD-7-88-1 (September 5, 1989).
Notice was sufficient under § 31-294 for the claim to survive the statute of limitations, however, such notice would not satisfy 31-297(b) requirements under DeLeon v. Jacob Bros., 38 Conn. Sup. 331 (1981); Secor v. C.A. Parshall, Inc., 4 Conn. Workers' Comp. Rev. Op. 158 (March 8, 1988); Brown v. Bonvini Dental Lab, 6 Conn. Workers' Comp. Rev. Op. 132, 594 CRD-7-87 (March 28, 1989); Salvaggio v. Candlewood Valley Bus Co., 6 Conn. Workers' Comp. Rev. Op. 156, 731 CRD-7-88 (May 1, 1989). Claim dismissed on alternate ground failure to sustain burden of proof where evidence of causality insufficient.

Robinson v. Miller, 7 Conn. Workers' Comp. Rev. Op. 69, 686 CRD-1-88-1 (August 28, 1989).
Reversed & remanded, where notice of claim designates a place where mail or other communications could reach claimant (in the hospital) and additionally gave the address of claimant's lawyer, the requirements of § 31-294 have been satisfied.

Lopez v. Penny's Restaurant, 7 Conn. Workers' Comp. Rev. Op. 67, 697 CRD-7-88-2 (August 23, 1989).
Remanded. Where letter from employer sent regular mail raises jurisdictional issue as to employment status, late or improperly filed disclaimer will estop § 31-297(b) presumption.

Gelinas v. St. Mary's Hospital, 7 Conn. Workers' Comp. Rev. Op. 65, 705 CRD-88-3 (August 16, 1989).
Remanded. Notice contains all elements necessary to comply with § 31-294 requirements. Place of injury and place of employment are the same in this instance. Notice satisfies simple language requirement. Disclaimer filed early does not render it deficient. However, disclaimer did not comply with § 31-321, therefore preclusion must lie.

Durante v. Amity Regional School District #5, 7 Conn. Workers' Comp. Rev. Op. 59, 701 CRD-3-88-3 (August 11, 1989).
Disclaimer not sufficiently specific where language constitutes a general denial.

Cleveland v. U.S. Printing Ink, Inc., 7 Conn. Workers' Comp. Rev. Op. 51, 680 CRD-2-88-1 (August 10, 1989), **no error**, 21 Conn. App. 610 (1990), **aff'd**, 218 Conn. 181 (1991).
Allegation of improper venue incorrect as § 31-278 and § 31-294 permit notice and jurisdiction of claims with any commissioner. Where trial commissioner finds employer-employee relationship exists and there were significant contacts with this jurisdiction, Motion to Preclude will lie. See also, **Cleveland**, § 31-278.

Garthwait v. Banner State Rail, 7 Conn. Workers' Comp. Rev. Op. 24, 605 CRD-3-87 (July 12, 1989).
Remanded. Failure to properly identify employer and employer's address renders notice insufficient to meet technical requirements of § 31-294.

Wagner v. Texaco Refining & Marketing, Inc., 7 Conn. Workers' Comp. Rev. Op. 14, 637 CRD-1-87 (June 23, 1989).
Motion to Preclude upheld on the basis that notice of claim was proper and timely filed within the three-year limit for an occupational disease.

Salvaggio v. Candlewood Valley Bus Co., 6 Conn. Workers' Comp. Rev. Op. 156, 731 CRD-7-88-5 (May 1, 1989).
Notice of claim which stated employer's name incorrectly is insufficient to preclude liability. See also, Fuller v. Central Paving Co., 5 Conn. Workers' Comp. Rev. Op. 92, 655 CRD-1-87 (April 6, 1988).

Ebrech v. Cadbury Schweppes, Inc., 6 Conn. Workers' Comp. Rev. Op. 120, 687 CRD-7-88-1 (March 2, 1989).
Section 31-294 only requires statement of claim and nature of injury in simple language. See also, Pagan v. Paparazzo & Son, 6 Conn. Workers' Comp. Rev. Op. 38 (September 30, 1988). Disclaimer sent by ordinary mail to compensation commissioner not in compliance with § 31-321, See, Skorupski v. Commercial Union Insurance Co., 2 Conn. Workers' Comp. Rev. Op. 133, 338 CRD-3-84 (April 1, 1985); Ricci v. Peabody N.E. Inc., 6 Conn. Workers' Comp. Rev. Op. 54, 738 CRD-3-88-6 (October 26, 1988).

Piscitelli v. Connecticut Coke/Eastern Gas and Fuel Associates, 6 Conn. Workers' Comp. Rev. Op. 94, 575 CRD-3-87 (January 26, 1989).
Statute of limitations for occupational disease runs from date of first known manifestation.

Collins v. Seal Products, 6 Conn. Workers' Comp. Rev. Op. 90, 702 CRD-5-88-3 (January 19, 1989).
Disclaimer not sufficiently specific.

Falcigno v. Joseph Feldman, Inc., 6 Conn. Workers' Comp. Rev. Op. 88, 733 CRD-3-88-5 (January 13, 1989).
Remanded as trial commissioner did not take evidence as to jurisdictional defenses. See also, **Falcigno**, § 31-278. See, Castro v. Viera, 207 Conn. 420 (1988).

Schenkel v. Ken Yoos Valley Services, 6 Conn. Workers' Comp. Rev. Op. 78 (January 6, 1989).
Remanded to establish jurisdictional facts as to the timeliness of the claim.

Ricci v. Peabody N.E., Inc., 6 Conn. Workers' Comp. Rev. Op. 54, 738 CRD-3-88-6 (October 26, 1988).
Disclaimer sent regular mail to commissioner's office invalid.

Lopez v. Peerless Aluminum Foundry, 6 Conn. Workers' Comp. Rev. Op. 46, 654 CRD-4-87 (October 18, 1988).
A motion to preclude will not lie where a valid notice of disclaimer [Form 43] was filed prior to a notice of claim.

Pagan v. Paparazzo's & Son, 6 Conn. Workers' Comp. Rev. Op. 38, 653 CRD-5-87 (September 30, 1988).
Section 31-294's requirement as to statement of nature of injury does not require a medical diagnosis.

Barron v. East Hartford, 6 Conn. Workers' Comp. Rev. Op. 15, 534 CRD-1-86 (September 13, 1988).
Medical care provided to claimant by respondent-Town's Director of Health who was also a physician constituted furnishing of medical care.

Grady v. G & L Oxygen & Medical Co., 6 Conn. Workers' Comp. Rev. Op. 12, 572 CRD-6-87 (September 12, 1988).
Where claimant alleges injury due to repetitive trauma, § 31-294 requirement of specific accident dates not applicable. Further, in order for claim to meet statute of limitations repetitive trauma must have existed 1 year prior to claim filing.

Jarret v. Clairol, Inc., 6 Conn. Workers' Comp. Rev. Op. 5, 540 CRD-7-86 (August 16, 1988).
Trial commissioner must rule on jurisdictional issues before further action on a motion to preclude.

Tovish v. Gerber Electronics, 5 Conn. Workers' Comp. Rev. Op. 154, 617 CRD-4-87 (August 2, 1988), **remanded**, 19 Conn. App. 273 (1989), **cert. denied**, 212 Conn. 814 (1989).
Disclaimer language, "Injury did not arise out of or in the course and scope of employment," held not sufficiently specific. See later case, **Tovish**, § 31-275(1).

Gallagher v. Edmunds Manufacturing Co., 5 Conn. Workers' Comp. Rev. Op. 133, 494 CRD-6-86 (June 30, 1988).
The recitation of specific disabling conditions in a Voluntary Agreement does not preclude a claimant from asserting disabilities other than those specifically cited in the Voluntary Agreement if the injuries were causally related.

Black v. London & Egazarian Associates, Inc., 5 Conn. Workers' Comp. Rev. Op. 126, 483 CRD-7-86 (June 29, 1988), **rev'd**, 30 Conn. App. 295 (1993), **cert. denied**, 225 Conn. 916 (1993).
Trial commissioner's conclusion that claimant's notice was not filed in conformity with § 31-321 was not based on impermissible inferences or contrary to law. Further rulings on Motions to Preclude are permitted under § 31-301(a). Subsequent decision at Black, 10 Conn. Workers' Comp. Rev. Op. 25, 1098 CRD-7-90-8 (December 30, 1991), supra.

Chute v. Mobil Shipping and Transportation Co., 5 Conn. Workers' Comp. Rev. Op. 119, 579 CRD-7-87 (June 21, 1988).
Claimant's notice of claim failed to properly identify claimant and therefore did not contain all elements necessary under § 31-294. Held no § 31-297 (b) preclusion could lie. Subsequent decision at Chute, 10 Conn. Workers' Comp. Rev. Op. 183, 1321 CRD-7-91-10 (September 1, 1992), aff'd, 32 Conn. App. 16 (1993), cert. denied, 227 Conn. 919 (1993), § 31-275(9), § 31-294c, § 31-301. Appeal procedure.

Elmassri v. Vinco, Inc., 5 Conn. Workers' Comp. Rev. Op. 96, 584 CRD-7-87 (June 2, 1988).
See, Fuller, infra. Also a perfect disclaimer of liability filed before a notice of claim is a proper disclaimer and therefore the preclusive effects of § 31-297(b) cannot lie.

Paladino v. Schaller Subaru, Inc., 5 Conn. Workers' Comp. Rev. Op. 87, 522 CRD-6-86 (May 17, 1988).
Respondents' failure to send its disclaimer within statutory period and as directed by § 31-321 rendered the disclaimer a nullity. The respondents' attempt to cure the defective filing after the 20-day statutory period for filing was untimely and therefore, Motion to Preclude granted.

Lumley v. Fairfield, 5 Conn. Workers' Comp. Rev. Op. 77, 439 CRD-4-85 (May 10, 1988).
See, Pelletier, infra.

Foley v. New Britain, 5 Conn. Workers' Comp. Rev. Op. 68, 404 CRD-7-85, **Gavin v. New Britain**, 5 Conn. Workers' Comp. Rev. Op. 68, 405 CRD-7-85 (April 28, 1988), **no error**, 17 Conn. App. 834 (1989) (per curiam).
The furnishing of medical care does not trigger need for a disclaimer.

Kalaky v. State, 5 Conn. Workers' Comp. Rev. Op. 66, 520 CRD-4-86 (April 28, 1988).
See, Wilcox, infra.

Sinaguglia v. Stamford, 5 Conn. Workers' Comp. Rev. Op. 62, 435 CRD-7-85 (April 26, 1988).
Claim for job-related stress benefits time barred under § 31-294 where the first manifestation of symptom was found to be in 1978 and the notice of claim was in 1982.

Wilcox v. Naugatuck, 5 Conn. Workers' Comp. Rev. Op. 54, 518 CRD-5-86 (April 8, 1988), **no error**, 16 Conn. App. 676 (1988)(per curiam).
Language of disclaimer lacked specificity required under Menzies, infra. See also, Tovish, supra.

Fuller v. Central Paving Company, 5 Conn. Workers' Comp. Rev. Op. 92, 665 CRD-7-87 (April 6, 1988).
Notice of claim must meet all technical requirements of § 31-294 before the preclusive effects of § 31-297 (b) will be triggered. Substantial compliance is not enough to trigger § 31-297(b).

Gardella v. The Torrington Co., 5 Conn. Workers' Comp. Rev. Op. 33, 471 CRD-5-86 (April 6, 1988).
Preclusion does not apply to issue of extent of disability.

Kelly v. Raymark Industries, Inc., 5 Conn. Workers' Comp. Rev. Op. 38, 469 CRD-4-86 (April 6, 1988).
Disclaimer not served in accordance with § 31-297(b) and § 31-321 failed to satisfy requisites of statute.

Pagliuco v. United Illuminating, 5 Conn. Workers' Comp. Rev. Op. 27, 427 CRD-4-85 (March 29, 1988).
Medical care furnished to claimant by a registered nurse employed in employer's health department and under the supervision of a physician was held to meet exception to requirement of written notice of claim.

Bjelka v. Norwalk Hospital, 5 Conn. Workers' Comp. Rev. Op. 21, 370 CRD-7-84 (March 28, 1988).
Trial commissioner's reliance on C.G.S. § 7442 (Rev. 1949) may be misplaced where later evidence was found tending to show claimant's first exposure to deleterious substance was not during employment with respondents. CRD remanded as the date of death and first manifestation of symptom were November 1977 and March 1978 (respectively) and thus, § 31-297(b) preclusion might lie.

Maher v. State, 5 Conn. Workers' Comp. Rev. Op. 19, 374 CRD-4-85 (March 24, 1988).
Trial commissioner's finding that notice was sent by certified mail will not be disturbed on appeal. See also, **Maher**, § 31-306.

Pich v. Pratt & Whitney, 4 Conn. Workers' Comp. Rev. Op. 163, 354 CRD-6-84 (March 9, 1988).
Informal hearing met statute's hearing exception for written notice and date of injury for hearing loss was last day worked.

Morton v. Vallerie's Transportation, 4 Conn. Workers' Comp. Rev. Op. 161, 343 CRD-7-84 (March 9, 1988).
Calling for an ambulance when worker complained of internal pain was not furnishing of medical care where pain was not readily distinguishable as symptom of a work injury. Further, payment of medical expenses through union administered group insurance plan was not furnishing of medical care.

Secor v. C.A. Parshall, Inc., 4 Conn. Workers' Comp. Rev. Op. 158, 340 CRD-7-84 (March 8, 1988).
A notice of claim for § 31-294 purposes need not be served in accordance with § 31-321. Cf. § 31-297(b).

Butkus v. Bethlehem, 4 Conn. Workers' Comp. Rev. Op. 153, 421 CRD-5-85 (February 23, 1988).
Notice of Intent to Contest must be sent certified or registered mail as provided in § 31-321.

Laprade v. Robbins, 4 Conn. Workers' Comp. Rev. Op. 100, 505 CRD-7-87 (June 12, 1987).
Respondent argued that it should not be precluded from contesting liability where it alleged fraud in the making of the claim. Held commissioner's factual determination that there was no fraud in the making of the claim should be upheld.

Bull v. Raymark Industries, 4 Conn. Workers' Comp. Rev. Op. 91, 474 CRD-4-86 (June 8, 1987).
Disclaimer stating grounds of contest as alleged injury found lacking specificity.

Castro v. Viera, 4 Conn. Workers' Comp. Rev. Op. 64, 442 CRD-1-86 (1987), **error**, 207 Conn. 420 (1988).
CRD held respondent could not assert defense of no employer-employee relationship when it failed to file a timely disclaimer. Reversed by Supreme Court.

Squier v. Raymark Industries, 4 Conn. Workers' Comp. Rev. Op. 46, 406 CRD-4-85 (April 3, 1987).
Use of the term "alleged" before "injury" on Form 43 did not meet Menzies v. Fisher, 165 Conn. 338 (1973) specificity requirements.

Janov v. General Electric Co., 4 Conn. Workers' Comp. Rev. Op. 44, 491 CRD-4-86 (March 27, 1987).
A recurrence of injury relates back to the date of original injury and therefore does not time bar claim.

Ash v. New Milford, 4 Conn. Workers' Comp. Rev. Op. 41, 433 CRD-7-85(a), 433 CRD-7-85(b) (March 26, 1987), **no error**, 207 Conn. 665 (1988).
Non-compliance with 20-day disclaimer rule precludes right to assert defenses against both dependent widow and dependent minor son. Also flooding of municipality which did not actually close municipal government office did not excuse Town from compliance with 20-day period.

Boutin v. Industrial Components, 4 Conn. Workers' Comp. Rev. Op. 19, 237 CRD-6-83 (March 3, 1987).
Repetitive trauma statute of limitation starts to run from when claimant knew of disability and its work connection. But see Dorsey, 15 Conn. Workers' Comp. Rev. Op. 447, 2268 CRB-7-95-1 (September 6, 1996) and Discuillo v. Stone & Webster, 242 Conn. 570 (1997), supra.

Barnett v. Stafford, 4 Conn. Workers' Comp. Rev. Op. 7, 219 CRD-1-83 (March 2, 1987).
Disclaimer held sufficiently specific under Menzies v. Fisher, 165 Conn. 338 (1973).

Pelletier v. Caron Pipe Jacking, Inc., 3 Conn. Workers' Comp. Rev. Op. 132, 487 CRD-6-86 (December 29, 1986), **rev'd**, 13 Conn. App. 276 (1988), **cert. denied**, 207 Conn. 805 (1988).
Employer's failure to file disclaimer (Form 43) within prescribed time stated in § 31-297(b) results in preclusion. Reversed and set aside by Appellate Court.

Vallee v. Curtis Packaging Company, 3 Conn. Workers' Comp. Rev. Op. 124, 336 CRD-4-84 (December 23, 1986).
Failure to file a written notice of claim within statutory period prescribed by § 31-294 does not prevent preclusion of compensability if employer fails to file a timely Form 43, Notice of Contest, once employee files a written claim.

Oliver v. General Dynamics Corporation/Electric Boat Division, 3 Conn. Workers' Comp. Rev. Op. 117, 225 CRD-2-83 (December 23, 1986).
Exception to written claim requirement where claimant has requested a hearing applies to both formal and informal hearing requests. Furnishing medical attention is an exception to filing written notice of claim within 1 year.

Weston v. Avco Lycoming, 3 Conn. Workers' Comp. Rev. Op. 99, 279 CRD-4-83 (November 26, 1986).
Motion to Preclude granted when Notice of Contest not filed within prescribed time period. See, Bush and LaVogue, infra.

Murphy v. West Haven, 3 Conn. Workers' Comp. Rev. Op. 88, 126 CRD-3-82 (November 13, 1986).
Failure to negate existence of medical care exception will justify refusal to reopen award on ground that no notice was given by claimant within 1 year.

O'Neill v. New King, Inc., 3 Conn. Workers' Comp. Rev. Op. 86, 190 CRD-6-82 (November 13, 1986).
As notice to the respondent was not forwarded in prescribed statutory manner, claimant's Motion to Preclude must be denied.

Brusca v. Color Tech, Inc., 3 Conn. Workers' Comp. Rev. Op. 81, 50 CRD-7-81 (November 6, 1986).
Notice of claim must comply with § 31-321 before Motion to Preclude will be granted.

Sartirana v. Winchester, 3 Conn. Workers' Comp. Rev. Op. 67, 368 CRD-5-84 (July 15, 1986).
Defenses limited to those raised in Notice to Compensation Commissioner and Employee of Intention to Contest Liability to Pay Compensation (Form 43).

Stasolla v. Fairfield, 3 Conn. Workers' Comp. Rev. Op. 63, 328 CRD-4-84 (July 15, 1986).
Defense of untimely filing of claim notice precluded when employer failed to file a timely Notice to Contest Liability (Form 43).

LaVogue v. Cincinnati, Inc., 3 Conn. Workers' Comp. Rev. Op. 51, 263 CRD-1-83 (April 15, 1986), **no error**, 9 Conn. App. 91 (1986)(per curiam), **cert. denied**, 201 Conn. 814 (1986).
Failure to file timely Notice of Contest (Form 43) precludes employer from asserting jurisdictional defense.

Yuknat v. State/State Police, 3 Conn. Workers' Comp. Rev. Op. 43, 274 CRD-2-83 (March 19, 1986), **no error**, 9 Conn. App. 425 (1987)(per curiam).
Where letter and accompanying documents were to serve as written notice of claim and employer did not contest liability within twenty (20) days, compensability is presumed.

Skorupski v. Commercial Union Insurance Co., 2 Conn. Workers' Comp. Rev. Op. 133, 338 CRD-3-84 (April 1, 1985).
Filing of proper notice of claim (Form 30-C), in accord with § 31-321 requirements, must be disclaimed within twenty (20) days.

De La Torre v. State, 2 Conn. Workers' Comp. Rev. Op. 95, 148 CRD-1-82 (August 6, 1984).
Notice to disclaim liability sent to estate of deceased and not dependent minor child does not operate against interests of dependent minor child where proper notice of claim was filed.

Cuccuro v. West Haven, 2 Conn. Workers' Comp. Rev. Op. 87, 103 CRD-3-81 (July 27, 1984), **no error**, 6 Conn. App. 265 (1986), **cert. denied**, 199 Conn. 804 (1986).
Notice requirements may be satisfied by means other than written notice. See, Spragg v. West Haven, 2 Conn. Workers' Comp. Rev. Op. 89, 125 CRD-3-82, no error, 6 Conn. App. 265 (1986), cert. denied, 199 Conn. 805 (1986) (same issues).

Bush v. Quality Bakers of America, 2 Conn. Workers' Comp. Rev. Op. 36, 132 CRD-7-82 (October 4, 1983), **no error**, 2 Conn. App. 363 (1984), **cert. denied**, 194 Conn. 804 (1984).
Compensation awarded due to employer's failure to file a timely notice of contest where injury did not arise out of and in the course of employment.

Timothy v. Upjohn, 2 Conn. Workers' Comp. Rev. Op. 1, 150 CRD-3-82 (February 25, 1983), **dismissed for lack of final judgment**, 3 Conn. App. 162 (1985).
Notice of claim for chapter 568 benefits must be made in accordance with § 31-321 if claimant seeks to preclude respondent from contesting liability.

Janco v. Fairfield, 1 Conn. Workers' Comp. Rev. Op. 189, 102 CRD-4-81 (September 13, 1982), **reversed and remanded**, 39 Conn. Sup. 403 (1983).
Compensation Review Division held furnishing group health benefits constituted furnishing medical care. Appellate court reversed and remanded.

Cortes v. Allegheny Ludlum Steel Corp., 1 Conn. Workers' Comp. Rev. Op. 173, 61 CRD-3-81 (August 18, 1982).
Statute of limitation did not commence until claimant knew or should have known that he was experiencing a manifestation of occupational disease symptoms.

Ciotti v. Morani Tile Co., 1 Conn. Workers' Comp. Rev. Op. 141, 35 CRD-4-80 (July 29, 1982).
No written notice of claim necessary where employer furnished medical care under group plan. Where notice of claim was filed but not necessary, disclaimer of liability must be filed within twenty (20) days.

Graf v. Genovese & Massaro, Inc., 1 Conn. Workers' Comp. Rev. Op. 129, 59 CRD-3-81 (July 13, 1982).
Claimant furnished care within one year.

Clapps v. Waterbury Iron Works, 1 Conn. Workers' Comp. Rev. Op. 115, 20 CRD-5-80 (February 19, 1982), **error**; **judgment directed**, 38 Conn. Sup. 644 (1983).
Payment of medical expenses by group health plan constituted furnishing of medical care under statute. Appellate court set aside and remanded.

DeLeon v. Jacob Brothers, Inc., 1 Conn. Workers' Comp. Rev. Op. 18, 23 CRD-4-80 (January 26, 1981), **aff'd**, 38 Conn. Sup. 331 (1981), **appeal dismissed**, 456 U.S. 952, 102 S. Ct. 2026 (1982).
Section 31-297(b) held constitutional.

Sec. 31-294d. Medical treatment; physician authorization; pecuniary liability.

Donaldson v. Continuum of Care, Inc., 4581 CRB-3-02-10 (October 4, 2004).
CRB found no error in trier's refusal to authorize claimant's treating physician where claimant changed providers on her own for her own reasons. CRB affirmed trier's determination that proposed treatment by claimant's physician was not reasonable or necessary based on medical evidence. CRB affirmed trier's authorization of a new treating physician, however, reversed trier's order for a treatment plan, which the physician had not acquiesced to. See also, **Donaldson**, § 31-298.

Papapietro v. Bristol, 4674 CRB-6-03-6 (May 3, 2004).
CRB affirmed commissioner's award ordering the Second Injury Fund to pay for claimant's residence in an assisted care facility and some hours per day for nursing care. Claimant sustained a compensable back injury and underwent unsuccessful back surgeries. Claimant's spine deteriorated and claimant became wheelchair dependent and unable to live independently. Claimant appealed contending the trier erred in failing to award 24 hour/7 day per week in home care and in failing to order the Fund to pay for an

equivalent facility in the event the claimant's current living facility was unable to provide care. CRB affirmed the trier's finding as to his present living situation as it was a factual determination to be made by the trial commissioner. CRB additionally dismissed claimant's appeal contending the trier erred in failing to order the Fund to provide care on the basis of some subsequent future condition. CRB held it was not required to rule on hypothetical situations. See also, **Papapietro**, § 31-301, Appeal procedure, § 31-301. Factual findings.

Schenkel v. Richard Chevrolet, Inc., 4639 CRB-8-03-3 (March 12, 2004).
Claimant retains right to seek medical treatment throughout life of claim absent execution and approval of full and final settlement. See also, **Schenkel**, § 31-295(c), § 31-301. Factual findings, § 31-307, § 31-308(b), § 31-349.

Bernardo v. Capri Bakery, 4570 CRB-3-02-9 (February 10, 2004).
CRB affirmed trier's order that the respondents pay for pain management and psychological treatment for claimant's depression. Trier found claimant's depression was related to his work injury and his subsequent back surgeries and thus authorized treatment. See also, **Bernardo**, § 31-301. Factual findings and § 31-300.

Murray v. Mass Mutual Life Ins. Co., 4590 CRB-1-02-11 (November 20, 2003).
No error in failure to authorize treatment of out-of-state doctor where respondents did not accept compensability of cubital tunnel syndrome. Obligation of claimant to obtain referral and to adhere to approved list of physicians under § 31-280(10) only attaches to claims in which respondents have provided treatment required by § 31-294d(a). See also, **Murray**, § 31-296. Voluntary agreements (discontinuance of payments), § 31-300, § 31-301. Factual findings, § 31-307, § 31-308(a).

Carroll v. Flattery's Landscaping, Inc., 4499 CRB-8-02-2 (March 25, 2003).
CRB affirmed trier's ruling that medical treatments by physical therapist were palliative rather than curative. Trier had discretion to credit opinion of independent medical examiner that expressed doubt as to origin of pain symptoms, and indicated that further medical treatment would be of no benefit. CRB explained that respondents properly used Form 43 to contest liability for further treatment, rather than Form 36. See, **Carroll**, § 31-296. Voluntary agreements (discontinuance of payments).

Beaudry v. Uniroyal, 4505 CRB-5-02-3 (March 5, 2003), **appeal dismissed**, A.C. 24046 (June 6, 2003).
CRB affirmed trial commissioner's dismissal of dependent spouse's claim for death benefits where surgery was found not reasonable or necessary. The trier relied on the opinions of two physicians that decedent's smoking habit and obesity made him a poor surgical candidate.

Fox v. New Britain General Hospital, 4414 CRB-6-01-7 (August 6, 2002).
CRB affirmed trier's order that MRI, bone scan and functional capacity evaluation be performed, rejecting respondents' assertion that such tests were not "reasonable or necessary" treatment under § 31-294d. See also, **Fox**, § 31-301. Factual findings, § 31-308(a), § 31-308a.

Covaleski v. Casual Corner, 4419 CRB-1-01-7 (June 27, 2002).
CRB affirmed trier's order that respondents reimburse claimant for cost of installing handrails in his house, and affirmed order that claimant be provided with wheelchair in certain situations requiring travel. See also, **Covaleski**, § 31-296. Voluntary agreements (discontinuance of payments); § 31-307.

Cotugno v. Lexington Caterers, Inc., 4390 CRB-2-01-5 (June 21, 2002).
CRB affirmed denial of authorization for pain management therapy program due to trier's conclusion that claimant was addicted to narcotics. Issue of detoxification was closely tied to qualification for programs that parties had considered, and was properly addressed by trier. Social worker not classified as practitioner of "healing arts" under § 20-1. CRB remanded for trier to consider whether claimant should be admitted to detoxification program, as evidence suggested that she should be weaned off narcotics. See also, **Cotugno**, § 31-301-9.

Phaiah v. Danielson Curtain (C.C. Industries), 4409 CRB-2-01-6 (June 7, 2002).
Though alleviation of pain may be a valid basis for treatment, and reasonable or necessary medical care is not limited to courses of treatment that will probably succeed, trier still has discretion to decide whether such treatment will be approved. See also, **Phaiah**, § 31-294f, § 31-301. Factual findings.

Irizarry v. Purolator Courier Corp., 4382 CRB-4-01-4 (May 2, 2002).
Acknowledged possibility that back surgery might improve claimant's quality of life was sufficient to satisfy standard of "reasonable or necessary" medical treatment. Authorization of surgery justified. Where two different surgical procedures were suggested (one anterior, one 360°), trier's failure to elect between them was intended to give the parties the choice. Trier could later choose a physician, and ergo, a surgical procedure, if parties proved unable to agree. Matter remanded where trier failed to rule on issue of continuing narcotic medication as long-term treatment. See also, **Irizarry**, § 31-296. Voluntary agreements (discontinuance of payments).

DeFelippi v. Wal-Mart Stores, Inc., 4349 CRB-5-01-1 (January 15, 2002).
CRB affirmed trier's retroactive authorization of treating physician who was a colleague of approved physician listed on voluntary agreement. Also, authorized treatments were necessary medical care within meaning of statute, as they helped keep employee at work. See also, **DeFelippi**, § 31-301. Appeal procedure.

Lemelin v. MRC Bearings, Inc., 4320 CRB-5-00-12 (December 27, 2001).
Medical care provider argued that chiropractic care was curative rather than palliative. However, trier permissibly relied on opinions of independent medical examiner and commissioner's examiner, who both opined that care was palliative. Board noted that medical protocols are not absolute. See also, **Lemelin**, § 31-301. Appeal procedure.

Gonzalez v. Coca-Cola Bottling Co. of New York, 4284 CRB-8-00-8 (September 14, 2001).
Employer refused to authorize initial treatment at Industrial Health Care due to claimant's failure to report injury in writing, then argued that medical care was not

authorized because claimant initially treated with a doctor outside its plan. CRB affirmed trier's rejection of this argument. Section 31-294d requires employer to provide competent medical care as soon as it knows of injury. Though employer is free to have an internal policy requiring claimants to report injuries in writing, it cannot place such policy ahead of obligation to provide care as soon as it somehow learns of an injury. Act does not require claimants to report injuries in writing. If claimant fails to immediately report injury, § 31-294b prescribes remedy for prejudice caused by such failure, which does not include permission for employers to refuse care altogether. CRB also explained that medical care plans do not play a role in choosing a treater until subscribing employer accepts responsibility for providing initial treatment. See also, **Gonzalez**, § 31-279(c).

Garofalo v. Jarvis Products Corp., 4249 CRB-8-00-6 (September 12, 2001).
In a footnote, panel noted that retroactive authorization of single-session treatment by an orthopedist that claimant went to see on his own was acceptable where claim was in its infancy, and he had not yet been assigned an authorized treater by respondents or by a commissioner. See also, **Garofalo**, § 31-301. Factual findings.

Cirrito v. Resource Group Ltd. of Conn., 4248 CRB-1-00-6 (June 19, 2001).
CRB affirmed trier's authorization of epidural steroid injections. Both of the claimant's doctors thought it reasonable to attempt such therapy, even if chance of success was only five percent. "Reasonable and necessary" medical care is not limited to courses of treatment that will probably be effective; if doctors believe that a given treatment is worth trying, a commissioner would normally be justified in approving such treatment. See also, **Cirrito**, § 31-300, § 31-301. Factual findings, § 31-298.

Zalutko v. Danbury Hospital, 4229 CRB-7-00-4 (May 23, 2001).
CRB affirmed trier's approval of 32 visits by claimant to massage therapist/acupuncturist. Evidence supported finding that treatments helped claimant to return to work by alleviating her pain, which satisfies "curative" requirement of our case law.

Donaldson v. Duhaime, 4213 CRB-6-00-3 (April 30, 2001).
It was within trier's discretion to retroactively approve treatment by Drs. P. and S., where claimant had been sent to Dr. P. for a § 31-294f examination after she continued to experience pain for several years, despite having treated with Dr. M. Respondents did not object to new treater until over a year after § 31-294f exam, and following referral of the claimant to Dr. S. See also, **Donaldson**, § 31-298, § 31-301. Factual findings, § 31-307.

Ford v. Carpenter Chapman, 4128 CRB-3-99-9 (November 30, 2000).
CRB affirmed trier's finding that urologist's treatment was compensable. Treating physician had referred claimant to urologist in attempting to diagnose cause of chronic pain following hernia surgeries. Urologist participated in a third surgical procedure to repair hernia, removing a hydrocele during the course of his own surgical investigation. He explained that his participation in the surgery was in the nature of an exploratory procedure, intended to identify and correct any potential urologic sources for the

claimant's pain. Ultimately, chronic pain resumed after surgery, and urologist opined that continuing pain was due to compensable hernia condition. See also, **Ford**, § 31-301. Factual findings, § 31-308(a), § 31-308(b).

Covert v. Patterson, 4094 CRB-3-99-8 (September 29, 2000).
CRB affirmed trier's determination that claimant's disability ceased effective April 30, 1998, and that medical treatment was not reasonable or necessary subsequent to that date. Issue was a factual issue for the trial commissioner to determine. See also, **Covert**, § 31-296 Voluntary Agreements (discontinuance of payments), § 31-301-4, § 31-301-9.

Caprio v. Stop & Shop, 4028 CRB-3-99-4 (July 26, 2000).
Trier found that recommended physical therapy, occupational therapy, and psychological treatment for the claimant's pain constituted reasonable and necessary medical treatment. Respondent contended that physical and occupational therapy were not necessary, as claimant had already successfully completed these therapies. Board affirmed, as this was a factual determination and was supported by the medical evidence in the record. See also, **Caprio**, § 31-296 Voluntary agreements (approval of).

Telesca v. Pratt & Whitney, 4056 CRB-6-99-6 (July 11, 2000).
CRB affirmed trial commissioner's decision that treatment for claimant's binaural hearing loss was reasonable and necessary pursuant to § 31-294d, even though employment caused only his right-side hearing loss. Treating physician opined that in order to properly treat the right-side hearing loss, treatment must include both sides.

D'Amico v. State/Dept. of Correction, 4029 CRB-5-99-4 (May 18, 2000).
CRB affirmed trier's order authorizing claimant to be evaluated and admitted as an inpatient at Massachusetts rehabilitation facility, rejecting the respondent's argument that "equally beneficial" treatment was available in Connecticut pursuant to Cummings v. Twin Mfg., Inc., 29 Conn. App. 249 (1992). Trier could infer that better results would be obtained from focused, integrated inpatient program than could be achieved with outpatient treatment. Also, trier not required to rely upon § 31-294f examiner's contrary opinion. Subsequent decision at D'Amico, 4287 CRB-5-00-9 (August 3, 2001), aff'd, 73 Conn. App. 718 (2002), cert. denied, 262 Conn. 933 (2003), § 31-301-9, § 31-307.

Fyler v. Barrieau Moving & Storage, 3985 CRB-1-99-3 (April 18, 2000).
Treating physician ruled out surgery for claimant, who had reached maximum medical improvement but was still suffering back pain, and prescribed a TENS unit. Independent medical examiner did not challenge that recommendation. Respondents failed to reply to three requests by claimant's attorney for a TENS unit, allegedly relying on the medical protocols' description of passive modalities such as TENS units as inappropriate treatment for low back injuries. Trial commissioner noted protocols not absolute, and ruled that TENS unit was reasonable and necessary treatment. Trier also found that respondents had unreasonably contested liability by failing to inquire about possible alternative treatment. CRB affirmed. Doctors suggested no other form of treatment, and respondents had a duty to respond to claimant's requests for neural stimulator, rather than waiting for a direct call from the claimant's doctor. CRB chastised respondents for their conduct.

Outlaw v. Pray Automotive of Greenwich, 3981 CRB-7-99-2 (March 23, 2000).
CRB affirmed trier's decision to retroactively authorize 64 of claimant's 225 visits to chiropractic physician where her condition did not improve prior to seeking outside care. Doctor testified that treatment had some value in bettering claimant's condition, and medical protocols were neither in effect at time of her injury nor written to absolutely prohibit deviation from their standards. See also, **Outlaw**, § 31-301. Factual findings.

Schiaroli v. UTC/Pratt & Whitney, 3988 CRB-5-99-3 (March 7, 2000).
Trier had discretion to find doctors unauthorized due to lack of proper referral. See also, **Schiaroli**, § 31-301. Appeal procedure. Prior decision at Schiaroli, 3555 CRB-3-97-3 (December 30, 1997), § 31-301. Appeal procedure.

Student v. Corometrics Medical Systems, Inc., 3980 CRB-8-99-2 (February 9, 2000).
Respondents argued that because trial commissioner found psychiatrist's treatment of claimant to be unreasonable, it was error to order respondents to pay for his treatment. Though trier described treatment as "unreasonable," he did *not* hold that this treatment failed to constitute "reasonable or necessary" medical treatment as per § 31-294d. CRB thus affirmed the trier's decision. See also, **Student**, § 31-275(1), § 31-298, § 31-308(c).

Rodriguez v. Seal Rite Mfg., 3954 CRB-4-98-12 (January 20, 2000).
Medical care provider filed a claim to collect fee for medical services rendered to an employee who had not filed a workers' compensation claim. CRB affirmed trial commissioner's dismissal due to lack of subject matter jurisdiction. Board held that a medical provider does not have standing to furnish the notice *required of an employee* to invoke the jurisdiction of the commission. See also, **Rodriguez**, § 31-278.

Bailey v. State/Greater Hartford Community College, 3922 CRB-2-98-10 (November 30, 1999), **aff'd in part**, **rev'd in part**, 65 Conn. App. 592 (2001).
See, **Bailey**, § 31-300, § 31-307, § 31-284b, § 31-301. Factual findings. Prior decisions at Bailey, 3694 CRB-1-97-9 (January 12, 1999), aff'd in part, rev'd in part, 65 Conn. App. 592 (2001), § 31-298, § 31-301. Appeal procedure; Bailey, 15 Conn. Workers' Comp. Rev. Op. 433, 3152 CRB-5-95-8 (September 3, 1996), § 31-301. Appeal procedure, § 31-301. Factual findings.

Spencer v. Merocel Corporation, 3919 CRB-2-98-10 (November 23, 1999).
CRB affirmed trier's ruling that the insurer (St. Paul) was liable for medical treatment related to claimant's right shoulder injury of 1992, including surgery for which claimant sought approval at the time of the formal hearing. St. Paul had entered into an approved voluntary agreement accepting his right shoulder injury, and, moreover, trial commissioner found that his right shoulder condition and symptoms were the same at the time of the formal hearing as they had been in 1992. Disputes regarding causation and need for surgery were issues of fact.

Murray v. Black Tie Limousine, 3899 CRB-3-98-9 (November 4, 1999).
CRB affirmed trier's decision that respondent was liable for payment of claimant's medical treatment. Respondent argued that claimant unilaterally went to a chiropractor without referral from treating physician. CRB held that trier implicitly authorized a

change in physician retroactively. See also, **Murray**, § 31-275(9), § 31-307. Prior decision at Murray, 3306 CRB-3-96-3 (August 21, 1997), § 31-315.

Johnson v. Braun Moving, Inc., 3861 CRB-7-98-7 (November 2, 1999).
Respondents conducted selves in an "uncooperative and callous" manner by refusing to communicate with claimant or authorize any treatment at all, thereby failing to discharge their responsibility to provide a physician under § 31-294d(a). Claimant, who lived in New York, sought treatment with out-of-state doctor as result. No error in retroactive approval of that treatment. See also, **Johnson**, § 31-275(9), § 31-298.

Norwood v. Custom Design Services, Inc., 3844 CRB-7-98-6 (November 2, 1999).
CRB affirmed trial commissioner's determination that trigger point injection did not constitute reasonable or necessary medical treatment of claimant's shoulder injury. See also, **Norwood**, § 31-298.

Dudley v. Wadsworth Glen, 3942 CRB-8-98-12 (October 14, 1999), **aff'd**, 60 Conn. App. 907 (2000)(per curiam).
Trial commissioner found that claimant was unhappy with treating physician's opinion and went to see other medical care providers without a referral. CRB found no abuse of discretion in trier's refusal to retroactively authorize those other medical care providers. See also, **Dudley**, § 31-301-9.

DelGardo v. ARRA Construction, 3913 CRB-4-98-10 (August 30, 1999), **aff'd**, 57 Conn. App. 904 (2000).
Board affirmed trier's decision that Commission did not have jurisdiction to consider medical provider's bill for services where the named claimant chose to file a claim in New York rather than in Connecticut. Where, as here, claimant has chosen not to file a claim in this state, it would contradict the court's reasoning in Figueroa v. C&S Ball Bearing, 237 Conn. 1 (1996) to allow a medical provider to invoke jurisdiction based upon the alleged furnishing of medical care by the employer.

Trimachi v. State/Workers' Compensation Commission, 3749 CRB-1-97-12 (August 25, 1999).
CRB reversed denial of payment for neurologist's treatment where claimant had been seen by a physician at the request of the respondent, and that physician referred her to a neurologist. CRB noted that claimant had chosen the neurologist from the network of physicians listed in employer's medical care plan under § 31-279(c). See also, **Trimachi**, § 31-307, § 31-279(c).

Rodenbaugh v. F.R. Tetro Enterprises, 3823 CRB-5-98-5 (August 18, 1999).
Board affirmed trial commissioner's conclusion that medical treatment requested by claimant (intrathecal infusion pump or "morphine pump") was not reasonable and necessary.

Melendez v. Home Depot, 3835 CRB-4-98-6 (July 13, 1999), **aff'd**, 61 Conn. App. 653 (2001).
CRB affirmed trier's approval of out-of-state medical treatment for claimant who relocated to Pennsylvania, then Texas. Retroactive authorization of out-of-state medical

care is not precluded by Cummings v. Twin Mfg., Inc., 29 Conn. App. 249 (1992), which respondents attempted to argue. Humanitarian and constitutional considerations forbid a blanket prohibition against allowing medical care by out-of-state doctors.

Barton v. Waterbury Company, 3786 CRB-5-98-3 (June 3, 1999).
CRB affirmed trial commissioner's refusal to authorize treatment by seven doctors. Trier declined to authorize additional treatment by claimant's optometrist subsequent to opinion of ophthalmologist that pronounced claimant ready to work. Doctors to whom the optometrist referred the claimant were likewise unauthorized. Adoption of medical report stating that claimant's problems were essentially psychological and were not caused by her compensable injury provided support for trier's denial of authorization. See also, **Barton**, § 31-294f. Prior decision at Barton, 16 Conn. Workers' Comp. Rev. Op. 216, 3428 CRB-5-96-9 (June 6, 1997).

Wooten v. UTC/Pratt & Whitney, 3674 CRB-6-97-9 (May 7, 1999).
See, **Wooten**, § 31-301. Appeal procedure, § 31-301. Factual findings (concerning payment of validly referred physician).

Castano v. Astrophonic Corp. of America, 3714 CRB-7-97-11 (December 29, 1998).
Trier did not err by authorizing treatment retroactively. Claimant was not given opportunity to choose a physician initially when he went to a walk-in medical clinic. The physician he chose after returning to work and not receiving treatment for two months was the initial authorized treating physician under § 31-294d(b).

Haskos v. NROE-Ernest DePalma, 3421 CRB-3-96-9 (January 22, 1998).
CRB affirmed trial commissioner's determination that installation of dry sauna in claimant's home constituted reasonable medical treatment, as opined by claimant's treating psychologist.

Vargas v. King-Conn Enterprises d/b/a Burger King Corporation, 3333 CRB-4-96-4 (October 24, 1997).
Employer's responsibility for necessary and reasonable medical care generally means that all unpaid medical bills should be paid. Trier's general order to that effect did not require respondents to compensate claimant for bills already covered by a group medical insurer. See, Pokorny v. Getta's Garage, 219 Conn. 439 (1991). Trier did not err in ordering payment of doctor whom claimant testified treated her, as no evidence contradicted this fact. See also, **Vargas**, § 31-295, § 31-300.

Cormier v. The Macke Company, 3266 CRB-2-96-2 (August 20, 1997).
Claimant argued that trier erred by denying her compensation for the cost of home housekeeping services. Affirmed. It would not be reasonable to read § 31-294d to include in the definition of "medical aid" housekeeping services unrelated to other home nursing or medical care. Such an interpretation would stray too far from legislative intent. Trier's focus on whether housekeeping services were "incidental to" medical treatment was proper.

Zering v. UTC/Pratt & Whitney, 3321 CRB-6-96-4 (August 8, 1997).
CRB affirmed trial commissioner's decision ordering the respondents to pay medical bills for treatment by Dr. Steckler. The respondents contended that the trial commissioner erred because there was no referral from Dr. Rivera. CRB disagreed, as the trial commissioner found Dr. Steckler rather than Dr. Rivera to be the claimant's treating physician. The trial commissioner found that on the day following the injury, the respondent employer directed the claimant to a walk-in health clinic where he was seen by Dr. Rivera, but that the claimant *did not select him* as his treating physician. See also, **Zering**, § 31-300.

Figueroa v. Laidlaw Transit, 3154 CRB-4-95-9 (March 4, 1997).
CRB affirmed the trial commissioner's conclusion that the claimant failed to meet his burden of proof that the medical treatment which he received was reasonable or causally connected to his prior compensable injury. Whether the claimant's alleged depression and the medical conditions for which he received treatment were causally related to the compensable injury were questions of fact for the trial commissioner. See also, **Figueroa**, § 31-301. Factual findings, § 31-308a.

Jaworski v. A.B. Chance Co., 3006 CRB-3-95-2 (January 6, 1997).
Claimant required a motorized wheelchair to move about independently, and respondents paid for modifications to his home creating wheelchair access. Commissioner ruled claimant had not met his burden of proving that respondents should purchase him a special motor vehicle, as no estimate of its cost was in evidence. Reversed and remanded for further findings regarding medical necessity of vehicle; commissioner should have considered more than the lack of evidence regarding the cost of the vehicle in making his decision, given its importance to the claimant's ability to remain active in society. See also, **Jaworski**, § 31-349 and § 31-301. Factual findings.

Infante v. Mansfield Construction, 3067 CRB-4-95-5 (December 18, 1996), **aff'd**, 47 Conn. App. 530 (1998).
Respondents objected to order requiring them to pay for home improvements and custom van. Respondents' representative had specifically agreed to pay for these items, however; fact that they were not compelled by § 31-294 to make such payments did not entitle them to breach agreement, on which claimant relied. See also, **Infante**, § 31-296, and § 31-315.

Mahoney v. Bill Mann Tree Service, 16 Conn. Workers' Comp. Rev. Op. 17, 3025 CRB-4-95-3 (October 4, 1996).
Where retroactive authorization of treatment is sought, claimant has burden of proving that it was provided pursuant to valid referral or was otherwise appropriate for authorization. Claimant did not show either a valid referral or a request by a party that the doctor in question be allowed to treat him, so denial of authorization was reasonable. See also, **Mahoney**, § 31-298 notes. Subsequent decision at Mahoney, 4095 CRB-4-99-8 (August 10, 2000), aff'd, 67 Conn. App. 134 (2001), § 31-303(b), § 31-308a.

Cuascut and VMMC v. Waldbaum's Foodmart, 16 Conn. Workers' Comp. Rev. Op. 3, 3111 CRB-8-96-6 (October 1, 1996).
VMMC actually filed two separate appeals in this case; the first was addressed in the May 20, 1996 VMMC decision by the CRB. Doctrine of law of the case did not prevent board from addressing appellate arguments, as prior VMMC decision focused on medical provider's rights in absence of colorable claim, and compensable injury was alleged by claimant here. Consistent with Gonzalez v. Electric Transport, 13 Conn. Workers' Comp. Rev. Op. 6, 1729 CRB-1-93-5 (October 13, 1994), board ruled that provider had right to intervene in proceedings, and remanded case to trial commissioner for a determination as to whether or not stipulation should be opened.

Dichello v. Holgrath Corporation, 15 Conn. Workers' Comp. Rev. Op. 441, 2249 CRB-5-94-12 (September 5, 1996), **aff'd**, 49 Conn. App. 339 (1998).
Fact that one physician referred claimant to doctors who were accepted as treating physicians by trial commissioner did not mean that first physician had to be authorized. Second physician was the first link in the chain of authorized treaters pursuant to voluntary agreement; first physician was never authorized to begin with. See also, **Dichello**, § 31-296, and § 31-300.

Landry v. North American Van Lines/Transtar, Inc., 15 Conn. Workers' Comp. Rev. Op. 397, 1971 CRB-2-94-2 (August 16, 1996).
Authorization of treating physician is largely within commissioner's discretion; no error in approving Wisconsin physician as claimant's treater during time period claimant was out-of-state. See also, **Landry**, § 31-296, and § 31-301.

Peet v. United Parcel Service, 3136 CRB-7-95-8 (July 1, 1996).
Claimant's appeal resolved where pursuant to an agreement of the parties the CRB issued a bench ruling authorizing a medical treater for claimant's injury.

Boiano v. Eppoliti Construction, 15 Conn. Workers' Comp. Rev. Op. 342, 2108 CRB-4-94-7 (June 26, 1996).
Commissioner ordered respondents to pay claimant's wife $100 per week for home health care services. Affirmed. Medical evidence existed to support the finding that the claimant needed such care. Section 31-294 does not prevent insurer from compensating claimant's family for providing health care, especially where services are provided in lieu of professional health care. Although not all spousal and family care need be compensated, the facts of this case support this award.

In re Veterans Memorial Medical Center and Abduraim Memeti v. Ray's Construction, 15 Conn. Workers' Comp. Rev. Op. 263, 3063 CRB-8-95-5 (May 24, 1996), **aff'd**, 45 Conn. App. 922 (1997)(per curiam).
Medical provider (VMMC) sought payment for medical treatment alleged to have been provided as a result of a work related injury. The putative employer stated claimant was never an employee and requested claim be dismissed. CRB applied the same reasoning it applied in In re Veterans Memorial Medical Center, infra. VMMC alleged insufficient jurisdictional facts in support of its request for a hearing on subject matter jurisdiction before the workers' compensation commission.

In re Veterans Memorial Medical Center, 15 Conn. Workers' Comp. Rev. Op. 244, 3063 CRB-8-95-5 (May 20, 1996), **aff'd**, 45 Conn. App. 922 (1997)(per curiam). Medical provider sought hearings in 700 cases where no workers' compensation claim had been filed by employee. No proof of compensable injury was filed with hearing requests. Held, ruling in Figueroa v. C & S Ball Bearing, 237 Conn. 1 (1996), dispositive of issue; only employee has standing to initiate claim. Medical provider may not initiate a claim on the employee's behalf under Workers' Compensation Act, although it may request a hearing regarding medical bills if a claim has already been filed. Proof that colorable claim exists must be provided by medical provider in order to support jurisdiction of Commission, and other conditions precedent must be satisfied to warrant a hearing. See also, Memeti v. Ray's Construction, 15 Conn. Workers' Comp. Rev. Op. 263, an identical VMMC case in which a separate opinion was issued on May 24, 1996, (this section, supra).

Bertalovitz v. Danbury, 15 Conn. Workers' Comp. Rev. Op. 186, 2204 CRB-7-94-11 (April 1, 1996).
See, **Bertalovitz**, § 31-308(b) and (c) (no hearing required for commissioner to change treating physician).

Leiner v. Newmark & Lewis, 15 Conn. Workers' Comp. Rev. Op. 147, 2202 CRB-8-94-10 (January 18, 1996).
CRB reversed trial commissioner's retroactive authorization of medical treatment. Voluntary agreement established another doctor as treating physician, and no good reason was shown for unilateral change of providers. No gap in medical treatment occurred here, and acting commissioner earlier had denied request to change physicians.

McVety v. Sidetex Corp., 14 Conn. Workers' Comp. Rev. Op. 340, 2050 CRB-3-94-5 (September 20, 1995), **aff'd**, 43 Conn. App. 912 (1996)(per curiam).
Trial commissioner found that doctor's treatment was not obtained pursuant to valid referral. Claimant argued that said ground was not raised in the Form 43 or in the hearing notice. Held, due process requires meaningful opportunity to be heard, and notice of hearing provided such. Issue in Form 43 was causal relation of medical treatment to accident; existence of valid referral was necessary to qualify doctor as an authorized treating physician under the statute. Referral issue was not removed from dispute by parties. Finding of no referral was legally sufficient to support conclusion that treatment should not be authorized.

McGowan v. Waterbury Farrell, 14 Conn. Workers' Comp. Rev. Op. 319, 1964 CRB-1-94-2 (September 15, 1995), **aff'd**, 43 Conn. App. 917 (1996)(per curiam).
Commissioner ruled that an unauthorized treater had made a referral to another doctor; latter's treatment also unauthorized. Evidence supported decision that doctor was outside the chain of authorized physicians. See also, **McGowan**, § 31-308a.

Cummings v. Twin Tool Manufacturing, 13 Conn. Workers' Comp. Rev. Op. 225, 2008 CRB-1-94-4 (April 12, 1995), **appeal dismissed**, A.C. 14747 (June 29, 1995).
Respondents objected to commissioner authorizing a psychologist to treat claimant. CRB found no error in commissioner's decision which authorized a psychologist to assist the treating physician. See also, **Cummings**, § 31-298.

Valentino v. United Parcel Service, 13 Conn. Workers' Comp. Rev. Op. 142, 1907 CRB-4-93-11 (February 1, 1995).
Insurer's representative agreed to pay family members to care for seriously traumatized claimant at $10.50 hourly rate instead of placing claimant in rehabilitation facility. Respondents later refused to pay for 24-hour care at that rate on ground that § 31-294 does not require them to compensate family for home nursing services because statutory definition of "nurse" not met. Held, statute does not prevent insurer from agreeing to compensate claimant's family for taking care of him, as was done here by agent of insurer. Valid contract.

Baigert v. Fosdick Corporation, 13 Conn. Workers' Comp. Rev. Op. 78, 1784 CRB-8-93-7 (January 20, 1995).
Workers' compensation commission lacks jurisdiction to adjudicate medical provider's request for an informal hearing on unpaid medical services where no claim for benefits is asserted by the injured employee. Distinguished from Gonzalez, Derman, and Tanner, infra, where compensation claim existed. Chairman's directive postponing request for hearing indefinitely was proper where there was no evidence an underlying workers' compensation claim existed. Appeal dismissed as commission lacked subject matter jurisdiction. (*Arcudi, C.,* **dissenting**) (Chairman does not have statutory power to deny medical provider due process). See also, **Baigert**, § 31-280, and § 31-297.

Cookson v. G.R. Cummings Company, 13 Conn. Workers' Comp. Rev. Op. 76, 1796 CRB-8-93-7 (January 20, 1995).
Medical provider is entitled to a hearing on unpaid medical services furnished where it appears the injured employee filed a workers' compensation claim. See also, **Cookson**, § 31-297.

Burgos v. United Technologies/Sikorsky Aircraft Division, 12 Conn. Workers' Comp. Rev. Op. 204, 1441 CRB-4-92-6 (March 15, 1994).
CRB affirmed trier's determination that weight loss program would be palliative treatment and not a curative remedy. Thus, payment for weight loss program denied. See also, **Burgos**, § 31-301-9 and § 31-308a.

Besitko v. McDonald's Restaurant, 12 Conn. Workers' Comp. Rev. Op. 111, 1415 CRB-8-92-5 (February 28, 1994).
Where treating physician refers claimant to another physician yet continues to treat claimant, commissioner's conclusion that treating physician remained an authorized treater affirmed. However, order for reimbursement of prescription charges modified to cover only medications prescribed during period covered in treater's written statement. See also, **Besitko**, § 31-298.

Farkash v. Gerelco, Inc., 12 Conn. Workers' Comp. Rev. Op. 9, 1566 CRB-8-92-11 (January 12, 1994).
CRB reversed trier's retroactive authorization of change of physician where authorized treater intended to continue treatment. Claimant sought to change the course of his treatment and on his own obtained treatment from a chiropractic physician, thereby failing to satisfy § 31-294d(c). See also, **Farkash**, § 31-307.

Davis v. New London/Board of Education, 11 Conn. Workers' Comp. Rev. Op. 245, 1346 CRD-2-91-11 (November 10, 1993), **dismissed for lack of final judgment**, A.C. 13053 (February 16, 1994).
Medical treatment found to be reasonable and necessary where treating physician suggested claimant seek further medical advice without providing a referral to any specific physician. Also, CRB affirmed trier's retroactive authorization of change of medical providers. Remanded on other issues. See also, **Davis**, § 31-301. Factual findings.

Atherton v. Rutledge, 11 Conn. Workers' Comp. Rev. Op. 172, 1339 CRD-7-91-11 (September 2, 1993).
CRB held trier is authorized to retroactively approve a change of physician or medical provider(s).

Galgano v. Torrington, 11 Conn. Workers' Comp. Rev. Op. 133, 1280 CRD-5-91-8 (June 30, 1993).
Absent a timely notice of claim an independent medical examination does not constitute the furnishing of medical care.

Byars v. Whyco Chromium Company, 11 Conn. Workers' Comp. Rev. Op. 39, 1257 CRD-5-91-7 (March 10, 1993), **dismissed for lack of final judgment**, 33 Conn. App. 667 (1994).
Authorization of a treating physician is largely a factual determination within trier's discretion. See also, **Byars**, § 31-296, § 31-300 and § 31-301-9. Additional evidence.

Mulligan v. N.C.H. Corporation, 10 Conn. Workers' Comp. Rev. Op. 131, 1135 CRD-7-90-11 (June 2, 1992).
Remanded. Trier found claimant's trip to Arizona and California was prescribed by treating physician. Since physician's report is dated eight months after claimant's trip, it is not clear whether the trip was prescribed as reasonable or necessary at the time it was taken.

Marzano v. Luis, 10 Conn. Workers' Comp. Rev. Op. 129, 1181 CRD-5-91-2 (May 21, 1992), **aff'd**, 30 Conn. App. 916 (1993)(per curiam).
Trier's conclusion as to physician's status as an unauthorized treater supported by evidence. Evidence reveals physician's bills for treatment were not related to claimant's compensable injury. Also, factual finding claimant's injury to his right index finger did not arise out of and in the course of employment is supported by evidence and will not be disturbed on appeal. Further, no Motion to Correct was filed. Therefore, the facts found by the trial commissioner must stand.

Corona v. Briganti, 10 Conn. Workers' Comp. Rev. Op. 113, 1160 CRD-7-91-1, 1240 CRD-7-91-5 (May 8, 1992).
CRB affirmed trier's finding physicians were authorized treaters as conclusions were based on evidence presented. See also, **Corona**, § 31-307.

Canfield v. Consolidated Freightways, 10 Conn. Workers' Comp. Rev. Op. 59, 1125 CRD-7-90-10 (February 21, 1992).
See, **Canfield**, § 31-301-9. Additional evidence.

Keating v. Allegheny Ludlum Steel Corp., 10 Conn. Workers' Comp. Rev. Op. 28, 1102 CRD-3-90-8 (January 13, 1992).
Testimony of two medical specialists that further lumbar surgery was not a reasonable alternative or would appreciably improve claimant's condition supports trier's conclusion claimant had not refused reasonable medical treatment. See also, **Keating**, § 31-315, Remanded under § 31-349.

Cummings v. Twin Manufacturing, Inc., 9 Conn. Workers' Comp. Rev. Op. 199, 1023 CRD-1-90-5 (August 29, 1991), **aff'd**, **rev'd in part**; **further proceedings**, 29 Conn. App. 249 (1992).
CRD held trial commissioner has power to grant claimant treatment for traumatic brain injury at an out of state medical facility without an evidentiary hearing where good reason exists. See also, **Cummings**, § 31-301. Factual findings, § 31-300. Appellate Court reversed CRB in part and held Workers' Compensation Commissioner should have held an evidentiary hearing to determine whether treatment out of state was reasonable or necessary.

Gruss v. Neurological Group, 9 Conn. Workers' Comp. Rev. Op. 83, 888 CRD-2-89-6 (February 26, 1991).
CRD affirmed trial commissioner's findings of total disability and authorization of treating physician. See, Greiger v. Leake & Nelson, 9 Conn. Workers' Comp. Rev. Op. 17, 890 CRD-4-89-6 (January 10, 1991). Remanded to determine which physician services are included in trier's order to pay reasonable medical expenses.

Burdick v. Frito-Lay, Inc., 1048 CRD-2-90-6 (February 7, 1991).
DRG. See, Tanner v. Walgren Tree Experts, 8 Conn. Workers' Comp. Rev. Op. 16, 748 CRD-8-88-7 (January 17, 1990), infra.

Delaney v. Camelot Nursing Home, 1049 CRD-2-90-6 (February 7, 1991).
DRG. See, Tanner v. Walgren Tree Experts, 8 Conn. Workers' Comp. Rev. Op. 16, 748 CRD-8-88-7 (January 17, 1990), infra.

Myles v. Beach, 975 CRD-8-90-2 (February 7, 1991).
See, Tanner v. Walgren Tree Experts, 8 Conn. Workers' Comp. Rev. Op. 16, 748 CRD-8-88-7 (January 17, 1990), infra.

Greiger v. Leake & Nelson, 9 Conn. Workers' Comp. Rev. Op. 17, 890 CRD-4-89-6 (January 10, 1991).
Remanded as trier's conclusion as to physician's status as an unauthorized treater was not supported by sufficient factual findings. CRB opinion also includes discussion of case law and legislative history concerning employees' choice of physician. See also, **Greiger**, 31-307b.

Gervais v. Atlantic Builders, 8 Conn. Workers' Comp. Rev. Op. 120, 1046 CRD-2-90-6 (June 29, 1990).
See, Derman, infra. Also remanded to determine actual date hospital provided services. If date of hospital's services preceded the effective date of the DRG legislation, DRG rate was improper.

Pont v. Old Lyme, 8 Conn. Workers' Comp. Rev. Op. 118, 1036 CRD-2-90-6 (June 29, 1990).
See, Derman, infra.

Derman v. Norwalk, 8 Conn. Workers' Comp. Rev. Op. 100, 860 CRD-7-89-5 (May 24, 1990).
CRD relied on Tanner v. Walgren Tree Experts, 8 Conn. Workers' Comp. Rev. Op. 16, 748 CRD-8-88-7 (January 17, 1990), infra, in its ruling that the medical provider was entitled to DRG rate payment under § 31-294. Further the Commission has jurisdiction to resolve disputes as to appropriateness of fees under § 31-294, § 31-319 and § 31-327. Note: Derman was one of a series of cases on this issue and as the issues raised were substantially the same please see 8 Conn. Workers' Comp. Rev. Op. p. viii, Appendix A for a complete listing of cases.

Spataro v. Mattioli Construction, 8 Conn. Workers' Comp. Rev. Op. 41, 784 CRD-4-88-10 (February 21, 1990).
Claimant, a paraplegic, failed to sustain burden of proof as to the causal connection between the need for a specially equipped van and his psychiatric problems. See also, **Spataro**, § 31-301. Appeal procedure.

McConnell v. Hewitt Associates, 8 Conn. Workers' Comp. Rev. Op. 32, 764 CRD-7-88-8 (February 5, 1990).
Commissioner has authority to authorize treatment by medical provider even though respondents claim treatment was rendered before referral. See also, **McConnell**, § 31-301c(b), § 31-307.

Tanner v. Walgren Tree Experts, 8 Conn. Workers' Comp. Rev. Op. 16, 748 CRD-8-88-7 (January 17, 1990).
Respondents to pay DRG charge as set under 19a-165f as it is consistent with § 31-294 in that it satisfies prevailing community standard criterion. Retrospective application is permitted where legislative history indicates that it was intended to clarify a prior existing law.

Todd v. Jazlowiecki, 6 Conn. Workers' Comp. Rev. Op. 9, 493 CRD-6-86 (August 26, 1988), **no error**, 20 Conn. App. 805 (per curiam).
Affirmed trial commissioner's finding as to authorized treating physician. See also, **Todd**, § 31-278, § 31-298.

Botelho v. Power Systems, 4 Conn. Workers' Comp. Rev. Op. 92, 331 CRD-1-84 (June 10, 1987).
Questions of authorization of treating physician are factual questions.

Adams v. Stop & Shop, 4 Conn. Workers' Comp. Rev. Op. 80, 380 CRD-2-85 (June 4, 1987).
Commissioner is empowered to authorize a change of physicians after informal hearing.

Lupulio v. General Data Communications, 4 Conn. Workers' Comp. Rev. Op. 29, 554 CRD-7-87 (March 11, 1987).
Commissioner has power to order treatment without hearing.

Veillette v. State, 3 Conn. Workers' Comp. Rev. Op. 135, 288 CRD-2-83 (January 21, 1987).
Out of state medical treatment can be authorized when the employee resides in a sparsely populated Connecticut area and seeks medical treatment from nearby metropolitan medical community.

Kiley v. Executone of Fairfield, Inc., 2 Conn. Workers' Comp. Rev. Op. 103, 107 CRD-7-81 (August 29, 1984).
Employer liable for psychological treatment from date of treating physician's statement as long as fee complied with § 31-298.

Phelps v. State, 2 Conn. Workers' Comp. Rev. Op. 92, 133 CRD-2-82 (July 30, 1984).
Employer cannot terminate compensation where claimant does not visit treating physician because claimant moved out of state and authorization for out of state medical treatment may be permitted.

Aguino v. Mt. Vernon Die Casting Co., 2 Conn. Workers' Comp. Rev. Op. 72, 159 CRD-7-82 (July 11, 1984).
Commissioner is empowered to determine reasonableness or necessity of medical treatment.

Bowen v. Stanadyne, Inc., 2 Conn. Workers' Comp. Rev. Op. 60, 232 CRD-1-83 (June 19, 1984).
Reasonableness or necessity of medical treatment is to be decided by commissioner.

Sec. 31-294e. Medical care refusal.

Kraemer v. Northeast Utilities, 4562 CRB-7-02-8 (July 29, 2003).
See, **Kraemer**, § 31-294f.

Pesce v. Mitchell Bate Company, 16 Conn. Workers' Comp. Rev. Op. 231, 3236 CRB-5-95-12 (June 23, 1997).
Claimant's doctor told him that his failure to have back surgery could cause symptoms to worsen, but claimant continued to decline surgery despite increased back pain. Trier found treating physician's recommendation medically reasonable, and declined to award total disability benefits and § 31-308a benefits. (Claimant also did not look for work.) Affirmed. See also, **Pesce**, § 31-301. Appeal procedure.

Barnett v. Harborview Manor, 3189 CRB-3-95-10 (February 27, 1997).
Reasonableness of a given treatment is an issue of fact, and was not addressed by trier. However, CRB noted that "refusal of medical treatment" cases have usually centered on the refusal of potentially crucial surgery. Here, the claimant declined to attend a pain clinic and receive pain injections. The findings did not indicate that the claimant's doctor felt strongly about this treatment; instead, they say he "suggested" it as a course of action, and tried something else when she declined. Suspension of benefits not legally required here. See also, **Barnett**, § 31-307.

Gesualdi v. Natkin & Company, 12 Conn. Workers' Comp. Rev. Op. 250, 1493 CRB-6-92-8 (May 25, 1994).
Matter remanded where trier failed to make any factual findings as to whether claimant's conduct and actions following a heart attack and admission into the hospital constituted refusal of reasonable medical treatment. Angioplasty surgery was recommended to claimant who then signed himself out of the hospital in order to obtain a second opinion and shortly thereafter suffered a second heart attack.

D'Anna v. Kimberly Clark Corporation, 12 Conn. Workers' Comp. Rev. Op. 194, 1580 CRB-7-92-12 (May 4, 1994).
Claimant failed to have left shoulder surgery recommended and scheduled by treating surgeon. CRB affirmed finding that claimant refused to accept reasonable medical care thereby trier's suspension of compensation benefits warranted.

Camp v. White Oak Corporation, 12 Conn. Workers' Comp. Rev. Op. 121, 1443 CRB-6-92-6 (February 28, 1994).
Remanded. In determining that claimant's refusal to undergo surgery was not unreasonable, the trier failed to consider surrounding circumstances for claimant's refusal i.e. age, medical history, previous treatment, danger of procedure. Trier also failed to consider the reasonableness of the medical treatment available thereby misapplying statute's provision as to the reasonableness of medical care. See also, **Camp**, § 31-308a. Additional Compensation.

Pagliarulo v. Bridgeport Machines, 6 Conn. Workers' Comp. Rev. Op. 69, 515 CRD-4-86 (December 2, 1988), **error remand**, 20 Conn. App. 154 (1989).
CRD affirmed trial commissioner's ruling that claimant's refusal of a third back surgery was not unreasonable where physician testified the surgery only had a 50% chance of significantly helping claimant. Note: Appellate Court held CRD applied wrong standard. Correct standard under § 31-294 is the reasonableness for the proposed surgical treatment itself not the reasonableness of the refusal.

Mignosa v. New Britain, 3 Conn. Workers' Comp. Rev. Op. 75, 135 CRD-6-82 (October 8, 1986).
Claimant's refusal to undergo surgery held not unreasonable.

Sec. 31-294f. Medical examination of injured employee. Medical reports.

Kraemer v. Northeast Utilities, 4562 CRB-7-02-8 (July 29, 2003).
CRB affirmed trier's denial of Form 36. Held one-time treatment with an out-of-state physician did not trigger suspension of benefits pursuant to § 31-294f or 31-294e(b) where the physical therapy prescribed by the physician was accepted and paid for by the respondents. Claimant's failure to initially consult an orthopedic specialist in Connecticut as another medical provider directed, did not rise to the level of failing to obtain reasonable medical treatment.

Gagliardi v. Eagle Group, Inc., 4496 CRB-2-02-2 (February 27, 2003), **aff'd**, 82 Conn. App. 905 (2004)(per curiam).
Trier is not required by law to give reasons for failing to adopt opinion of commissioner's examiner, though in recognition of traditional role of § 31-294f exam, CRB favors articulation of reasons for disregarding such opinion. See also, **Gagliardi**, § 31-301. Factual findings. Prior decision at Gagliardi, 4012 CRB-1-99-4 (July 20, 2000).

Bidoae v. Hartford Golf Club, 4424 CRB-6-01-8 (June 27, 2002).
See, **Bidoae**, § 31-298. See subsequent decision Bidoae, 4693 CRB-6-03-7 (June 23, 2004), § 31-301. Appeal procedure, § 31-307.

Phaiah v. Danielson Curtain (C.C. Industries), 4409 CRB-2-01-6 (June 7, 2002).
Greater familiarity of treating physicians with claimant's condition as compared to commissioner's examiner was valid reason for trier to rely on their opinions regarding wisdom of surgery. See also, **Phaiah**, § 31-294d, § 31-301. Factual findings.

Carozza v. Aetna/U.S. Healthcare, 4406 CRB-8-01-6 (May 30, 2002).
CRB affirmed trier's granting of Form 36 effective April 3, 2001 where claimant did not receive updated report of independent medical examiner until May 18, 2001, three days before formal hearing. Though § 31-294f(b) was violated insofar as doctor did not furnish his report to claimant within thirty days and in same time and manner as it was given to the respondent, trier found that claimant was not unfairly prejudiced by this delay. Trier had discretion to accept report into evidence and rely on it in setting April 3, 2001 cutoff date for total disability benefits. See also, **Carozza**, § 31-296. Voluntary agreements (discontinuance of payments).

Champagne v. O.Z. Gedney, 4425 CRB-5-01-8 (May 16, 2002).
Trier need not credit report of § 31-294f examiner. Though CRB has said that reasons for disregarding commissioner's exam should be articulated, ultimate decision still lies with trier. No error where trier chose to rely on report of treating physician over that of § 31-294f examiner, as trier believed treater was better positioned to assess and track

claimant's respiratory condition due to familiarity with case. See also, **Champagne**, § 31-301. Factual findings.

Taylor v. Ron Fournier Builders, 4257 CRB-5-00-6 (July 30, 2001).
See, **Taylor**, § 31-301. Appeal procedure, § 31-355 (Second Injury Fund required to pay for cost of § 31-294f exam on behalf of uninsured employer even though underlying claim dismissed).

Mosman v. Sikorsky Aircraft Corp., 4180 CRB-4-00-1 (March 1, 2001).
See, **Mosman**, § 31-298. See also, **Mosman**, § 31-297, § 31-301. Factual findings.

Faroni v. Country Club of Waterbury, 4175 CRB-5-00-1 (January 25, 2001).
See, **Faroni**, § 31-308(b).

Manganello v. State/Dept. of Mental Health, 4082 CRB-1-99-7 (November 27, 2000).
CRB affirmed trial commissioner's decision dismissing claim that claimant sustained reflex sympathetic dystrophy as a result of her compensable carpal tunnel syndrome. Trier adequately explained his reason for not following the opinion of the § 31-294f examiner; specifically, that said opinion was "somewhat conflicting and less reliable [than the other] physicians who rendered opinions on the issue."

Simmons v. Doran Manufacturing Co., 4121 CRB-4-99-9 (October 11, 2000).
Board affirmed trier's decision to authorize surgery for claimant's compensable back injury. Respondents contended that trier failed to provide sufficient reason for not following the opinion of the § 31-294f examiner. CRB held that the trier adequately explained his reasons for not following that opinion: treating physician's opinion was more persuasive, and examiner's opinion was not very certain.

Osowiecki v. O & G Industries, 3993 CRB-5-99-3 (April 13, 2000).
CRB affirmed trier's finding of no permanent partial disability. Trier chose not to follow the opinion of his § 31-294f examiner, explaining that this opinion was based upon the claimant's significantly exaggerated version of the incident and of his subsequent physical condition. (*Santos, C.*, **concurring**) Trial commissioner should not be required to state a reason for disregarding opinion of commissioner's examiner. See also, **Osowiecki**, § 31-301-9.

Agosto v. Bridgeport, 3967 CRB-4-99-1 (April 12, 2000).
CRB found no error in trier's finding that claimant continued to be totally disabled. Respondents argued that trial commissioner failed to cite reasons for not accepting the opinion of the § 31-294f examiner, and did not even state in the findings that this physician's examination was at the request of a commissioner. Board found no error, as trier is not bound by the opinion of any one physician, even where that physician conducted a commissioner's exam. Moreover, in the instant case, the opinion did *not contradict* the conclusion that the claimant continued to be totally disabled. (*Santos, C.,* **concurring**) Trier should not be required to state a reason for disregarding opinion of commissioner's examiner. See also, **Agosto**, § 31-307.

Zito v. Stop & Shop, 3929 CRB-3-98-11(February 17, 2000).
CRB affirmed trier's decision in which he chose to accept some, but not all, of the opinion rendered by the § 31-294f examiner. Trier accepted examiner's opinion that claimant was capable of sedentary work, but did not agree that the claimant had reached maximum medical improvement. Although board has stressed that a trier should articulate the reasons behind a decision to disregard a § 31-294f examiner's opinion, the ultimate decision is always with the commissioner. Here, he articulated his reasons for concluding that claimant had not yet reached MMI and still needed medical care. See also, **Zito**, § 31-308(a).

Barton v. Waterbury Company, 3786 CRB-5-98-3 (June 3, 1999).
Trier was entitled to credit independent medical examination over report of § 31-294f examiner. Trier explained that the former contained a more complete history of claimant's symptoms, and CRB noted that the commissioner's examiner drew a questionable connection between injury and disability. See also, **Barton**, § 31-294d. Prior decision at Barton, 16 Conn. Workers' Comp. Rev. Op. 216, 3428 CRB-5-96-9 (June 6, 1997).

Harris v. UTC/Pratt & Whitney, 3762 CRB-1-98-1 (February 23, 1999), **aff'd**, 56 Conn. App. 912 (2000)(per curiam), **cert. denied**, 253 Conn. 907 (2000).
Trier had authority to order claimant to attend independent medical examination, and to dismiss claim when claimant failed to show up for appointment. See also, **Harris**, § 31-301-9, § 31-315. Prior decision at Harris, 15 Conn. Workers' Comp. Rev. Op. 357, 3143 CRB-5-95-8 (June 26, 1996), § 31-275(17), § 31-298.

Patterson v. St. Mary's Hospital, 3526 CRB-5-97-2 (June 1, 1998).
The respondents contended on appeal that the trier failed to articulate his reasons for not following the opinion of Dr. Fisher, who conducted an examination at the request of a commissioner. CRB found no error, as the trier satisfactorily set forth findings of fact which indicate that he considered Dr. Fisher's opinion, but chose not to accept it.

Matteau Riley v. ARA Services/County School, 2280 CRB-2-95-1 (May 6, 1998).
Case was originally remanded to trial commissioner for articulation of her reasons for disregarding the report of the commissioner's examiner. See, Matteau, 16 Conn. Workers' Comp. Rev. Op. 112 (November 25, 1996). Commissioner provided those reasons. Commissioner was within her discretion to choose report of independent medical examiner over that of commissioner's examiner. Original decision affirmed.

Rivera v. New Britain, 3501 CRB-6-96-12 (April 28, 1998).
The respondent argued that the trier should have credited the opinion of a physician who reviewed medicals and wrote a report at the request of a trial commissioner at a prior informal hearing. CRB disagreed, as the trier who presided over the formal hearing was not the commissioner who ordered the report, and more importantly, the physician did not examine the claimant, but merely reviewed some of the medicals. See also, § 31-301. Factual findings.

Brown v. Greenwich, 3521 CRB-7-97-2 (March 31, 1998).
Trial commissioner chose to credit treating physician's report over those of an independent medical examiner and a § 31-294f examiner. CRB affirmed. Trier of fact is not required to accept opinion of commissioner's examiner just because he ordered the exam.

Carrozelli v. Bridgeport, 3489 CRB-4-96-12 (March 6, 1998).
It was within the discretion of the trial commissioner, as the trier of fact, to accord greater weight to the opinion of the physician who conducted the independent medical examination than to the opinions of the claimant's treaters. CRB thus affirmed trial commissioner's conclusion that claimant's hypertension and arterial occlusion were not caused by his employment.

Diaz v. Robert W. Baker Nursery, Inc., 3309 CRB-1-96-3 (March 5, 1998).
See, **Diaz**, § 31-298.

Chery v. Community Visiting Nurse & Home Care, 3654 CRB-7-97-7 (February 13, 1998).
Acting commissioner ordered a commissioner's exam, stating in the process that the respondents could not submit depositions and other records to the physician because only medical reports could be considered by the examining doctor. CRB reversed; there is no categorical prohibition against providing extra information to a § 31-294f medical examiner. Commissioner has discretion to allow other items to be considered if they would be helpful.

Wilson-Shirley v. Yale University, 3355 CRB-3-96-6 (November 4, 1997).
See, **Wilson-Shirley**, § 31-301. Factual findings.

Gillis v. White Oak Corporation and Waterbury Construction, 3337 CRB-5-96-5 (July 15, 1997), **aff'd**, 49 Conn. App. 630 (1998), **cert. denied**, 247 Conn. 919 (1998).
CRB previously remanded case because trier did not explain his disregard of the § 31-294f examiner's opinion. On remand, trier explained why he felt the claimant's injuries hastened his need for knee surgery. Respondents argued on appeal that the medical examiner's opinion that the incident was relatively trivial must be followed absent evidence that he relied on improper facts or that his medical analysis is patently erroneous. Held: adopting respondents' proposition would shift fact-finding role from commissioner to medical examiner whenever § 31-294f was invoked. Such a result would be improper. Nieves, infra, cited; Iannotti v. Amphenol/Spectra Strip, 13 Conn. Workers' Comp. Rev. Op. 319, 1829 CRB-3-93-9 (April 25, 1995), aff'd, 40 Conn. App. 918 (1996)(per curiam), distinguished. Note subsequent decision in Gillis, 4080 CRB-5-99-7 (October 20, 2000), rev'd, 73 Conn. App. 523 (2002), cert. granted, 262 Conn. 936 (2003), § 31-349.

Nieves v. SCM Company, 3317 CRB-6-96-4 (July 9, 1997).
The parties reasonably expect that a commissioner-ordered medical examination will provide him with strong guidance, but he is not bound to credit any given medical report when making his findings. CRB's emphasis of the need for a trier to articulate his

reasons for disregarding a § 31-294f exam does not require him to accept it if he finds that other evidence is more credible. There is no legal presumption of credibility for an expert witness in a workers' compensation case. Sufficient evidence existed to support the outcome here.

Barton v. Waterbury Company, 16 Conn. Workers' Comp. Rev. Op. 216, 3428 CRB-5-96-9 (June 6, 1997).
Commissioner declined to admit report into evidence as a § 31-294f commissioner's exam, and ordered that a new exam be scheduled with a different doctor. Respondents appealed. CRB found no error. Respondents communicated ex parte with trier in initial scheduling of exam, and sent a letter to the doctor that was not copied to claimant's counsel until the day before the examination. Further, respondents' counsel agreed at the formal hearing to offer the initial examination as an IME and to allow another doctor to perform the commissioner's examination. CRB noted proper procedure in scheduling commissioner's exams involves communication and agreement between both parties as to contents of any communication with doctor. Subsequent decision at Barton, 3786 CRB-5-98-3 (June 3, 1999), supra, and at § 31-294d.

Ruilova v. Accurate Electronics, Inc., 3211 CRB-4-95-11 (January 16, 1997).
Commissioner ordered examination, but did not hold a formal hearing on the issue or take exhibits into evidence, even though respondents objected. Thus, CRB had no record to review. Reversed and remanded for formal hearing.

Matteau Riley v. ARA Services/County School, 16 Conn. Workers' Comp. Rev. Op. 112, 2280 CRB-2-95-1 (November 25, 1996).
Commissioner declined to authorize knee arthroscopy on grounds treatment was not reasonable and necessary. CRB remanded matter to trial commissioner for articulation of findings. Although trial commissioner had discretion to believe any of the conflicting medical opinions in the case, and the respondents' examiner provided reports that supported the commissioner's decision, the commissioner was still required to articulate the reasons for her decision to disregard the report of the doctor who examined the claimant at the commissioner's request. Subsequent decision at Matteau Riley, 2280 CRB-2-95-1 (May 6, 1998), supra.

Gillis v. Waterbury Construction, 15 Conn. Workers' Comp. Rev. Op. 131, 2182 CRB-5-94-10 (January 17, 1996).
The respondents objected to the commissioner's failure to accept the medical opinion of the IME who examined the claimant pursuant to a commissioner's ordered exam. CRB held that when a commissioner orders a medical examination, there is usually an expectation among the parties that said examination will provide strong guidance to the commissioner. Thus, where a commissioner chooses not to adopt the diagnosis of the physician performing that examination, he or she should articulate the reasons behind his or her decision to disregard the examiner's report. CRB remanded for articulation by trial commissioner. See, Iannotti v. Amphenol/Spectra-Strip, 13 Conn. Workers' Comp. Rev. Op. 319, 1829 CRB-3-93-9 (April 25, 1995), aff'd, 40 Conn. App. 918 (1996)(per curiam), infra. See also, Gillis v. White Oak Corporation and Waterbury Construction, 3337 CRB-5-96-5 (July 15, 1997), aff'd, 49 Conn. App. 630 (1998).

Iannotti v. Amphenol/Spectra-Strip, 13 Conn. Workers' Comp. Rev. Op. 319, 1829 CRB-3-93-9 (April 25, 1995), **aff'd**, 40 Conn. App. 918 (1996)(per curiam).
Commissioner not required to rely on conflicting report of commissioner's examiner where other medical reports supported finding of permanent partial disability. However, commissioner should articulate reasons for failure to adopt the diagnosis of the physician performing the § 31-305 examination. No harmful error in this case.

Baccielo v. Business Products, Inc., 13 Conn. Workers' Comp. Rev. Op. 163, 1732 CRB-4-93-5 (March 9, 1995).
Claimant argued examination improper in brief, but did not object to order when given, and did not raise issue in Motion to Correct or Reasons of Appeal. Thus, we declined to address issue further. See also, **Baccielo**, § 31-275(1) and § 31-301. Appeal procedure.

Lee v. Norwalk, 13 Conn. Workers' Comp. Rev. Op. 23, 1626 CRB-7-93-1 (November 7, 1994).
Employer must properly introduce results of IME examination into evidence and pay the cost of the subpoena or deposition testimony. Absent the opportunity for cross examination of IME physician, trier's admission of medical report is improper. See also, **Lee**, § 31-275(1) and § 31-298.

Casman v. Lego Systems, 12 Conn. Workers' Comp. Rev. Op. 178, 1520 CRB-3-92-10 (May 2, 1994).
Claimant must attend medical examinations requested by employer even though a third party tort action is pending in superior court. Medical examinations in superior court forum proceed independent of those within the workers' compensation forum. See also, **Casman**, § 31-293(a).

Hurley v. Carolina Freight, 12 Conn. Workers' Comp. Rev. Op. 44, 1406 CRB-6-92-4 (January 26, 1994).
Independent medical examination while reasonable and appropriate when scheduled became unreasonable when claimant waited more than two hours for the examination. Claimant justified in leaving physician's office after the delay in conducting the examination.

Straub v. Bolt Technology Corporation, 9 Conn. Workers' Comp. Rev. Op. 212, 1130 CRD-3-90-11 (September 12, 1991).
Trial commissioner's denial of further medical examination cannot be termed an abuse of discretion where there is substantial medical evidence below to support his conclusion. See also, **Straub**, § 31-298, § 31-308(b).

Applebee v. State/Southbury Training School, 8 Conn. Workers' Comp. Rev. Op. 142, 841 CRD-5-89-4 (August 20, 1990).
Benefits cannot be suspended or discontinued without the commissioner's approval of a Form 36 even if respondents contend claimant failed to submit to a reasonable medical examination.

Garfitt v. Pfizer, Inc., 7 Conn. Workers' Comp. Rev. Op. 62, 742 CRD-3-88-6 (August 11, 1989).
Section 31-305 sanctions prevail only where a reasonable medical exam is refused.

Sec. 31-295. Waiting period. When compensation begins.

Maddaloni v. State/UConn., 4679 CRB-2-03-6 (June 4, 2004).
CRB affirmed trial commissioner's order of interest for claimant's multiple permanent partial disabilities under § 31-295 as of the date of IME's report. Trier found claimant's treater did not specify which date of injury was attributable to which injury. Trier is entitled to determine which date maximum medical improvement occurred. See also, **Maddaloni**, § 31-308(b).

Schenkel v. Richard Chevrolet, Inc., 4639 CRB-8-03-3 (March 12, 2004).
Payment of interest for unpaid permanency benefits is mandatory beginning 30 days after maximum medical improvement date. See also, **Schenkel**, § 31-294d, § 31-301. Factual findings, § 31-307, § 31-308(b), § 31-349.

Ruffino v. Middletown, 4508 CRB-8-02-3 (March 12, 2003).
See, **Ruffino**, § 7-433c.

Ortiz v. Highland Sanitation, 4439 CRB-4-01-9 (November 12, 2002).
Claimant was found to be entitled to payment of "permanent partial disability benefits" for sixteen-day period, followed by payment of 20% permanency award to shoulder commencing on date of maximum medical improvement. 10% interest per annum was awarded on all unpaid weeks, while attorney's fees were denied. Sixteen-day permanent partial disability award was subsequently amended to reflect entitlement to temporary partial disability benefits. CRB agreed with claimant's contention that interest cannot be awarded without attorney's fees under § 31-300, but also agreed that trier had not made a finding of undue delay here. While unpaid permanency may be source of interest award under § 31-295(c), correction as to nature of 16-day award was irreconcilable with unaltered 10% interest order. Due to inconsistent findings, case remanded for clarification. See also, **Ortiz**, § 31-300; § 31-301. Factual findings.

Rayhall v. Akim Co., Inc., 4321 CRB-2-00-12 (November 5, 2001), **aff'd**, 263 Conn. 328 (2003).
Where claimant injured both legs in compensable incident, and one leg reached maximum medical improvement while the other continued to leave claimant temporarily partially disabled, CRB held that the phrase "member or members" in § 31-295(c) allows the claimant the option of continuing to receive temporary partial disability benefits until maximum improvement for all members has been reached. Any other construction would render the words "or members" meaningless. (*Metro, C.*, **dissenting**): Alternate reading of "member or members" is plausible. More significant guidance is provided by § 31-308(b), which allows permanency to be paid in conjunction with temporary total disability, but not temporary partial. See also, **Rayhall**, § 31-278, 31-298, § 31-307, 31-308(b).

Vargas v. King-Conn Enterprises d/b/a Burger King Corporation, 3333 CRB-4-96-4 (October 24, 1997).
Respondents contended that claimant was not out of work for more than three days because she was released to full duty on the fourth day following her injury. However, within several weeks, she was treated by a doctor, and the respondent consented to this treatment. That doctor kept her out of work for over a month. Thus, she was disabled more than three days. See also, **Vargas**, § 31-294d, § 31-300.

Moxon v. State/Board of Trustees, Regional Community Colleges, 12 Conn. Workers' Comp. Rev. Op. 246, 1485 CRB-1-92-8 (March 29, 1994), **aff'd**, 37 Conn. App. 648 (1995).
Where payment for permanent partial disability is not paid within thirty days following the date of maximum medical improvement, interest should be awarded. See also, **Moxon**, § 31-310 and § 31-315.

McCurdy v. State, 9 Conn. Workers' Comp. Rev. Op. 22, 887 CRD-4-89-6 (January 10, 1991) **aff'd**, 26 Conn. App. 466 (1992), **rev'd**, 227 Conn. 261 (1993).
Claimant must be entitled to receive § 31-308 benefits before time requirements of § 31-295(c) will apply. See also, **McCurdy**, § 31-306, § 31-308(b).

Piscitelli v. Connecticut Coke/Eastern Gas and Fuel Associates, 6 Conn. Workers' Comp. Rev. Op. 94, 575 CRD-3-87 (January 26, 1989).
Incapacity is not to be narrowly defined so as to defeat purpose of compensation.

Birdsell v. Bic Pen, 4 Conn. Workers' Comp. Rev. Op. 17, 201 CRD-3-83 (March 2, 1987), **error in part**, 16 Conn. App. 437 (1988).
See, Kreidler, infra. Appellate Court reversed.

Kreidler v. Bic Pen, 4 Conn. Workers' Comp. Rev. Op. 15, 200 CRD-3-83 (March 2, 1987), **no error**, 16 Conn. App. 437 (1988).
Wages should include scheduled overtime.

Sec. 31-296. Voluntary agreements (approval of).

Horobin v. West Haven, 4724 CRB-3-03-9 (December 2, 2004).
Claimant sustained 1986 back injury that led to depression. Second Injury Fund accepted transfer. Claimant then suffered compensable injuries to back, knee, and other body parts in a 1991 fall. Back injury liability again transferred to Fund, while other injuries remained with insurer CIRMA. Claimant again developed symptoms of depression, relatable to chronic post-surgical pain in knee and to chronic back pain. Total disability was paid from 1991 through 1997. In November 1997, claimant entered into stipulation with Fund expressly addressing 1986 lumbar spine and psychosocial conditions, and 1991 lumbar spine injury. Stipulation also contained standard language releasing Fund from liability for "claims of any nature out [of] the foregoing accidents either wholly, partially, specifically, physical or mental, known or unknown." Fund's settlement specialist had been operating under mistaken assumption that psychiatric claim arose

from 1986 injury only. Presiding commissioner also testified that, in his understanding, 1991 psychiatric injury was not part of stipulation, and that some aspects of claim were being left open. Trier found that both CIRMA and the Fund shared ongoing liability for the psychiatric condition. CRB affirmed. First, board held that extraneous notation "partial stip only" on copy of settlement in evidence should not be deemed part of contract, as parties did not mutually consent to alteration of agreement. Next, board found that no mutual mistake existed with regard to existence of 1991 psychiatric claim. Claimant's understanding of his condition was accurate, and any mistake on Fund's part was unilateral. Insufficient grounds to invalidate agreement. CRB's third step was to determine that contract language was ambiguous, i.e., susceptible to two reasonable constructions, as one could rationally read stipulation to support inclusion or exclusion of 1991 psychological claim. This allowed trier to consider extrinsic evidence as to intended meaning of contract. Evidence supported trier's finding that the parties did not intend to include 1991 psychological condition in stipulation. Thus, claimant was not precluded from seeking further benefits for that condition. See, **Horobin**, § 31-300, § 31-301. Appeal Procedure, § 31-301. Factual findings, § 31-307, § 31-349, § 31-298.

Malz v. State/University of Connecticut Health Center, 4701 CRB-6-03-7 (August 20, 2004).
Approved stipulation settled disputed total disability claim at two-thirds of difference between TT rate and § 31-308(a) rate (if applicable). Contrary to trier's finding, this did not equate to acceptance of total disability status for purposes of five-year total disability computation under § 31-307a. No ground for trier to reopen underlying controversy to decide this issue, as it was fully settled by the approved agreement. See also, **Malz**, § 31-307a, § 31-349, § 31-299b.

Caprio v. Stop & Shop, 4028 CRB-3-99-4 (July 26, 2000).
Trial commissioner found that physical therapy, occupational therapy, and psychological treatment of claimant's pain constituted reasonable and necessary medical treatment. Respondent contended on appeal that an approved stipulation settled any and all of the claimant's psychological claims, because it closed out a claim for depression. Trier found that the 1996 stipulation closed out all future claims arising out of the December 21, 1990 injury *except for* claims for future medical treatment regarding the cervical spine injury. Accordingly, because the psychological treatment constituted reasonable and necessary medical treatment *of the claimant's 1990 cervical spine injury*, said treatment was not foreclosed by the 1996 stipulation. See also, **Caprio**, § 31-294d.

Lizcano v. Holiday Inn Crowne Plaza, 4036 CRB-7-99-4 (May 24, 2000).
Voluntary agreement form contained language stating that employer remained liable for COLAs for concurrent employment wages. CRB ruled that the statute requires the Second Injury Fund to pay those COLAs. As the voluntary agreement form was promulgated by this commission, and was not drafted by either party, the respondents were not bound by the "fine print." CRB also noted that said form was revised in 1992 to eliminate the language making employer responsible for concurrent employment COLAs. See also, **Lizcano**, § 31-310, § 31-307a.

Serfilippi v. Vision Hair Design, 3815 CRB-7-98-5 (May 21, 1999).
Commissioner ruled that "tender" was accomplished within meaning of stipulation when respondent mailed check to claimant, not when claimant received it. He also awarded claimant interest, but not attorney's fees, in response to a request that he correct the findings to allow such additional sums under § 31-296. CRB affirmed trier's interpretation of "tender;" adequate evidence supported finding that check was mailed on 9/16/97, and the definition of "tender" in Mayron's Bake Shops, Inc. v. Arrow Stores, Inc., 149 Conn. 149 (1961), could include the mailing of a check where the claimant never objected to the respondent's previous use of the mail system, as control over the check is relinquished by the insurer once it is mailed. As for interest award, trier's explicit denial of attorney's fees should be read as an adoption of the "delay without fault" basis for the awarding of interest under § 31-300. As trier used the higher rate in § 31-296 to calculate interest, CRB had to remand for recalculation. See also, **Serfilippi**, § 31-300.

Martinez v. Danbury Hospital, 3784 CRB-7-98-3 (May 13, 1999).
In separate case, claimant stipulated that she suffered from a 16% permanent partial disability of the low back. This did not bind commissioner in assignment of low back disability for previous injury. Medical reports in evidence supported higher percentage of permanent partial disability. Stipulations are compromise-and-release type agreements that bind the contracting parties as to the facts recited in the document, but do not carry the same weight in unrelated proceedings involving different parties. Not a judicial admission. As there was evidence to support the trier's finding, the CRB affirmed.

Graves v. Manchester, 3741 CRB-8-97-12 (February 18, 1999).
Trier dismissed § 7-433c claim for lack of jurisdiction because of prior stipulation. CRB held that release of liability by stipulation is an affirmative defense, not a jurisdictional matter. CRB also held that, as claimant had offered evidence that hypertension was due to repetitive trauma subsequent to the date of the stipulation and not due to rheumatic heart disease addressed by stipulation, trier should have evaluated merits of claimant's claim. Panel rejected argument that § 7-433c, by requiring claimant to prove that she did not suffer from hypertension at time of hire, somehow prevents her from "skipping over" the 1990 stipulation. See also, **Graves**, § 7-433c.

Harbec v. Stone & Webster Engineering, 3628 CRB-8-97-6 (October 16, 1998).
The trial commissioner interpreted the approved stipulation between the claimant dependent widow and certain employers and their insurers as barring the claimant from proceeding against *other* employers and their insurers who were *not* named in the stipulation. CRB reversed, as the language of the stipulation specifically left open the claimant's right to pursue respondents not listed in the stipulation. Subsequent decision at Harbec, 4308 CRB-8-00-10 (August 29, 2001), § 31-299b.

Colello v. Pitney Bowes, 3541 CRB-7-97-2 (May 14, 1998).
Trial commissioner did not err by failing to reopen claimant's first stipulation, or in refusing to approve a subsequent agreement with which the claimant was no longer in

accord. Pro se claimant did not produce any proof in support of his position that the first stipulation should be reopened due to fraud or mistake.

Dowling Considine v. Slotnik, 3468 CRB-4-96-11 (May 6, 1998).
CRB affirmed trial commissioner's award of supplemental benefits where parties attempted to enter into a stipulation that was not approved by the commissioner. Trier has authority to deny approval of stipulation for various reasons. See, **Dowling**, § 31-290, § 31-301. Appeal procedure. See also, **Dowling**, § 31-301(f). Prior decision at Dowling, 3062 CRB-4-95-5, 3277 CRB-4-96-2 (February 5, 1997), aff'd, rev'd and remanded in part, 244 Conn. 781 (1998)(with dissenting opinion), § 31-275(9), § 31-288, § 31-301. Appeal procedure, § 31-307.

Algiere v. General Dynamics Corporation/Electric Boat Division, 3466 CRB-8-96-11 (January 27, 1998).
CRB affirmed trial commissioner's refusal to open the Voluntary Agreement executed between the surviving spouse and the self-insured employer. See, Soares v. Glass Industries, 12 Conn. Workers' Comp. Rev. Op. 189, 1377 CRB-3-92-1 (May 4, 1994).

Anguish v. TLM, Inc., 3437 CRB-7-96-9 (January 20, 1998), **aff'd**, 53 Conn. App. 241 (1999)(per curiam), **cert. denied**, 250 Conn. 910 (1999)(Dissenting Opinion).
CRB declined to readdress the issue of whether a claimant was deprived of due process by the use of the "emergency informal hearing" procedure discussed in Stryczek v. State/Mansfield Training School, 14 Conn. Workers' Comp. Rev. Op. 32, and in the previous decision in Anguish, 14 Conn. Workers' Comp. Rev. Op. 195. This panel does not address arguments that it has already ruled on in previous appeals, and this issue was dealt with in the prior Anguish decision. Further, there was no longer any relief that could be granted to the claimant, as a subsequent formal hearing resulted in the reinstatement of temporary total disability benefits, and the vacating of the prior approval of the Form 36. Issue likely moot.

Krampetz v. Uniroyal, Inc., 3310 CRB-5-96-3 (September 23, 1997).
Decedent died of malignant mesothelioma due to work-related asbestos exposure. He had signed a stipulation in 1976 settling "all his claims and cases both known and unknown" against Uniroyal, as he had suffered numerous injuries to various body parts (but nothing in the nature of a respiratory ailment). CRB cited Duni v. United Technologies Corp./Pratt & Whitney Aircraft Division, 239 Conn. 19 (1996), in which a similar stipulation was discussed. Just as the Duni court did there, the CRB ruled here that this language extinguished the rights of the claimant, as the settlement was made in "complete satisfaction of all claims due or to become due at any time in favor of anybody on account of the claimed injuries or on account of any condition in any way resulting out of the said injuries." Although the decedent was presumably unaware of his latent mesothelioma at the time of the stipulation, all of the work-related exposure leading to the development of that disease had occurred. Unknown, inchoate claims existing at the time of the release are ordinarily covered by such language. See also, **Krampetz,** § 31-306.

Morris v. A & A Acoustics, 3429 CRB-7-96-9 (August 8, 1997).
CRB held that a trial commissioner, under appropriate circumstances, has the discretion to award ongoing temporary total disability benefits for the period following the last evidentiary hearing.

Festa v. Hamden, 16 Conn. Workers' Comp. Rev. Op. 46, 3052 CRB-3-95-4 (October 16, 1996).
Respondents sought to enforce stipulation against claimant, but commissioner denied motion to enforce on ground that claimant was not competent to understand terms of agreement at that time. Affirmed by CRB. Although prior commissioner had questioned claimant regarding his understanding of agreement, the transcript does not indicate that claimant demonstrated an actual understanding of the agreement. Commissioner did not ask claimant if he realized that the settlement was final or if he wanted to formally enter into agreement at that time; claimant testified that he believed a stipulation had to be reduced to writing and signed before it could become effective, which was not done here. Use of "Stipulation and What It Means" form discussed. Commissioner also found that claimant had suffered from hypoglycemic attack on morning of formal hearing, and could not fully understand purported agreement. Facts supported decision not to enforce agreement.

Wonacott v. Bartlett Nuclear, Inc., 15 Conn. Workers' Comp. Rev. Op. 334, 2237 CRB-4-94-12 (June 25, 1996).
Role of stipulation of facts discussed; See also, **Wonacott**, § 31-310.

Secola v. State/Comptrollers Office, 13 Conn. Workers' Comp. Rev. Op. 121, 1703-5-93-4 (January 31, 1995).
Discussion of process by which commissioners approve a voluntary agreement. In this case, commissioner refused to approve a voluntary agreement which had been signed by both parties, and noted that the insurance company signed without knowledge that the claimant suffered from terminal cancer which was unrelated to her compensable injury. Findings do not indicate that claimant intentionally failed to disclose a material fact. CRB remanded because reason for refusal to approve voluntary agreement was not clear. See also, **Secola**, § 31-290c; See also subsequent decision, Secola, 3102 CRB-5-95-6 (February 26, 1997).

Saporoso v. Aetna Life & Casualty Ins. Co., 13 Conn. Workers' Comp. Rev. Op. 88, 1513 CRB-1-92-9 (January 23, 1995).
Remanded where trier's finding approving respondents' Form 36 contains summaries of medical evidence unsupported by factual findings.

Sec. 31-296. Voluntary agreements (discontinuance of payments).

Greene v. State/UCONN Health Center, 4749 CRB-1-03-11 (September 28, 2004), **appeal dismissed**, A.C. 26004 (January 27, 2005).
CRB dismissed claimant's appeal from ruling ordering repayment to the respondent for an overpayment of indemnity benefits following the formal approval of a Form 36. The

claimant did not file any papers in support of her appeal other than a petition for review until after the matter was scheduled for oral argument. Furthermore, claimant's argument before the CRB concerned issues relating to an earlier Finding and Dismissal from which the claimant did not take an appeal. See also, **Greene,** § 31-301. Appeal procedure. Prior decision at Greene, 4285 CRB-1-00-8 (September 21, 2000).

Rurak v. Sweet Life Inc., 4630 CRB-1-03-2 (February 6, 2004).
A flaw in service of a Form 36 is negated when claimant is afforded the opportunity to present his case against the approval of the Form 36 as if he received notice consistent with § 31-321. See also, **Rurak**, § 31-301, § 31-301-9. Additional evidence.

Krol v. A.V. Tuchy, Inc., 4613 CRB-4-03-1 (January 29, 2004).
By holding de novo formal hearing on Form 36, parties rendered moot any alleged procedural inconsistencies regarding prior administrative approval of Form 36. With regard to substantive ruling, evidence supported trier's determination that claimant had work capacity at time Form 36 was filed. See also, **Krol**, § 31-308(b).

Murray v. Mass Mutual Life Ins. Co., 4590 CRB-1-02-11 (November 20, 2003).
Two Forms 36 were permissibly denied by trial commissioner at informal hearing, and subsequent trier who presided over formal proceedings. The first, alleging full work capacity, was inconsistent with opinion of treating physician. Informal hearing commissioner was not required to accept credibility of respondents' examiner. Second Form 36 was also not denied in error, as totality of evidence allowed finding that claimant was still entitled to partial disability benefits during three-month period prior to her undertaking exhaustive, unsuccessful job searches. See also, **Murray**, § 31-294d, § 31-300, § 31-301. Factual findings, § 31-307, § 31-308(a).

Kraemer v. Northeast Utilities, 4562 CRB-7-02-8 (July 29, 2003).
CRB affirmed trier's denial of Form 36. See also, **Kraemer**, § 31-294f.

Fish v. Visiting Nurse & Community Care, 4545 CRB-1-02-6 (July 2, 2003).
CRB affirmed trier's denial of Form 36. Evidence supported finding that claimant did not refuse reasonable medical treatment, or unreasonably delay surgery to travel to Australia. Trier was not required to make findings regarding claimant's disability status, as Form 36 did not address issue of light-duty work capacity, and claimant was not informed in advance that this would be a contested issue.

Simotas v. Norwalk Hospital, 4530 CRB-7-02-5 (May 20, 2003).
See, **Simotas,** § 31-300, § 31-307.

Matey v. Dember, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), **appeal dismissed for failure to comply with Supreme Court's directive**, 85 Conn. App. 198 (2004).
See, Matey v. Dember, 256 Conn. 456 (2004). See, **Matey** § 31-307.

Valletta v. State/DMR, 4543 CRB-5-02-6 (March 26, 2003).
CRB affirmed trial commissioner's finding and conclusion claimant was entitled to temporary total disability for a period following the date of an approved Form 36.

Respondent's contention that no change of circumstance existed warranting an award of temporary total disability benefits not persuasive. See also, **Valletta**, § 31-301. Factual findings.

Carroll v. Flattery's Landscaping, Inc., 4499 CRB-8-02-2 (March 25, 2003).
See, **Carroll**, § 31-294d (Form 43 should be used to contest liability for allegedly palliative medical treatment, rather than Form 36).

Hansen v. State, 4531 CRB-5-02-5 CRB (March 25, 2003).
CRB affirmed trial commissioner's ruling that the claimant had a work capacity and thus, the Form 36 was appropriately approved. See, **Hansen,** § 31-307.

Papa v. Jeffrey Norton Publishers, Inc., 4486 CRB-3-02-1 (February 25, 2003).
CRB took administrative notice of approved Form 36 (as had trier), which was based on medical report stating that claimant had reached maximum medical improvement with regard to low back impairment. However, failure to contest Form 36 within ten days did not prevent trier from taking note of continuing total disability, and in awarding total disability benefits. See also, **Papa**, § 31-301. Factual findings, § 31-301-9, § 31-307.

Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002).
Physician felt claimant capable of light duty. No error in granting Form 36 on strength of independent medical examiner's report, after which claimant was no longer entitled to continue her light duty status by working four-hour days. See also, **Duddy**, § 31-298; § 31-301. Factual findings; § 31-307.

Covaleski v. Casual Corner, 4419 CRB-1-01-7 (June 27, 2002).
Trier appropriately construed pro se claimant's letter as an objection to Form 36. Formal hearing affords *de novo* review of ruling on Form 36. Claimant later hired counsel who did not object to second Form 36, but trier held objection unnecessary given that parties were already debating issues raised by that Form 36 via the hearing process. Trier may take into account context of events. See also, **Covaleski**, § 31-294d, § 31-307.

Carozza v. Aetna/U.S. Healthcare, 4406 CRB-8-01-6 (May 30, 2002).
CRB affirmed granting of Form 36 effective April 3, 2001 where claimant did not receive updated IME report until May 18, 2001, three days before formal hearing. Claimant was aware that benefits had been discontinued, and doctor had stated in prior report that she could perform light work, provided that blood tests came back negative for an occult infection. Reasonable for trier to infer that claimant was not unfairly prejudiced by delay in providing report, though § 31-294f(b) was technically violated. See also, **Carozza**, § 31-294f.

Irizarry v. Purolator Courier Corp., 4382 CRB-4-01-4 (May 2, 2002).
Total disability issue raised at outset of hearings was settled via stipulation through October 1999. Testimony of doctor gave rise to new issue of possible sedentary work capacity. CRB affirmed trier's omission of a ruling on this issue, as Form 36 was not filed until formal hearings had essentially concluded. See also, **Irizarry**, § 31-294d.

Sellers v. Sellers Garage, Inc., 4391 CRB-5-01-5 (April 26, 2002), **aff'd**, 80 Conn. App. 15 (2003), **cert. denied**, 267 Conn. 904 (2003).
Pro se claimant argued that employer should have filed Form 36 before ceasing "without prejudice" disability payments after 23 weeks, as Admin. Reg. § 31-296-2 only allows six weeks of payments without prejudice. CRB disagreed that payment beyond six weeks constitutes acceptance of claim for disability, thereby obligating employer to file Form 36. 1993 amendment to § 31-294c discussed, by which legislature extended employer's time for contesting compensation or extent of disability to one year; regulation was not amended to conform to change in § 31-294c, and CRB noted this conflict, along with importance of "without prejudice" payments. See also, **Sellers**, § 31-301. Appeal procedure.

Henley v. Pratt & Whitney, 4381 CRB-3-01-4 (March 1, 2002).
Board found no error in trier's approval of Form 36 discontinuing total disability benefits. Trier adequately addressed claimant's contention that surveillance tapes were misleading and that physician misinterpreted them, and trier had discretion to accept that doctor's medical opinion.

Rodrigues v. American National Can, 4329 CRB-7-00-12 (January 2, 2002).
Trier properly approved Form 36 where claimant was capable of non-strenuous work and had reached MMI based upon medical report of independent medical examiner. See also, **Rodrigues**, § 31-279-3, § 31-298, § 31-301-9. Prior decision at Rodrigues, 4043 CRB-5-99-4 (July 26, 2000), § 31-301. Appeal procedure, Factual findings, § 31-308a.

Brinson v. Finlay Brothers Printing Co., 4307 CRB-1-00-10 (November 1, 2001), **aff'd**, 77 Conn. App. 319 (2003).
Respondents argued that it was error to reverse approval of Form 36, as prior commissioner had discretion to grant it based on medical evidence available at that time. CRB disagreed. At formal hearing, trier may review approval or denial of Form 36 that was made at informal hearing, and must make decision based on evidence presented at formal hearing. See also, **Brinson**, § 31-301-4, 31-308(a).

LaPierre v. UTC/Pratt & Whitney, 4305 CRB-8-00-10 (October 23, 2001).
Board affirmed trier's award of four weeks of temporary total disability benefits, and disagreed with claimant's argument that Form 36 was necessary where there was no evidence that respondents agreed to pay total disability benefits, or that ongoing total disability benefits were being paid. See also, **LaPierre**, § 31-307, 31-308(a).

Audi v. Blakeslee Arpaia Chapman, 4234 CRB-3-00-5, 4151 CRB-3-99-11 (June 26, 2001).
See, **Audi**, § 31-298, § 31-301-9, § 31-315 (CRB affirmed reopening of voluntary agreement and Form 36); See also, **Audi**, § 31-307. See prior decision Audi, 3418 CRB-3-96-9 (August 4, 1997), § 31-349. Also see subsequent decision Audi, 4311 CRB-3-00-10, 4624 CRB-3-03-2 (February 10, 2004), § 31-278, § 31-284(b), § 31-288, § 31-300.

Recalde v. Pop Fasteners, 4183 CRB-8-00-1 (March 7, 2001).
CRB affirmed trier's approval of Form 36, which had been filed on June 23, 1994, effective October 7, 1994. Trier found that claimant was no longer temporarily totally disabled as of October 7, 1994. Board disagreed with claimant's characterization of Form 36 approval as "retroactive," as trier approved it effective October 7, 1994, which was after its filing date. CRB discussed Form 36 procedure, but declined to address constitutional issues.

Johndrow v. General Motors Corporation, 4070 CRB-6-99-6 (March 1, 2001).
CRB affirmed trier's decision granting respondents' two Forms 36 dated March 6, 1989 and November 15, 1985. 1989 Form 36 was based on medical report that indicated claimant capable of working. 1985 Form 36 was based on a report describing claimant as capable of light duty work. Claimant argued that 1985 Form 36 was legally insufficient because it was not certified by a licensed physician. CRB concluded that trier considered totality of evidence, and found claimant was not totally disabled as of 1985.

Christman v. State/Dept. of Correction, 4134 CRB-1-99-10 (October 16, 2000).
See also, **Christman**, § 31-301. Appeal procedure, § 31-308(a)(CRB found error in post-filing approval date of Forms 36).

Covert v. Patterson, 4094 CRB-3-99-8 (September 29, 2000).
Board affirmed trier's ruling that claimant was no longer disabled, as evidenced by a medical report issued by a § 31-294f examiner. Trier found that Form 36 had properly been granted effective April 30, 1998 (the date it was filed), and that medical treatment was not reasonable or necessary subsequent to that date. Issue was one of fact for the commissioner to decide. See also, **Covert**, § 31-294d, § 31-301-4, § 31-301-9.

Brown v. State/Dept. of Mental Health & Addiction Services, 4053 CRB-2-99-5 (July 27, 2000), **aff'd**, 66 Conn. App. 882 (2001)(per curiam), **cert. denied**, 259 Conn. 913 (2002).
See, **Brown**, § 31-298 (trier in subsequent proceeding did not err by awarding total disability benefits predating an earlier formal hearing, as previous commissioner had only considered issue of disability through date Form 36 was filed). See also, **Brown**, § 31-307. Prior decision at Brown, 3100 CRB-2-95-6 (December 23, 1996), infra, § 31-298.

Bennett v. Federal Express Corp., 4023 CRB-4-99-4 (May 22, 2000).
Trier denied claimant's request to reopen Form 36 in order to change maximum medical improvement date of March 12, 1996, presumably relying on a medical report upon which the commissioner who presided over the initial Form 36 proceeding had also relied. CRB held that trier had discretion to choose among various reports in ascribing MMI date, as question was purely factual. Claimant also failed to offer into evidence any documentation to show that the parties had previously agreed to set an MMI date of November 1997 should he decline surgery. No error in trier's failure to discuss this alleged agreement. However, CRB ruled that MMI date would have to be amended because Form 36 was not filed until August 19, 1996, and claimant continued to

maintain that he was entitled to temporary disability benefits. Permanency benefits cannot commence retroactively to MMI date if it occurs prior to filing of Form 36. See also, **Bennett**, § 31-301. Factual findings.

Lirot v. Mashantucket Pequot Gaming, 4015 CRB-2-99-3 (March 13, 2000), **aff'd**, 62 Conn. App. 908 (2001)(per curiam), **cert. denied**, 257 Conn. 908 (2001).
CRB affirmed granting of Form 36 where physician did not sign form, but signed note was attached releasing claimant to light duty. Prior decision at Lirot, 3400 CRB-2-96-8 (April 7, 1997).

Auger v. Stratford, 3944 CRB-4-98-12 (January 14, 2000), **rev'd**, 64 Conn. App. 75 (2001).
See, **Auger**, § 31-284b, § 31-300, § 7-433c.

Hyde v. Stop & Shop Companies, 3728 CRB-4-97-11 (February 18, 1999).
Trier found that claimant had not been totally disabled during disputed period, and then concluded that he had "most probably [been] partially disabled" through date of maximum medical improvement. Although neither party had alleged temporary partial disability, the distinction (which was supported by medical evidence) was irrelevant for the purposes of this case. Respondents had not filed a Form 36 seeking to discontinue payment of benefits, and whether paying temporary total or temporary partial disability benefits, the respondents were required to file a Form 36 before discontinuing payment. See also, **Hyde**, § 31-300, § 31-301. Factual findings.

Corarito v. United Home Care, Inc., 3660 CRB-4-97-8 (December 16, 1998).
CRB reversed decision of trial commissioner granting Form 36 effective as of formal hearing date. Absent evidence of extenuating circumstances, Form 36 must be granted effective the date it is filed. (*Miles, C.*, **dissenting**) CRB should remand to give trier opportunity to explain whether the use of formal hearing date had a basis.

Jones v. Maaco of Greater Bridgeport, 3634 CRB-4-97-4 (August 5, 1998).
Trial commissioner affirmed Form 36 effective on date filed. Respondents argued on appeal that it was undisputed that the maximum medical improvement date was actually several months earlier, and that the trier should have made the Form 36 ceasing payment of § 31-308(a) benefits effective at that time. CRB held that § 31-296 specifically requires a Form 36 to be filed before benefits for total or partial incapacity are discontinued, which includes benefits being paid under § 31-308(a). Trier correctly ordered that the maximum medical improvement date be treated as the date the Form 36 was filed. See also, **Jones**, § 31-308(a).

Santala v. New Britain General Hospital, 3298 CRB-8-96-3 (November 25, 1997).
Form 36 filed December 21, 1994. Trier discontinued benefits effective October 3, 1995. CRB explained that trier should discontinue benefits effective on the filing date of a Form 36 unless extenuating circumstances indicate a later date is more appropriate. There was no hint of such circumstances here. See also, **Santala**, § 31-307.

Liano v. Bridgeport, 3199 CRB-4-95-10 (March 25, 1997).
See, **Liano**, § 31-279-3, § 31-298, § 31-307. Subsequent decisions at Liano, 3561 CRB-4-97-3 (June 3, 1998), rev'd in part, 55 Conn. App. 75 (1999), cert. denied, 252 Conn. 909 (1999), § 31-300; Liano, 3447 CRB-4-96-10 (January 6, 1998), aff'd, 51 Conn. App. 905 (per curiam), cert. denied, 248 Conn. 907 (1999), § 7-433c; companion decision at Liano, 3299 CRB-4-95-10 (March 25, 1997), § 31-294c, § 31-297, § 31-301. Factual findings. Prior decision at Liano, 14 Conn. Workers' Comp. Rev. Op. 201, 2033 CRB-4-94-5 (July 25, 1995), appeal and cross appeal dismissed, lack of final judgment, A.C. 15082 (June 6, 1996), cert. denied, 238 Conn. 906 (1996), § 7-433b, § 31-300, § 31-310.

Ryba v. West-Con, 3196 CRB-2-95-10 (February 27, 1997).
Commissioner approved Form 36 effective on its filing date of January 3, 1994, on the ground the claimant had not proven total disability subsequent to that date. Claimant argued error in that the Form 36 was based on failure to continue treatment, which became moot when he agreed to treatment; second Form 36 was not filed until March 10, 1994, and could not be effective any earlier. Held: although trier is normally restricted to the grounds listed in the Form 36 at the "speedy emergency informal hearing" that must be held soon after the claimant objects to discontinuance of benefits, the same is not true at a later formal hearing on the matter. There, the trier may consider a broader range of issues, including the existence of total disability. Also: Motion to Submit Additional Evidence denied; failure of counsel to anticipate need for claimant to be present to testify at formal hearing is not an adequate reason for allowing additional evidence on appeal. Existence of total disability is a factual issue based on trier's evaluation of credibility of evidence; accuracy of doctor's reports could reasonably be questioned by commissioner. See also, **Ryba**, § 31-301-9 and § 31-307.

Secola v. State/Comptroller's Office, 3102 CRB-5-95-6 (February 26, 1997).
Claimant entered into stipulation with insurer for over $40,000 three days before claimant died of terminal cancer. Insurer was not aware of terminal illness, and potential entitlement to future benefits was considered in calculating stipulation. Commissioner declined to enforce stipulation on ground it would be inequitable. Claimant appealed. Held: most case law regarding stipulations concerns protection of claimant's interests, but protecting employee's rights does not mean ignoring the rights of the employer or insurer. Fairness and equity are two-way streets. Commissioner found respondent no longer agreed with stipulation at time it was submitted for approval, and had the authority to withhold approval of that contract.

Torres v. Southern Connecticut Truck & Tire Center, 3144 CRB-3-95-8 (February 5, 1997).
Trial commissioner erred by approving Form 36 effective on date claimant reached maximum medical improvement, as Form 36 was not filed until 1½ years later. Respondent must notify commissioner and employee of proposed discontinuance of benefits prior to the proposed cut-off date, and Form 36 may not become effective before date it is filed. Also, commissioner should not hold Form 36 in abeyance for more than 30 days, as a hearing should be completed as soon as possible after a claimant

objects to a Form 36. (*Brouillet, C.,* **concurring***)* (limited situations exists where Form 36 should be approved retroactively, such as where claimant has returned to work, or where award paid pursuant to approved voluntary agreement has run out.

Stefenski v. C. Raimondo & Sons, 3081 CRB-2-95-6 (January 8, 1997).
Fund filed Form 36 on May 18, 1993 along with April 1993 medical report stating claimant had light duty capability. Commissioner found claimant not totally disabled, but with severely limited work capability; approved Form 36 as of date of decision, which was almost two years after Form 36 was filed. CRB held that no finding supported the use of a severance date for total disability benefits later than the filing date of the Form 36, which should have been ruled on soon after it was filed to avoid undue delay. Reversed. See also, **Stefenski**, § 31-308a.

Herwerth v. Groton, 3105 CRB-2-95-6 (December 24, 1996), **aff'd**, 45 Conn. App. 922 (1997)(per curiam).
Form 36 procedure reviewed; as claimant maintained continuing total disability, commissioner inappropriately ordered retroactive commencement of permanent partial disability benefits prior to filing date of Form 36, even though maximum medical improvement may have been reached earlier. Claimant had no notice until 1993 that respondent was contesting disability back to 1990. See also notes on § 31-301. Appeal procedure re: Motion to Dismiss for late Reasons of Appeal.

Wrubleski v. Kimberly-Clark Corp., 3106 CRB-7-95-6 (December 24, 1996).
Trial commissioner ruled that 1992 stipulation did not preclude carpal tunnel claim. Affirmed. Stipulations are intended to foreclose future claims flowing from a compensable injury. However, a release will not be construed to include claims not contemplated by the parties. Absence of relationship between carpal tunnel syndrome and previous injury, coupled with finding that claimant did not make a claim for carpal tunnel before stipulation approved, supports commissioner's decision.

Brown v. State/Norwich State Hospital, 3100 CRB-2-95-6 (December 23, 1996).
Claimant appealed approval of Form 36 to CRB. Issue regarding authority of Acting Commissioner to rule on Form 36 at informal hearing was moot, as issue tried de novo at a later formal hearing, superseding the first ruling. At formal hearing, trial commissioner was entitled to use doctor's testimony in assessing meaning of report, even though doctor failed to sign report. Commissioner could rely on it in later proceedings, as doctor authenticated it in his deposition. Evidence thus supported discontinuation of total disability benefits. No improper shifting of burden of proof; claimant simply failed to rebut respondent's evidence. See also, **Brown**, § 31-298. Subsequent decision at Brown, 4053 CRB-2-99-5 (July 27, 2000), § 31-298, § 31-307, and cited supra.

Infante v. Mansfield Construction, 3067 CRB-4-95-5 (December 18, 1996), **aff'd**, 47 Conn. App. 530 (1998).
Respondents failed to file Form 43, and stopped noting that payments to claimant were being made without prejudice over six years before they attempted to discontinue payment. CRB affirmed finding that they had accepted compensability of claim, noting

that Admin. Reg. § 31-296-2 allows payments without prejudice for only six weeks. See also, **Infante**, § 31-294d, and § 31-315.

Dichello v. Holgrath Corporation, 15 Conn. Workers' Comp. Rev. Op. 441, 2249 CRB-5-94-12 (September 5, 1996), **aff'd**, 49 Conn. App. 339 (1998).
No error in granting Form 36; trial commissioner was not required to credit doctor's testimony that claimant's disability continued over conflicting testimony by other doctors. Unchallenged findings also supported decision. See also, **Dichello**, § 31-294d, and § 31-300.

Landry v. North American Van Lines/Transtar, Inc., 15 Conn. Workers' Comp. Rev. Op. 397, 1971 CRB-2-94-2 (August 16, 1996).
No error for commissioner to fail to penalize respondents for failing to file Form 36 before discontinuing benefits. Claimant had ceased performing light duty work and was cleared for regular work by treating physician and attempted to resume regular work before payment stopped, thus ending period of partial incapacity under § 31-308(a). Fact that compensability had been presumed under § 31-294c(b) did not change fact that claimant had to allege continuing incapacity to be entitled to advance notice under § 31-296. See also, **Landry**, § 31-294d, and § 31-301.

Kelley v. New England Railroad, 15 Conn. Workers' Comp. Rev. Op. 206, 2274 CRB-2-95-1 (April 23, 1996), **rev'd**, 45 Conn. App. 448 (1997).
Retroactive approval of Form 36 permissible, as claimant did not allege continuing incapacity. See also, **Kelley**, § 31-349 (transfer to Second Injury Fund upheld, notice timely; Appellate Court reversed).

Rios v. Polystar Packaging Inc., 14 Conn. Workers' Comp. Rev. Op. 376, 3002 CRB-7-95-2 (October 4, 1995).
Petition for review from approval of Form 36. No formal hearing yet, so case remanded to district.

Hurley v. Bridgeport, 14 Conn. Workers' Comp. Rev. Op. 366, 2037 CRB-4-94-5 (September 26, 1995).
The commissioner determined that the employer's payments to the claimant did not constitute temporary total or partial disability payments, but rather constituted a continuation of his salary pursuant to his employment contract. In the absence of an order or a written or oral agreement to make *workers' compensation payments*, the trial commissioner properly concluded that the employer was not required to file a notice prior to discontinuing such payments. See also, **Hurley**, § 31-307.

Crowe v. DBD, Inc., 14 Conn. Workers' Comp. Rev. Op. 283, 1941 CRB-7-93-12 (September 11, 1995), correction, 15 Conn. Workers' Comp. Rev. Op. 1 (September 27, 1995).
Commissioner approved Form 36 retroactively effective to maximum medical improvement date. Held, earliest date on which Form 36 can become effective is its filing date. Case remanded.

Anguish v. TLM, Inc., 14 Conn. Workers' Comp. Rev. Op. 195, 2286 CRB-7-95-1 (July 13, 1995), **appeal dismissed for lack of final judgment**, A.C. 15034 (October 26, 1995), **cert. denied**, 235 Conn. 934 (1995).
In light of Conaci v. Hartford Hospital, 36 Conn. App. 298 (1994), notice of decision on Form 36 was not deemed sent until claimant was actually notified of its approval. Thus, petition for review was timely. Also, a formal hearing is unnecessary before rendering a decision on a Form 36; a single emergency informal hearing will suffice, as discussed in Stryczek (below). However, the claimant was entitled to challenge the Form 36 in a subsequent formal hearing, which ordinarily should be held shortly after the Form 36 is approved. Remanded.

Stryczek v. State/Mansfield Training School, 14 Conn. Workers' Comp. Rev. Op. 32, 1765 CRB-2-93-6 (May 4, 1995).
1980 injury accepted by voluntary agreement; Form 36 request to discontinue benefits filed on 8/8/88. Commissioner found on 3/10/92 that respondents had met burden of proving claimant no longer disabled, and ruled that benefits should be discontinued as of the last formal hearing date on 11/14/91. Held, when Form 36 procedure is considered with § 31-307, it is evident that the legislature intended that claimants should stop receiving total disability benefits effective on the date incapacity ceases. No reason why same rule should not apply where voluntary agreement in effect. Thus, unless circumstances dictate otherwise, a commissioner should grant a Form 36 effective on the date of its filing. The word "hearing" in § 31-296 refers to a single emergency informal hearing, which should be held as soon as possible after the claimant objects to the Form 36.

Eldridge v. Transport Drivers, 13 Conn. Workers' Comp. Rev. Op. 75, 2229 CRB-2-94-12 (January 4, 1995).
Appeal dismissed absent a record of the trial proceedings wherein respondents' Form 36 was approved. See also, **Eldridge**, § 31-301. Appeal procedure.

Santiago v. Metropolitan Insurance Co., 12 Conn. Workers' Comp. Rev. Op. 388, 1631 CRB-6-93-1 (September 1, 1994), **appeal dismissed** (February 3, 1995).
CRB held ten day provision is directory as opposed to mandatory. When ten day provision is not complied with, it is within the trier's discretion whether to permit claimant to contest and challenge an already approved Form 36. See also, **Santiago**, § 31-307 and § 31-315.

Cummings v. Twin Tool Mfg. Co., 12 Conn. Workers' Comp. Rev. Op. 341, 1542 CRB-1-92-10 (July 11, 1994), **aff'd**, 40 Conn. App. 36 (1996).
No Form 36 required where previous finding awarded total disability benefits and limited those benefits through the date of the decision. A claim for further total disability benefits therefore is a matter of continuing proof. See also, **Cummings**, § 31-298, § 31-301. Factual findings, § 31-301-9. Additional evidence and § 31-307.

Mulligan v. N.C.H. Corporation, 12 Conn. Workers' Comp. Rev. Op. 223, 1499 CRB-7-92-8 (March 22, 1994).
See, **Mulligan**, § 31-293(a) Reimbursement and third party suits. See, Mulligan v. Hall, 32 Conn. App. 203 (1993).

Lee v. Bridgeport Housing Authority, 12 Conn. Workers' Comp. Rev. Op. 58, 1416 CRB-4-92-5 (January 27, 1994).
CRB affirmed trier's determination that respondents had disputed liability, and thus respondents were not required to either issue a voluntary agreement or to follow Form 36 procedure in order to terminate temporary total benefits. Respondents' payment of temporary total benefits did not constitute acceptance of compensability under § 31-296-2. See also, **Lee**, § 31-307.

Byars v. Whyco Chromium Company, 11 Conn. Workers' Comp. Rev. Op. 39, 1257 CRD-5-91-7 (March 10, 1993), **dismissed for lack of final judgment**, 33 Conn. App. 667 (1994).
Evidence supports trier's determination claimant was no longer totally disabled and could perform selected work. See also, **Byars**, § 31-294d, § 31-300 and § 31-301-9. Additional evidence.

Graziano v. St. Mary's Hospital, 11 Conn. Workers' Comp. Rev. Op. 10, 1230 CRD-5-91-5 (February 8, 1993).
Notice to discontinue benefits not required for discontinuing partial incapacity benefits for a neck and shoulder injury where temporary total benefits are being paid for a separate right leg injury. See also, **Graziano**, § 31-307, § 31-308a and § 31-310.

Muldoon v. Homestead Insulation, 10 Conn. Workers' Comp. Rev. Op. 255, 1226 CRD-4-91-5 (January 13, 1993), **rev'd**, 33 Conn. App. 695 (1994), **rev'd**, 231 Conn. 469 (1994), **aff'd on remand**, 37 Conn. App. 266 (1995)(per curiam).
See, **Muldoon**, § 31-275(1), § 31-275(15), § 31-284(a), § 31-299b. Subsequent decisions.

Pulcinella v. Prudential Insurance Company, 10 Conn. Workers' Comp. Rev. Op. 251, 1236 CRD-6-91-5 (January 11, 1993).
Trier found claimant had some work capacity and was not totally disabled due to chronic pain syndrome. Where the medical testimony is conflicting and there is supporting evidence, trier's conclusion must stand.

Molbury v. Midwest Drivers Corporation, 10 Conn. Workers' Comp. Rev. Op. 202, 1278 CRD-7-91-8 (November 12, 1992).
Medical evidence, although conflicting, supports trier's conclusion claimant was no longer totally disabled. See also, **Molbury**, § 31-301. Appeal procedure.

Gillette v. State/J.B. Gates Correctional Unit, 10 Conn. Workers' Comp. Rev. Op. 69, 1145 CRD-2-90-11 (March 26, 1992), **vacated and reissued** (July 8, 1992).
No grounds exist under § 31-315 for modification of a voluntary agreement for claim of state employee to receive benefits pursuant to § 5-142(a). Trier found claimant was not

in the actual performance of guard duties at the time of his injury thereby not entitled to receive benefits under § 5-142(a). See also, **Gillette**; § 5-142(a) and § 31-315.

Chemero v. Westreco, Inc., 10 Conn. Workers' Comp. Rev. Op. 142, 1081 CRD-7-90-7 (June 29, 1992).
CRB affirmed trier's ruling approving respondents' Form 36. Also affirmed finding that claimant was not psychiatrically temporarily totally disabled as that finding was supported by evidence. Further, where finding is clear as to basis for conclusion and additional evidence proffered is merely cumulative trier's denial of claimant's Motion for Articulation and Motion for Modification will not be disturbed. See also, **Chemero**, § 31-301. Appeal procedure, Factual findings, § 31-315.

Germe v. Conway Eastern Express, 10 Conn. Workers' Comp. Rev. Op. 148, 1180 CRD-3-91-2 (June 29, 1992).
Any Form 36 issue as to whether claimant remained totally disabled should have been made at the formal hearing below. As hearing notice referred to neck and shoulder injury, respondents had ample time to present evidence at the formal hearing below as to causation and employment relationship, and thus the scope of the formal hearing was not limited to the approval of the Form 36. See also, **Germe**, § 31-301. Factual findings.

Goncalves v. Cornwall & Patterson, 10 Conn. Workers' Comp. Rev. Op. 43, 1111 CRD-4-90-9 (January 28, 1992).
Remanded as trier's conclusion claimant was able to work, however no work was found or available during period in question lacks evidentiary factual findings. Work search procedure is an informally accepted evidentiary basis to demonstrate a willingness to work. However, it is not the only evidentiary means by which a claimant may demonstrate reasonable efforts to find work. See also, **Goncalves**, § 31-301. Factual findings, § 31-308a.

Fiore v. Office Furniture Depot, 10 Conn. Workers' Comp. Rev. Op. 15, 1093 CRD-3-90-8 (December 27, 1991).
Remanded as employment contract provided for time and a half for each Sunday worked and two (2%) commission on sales. The computations on which the voluntary agreement was based derived from inconsistent or mistaken facts. See also, **Fiore**, § 31-310 and § 31-315.

Holevinski v. State/Southbury Training School, 9 Conn. Workers' Comp. Rev. Op. 215, 988 CRD-5-90-3 (September 12, 1991).
Where claimant returns to work after sustaining a compensable injury and then suffers a new and separate injury, no Form 36 is required. See, Platt v. UTC/Pratt & Whitney Aircraft Div., 3 Conn. Workers' Comp. Rev. Op. 3, 164 CRD-6-82 (August 16, 1985). See also, **Holevinski**, § 31-300, § 31-307. Remanded on § 31-300 issue.

Haluschak v. J.F. Barrett & Sons, Inc., & S.I.F., 9 Conn. Workers' Comp. Rev. Op. 93, 925 CRD-3-89-10 (March 1, 1991).
A party without notice or participation in proceedings involving an approval of a voluntary agreement cannot be held liable for payments.

Applebee v. State/Southbury Training School, 8 Conn. Workers' Comp. Rev. Op. 142, 841 CRD-5-89-4 (August 20, 1990).
See, **Applebee**, § 31-294f.

Minotti v. State, 6 Conn. Workers' Comp. Rev. Op. 165, 611 CRD-2-87 (June 2, 1989).
Evidentiary basis for trial commissioner to discontinue § 5-142(a) temporary total disability benefits based on maximum medical improvement.

Hankey v. Hamden Steel and Aluminum Corp., 6 Conn. Workers' Comp. Rev. Op. 153, 644 CRD-5-87 (April 28, 1989).
Remanded where trial commissioner's finding failed to apprise respondents of why their Form 36 was not proper. See also, **Hankey**, § 31-301. Appeal procedure.

Richardson v. H.B. Sanson, Inc., 6 Conn. Workers' Comp. Rev. Op. 107, 590 CRD-1-87 (February 23, 1989).
Remanded. A voluntary agreement is a consensual agreement requiring the approval of both parties. A trial commissioner may not order its enforcement on a party that has not consented to it.

Stearns v. First National Supermarkets, 6 Conn. Workers' Comp. Rev. Op. 103, 588 CRD-1-87 (January 26, 1989).
Trial commissioner's conclusion as to continuing total incapacity will not be disturbed where evidence in conflict. See also, **Stearns**, § 31-307.

Muir v. Trailways of New England, 4 Conn. Workers' Comp. Rev. Op. 120, 419 CRD-6-85 (November 9, 1987).
A valid approved Form-36 is a condition precedent to the discontinuance of payments.

Damelio v. Anaconda, Inc., 4 Conn. Workers' Comp. Rev. Op. 31, 281 CRD-5-83 (March 4, 1987), **no error**, 15 Conn. App. 805 (1988)(per curiam), **cert. denied**, 208 Conn. 814 (1988).
Validity of Form-36 (Discontinuance) upheld where physician's signature could be incorporated by reference to another form.

Platt v. UTC/Pratt & Whitney Aircraft Div., 3 Conn. Workers' Comp. Rev. Op. 3, 164 CRD-6-82 (August 16, 1985).
Employer must file a proper Form 36 before discontinuing payments.

Sec. 31-297. Hearing of claims.

Chung v. Wal-Mart, 4474 CRB-2-02-1 (November 13, 2002).
Respondents appealed imposition of fine pursuant to § 31-288(b)(2) for failure to appear at informal hearing, arguing that the hearing notice did not comply with § 31-297 insofar as it was not received until after hearing took place. As fine was imposed at an informal hearing, CRB remanded case to give respondents opportunity to present claims at formal hearing. However, board noted that § 31-297 vests commissioner with authority to

waive 10-day notice requirement when emergency circumstances exist. See also, **Chung**, § 31-288, § 31-301. Appeal procedure.

Siebold v. Helicopter Support, Inc., 4392 CRB-3-01-5 (September 6, 2002).
Remand appropriate on § 31-308a claim. Unclear to CRB whether respondents had been properly notified that claimant's allegedly worsening physical condition and related depression were at issue. Though evidence was introduced at trial to establish basis for finding related to cervical/thoracic spinal injury and depression, CRB entertained doubt that due process was provided, and erred on side of caution. See also, **Siebold**, § 31-308a.

Czujak v. Bridgeport, 4371 CRB-4-01-3 (April 8, 2002).
Claimant alleged mental incompetence at time of formal hearing. Board found no merit to this argument, as formal hearing was held to determine claimant's overpayment (which he did not dispute), and his wife testified regarding all pertinent information, having been in charge of household finances. See also, **Czujak**, § 31-301(g). Prior decision at Czujak , 3535 CRB-4-97-2 (June 10, 1998), aff'd, 55 Conn. App. 789 (1999), cert. denied, 252 Conn. 920 (2000), § 7-433c, § 31-300, § 31-301. Appeal procedure, § 31-307a, § 31-315.

Schreiber v. Town & Country Auto Service, 4239 CRB-3-00-5 (June 15, 2001).
See, **Schreiber**, § 31-278 (discussion of res judicata, collateral estoppel and "law of the case" doctrines).

Spatafore v. Yale University, 3969 CRB-3-99-1 (May 29, 2001).
Claimant contended on appeal that the parties agreed during formal hearing that trier would only address issue of compensability, making it error for trier to address entitlement to temporary total or partial disability benefits. Transcript supported this contention, so board vacated portions of award that addressed disability status. Claimant also succeeded in showing that she had requested attorney's fees and interest due to unreasonable contest, but trier failed to address that issue in his decision. CRB remanded case for rulings on disability and attorney's fees.

Mosman v. Sikorsky Aircraft Corp., 4180 CRB-4-00-1 (March 1, 2001).
Issues before trier were approval of surgery, temporary total and temporary partial disability (the latter two having been put on the table by virtue of counsel's remarks at the formal hearing). CRB ruled that issue of maximum medical improvement had properly been considered as a natural outgrowth of issues before trier, but permanency rating should not have been set without providing claimant opportunity to obtain her own evidence. CRB encouraged parties to articulate issues at outset of formal hearings in order to avoid later uncertainty. See also, **Mosman**, § 31-297, § 31-301. Factual findings, § 31-294f.

Vetre v. State/Dept. of Children and Families, 3443 CRB-6-98-12 (November 28, 2000).
CRB held that, though formal hearing notices did not mention it, state was nonetheless aware that total disability was at issue because the state raised the subject in its Form 43

and total disability was cited in the pre-formal hearing notice. No express waiver of this issue at trial. See also, **Vetre**, § 31-298, § 31-300, § 31-307. Prior decisions at Vetre, 3948 CRB-6-98-12 (February 14, 2000), § 31-298, § 31-301. Appeal procedure; and Vetre, 3443 CRB-6-96-10 (January 16, 1998), § 31-298. Subsequent decisions at Vetre, 4378 CRB-6-01-4 (March 14, 2002), Vetre, 4728 CRB-6-03-9 (October 8, 2003).

Calinescu v. CFD Associates, 4144 CRB-8-99-11 (November 7, 2000).
CRB affirmed trier's dismissal of claim on ground that it was precluded by doctrine of res judicata. Hearing notices at prior proceedings cited two dates of injury, including the one claimant now wished to litigate. Claimant could have raised connection between shoulder symptoms and first injury at trial, rather than proceeding under theory that first injury had resolved itself by the time of later injury. Prior decision at Calinescu, 13 Conn. Workers' Comp. Rev. Op. 298, 1794 CRB-8-93-8 (April 21, 1995), § 31-301. Factual findings, § 31-301-9.

Borici v. State/Southbury Training School, 3718 CRB-6-97-11 (January 14, 2000).
Adequate notice of formal hearing was provided to respondent where notice was sent to employer's counsel (Office of the Attorney General), to the employer, and to the Administrator. Issues listed on notice were sufficient because, even though § 31-300 was referenced rather than § 31-303, notice stated that the issue was the imposition of a twenty percent penalty for late payment. See also, **Borici**, § 31-303.

Palm v. Yale University, 3923 CRB-3-98-10 (January 7, 2000).
After reviewing the transcript, CRB concluded that the parties were not afforded sufficient notice that the issue of temporary partial benefits under § 31-308(a) would be decided. Claimant's counsel specifically limited issues at formal hearing so as not to include a claim for § 31-308(a) benefits. Board therefore set aside commissioner's § 31-308(a) award and remanded that issue for a formal hearing.

Liano v. Bridgeport, 3299 CRB-4-95-10 (March 25, 1997).
The claimant contended that he did not receive proper notice that the formal hearing would include the issue of causation of his psychiatric claim. CRB found sufficient notice provided. Notice of a hearing is not required to contain an accurate forecast of the precise action which will be taken on the subject matter referred to in the notice, but is adequate if it fairly and sufficiently apprises those who may be affected of the nature and character of the action proposed, so as to make possible intelligent preparation for participation in the hearing. See, **Liano**, § 31-294c, § 31-301. Factual findings. Subsequent decisions at Liano, 3561 CRB-4-97-3 (June 3, 1998), rev'd in part, 55 Conn. App. 75 (1999), cert. denied, 252 Conn. 909 (1999), § 31-300; Liano, 3447 CRB-4-96-10 (January 6, 1998), aff'd, 51 Conn. App. 905 (per curiam), cert. denied, 248 Conn. 907 (1999), § 7-433c; companion decision at Liano, 3199 CRB-4-95-10 (March 25, 1997), § 31-279-3, § 31-298, § 31-307. Prior decision at Liano, 14 Conn. Workers' Comp. Rev. Op. 201, 2033 CRB-4-94-5 (July 25, 1995), appeal and cross appeal dismissed, lack of final judgment, A.C. 15082 (June 6, 1996), cert. denied, 238 Conn. 906 (1996), § 7-433b, § 31-300, § 31-310.

Proto v. Kenneth Grant d/b/a Kenney G's Irish Pub, 16 Conn. Workers' Comp. Rev. Op. 129, 3030 CRB-8-95-3 (November 26, 1996).
On appeal, the employer contended that it was denied due process because its failure to appear at a formal hearing was due to its reliance upon its insurance company to appear on its behalf. However, employer did not deny that it received proper notice of the formal hearing, which was mailed via certified mail. The notice, which states the names of the parties notified, does not list the insurer as a party. Under these circumstances, CRB found that the employer was not denied due process, as it was properly sent timely notice of the formal hearing. See also, **Proto,** § 31-288(c).

Greiner v. Pratt Associates, 13 Conn. Workers' Comp. Rev. Op. 222, 2000 CRB-8-94-3 (April 12, 1995), **aff'd and appeal dismissed**, A.C. 14646, A.C. 14596 (June 6, 1996) pursuant to Figueroa v. C & S Ball Bearing, 237 Conn. 1 (1996).
Workers' Compensation Commission lacks jurisdiction to assign hearings requested by medical provider where no Chapter 568 claim exists. See, Baigert, 13 Conn. Workers' Comp. Rev. Op. 78, infra.

Baigert v. Fosdick Corporation, 13 Conn. Workers' Comp. Rev. Op. 78, 1784 CRB-8-93-7 (January 20, 1995).
Chairman's directive postponing medical provider's request for an informal hearing indefinitely was proper where there was no evidence an underlying workers' compensation claim existed. (*Arcudi, C.,* **dissenting**) (Chairman does not have statutory power to deny medical provider due process. Chairman's administrative powers may have been expanded by 1991 amendments to the workers' compensation act, however, adjudicatory powers were left undisturbed). But see, Figueroa v. C & S Ball Bearing, aff'd, 237 Conn. 1 (1996). See also, **Baigert**, § 31-294d, and § 31-280.

Cookson v. G.R. Cummings Company, 13 Conn. Workers' Comp. Rev. Op. 76, 1796 CRB-8-93-7 (January 20, 1995).
Chairman, acting for the Eighth District, erred in ordering an indefinite postponement of medical provider's request of an informal hearing where it appears a workers' compensation claim exists. See also, **Cookson**, § 31-294d.

Soares v. Glass Industries, 12 Conn. Workers' Comp. Rev. Op. 189, 1377 CRB-3-92-1 (May 4, 1994).
Respondents' contention they were denied due process where trial commissioner notified all parties at conclusion of morning informal that the matter would proceed to trial at a formal hearing that afternoon held unpersuasive. Given totality of circumstances, i.e. claimant's financial hardship, cutting of benefits, and prior informal hearings, it was within trier's statutory authority to find an emergency existed. See also, **Soares**, § 31-300, § 31-307b and § 31-315.

Monroe v. Twin County Sanitation Co., 4 Conn. Workers' Comp. Rev. Op. 78, 337 CRD-2-84 (June 2, 1987).
Notice of hearing which stated hearing was to determine liability was not merely limited to existence of liability.

Sec. 31-297a. Informal Hearings.

Costa v. United Nuclear Corp., 16 Conn. Workers' Comp. Rev. Op. 101, 2296 CRB-2-95-1 (November 20, 1996).
Commissioner is authorized to make recommendations at an informal hearing that shall be reduced to writing and, if accepted by parties, made binding as an award. Although proceeding in question was actually a formal hearing, commissioner at hearing testified that § 31-297a most closely approximated his authority to make agreement. Claimant argued that the resulting agreement had no effect under Act, but board disagreed. As long as claimant understood its nature and scope, the commissioner had authority to memorialize that agreement as a binding stipulation. Fact that hearing was formal rather than informal did not prevent document from taking legal effect. See also **Costa**, § 31-315 and Rules of Professional Conduct.

Sec. 31-298. Conduct of hearings. Evidence.

Bailey v. State, 4744 CRB-1-03-10 (December 3, 2004).
Appellate Court reversed award of total disability benefits on ground that respondent had been denied opportunity to conduct independent medical examination in contravention of law, and remanded case for further proceedings. Trier subsequently ordered claimant to comply with motion for discovery, having found that claimant has not complied with state's requests for mental health records requested by examining psychiatrist. CRB affirmed, citing Appellate Court's statement that respondent should be allowed to follow through on independent medical examination. See, **Bailey**, § 31-301(g),§ 31-301(f). Prior decisions at Bailey, 3922 CRB-2-98-10 (November 30, 1999), aff'd in part, rev'd in part, 65 Conn. App. 592 (2001), § 31-300, § 31-307, § 31-284b, § 31-294d, § 31-301. Factual findings, Bailey, 3694 CRB-1-97-9 (January 12, 1999), rev'd, 65 Conn. App. 592 (2001), § 31-298, § 31-301. Appeal procedure; and Bailey, 15 Conn. Workers' Comp. Rev. Op. 433, 3152 CRB-5-95-8 (September 3, 1996), § 31-301. Appeal procedure, § 31-301. Factual findings.

Horobin v. West Haven, 4724 CRB-3-03-9 (December 2, 2004).
See, **Horobin**, § 31-349 (parties were not notified that joint and several liability theory was being considered); see also, **Horobin**, § 31-296. Voluntary agreements (approval of), § 31-300, § 31-301. Appeal procedure; § 31-301. Factual findings, § 31-307.

Sadosky v. U.S. Properties, Inc., 4751 CRB-2-03-11 (November 2, 2004).
No error in trier's reliance on medical expert's opinion despite respondent's contention that the doctor had insufficient history. Respondent never objected to admission of doctor's report at hearing. Respondent was free to depose expert. Trier must consider record and determine whether expert has necessary information to form a credible opinion. See also, **Sadosky**, § 31-299b.

Brown v. State/DMR, 4748 CRB-6-03-11 (October 18, 2004).
CRB held commissioner's admission of hearsay did not violate claimant's due process rights. Claimant's counsel was given an opportunity to procure evidence on the issue of

benefit payments previously paid to the claimant, and indicated he would rely on the respondent's representation as to prior payments. See also, **Brown**, § 31-301-4, § 31-308a.

Donaldson v. Continuum of Care, Inc., 4581 CRB-3-02-10 (October 4, 2004).
No error in admitting psychologist's medical report into evidence. Appellant had submitted similar evidence. See also, **Donaldson**, § 31-294d.

Dunlevy v. Infra Metals Corp., 4626 CRB-8-03-2 (April 5, 2004).
Claimant introduced two letters as exhibits, which respondents objected to as hearsay. Trier granted counsel an exception, and stated that he would allow it to depose the author of the letters. After hearing claimant's testimony, trier then issued bench ruling in claimant's favor, failing to address the objection. Respondents' motion to reconsider trier's ruling listed this issue as a ground for error, but motion was denied. CRB had no way of knowing how much weight trier placed on these exhibits, but acknowledged that due process principles concerning right to confront witnesses apply here. Board cannot assume that there was no prejudice. Award of benefits was reversed, and case remanded for new hearing. See also, **Dunlevy**, § 31-308a, § 31-310.

Capozzo v. Milford Jai Alai, 4655 CRB-3-03-3 (March 26, 2004).
CRB reversed trial commissioner's ruling the respondents unduly delayed the authorization for claimant's surgery as the respondents were not given adequate notice the issue was under consideration. Matter remanded for further proceedings consistent with respondents' due process rights. See also, **Capozzo**, § 31-300.

Paige v. Hartford Insurance Co., 4594 CRB-2-02-12 (January 9, 2004).
CRB upheld admission of hearsay evidence where claimant never raised an objection to the nature of the evidence and never alleged she was not afforded an opportunity to cross-examine the author of the evidence. Commissioner's findings did not mention the evidence and were supported by substantial evidence apart from the hearsay. CRB upheld admission of undisclosed witness' testimony where pro se claimant never alleged she was unprepared to cross-examine the witness, was present during the events which the witness testified regarding and had actual notice the witness was to testify several months prior. See also, **Paige**, §§ 31-294c, 31-301. Factual findings.

Fiorillo v. Bridgeport, 4585 CRB-4-02-11 (December 17, 2003), **appeal dismissed for lack of a final judgment**, A.C. 24991 (May 5, 2004).
Testimonial fees may not be awarded for claimant's vocational rehabilitation specialist and any other non-physician expert witness. Statute only allows payment for costs associated with testimony by "competent physician, surgeon or other medical provider." Administrative notice of prior decisions in same case may be taken, but better approach is to give parties notice of intent to take such notice. Where Supreme Court vacated earlier decision in Fiorillo v. Bridgeport, 4337 CRB-4-01-1 (November 19, 2001), vacated, S.C. 16756 (December 16, 2002), based on mutual mistake in stipulation of facts regarding length of total disability period, CRB had to reverse finding of unreasonable contest of liability, which was based on incorrect notion that claimant had

received five years of total disability benefits. See also, **Fiorillo**, § 31-301. Factual findings, § 31-301-4, § 31-307a, § 31-307.

Blaha v. Logistec Connecticut, Inc., 4544 CRB-3-02-6 (July 9, 2003).
Prevailing claimant's entitlement to cost of testimony by competent physician includes time that physician has spent reviewing file and traveling to hearing, if it would otherwise be billed to claimant. See also, **Blaha**, § 31-300, § 31-312.

Bailey v. Willimantic Dodge/Nissan, 4516 CRB-2-02-4 (May 8, 2003).
Claimant sustained compensable hip injury. Prior total disability claim was denied through May 9, 1995 formal hearing. Respondents herein sought to preclude claimant from pursuing subsequent total disability claim from May 10, 1995 forward. Trier denied motion to dismiss claim that alleged res judicata, and denied motion to preclude introduction of evidence that was allegedly based on reports considered at prior hearings. CRB affirmed. Trier has broad discretion to admit evidence under § 31-298. Questions over proper weight to give medical reports in light of arguably uncertain diagnosis pertain to credibility, not admissibility. Reports of non-treating physician are now admissible under George v. Ericson, 250 Conn. 312 (1999). See also, **Bailey**, § 31-307. See prior decisions at Bailey v. Stripling Auto Sales, Inc., 3461 CRB-3-96-11 (April 9, 1998), § 31-315; Bailey, 15 Conn. Workers' Comp. Rev. Op. 369, 3095 CRB-2-95-6 (June 28, 1996), § 31-278, § 31-298, § 31-301-9.

Catale v. Physicians Health Services, 4495 CRB-4-02-2 (March 5, 2003).
Respondents failed to authenticate videotape that was introduced into evidence and relied on by trier. Claimant objected in timely manner. Board reversed decision and remanded for new trial.

Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002).
Trier was not required to honor pro se claimant's last-minute request to postpone hearing, where it had already been postponed twice before. Granting of continuances is almost completely discretionary. With regard to ex parte communication between nurse case managers/claims adjusters and treating physicians, CRB discussed July 12, 1999 Memorandum that creates safeguards designed to prevent respondent from unduly influencing doctor-patient relationship without cutting off communication entirely. See also, **Duddy**, § 31-296. Voluntary agreements (discontinuance of payments); § 31-301. Factual findings; § 31-307.

Kasfeldt v. Heitkamp, Inc., 4452 CRB-5-01-10 (September 18, 2002).
Claimant stipulated at hearing that method-of-service issue raised in Motion to Preclude was no longer in dispute; trier nonetheless granted motion on basis of insufficient proof of proper service under § 31-321. Respondents appealed, and claimant did not actively object. CRB granted motion to reverse commissioner's decision, as due process requires that parties be aware factual element of case is at issue. Remanded for further proceedings.

Millette v. Wal-Mart, 4429 CRB-5-01-8 (July 19, 2002).
CRB affirmed trier's ruling denying the respondent an opportunity to depose treating physician where respondent waited until after two formal hearing sessions and closing of evidentiary record to schedule deposition. Also, trier's failure to rule on respondent's request for sanctions due to cancellation of a scheduled deposition by claimant's counsel was harmless error. Respondent had chance to cross-examine claimant and, given three-month period between formal hearings, had sufficient opportunity to investigate her testimony and challenge its veracity.

Bidoae v. Hartford Golf Club, 4424 CRB-6-01-8 (June 27, 2002).
Trier ruled that claimant could not introduce testimony and reports of her vocational rehabilitation expert unless she consented to examination by respondents' vocational rehabilitation expert. CRB affirmed. Issue did not center around definition of "physician" in § 31-294f, but rather concerned fundamental due process issues that grant parties the right to produce relevant evidence and offer rebuttal evidence. See also, **Bidoae**, § 31-294f. See subsequent decision Bidoae, 4693 CRB-6-03-7 (June 23, 2004), § 31-301. Appeal procedure, § 31-307.

Green v. United Illuminating Co., 4361 CRB-3-01-2 (February 28, 2002).
Board affirmed trier's finding that alleged Lyme disease was not caused by claimant's employment, as medical evidence was conflicting, and an expert testified that any tick bite she may have gotten could have occurred anywhere. Claimant argued that trier erred by admitting deposition of independent medical examiner. CRB ruled that trier did not rely on said deposition, as it set forth no opinion regarding whether tick bite occurred while at work or was more likely to have occurred during non-work hours. See also, **Green**, § 31-275(1).

Cordi-Allen v. Hartford, 4422 CRB-1-01-7 (January 30, 2002).
CRB affirmed trier's ruling on Motion To Withdraw representation by claimant's counsel.

Savage v. Rogers Corporation, 4330 CRB-2-00-12 (January 3, 2002).
Claimant appealed trier's finding that she did not establish Multiple Chemical Sensitivity Syndrome, contending that notice had not been given that MCSS was at issue. Respondents contended MCSS was not a scientifically tenable diagnosis. CRB ruled that claimant should have been allowed to introduce evidence regarding MCSS at formal proceedings, which would have enabled trier to rule on both temporary total and partial disability, and to consider scientific viability of MCSS diagnosis. Remanded.

Rodrigues v. American National Can, 4329 CRB-7-00-12 (January 2, 2002).
At formal hearing, trier explained to the claimant (acting pro se) that he needed to present medical evidence to refute written report and deposition of respondents' independent medical examiner. Trier would not allow claimant to present old medical records, as they did not address limited Form 36 issue at hand. CRB found no error, as decisions regarding relevance and remoteness of evidence in workers' compensation proceedings fall solely within trier's discretion. See also, **Rodrigues**, § 31-279-3, § 31-296. Voluntary agreements (discontinuance of payments), § 31-301-9. Prior decision at

Rodrigues, 4043 CRB-5-99-4 (July 26, 2000), § 31-301. Appeal procedure, Factual findings, § 31-308a.

Mason v. Dale Construction, Inc., 4354 CRB-3-01-1 (November 7, 2001).
Intoxication defense is evidentiary issue rather than one implicating preclusion. Because of discretion afforded a trier under § 31-298, CRB was "not persuaded that any defense not listed in a Form 43 may subsequently *never* be asserted by a respondent." Rather, respondent is expected to make diligent and timely investigation of claim, which may result in uncovering previously unknown evidence that may support additional defenses. Thus, trier should assess respondents' diligence in investigating the claim, and should decide whether defense of intoxication was timely made. See also, **Mason**, § 31-284(a), § 31-301. Appeal procedure, § 31-294c. Subsequent decision at Mason, 4476 CRB-3-01-2 (April 28, 2003).

Rayhall v. Akim Co., Inc., 4321 CRB-2-00-12 (November 5, 2001), **aff'd**, 263 Conn. 328 (2003).
Where all facts were stipulated, and no testimony was taken, CRB did not need to adhere to its normal deferential standard of review. See also, **Rayhall**, § 31-278, 31-295, § 31-307, 31-308(b).

Briggs v. American Medical Response, 4302 CRB-3-00-9 (September 24, 2001).
Trier has broad discretion to determine whether party has acted with sufficient diligence in gathering evidence to support or refute a claim. CRB affirmed trier's decision to deny request to depose independent medical examiner where respondents could have obtained medical records and presented them to their examiner many months before formal hearing. Sufficient opportunity for examination of claimant was provided, and initial examination had already been performed. See also, **Briggs**, § 31-301. Factual findings, § 31-301-9.

Kuba v. Michael's Landscaping & Lawn Service, 4266 CRB-4-00-7 (August 29, 2001).
CRB held that claimant was not precluded from raising evidentiary issues on appeal, notwithstanding failure to initially appeal denial of motion to preclude. Though § 31-301(a) allows parties to appeal within ten days after a decision on a motion, CRB held that "it would be imprudent for a party to delay the progress of an action for many months at a time in order to immediately appeal every one of a commissioner's interlocutory rulings to the Compensation Review Board." Absent likelihood of irreparable harm resulting from immediate actualization of evidentiary ruling, parties should wait until merits have been decided before appealing. CRB also held that trier permissibly allowed deposition of respondents' doctor into evidence, as both parties were present at deposition, and claimant had time to obtain further evidence in response to contents of deposition. See also, **Kuba**, § 31-294c.

Baldino v. Corcoran & Son Landscaping & Paving, 4275 CRB-4-00-8 (July 23, 2001).
Board affirmed trier's decision, including ruling denying entry of Superior Court transcript as full exhibit. Transcript was offered by claimant to show respondents had

agreed to pay temporary partial disability benefits, but trier found that transcript did *not* indicate such an agreement. See also, **Baldino**, § 31-308(a).

Kudlacz v. Lindberg Heat Treating, 3407 CRB-8-96-8 (June 26, 2001), **aff'd**, 70 Conn. App. 559 (2002), **cert. denied**, 261 Conn. 927 (2002).
CRB affirmed trier's decision, including denial of claimant's request to enter as an exhibit out-of-state deposition of Colorado physician. Trier is not required to allow every deposition into evidence. CRB highlighted importance of using physicians licensed in Connecticut, though admission of testimony from out-of-state physician is within commissioner's discretion. See also, **Kudlacz**, § 31-315. Prior decision at Kudlacz, 16 Conn. Workers' Comp. Rev. Op. 214, 3407 CRB-8-96-8 (June 6, 1997), aff'd, 49 Conn. App. 1 (1998) (with dissenting opinion), rev'd, 250 Conn. 581 (1999), appeal reinstated, 3407 CRB-8-96-8 (July 21, 2000).

Audi v. Blakeslee Arpaia Chapman, 4234 CRB-3-00-5, 4151 CRB-3-99-11 (June 26, 2001).
CRB reversed finding of total disability spanning from date of voluntary agreement to date of formal hearing. Respondent had not been sufficiently apprised total disability was at issue where nine of ten hearing notices had listed "modification of award/VA" as only issue, and claimant's counsel had expressed doubt that continuing total disability should be resolved at first formal hearing. Trier did not clarify that total disability would be decided until after record was closed, and refused to allow respondent to submit further evidence on claimant's work capacity. Remanded. See also, **Audi**, § 31-301-9, § 31-315, § 31-296. Voluntary agreements (discontinuance of payments), § 31-307. See prior decision Audi, 3418 CRB-3-96-9 (August 4, 1997), § 31-349. Also see subsequent decision Audi, 4311 CRB-3-00-10 , 4624 CRB-3-03-2 (February 10, 2004), § 31-278, § 31-284(b), § 31-288, § 31-300.

Cirrito v. Resource Group Ltd. of Conn., 4248 CRB-1-00-6 (June 19, 2001).
See, **Cirrito**, § 31-294d, § 31-300 (trier improperly denied attorney's request to call opposing counsel to stand in order to question him regarding attorney's fee petition), § 31-301. Factual findings.

Melendez v. Valley Metallurgical¸ 4178 CRB-2-00-1 (May 1, 2001), **appeal dismissed**, A.C. 23921 (May 14, 2003), **cert. denied**, 266 Conn. 904 (2003).
Trier did not violate due process rights of claimant by failing to remove action to Superior Court, as he had jurisdiction to decide issues surrounding claimant's entitlement to COLAs, interest, and attorney's fees. Relaxed rules of discovery prevail in this forum. No error in denying request for disclosure and production, which sought extensive discovery from insurer. No due process violation in refusing to allow such discovery, as claimant need not be given advance notice of every legal strategy respondent intends to pursue. Also, trier may exclude statements of witnesses if party is not given opportunity to cross-examine. Simplified hearing procedures in this forum entitled trier to restrict scope of evidence to be admitted in these proceedings. No error in admitting exhibit that incorporated evidence of settlement negotiations where issue was whether insurer unduly delayed payment of interest while efforts to reach compromise were ongoing. No error in admitting accountant's interest calculations

despite his unavailability for cross-examination, as nature of calculation method could be discerned by comparing tables that had been prepared. See also, **Melendez**, §§ 31-278, 31-300, 31-303; and see May 24, 2001 ruling on motion to correct/articulate CRB decision in Melendez, § 31-301. Appeal procedure. Related decision in Melendez, 4178 CRB-2-00-1 (November 19, 2003), rev'd, 86 Conn. App. 880 (2005)(no jurisdiction to rule on motion to reopen CRB decision), § 31-301. Appeal procedure.

Donaldson v. Duhaime, 4213 CRB-6-00-3 (April 30, 2001).
Trier did not err by admitting testimony of doctor during rebuttal phase of claimant's case. Practice Book rules regarding disclosure of witnesses do not technically apply in workers' compensation forum, and respondents did not request continuance so that they might depose witness or obtain his records. Also, case law no longer prohibits introduction of medical opinion that is prepared on basis of statements made by patient for purpose of enabling expert to testify in litigation, as per George v. Ericson, 250 Conn. 312 (1999). See also, **Donaldson**, § 31-294d, § 31-301. Factual findings, § 31-307.

Mosman v. Sikorsky Aircraft Corp., 4180 CRB-4-00-1 (March 1, 2001).
Claimant alleged that commissioner's examiner had improper contact with respondents, and mistakenly viewed his role as that of an independent medical examiner rather than an impartial commissioner's examiner. However, no objection was made at time of formal hearing; issue was first raised in trial brief, and was not discussed by trier in her findings and conclusions. CRB held that trier has broad discretion to determine admissibility of evidence, and that she apparently rejected claimant's challenge to credibility of the examiner's report. Board declined to commence exploration of motivation behind doctor's diagnosis on appeal, particularly where claimant did not offer strong evidence that doctor was predisposed to provide an opinion favorable to respondents. See also, **Mosman**, § 31-297, § 31-301. Factual findings, § 31-294f.

Pantanella v. Enfield Ford, 4220 CRB-1-00-4 (December 19, 2000).
CRB declined to review trial commissioner's granting of Motion to Quash a notice of deposition, as appellant declared at oral argument that subsequent developments had made the deposition unnecessary. Issue rendered moot. See also, **Pantanella**, § 31-300. Prior decisions at Pantanella, 3937 CRB-1-98-11 (January 7, 2000), § 31-299b, § 31-300, § 31-301. Factual findings, § 31-298, § 31-315; and Pantanella, 3377 CRB-1-96-7 (January 28, 1998), § 31-298, § 31-299b, § 31-301. Factual findings, § 31-355(e). Pantanella decisions 3937 and 3377 aff'd, 65 Conn. App. 46 (2001), cert. denied, 258 Conn. 930 (2001).

Vetre v. State/Dept. of Children and Families, 3443 CRB-6-98-12 (November 28, 2000).
Trier's conclusion that state was "estopped" from denying compensability of psychiatric condition was not the basis of his finding of compensability; trier instead invoked "estoppel" only in evaluating the reasonableness of respondent's defense. Though there was no proof that traditional equitable estoppel defense had been established, trier was using the term "estopped" more generally in light of the purpose and language of Chapter 568. See also, **Vetre**, § 31-297, § 31-300, § 31-307. Prior decisions at Vetre,

3948 CRB-6-98-12 (February 14, 2000), infra, § 31-301. Appeal procedure; and Vetre, 3443 CRB-6-96-10 (January 16, 1998), infra. Subsequent decisions at Vetre, 4378 CRB-6-01-4 (March 14, 2002), Vetre, 4728 CRB-6-03-9 (October 8, 2003).

Brown v. State/Dept. of Mental Health & Addiction Services, 4053 CRB-2-99-5 (July 27, 2000), **aff'd**, 66 Conn. App. 882 (2001)(per curiam), **cert. denied**, 259 Conn. 913 (2002).
No error for trier to deny State's last-minute request to convert formal hearing into a "pre-formal hearing." Statute does not entitle parties to such a proceeding, and trier has full discretion regarding its scheduling. Further, "prejudice" to State was minimized because State was allowed to introduce independent medical examination into evidence later despite its own failing to begin preparation of case until shortly before formal. See also, **Brown**, § 31-307, § 31-296 Voluntary agreements (discontinuance of payments). Prior decision at Brown, 3100 CRB-2-95-6 (December 23, 1996), § 31-296 Voluntary agreements (discontinuance of payments), infra.

Lafayette v. General Dynamics Corporation/Electric Boat Division, 3943 CRB-8-98-12 (April 18, 2000), **rev'd**, 255 Conn. 762 (2001).
See, **Lafayette**, § 31-275(1) (claimant sought to invoke collateral estoppel doctrine on strength of LHWCA ruling regarding causation).

Wlodyka v. First National Stores, 4025 CRB-2-99-4 (March 15, 2000).
CRB found that it was not error for trial commissioner to find that hearings were not requested or held for many years, as it was within the trier's discretion to take administrative notice of prior hearings. See also, **Wlodyka**, § 31-307.

Saleh v. Poquonock Giant Grinder Shop, 4005 CRB-1-99-3 (March 13, 2000).
CRB found no error in trial commissioner's taking administrative notice that prior hearings had been held on the issue of increased permanent partial disability. Board explained that although general rule is that trier should not review notes from prior informal hearings, in the instant case the commissioner merely referred to the fact that these hearings had been held. See also, **Saleh**, § 31-279-2, § 31-300, § 31-301-9, § 31-315.

Vetre v. State/Dept. of Children and Families, 3948 CRB-6-98-12 (February 14, 2000).
CRB affirmed trier's decision to deny respondent access to records from claimant's 1960's psychiatric hospitalization after conducting *in camera* inspection pursuant to earlier CRB decision. See Vetre, 3443 CRB-6-96-10 (January 16, 1998), infra. Board reaffirmed its earlier decision to honor the right of privacy granted by § 52-146e, establishing patient-psychiatrist privilege in workers' compensation forum. Board also rejected respondent's argument that trier's *in camera* inspection was insufficient because neither a medical expert nor counsel was allowed to participate in record review. Solitary *in camera* review was appropriate. Trier may seek aid of expert if medical significance of information is beyond judicial ken. Appellate inspection of records revealed no abuse of discretion by trier. See also, **Vetre**, § 31-301. Appeal procedure; subsequent decision in Vetre, 3443 CRB-6-96-10 (November 28, 2000), supra, and § 31-

297, § 31-300, § 31-307. Subsequent decisions at Vetre, 4378 CRB-6-01-4 (March 14, 2002), Vetre, 4728 CRB-6-03-9 (October 8, 2003).

Student v. Corometrics Medical Systems, Inc., 3980 CRB-8-99-2 (February 9, 2000).
CRB affirmed trial commissioner's scarring award, which mentioned another commissioner's assessment made at a prior informal hearing. Board cautioned that a commissioner should *not* review notes from a prior informal hearing. However, reference to informal hearing was harmless error, because the trier specifically stated that his scarring award was based upon his "own observation" and upon a physician's evaluation which was in the record. See also, **Student**, § 31-275(1), § 31-294d, § 31-308(c).

Pantanella v. Enfield Ford, 3937 CRB-1-98-11 (January 7, 2000), **aff'd**, 65 Conn. App. 46 (2001), **cert. denied**, 258 Conn. 930 (2001)(along with Case No. 3377).
See, **Pantanella**, § 31-299b, § 31-300, § 31-301. Factual findings, § 31-315. Subsequent decision in Pantanella, 4220 CRB-1-00-4 (December 19, 2000), supra and § 31-300. Prior decision at Pantanella, 3377 CRB-1-96-7 (January 28, 1998), § 31-298, 31-299b, § 31-301. Factual findings, § 31-355(e).

Sansone v. Enfield, 3885 CRB-1-98-9 (November 18, 1999).
Commissioner decided general question of law and specific applicability of § 31-284b to claimant, even though both parties had signed a "Stipulation As To Procedure" contemplating bifurcated proceedings, with respondent having interlocutory appeal rights. Facts of case had also been stipulated, but respondent wished to introduce evidence regarding prior settlement agreement should it lose on the general legal question. CRB held that workers' compensation commissioner does not have authority to issue an advisory opinion; specific facts of case must be addressed in order for an award to ensue. However, respondent was misled into believing that proceedings had been bifurcated, and effectively had no opportunity to introduce its evidence. Remand for another hearing. See also, **Sansone**, § 31-306, § 31-284b.

Johnson v. Braun Moving, Inc., 3861 CRB-7-98-7 (November 2, 1999).
Photocopies of medical reports were not admitted as full exhibits, but only for identification. Trier's findings based on contents of those reports were vacated, and case was remanded for further proceedings. CRB also noted in footnote that it was not hearsay for claimant's wife to testify that none of insurer's representatives told her not seek out-of-state care for her husband. Statement (or omission) offered solely to show its effect on the hearer is not hearsay. See also, **Johnson**, § 31-275(9), § 31-294d.

Norwood v. Custom Design Services, Inc., 3844 CRB-7-98-6 (November 2, 1999).
Claimant objected to admission of IME deposition where physician did not recall having viewed videotape that showed another employee demonstrating claimant's job duties. Videotape was not available during the deposition, but was viewed during the formal hearing by the trial commissioner and the claimant, who testified regarding alleged inaccuracies of said videotape. Board ruled that it was within the discretion of the commissioner to admit deposition and videotape. See also, **Norwood**, § 31-294d.

Pietraroia v. Northeast Utilities, 3838 CRB-8-98-6 (August 18, 1999), **rev'd**, 254 Conn. 60 (2000).
Claimant, a resident of Australia, refused to fly to United States in order to testify and submit to medical examination, protesting that he was too ill to travel. Trial commissioner dismissed his claim with prejudice, citing claimant's failure to offer proof that he was medically unable to make the trip. CRB affirmed. Trial commissioner has authority to dismiss case where claimant refuses to attend hearings, and where he is not convinced that the claimant has adequately established an excuse for failing to appear. Reversed and remanded by Supreme Court. Though a commissioner has the power to dismiss a claim without adjudicating it on the merits if equity favors such a result, the trier here abused his discretion because procedures were available short of dismissal that would have protected both the claimant and the respondents' legitimate interests. Prior decision at Pietraroia, 3597 CRB-8-97-4 (September 8, 1997), infra.

Zizic v. Sikorsky Aircraft Division, 3732 CRB-4-97-11 (July 7, 1999).
Claimant contended that trial commissioner erred in failing to allow into evidence the reports of two treating physicians, who were not authorized treating physicians. CRB agreed with claimant that even though the physicians were not authorized (and therefore their treatment was not compensable), as treating physicians their reports were admissible into evidence under § 52-174.

Cabral v. Metropolitan District Employees, 3770 CRB-1-98-2 (May 13, 1999).
Trial commissioner did not err by relying on the medical opinion of a doctor whose "rebreathing diffusion capacity test" was allegedly disfavored by the general medical community. Section 31-298 gives the trier discretion to choose among alternative diagnostic methods in fulfilling fact-finding duties. CRB acknowledged existence of preferred procedures and medical protocols, but stressed the importance of maintaining a degree of flexibility regarding authorized diagnostic and treatment techniques where customized treatment proves necessary. CRB discussed impact of State v. Porter, 241 Conn. 57 (1997), which mildly relaxed the common-law standard in Connecticut for the admissibility of scientific evidence by changing the nature of the admissibility test. Panel decided that Porter corroborates the deferential approach sanctioned by this board. See also, **Cabral**, § 31-301. Factual findings.

Bryan v. Sheraton-Hartford Hotel, 3730 CRB-1-97-11 (May 7, 1999), **rev'd**, 62 Conn. App. 733 (2001).
Trial commissioner affirmed as to scope of proceedings after CRB remand where CRB granted, in part, the claimant's Motion to Submit Additional Evidence. Trial commissioner refused to consider respondents' evidence admitted after remand. That evidence tended to undermine the credibility and foundation of the additional report proffered by the claimant. CRB concluded the weight to be given the respondents' evidence was a matter within the trier's purview and noted that the report in question was cumulative of an earlier report given by the same physician. Appellate Court reversed, holding that the evidence was not cumulative, but rather constituted a recantation of previously admitted evidence, and that due process entitled the respondents to offer evidence in rebuttal of claimant's evidence. Judgment directed. See

related case, Bryan, 3320 CRB-1-96-4 (January 29, 2002), aff'd, 74 Conn. App. 901 (2002), cert. denied, 263 Conn. 916 (2003).

Capra v. State/Dept. of Correction, 3791 CRB-4-98-4 (April 27, 1999).
No legal requirement that doctor's diagnosis be obtained in the form of a hypothetical question. Acceptance of deposition into evidence was not an abuse of discretion, as non-hypothetical questions asked by respondent to its examiner did not rely improperly on underlying hearsay information. See also, **Capra**, § 5-145a, § 31-301. Appeal procedure.

Wysocki v. State/Cedarcrest Hospital, 3807 CRB-6-98-4 (April 12, 1999).
Trial commissioner did not order the respondent to pay for the deposition of one of the claimant's treating physicians/expert witnesses. Respondent claimed the necessity to pay for the deposition was pursuant to P.A. 97-106 (amending § 31-298), which was passed after the claimant's date of injury. CRB held, inter alia, that P.A. 97-106 only affected a matter of procedure, thus making it applicable to the instant matter. Case remanded to determine the reasonableness of witness' fee.

John v. State/University of Connecticut Health Center, 3729 CRB-3-97-11 (March 1, 1999).
Claimant made a convincing argument regarding the inequitable nature of the formal hearing proceedings caused by the surprise introduction of medical reports that opposing counsel had promised to provide to the claimant. In order to provide her with a full and fair opportunity to present her case and to respond to the employer's evidence, CRB remanded the matter to be heard *de novo* by another trial commissioner.

Aguayo v. Franklin Mushroom Farms, Inc., 3697 CRB-2-97-1 (January 28, 1999).
CRB reversed trial commissioner's order that respondents pay for the cost of claimant's witness, a vocational rehabilitation expert, as § 31-298 does not allow for same. See also, **Aguayo**, § 31-300.

Bailey v. State/Greater Hartford Community College, 3694 CRB-1-97-9 (January 12, 1999), **aff'd in part, rev'd in part**, 65 Conn. App. 592 (2001).
Interlocutory appeal from two evidentiary decisions by trial commissioner. Trier must abide by restriction of proceedings on remand to disability period through January 20, 1994. Ruling that employer should be denied another independent medical examination or further opportunity to obtain records was within trier's discretion; he felt that respondent had not pursued discovery with proper diligence. Parties had agreed that claimant would only have to testify on one occasion, and trier's adherence to that agreement was reasonable as well. Appellate court reversed, holding that respondent had right under § 31-294f to demand examination at any time upon reasonable request, and commissioner should have worked with parties to ensure that respondent obtained examination with "all deliberate speed . . . and with consideration for the [claimant]'s psychological condition." See also, **Bailey**, § 31-301. Appeal procedure. Subsequent decision at Bailey, 3922 CRB-2-98-10 (November 30, 1999), aff'd in part, rev'd in part, 65 Conn. App. 592 (2001), § 31-300, § 31-307, and **Bailey**, § 31-284b, § 31-294d, § 31-301. Factual findings. Prior decision at Bailey, 15 Conn. Workers' Comp. Rev. Op. 433,

3152 CRB-5-95-8 (September 3, 1996), § 31-301. Appeal procedure, § 31-301. Factual findings.

Boland v. Solar Atmospheres of New England, Inc., 3673 CRB-8-97-9 (October 19, 1998).
The respondents argued on appeal that the trial commissioner erred in allowing the reports of the IME physician into evidence without requiring that the claimant conduct a deposition, even though it was the respondents who had requested the examination by the IME physician. During the formal hearing, the respondents were provided with the opportunity to depose or subpoena the physician, but chose not to, and thus cannot now claim that they were denied due process.

Villalta v. Paychex, Inc., 3680 CRB-7-97-8 (October 13, 1998).
The claimant appeared *pro se* during the formal hearings. When the respondents introduced an IME report, the claimant was not advised that he had a right either to request that the respondents conduct a deposition, or in the alternative, that he had the right to himself pursue a deposition. The trial commissioner's decision was largely based upon the IME report. Accordingly, the CRB remanded for a *de novo* hearing.

Artese v. Sikorsky Aircraft, 3621 CRB-4-97-6 (July 30, 1998).
Parties agreed in 1990 stipulation that respondents would be responsible for lumbar surgery if treating physician prescribed it and if it was related to 1987 compensable injury. Claimant declined surgery at that time, but sought to have it several years later. Respondents offered evidence that subsequent incidents were the cause of the claimant's back problems, while treating physician issued report in 1996 that ascribed L4-L5 discopathy to 1987 injury, and recommended surgery. Trial commissioner concluded stipulation was valid, and authorized the claimant to return to the treating physician for an opinion as to whether surgery as a result of the 1987 injury was appropriate. If the doctor opined that it was, the commissioner stated that he would be authorized to perform the surgery. CRB affirmed decision. Credibility issues regarding other doctors' medical reports and claimant's testimony were for trial commissioner to resolve, and the trier was not precluded by § 31-298 from seeking another examination by Dr. Lipow.

Fenton v. A.C.E.S., 3752 CRB-3-97-12 (June 23, 1998).
The respondents appealed from the trial commissioner's denial of their Motion to Compel the claimant to testify at a deposition. The trial commissioner denied the motion because the claimant's physician opined that it would threaten the claimant's health (the claimant was awaiting a heart transplant). CRB remanded in order for the trial commissioner to issue a ruling regarding how the discovery process would proceed.

Cutler v. State/DMR Region 4, 3506 CRB-7-96-12 (April 28, 1998).
CRB set forth procedure for determining whether a non-attorney qualifies as an "accredited representative" under § 31-298. Instant case remanded, as trier's refusal to allow union staffer to represent claimant was apparently premised solely on her lack of malpractice insurance.

Tanzi v. New Britain, 3420 CRB-6-96-9 (April 28, 1998).
Respondent argued that commissioner erred by failing to admit an independent medical examiner's deposition into evidence. CRB affirmed. Respondent failed to mark deposition as an exhibit, making review more difficult, and discussion of deposition at formal hearing showed that respondent did not notify claimant of the deposition until the day before it was being held, which was two days before the formal hearing. Reasonable exercise of trier's discretion to exclude it from evidence. See also, **Tanzi**, § 31-301. Factual findings.

Dixon v. United Illuminating Co., 3543 CRB-4-97-3 (April 9, 1998).
No error in admitting testimony of psychologist into evidence and relying on it regarding causation of decedent's suicide. Trier has wide discretion to admit expert opinion in workers' compensation matters, and psychologists' reports are generally admissible. Although psychologist was not specifically an expert in suicide, nor was she a medical doctor, she had experience in substance abuse, depression and chronic pain patients. This gave her opinion a sufficient foundation to warrant its entry into evidence; any other questions implicated the weight of the evidence rather than its admissibility. See also, **Dixon**, § 31-301. Factual findings.

Diaz v. Robert W. Baker Nursery, Inc., 3309 CRB-1-96-3 (March 5, 1998).
Respondents objected to admission of IME report where IME doctor was located in Massachusetts. During formal hearing, respondents advised trial commissioner that they may wish to depose said doctor, but later on during the formal hearing the respondents decided to rest their case. As respondents chose the out-of-state doctor, and never attempted to depose him, there was no denial of due process.

Fenn v. Hospital of St. Raphael, 3444 CRB-3-96-10 (February 25, 1998).
Where evidence was apparently misplaced by this Commission, the trier had the authority to schedule a second formal hearing for the sole purpose of readmitting the misplaced exhibit. See also, **Fenn**, § 31-300, § 31-325.

Swaggerty v. Mattie's Service Station, 3378 CRB-6-96-7 (February 3, 1998).
Trier did not err by failing to include findings regarding prior convictions of alleged assailant, nor was he required to find for claimant based on fact that alleged assailant pleaded no contest to criminal charges of ridicule based on race and reckless endangerment. Exception allowing evidence of violent character based on prior convictions where a homicide defendant alleges self-defense on his own behalf does not automatically extend to other cases, and trier was not bound by ordinary evidentiary rules anyway. Factual findings based on testimony of several witnesses supported the trier's finding that the claimant engaged in horseplay unrelated to work duties when he was injured. See also, **Swaggerty**, § 31-284(a), § 31-301. Factual findings.

Gibbs v. New England Home Care, 3291 CRB-3-96-2 (February 2, 1998).
Trier concluded car accident occurred outside course of claimant's employment. Affirmed. Respondents' questioning of claimant on witness stand about prior arrests was not referred to in trier's decision, and even assuming it was irrelevant, a trial commissioner is unlikely to be swayed by the introduction of irrelevant evidence.

Introduction of claimant's no-fault auto insurance claim at supplemental formal hearing not improper. Impact of that item likely minimal, and trier has the right to accept evidence until the time the record is formally closed. CRB agreed that telephonic deposition compromised claimant's ability to effectively cross-examine witness, but claimant failed to object to the introduction of that deposition into evidence. Evidentiary rulings must be preserved by an objection before they may be considered on review by an appellate body.

Pantanella v. Enfield Ford, 3377 CRB-1-96-7 (January 28, 1998), **aff'd**, 65 Conn. App. 46 (2001), **cert. denied**, 258 Conn. 930 (2001)(along with Case No. 3937).
No error for trier to refuse to hold record open so CIGA attorney could depose treating physician where counsel had already been given sufficient opportunity to do so, but had not acted with due diligence. Further, failure to mark deposition as an exhibit for identification after it was denied admission as a full exhibit prevented the CRB from taking notice of its existence on appeal. See, **Pantanella**, § 31-299b, § 31-301. Factual findings, § 31-355(e). Subsequent decisions in Pantanella, 4220 CRB-1-00-4 (December 19, 2000), supra and § 31-300; Pantanella, 3937 CRB-1-98-11 (January 7, 2000), § 31-299b, § 31-300, § 31-301. Factual findings, supra and at § 31-315.

Vetre v. State/Dept. of Children and Youth Services, 3443 CRB-6-96-10 (January 16, 1998).
Trier has discretion to admit psychiatric records where claimant raised mental condition as part of claim and where interests of justice favor their introduction into evidence. In this case, trier should have conducted *in camera* inspection of claimant's psychiatric records from 1960's hospitalization before ruling that those records were too remote to be relevant. Subsequent decisions at Vetre, 3443 CRB-6-96-10 (November 28, 2000), supra, and § 31-297, § 31-300, § 31-307; Vetre, 3948 CRB-6-98-12 (February 14, 2000), supra. Subsequent decisions at Vetre, 4378 CRB-6-01-4 (March 14, 2002), Vetre, 4728 CRB-6-03-9 (October 8, 2003).

Ferrara v. The Hospital of St. Raphael, 3260 CRB-3-96-2 (November 18, 1997), **aff'd**, 54 Conn. App. 345 (1999), **cert. denied**, 251 Conn. 916 (1999).
A commissioner can order a respondent to pay the appearance fee for a doctor deposed by the claimant. Although not mandatory, such an order is permissible, and respondents contested extent of disability here, so a separate hearing was not required before the order could be made. See also, **Ferrara**, § 31-301. Factual findings.

Spears v. Spears, 2082 CRB-2-94-6 (October 30, 1997), **dismissed for lack of a final judgment**, A.C. 17819 (January 15, 1998).
Supreme Court has stated that a fact conceded by a party has the force of a judicial admission, with the court retaining the discretion to allow its withdrawal if made by improvidence or mistake. CRB would apply a similar rule in workers' compensation proceedings. However, the "admission" in this case concerned a purely legal question not susceptible to judicial admission, and the issue was thus obviated. See also, **Spears**, § 31-278.

Leary v. Stamford, 3280 CRB-7-96-3 (September 17, 1997).
Commissioner is not bound by ordinary rules of evidence under this statute. Broad discretion existed to determine admissibility of hospital record. Claimant had reasonable basis to object at trial that said record was incomplete, and that single 1986 blood pressure reading was not a reliable indicator of hypertension. No error. See also, **Leary**, § 7-433c.

Casertano v. Shelton, 3329 CRB-4-96-4 (September 16, 1997).
Claimant's attorney believed that he had restricted the disputed issue below to the date the claimant found out he was hypertensive. Trial commissioner proceeded to rule that notice was untimely. Despite policy against cases being tried piecemeal, a party must be aware that a certain element of a case is at issue. Here, the date notice of injury was provided and the form and method of that notice were never discussed. Case remanded to trial commissioner for further proceedings on the notice issue.

Pietraroia v. Northeast Utilities, 3597 CRB-8-97-4 (September 8, 1997).
Claimant, who lives in Australia and claims to be unable to travel due to infirmity, was ordered by trier to attend a deposition, independent medical examination, and a formal hearing in Connecticut by 9/1/97, or "absent good cause," the trier might declare a mistrial. Claimant appealed that ruling. Held: Appeal is not premature, as the claimant has manifested a clear intent to disobey order akin to "anticipatory breach" in contract law. No error on merits of appeal; trier has discretion to order a claimant to appear in this state so that he may be confronted by respondents. Due process applies to all parties in workers' compensation proceedings. Also, claimant had not offered evidence to show that he was actually incapable of travel. Subsequent decision at **Pietraroia**, 3838 CRB-8-98-6 (August 18, 1999), rev'd, 254 Conn. 60 (2000), supra.

Conetta v. Stamford, 16 Conn. Workers' Comp. Rev. Op. 228, 3231 CRB-7-95-12 (June 23, 1997), **appeal dismissed**, 246 Conn. 281 (1998).
CRB noted in earlier decision that trier had attached a copy of the Stamford city charter to her decision and referred to it in her findings, but had not taken it into evidence or administratively noticed it. On remand, the trier ruled that the charter would be excluded from evidence "in accordance with the remand directive." She ultimately dismissed the claim. Realizing that the trial commissioner had misunderstood the nature of its previous ruling in this case, and that this had likely affected her decision, the board ordered that the case be reheard. It was assigned to a different commissioner in order to preserve the vital appearance of impartiality in Commission proceedings. See also, Conetta v. Stamford, 13 Conn. Workers' Comp. Rev. Op. 68, 1491 CRB-7-92-8 (December 29, 1994), § 31-294c, § 31-275(1), § 31-301. Factual findings.

Soto v. Hawie Manufacturing Co., 16 Conn. Workers' Comp. Rev. Op. 196, 3238 CRB-4-95-12 (May 20, 1997).
At the first formal hearing in this case, the commissioner apparently recommended to the respondents that they advance $6000 to the claimant until the continuation of the proceedings. She then stated that she would consider rendering a decision if that amount was not paid. When the advance was not tendered, the claimant requested that the trier issue a decision. Instead, she scheduled a second formal hearing, at which she expressed

anger at the insinuation that she had communicated ex parte with either party or that there were "monies involved" in her communication with claimant's counsel. The respondent requested that she disqualify herself, but she declined. Eventually, a decision was issued in the claimant's favor. Held: the appearance of impropriety is the benchmark of whether disqualification should occur, not actual impartiality. Even though the trier undoubtedly believed that she had not prejudged the case, the record shows that she suggested an advance to the claimant, and felt the need to defend herself from allegations of bias. To a neutral observer, there would be a suspicion that the commissioner had already decided this case. Decision vacated; new trial. Subsequent decision at Soto, 3787 CRB-4-98-3 (May 21, 1999), § 31-301. Factual findings.

Hodgdon v. UTC/Pratt & Whitney, 16 Conn. Workers' Comp. Rev. Op. 164, 3150 CRB-1-95-8 (May 2, 1997).
Claimant argued that trier improperly decided the issues of total disability and entitlement to § 31-308a benefits after limiting the formal hearing to the issue of causation. Affirmed. At the first formal hearing, compensability and benefits were both at issue, and the claimant introduced evidence regarding both. At the end of the hearing, the parties agreed to leave the record open only for the introduction of specific items. The next formal hearing was held several years later, and the claimant was represented by different counsel, who wanted to introduce further evidence. The trier decided that the previous agreement limiting the evidence applied despite the change in counsel. He admitted the previously discussed evidence, and then closed the record "on causation." CRB held that the trier was not required to exercise his discretion to allow further evidence; claimant was not denied due process. See also, **Hodgdon**, § 31-301. Factual findings.

Brown v. Connecticut Aerosol, 3169 CRB-3-95-5 (April 7, 1997).
Claimant was hurt in a chemical explosion at Connecticut Aerosol on June 14, 1974, which injury was accepted as compensable. He subsequently worked for other employers, and made a claim against them for repetitive trauma injuries to his right leg and vascular system, which was dismissed for failure to file a timely claim. The claimant then sought to collect temporary total disability benefits from Connecticut Aerosol, alleging that his condition was due to the 1974 injury, and denying the occurrence of intervening repetitive trauma. Trier took notice of 1993 Finding and Dismissal in making his decision here. CRB held that a party cannot present his case in a piecemeal fashion, taking a second bite at the apple after a first attempt fails. Claimant not entitled to seek compensation from original employer now that his claim for compensation against subsequent employers for the same time period failed in prior proceedings. Issue of total disability from 1990 through date of formal hearings has now been litigated, and trier did not err by holding that the claimant was bound by his prior allegations of repetitive trauma. See also, **Brown**, § 31-301. Factual findings.

Liano v. Bridgeport, 3199 CRB-4-95-10 (March 25, 1997).
Within discretion of trial commissioner to limit claimant's testimony to events within relevant time period. See, **Liano**, § 31-279-3, § 31-298, § 31-307, § 31-296 Voluntary agreements (discontinuance of payments). Subsequent decisions at Liano, 3561 CRB-4-

97-3 (June 3, 1998), rev'd in part, 55 Conn. App. 75 (1999), cert. denied, 252 Conn. 909 (1999), § 31-300; Liano, 3447 CRB-4-96-10 (January 6, 1998), aff'd, 51 Conn. App. 905 (per curiam), cert. denied, 248 Conn. 907 (1999), § 7-433c; companion decision at Liano, 3299 CRB-4-95-10 (March 25, 1997), § 31-294c, § 31-297, § 31-301. Factual findings. Prior decision at Liano, 14 Conn. Workers' Comp. Rev. Op. 201, 2033 CRB-4-94-5 (July 25, 1995), appeal and cross appeal dismissed, lack of final judgment, A.C. 15082 (June 6, 1996), cert. denied, 238 Conn. 906 (1996), § 7-433b, § 31-300, § 31-310.

Rindos v. J.F. Barrett & Sons, 3188 CRB-3-95-8 (February 27, 1997).
See, **Rindos**, § 31-279-2, Attendance at hearings.

Santora v. A.C.E.S., 2299 CRB-3-95-11 (February 26, 1997).
Insurer sent timely notice of intent to transfer neck injury on October 25, 1993. However, commissioner found that compensation paid through January 24, 1994 was for other injuries, as claimant was not yet disabled on account of neck. Further, doctor's opinion did not make clear whether pre-existing arthritic condition in cervical spine made resulting disability materially and substantially greater. Commissioner "dismissed without prejudice" the insurer's claim for transfer, subject to two conditions: that parties stipulate medical causation not at issue, and that respondents "have paid 104 weeks of disability on behalf of cervical spine." Trier also granted Motion to Correct, adding a finding that claimant's initial disability was due to all injuries, including cervical spine. Held: corrected finding plainly contradicts original finding, and is inconsistent with conclusion that 104 weeks not yet paid. Also, commissioner clearly did not believe that respondents had met burden of proving entitlement to transfer, but tried to leave claim open by dismissing without prejudice. Such a decision is not appropriate in workers' compensation proceedings. If respondents cannot prove case, commissioner should dismiss claim unconditionally. Dismissal "without prejudice" left parties uncertain as to effect of decision and proper course of action to take thereafter. This was not a meaningful disposition of the case. CRB remanded the matter for clarification of findings on the two open issues, limited to the evidence in the record. Respondents did not request further evidence at formal hearing, and are not entitled to "second bite at the apple." See also, **Santora**, § 31-349 and § 31-315.

Pinto v. General Signal Corp., 2277 CRB-5-95-1 (January 22, 1997), **dismissed for lack of a final judgment** A.C. 16874 (October 30, 1997).
See, **Pinto**, § 31-315.

Brown v. State/Norwich State Hospital, 3100 CRB-2-95-6 (December 23, 1996).
See, **Brown**, § 31-296 Voluntary agreements (discontinuance of payments). Subsequent decision in Brown, 4053 CRB-2-99-5 (July 27, 2000), infra and § 31-307; see also, **Brown**, § 31-296 Voluntary agreements (discontinuance of payments).

Minneman v. Norwich/Board of Education, 2294 CRB-2-95-2 (December 13, 1996), **aff'd**, 47 Conn. App. 913 (1997)(per curiam), **cert. denied**, 243 Conn. 962 (1998).
Although a document not offered into evidence normally may not be relied on in the findings, even if marked for identification, the depositions in this case were properly used in the decision. Both parties' attorneys were present at the depositions, and they

agreed on the record that said depositions would be forthcoming. Neither appeared to contemplate that a formal introduction into evidence of the transcripts would be necessary. See also, **Minneman**, § 31-300, and § 31-301.

Blassingame v. Acme Steel Co., 16 Conn. Workers' Comp. Rev. Op. 20, 3007 CRB-6-95-3 (October 8, 1996), **aff'd**, 45 Conn. App. 914 (1997)(per curiam).
Trial commissioner did not err by failing to award claimant the costs of certain medical examinations and testimony; although § 31-298 authorizes the commissioner to award such fees, it does not require such an award in any given case. See also, **Blassingame**, § 31-308.

Mahoney v. Bill Mann Tree Service, 16 Conn. Workers' Comp. Rev. Op. 17, 3025 CRB-4-95-3 (October 4, 1996).
Commissioner relied on doctor's report that was not part of the exhibits and transcripts. As this report was the sole basis of the commissioner's finding of permanent partial disability, the case was remanded for further findings. See also, **Mahoney**, § 31-294d. Subsequent decision at Mahoney, 4095 CRB-4-99-8 (August 10, 2000), aff'd, 67 Conn. App. 134 (2001), § 31-303(b), § 31-308a.

Norton v. James Fleming Trucking, Inc., 15 Conn. Workers' Comp. Rev. Op. 472, 2119 CRB-1-94-8 (September 16, 1996).
Commissioner found that no evidence was presented to establish employment relationship between claimant and alleged employer. Claimant argues that commissioner should not have determined jurisdiction because it was not made an issue in the hearing notice, and it was undisputed among the parties. Held, claimant must establish elements of claim, including employment relationship and its causal link to an injury, to prove entitlement to compensation. No proof provided that parties had agreed to jurisdiction. Allingham v. Burns International Security, 14 Conn. Workers' Comp. Rev. Op. 333, 1977 CRB-1-94-2 (September 20, 1995), infra, distinguished. There, parties had assumed jurisdictional issue settled by stipulation, and commissioner did not give them a chance to address that issue before ruling on it. See also, **Norton**, § 31-301. Appeal procedure.

Mulroy v. Becton Dickinson, 15 Conn. Workers' Comp. Rev. Op. 455, 2295 CRB-8-95-2 (September 6, 1996), **aff'd**, 48 Conn. App. 774 (1998).
Commissioner has discretion to determine relevancy and remoteness of evidence. No error in limiting scope of bias inquiry regarding doctor's departure from employer, as his testimony was not fundamental to the decision, and exploring such a peripheral issue would have required significant extra time and testimony. Also, regardless of a possible private arrangement between claimant and UConn Medical Center, commissioner had authority to order respondents to pay testimonial fees for medical center employees. See also, **Mulroy**, § 31-301, Factual findings and **Mulroy**, 16 Conn. Workers' Comp. Rev. Op. 7, 2295 CRB-8-95-2 (October 2, 1996), § 31-301c (Interest added to award affirmed on appeal). Also see later **Mulroy**, 4083 CRB-5-99-7 (September 29, 2000), § 31-349.

Bailey v. Stripling Auto Sales, 15 Conn. Workers' Comp. Rev. Op. 369, 3095 CRB-2-95-6 (June 28, 1996).
Social Security records were excluded from evidence, but claimant never attempted to introduce them. No appealable issue. See also, **Bailey**, § 31-278, and § 31-308a. See subsequent decision Bailey, 3461 CRB-3-96-11 (April 9, 1998), § 31-315 and Bailey, 4516 CRB-2-02-4 (May 8, 2003), § 31-298, § 31-307a.

Harris v. UTC/Pratt & Whitney, 15 Conn. Workers' Comp. Rev. Op. 357, 3143 CRB-5-95-8 (June 26, 1996).
Trial commissioner dismissed claimant's work-related emotional stress claim (which was not yet excluded by § 31-275(16) at time of injury). Commissioner had discretion under § 31-298 to exclude physician's reports that were expressly prepared for use in workers' compensation claim. See, Zawisza v. Quality Name Plate, Inc., 149 Conn. 115 (1961). However, commissioner erroneously failed to consider admitting the reports of a treating psychologist, as the Act allows inclusion of psychologists' reports into evidence. De novo trial ordered. See also, **Harris**, § 31-275(17). Subsequent decision at Harris, 3762 CRB-1-98-1 (February 23, 1999), aff'd, 56 Conn. App. 912 (2000)(per curiam), cert. denied, 253 Conn. 907 (2000), § 31-294f, § 31-301-9, § 31-315.

Nelson v. Deb's Inc., 15 Conn. Workers' Comp. Rev. Op. 274, 2228 CRB-3-94-12 (June 20, 1996), **aff'd**, 45 Conn. App. 909 (1997)(per curiam), **appeal dismissed**, 244 Conn. 349 (1998).
Trial commissioner had authority to admit signed, undated document into evidence; statute grants broad discretion. See also, **Nelson**, § 31-275(9) for details of case.

Fassett v. F. Castellucci & Sons, 15 Conn. Workers' Comp. Rev. Op. 83, 2150 CRB-3-94-9 (December 7, 1995).
Commissioner improperly left total disability issue open for claimant to produce additional evidence. Parties are not entitled to present their cases piecemeal, and the absent wage records cited by the commissioner have no discernible impact on the total disability issue. (*Vargas, C.,* **dissenting**) (commissioner must be given discretion to hear claim in the manner he deems appropriate; no jurisdictional bar against postponing a decision to await further evidence).

Olds v. Howe Place Associates, 15 Conn. Workers' Comp. Rev. Op. 63, 2099 CRB-3-94-7 (December 5, 1995).
Commissioner found no insurance on date of injury; respondent argued on appeal neither it nor Second Injury Fund knew proceedings were closed on issue of insurance. Held: respondent placed several documents related to insurance issue into evidence. In light of concurrent Superior Court suit on insurance issue, commissioner properly chose to award claimant benefits immediately. If civil proceedings establish existence of insurance contract, respondent can seek modification of award to allow reimbursement from insurer.

McClinton v. Bridgeport, 15 Conn. Workers' Comp. Rev. Op. 39, 2079 CRB-4-94-6 (November 28, 1995).
CRB affirmed commissioner's determination that the claimant suffered from a stress disorder which caused her to be temporarily totally disabled, and that her condition was caused by a prior compensable head injury. Contrary to arguments made by the respondents, in reaching his determination a trial commissioner may rely upon a medical report which is the result of a commissioner-ordered examination.

Pothier v. Stanley-Bostitch/The Bostitch Co., 15 Conn. Workers' Comp. Rev. Op. 13, 2019 CRB-3-94-4 (November 7, 1995).
Commissioner had vacated his decision in order to allow CIGNA to present a brief, which CIGNA had not done due to legitimate confusion. Based upon the compelling circumstances regarding due process in this case, CRB concluded that the commissioner properly exercised his discretion in granting the motion to vacate.

Mercado v. Personal Moving Services, 14 Conn. Workers' Comp. Rev. Op. 364, 2023 CRB-4-94-5 (September 26, 1995).
Respondent requested a postponement of the commissioner's hearing on the day prior to the hearing, which commissioner denied. Section 31-279-4 states in part that no party can assume the granting of a continuance to produce witnesses at a later date. It is within the broad discretion of the commissioner to grant or deny a continuance, and such a decision is virtually unreviewable. CRB concluded that it was within the trial commissioner's discretion to conduct the formal hearing and to issue a decision without the respondent's participation.

Senoski v. Corometrics, Inc., 14 Conn. Workers' Comp. Rev. Op. 344, 1906 CRB-8-93-11 (September 22, 1995), **appeal dismissed**, A.C. 15289 (April 30, 1996).
CRB affirmed commissioner's determination that the claimant's tendonitis was not caused by her use of a glass-pulling machine at work. Claimant on appeal objected to the showing of a video of another person using the glass-pulling machine. Because the claimant failed to make a timely objection to the admission of the video film at the formal hearing, the CRB would not consider the matter on appeal. Trial commissioner made a credibility determination based upon the transcript of claimant's testimony (taken by a prior commissioner who had since retired) of the claimant regarding the use of the machine and based upon viewing the video. See also, **Senoski**, § 31-275(1).

McVety v. Sidetex Corp., 14 Conn. Workers' Comp. Rev. Op. 340, 2050 CRB-3-94-5 (September 20, 1995), **aff'd**, 43 Conn. App. 912 (1996)(per curiam).
See, **McVety**, § 31-294 (due process requirements as to notice and hearing; parties must have chance to be heard).

Smith v. Aetna Life & Casualty, 14 Conn. Workers' Comp. Rev. Op. 336, 2006 CRB-1-94-3 (September 20, 1995), **aff'd**, 43 Conn. App. 910 (1996)(per curiam).
Trial commissioner had discretion to deny admission of letter of resignation as evidence, as its credibility would have been questionable, and claimant could have testified to its substance. See also, **Smith**, § 31-294c, and § 31-301. Factual findings.

Allingham v. Burns International Security, 14 Conn. Workers' Comp. Rev. Op. 333, 1977 CRB-1-94-2 (September 20, 1995).
Claimant, respondent stipulated to existence of subject matter jurisdiction. Trial commissioner found this improper, and found that facts did not support jurisdiction. Petition for review was received fourteen days after award; it noted that the commissioner's decision was received by regular mail. Held, normally CRB would require a finding as to date notice of appeal sent. See, Conaci v. Hartford Hospital, 36 Conn. App. 298 (1994). However, two reasons prevent doing so here. First, § 31-321 was not complied with in sending notice of decision, thus potentially prejudicing claimant. Second, trial commissioner deprived the claimant of due process by dismissing claim for lack of subject matter jurisdiction without notifying parties that it was at issue; parties had assumed it was stipulated, and did not have a chance to be heard. Remanded.

Pascarelli v. Moliterno Stone Sales, 14 Conn. Workers' Comp. Rev. Op. 328, 2115 CRB-4-94-8 (September 15, 1995), **aff'd**, 44 Conn. App. 397 (1997).
See, **Pascarelli**, § 31-287 (CRB deferred to commissioner's decision to honor bankruptcy stay); See also, **Pascarelli**, § 31-310.

Manns v. UTC/Pratt & Whitney, 14 Conn. Workers' Comp. Rev. Op. 267, 1960 CRB-1-94-1 (September 6, 1995).
Claimant contended that trial commissioner did not have jurisdiction to decide no further treatment necessary when issue at hearing was payment of prescription bills. CRB affirmed: because medical reports were already in evidence, claimant was not denied opportunity to present his argument. Issues surrounding prescriptions substantially similar to those surrounding further medical treatment; decision not beyond scope of commissioner's jurisdiction. Also, evidence supported finding that further treatment was unnecessary.

Dixon v. United Illuminating Co., 14 Conn. Workers' Comp. Rev. Op. 215, 1996 CRB-4-94-3 (August 4, 1995).
Trial commissioner should have allowed respondents' request to depose claimant widow; our system encourages full disclosure and cooperation, and commissioner has power to order such a deposition under § 31-278. Failure to produce psychiatric records could not be addressed, as that issue was not ruled on by trial commissioner (although CRB noted that § 52-146f applies). Board also had jurisdiction to hear appeal from this particular interlocutory ruling. (*Brouillet, C.,* **dissenting in part**) (discusses need for limitation on interlocutory appeals; no written decision in this case, so review inhibited. Also, no formal hearing on request to depose. Respondents should have used § 51-85 procedure to obtain deposition of witness; ruling exceeded commissioner's authority and conflicted with that procedure). See also, **Dixon**, § 31-278.

Yablonski v. Danbury Hospital, 14 Conn. Workers' Comp. Rev. Op. 212, 1968 CRB-7-94-2 (July 27, 1995), **aff'd**, 43 Conn. App. 912 (1996)(per curiam).
CRB affirmed the trial commissioner's determination that the claimant sustained a traumatic brain injury as a result of an attack by a patient. The respondents specifically objected to the admission of a medical report signed by a clinical neuropsychologist who treated the claimant. The respondents contended that the report was not admissible

pursuant to § 52-174(b) C.G.S. CRB found no error on the basis that under § 31-298, the trial commissioner had the discretion to admit the medical reports of the claimant's treating neuropsychologist. The respondents failed to exercise their opportunity to cross-examine the doctor, and cannot complain on appeal that they did not receive due process. Distinguished Lee v. Norwalk, 13 Conn. Workers' Comp. Rev. Op. 23, 1626 CRB-7-93-1 (November 7, 1994) and stated that Lee was limited to the specific factual circumstances of that case.

Burr v. Hoffman Water Treatment Co., 14 Conn. Workers' Comp. Rev. Op. 180, 2125 CRB-8-94-8 (June 29, 1995).
CRB has power to take judicial notice of matters of fact; decision to do so is discretionary, and depends on nature of subject. Here, commissioner erred in not giving parties prior notice and opportunity to be heard before construing Notice of Claim to be for permanent partial disability benefits; meaning of notice was susceptible to more than one explanation, and parties should have had a chance to contest its meaning. See also, **Burr**, § 31-308(b).

Holle v. The William Backus Hospital, 14 Conn. Workers' Comp. Rev. Op. 166, 169, 2039 CRB-2-94-4 (June 29, 1995).
The trial commissioner found that the claimant failed to sustain her burden of proof that she suffered any injuries which were causally related to her employment. Specifically, the trial commissioner found that the claimant, a registered nurse, failed to establish that her symptoms were causally related to a vaccine which had been administered in the course of her employment. In support of appeal to CRB, claimant contended that the deposition of her treating physician and a rubella screen were improperly admitted into evidence. CRB found no error as claimant's attorney attended the deposition and had not objected to the admissibility of the rubella screen which the respondents submitted as an exhibit at the deposition.

Lee v. ABB Combustion Engineering, 14 Conn. Workers' Comp. Rev. Op. 157, 2134 CRB-1-94-8 (June 27, 1995).
Trial commissioner denied motion for discovery and production seeking psychologist's records on the ground that it was beyond claimant's power to produce his notes. CRB reversed. Section 52-146c(b) privilege does not extend to situation where party introduces her psychological condition as part of her claim, and claimant here agreed to waive her privilege. Psychologist did not have independent standing to assert statutory privilege. Also, notes requested here must be produced under § 31-294f(b), and commissioner had power under § 31-278 to order psychologist to release his notes as soon as he submitted himself to jurisdiction of commissioner by testifying for claimant. See also, **Lee**, § 31-301.

Peters v. Corporate Air, Inc., 14 Conn. Workers' Comp. Rev. Op. 91, 1679 CRB-5-93-3 (May 19, 1995).
Claimant objected to admission of hearsay documents and hearsay testimony regarding his unsatisfactory work record, contending it was irrelevant. CRB found no error. Discussion of hearsay, due process, and irrelevant evidence. Distinguishes Lee v.

Norwalk, 13 Conn. Workers' Comp. Rev. Op. 23, 1626 CRB-7-93-1 (November 7, 1994). See also, **Peters**, § 31-275(1), and § 31-301. Factual findings.

Giovino v. West Hartford, 14 Conn. Workers' Comp. Rev. Op. 74, 1912 CRB-1-93-12 (May 12, 1995).
Respondents objected to claimant's submission of an IME at formal hearing on basis of hearsay. The IME had been arranged at the request of the respondents. CRB held that an independent medical exam report is admissible at a formal hearing provided the objecting party has an opportunity to cross-examine the author. If the objecting party does not act with due diligence by failing to either depose or subpoena the authoring physician, the objecting party cannot later complain that it did not have the opportunity to cross-examine. CRB distinguished holding in Lee v. Norwalk, 1626 CRB-7-93-1 (November 7, 1994) by stating that "the decision in Lee was limited to the specific factual circumstances of that case." See also, **Giovino**, § 31-294c, and § 31-310.

Fontanella v. C.H. Moore Company, 14 Conn. Workers' Comp. Rev. Op. 66, 1916 CRB-2-93-12 (May 11, 1995).
Commissioner found claimant's back injury compensable. Respondent's sole contention on appeal was that the commissioner improperly admitted a handwritten note by claimant's treater. CRB found no error, citing § 31-298. Moreover, even without that note, the commissioner's decision was amply supported by the record.

Pereira v. Taylor & Fenn Co., 14 Conn. Workers' Comp. Rev. Op. 16, 1816 CRB-1-93-8 (April 28, 1995).
Second Injury Fund claimed no formal hearing held, and no consent to factual stipulation between claimant and employer. Held, record shows formal hearing was held on transfer of claim to Fund, where a Fund attorney appeared. As to stipulation, Fund had opportunity to sign it or present evidence against it, and commissioner did not rely on it anyway. No error. See also, **Pereira**, § 31-301(f), and § 31-349.

Nasinka v. Ansonia Copper & Brass, 13 Conn. Workers' Comp. Rev. Op. 332, 1592 CRB-5-92-12 (April 27, 1995).
Respondents contended that doctor's conclusion regarding apportionment was unreliable because it was based on claimant's own representations. Zawisza v. Quality Name Plate, Inc., 149 Conn. 115 (1961). Held: Zawisza similar, but inapplicable. There, claimant had sought medical expert who would diagnose a compensable injury in the face of four contrary medical opinions; here, contested examination was ordered by commissioner, and claimant had no motivation to lie on issue of apportionment, as claimant's recovery would be unaffected. Therefore, commissioner did not err in admitting testimony of doctor. Also, trier entitled to accept part of expert's testimony and reject other parts, so long as parts are not interdependent. See also, **Nasinka**, § 31-301. Factual findings.

Southard v. Southard Development, 13 Conn. Workers' Comp. Rev. Op. 348, 1891 CRB-4-93-11 (April 27, 1995).
Not enough evidence in record to support finding that insurer was negligent in administering claim. Commissioner should not presume existence of evidence that is not

in the record without giving notice to both parties; due process considerations are implicated. See also, **Southard**, § 31-315.

Muniz v. Koteas, 13 Conn. Workers' Comp. Rev. Op. 284, 1720 CRB-4-93-5 (April 21, 1995).
Request for disqualification of commissioner normally need not be considered if raised for the first time on appeal. Code of Ethics for Workers' Compensation Commissioners requires recusal where trier's impartiality might reasonably be questioned; fact that commissioner represented former clients against one of the parties does not automatically create such a situation. Also, no error in failure to continue hearing; appellant did not indicate that he had additional evidence, and cannot show prejudice. Moreover, a commissioner's decision to grant or deny a continuance is virtually unreviewable. See Admin. Reg. § 31-279-4. Lastly, commissioner was entitled to restrict hearing to issue of employment relationship; respondent would have opportunity to present evidence concerning other issues later. See also, **Muniz**, § 31-275(9).

Raccio v. Stone Safety Corp., 13 Conn. Workers' Comp. Rev. Op. 281, 1641 CRB-8-93-2 (April 21, 1995).
Commissioner engaged in ex parte communication with claimant's treating physician regarding her light work capability. Held: broad scope of § 31-298 does not stretch so far as to allow a commissioner currently hearing a case to engage in ex parte communication with a material witness. See § 4-181(a) C.G.S.; Canon 3 A (4) of Code of Judicial Conduct.

Simmons v. Philip Bonhotel, d/b/a Bonhotel's Lawn Maintenance, 13 Conn. Workers' Comp. Rev. Op. 234, 1778 CRB-5-93-7 (April 13, 1995), **aff'd**, 40 Conn. App. 278 (1996).
CRB affirmed denial of benefits where commissioner found claimant lacked credibility regarding alleged injury and where alleged injury occurred due to horseplay initiated by claimant. Commissioner had wide discretion to allow continuance for pro se claimant to present witnesses. Also, no error in commissioner's admission of testimony regarding prior acts of horseplay which were objected to by claimant. See also, **Simmons**, § 31-275(1), § 31-294c, and § 31-284(a).

Cummings v. Twin Tool Manufacturing, 13 Conn. Workers' Comp. Rev. Op. 225, 2008 CRB-1-94-4 (April 12, 1995), **appeal dismissed**, A.C. 14747(June 29, 1995).
I. Respondents contended that trial commissioner exhibited bias at formal hearing by acting as claimant's attorney and by having ex parte communication with claimant. A trier may not exhibit a position of "advocacy" in the case before him. Labow v. Labow, 13 Conn. App. 330 (1988). Discussion regarding propriety of assisting pro se claimants at hearings. CRB found no bias. Also, no bias found regarding alleged ex parte communication, where communication regarded procedural as opposed to substantive matter (citing § 12 of Code of Ethics). II. Issue of temporary total benefits remanded to afford due process where commissioner repeatedly stated during formal that temporary total benefits would not be an issue at the formal, but then awarded temporary total in Finding and Award. CRB agreed with respondents that they were not afforded notice of that issue or opportunity to present evidence. See also, **Cummings**, § 31-294d.

York v. General Dynamics Corporation/Electric Boat Division, 13 Conn. Workers' Comp. Rev. Op. 166, 1770 CRB-2-93-6 (March 9, 1995).
Commissioner did not err by allowing into evidence depositions of doctors who testified in LHWCA proceedings. Statute grants commissioner broad discretion to determine admissibility of evidence, and evidentiary ruling cannot be set aside absent a clear abuse of discretion. Because depositions were not expressly relied on in award, it is uncertain whether their admission would constitute harmful error. However, fact that insurers were not party to LHWCA proceedings did not lessen employer's interest in defending its own liability, and commissioner could reasonably have determined that respondent represented insurers' position closely enough to render doctors' depositions probative. Difference in burden of proving compensability did not require inadmissibility of depositions. Also, evidence other than decedent's lost testimony exists to support finding of total disability, including wife's testimony and medical reports. CRB declined to declare a mistrial. See also, **York**, § 31-294c.

Phelan v. Soda Construction Co., 14 Conn. Workers' Comp. Rev. Op. 389, 1979 CRB-3-94-3, 2107 CRB-3-94-7 (October 17, 1995).
See, **Phelan** § 31-310.

Schiano v. Bliss Exterminating, 13 Conn. Workers' Comp. Rev. Op. 45, 1852 CRB-4-93-9 (December 7, 1994).
Not improper for commissioner to require additional hearing upon decision that evidence surrounding payment of benefits unclear; commissioner not required to render decision on insufficient evidence. This is not the same as an improper failure to exercise discretion. See also, **Schiano**, § 31-293.

Weglarz v. State/Dept. of Correction, 13 Conn. Workers' Comp. Rev. Op. 35, 1648 CRB-4-93-2 (November 8, 1994).
Trier's decision to proceed with formal hearing absent a party's appearance affirmed on appeal where record discloses prior formals had been repeatedly cancelled and formal hearings rescheduled where same party failed to appear. See also, **Weglarz**, § 31-300.

Lee v. Norwalk, 13 Conn. Workers' Comp. Rev. Op. 23, 1626 CRB-7-93-1 (November 7, 1994).
Reversed. Trier erred in basing the dismissal of stress claim on an IME report improperly admitted into evidence where claimant timely objected to the admission of said report and was denied the opportunity to cross examine the IME physician. See also, **Lee**, § 31-275(1) and § 31-294f.

Hirth v. United Parcel Service, 12 Conn. Workers' Comp. Rev. Op. 353, 1497 CRB-1-92-8 (August 2, 1994).
Trier's refusal to hold open evidentiary proceedings so that respondents would have the opportunity to depose physician and admit deposition into evidence upheld on appeal. CRB held respondents' due process was not violated as there existed sufficient time for discovery prior to the trial date which notice indicated the trial would conclude on that scheduled date. Further, respondents failed to show how the deposition evidence would

aid their defense of the claim. See also, **Hirth**, § 31-301. Appeal procedure and § 31-279-3, Request for continuance.

Cummings v. Twin Tool Mfg. Co., 12 Conn. Workers' Comp. Rev. Op. 341, 1542 CRB-1-92-10 (July 11, 1994), **aff'd**, 40 Conn. App. 36 (1996).
A factual finding which relies on a document not offered into evidence, but marked for identification only, must be stricken. Additionally, findings not properly before trier, i.e. continued medical treatment, must be vacated. See also, **Cummings**, § 31-296, § 31-301. Factual findings, § 31-301-9. Additional evidence and § 31-307.

Flowers v. Benny's of Connecticut, 12 Conn. Workers' Comp. Rev. Op. 162, 1527 CRB-2-92-10 (April 26, 1994).
The claimant contended that trier erred in admitting into evidence certain irrelevant testimony of witnesses regarding claimant's conduct. The admission and use of alleged irrelevant evidence is generally harmless and will not be the basis of appellate reversal. See also, **Flowers**, § 31-275(1) and § 31-301. Appeal procedure and Factual findings.

Vetro v. Banton Dry Wall, Inc., 12 Conn. Workers' Comp. Rev. Op. 154, 1316 CRD-3-91-10 (April 22, 1994).
Record before CRB fails to support respondent employer's claim they were precluded from presenting evidence or from participating in proceedings below. See also, **Vetro**, § 31-301. Appeal procedure and § 31-301-9. Additional evidence.

Morris v. A & A Acoustics, 12 Conn. Workers' Comp. Rev. Op. 221, 1488 CRB-7-92-8 (March 22, 1994).
Claimant's challenge to impartiality of commissioner's conduct of the formal hearing below not supported by the record. See also, **Morris**, § 31-301. Factual finding and § 31-301-9. Additional evidence.

Besade v. Interstate Security Services, 12 Conn. Workers' Comp. Rev. Op. 103, 1383 CRB-2-92-2 (February 28, 1994), **aff'd**, 37 Conn. App. 903 (1995).
Trier did not abuse his discretion in allowing a leading question on direct examination to stand. See also, **Besade**, § 31-301. Factual findings and § 31-308(a). Prior decision at Besade, 6 Conn. Workers' Comp. Rev. Op. 83, 593 CRD-2-87 (January 13, 1989), no error, 212 Conn. 441 (1989).

Besitko v. McDonald's Restaurant, 12 Conn. Workers' Comp. Rev. Op. 111, 1415 CRB-8-92-5 (February 28, 1994).
Remanded as trier must limit decision to issues before him. It was improper to order payment of medical bills where issue was not before trier nor were medical bills introduced into evidence. See also, **Besitko**, § 31-294d.

Maylott v. Williams, 11 Conn. Workers' Comp. Rev. Op. 320, 1353 CRD-6-91-12 (December 23, 1993).
Trier's failure to close record at the conclusion of a formal hearing and granting continuances is not an abuse of discretion. Also, claimant's objection to doctor's deposition unwarranted as claimant had notice of the deposition, was present at its

taking, and exercised his right to cross-examine physician. See also, **Maylott**, § 31-301. Factual findings.

Furrey v. Wells Fargo Alarm System, 11 Conn. Workers' Comp. Rev. Op. 192, 1307 CRD-3-91-9 (September 22, 1993).
Trier admitted into evidence a journal article which had not been adopted or approved by the AMA or the ADA. Medical experts testified that the challenged article is generally accepted as authoritative for making impairment ratings. Therefore, it was up to the trial commissioner to determine the admissibility and weight to be given the evidence. See also, **Furrey**, § 31-308(c).

Petta v. Waterbury Hospital, 11 Conn. Workers' Comp. Rev. Op. 161, 1310 CRD-5-91-9 (August 23, 1993).
Commissioner has the authority to order payment of deposition fees where there exists a finding to support such an order. Where no finding exists, no payment can be ordered. See also, **Petta**, § 31-299b, § 31-300, § 31-301. Appeal procedure and § 31-308a.

Crochiere v. Enfield/Board of Education, 10 Conn. Workers' Comp. Rev. Op. 165, 1069 CRD-1-90-7 (August 27, 1992), **aff'd**, 227 Conn. 333 (1993).
CRB affirmed trial commissioner's decision to exclude the transcribed testimony of a female student on the basis that respondent did not satisfy the exceptions to the hearsay rule. Specifically, respondent's claim the witness was unavailable and therefore, transcripts should be admitted, was based upon two phone calls to schools outside this state. A party seeking to proffer evidence that a witness was unavailable must do so by a showing of due diligence to procure the attendance of the absent witness. State v. Aillon, 202 Conn. 385, 391 (1987). See also, **Crochiere**, § 31-275(1), § 31-284(a), § 31-294c, § 31-301. Factual findings and Appeal procedure.

Ruh v. Della Construction Co., 9 Conn. Workers' Comp. Rev. Op. 269, 1034 CRD-7-90-6 (December 5, 1991).
Remanded as trier concluded evidentiary hearings without giving claimant the opportunity of cross-examine as provided by § 52-174(c). See also, **Ruh**, § 31-301. Factual findings, § 31-307. Total disability.

Straub v. Bolt Technology Corporation, 9 Conn. Workers' Comp. Rev. Op. 212, 1130 CRD-3-90-11 (September 12, 1991).
Respondents had ample opportunity below to depose or cross-examine treating physician and or any other physician concerning their claim that trier erred in awarding a 15% loss of use of the lumbar spine. See also, **Straub**, § 31-308(b), § 31-294f.

Tomkus v. Upjohn Company, 9 Conn. Workers' Comp. Rev. Op. 163, 972 CRD-3-90-1 (June 28, 1991).
Trier has wide discretion in allowing leading questions on direct examination. See also, **Tomkus**, § 31-294c & § 31-301. Factual findings.

Merchant v. J.S. Nasin Company, 9 Conn. Workers' Comp. Rev. Op. 122, 952 CRD-2-89-11 (May 1, 1991).
Trier has broad discretion to determine both the relevancy and remoteness of evidence. It was not an abuse of discretion in ruling federal social security medical vocational guidelines inadmissible where claimant was being paid social security retirement benefits and not social security disability benefits. See also, **Merchant**, § 31-301. Appeal procedure.

Colas v. Marriott Food Services, 9 Conn. Workers' Comp. Rev. Op. 86, 939 CRD-7-89-11 (February 26, 1991).
Trier's failure to admit document into evidence or take administrative notice of it would not have affected the result of the decision. One respondent sought to admit a letter (notice of claim) from claimant's counsel in order to support a Motion to Preclude. CRD held that while the letter which purported alternative theories for the basis of the compensation claim was sufficient notice under § 31-294, the letter would not support the preclusive effects of § 31-297(b) as it was not a direct assertion of a claim against the other respondents. See also, **Colas**, § 31-298, § 31-307b, § 31-294c and § 31-349.

Laime v. American Standard, 9 Conn. Workers' Comp. Rev. Op. 62, 914 CRD-2-89-9 (February 6, 1991).
CRD remanded matter to trial commissioner where decision was issued as a result of an informal hearing and there was no record of the proceedings below. See also, **Laime**, § 31-301. Appeal procedure.

Case v. McClinch Crane, 7 Conn. Workers' Comp. Rev. Op. 92, 727 CRD-7-88-4 (October 4, 1989).
See, **Case**, § 31-301. Appeal procedure.

Moccia v. Dr. Martin Ecker, 7 Conn. Workers' Comp. Rev. Op. 10, 620 CRD-7-87 (June 22, 1989).
Error for trial commissioner to permit cross-examination concerning statements at informal hearing, Daniele v. Angelo Monarca, Inc., 6 Conn. Workers' Comp. Rev. Op. 25, 519 CRD-3-86 (1988). Error for trial commissioner to use the adverse inference rule on failure to produce an eyewitness. Turner v. Scanlon, 146 Conn. 149, 161 (1959). Remanded. CAVEAT: This inference known as the Secondino or adverse inference rule has been amended in part by P.A. 89-153 to be codified as amending § 52-174(b).

Mauro v. General Dynamics Corporation/Electric Boat Division, 713 CRD-2-88-3 (1989).
See also, **Mauro**, § 31-301. Appeal procedure. Case ordered remanded for trial proceedings so a transcript record can be prepared.

Besade v. Interstate Security Services, 6 Conn. Workers' Comp. Rev. Op. 83, 593 CRD-2-87 (January 13, 1989), **no error**, 212 Conn. 441 (1989).
Trier's admission of evidence was merely harmless error. Subsequent decision in Besade, 12 Conn. Workers' Comp. Rev. Op. 103, 1383 CRB-2-92-2 (February 28,

1994), aff'd, 37 Conn. App. 903 (1995), § 31-298, § 31-301. Factual findings, § 31-308(a).

Fappiano v. Nutmeg Concrete Inc., 6 Conn. Workers' Comp. Rev. Op. 29, 652 CRD-3-87 (September 27, 1988).
(1) Payment of transcript fees is to be made by party ordering transcript (§ 51-63(e)), (2) Deposition fees are to be paid by party taking deposition, see Practice Book § 247(b), (3) Commissioner may order respondents to pay expert witness fees.

Daniele v. Angelo Monarca, Inc., 6 Conn. Workers' Comp. Rev. Op. 25, 519 CRD-3-86 (1988).
Statements made at informal conferences are similar to common law statements made during settlement discussions and are therefore not ordinarily admissible. Cf. § 52-549s(c) C.G.S.

Debarros v. A.L. Singleton, 6 Conn. Workers' Comp. Rev. Op. 22, 498 CRD-5-86 (September 19, 1988), **no error**, 21 Conn. App. 107 (1990).
See, **Debarros**, § 31-301. Factual findings.

Todd v. Jazlowiecki, 6 Conn. Workers' Comp. Rev. Op. 9, 493 CRD-6-86 (August 26, 1988), **no error**, 20 Conn. App. 805 (1989)(per curiam).
Rules of evidence do not preclude physicians who were not authorized treating physicians from testifying. See also, **Todd**, § 31-278, § 31-294d.

Bergin v. Waterbury, 5 Conn. Workers' Comp. Rev. Op. 156, 537 CRD-5-86 (August 2, 1988).
OSHA and EPA regulations may be submitted into evidence.

Adams v. Stop & Shop, 4 Conn. Workers' Comp. Rev. Op. 80, 380 CRD-2-85 (June 4, 1987).
Commissioner may allow treatment with out-of-state physician.

Evans v. Lightolier, Inc., 4 Conn. Workers' Comp. Rev. Op. 69, 517 CRD-2-86 (May 20, 1987).
Adopted § 52-148d as rule for the furnishing of depositions.

Diogostine v. Somers Thin Strip, 3 Conn. Workers' Comp. Rev. Op. 139, 282 CRD-5-83 (January 22, 1987).
An unsigned doctors report which is a photostat of a signed original arguably in claimant's possession is admissible. Also, claimant's argument that he was denied the opportunity to cross-examine fails where commissioner evidenced his intention to hold further hearings. See also, **Diogostine**, § 52-174.

Kiley v. Executone of Fairfield, Inc., 2 Conn. Workers' Comp. Rev. Op. 103, 107 CRD-7-81 (August 29, 1984).
Psychological treatment fees payable if commissioner determines, inter alia, they are reasonable.

Aquino v. Mt. Vernon Die Casting Co., 2 Conn. Workers' Comp. Rev. Op. 72, 159 CRD-7-82 (July 11, 1984).
See, Bowen, infra.

Bowen v. Stanadyne, Inc., 2 Conn. Workers' Comp. Rev. Op. 60, 232 CRD-1-83 (June 19, 1984).
Commissioner is the arbiter under statute to determine reasonableness of medical fees.

Sec. 31-299a. Payments under group medical policy not defense to claim for benefits. Health insurer's duty to pay. Lien.

Bilodeau v. Bristol Assn. for Retarded Citizens, 4245 CRB-6-00-5 (May 29, 2001).
See, **Bilodeau**, § 31-293, § 31-300.

Sec. 31-299b. Apportionment; liability of last employer.

Sadosky v. U.S. Properties, Inc. 4751 CRB-2-03-11 (November 2, 2004).
CRB affirmed trier's determination claimant suffered a continuous exposure to repetitive trauma, not merely an aggravation of symptoms, and assessed liability against the last insurer under § 31-299b. See also, **Sadosky**, § 31-298.

Malz v. State/University of Connecticut Health Center, 4701 CRB-6-03-7 (August 20, 2004).
See, **Malz**, § 31-349 (§ 31-299b does not encompass separate identifiable injuries to same body part); see also, **Malz**, § 31-296. Voluntary agreements (approval of), § 31-307a.

Robert v. General Dynamics, 4691 CRB-2-03-7 (June 14, 2004).
CRB affirmed and modified trial commissioner's ruling permitting respondents additional to the § 31-299b entity to participate in proceedings, limited to showing why they should not be collaterally estopped from litigating causation by a prior LHWCA decision.

Jacobson v. General Dynamics/Electric Boat Div., 4642 CRB-2-03-3 (March 12, 2004).
See, **Jacobson** § 31- 275(1)(D), § 31-300, § 31-301. Factual findings, § 31-301-4.

Doran v. State/DMR, 4519 CRB-6-02-4 (April 16, 2003).
CRB held Hatt v. Burlington Coat Factory, 263 Conn. 279 (2003) not applicable as commissioner found subsequent employment and concomitant injuries did not substantially contribute to claimant's disability.

Ortiz v. United Illuminating Co., 4432 CRB-4-01-8 (August 8, 2002).
Based on CRB's opinion in Hatt v. Burlington Coat Factory, 4326 CRB-2-00-12 (December 19, 2001), aff'd, 263 Conn. 279 (2003), CRB held apportionment not available under this factual scenario. See also, **Ortiz**, § 31-349.

Konovaluk v. Graphite Die Mold, Inc., 4437 CRB-3-01-9 (August 8, 2002).
Reversing trier's decision, CRB held that § 31-299b allows last insurer on risk to seek apportionment and reimbursement for share of claim attributable to coverage period of now-insolvent insurer, based upon respective proportions of liability of all solvent insurers who are on risk for a portion of claim. Hunnihan v. Mattatuck Mfg. Co., 243 Conn. 438 (1997), disallowed recovery from Connecticut Insurance Guaranty Association for share of claim attributable to insolvent insurer, but Court specifically left open question of reapportionment of that share among remaining solvent insurers. CRB noted § 31-299b was amenable to two readings, and then examined its legislative history, origin and purpose, and related case law, including Hunnihan and its interpretation of CIGA, in reaching its decision.

Hatt v. Burlington Coat Factory, 4326 CRB-2-00-12 (December 19, 2001), **aff'd**, 263 Conn. 279 (2003).
Statute does not provide for apportionment of liability between insurer liable for specific accidental injury and insurer liable for subsequent repetitive trauma injury to same body part. See also, **Hatt**, § 31-301. Appeal procedure; § 31-349.

Kelly v. Dunkin' Donuts, 4278 CRB-4-00-8 (November 1, 2001).
Apportionment under § 31-299b inapplicable to case involving two separate accidental injuries that contribute to overall disability. See, **Kelly**, § 31-301. Factual findings, § 31-349. Subsequent decision at Kelly, 4621 CRB-4-03-2 (April 5, 2004), § 31-299b, § 31-301, § 31-349.

Harbec v. Stone & Webster Engineering Corp., 4308 CRB-8-00-10 (August 29, 2001).
Claimant widow had settled decedent's asbestos-related occupational disease claim, and her own survivor's claim, via settlement with a number of decedent's former employers and their insurers, including his last employer. Trier held that claimant could pursue an occupational disease claim against remaining employers, whose insurer had become insolvent, even though she could not seek relief against the Connecticut Insurance Guaranty Association. CRB held that, in an occupational disease case under § 31-299b, last employer is made initially liable for benefits, with apportionment to be ordered later. CIGA statute forbids recovery from CIGA where claimant has not exhausted rights under any valid insurance policy. As claimant had settled case rather than exhausting liability of solvent insurers on risk, including last employer's insurers, she could not seek relief from CIGA. CRB also reversed trier's decision allowing claimant to seek relief directly from employers. Though language of CIGA statute forbidding claims "against the insured of such insolvent insurer" was not added to statute until several months after date of first manifestation of disease, CRB held that the amendment was merely a clarification of existing definition of "covered claim." Prior decision at Harbec, 4308 CRB-8-00-10 (August 29, 2001), § 31-296. Voluntary agreements (approval of).

Kisson v. Shawmut National Bank, 4188 CRB-5-00-2 (March 16, 2001).
Apportionment of liability possibly required based on aggravation of elbow condition by subsequent workplace exposure. See also, **Kisson**, § 31-301. Factual findings; § 31-301-9.

Depina v. CHR, 4040 CRB-3-99-4 (May 9, 2000).
Respondent disputed trial commissioner's conclusion that claimant's carpal tunnel and cubital tunnel syndromes were caused by injurious exposure at work from 1992 through August of 1998 (the date of the last formal hearing). CRB affirmed, as this was a factual matter for the trier and was fully supported by the record. Although the last medical documentation was dated January 14, 1998, the claimant testified that his injurious exposure to repetitive trauma continued to the date of the formal hearing.

Pantanella v. Enfield Ford, 3937 CRB-1-98-11 (January 7, 2000), **aff'd**, 65 Conn. App. 46 (2001), **cert**. **denied**, 258 Conn. 930 (2001)(along with Case No. 3377).
In a footnote, CRB discussed inapplicability of § 31-299b to a case in which the claimant sustained several discrete back injuries. The issue at bar was whether the appellant CIGA could rely upon Hunnihan v. Mattatuck Mfg. Co., 243 Conn. 438 (1997), to establish that this was a reimbursement claim by an insurer, i.e., statutorily prohibited. See **Pantanella**, § 31-300, § 31-301. Factual findings, § 31-298, § 31-315. Subsequent decision at Pantanella, 4220 CRB-1-00-4 (December 19, 2000), § 31-298, § 31-300. Prior decision at Pantanella, 3377 CRB-1-96-7 (January 28, 1998), infra and § 31-298, § 31-301. Factual findings, § 31-355(e).

Simmons v. UTC/Sikorsky Aircraft Div., 3904 CRB-4-98-9 (September 17, 1999).
Two voluntary agreements were signed, each detailing a separate date of injury with a different insurer, with both pertaining to the same lung impairment, and dividing responsibility for an overall 15% permanent partial disability. Subsequently, one insurer became insolvent, and CIGA challenged the assertion that it was required to accept responsibility for 37.5% of the claimant's benefits under § 31-355(e) and the Connecticut Insurance Guaranty Act. The trier ruled that, pursuant to the voluntary agreements, CIGA's liability ran directly to the claimant, and Hunnihan v. Mattatuck Mfg., 243 Conn. 438 (1997), did not absolve CIGA of responsibility. CRB affirmed. There was no medical evidence of any kind in the record, and no support for CIGA's argument that the claimant's injuries should be treated like a § 31-299b case with a single period of repetitive trauma exposure. See also, **Simmons**, § 31-355(e).

Woods v. New Haven Manufacturing, 3820 CRB-4-98-5 (June 28, 1999).
CRB reversed trier's assessment of 65% of liability to an employer pursuant to § 31-299b. Trier apparently relied upon a physician's opinion that "one-half *or more*" of the claimant's condition was the result of her work for that employer. While CRB recognized that trial commissioner is the sole finder of fact, by allowing the commissioner to choose *any* percentage *above* fifty percent, he would be permitted to make a finding of fact that is subjective and not specifically supported by a medical opinion.

Babcock v. General Dynamics Corporation/Electric Boat Division, 3456 CRB-8-96-11 (May 20, 1998).
CRB affirmed trial commissioner's apportionment pursuant to § 31-299b where claimant sustained exposure to asbestos at two different employers. Apportionment was a question of fact.

Barron v. City Printing, Inc., 3497 CRB-3-96-12 (April 29, 1998), **aff'd**, 55 Conn. App. 85 (1999).
See, **Barron**, § 31-294c. See also, **Barron**, § 31-301. Factual findings.

Pantanella v. Enfield Ford, 3377 CRB-1-96-7 (January 28, 1998), **aff'd**, 65 Conn. App. 46 (2001), **cert. denied**, 258 Conn. 930 (2001)(along with Case No. 3937).
Case involved four distinct injuries, and liability was not apportioned under § 31-299b. See also, **Pantanella**, § 31-298, § 31-301. Factual findings, § 31-355(e). Subsequent decisions in Pantanella, 4220 CRB-1-00-4 (December 19, 2000), § 31-298, § 31-300; Pantanella, 3937 CRB-1-98-11 (January 7, 2000), supra and § 31-300, § 31-301. Factual findings, § 31-298, § 31-315.

Campbell v. UTC/Norden Systems, 3295 CRB-4-96-3 (November 20, 1997).
See, **Campbell**, § 31-301. Factual findings. See also, **Campbell**, § 31-307.

Joslyn v. U.S. Silica Co., 16 Conn. Workers' Comp. Rev. Op. 247, 3281 CRB-8-96-2 (June 24, 1997).
Statute allows trier to assign proportional liability among prior employers for injuries occurring over a time continuum. However, it does not apply to the most recent employer when it is clear that no injurious exposure occurred during that employment, even though the imposition of liability on the last employer under § 31-299b is a policy of administrative convenience rather than a presumption of true joint liability. Issue of corporate successor's identity also raised. Trier could have reasonably found that current "U.S. Silica Company" was the current version of the entity once known as the "Connecticut Silicon Division" of the Ottawa Silica Company, and ordered U.S. Silica to accept initial responsibility for the injury under § 31-299b. However, the evidentiary process also eliminated the ultimate liability of Travelers Insurance, and CRB ruled it should no longer be involved in the administration of this claim. Liberty Mutual's argument that Travelers' conduct has prejudiced its interests has no legal relevance to the apportionment of liability under § 31-299b.

Desantis v. Middlebury, 3182 CRB-5-95-10 (February 27, 1997).
See, **Desantis**, § 31-301.

Lefevre v. Marty Gilman, Inc., 3175 CRB-8-95-9 (February 19, 1997).
CRB affirmed the trial commissioner's conclusion that the claimant's heavy lifting duties at the respondent employer constituted an intervening cause with respect to the prior employer where he had sustained a prior injury to his back. Thus, the respondent employer was liable for the additional five percent permanent partial disability, as the remaining ten percent permanency had been paid or was payable by the prior employer. The trial commissioner properly apportioned the resulting permanent partial disability based upon § 31-349 rather than § 31-299b.

Koczur v. O.Z. Gedney, 3051 CRB-8-95-3 (December 20, 1996).
CRB affirmed the trial commissioner's decision which apportioned the resulting liability equally between two insurers where the claimant sustained two injuries that were equal, concurrent, and contributing causes of her disability and need for medical treatment,

including a herniated disc. Although the general rule in workers' compensation law is that employer is liable to fully compensate claimant for full extent of disability regardless of preexisting condition, hardships caused by that rule have led to enactment of apportionment statutes such as § 31-349 and § 31-299b (held inapplicable here). CRB held that trial commissioner's apportionment was proper pursuant to the common-law theory in Mund v. Farmers' Cooperative, Inc., 139 Conn. 338 (1952). See also, Jolicoeur, infra, this section.

Hunnihan v. Mattatuck Mfg. Co., 16 Conn. Workers' Comp. Rev. Op. 72, 2297 CRB-5-95-2 (October 30, 1996), **rev'd**, 243 Conn 438 (1997).
Claimant's repetitive trauma extended over 17 years, during which time four separate insurers were on risk. Pursuant to § 31-299b, last insurer paid benefits and then sought reimbursement from other insurers. One insurer had become insolvent, so last insurer sought payment from Connecticut Insurance Guaranty Association under § 38a-836. The commissioner ordered CIGA to pay insolvent insurer's share of benefits to last insurer; he also ruled that Workers' Compensation Commission had no jurisdiction to consider CIGA's constitutional defenses to liability. The CRB affirmed the trial commissioner, and held that the Workers' Compensation Commission has jurisdiction to apply CIGA statute; core issue is a workers' compensation question, and CIGA Act interpretation is incidental to its resolution. Legislative concern that most recent employer not unfairly be subjected to ultimate liability because of § 31-299b and the language of that statute show that liability is placed on last employer for administrative convenience, but true joint liability is not created. Commissioner is required to order reimbursement if he finds prior employers/insurers liable for any part of disability. Insurer can be a claimant under language of CIGA Act, and purposes of that act and Chapter 568 would not be furthered by preventing such a claim. Reversed by Supreme Court, which held that CIGA was established for the benefit of consumers, and claims for reimbursement of insurers are excluded from coverage. NOTE: The court agreed that a trial commissioner *does* have subject matter jurisdiction to adjudicate a claim for reimbursement under the CIGA statute.

Works v. John Olender Corp., 15 Conn. Workers' Comp. Rev. Op. 386, 2260 CRB-2-95-1 (August 6, 1996).
Trial commissioner found that claimant's disability was caused equally by work-related disc herniation, scar tissue from earlier surgery, and underlying spondylosis. As "immediate proximate cause" of total disability was work at Olender Corp., commissioner ruled it was liable for benefits. Held: sufficient evidence existed to establish a repetitive trauma injury. As for apportionment among previous employers, § 31-299b need not apply; commissioner found that work at Olender was sole proximate cause of back disability. Lighter duties were performed at previous employers. Commissioner was also entitled to infer that common-law apportionment was inappropriate based on causation. See, Jolicoeur, infra this section.

Estey v. Hartford Distributors, 15 Conn. Workers' Comp. Rev. Op. 76, 2162 CRB-5-94-9 (December 6, 1995).
The trial commissioner found that the claimant had sustained compensable injuries to his back on March 13, 1986 and July 10, 1987, and apportioned the claimant's resulting fifteen percent permanent partial disability between the two carriers that insured the employer at the time of the accidents. The commissioner found that the claimant suffered from a degenerative disc disease which preexisted the first injury, that the preexisting disease constituted one-half of the cause of his permanent partial disability, and that the two injuries were equally responsible for causing the remaining fifty percent of the permanent partial disability. CRB held that apportionment of liability between the two employers was appropriate under Mund v. Farmers' Cooperative, Inc., 139 Conn. 338 (1952). CRB further ruled that the insurer of the first injury was responsible for the permanent partial disability caused by that injury including the preexisting condition (seventy-five percent), and that the second insurer was responsible for the percentage attributable to the second injury only (twenty-five percent). See, Jolicoeur v. L.H. Duncklee Refrigeration, 14 Conn. Workers' Comp. Rev. Op. 24, 1842 CRB-2-93-9 (May 3, 1995).

Sidella v. Kelly Services, 15 Conn. Workers' Comp. Rev. Op. 72, 2151 CRB-5-94-9 (December 6, 1995).
Kelly Services argued on appeal that the commissioner improperly failed to apportion liability pursuant to § 31-299b. CRB affirmed the trial commissioner's decision, as the trial commissioner's determination that the claimant sustained two separate compensable injuries was adequately supported by the record. See, Milardo v. EIS/Div. Parker Hannifin, 15 Conn. Workers' Comp. Rev. Op. 27, 2034 CRB-8-94-4 (November 15, 1995), infra.

Milardo v. EIS/Div. Parker Hannifin, 15 Conn. Workers' Comp. Rev. Op. 27, 2034 CRB-8-94-4 (November 15, 1995).
Trial commissioner apportioned liability between two employers where claimant sustained injuries to his back while employed with each employer. Section 31-299b apportionment is appropriate in occupational disease and repetitive trauma cases where there is a single injury occurring over a time continuum involving several employers or carriers. Although CRB found error in the commissioner's ruling that § 31-299b was applicable to this case, CRB held that apportionment of liability between the two employers was appropriate under Mund v. Farmers' Cooperative, Inc., 139 Conn. 338 (1952) and the common-law tort theory of causation espoused by that court. See, Jolicoeur v. L.H v. Duncklee Refrigeration, 14 Conn. Workers' Comp. Rev. Op. 24, 1842 CRB-2-93-9 (May 3, 1995).

Lawrence v. Dichello Distributors, 15 Conn. Workers' Comp. Rev. Op. 16, 2038 CRB-4-94-5 (November 7, 1995).
Claimant suffered repetitive trauma injury with exposure from 1963 to 1988. Two insurers were on the risk during those years. Trial commissioner ordered claim transferred to Second Injury Fund, because claimant had pre-existing permanent impairment when second insurer accepted the risk. Held, repetitive trauma injury is a

single injury under the law. Section 31-349 only applies where there is more than one injury. Second insurer should look to § 31-299b for apportionment of liability for repetitive trauma injury between both insurers. Remanded for a decision on the propriety of apportionment under § 31-299b.

Lundquist v. Parkway Pavilion, 15 Conn. Workers' Comp. Rev. Op. 7, 2044 CRB-1-94-5 (November 1, 1995), **appeal dismissed for lack of final judgment**, A.C. 15412, 15415 (February 22, 1996).
See, **Lundquist**, § 31-349.

Lowe v. General Dynamics Corporation/Electric Boat Division, 14 Conn. Workers' Comp. Rev. Op. 118, 1746 CRB-2-93-5 (June 5, 1995).
Where commissioner determined employment at Navy Yard partially caused claimant's asbestosis, but did not attempt to exercise jurisdiction over Navy Yard as an employer under § 31-275(10), it was improper for commissioner to apply § 31-299b in apportioning award payable by General Dynamics' insurer. Section 31-299b embodies common-law concept of joint liability, and applies where single injury occurs over time involving several employers or carriers. If there are no prior employers or insurers within the meaning of the statute, liability cannot be apportioned.

Jolicoeur v. L. H. Duncklee Refrigeration, Inc., 14 Conn. Workers' Comp. Rev. Op. 24, 1842 CRB-2-93-9 (May 3, 1995).
Section 31-299b did not apply where the claimant suffered two compensable back injuries that were found to be equally contributing causes of the need for surgery. The statute refers to a single "injury or disease" as opposed to a disability, and was meant to impose joint liability where a single injury is sustained over time. See also, **Jolicoeur**, § 31-349.

Vigneri v. Utility Industrial Company, 12 Conn. Workers' Comp. Rev. Op. 402, 1433 CRB-2-92-6 (September 9, 1994).
Apportionment of liability equally between employers supported by medical evidence as trier found disability due to two separate and distinct events. See also, **Vigneri**, § 31-301. Appeal procedure and § 31-315.

Holmes v. G.A. Masonry Corp., 12 Conn. Workers' Comp. Rev. Op. 369, 1588 CRB-5-92-12 (August 11, 1994).
CRB vacated trier's finding of equal apportionment among insurers where physician clearly changed his opinion as to apportionment during cross examination. See also, **Holmes**, § 31-294c and § 31-301. Factual findings. Subsequent decisions at Holmes, 3338 CRB-8-96-5 (December 16, 1997), § 31-294c, Holmes, 4027 CRB-5-99-4 (November 7, 2000), § 31-349, Holmes, 4375 CRB-6-01-4 (March 4, 2002), 76 Conn. App. 563 (2003).

Prioleau v. Larosa Construction, 12 Conn. Workers' Comp. Rev. Op. 140, 1432 CRB-8-92-6 (April 7, 1994).
See, **Prioleau**, § 31-308(b), § 31-307 and § 31-349.

DeLucia v. Modena, 12 Conn. Workers' Comp. Rev. Op. 212, 1471 CRB-3-92-7 (March 15, 1994).
Finding that right shoulder injury sustained by hairdresser was the result of repetitive trauma and years of employment in that profession with various employers supported by medical evidence. See also, **DeLucia**, § 31-275(16)[formerly 31-275(8)] and § 31-301. Appeal procedure.

Capen v. General Dynamics Corporation/Electric Boat Division, 11 Conn. Workers' Comp. Rev. Op. 326, 1394 CRB-2-92-3 (December 30, 1993), **aff'd**, 38 Conn. App. 73 (1995).
Record lacks sufficient evidence to support trier's finding that decedent was exposed to asbestos while employed out of state. CRB remanded with direction to award dependency benefits at full compensation rate as opposed to trier's reduction in benefits. See also, **Capen**, § 31-294c, § 31-306.

Cloutier v. C.N. Flagg, 11 Conn. Workers' Comp. Rev. Op. 304, 1352 CRD-2-91-11 (December 23, 1993).
Asbestos exposure found to be a substantial contributing factor to claimant's lung cancer. CRB vacated trier's award against one respondent insurer as they found claimant was not exposed to asbestos in the workplace during period said insurer was on risk. However, CRB affirmed trier's award against another respondent insurer as evidence supports finding that claimant was exposed to asbestos in the workplace during period said insurer was on risk. See also, **Cloutier**, § 31-275(15).

Thomen v. Turri Electric, 11 Conn. Workers' Comp. Rev. Op. 299, 1324 CRD-5-91-10 (December 23, 1993).
Insurer mistakenly relied on § 31-299b where § 31-349 properly applied. Trier found wrist injury in 1989 a new injury. Therefore, any benefits, including permanent partial disability, payable to claimant and attributable to the 1989 injury were reduced by the amount previously paid for the 1981 compensable wrist injury where a separate insurer was at risk.

Gargano v. General Dynamics Corporation/Electric Boat Division, 11 Conn. Workers' Comp. Rev. Op. 287, 1285 CRD-2-91-8 (December 7, 1993).
CRB remanded matter as trier must determine if claim against insurer should be dismissed where there is no evidence presented showing decedent was exposed to asbestos during period where said insurer covered employer for workers' compensation purposes. See also, **Gargano**, § 31-275(15).

Petta v. Waterbury Hospital, 11 Conn. Workers' Comp. Rev. Op. 161, 1310 CRD-5-91-9 (August 23, 1993).
Before apportionment can be determined, there must be a factual finding to support such a determination. See also, **Petta**, § 31-298, § 31-300, § 31-301 and § 31-308a.

Galpin v. Joyce Moving & Storage, Inc., 11 Conn. Workers' Comp. Rev. Op. 31, 1241 CRD-5-91-6 (February 26, 1993).
Remanded where claimant contends he performed work as a lent employee during twenty-six week period prior to his injury and sought to offer proof of additional wages earned. See also, **Galpin**, § 31-310.

Codding v. Colchester Egg Farms, Inc., 11 Conn. Workers' Comp. Rev. Op. 4, 1232 CRD-2-91-5 (February 4, 1993).
Remanded as trier's conclusion inconsistent with factual findings. Trier found causation, i.e., claimant's occupational sensitivity to chicken products occurred during all times of exposure, i.e., 11 years of self employment plus 17 years employment with Colchester Egg Farms. Trier then found causation for claimant's injury was only ascribed to the 17 year period claimant worked for Colchester Egg Farms. Apportionment of liability for only 17 year period must be reexamined by trier. See also, **Codding**, § 31-307, § 31-349.

Muldoon v. Homestead Insulation, 10 Conn. Workers' Comp. Rev. Op. 255, 1226 CRD-4-91-5 (January 13, 1993), **rev'd**, 33 Conn. App. 695 (1994), **rev'd**, 231 Conn. 469 (1994), **aff'd on remand**, 37 Conn. App. 695 (1995)(per curiam).
Factual finding that respondent employer Cummings Insulation was the last employer subjecting claimant to asbestos exposure will not be disturbed on appeal. See also, **Muldoon**, § 31-275(1), § 31-275(15), § 31-296, § 31-315 and § 31-284(a). Subsequent decisions.

Perrotti v. Portland Chemical, 8 Conn. Workers' Comp. Rev. Op. 105, 836 CRD-8-89-3 (June 6, 1990).
Matter remanded where trial commissioner's order was inconsistent with facts found. Specifically, remanded for clarification and determination of facts which would support ultimate apportionment of liability between carriers under § 31-299b.

Brown v. Bon Dental Lab, 6 Conn. Workers' Comp. Rev. Op. 132, 594 CRD-7-87 (March 28, 1989).
While primarily procedural, retrospective application not permitted because commission lacked jurisdiction over out-of-state employers.

Borg v. Waterford Country School, 2 Conn. Workers' Comp. Rev. Op. 70, 156 CRD-2-82 (July 3, 1984).
Apportionment of liability appropriate where disability results from concurrent causes.

Sec. 31-300. Awards, interest and attorney's fees.

Horobin v. West Haven, 4724 CRB-3-03-9 (December 2, 2004).
Respondent CIRMA first raised objection to untimely award 208 days after issuance. CRB held that objection was not seasonable, and deemed it waived. See, **Horobin**, § 31-296. Voluntary agreements (approval of),§ 31-301. Appeal Procedure, § 31-301. Factual findings, § 31-307, § 31-349, § 31-298.

Izzo v. American Compressed Gases, 4678 CRB-3-03-6 (August 5, 2004).
When awarding interest for payments delayed without fault or neglect pursuant to § 31-300, trier must determine what rate is "fair and reasonable" given advantage of employer or insurer's use of money, and must allow employer or insurer opportunity to show that rate under circumstances should be less than that prescribed by § 37-3a.

Calabro v. Northeast Graphics, Inc., 4707 CRB-3-03-8 (July 27, 2004).
CRB remanded award of attorneys fees and interest under § 31-300 for lack of requisite factual basis for the finding. See also, **Calabro,** § 31-307.

Dobson v. Thames Valley Sanitation, 4645 CRB-6-03-3 (July 22, 2004).
CRB remanded issue of respondents' unreasonable contest/delay to the trial commissioner where the trier's conclusion on this issue was predicated, in part, on a factual finding the respondents sought to amend in their Motion to Correct and to which the claimant conceded there was no dispute. See also, **Dobson,** § 31-275(1)(D).

Capozzo v. Milford Jai Alai, 4655 CRB-3-03-3 (March 26, 2004).
CRB reversed trial commissioner's ruling the respondents unduly delayed the authorization for claimant's surgery as the respondents were not given adequate notice the issue was under consideration. Matter remanded for further proceedings consistent with respondents' due process rights. See also, **Capozzo** § 31-298.

Watters v. Rural Gas Co., 4649 CRB-4-03-3 (March 17, 2004).
CRB upheld trial commissioner's dismissal of claim for attorney's fees and interest brought forward several months after award for benefits.

Jacobson v. General Dynamics/Electric Boat Div., 4642 CRB-2-03-3 (March 12, 2004).
CRB concluded trial commissioner's decision was not late under § 31-300's requirement a decision be issued within 120 days after last hearing. While appellant contends the two hearings held after the submission of briefs were meaningless, nonetheless appellant's representative attended, and raised no objection. Furthermore, both hearings were held after 120 days passed from the hearing date to which appellant attached significance.

Audi v. Blakeslee Arpaia Chapman, 4624 CRB-3-03-12/4311 CRB-3-00-10 (February 10, 2004).
See, **Audi**, § 31-278, § 31-284(b)(self-insured employer is responsible for sanctions associated with undue delay in administering claims, even if delay was attributable to allegedly unauthorized acts of agent), § 31-288. See prior decision Audi, 3418 CRB-3-96-9 (August 4, 1997), § 31-349 and Audi, 4151 CRB-3-99-11, 4 (June 26, 2001), § 31-296, § 31-298, § 31-301-9, § 31-307, § 31-315.

Bernardo v. Capri Bakery, 4570 CRB-3-02-9 (February 10, 2004).
CRB found appellants' objection to the untimeliness of trier's decision was not seasonable. Appellants first raised objection in Amended Reasons of Appeal filed 119 days after the trier's decision was issued. See also, **Bernardo**, § 31-301. Factual findings and § 31-294d.

Murray v. Mass Mutual Life Ins. Co., 4590 CRB-1-02-11 (November 20, 2003).
When evaluating claim of unreasonable contest, trier may rely on respondents' pattern of conduct in defending case. Acceptance of carpal tunnel injury could be taken into account as evidence that denial of cubital tunnel syndrome was not in bad faith. Further, trial commissioner is in best position to determine whether defense has been reasonably conducted. Medical reports here left open possibility that flare-up of cubital tunnel symptoms might be due to some other stimulus aside from job. No abuse of discretion in denying unreasonable contest claim. See also, **Murray**, § 31-294d, § 31-296. Voluntary agreements (discontinuance of payments), § 31-301. Factual findings, § 31-307, § 31-308(a).

Hudson v. State/Dept. of Correction, 4582 CRB-3-02-11 (October 31, 2003).
CRB remanded trier's finding on the issue of unreasonable contest as no evidentiary record existed. See also, **Hudson,** § 5-142(a), § 31-301. Appeal procedure.

Blaha v. Logistec Connecticut, Inc., 4544 CRB-3-02-6 (July 9, 2003).
Trier made finding of unreasonable contest. Issue was first raised in proposed findings. CRB held that, though trier can make sua sponte finding of unreasonable contest without prior notice to parties, it must be construed as a preliminary finding, with either party having the right to raise it at full evidentiary hearing. Remanded for consideration on merits. See also, **Blaha**, § 31-298, § 31-312.

Kolomiets v. Syncor International Group, 4578 CRB-7-02-11 (July 8, 2003).
CRB vacated trial commissioner's decision, which had been issued 153 days after last hearing. Claimant's objection was filed simultaneously with timely petition for review, and was therefore seasonable. No waiver of right to timely decision. Prior decision at **Kolomiets**, 16 Conn. Workers' Comp. Rev. Op. 234, 3251 CRB-7-96-1 (June 23, 1997), rev'd, 51 Conn. App. 523 (1999), aff'd, 252 Conn. 261 (2000), § 31-275(1), § 31-301. Factual findings.

Simotas v. Norwalk Hospital, 4530 CRB-7-02-5 (May 20, 2003).
CRB concluded that the appellant's objection to the trier's failure to render decision within 120 days was seasonable and the matter was remanded for a new trial.

Matey v. Dember, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), **appeal dismissed for failure to comply with Supreme Court's directive**, 85 Conn. App. 198 (2004).
Affirmed trier's finding interest not due under § 31-300 as claimant failed to specify on what grounds she was seeking interest, undue delay, or unreasonable contest and trier's determination on these matters are discretionary. See also, **Matey,** § 31-278, § 31-307, § 31-307a, § 31-303. See, Matey v. Dember, 256 Conn. 456 (2004).

Milliot v. Yale University, 4527 CRB-3-02-5 (May 14, 2003).
Section 31-300 was listed on hearing notices as contested issue; however, claimant's counsel indicated at outset of formal hearings that he would not be pursuing that issue "at this time." No further mention was made of sanctions for unreasonable contest or undue delay until claimant filed his proposed findings. CRB held that remand was

necessary to determine whether respondent had adequate notice that this issue had been revived under all the circumstances, as respondent was entitled to rely on claimant's initial indication that § 31-300 would not be addressed. See also, **Milliot**, § 31-307.

Ortiz v. Highland Sanitation, 4439 CRB-4-01-9 (November 12, 2002).
See, **Ortiz**, § 31-295 (10% interest award was not entered pursuant to § 31-300, but rather § 31-295), **Ortiz**, § 31-301. Factual findings.

Colon v. CEI Bottling & Distribution Co., 4470 CRB-3-01-12 (November 12, 2002).
CRB affirmed finding of unreasonable contest and undue delay. Contemporaneous hospital report listed claimant as alleging that her injury had occurred the previous day, as she alleged at trial; respondents also provided immediate medical care. Attempts to impeach her testimony could reasonably be construed as attempts to evade responsibility rather than as indicia of sound basis for denying claim.

Regan v. Torrington, 4456 CRB-5-01-11 (October 25, 2002).
CRB affirmed finding of undue delay and award of 12% interest, as total disability was not paid as required by statute. Facts justified drawing of inferences that supported finding of undue delay. CRB also remanded on attorney's fee, as no formal hearings were held (save *pro forma* hearing), and respondents did not have opportunity to cross-examine regarding accuracy of figures in attorney's affidavit. See also, **Regan**, § 31-278, § 31-307.

Arcano v. Stamford/Board of Education, 4447 CRB-7-01-10 (October 10, 2002),
aff'd, 81 Conn. App. 761 (2004).
CRB affirmed trier's award of attorney's fees where respondents did not object when claimant's counsel detailed basis for fee amount requested. Further, only the amount of the fee was challenged, and not the trier's finding of undue delay.

Prescott v. Community Health Center, Inc., 4426 CRB-8-01-8 (August 23, 2002).
CRB deferred to trier's finding that there was no unreasonable contest, as trier was in better position than board to gauge legitimacy of respondents' uncertainties regarding origin of injury and motives in defending case. See also, **Prescott**, § 31-301. Factual findings, § 31-307, § 31-310.

Strona v. Textron Lycoming Division, 4398 CRB-4-01-5 (August 6, 2002).
CRB affirmed finding of unreasonable contest, as it was within trier's discretion to rely upon claimant's assertions that respondents had continuously failed to authorize medical treatment over a four-year span. Subsequent decision at Strona, 4700 CRB-3-03-7 (August 6, 2004).

Angiletta v. A & K Railroad Materials, Inc., 4411 CRB-3-01-6 (August 6, 2002).
Issue: whether claimant waived 120-day time limit by sending two letters to trial commissioner requesting that a decision be issued promptly. Claimant's letters requested that the trier issue a decision, but did not request a new formal hearing. Board declined to construe request for issuance of decision as an objection to lateness of decision, as this would allow complaining party to review decision upon its issuance, and then

choose whether to enforce 120-day rule. CRB expressed desire to avoid this type of possible gamesmanship.

McCurrey v. Nutmeg Express, 4342 CRB-5-01-1 (January 3, 2002).
CRB affirmed award of $2500 attorney's fee where employer failed to introduce promised evidence of claimant's compensation rate, or any evidence supporting their contest of total disability claim. Trier's granting of motion for attorney's fee was implicit finding of unreasonable contest, and $2500 amount was explained by counsel's affidavit and was not itself challenged by respondents. See also, **McCurrey**, § 31-288, § 31-310.

Spak v. Shelton Lakes Residence, 4372 CRB-4-01-3 (December 7, 2001).
Board dismissed claimant's appeal insofar as it related to § 31-290a claim. However, as claimant also alleged error in trier's denial of request for interest and attorney's fees (a separate matter), CRB considered that issue, finding no error. Prior decision at Spak, 4372 CRB-4-01-3 (April 26, 2001), § 31-301. Appeal procedure.

DiBello v. Barnes Page Wire Products, 4290 CRB-7-00-9 (September 25, 2001).
Trier corrected findings to reflect undue delay in payment of compensation. Attorney's fee had been awarded, but not interest. CRB remanded as required by Imbrogno v. Stamford Hospital, 28 Conn. App. 113 (1992), which does not allow awards of one without the other in cases of undue delay. See also, **DiBello**, § 31-308a. Prior decision at Dibello, 3970 CRB-7-99-2 (March 2, 2000), aff'd, 67 Conn. App. 361 (2001), cert. granted, 260 Conn. 915 (2002), appeal withdrawn (June 26, 2002), § 31-278, § 31-294c, § 31-301. Appeal procedure, § 31-301-9, § 31-348.

Cirrito v. Resource Group Ltd. of Conn., 4248 CRB-1-00-6 (June 19, 2001).
CRB affirmed trier's award of interest and attorney's fees on unpaid temporary partial benefits and delayed weekly checks. Some temporary partial benefits remained unpaid despite uncontradicted evidence that claimant could not maintain concurrent employment position due to injury, while other benefits were improperly discontinued without the filing of a Form 36 as required by § 31-296. However, case was remanded on amount of attorney's fee where trier denied request of respondents' counsel to summon claimant's counsel to the stand for questioning regarding the figures in his attorney's fee petition. Also, CRB could not discern trier's thought process in setting $10,000 as amount of fee award. See also, **Cirrito**, § 31-294d, § 31-301. Factual findings, § 31-298.

Bilodeau v. Bristol Assn. for Retarded Citizens, 4245 CRB-6-00-5 (May 29, 2001).
Trier awarded attorney's fees based on unreasonable contest of neck surgery. No error in failing to award interest, as there was no evidence that any payments were unduly delayed. See also, **Bilodeau**, § 31-293, § 31-299a.

Schreck v. Stamford, 3322 CRB-7-96-4 (May 17, 2001), **rev'd**, 72 Conn. App. 497 (2002).
In a footnote, CRB rejected claimant's argument that trier's decision was void due to violation of 120-day rule. Claimant did not object until Reasons for Appeal were filed,

which constituted waiver of statutory time limit. See **Schreck**, § 31-293, § 31-301. Appeal procedure. Appellate Court reversed this ruling and remanded case for new hearing, holding that waiver of right to void late judgment is not relinquished by mere silence prior to issuance of decision. As claimant objected to lateness of decision on the day he received it, the objection was seasonable, and new hearing was necessary. Prior decision at Schreck, 3322 CRB-7-96-4 (September 23, 1997) (dismissal order), rev'd, 51 Conn. App. 92 (1998), rev'd on different grounds, 250 Conn. 592 (1999), appeal reinstated, 3322 CRB-7-96-4 (July 21, 2000), § 31-301. Appeal procedure.

Melendez v. Valley Metallurgical¸ 4178 CRB-2-00-1 (May 1, 2001), **appeal dismissed**, A.C. 23921 (May 14, 2003), **cert. denied**, 266 Conn. 904 (2003).
Statutory changes in amount of interest payable under § 31-300 and § 37-3a apply to existing debts, as of date amendment takes effect. However, attorney's fees could not be charged to respondents, as they were not allowed for undue delay in 1970, when decedent was injured. Amendment did not take effect until 1988, and inclusion of attorney's fees imposed new, substantive obligation on respondents. Trier reduced legal fee to 12% of recovery without explanation of reasons behind reduction; CRB remanded for articulation. Interest award based only upon principal made up of late COLA payments would differ from an interest award also based in part on late payments of weekly benefits, as different interest rates apply to "adjustments" and "payments" under § 31-300 "undue delay" provision. See also, **Melendez**, §§ 31-278, 31-298, 31-303; and see decision on motion in Melendez, 4178 CRB-2-00-1 (May 24, 2001) (claimant moved to correct/articulate CRB opinion), § 31-301. Appeal procedure. Related decision in Melendez, 4178 CRB-2-00-1 (November 19, 2003), rev'd, 86 Conn. App. 880 (2005)(no jurisdiction to rule on motion to reopen CRB decision), § 31-301. Appeal procedure.

Soares v. Glass Industries, 4140 CRB-3-99-10 (April 10, 2001).
Trier could not levy $1000 fee against Second Injury Fund for unreasonable contest/unreasonable prosecution of reimbursement claim when, at time of injury, § 31-300 only allowed fee awards in cases where claimant prevailed or where benefits were discontinued without proper notice. See also, **Soares**, § 31-301(f). Prior decision at Soares, 12 Conn. Workers' Comp. Rev. Op. 189, 1377 CRB-3-92-1 (May 4, 1994), infra, § 31-297, § 31-307b, § 31-315.

Schiano v. Bliss Exterminating Co., 4104 CRB-4-99-8 (February 21, 2001), **rev'd**, 260 Conn. 21 (2002).
See **Schiano**, § 31-278, § 31-303. Prior decisions at Schiano, 3436 CRB-4-96-10 (April 8, 1998), and Schiano, 1852 CRB-4-93-9 (December 7, 1994), aff'd, 57 Conn. App. 406 (2000), both discussed at § 31-293 and, with regard to the 1994 CRB decision, § 31-301. Appeal procedure as well, and Schiano, 3315 CRB-4-96-4 (May 16, 1997), § 31-301. Appeal procedure.

Pantanella v. Enfield Ford, 4129 CRB-1-99-9 (December 19, 2000).
CRB affirmed trial commissioner's award of $800 attorney's fee against appellant Connecticut Insurance Guaranty Association. Trier had jurisdiction to issue attorney's fee award while merits of case were on appeal to Appellate Court. Undue delay

underlying award was premised on conduct of appellant that had not been the subject of a previous award of attorney's fees, and the amount of the fee was supported by an affidavit that the appellant could have contested if it had chosen to do so. See also, **Pantanella**, § 31-298; prior decisions at Pantanella, 3937 CRB-1-98-11 (January 7, 2000), § 31-299b, § 31-300, § 31-301. Factual findings, § 31-298, § 31-315; and Pantanella, 3377 CRB-1-96-7 (January 28, 1998), § 31-298, § 31-299b, § 31-301. Factual findings, § 31-355(e). Cases No. 3937 and 3377 aff'd, 65 Conn. App. 46 (2001), cert. denied, 258 Conn. 930 (2001)

Wierzbicki v. Federal Reserve Bank of Boston, 4147 CRB-1-99-11 (December 19, 2000).
CRB affirmed trier's denial of attorney's fees and interest for undue delay and unreasonable contest, as there was evidence that etiology of seizures was uncertain. See also, **Wierzbicki**, § 31-294c, § 31-307.

Vetre v. State/Dept. of Children and Families, 3443 CRB-6-98-12 (November 28, 2000).
CRB affirmed award of attorney's fees, as trier could reasonably have found state's delay in contesting liability for psychiatric treatment to be unreasonable. However, case was remanded for new determination of sum of fee award, as there was no evidence in record to establish an appropriate amount. See also, **Vetre**, § 31-297, § 31-298, § 31-307. Prior decisions at Vetre, 3948 CRB-6-98-12 (February 14, 2000), § 31-298, § 31-301. Appeal procedure; and Vetre, 3443 CRB-6-96-10 (January 16, 1998), § 31-298. Subsequent decisions at Vetre, 4378 CRB-6-01-4 (March 14, 2002), Vetre, 4728 CRB-6-03-9 (October 8, 2003).

Sharkey v. Stamford, 4068 CRB-7-99-6 (November 17, 2000).
Whether to award attorney's fees and interest for unreasonable delay and/or unreasonable contest pursuant to § 31-300 is a discretionary decision to be made by the trial commissioner. Here, the trier found that in light of complex legal and medical issues, respondents' contest was reasonable, and respondents did not unduly delay processing of claim. Board found no abuse of discretion. See also, **Sharkey**, § 31-349.

Kay v. Hubbard-Hall, Inc. 4092 CRB-5-99-7 (October 20, 2000).
CRB held that claimant waived the mandatory 120-day period, where claimant's letter of protest was mailed *after* the trier's decision had been issued. The 120 days commenced on the date the last brief was filed, and expired on July 13, 1999. Finding and Dismissal was issued on July 14, 1999. The claimant's letter of protest was mailed on July 15, 1999 and apparently "crossed in the mail" with the Finding and Dismissal. Board found waiver where the trier's decision was issued prior to the claimant's letter being mailed on July 15th, and noted that the Finding and Dismissal was indeed received by one of the parties on July 15th. The board explicitly rejected the respondents' argument that the 120-day rule applies to awards but not dismissals, as the term "award" in § 31-300 was meant to apply both to awards and dismissals. See also, **Kay**, § 31-275(1), § 31-275(16).

Bilotta v. Connecticut Natural Gas Corp., 4106 CRB-1-99-8 (October 5, 2000).
Where two awards of permanency were given based on two different medical reports, CRB modified trial commissioner's interest award to reflect the different dates of the underlying medical opinions. See also **Bilotta**, § 31-301. Factual findings, § 31-308(b). Prior decision at Bilotta, 3536 CRB-1-97-2 (May 26, 1998), § 31-308(a), § 31-308(b).

Simmons v. Temporary Labor Corp., 3975 CRB-6-99-2 (May 25, 2000).
Trier awarded $5000 attorney's fee after finding respondents unreasonably contested liability and unduly delayed benefits. Though advance notice of issue to parties was unnecessary for the trier to make findings regarding impropriety of employer's conduct in defending claim, the amount of an attorney's fee is generally determined after both sides are informed that the subject is being considered. Here, claimant's affidavit regarding expenses was not received by commission until *after* decision had been issued, and respondents only had two business days to file an objection to the claimant's request for fees in her proposed findings. CRB remanded this issue so that technical requirements of due process could be satisfied. See also, **Simmons**, § 31-301. Factual findings, § 31-275(1).

Saleh v. Poquonock Giant Grinder Shop, 4005 CRB-1-99-3 (March 13, 2000).
CRB found trier's determination of unreasonable delay and contest was amply supported by the record where claimant's treating physician had increased his permanent partial disability rating, and respondent did not depose treating physician prior to formal hearing. Though the amount of attorney's fees was not specifically addressed at the formal hearing, the commissioner's fee award of $2,500 was supported by the record. See also, **Saleh**, § 31-279-2, § 31-298, § 31-301-9 and § 31-315.

Auger v. Stratford, 3944 CRB-4-98-12 (January 14, 2000), **rev'd**, 64 Conn. App. 75 (2001).
No error in trial commissioner's failure to grant corrections regarding entitlement to interest or attorney's fees, as reasonable minds could differ on the instant legal question, and undue delay was not shown as a matter of law. Appellate Court reversed on the underlying § 31-284b issue. See also, **Auger**, § 31-284b, § 7-433c and § 31-296 Voluntary agreements (discontinuance of payments).

Pantanella v. Enfield Ford, 3937 CRB-1-98-11 (January 7, 2000), **aff'd**, 65 Conn. App. 46 (2001), **cert. denied**, 258 Conn. 930 (2001)(along with Case No. 3377).
CRB affirmed trial commissioner's assessment of attorney's fees and interest on ground of undue delay, as appellant's conduct could warrant such sanctions. See also **Pantanella**, § 31-298, § 31-301. Factual findings, § 31-298, § 31-315. Subsequent decision at Pantanella, 4220 CRB-1-00-4 (December 19, 2000), supra and at § 31-298. Prior decision at Pantanella, 3377 CRB-1-96-7 (January 28, 1998), § 31-298, 31-299b, § 31-301. Factual findings, § 31-355(e).

Bailey v. State/Greater Hartford Community College, 3922 CRB-2-98-10 (November 30, 1999), **aff'd in part, rev'd in part**, 65 Conn. App. 592 (2001).
Award of attorney's fees was properly made following hearings concerning the limited issue of the period of claimant's temporary total disability. Prior decision at Bailey, 15

Conn. Workers' Comp. Rev. Op. 433, 3152 CRB-5-95-8 (September 3, 1996), § 31-301. Appeal procedure, § 31-301. Factual findings. Trier may decide *sua sponte* that respondent's argument lacks sufficient merit to constitute reasonable ground of contest, and award attorney's fees. In fact, the trial commissioner who presides over the hearings is the best person to perform that task, as he is the person most familiar with the proceedings. Trier here based his decision on permissible evidentiary rulings. See prior decision at Bailey, 3694 CRB-1-97-9 (January 12, 1999), aff'd in part, rev'd in part, 65 Conn. App. 592 (2001), § 31-298, § 31-301. Appeal procedure. Factual foundation existed for a finding of unreasonable contest. A second award of attorney's fees was reversed, however, as a previous commissioner had not actually ordered the respondent to pay the claimant a $12,000 attorney's fee, contrary to the trier's assumption. See also, **Bailey**, § 31-307, § 31-284b, § 31-294d, § 31-301. Factual findings.

Saporoso v. Aetna Life & Casualty, 3759 CRB-1-98-11 (September 3, 1999).
Claimant/appellant failed to object to lateness of trial commissioner's decision until after it was issued, and her objection was accordingly deemed waived. See also, **Saporoso**, § 31-301. Factual findings.

Lalanne v. Greenwich, 3914 CRB-7-98-10 (September 2, 1999).
CRB held that claimant waived the 120 day rule even though claimant's counsel alleged that it had inquired with the trial commissioner several times as to when the decision would be issued. Board noted that there was no record of the claimant's alleged protest regarding the 120-day rule. See also, **Lalanne**, § 31-301. Factual findings.

Malafronte v. Med-Center Home Health Care, 3888 CRB-7-98-9 (August 31, 1999).
CRB reversed trial commissioner's finding of unreasonable contest, although trial commissioners are normally accorded wide discretion. Board held that the respondents had a reasonable basis for contesting the claimant's claim, particularly in light of the independent medical examiner's opinion that the injury was not work-related. See also, **Malafronte**, § 31-301. Factual findings.

Serfilippi v. Vision Hair Design, 3815 CRB-7-98-5 (May 21, 1999).
See, **Serfilippi**, § 31-296 Voluntary agreements (approval of).

Hyde v. Stop & Shop Companies, 3728 CRB-4-97-11 (February 18, 1999).
CRB affirmed award of attorney's fees and interest for undue delay, as a careful reading of a superficially confusing award brought into focus a legally consistent interpretation of the commissioner's conclusions. See also, **Hyde**, § 31-301. Factual findings, § 31-296 Voluntary agreements (discontinuance of payments).

Aguayo v. Franklin Mushroom Farms, Inc., 3697 CRB-2-97-1 (January 28, 1999).
CRB affirmed trier's determination that respondents and Second Injury Fund had unreasonably contested claim of temporary total disability and unduly delayed payment for said disability and medical treatment. Fund had argued that respondents were responsible for claimant's temporary total disability, while respondents had argued that Fund should pay. See also, **Aguayo**, § 31-298.

Heene v. Professional Ambulance Service, Inc., 3743 CRB-6-97-12 (January 8, 1999). Claimant was awarded interest and attorney's fees for unreasonable contest and undue delay. CRB affirmed award. Trier was entitled to fault respondents for withholding benefits where issue was which insurer was responsible, and where respondents failed to obtain a medical report that supported their argument that they were not responsible for the claimant's disability. Chairman's attorney's fee guidelines need not be applied to awards under § 31-300 if trier thinks a greater sum is appropriate. No evidence that this award was an abuse of discretion. See also, **Heene**, § 31-308(a), § 31-310.

Syphers v. Dedicated Logistic Services, 3711 CRB-1-97-10 (November 16, 1998). First, the CRB affirmed the trier's decision that the respondents' refusal to authorize surgery prevented the claimant from receiving necessary surgery for his compensable ankle injury, and that said conduct constituted unreasonable delay. All of the parties agreed that the claimant should undergo surgery on his ankle, and the surgery was scheduled but subsequently canceled as a result of the refusal of the respondents to authorize said surgery due to the lack of an agreement as to apportionment. Next, the CRB remanded the case because trier awarded attorney's fees without also awarding interest. Finally, CRB agreed with the respondents' contention that the imposition of a fine for undue delay is not permitted under § 31-300, but that a fine may be levied under § 31-288(b) in an amount of five hundred dollars or less.

McMullen v. Haynes Construction Co., 3657 CRB-5-97-7 (November 12, 1998). The trial commissioner found that the respondents had unreasonably contested liability and thus awarded attorney's fees and interest. The CRB affirmed the trial commissioner's conclusion regarding unreasonable contest and thus affirmed the award of attorney's fees, but remanded for a determination of whether there had also been undue delay so as to support an award of interest.

Muldoon v. New England Installation, 3552 CRB-4-97-3 (August 24, 1998). The trial commissioner found that both the insurance carrier and the Fund had unreasonably contested payments under § 31-301(f). Additionally, the trial commissioner found that the Fund was responsible for payments under § 31-301(f). Subsequently, pursuant to a Supreme Court decision, the order to make payments pending appeal was amended to make the carrier rather than the Fund liable. The CRB affirmed the trial commissioner's award of attorney's fees against the carrier for unreasonable contest, because both the carrier and the Fund knew that one of them would eventually be held liable, and therefore should have made payments rather than leave the claimant with no benefits for an extended period. Prior decision at Muldoon, 10 Conn. Workers' Comp. Rev. Op. 255, 1226 CRD-4-91-5 (January 13, 1993), rev'd, 33 Conn. App. 695 (1994), rev'd, 231 Conn. 469 (1994), aff'd on remand, 37 Conn. App. 266 (1995); Muldoon, 3345A, 3345B CRB-4-96-5 (November 3, 1997); Muldoon, 3415 CRB-4-96-8 (November 3, 1997).

Rossi v. Danbury Hospital, 3608 CRB-7-97-5 (August 10, 1998). CRB remanded case to trial commissioner for articulation of interest rate and attorney's fees.

Czujak v. Bridgeport, 3535 CRB-4-97-2 (June 10, 1998), **aff'd**, 55 Conn. App. 789 (1999), **cert. denied**, 252 Conn. 920 (2000).
Award of attorney's fees and interest based on undue delay was reversed, as the underlying award (an unpaid § 7-433b(b) cap adjustment) was reversed by the CRB. See also, **Czujak**, § 7-433c, § 31-301. Appeal procedure, § 31-307a, § 31-315. Subsequent decision at Czujak, 4371 CRB-4-01-3 (April 8, 2002), § 31-297, § 31-301(g).

Liano v. Bridgeport, 3561 CRB-4-97-3 (June 3, 1998), **rev'd in part**, 55 Conn. App. 75 (1999), **cert. denied**, 252 Conn. 909 (1999).
CRB remanded case to trial commissioner where trier awarded attorney's fees but did not provide any findings to substantiate the amount of the award. Prior decisions at Liano, 3447 CRB-4-96-10 (January 6, 1998), aff'd, 51 Conn. App. 905 (per curiam), cert. denied, 248 Conn. 907 (1999), § 7-433c; Liano, 3299 CRB-4-95-10 (March 25, 1997), § 31-294c, § 31-297, § 31-301. Factual findings; Liano, 3199 CRB-4-95-10 (March 25, 1997), § 31-279-3, § 31-298, § 31-307; Liano, 14 Conn. Workers' Comp. Rev. Op. 201, 2033 CRB-4-94-5 (July 25, 1995), appeal and cross appeal dismissed, lack of final judgment, A.C. 15082 (June 6, 1996), cert. denied, 238 Conn. 906 (1996), infra and at § 7-433b, § 31-310.

Dalling v. Dalling Hauling, Inc., 3615 CRB-4-97-5 (May 26, 1998).
Trial commissioner awarded attorney's fees. CRB remanded, as findings did not indicate basis for attorney's fees (i.e. unreasonable delay or unreasonable contest) and did not include interest along with attorney's fees. See also, **Dalling**, § 31-301. Factual findings.

Coley v. Camden Associates, Inc., 3432 CRB-2-96-9 (April 6, 1998).
In a footnote, panel approved award of $2500 attorney's fee, and commissioner's finding of unreasonable delay of payment of compensation. See also, **Coley**, § 31-301. Appeal procedure. Section 31-301. Factual findings, § 31-343. Prior decision at Coley, 3432 CRB-2-96-9 (February 28, 1997), rev'd, 243 Conn. 311 (1997), § 31-301(f).

Anglero v. State/Dept. of Administrative Services, 3457 CRB-8-96-11 (March 5, 1998).
No error in awarding $2500 in attorney's fees and interest against respondent for undue delay in payment of benefits. $2500 was a reasonable approximation of 20% of the value of the award, and the respondent was not denied due process because a "preformal hearing" was not scheduled at which the state could have tried to settle the claim. Respondent criticized for downplaying importance of informal hearing stage. See also, **Anglero**, § 31-308(a).

Fenn v. Hospital of St. Raphael, 3444 CRB-3-96-10 (February 25, 1998).
One hundred twenty day period starts running from the date the last trial brief is filed. See also, **Fenn**, § 31-298, § 31-325.

Golanski v. Wallingford/Board of Education, 3334 CRB-8-96-4 (February 2, 1998).
Claimant repeatedly missed hearings, and trier denied further postponement of formal hearing. He then refused to let claimant's counsel introduce evidence regarding the alleged injury because the claimant was not present to establish a factual basis for the

claim. He dismissed the claim "without prejudice to the claimant to file a Motion to Reopen and set aside the dismissal within four months of the granting of said Motion to Dismiss." Respondent appealed that decision to CRB. Panel cited Santora v. A.C.E.S., 2299 CRB-3-95-11 (February 26, 1997), in which CRB stated that a dismissal "without prejudice" was an inappropriate type of decision to follow a formal hearing in workers' compensation proceedings. This case is similar; formal hearing was a trial on the merits, and claimant did not meet his burden of proof. Trier should have dismissed claim. Insertion of language suggesting that claimant seek to reopen case, however, led claimant to believe that an appeal to CRB was unnecessary. This would deprive him of his statutory right to appeal. Further, case contained inconsistent conclusions of law. Remanded for a new trial.

Holland v. UTC/Pratt & Whitney, 3248 CRB-2-96-1 (November 14, 1997).
Commissioner's decision was not issued within 120 days of close of last hearing. Claimant's counsel attempted to pursue right to speedy decision soon after the 120-day limit had passed, so there was no waiver of that time limit. The Compensation Review Board further explained its reasoning in a January 30, 1998 ruling denying respondents Motion for Reconsideration.

Wilson v. Stamford, 3268 CRB-7-96-2 (November 7, 1997).
CRB held that the respondent waived its right to enforce the 120-day time limit in § 31-300 by failing to raise an objection until after the trial commissioner's decision had been issued. CRB affirmed the trial commissioner's determination that the respondent unreasonably contested liability for the claimant's permanent partial disability and benefit rate in this case, as it was a factual question for the trier. CRB found no merit to the respondent's argument that because the claimant's claim was filed under § 7-433c the trial commissioner lacked "jurisdiction" to award interest or attorney's fees. See also, **Wilson**, § 31-310. Subsequent decision at Wilson, 4506 CRB-7-02-3 (March 5, 2003), aff'd, 81 Conn. App. 339 (2004), cert. denied, 268 Conn. 918 (2004).

Vargas v. King-Conn Enterprises d/b/a Burger King Corporation, 3333 CRB-4-96-4 (October 24, 1997).
Trier ordered payment of temporary total and temporary partial disability benefits. No evidence was introduced to establish the relevant dates, however, as the commissioner simply ordered the parties to "meet and exchange information necessary" to determine the amounts owed. This is the trier's job once a case proceeds to the formal hearing stage. Remanded. See also, **Vargas**, § 31-294d, § 31-295.

Rulewicz v. New Britain General Hospital, 3302 CRB-6-96-3 (September 16, 1997); ***VACATED*:** (December 5, 1997).
CRB held that the respondents waived their right to enforce the 120-day time limit in § 31-300 because they did not object to the delay of the issuance of a decision by the trial commissioner until after the decision was issued. See also, **Rulewicz**, § 31-349.

Ridente v. MMR Wallace, 3303 CRB-6-96-3 (August 21, 1997).
Decision issued over two years after last formal hearing and filing of proposed findings. Fund sent a letter one month before decision was issued objecting that trier did not have

jurisdiction to decide case based on passage of amendment to § 31-349, but did not cite 120-day provision as a reason for their objection, and did not express concern over the time delay. CRB held this to be a waiver of the 120-day provision. See also, **Ridente**, § 31-349 notes.

Zering v. UTC/Pratt & Whitney, 3321 CRB-6-96-4 (August 8, 1997).
CRB concluded that the respondents waived their right to enforce the 120-day time limit in § 31-300 as they did not object until after the trial commissioner's decision was issued. See also, **Zering**, § 31-294d.

Soto v. Swank Crestline, Inc., 3255 CRB-7-96-1 (July 24, 1997).
Last formal hearing held on June 30, 1995; Fund sought, was granted one-week extension to file brief, but nothing was filed. CRB held that the 120-day period generally begins running on the date the last brief is filed, whether or not done at a pro forma hearing. Since nothing was submitted here, the clock began ticking on June 30, 1995. Decision was issued on January 11, 1996. Fund did not object to lateness of decision until after it was issued, however. CRB ruled that such inaction constituted a waiver of the 120-day provision. See also, **Soto**, § 31-349.

Perri v. Mitchell Motors, 16 Conn. Workers' Comp. Rev. Op. 242, 3259 CRB-6-96-1 (June 24, 1997).
Commissioner should not have entered finding that claimant would not be entitled to further § 31-308a benefits after the date of the formal hearing. Although that statute allows a commissioner to determine the duration of an award, he cannot presume to know that a claimant will not merit benefits in the future, as his condition is still unknown. Policy against cases being presented in a piecemeal fashion relates to delayed litigation of already-ripe issues, not inchoate future claims. See also, **Perri**, § 31-308a.

State v. Champagne, 16 Conn. Workers' Comp. Rev. Op. 245, 3269 CRB-8-96-1 (June 24, 1997).
Case remanded; no written findings or conclusions. See also, **Champagne**, § 31-288.

Sanchez v. Steben's Motors, 3247 CRB-6-96-1 (December 24, 1996).
Award of attorney's fees and interest affirmed. Whether respondents unreasonably contested liability for surgery was factual question for trial commissioner, who found that respondents waited over a year and a half after the treating physician recommended surgery to have an independent medical examination performed on the claimant. Not unreasonable for commissioner to conclude that respondents' examiner's disagreement on issue of causation was untimely and unreasonable ground for contest.

Deoliveira v. Ross & Roberts, Inc., 3033 CRB-4-95-4 (December 13, 1996), **aff'd**, 47 Conn. App. 919 (1997)(per curiam), **cert. denied**, 243 Conn. 965 (1998).
See, **Deoliveira**, § 31-275(1).

Minneman v. Norwich/Board of Education, 2294 CRB-2-95-2 (December 13, 1996), **aff'd**, 47 Conn. App. 913 (1997)(per curiam), **cert. denied**, 243 Conn. 962 (1998).
Commissioner issued decision long after the 120-day time limit had passed. Claimant raised no objection, however, until after the decision was issued and her case was

dismissed. Subsumed within claimant's argument was notion that she chose to await the late decision on her attorney's advice; this amounts to waiver of the 120-day time limit. See also, **Minneman**, § 31-298, § 31-301. Factual findings.

Dichello v. Holgrath Corporation, 15 Conn. Workers' Comp. Rev. Op. 441, 2249 CRB-5-94-12 (September 5, 1996), **aff'd**, 49 Conn. App. 339 (1998).
Commissioner did not issue decision within 120 days of closing of record. CRB noted that former rule requiring demonstration of prejudice was overruled by Supreme Court in Stewart v. Tunxis Service Center, 237 Conn. 71 (1996). However, waiver of the 120-day deadline may still occur. Here, claimant filed a motion to open the record subsequent to the issuance of the late decision, which motion was denied by the trial commissioner. No objection was made to the late decision until amended reasons for appeal were filed nine months after the late decision. CRB held that these actions constituted waiver of the § 31-300 time limit. See also, **Dichello**, § 31-294d, and § 31-300.

Stewart v. Tunxis Service Center, 13 Conn. Workers' Comp. Rev. Op. 135, 1684 CRB-6-93-4 (February 1, 1995), **rev'd**, 237 Conn. 71 (1996).
CRB relied on Stevens v. Hartford, 8 Conn. Workers' Comp. Rev. Op. 134, 831 CRD-1-89-2 (August 6, 1990) and Supreme Court's decision in Besade v. Interstate Security Services, 212 Conn. 441 (1989). CRB held, as claimant failed to assert any claim of prejudice by trier's failure to issue a decision within 120 days, the commissioner's decision will stand if valid in all other respects. Supreme Court reversed CRB and held statutory language was amended in 1985 adding 120-day time period, which provision supports mandatory compliance. Parties may waive noncompliance. Remanded to CRB to determine whether there was a waiver of the right to challenge the trier's delayed decision. Stewart II**.** In decision dated October 30, 1996, Stewart v. Tunxis Service Center, 16 Conn. Workers' Comp. Rev. Op. 69, CRB cited the rules set forth by the Supreme Court regarding waiver, and distinguished the Dichello case (see above), as the claimant's attorney here requested a new formal hearing and objected to the lateness of the decision before it was issued. Case remanded for new hearing.

Artkop v. East Coast Office Systems, Inc., 15 Conn. Workers' Comp. Rev. Op. 419, 2252 CRB-2-94-12 (August 29, 1996).
Commissioner awarded attorney's fees and interest against respondents. Reversed: parties expressly waived claims for costs, and respondents could not be expected to defend issue once it was waived, even if record contained evidence of undue delay.

Kilton v. Cote & Sons, Inc., 15 Conn. Workers' Comp. Rev. Op. 199, 2178 CRB-7-94-10 (April 23, 1996), **dismissed for lack of final judgment**, A.C. 15936 (September 19, 1996).
Trial commissioner initially awarded attorney's fees in Finding and Award. In subsequent articulation the commissioner stated that he did not award attorney's fees to be paid by the respondents, but merely set a cap on the fees to be paid by the claimant. The commissioner found that the respondents were responsible for an "undue delay" in payments of all indemnity benefits, and thus ordered the respondents to pay twelve percent interest on those payments. As an award of interest without an award of

attorney's fees for undue delay pursuant to § 31-300 is not permissible, CRB remanded this matter to the trial commissioner. (*Miles, C.,* **dissenting**) (the language of § 31-300 should be interpreted to allow discretion to a trial commissioner to award either interest or attorney's fees, or both, based upon the unique circumstances of each case).

Byars v. Whyco Chromium, 14 Conn. Workers' Comp. Rev. Op. 386, 2187 CRB-5-94-10 (October 5, 1995), **aff'd**, 40 Conn. App. 938 (1996)(per curiam).
It was within commissioner's discretion to deny attorney's fees and interest. In the instant case, the commissioner did not find that there was a delay in payments or an unreasonable contest, and thus did not award interest. In addition, the commissioner found that the claimant was not entitled to attorney's fees (claimant had discharged his attorney and never paid him for his services).

Palmateer v. Stop & Shop Companies, 14 Conn. Workers' Comp. Rev. Op. 277, 2218 CRB-2-94-11 (September 6, 1995).
Trial commissioner fined respondent $500 for failure to appear at informal hearing. Held: trial commissioner improperly relied on § 31-300 in making fine. Although § 31-288(b) could apply, no formal hearing was held, and no record existed for review--thus making an appeal impossible. Since respondent has right to appeal fine, CRB reversed. No remand.

Liano v. Bridgeport, 14 Conn. Workers' Comp. Rev. Op. 201, 2033 CRB-4-94-5 (July 25, 1995), **appeal and cross appeal dismissed, lack of final judgment**, A. C. 15082 (June 6, 1996), **cert. denied**, 238 Conn. 906 (1996).
Commissioner's finding of unreasonable contest affirmed in light of "outside overtime" decision; further determination necessary regarding attorney's fees. See, **Liano**, § 7-433b, § 31-310. Subsequent decisions at Liano, 3561 CRB-4-97-3 (June 3, 1998), rev'd in part, 55 Conn. App. 75 (1999), cert. denied, 252 Conn. 909 (1999), supra; Liano, 3447 CRB-4-96-10 (January 6, 1998), aff'd, 51 Conn. App. 905 (per curiam), cert. denied, 248 Conn. 907 (1999), § 7-433c; Liano, 3299 CRB-4-95-10 (March 25, 1997), § 31-294c, § 31-297, § 31-301. Factual findings; Liano, 3199 CRB-4-95-10 (March 25, 1997), § 31-279-3, § 31-298, § 31-307.

Owens v. R. R. Donnelley & Sons, 14 Conn. Workers' Comp. Rev. Op. 28, 1892 CRB-2-93-11 (May 3, 1995).
Eleven-month delay in issuance of decision by commissioner is unnecessary and inequitable, but prejudice still must be shown in order to vacate award on grounds of lateness. Affirmed. See also, **Owens**, § 31-307a, and § 31-310. But see, Stewart v. Tunxis Service Center, 237 Conn. 71 (1996).

Cruz v. Sheraton Hartford Hotel, 13 Conn. Workers' Comp. Rev. Op. 308, 1560 CRB-1-92-11 (April 25, 1995).
At time of claimant's 1982 injury, district jurisdiction was still in existence, and 120-day time limit for issuing decisions had not yet been enacted. 1985 amendment of § 31-300 does not require automatic divestiture of jurisdiction in commissioner if no decision reached in 120 days unless prejudice is shown. No prejudice demonstrated here. See also, **Cruz**, § 31-301. Appeal procedure. **But see later cases**.

Grillo v. Prestige Enterprises, Inc., 13 Conn. Workers' Comp. Rev. Op. 311, 1704 CRB-1-93-4 (April 25, 1995).
Where an award of attorney's fees is made, its reasonableness depends on many factors. Here, award corresponded to 20 percent of estimated lost wages, consistent with chairman's fee guidelines. Evidence sufficient to refute contention that commissioner abused discretion. See also, **Grillo**, § 31-310.

Pelletier v. M & M Builders, Inc., 13 Conn. Workers' Comp. Rev. Op. 266, 1740 CRB-5-93-5 (April 19, 1995).
Respondents did not refute claimant's assertion that written approval for discontinuance of benefits was not obtained before payment stopped. Where CRB determined that claimant was properly entitled to benefits, § 31-300 required commissioner to award interest and attorney's fees if payment discontinued without prior written approval. See also, **Pelletier**, § 31-307, and § 31-310.

Sargent v. Rybczyk Plumbing & Heating, 13 Conn. Workers' Comp. Rev. Op. 128, 1974 CRB-6-94-2 (January 31, 1995).
In light of decision upholding commissioner's award, and finding that fee agreement existed entitling claimant's counsel to twenty percent of benefits received as a result of counsel's efforts, CRB had no reason to overturn award of attorney's fees. Claimant failed to place copy of fee agreement in record and did not support allegation that weekly payment ordered by commissioner caused him hardship.

Tyc v. Calabrese Construction Co., 13 Conn. Workers' Comp. Rev. Op. 71, 1529 CRB-5-92-10 (December 29, 1994).
Claim for attorney's fees properly denied where trier found contest by respondents reasonable. Additionally, no basis that interest rate awarded should have been at a higher rate. See also, **Tyc**, § 31-308(a) and § 31-310.

Weglarz v. State/Dept. of Correction, 13 Conn. Workers' Comp. Rev. Op. 35, 1648 CRB-4-93-2 (November 8, 1994).
Unless a party shows they were prejudiced by receipt of trier's finding later than one hundred and twenty (120) days after conclusion of trial proceedings, CRB will not order a new hearing. See also, **Weglarz**, § 31-298. **But see later cases**.

Marchitto v. Hamden Upholstery Co., 12 Conn. Workers' Comp. Rev. Op. 289, 1558 CRB-3-92-11 (June 8, 1994).
CRB affirmed trier's discretionary award of attorney's fees.

Soares v. Glass Industries, 12 Conn. Workers' Comp. Rev. Op. 189, 1377 CRB-3-92-1 (May 4, 1994).
Remanded where trier's finding failed to address claim for interest and attorney's fees although issue was raised below. See also, **Soares**, § 31-297, § 31-307b and § 31-315.

Haugh v. Leake & Nelson, 12 Conn. Workers' Comp. Rev. Op. 201, 1421 CRB-2-92-5 (March 15, 1994).
CRB affirmed trier's finding that respondent's contest of liability was not unreasonable thereby denying claimant's request for attorney's fees and costs. See also, **Haugh**, § 31-284b, § 31-301. Appeal procedure, and § 31-307.

Versage v. Kurt Volk, Inc., 11 Conn. Workers' Comp. Rev. Op. 253, 1313 CRD-3-91-10 (November 17, 1993), **dismissed for lack of final judgment**, A.C. 13072 (February 16, 1994).
Remanded. Trier abused his discretion in ordering respondent insurer to pay interest pursuant to § 31-300 for period prior to the determination of maximum medical improvement and prior to demand for § 31-308 benefits. Also remanded to determine whether an award of interest pursuant to § 31-295(c) is appropriate and whether interest pursuant to § 31-300 or § 31-295(c) should lie against either the employer or insurer or both. Discussion of respondent insurer's challenge to trier's award of interest under the Connecticut Insurance Guaranty Association Act, § 38a-836 to § 38a-853 and the Workers' Compensation Act.

Fletcher v. UTC/Pratt & Whitney, 11 Conn. Workers' Comp. Rev. Op. 182, 1322 CRD-8-91-10 (September 13, 1993).
CRB held even though trier's finding was issued beyond the statutory 120 day period, here, claimant has not alleged any prejudice due to the delay. Therefore, claimant cannot obtain a new hearing. See also, **Fletcher**, § 31-301. Factual findings.

Petta v. Waterbury Hospital, 11 Conn. Workers' Comp. Rev. Op. 161, 1310 CRD-5-91-9 (August 23, 1993).
CRB found trier's failure to award interest was not an abuse of discretion. See also, **Petta**, § 31-298, § 31-299b, § 31-301. Appeal procedure and § 31-308a.

Hunt v. Mirror Polishing and Plating Co., 11 Conn. Workers' Comp. Rev. Op. 61, 1254 CRD-5-91-7 (April 21, 1993).
Remanded to determine which respondents are liable to pay interest and attorney's fee. See also, **Hunt**, § 31-301. Factual findings.

Byars v. Whyco Chromium Company, 11 Conn. Workers' Comp. Rev. Op. 39, 1257 CRD-5-91-7 (March 10, 1993), **dismissed for lack of final judgment**, 33 Conn. App. 667 (1994).
Remanded where record before CRB unclear as to whether or not claimant was represented by counsel in proceedings below. As trier ordered interest on the award, if claimant was represented by an attorney during any part of the proceedings below, then a reasonable attorney's fee must be awarded. See also, **Byars**, § 31-294d, § 31-296, and § 31-301-9. Additional evidence.

Wheeler v. Bender Plumbing Supply of Waterbury, Inc., 10 Conn. Workers' Comp. Rev. Op. 140, 1186 CRD-5-91-3 (June 5, 1992).
Award for attorney's fee affirmed as trier found respondents unreasonably contested liability. Such an award is a matter within the discretion of the trial commissioner.

Miner v. Watertown, 10 Conn. Workers' Comp. Rev. Op. 100, 971 CRD-5-90-1 (April 28, 1992).
Reversed trier's award for 12% interest and attorney's fees as it is not necessary for respondent to present evidence in order to make a reasonable or good faith contest. There must be a finding of fault or neglect or unreasonable contest in order to award interest at a rate higher than that permitted by § 37-3a. As a delay in payment did in fact exist, award for interest is justified at a rate prescribed by § 37-3a. See also, **Miner**, § 31-301. Factual findings, § 31-308(a), and § 31-308(b).

Lynch v. Red Star Express, 10 Conn. Workers' Comp. Rev. Op. 75, 1133 CRD-3-90-11 (March 9, 1992).
Before a commissioner's decision may be set aside due to failure to satisfy § 31-300 time requirements (written award sent after the conclusion of any hearing no later than 120 days after such conclusion) parties must demonstrate how they were prejudiced by the delay. See also, **Lynch**, § 31-301. Appeal procedure.

Holevinski v. State/Southbury Training School, 9 Conn. Workers' Comp. Rev. Op. 215, 988 CRD-5-90-3 (September 12, 1991).
Remanded. CRD unable to determine from finding why interest on temporary total benefits was denied. See also, **Holevinski**, § 31-307, § 31-296.

Cummings v. Twin Manufacturing, Inc., 9 Conn. Workers' Comp. Rev. Op. 199, 1023 CRD-1-90-5 (August 29, 1991), **aff'd**, **rev'd in part**; **further proceedings**, 29 Conn. App. 249 (1992).
Claim for interest and attorney's fees must be heard at hearing below before the CRD can review them. See also, **Cummings**, § 31-294d, § 31-301. Factual findings.

Imbrogno v. Stamford Hospital, 9 Conn. Workers' Comp. Rev. Op. 174, 967 CRD-7-90-1 (August 2, 1991), **aff'd**, **rev'd & remanded in part**, 28 Conn. App. 113 (1992), **cert. denied**, 223 Conn. 920 (1992).
Amount of attorney's fee awarded within trier's discretion where based on unreasonable delay and/or unreasonable contest of liability. CRD affirmed fee awarded based on delay in payment of certain medical claims as no unreasonable contest was found. Appellate Court held § 31-300 allows a discretionary award of both interest and attorney's fees or neither but does not allow an award of one and not the other. Remanded for a further award of interest. See also, **Imbrogno**, § 31-301. Appeal procedure, § 31-301. Factual findings.

Watson v. American Cyanamid, 9 Conn. Workers' Comp. Rev. Op. 90, 911 CRD-8-89-8 (March 1, 1991).
Trial commissioner's award of interest on unpaid payments of compensation affirmed where CRD held respondent's contention of its obligation to not pay pursuant to § 31-299b unconvincing.

Chisham v. Culbro Tobacco, 9 Conn. Workers' Comp. Rev. Op. 36, 909 CRD-1-89-8 (February 1, 1991).
Trial commissioner's decision not issued within 120 days in accordance with § 31-300. See, Stevens v. Hartford, 8 Conn. Workers' Comp. Rev. Op. 134, 831 CRD-1-89-2 (August 6, 1990), infra.

Applebee v. State/Southbury Training School, 8 Conn. Workers' Comp. Rev. Op. 142, 841 CRD-5-89-4 (August 20, 1990).
See, **Applebee**, § 31-294f.

Stevens v. Hartford, 8 Conn. Workers' Comp. Rev. Op. 134, 831 CRD-1-89-2 (August 6, 1990).
Failure to render decision within statutory time limits (120 days) does not deprive trial commissioner of jurisdiction. Further in order to vacate a decision which is proper in all other respects requires a showing of prejudice. See also, **Stevens**, § 31-301. Appeal procedure.

Trantolo v. Trantolo & Trantolo, 8 Conn. Workers' Comp. Rev. Op. 69, 823 CRD-6-89-2 (April 17, 1990).
Attorneys' Fees. Whether an appellant's filing an appeal on the basis of an issue not raised at the trial level is unreasonable delay is a factual determination to be made by the trial commissioner. See also, **Trantolo**, § 31-278, § 31-294c & § 31-301. Appeal procedure.

Tartakovsky v. Sohmer/Pratt & Read, 7 Conn. Workers' Comp. Rev. Op. 46, 666 CRD-8-87 (August 9, 1989).
Award of interest and attorneys fees within trial commissioner's discretion. See also, **Tartakovsky**, § 31-327.

Hicks v. State/Dept. of Administrative Services, 6 Conn. Workers' Comp. Rev. Op. 111, 429 CRD-5-85 (February 23, 1989), **no error**, 21 Conn. App. 464 (1990), **cert. denied**, 216 Conn. 804 (1990).
Commissioner's denial of mandatory interest and attorneys' fees valid where law requiring such awards was enacted after claimant's date of injury. Further an award for attorneys' fees based on unreasonable contest is a matter to be decided by trial commissioner as he is in the best position to assess the weight and credibility of the evidence supporting such claims. See also, **Hicks**, § 31-307, § 31-308(c), § 31-308a.

Besade v. Interstate Security Services, 6 Conn. Workers' Comp. Rev. Op. 83, 593 CRD-2-87 (January 13, 1989), **no error**, 212 Conn. 441 (1989).
Respondents failed to demonstrate how delay in rendering trial commissioner's decision prejudiced them. Subsequent decision at Besade, 12 Conn. Workers' Comp. Rev. Op. 103, 1383 CRB-2-92-2 (February 28, 199), aff'd, 37 Conn. App. 903 (1995).

Beauregard v. Hartford Hospital, 6 Conn. Workers' Comp. Rev. Op. 149, 603 CRD-1-87 (April 21, 1989).
CRD upheld the denial of attorney's fees where delay was not the fault or neglect of the employer, but the result of the complexity of the litigation.

Pokorny v. Getta's Garage, 6 Conn. Workers' Comp. Rev. Op. 161, 716 CRD-7-88-3 (June 2, 1989), **rev'd**, 22 Conn. App. 539 (1990), **rev'd**, 219 Conn. 439 (1991).
Award of interest and attorneys' fees is within the discretion of the trial commissioner and will not be disturbed unless contrary to law or without evidence. Appellate Court reversed and held trial commissioner should have considered interest award under § 31-300 which permits such awards even if delay was not due to fault or neglect of the respondents. Supreme Court then reversed Appellate Court ruling. See also, **Pokorny**, § 31-293.

Fappiano v. Nutmeg Concrete Inc., 6 Conn. Workers' Comp. Rev. Op. 29, 652 CRD-3-87 (September 27, 1988).
Trial commissioner's finding that delay was not due to unreasonable contest was not an abuse of discretion.

McGloin v. Gateway Industries, 5 Conn. Workers' Comp. Rev. Op. 148, 618 CRD-1-87 (July 26, 1988).
Award for attorney's fee due to undue delay is within trial commissioner's discretion.

Carlino v. Danbury Hospital, 5 Conn. Workers' Comp. Rev. Op. 139, 357 CRD-7-84 (July 18, 1988).
Trial commissioner's decision to award interest from date of CRD's decision to reverse denial of compensation, rather than from date of incapacity, is within his discretion.

Delcarmine v. Fire Prevention Service, Inc., 5 Conn. Workers' Comp. Rev. Op. 123, 311 CRD-7-84 (June 27, 1988).
Awards for interest due to undue delay are based on law at time of injury. In the instant matter the applicable law provided that awards for interest were in the trial commissioner's discretion.

Whitney v. Lapoint Garden Center, 5 Conn. Workers' Comp. Rev. Op. 74, 467 CRD-7-86 (April 29, 1988).
Where record showed irrebuttable presumption could lie under § 31-297(b) and no payment of medicals by employer, award for attorney's fees was correctly awarded by trial commissioner.

Bailey v. Guilford, 5 Conn. Workers' Comp. Rev. Op. 47, 464 CRD-3-86 (April 7, 1988).
Matter remanded for additional proceedings to determine if a finding of unreasonable contest was in order.

Carpentino v. Perkins Trucking Co., 5 Conn. Workers' Comp. Rev. Op. 40, 488 CRD-3-86 (April 6, 1988), **no error**, 18 Conn. App. 810 (1989)(per curiam).
Where trial commissioner concluded that benefits were improperly discontinued, attorney's fees and interest must be awarded.

Miner v. Federal Paperboard Co., 4 Conn. Workers' Comp. Rev. Op. 129, 333 CRD-2-84 (December 1, 1987).
Appellant's argument alleging delay in adjudication dismissed.

Neumann v. Southern Conn. Gas Co., 4 Conn. Workers' Comp. Rev. Op. 62, 265 CRD-4-83 (May 8, 1987).
Award for attorney's fees dependent on finding of unreasonable contest.

Marino v. West Haven, 4 Conn. Workers' Comp. Rev. Op. 34, 240 CRD-3-83 (March 16, 1987).
Remanded for further proceedings to determine if unreasonable contest and if attorneys' fees and interest should be awarded.

Raucci v. West Haven, 3 Conn. Workers' Comp. Rev. Op. 94, 233 CRD-3-83 (November 17, 1986).
Matter remanded for further hearings as to an award for attorney's fees and interest where appellant should have withdrawn the appeal and made payments after Connecticut Supreme Court's decision in Bakelaar v. West Haven, 38 Conn. Sup. 359 (1982). See, Bakelaar, § 7-433c.

O'Leary v. New Britain, 3 Conn. Workers' Comp. Rev. Op. 108, 236 CRD-6-83 (December 2, 1986).
Attorney's fees only awarded where there is an unreasonable contest.

Davis v. Dwight Building Co., 2 Conn. Workers' Comp. Rev. Op. 51, 129 CRD-3-82 (May 29, 1984).
Commissioner's decision to award interest for delayed payments is discretionary. Where a 20 year delay existed, failure to award interest was an abuse of discretion.

Robinson v. Allied Grocers Cooperative, Inc., 1 Conn. Workers' Comp. Rev. Op. 132, 68 CRD-1-81 (July 13, 1982), **aff'd**, 39 Conn. Sup. 386 (1983).
Finding of unreasonable contest is discretionary with commissioner. Dicta discussion of counsel fees.

Graf v. Genovese and Massaro, Inc., 1 Conn. Workers' Comp. Rev. Op. 129, 59 CRD-3-81 (July 13, 1982).
Remanded for further proceeding to determine what attorney's fees and interests should be permitted where appeal approached the unreasonable.

Sec. 31-301. Appeal procedure.

Miller v. Blue Bell Mattress Company, Inc., 4889 CRB-1-04-12 (2004).
Appeal from trial commissioner's order directing respondent to pay for commissioner's exam remanded for a formal hearing or other appropriate action. No record exists for board to properly consider appeal.

Byrd v. Bechtel/Fusco, 4765 CRB-2-03-12 (December 17, 2004).
Pro se claimant filed Reasons for Appeal nine days late. No prejudice alleged or demonstrated. CRB denied motion to dismiss appeal. See, **Byrd**, § 31-279(c), § 31-301. Factual findings.

Cichy v. MTU Aero Engines North America, 4882 CRB-6-04-10 (December 2, 2004).
Remanded for a formal hearing or other appropriate action where § 31-308a order is issued as a result of an informal hearing.

Horobin v. West Haven, 4724 CRB-3-03-9 (December 2, 2004).
CRB accepted late Reasons of Appeal where neither appellee (under Practice Book § 66-8) nor CRB took action seeking dismissal of appeal, and no prejudice to parties was apparent from the delayed filing. See, **Horobin**, § 31-296. Voluntary agreements (approval of), § 31-300, § 31-301. Factual findings, § 31-307, § 31-349, § 31-298.

Ginsberg v. Combined Insurance Co., 4875 CRB-6-04-10 (November 17, 2004).
Trial commissioner's order vacating an earlier approval of a Form 36 was issued as a result of a pre-formal hearing. Remanded to create a record.

Lopez v. Lowe's Home Improvement Center, 4871 CRB-6-04-10 (November 1, 2004).
Trial commissioner's § 31-308a order issued as a result of an informal hearing. Remanded for a formal hearing or other appropriate action. Absent a record, the CRB cannot properly consider an appeal.

Donaldson v. Continuum of Care, Inc., 4581 CRB-3-02-10 (October 6, 2004).
CRB denied motion of attorney to withdraw as claimant's counsel on appeal. Situation might still be resolved productively, and effective replacement counsel was difficult or impossible for claimant to obtain.

Greene v. State/UCONN Health Center, 4749 CRB-1-03-11 (September 28, 2004), **appeal dismissed**, A.C. 26004 (January 27, 2005).
See, **Greene**, § 31-296. Prior decision at Greene, 4285 CRB-1-00-8 (September 21, 2000).

Zarodkiewicz v. Stamford, 4837 CRB-7-04-7 (August 31, 2004).
Appeal from trial commissioner's informal disfigurement evaluation remanded for a formal hearing or other appropriate action. A record must exist before the board can properly consider an appeal.

Feliciano v. Bristol, 4834 CRB-6-04-7 (August 26, 2004).
Sections 31-288 and 31-300 order imposed a fine for non-appearance at an informal hearing. Remanded as no record exists for the board to properly consider appeal.

Belanger v. J & G Belanger Concrete Construction, 4684 CRB-6-03-6 (July 28, 2004).
CRB declined to dismiss appeal where respondents-appellants' brief was captioned "Motion to Reverse Finding and Award" and accompanied by "Memorandum of Law in Support of Appeal." Commission has no rule in place regarding captioning of briefs, and it is not CRB practice to demand strict adherence to terms of Practice Book § 67-4 and § 67-5. Memorandum of Law adequately set forth ground for appeal, and substantially satisfied requirement that appellant file a brief. See also, **Belanger**, § 31-301. Factual findings.

Bidoae v. Hartford Golf Club, 4693 CRB-6-03-7 (June 23, 2004).
CRB will not address issue decided in earlier appeal of same case. See also, **Bidoae**, § 31-307. Prior decision at Bidoae, 4424 CRB-6-01-8 (June 27, 2002).

Bonauito v. Westport, 4811 CRB-4-04-5 (June 9, 2004).
Sec. 31-308a order issued as the result of an informal hearing. Remanded for formal hearing or other appropriate action where there is no record to properly consider the appeal.

Kuelesza v. O & G Industries, 4692 CRB-4-03-7 (May 25, 2004).
CRB refused to reverse trier's decision based on a scrivener's error. See also, **Kuelesza**, § 31-301. Factual findings.

Papapietro v. Bristol, 4674 CRB-6-03-6 (May 3, 2004).
CRB held commissioner not required to rule on hypothetical factual situation. See also, **Papapietro**, § 31-294d . § 31-301. Factual findings.

Hummel v. Marten Transport, Ltd., 4667 CRB-5-03-5 (May 3, 2004).
CRB refused to grant Motion to Dismiss based on late filing of Motion to Correct and failure to file Reasons for Appeal where the trial commissioner ruled on Motion to Correct and respondents filed document delineating its reasons for appeal. Claimant did not prove prejudice. See also, **Hummel**, § 31-301. Factual findings.

Bonito v. ESPN/Walt Disney Co., 4789 CRB-8-04-2 (March 22, 2004).
Appeal from trial commissioner's denial of claimant's § 31-290a claim dismissed for lack of jurisdiction. Appeal from trial commissioner's decision must be filed with the Appellate Court.

DeMatteo v. East Haven, 4778 CRB-3-04-1 (March 3, 2004).
Remanded for a formal hearing where § 31-308a order is issued as the result of an informal hearing.

Pastor v. Torre Tile Distributors, Inc., 4634 CRB-8-03-2 (February 23, 2004).
Panel granted Motion to Dismiss appeal for failure to prosecute with due diligence.

Rurak v. Sweet Life Inc., 4630 CRB-1-03-2 (February 6, 2004).
Although pro se appellants are given great latitude in terms of complying with appellate procedures, some document should be filed that would apprise the opposing party of grounds for the appeal. See also, **Rurak**, § 31-296, § 31-301-9. Additional evidence.

Bazzano v. Adecco Employment Services, 4750 CRB-1-03-11 (January 5, 2004).
Remanded for formal hearing or other appropriate action where trial commissioner's order imposing sanctions pursuant to § 31-300 is issued absent a formal hearing on the record.

Pelletier v. R & L Acoustics, Inc., 4596 CRB-6-02-12 (November 26, 2003).
Petition for review was filed after twenty-day appeal period expired, requiring CRB to dismiss appeal. "Inadvertence, mistake or neglect" by claimant's counsel in accidentally

misfiling the commissioner's decision was not sufficient ground to constitute failure of notice under Kudlacz v. Lindberg Heat Treating Co., 250 Conn. 581 (1999).

Melendez v. Valley Metallurgical, 4178 CRB-2-00-1 (November 19, 2003), **rev'd**, 86 Conn. App. 880 (2005).
Trier issued finding and award on January 14, 2000. CRB reversed in part with orders for further proceedings. Melendez v. Valley Metallurgical, 4178 CRB-2-00-1 (May 1, 2001). Appellate Court dismissed claimant's appeal on July 11, 2001, for lack of final judgment. Formal hearing was held on remand, and trier issued supplemental finding and award on January 28, 2003. Claimant did not appeal second decision to CRB, instead appealing directly to Appellate Court, which again dismissed for lack of final judgment. Claimant then moved to have CRB reopen 2001 decision and reissue consolidated decision incorporating its earlier ruling and trier's subsequent award. Held: Carlino v. Danbury Hospital, 1 Conn. App. 142 (1984), provides that CRB retains jurisdiction over appeals where remand proceedings require trier to exercise fact-finding discretion. Claimant is not required to file subsequent appeals from supplemental findings in order to preserve initial appeal. CRB granted motion to reopen judgment for limited purpose of reconfirming prior decision, along with decisions on subsequent motions, and to incorporate into its decision trier's January 28, 2003 findings, which stand as final determination of remand issues. Appellate court reversed, distinguishing Carlino and holding that board lacked statutory authority to consider motion to reopen decision. Prior decision at Melendez, May 1, 2001, § 31-278, § 31-298, § 31-300, § 31-303; see also May 24, 2001 ruling on motion for articulation, § 31-301. Appeal procedure.

Cutler v. S. Carpenter Construction Co., 4737 CRB-6-03-10 (November 3, 2003).
Remanded where trial commissioner's rulings are issued absent a formal hearing on the record.

Hudson v. State/Dept. of Correction, 4582 CRB-3-02-11 (October 31, 2003).
CRB remanded trier's finding on the issue of unreasonable contest as no evidentiary record existed. See also, **Hudson,** § 5-142(a).

Vetre v. State/Department of Administrative Services, 4728 CRB-6-03-9 (October 8, 2003).
Ruling denying claimant's Motion to Disqualify issued absent a Formal Hearing on the record. Remanded to create record. Prior decisions at Vetre, 3948 CRB-6-98-12 (February 14, 2000), § 31-298, § 31-301. Appeal procedure, and Vetre, 3443 CRB-6-96-10 (January 16, 1998), § 31-298, Vetre, 3443 CRB-6-98-12 (November 28, 2000).

Threlfall v. Connecticut Institute For The Blind, 4727 CRB-6-03-9 (October 8, 2003).
Remanded for formal hearing or other appropriate action where § 31-308a order is issued as the result of an informal hearing.

Rios v. Boehle's Express, 4726 CRB-6-03-9 (October 8, 2003).
Order pursuant to §§ 31-288 and 31-300 for non-appearance at a duly noticed informal hearing. Remanded to create record.

Paradis v. New England Drywall Company, Inc., 4680 CRB-6-03-6 (October 8, 2003).
Remanded where trial commissioner's ruling on objection to scheduling approval of stipulation hearing is issued absent a formal hearing on the record.

Pantanella v. Enfield Ford, 4721 CRB-1-03-9, 4720 CRB-1-03-9 (September 18, 2003).
Orders pursuant to § 31-308a, § 31-300 and, § 31-288 issued as a result of an informal hearing. Remanded for further proceedings where no evidentiary record was created.

Carmody v. Waterbury, 4712 CRB-5-03-8 (September 16, 2003).
Remanded for formal hearing or other appropriate action where § 31-308a order is issued as a result of an informal hearing.

Aulenti v. Darien, 4571 CRB-7-02-9 (September 6, 2003).
CRB could not review granting of § 31-294c motion to preclude, as trier's order was issued sans a formal hearing, and no evidentiary record was created. Remanded**.**

Mackiewicz v. Aetna Life & Casualty, 4558 CRB-8-02-8 (August 14, 2003).
CRB dismissed appeal as the appellant Second Injury Fund failed to provide a transcript. CRB did not reach the issue raised by the Fund as to whether it must reimburse for concurrent employment pursuant to § 31-310 when medical evidence arguably supported apportionment under 31-299b for repetitive trauma to which some portion of liability might lie against the concurrent employer.

Donaldson v. Continuum of Care, Inc., 4581 CRB-3-02-10 (July 29, 2003).
CRB denied the claimant's attorney's request to withdraw his appearance.

Travis v. Forestville Lumber Company, Inc., 4690 CRB-6-03-6 (July 9, 2003).
Remanded for a formal hearing or other appropriate action where order imposing sanctions pursuant to §§ 31-288 and 31-300 is issued as the result of an informal hearing.

Ortiz v. Mosey's, Inc., 4681 CRB-1-03-5 (July 9, 2003).
Trial commissioner issued a ruling without a formal hearing on the record. Remanded for a formal hearing or other appropriate action.

Martinez v. Cellu Tissue Corporation, **4668** CRB-1-03-5 (June 25, 2003).
Appeal remanded for formal hearing or other appropriate actions where trier's order pursuant to §§ 31-302 and 31-308a are issued as the result of an informal hearing.

Mace v. Tradesource, Inc., 4664 CRB-6-03-5 (May 14, 2003).
Secs. 31-288, 31-300, and 31-308a orders issued as the result of an informal hearing. Matter remanded for a formal hearing or other appropriate action where there is no record for the board to properly consider the appeal.

Mason v. Dale Construction, Inc., 4476 CRB-3-01-2 (April 28, 2003).
Claimant died several days prior to issuance of trier's Finding and Dismissal. Trial counsel filed petition for review, but had no authority to proceed further. At time of oral argument, no estate had been created, nor were probate proceedings pending. Respondents moved to dismiss for failure to file Reasons of Appeal. CRB granted request for dismissal of appeal, but did so without prejudice against rights of possible future estate administrator to reopen petition for review. Section 45-330 C.G.S. allows probate action to be commenced up to ten years after date of decease. Given absence of estate, it is impossible to meaningfully notify claimant of adverse decision, and dismissal with prejudice would be inappropriate. Prior decision at Mason, 4354 CRB-3-01-1 (November 7, 2001).

Yuille v. Bridgeport Hospital, 4525 CRB-4-02-5 (April 28, 2003).
CRB declined to dismiss petition for review for failure to file Reasons of Appeal within extended time period granted by board. Despite timely motion to dismiss, CRB still retains discretion over whether to dismiss appeal. No prejudice was shown from delay, as oral argument was held as originally scheduled, and respondents explained reason for needing second, two-week extension of time. See also, **Yuille**, § 31-307, § 31-307c. Prior decision at Yuille, 3735 CRB-4-97-12 (June 10, 1998), § 31-301. Appeal procedure, § 31-301c, § 31-327.

Pastorelli v. Pomerantz Staffing Services, 4641 CRB-1-03-3 (April 16, 2003).
CRB remanded matter for a formal hearing or other appropriate action as the result of the trial commissioner's order pursuant to § 31-288 issued subsequent to an informal hearing.

Krajewski v. Atlantic Machine Tool Works, Inc., 4500 CRB-6-02-3 (March 7, 2003).
Various issues not raised in appeal papers were mentioned for benefit of pro se claimant, but were not extensively considered by CRB. See, **Krajewski**, § 31-278, § 31-284b, § 31-290a, § 31-301. Factual findings, § 31-301-9, § 31-312, § 31-313, § 31-315; prior decisions at Krajewski, 15 Conn. Workers' Comp. Rev. Op. 44, 2120 CRB-6-94-8 (November 28, 1995), § 31-308a; Krajewski, 11 Conn. Workers' Comp. Rev. Op. 54, 1387 CRD-6-92-2 (April 1, 1993), § 31-290a.

Mack v. State/Department of Correction, 4589 CRB-1-02-11 (January 8, 2003).
Section 31-308a order issued as result of informal hearing, so no record existed for proper review under 31-301(a). Remanded for formal hearing or other appropriate action.

Stevenson v. Edward W. Stevenson & Sons, 4480 CRB-8-02-1 (January 8, 2003).
Matter remanded where trier made assumption as to the date of the first manifestation of symptom rather than factual finding. See, **Stevenson**, § 31-294c, § 31-306.

Bombardier v. CT Valley Fitness Center, 4475 CRB-6-02-1 (November 20, 2002).
Claimant-appellant failed to file Motion to Correct. Where basis of appeal was omission of allegedly undisputed facts that trier might have drawn from evidence, CRB affirmed

trier's determination that said evidence was not credible. See also, **Bombardier**, § 31-301. Factual findings.

Downer v. Mark IV Construction, Inc., 4462 CRB-3-01-11 (November 15, 2002).
CRB granted motion to dismiss appeal where pro se claimant's letter to trier, which was construed as petition for review, was filed one day after twenty-day appeal period had expired. In dicta, board also explained for claimant's benefit that evidence in record supported dismissal of total disability claim, and CRB could not reverse.

Chung v. Wal-Mart, 4474 CRB-2-02-1 (November 13, 2002).
Respondents appealed from trier's imposition of fine pursuant to § 31-288(b)(2) for failure to appear at informal hearing. As fine was imposed at informal hearing, CRB remanded matter to give respondents opportunity to prepare an evidentiary record and present their claims at a formal hearing. See also, **Chung**, § 31-288(b)(2), § 31-297.

Conerly v. IBM, 4567 CRB-7-02-9 (November 7, 2002).
Remanded where formal hearing was conducted off the record. No exhibits or transcript exist to properly consider appeal pursuant to § 31-301(a). See subsequent decision at Conerly, 4619 CRB-7-02-12 (December 29, 2003), § 31-294c.

Smedley v. State/Department of Mental Retardation, 4461 CRB-5-01-11 (October 25, 2002), **rev'd on other grounds**, 270 Conn. 32 (2004).
Where originals of documents could not be located, parties submitted copies and agreed to same in writing. See also **Smedley**, § 31-308a.

Mckim v. C & S Wholesale Grocers, Inc., 4565 CRB-1-02-9 (October 10, 2002).
Section 31-308a order issued as result of an informal hearing. Without a record, case was not ripe for appellate review. Remanded for formal hearing or other appropriate action.

Kovalik v. E. Stewing Movers, Inc., 4556 CRB-7-02-8 (August 29, 2002).
CRB dismissed petition for review where no formal hearing had yet been held to allow creation of evidentiary record. Respondents had filed appeal from Memorandum of Decision that expressed trier's intent to interpret law surrounding § 31-310 in a certain manner should the facts establish that injury was a new injury rather than a recurrence, but said facts had not yet been found, and CRB does not render advisory opinions.

Iciak v. Cary Insulation/New England Building Products, 4539 CRB-8-02-6 (July 17, 2002).
Appeal from trier's denial of respondents' motion to dismiss remanded where no record exists for board to review.

Williams v. Merestone Construction, 4436 CRB-4-01-9 (July 3, 2002), **appeal dismissed**, A.C 23281 (October 24, 2002), A.C. 24164 (March 25, 2004), **cert. denied**, 269 Conn. 905 (2004).
Board dismissed pro se claimant's appeal as late where nothing was filed until the 11th day, when the claimant filed a Motion to Correct. Claimant did not appeal from denial of Motion to Correct. In his appeal, claimant was addressing legal issues of trier's decision.

As claimant failed to appear at oral argument and failed to file reasons of appeal, board also dismissed appeal for failure to prosecute. Even if board were to address merits, trier's decision would be affirmed, as neither § 31-293 nor § 31-355 require that the Fund cover an unpaid § 31-290a claim. See also, **Williams**, § 31-293, § 31-355(b).

Kenyon v. General Dynamics Corp./Electric Boat Division, 4521 CRB-1-02-4 (June 4, 2002).
Where claimant filed written hearing request on "Motion to Correct" following CRB dismissal of prior appeal on ground that board lacked jurisdiction over appeal from § 31-290a ruling, and trier treated hearing request as Motion to Correct (which was denied), CRB ruled that appeal from that denial must be dismissed. Not only does CRB lack jurisdiction over § 31-290a appeals, it also need not rule on a moot issue. As "Motion to Correct" was not a valid issue for hearing, this sequence of events had no possible disposition with legal significance. See also, **Kenyon**, § 31-290a. Prior decision at Kenyon, 4497 CRB-1-02-3, § 31-290a.

Hashmi v. Dan's Shell of West Hartford, 4524 CRB-1-02-5 (May 30, 2002).
Section 31-301(b) requires CRB to review trier's decision on record of proceedings below. Because there was no formal hearing in this case, there were neither exhibits nor a transcript for CRB to review on appeal. Case remanded.

Drew v. Sears Roebuck & Co., 4400 CRB-7-01-5 (May 2, 2002).
Pro se claimant's failure to request transcript of formal hearing prevented board from reviewing trial proceedings. Though board shows leniency to pro se claimants insofar as possible (i.e., construing Reasons of Appeal as a brief), claimant is ultimately responsible for providing adequate record for review. See also, **Drew**, § 31-301-9, § 31-315.

Sellers v. Sellers Garage, Inc., 4391 CRB-5-01-5 (April 26, 2002), **aff'd**, 80 Conn. App. 15 (2003), **cert. denied**, 267 Conn. 904 (2003).
Pro se claimant failed to file Motion to Correct, which prevented CRB from being able to question whether trier misinterpreted evidence, or failed to consider other relevant evidence. Numerous claims of error affected. See also, **Sellers**, § 31-296 Voluntary agreements (discontinuance of payments).

Gomes v. Bridgeport, 4510 CRB-4-02-3 (April 25, 2002).
Section 31-288(b) order issued as the result of an informal hearing. Matter not ripe for appellate review where no record exists. Case remanded.

Woomer v. Home Depot 4507 CRB-2-02-3 (April 25, 2002).
Section 31-288(b) order issued as the result of an informal hearing. Matter not ripe for appellate review where no record exists. Remanded for formal hearing or other appropriate action.

Bellman v. Christy's Market, 4387 CRB-6-01-5 (March 25, 2002).
Board dismissed pro se claimant's appeal for failure to prosecute with proper diligence pursuant to Practice Book § 85-1 where claimant failed to file reasons of appeal, motion to correct, or brief. Although claimant was represented by counsel at trial level, CRB

noted that correspondence in the record indicated that her attorney would not represent her in her appeal and advised her to obtain other counsel. Also, claimant did not argue that her attorney should have appeared at oral argument. Board added that. even if it were to consider merits of appeal, it would necessarily affirm trier's credibility determination that claimant's alleged spinal cord and brain injuries were not caused by a compensable fall-down injury. See also, **Bellman**, § 31-301. Factual findings.

Vetre v. State, 4378 CRB-6-01-4 (March 14, 2002).
CRB affirmed trier's decision to deny respondent extension of time to file Motion to Correct. Respondent's counsel missed formal hearing on proper amount of attorney's fees awarded for unreasonable contest, and did not show that any effort was made to obtain transcript of that hearing or affidavits of claimant's counsel until after trier released his decision. No abuse of discretion. CRB also declined to address issues that had been discussed in earlier CRB opinions. Prior decisions at Vetre, 3443 CRB-6-98-12 (November 28, 2000), § 31-297, § 31-298, § 31-300, § 31-307; Vetre, 3948 CRB-6-98-12 (February 14, 2000), § 31-298, § 31-301. Appeal procedure; and Vetre, 3443 CRB-6-96-10 (January 16, 1998), § 31-298. Subsequent decision at Vetre, 4728 CRB-6-03-9 (October 8, 2003).

Puchala v. Connecticut Abatement Technologies, 4232 CRB-4-00-4 (January 30, 2002).
Board dismissed respondent's appeal, which became moot when a Full and Final Stipulation was approved by a Commissioner. Board took note that respondent had not withdrawn its appeal as requested. Prior decision at Puchala, 3859 CRB-4-98-7 (September 27, 1999), § 31-275(9), § 31-291.

Marcoux v. Allied Signal, 4366 CRB-4-01-3 (January 16, 2002).
Claimant's failure to file Motion to Correct limited ability of CRB to review factual findings, as trier has sole authority to reconsider impressions drawn from evidence. See also, **Marcoux**, § 31-301. Factual findings.

DeFelippi v. Wal-Mart Stores, Inc., 4349 CRB-5-01-1 (January 15, 2002).
CRB denied motion to dismiss appeal where petition for review was faxed to district office on last day of appeal period, and original petition for review plus four copies arrived only one day later. See also, **DeFelippi**, § 31-294d.

Noble v. Allstate Insurance Co., 4074 CRB-5-99-7, 4096 CRB-5-99-7 (January 10, 2002).
Appeals filed in effort to transfer liability to Second Injury Fund were rendered moot where prior appeal addressed merits of case and CRB affirmed trier's finding that claimant failed to sustain burden of proving that mental stress and physical illness were caused by workplace harassment. Prior decision at Noble, 4157 CRB-5-9-12 (July 28, 2000), aff'd, 67 Conn. App. 160 (2001). Section 31-301. Factual findings.

Robare v. Robert Baker Companies, 4328 CRB-1-00-12 (January 2, 2002).
Board explained that it has subject matter jurisdiction over appeal from denial of Motion to Correct where nothing was filed within ten days of the initial decision. However,

board expressed reluctance to allow "back door" route to review of merits, and thus held that its scope of review was necessarily limited to reviewing errors in denial of Motion to Correct. See also, **Robare**, § 31-301-4.

Lemelin v. MRC Bearings, Inc., 4320 CRB-5-00-12 (December 27, 2001).
Medical care provider's appeal was late, as it was not filed within ten days of Finding and Dismissal as required by § 31-301(a). Provider contended that he did not receive decision within ten-day appeal period. Record corroborated this claim, indicating that copy of decision was not sent to provider until he telephoned district office, at which time it was mailed to him via certified mail. Accordingly, appeal was deemed timely, as provider filed his appeal within ten days after decision was sent to him. See also, **Lemelin**, § 31-294d.

Fiamma v. Moliterno Stone Sales, 4465 CRB-1-01-12 (December 20, 2001).
Section 31-288(b) order issued as the result of an informal hearing. Matter not ripe for appellate review where no record exists. Remanded for formal hearing or other appropriate action.

Hatt v. Burlington Coat Factory, 4326 CRB-2-00-12 (December 19, 2001), **aff'd**, 263 Conn. 279 (2003).
Board declined to dismiss appeal where appellant did not receive certified letter containing decision until one month after award was issued, even though appellant received a fax copy of the decision on the ninth appeal day. Notice must be provided by certified mail under § 31-321, and board declined to hold that a lesser form of notice satisfied this requirement and triggered appellant's obligation to respond by close of tenth day. See also, **Hatt**, § 31-299b, § 31-349.

Mele v. Hartford 4453 CRB-1-01-9 (November 30, 2001).
Trier's order pursuant to § 31-288 and § 31-300 issued as result of informal hearing. Absent a record, appeal is not ripe for review. Remanded for formal hearing or other appropriate action.

Somsky v. Bridgeport Hospital Foundation, Inc., 4336 CRB-4-01-1 (November 15, 2001).
Respondent failed to prosecute appeal from decision on § 31-290a claim and attorney's fees. CRB dismissed appeal for lack of jurisdiction insofar as it concerned merits of § 31-290a claim, and for failure to prosecute pursuant to Practice Book § 85-1 insofar as it might have sought to challenge attorney's fee award. See also, **Somsky**, § 31-290a.

McCall v. State/University of Conn./Storrs 4451 CRB-2-01-10 (November 13, 2001).
Section 31-288(b) order issued as the result of an informal hearing. Matter not ripe for appellate review where no record exists. Remanded for formal hearing or other appropriate action.

Mason v. Dale Construction, Inc., 4354 CRB-3-01-1 (November 7, 2001).
CRB had jurisdiction over claimant's appeal from denial of motion to preclude, which ruling was made during formal hearing. Respondents argued that it was premature for board to consider claimant's appeal, as trier had not yet issued any findings of fact.

Board determined it had jurisdiction under § 31-301(a), which allows it to hear an appeal from "a decision of the commissioner upon a motion;" CRB has held that this contemplates some jurisdiction over "interlocutory rulings in the districts." See also, **Mason**, § 31-284(a), § 31-298, § 31-294c. Subsequent decision at Mason, 4476 CRB-3-01-2 (April 28, 2003).

Napolitano v. Bridgeport, 4388 CRB-4-01-5 (October 22, 2001).
Attorney's motion to withdraw as counsel granted where it appeared confidence and trust between claimant and his lawyer had eroded.

Bergin v. State/Department of Correction, 4200 CRB-8-00-3 (August 23, 2001), **aff'd**, 75 Conn. App. 591 (2003), **cert. denied**, 264 Conn. 903 (2003).
Claimant failed to file timely appeal from Finding and Dismissal, but approximately two months later filed Motion to Reopen, which trier denied. Board explained that it had jurisdiction only over denial of Motion to Reopen, and could not consider merits of Finding and Dismissal. See also, **Bergin**, § 5-145a, § 31-315.

Taylor v. Ron Fournier Builders, 4257 CRB-5-00-6 (July 30, 2001).
Pro se claimant's appeal was dismissed for failure to prosecute under Practice Book § 85-1, as nothing was filed beyond petition for review. See also, **Taylor**, § 31-355, § 31-294f.

Barretta v. Thermal Acoustics, Inc., 4142 CRB-3-99-11 (July 12, 2001).
Board noted that claimant's appeal appeared to be untimely, but issue of timeliness had not been addressed by parties. Thus, because claimant-appellant did not have opportunity to address timeliness of appeal, board explained that even if it were to consider merits of appeal, it would affirm trier. See also, **Barretta**, § 31-301. Factual findings.

Christoforo v. Christoforo's Northford Gardens, 4260 CRB-3-00-6 (July 2, 2001).
Board denied Motion to Dismiss where claimant's Motion to Correct was filed within the ten-day appeal period. See also, **Christoforo**, § 31-294c, § 31-301. Factual findings,§ 31-301-4.

Porter v. Wallingford, 4273 CRB-8-00-7 (June 21, 2001).
Trial counsel filed late petition for review, noting on petition that mail had been delayed due to change in his office address. He was also placed on inactive status under Practice Book § 2-58 due to illness, and a trustee was appointed for his clients. Trustee requested 90-day extension of "all dates" to allow distribution of attorney's files to new counsel. Six months passed, during which nothing more was filed on claimant's behalf. CRB dismissed appeal for failure to prosecute in a diligent manner under Practice Book § 85-1, and also on ground that appeal was, on its face, filed in untimely fashion. Claimant would have burden of offering evidence to CRB to show that counsel failed to receive notice of commissioner's decision within ten days, thereby extending appeal period pursuant to Kudlacz v. Lindberg Heat Treating Co., 250 Conn. 581 (1999).

Cartagena v. Electroflex Heat, Inc., 4363 CRB-1-01-3 (June 6, 2001).
Board dismissed respondent's appeal from Finding and Award in which trier found that respondent had violated § 31-290a. Appeal dismissed, as CRB lacks jurisdiction over appeals arising from § 31-290a rulings.

Gawlik v. Stanley Hand Tools, 4303 CRB-6-00-10 (June 6, 2001).
Subsequent to filing of appeal, claim was settled pursuant to an approved Full and Final Stipulation. As claimant's appeal became moot, and it was not withdrawn as requested, CRB dismissed appeal.

Searles v. Town of West Hartford, 4396 CRB-1-01-5 (June 6, 2001).
CRB dismissed claimant's appeal from Finding and Dismissal of § 31-290a claim, as CRB lacks jurisdiction over such appeals.

Ciocci v. Morrison Knudsen, Inc., 4244 CRB-1-00-5 (June 1, 2001).
Appellant's failure to file Motion to Correct curtailed ability of board to scrutinize trier's factual findings, and absence of transcript from formal hearing prevented CRB from using parties' discussion to clarify meaning of trier's ambiguous finding. See also, **Ciocci**, § 31-301. Factual findings, § 31-310, § 31-315.

Melendez v. Valley Metallurgical, 4178 CRB-2-00-1 (May 24, 2001), **appeal dismissed**, A.C. 23921 (May 14, 2003), **cert. denied**, 266 Conn. 904 (2003).
CRB construed "Motion to Correct Opinion" of CRB as motion for articulation of its decision in Melendez, 4178 CRB-2-00-1 (May 1, 2001). No "corrections" ordered. See also, **Melendez**, § 31-278, § 31-298, § 31-300, § 31-303. Related decision in Melendez, 4178 CRB-2-00-1 (November 19, 2003), rev'd, 86 Conn. App. 880 (2005)(no jurisdiction to rule on motion to reopen CRB decision), supra.

Schreck v. Stamford, 3322 CRB-7-96-4 (May 17, 2001), **rev'd on other grounds**, 72 Conn. App. 497 (2002).
Absence of Motion to Correct curtailed ability of board to scrutinize subordinate facts found. See **Schreck**, § 31-293, § 31-300. Prior decision at Schreck, 3322 CRB-7-96-4 (September 23, 1997) (dismissal order), rev'd, 51 Conn. App. 92 (1998), rev'd on different grounds, 250 Conn. 592 (1999), appeal reinstated, 3322 CRB-7-96-4 (July 21, 2000), infra.

Simpson v. Mediplex of Wethersfield, 4210` CRB-6-00-3 (May 4, 2001).
Board dismissed claimant's appeal for failure to prosecute with proper diligence pursuant to Practice Book § 85-1 where pro se claimant failed to file motion to correct, reasons of appeal, or brief. Board also noted that even if it were to consider merits of appeal, it would affirm trier's decision, which was based on evidentiary credibility.

Spak v. Shelton Lakes Residence, 4372 CRB-4-01-3 (April 26, 2001).
Board dismissed claimant's appeal insofar as it related to § 31-290a claim. However, claimant also alleged that trier erred in denying her request for interest and attorney's fees, which was a separate issue. That portion of appeal must be heard. Subsequent decision at Spak, 4372 CRB-4-01-3 (December 7, 2001), § 31-300.

Shahid v. AAA Nursing Care, 4227 CRB-4-00-4 (March 8, 2001).
CRB dismissed pro se claimant's appeal pursuant to Practice Book § 85-1, as no supportive documents had been filed.

Kelley v. Venezia Transport Services, 4184 CRB-2-00-2 (March 8, 2001).
Absence of Motion to Correct prevented CRB from scrutinizing factual findings on review. See also, **Kelley**, § 31-278, § 31-294c.

Garcia v. Tully, 4209 CRB-7-00-3 (March 1, 2001).
Respondent's attorney received trier's decision four or five days after it was sent, but failed to file petition for review until either twelve or thirteen days later. Board held that it did not matter if Commission employee deposited notice of ruling in box outside post office instead of placing it directly in custody of postal worker, as it was sent certified either way, and this minor variance in procedure does not appear to have prejudiced the respondent. Appeal dismissed as late. Also, in footnote CRB noted that filing of motion to correct did not serve to extend initial appeal period where separate petition for review was filed from denial of that motion, and respondent was primarily aggrieved by award itself. See also, **Garcia**, § 31-301. Factual findings.

Warren v. Federal Express Corp., 4163 CRB-2-99-12 (February 27, 2001).
Pro se claimant filed untimely reasons of appeal. CRB denied respondent's motion to disregard that document, as rules of procedure are often relaxed for pro se parties, and respondent showed no prejudice from delay. See also, **Warren**, § 31-301. Factual findings, § 31-301-9.

Iannarone v. State/Dept. of Mental Retardation, 4310 CRB-7-99-11 (December 6, 2000).
Trial commissioner's order was issued as the result of an informal hearing. Absent a record of the proceedings below, CRB cannot properly consider appeal under § 31-301. Case remanded for a formal hearing or other appropriate action. Subsequent decision at Iannarone, 4138 CRB-7-99-10 (June 15, 2001), § 31-308a, § 31-310, § 31-314.

Mursko v. R & K Spero, 4159 CRB-3-99-12 (November 30, 2000).
Pro se claimant filed a late petition for review, and did not file any supporting documentation such as brief or Reasons of Appeal. No allegation that decision was received after ten-day appeal period had expired. Respondents' Motion to Dismiss granted under § 31-301(a) and Practice Book § 85-1.

Chang v. Pizza Hut of America, Inc., 4122 CRB-6-99-9 (November 28, 2000).
Appellant Second Injury Fund failed to file Reasons for Appeal until several months after its extension for filing lapsed. By then, CRB had scheduled hearing to show cause why appeal should not be dismissed under Practice Book § 85-1. Though panel was not sympathetic to Fund's reasons for the delayed filing, no overt prejudice to respondents' defense of appeal was shown. CRB thus refrained from dismissing appeal.

Rowe v. Yale University, 4124 CRB-3-99-9 (November 27, 2000).
CRB dismissed respondent's appeal following motion to withdraw appeal. However, CRB also awarded sanctions in the form of attorney's fees against respondent after

finding that the appeal was frivolous (it was taken from an unwritten ruling at an informal hearing) and was taken primarily for the purpose of vexation and delay.

Christman v. State/Dept. of Correction, 4134 CRB-1-99-10 (October 16, 2000).
CRB dismissed claimant's appeal for failure to prosecute pursuant Practice Book § 85-1, as pro se cross-appellant had failed to secure substitute counsel for over five months, and had filed neither Reasons for Appeal or brief. See also, **Christman**, § 31-308(a), § 31-296.

Barrillaro v. Southington/Board of Education, 4294 CRB-6-00-9 (October 6, 2000).
Trial commissioner's order was issued as the result of an informal hearing. Absent a record of the proceedings below, CRB cannot properly consider appeal under § 31-301. Case remanded for a formal hearing or other appropriate action.

Greene v. State/University of Connecticut Health Center, 4285 CRB-1-00-8 (September 21, 2000).
The trial commissioner's order was issued as the result of an informal hearing. Absent a record of the proceedings below, CRB cannot properly consider appeal under § 31-301. Case remanded for a formal hearing or other appropriate action. Subsequent decision at Greene, 4749 CRB-1-03-11 (September 28, 2004). Section 31-296 Voluntary agreements (discontinuance of payments), § 31-301. Appeal procedure.

Walsh v. Charlotte Hungerford Hospital, 4282 CRB-5-00-8 (September 13, 2000).
The trial commissioner's order was issued as the result of an informal hearing. Absent a record of the proceedings below, CRB cannot properly consider appeal under § 31-301. Case remanded for a formal hearing or other appropriate action.

Draughn v. Yale-New Haven Hospital, 4055 CRB-8-99-6 (August 29, 2000).
Dismissal order for failure to diligently prosecute appeal under Practice Book § 85-1 (formerly Practice Book § 4055), as appellant filed nothing in support of the review petition other than a pair of last-minute requests by counsel to postpone oral argument due to illness (granted) and then a Superior Court scheduling conflict (denied).

Judkins v. Michael Streckfus Co., 4072 CRB-8-99-6 (August 9, 2000).
Section 31-288b order issued as the result of an informal hearing. Matter is not ripe for appellate review where no record exists. Remanded for formal hearing or other appropriate action.

Iannarone v. State/Dept. of Mental Retardation, 4138 CRB-7-99-10 (August 4, 2000).
Respondent's cross-appeal was filed within ten days of the filing of the claimant's appeal. Respondent contended that its cross-appeal should be deemed timely based upon § 61-8 of the Connecticut Practice Book, which provides that an appellee may file a cross appeal "within ten days from the filing of the appeal." CRB held that it does not have subject matter jurisdiction over a late appeal. Though we look to the rules of court regarding *procedural* aspects of appeals, we may not apply those rules to create subject matter jurisdiction over an otherwise late appeal. **Note**: In a September 14, 2000 ruling, the board denied the respondent's Motion for Reconsideration. The board explained that

in contrast to the limited jurisdiction of this board, the Appellate Court's subject matter jurisdiction is not affected by a late appeal, which allows the court to permit a party to pursue a late appeal. Subsequent decision at Iannarone, 4310 CRB-7-00-11 (December 6, 2000).

Rodrigues v. American National Can, 4043 CRB-5-99-4 (July 26, 2000).
In a footnote, CRB declined to strike appellants' Motion to Correct and Reasons for Appeal despite counsel's failure to sign those documents. Practice Book § 62-6 requires such signatures, but Practice Book 62-7 makes rejection of incorrectly filed papers discretionary. There was no dispute as to authenticity of papers, and claimant did not demonstrate prejudice from omission. See also, **Rodrigues**, § 31-301. Factual findings, § 31-308(a). Subsequent decision at Rodrigues, 4329 CRB-7-00-12 (January 2, 2002), § 31-279-3, § 31-296, § 31-298, § 31-301-9.

Kudlacz v. Lindberg Heat Treating Co., 3407 CRB-8-96-8 (July 21, 2000).
On remand from Supreme Court decision in Kudlacz, CRB was ordered to make factual findings as to whether, through no fault of his own, claimant did not receive notice of trier's Finding and Dismissal within ten days of the date that it was sent. CRB found that claimant was not at fault for failing to receive such notice based on the testimony of the claimant's trial counsel and his paralegal, as there was no evidence as to what date delivery was attempted by the post office. Claimant not held responsible for accounting for conduct of Postal Department employees. Appeal reinstated. Prior decision at Kudlacz, 16 Conn. Workers' Comp. Rev. Op. 214, 3407 CRB-8-96-8 (June 6, 1997), aff'd, 49 Conn. App. 1 (1998) (with dissenting opinion), rev'd, 250 Conn. 581 (1999), infra.

Kulig v. Crown Supermarket, 3335 CRB-6-96-5 (July 21, 2000).
On remand from Supreme Court decision in Kulig, CRB was ordered to make factual findings as to whether, through no fault of her own, claimant did not receive notice of the trier's Finding and Dismissal within ten days of the date that it was sent. CRB found that the claimant was not at fault for failing to receive such notice based on the testimony of the claimant's trial counsel and his paralegal, as the only documentary evidence was a certified mail "green card" that listed the date of delivery as being over one month after the claimant's copy of the decision was sent by the District Office. Board declined to apply presumption that a properly-mailed letter was received in a timely manner. Appeal reinstated. Prior decision at Kulig, 3335 CRB-6-96-5 (November 25, 1997), rev'd, 250 Conn. 603 (1999), infra.

Propiescus v. State/Office of the County Sheriff, 4261 CRB-1-00-6 (July 21, 2000).
Remanded. Appeal not ripe for review where petition is filed from a § 31-300 order issued as the result of an informal hearing.

Schreck v. Stamford, 3322 CRB-7-96-4 (July 21, 2000).
On remand from Supreme Court decision in Schreck, CRB was ordered to make factual findings as to whether, through no fault of his own, claimant did not receive notice of trier's Finding and Order within ten days of the date that it was sent. CRB found that claimant was not at fault for failing to receive such notice. Postal carrier who initially

attempted delivery of the certified letter did not inform the prospective recipient of the nature of the letter or of the post office where it was being held, and indicated that re-delivery was forthcoming when he left notice of attempted delivery. Re-delivery unexpectedly and inexplicably took twelve days. Appeal reinstated. Prior decision at Schreck, 3322 CRB-7-96-4 (September 23, 1997), rev'd, 51 Conn. App. 92 (1998), rev'd, 250 Conn. 592 (1999), infra.

Davis v. Edward J. Corrigan, 4024 CRB-2-99-3 (July 20, 2000).
CRB denied claimant's Motion to Dismiss where employer was acting pro se and filed a timely appeal, but filed late Reasons of Appeal and a late brief, and failed to appear at oral argument. Additionally, the board noted that a Motion to Correct which has not been ruled upon by the trial commissioner is presumed denied for the purposes of appeal. See also, **Davis**, § 31-275(9).

Palma v. Manuel A. Pinho Landscaping, Inc., 4047 CRB-7-99-5 (July 18, 2000).
Claimant failed to order production of transcript on appeal, and failed to file Motion to Correct. CRB accordingly could not review allegations that trier relied upon information obtained solely at informal hearing, as the formal hearing record was unavailable for examination. Lack of Motion to Correct also prevented trier from reexamining his own findings in the event an improper factor was considered, and prevented trier from correcting two errors regarding his recital of the date of the claimant's alleged injury. CRB refused to reverse trier's decision based on presence of scrivener's errors. See also, **Palma**, § 31-301. Factual findings notes.

Belanger v. J & G Belanger Concrete Construction, 4238 CRB-6-00-5 (June 23, 2000).
Remanded. Appeal not ripe for appellate review where petition is filed from a § 31-308a order issued as the result of an informal hearing. Subsequent decision at Belanger, 4368 CRB-6-01-3 (February 19, 2002), § 31-308a and Belanger, 4684 CRB-6-03-6 (July 28, 2004), § 31-301. Appeal procedure, § 31-301. Factual findings.

Rogers v. C.N. Flagg Power, 3809 CRB-6-96-5 (June 23, 2000).
CRB addressed claimant's appeal from Chairman's transfer of his case from one District to another. Matter remanded to trial commissioners who were involved for them to determine whether to recuse themselves. See also, **Rogers**, § 31-280.

Parker-Zaimoff v. Mohegan Sun Casino, 4224 CRB-2-00-4 (May 24, 2000).
Trier's order denying approval of stipulation issued as the result of an informal hearing. Board cannot consider appeal where no record exists. Remanded for formal hearing or other appropriate action.

Quinn v. Dwan & Co., Inc. 4216 CRB-5-00-3 (May 24, 2000).
Section 31-288b order issued as the result of an informal hearing. Matter not ripe for appellate review where no record exists. Remanded for formal hearing or other appropriate action.

Rizor v. International Ice Cream Corp. 4206 CRB-1-00-3 (May 24, 2000).
Section 31-308a order issued as the result of an informal hearing. Matter not ripe for appellate review where no record exists. Remanded for formal hearing or other appropriate action.

Figliola v. Ogden Services, 4013 CRB-7-99-4 (March 27, 2000).
Claimant-appellant failed to file Motion to Correct, thus restricting scope of CRB review. See also, **Figliola**, § 31-301. Factual findings.

Palko v. State/Dept. of Correction, 4018 CRB-2-99-3 (March 22, 2000).
Claimant's counsel withdrew in May 1999 after petition for review had been filed. Claimant was contemporaneously notified of motion to withdraw, but failed to obtain substitute counsel or file an appearance on his own behalf. Respondent moved to dismiss appeal in November 1999. Claimant faxed a request for a continuance the afternoon before the scheduled oral argument on the motion, stating that he was currently living in Virginia, and wished to represent himself in the appeal as he could not find an attorney. The fax contained no telephone number where he could be reached. CRB denied request for continuance, and granted Motion to Dismiss pursuant to Practice Book § 85-1, as neither Reasons for Appeal nor a brief had been filed.

Schiaroli v. UTC/Pratt & Whitney, 3988 CRB-5-99-3 (March 7, 2000).
Pro se claimant filed no reasons of appeal or brief. CRB granted motion to dismiss, but also delved into facts. See also, **Schiaroli**, § 31-294d. Prior decision at Schiaroli, 3555 CRB-3-97-3 (December 30, 1997), infra.

DiBello v. Barnes Page Wire Products, 3970 CRB-7-99-2 (March 2, 2000), **aff'd**, 67 Conn. App. 361 (2001), **cert. granted**, 260 Conn. 915 (2002), **appeal withdrawn** (June 26, 2002).
CRB declined to address issue that was listed in reasons for appeal, but not briefed or raised at oral argument. See also, **DiBello**, § 31-278, § 31-294c, § 31-301-9, § 31-348. Subsequent decision at DiBello, 4290 CRB-7-00-9 (September 25, 2001), § 31-300, § 31-308a.

Wrice v. Sam's Club, 4006 CRB-6-99-3 (February 17, 2000).
CRB granted attorney's request to withdraw as counsel where he and the claimant both confirmed that he had never agreed to represent the claimant on appeal, and that he had filed a petition for review and a motion for extension of time on the claimant's behalf as a favor while the claimant was attempting to retain substitute counsel. CRB also granted motion to dismiss the appeal pursuant to Practice Book § 85-1, as neither a brief nor reasons of appeal were ever filed.

Vetre v. State/Dept. of Children and Families, 3948 CRB-6-98-12 (February 14, 2000).
Issues raised in previous appeal were not addressed due to nature of remand decision. See Vetre, 3443 CRB-6-96-10 (January 16, 1998). Commissioner's ruling on remand was also appealed, and CRB affirmed. Board refused to presume that previously raised appellate issues had been abandoned. As two of the three panel members before whom

those issues had been argued were no longer presiding over the case, the best course of action was to allow the respondent to reargue the leftover issues. See also, **Vetre**, § 31-298. Subsequent decision at Vetre, 3443 CRB-6-96-10 (November 28, 2000), § 31-297, § 31-298, § 31-300, § 31-307, Vetre, 4378 CRB-6-01-4 (March 14, 2002), Vetre, 4728 CRB-6-03-9 (October 8, 2003).

Levy v. Philip Technologies, 3989 CRB-8-99-3 (February 1, 2000).
Claimant/Appellant did not file brief on appeal. Trier had dismissed her action after two continuances because the claimant had not attempted to introduce any medical evidence supporting her contention that workplace chemical exposure caused her to develop leukemia. Without any evidence in the record supporting the claimant's case, and without a brief to familiarize the board with the facts and legal arguments, the appeal had to be dismissed.

Prioli v. State/Connecticut State Library/Arts Commission, 3955 CRB-6-98-12 (January 13, 2000), **aff'd**, 64 Conn. App. 301 (2001), **cert. denied**, 258 Conn. 917 (2001).
Appellant's failure to file brief prior to oral argument could have warranted dismissal, but CRB chose not to do so here. Instead, contents of late brief were not considered by panel. Failure to file Motion to Correct likewise does not mandate dismissal; instead, CRB is limited to factual findings in record unless they lack even an "iota of support." Regarding petition for review, it was filed within ten days of denial of Motion to Open, but not within ten days of the memorandum of decision itself. Because motion to open was filed within ten days of the memorandum of decision, however, CRB held (in accord with Practice Book § 63-1(b)) that a new appeal period commenced upon issuance of decision denying motion to open, and the appeal was timely. See also, **Prioli**, § 31-278, § 31-290a, § 31-301-9, § 31-315, § 31-327. Subsequent decision at Prioli, 3955 CRB-6-98-12 (October 16, 2000), § 31-301c.

Reaves v. Brownstone Construction, 3930 CRB-4-98-11 (November 30, 1999).
CRB denied motion to dismiss respondents' appeal for failure to file a brief. Pursuant to Practice Book § 85-1, the dismissal of an appeal for failure to prosecute with due diligence, including failure to file a timely brief, is discretionary. See also, **Reaves**, § 31-294c.

Green v. Yale University, 3842 CRB-3-98-6 (August 18, 1999).
Board dismissed claimant's appeal for failure to prosecute with proper diligence pursuant to Practice Book § 85-1 where the claimant failed to file a motion to correct, reasons of appeal, or a brief.

Krevis v. Bridgeport, 3857 CRB-4-98-7 (August 18, 1999), **aff'd**, 63 Conn. App. 328 (2001).
No error in commissioner's denial of Motion for Extension of Time to File Motion to Correct. Ruling is discretionary, and claimant did not explain why he needed more time to review the transcripts and exhibits. No unfair prejudice demonstrated by denial of request for extension. See also, **Krevis**, § 7-433c, § 31-301. Factual findings, § 31-307.

Hazard v. Mashantucket Pequot Tribe, 3813 CRB-2-98-5 (August 17, 1999).
Board dismissed claimant's appeal for failure to prosecute with proper diligence pursuant to Practice Book § 85-1 where the claimant failed to file a motion to correct, reasons of appeal, or a brief, and failed to appear at oral argument.

Delsesto v. Steve Bousquet's Appliance and T.V., 3826 CRB-2-98-6 (August 16, 1999).
Board dismissed claimant's appeal pursuant to Practice Book § 85-1 where claimant failed to file reasons of appeal, a brief, or a motion to correct, and failed to appear at oral argument.

Grimes v. State/Dept. of Mental Health and Addiction Services, 3832 CRB-4-98-6 (July 22, 1999).
Board dismissed claimant's appeal where petition of review was not date-stamped within the ten-day appeal period. Although claimant's attorney contended that she had hand delivered the petition for review on the tenth day after the close of business, CRB held that in order to be timely the appeal needed to be delivered prior to the close of business on the tenth day. See also, **Grimes**, § 31-279-3 Request for continuance.

Ryan v. VIC Insulation, 3798 CRB-3-98-4 (June 30, 1999).
CRB declined to grant Motion to Dismiss based upon claimant's late filing of Reasons of Appeal where Motion to Dismiss was not timely filed. See also, **Ryan**, § 31-294c.

Montini v. Life Touch National School, 3818 CRB-4-98-5 (June 21, 1999).
CRB dismissed appeal pursuant to Practice Book § 85-1. Claimant failed to file a Motion to Correct by the extended deadline and trier denied additional request for extension. Additionally, claimant failed to file Reasons of Appeal or any document which would reasonably indicate the issues he sought to have reviewed. Claimant also filed a Motion To Stay Judgment, which was denied.

Walter v. State/Services for the Blind, 3785 CRB-2-98-3 (June 18, 1999), **aff'd**, 63 Conn. App. 1 (2001).
All of claimants' appellate arguments concern the previous decision of the CRB in Walter, 14 Conn. Workers' Comp. Rev. Op. 107, 1694 CRB-2-93-4 (June 2, 1995), appeal dismissed for lack of final judgment, A.C. 14925 (September 7, 1995). As CRB does not disregard the law of cases already decided, it declined to reconsider any of those issues. Prior decision at Walter, 14 Conn. Workers' Comp. Rev. Op. 107, 1694 CRB-2-93-4 (June 2, 1995), aff'd, 63 Conn. App. 1 (2001), § 31-294c, § 31-301-9 Additional evidence.

Silva v. Allied Signal/Bendix, 3794 CRB-5-98-4 (June 15, 1999).
Dismissal of appeal pursuant to Practice Book § 85-1 for failure to file brief, reasons of appeal or motion to correct.

Wooten v. UTC/Pratt & Whitney, 3674 CRB-6-97-9 (May 7, 1999).
Trier did not err by considering respondents' Motion to Correct, which was filed six months after decision was issued. Trier has discretion to rule on late Motion to Correct,

and claimant did not submit a timely objection to the tardily-filed motion. See also, **Wooten**, § 31-301. Factual findings, § 31-294d.

Allen v. Griffin Health Services Corp., 3768 CRB-4-98-2 (April 27, 1999).
Claimant did not file Motion to Correct, so CRB could not review evidence supporting facts found by trier. See also, **Allen**, § 31-301. Factual findings.

Capra v. State/Dept. of Correction, 3791 CRB-4-98-4 (April 27, 1999).
Petition for review that claimant sent to district office was returned for insufficient postage. However, he filed a Motion for Extension of Time to File Reasons for Appeal within the 10-day period, and timely petitions for review were received by the employer and by the CRB administrative office. Held: Motion to Dismiss denied; substantial compliance with § 31-301(a) evident. See also, **Capra**, § 5-145a, § 31-298.

Melendez v. Warner's, 3772 CRB-4-98-2 (April 23, 1999).
See, **Melendez**, § 31-288.

Soden v. Custom Bottles of CT, Inc., 3849 CRB-5-98-6 (March 3, 1999).
Appeal dismissed pursuant to Practice Book § 85-1 and as per the respondents' Motion To Dismiss. Claimant-appellant did not file any papers in support of his appeal beyond his Petition for Review.

State/Workers' Compensation Commission v. Todd Rose, 3896 CRB-2-98-9 (March 3, 1999).
Appeal dismissed pursuant to Practice Book § 85-1 where Appellant did not file Reasons of Appeal or brief, nor did he appear at oral argument.

Surozenski v. Glass Container Corp., 3753 CRB-2-97-12 (February 23, 1999).
See, **Surozenski**, § 31-301-9 (concerns attorney's right to withdraw from case where attorney allegedly represented administrator only).

Bailey v. State/Greater Hartford Community College, 3694 CRB-1-97-9 (January 12, 1999), **aff'd in part, rev'd in part**, 65 Conn. App. 592 (2001).
Respondent's appeals from evidentiary decisions of trier were within jurisdiction of CRB under statute. Panel noted, however, that such appeals delay resolution of case, and are not encouraged. See also, **Bailey**, § 31-298. Subsequent decision at Bailey, 3922 CRB-2-98-10 (November 30, 1999), aff'd in part, rev'd in part, 65 Conn. App. 592 (2001), § 31-300, § 31-307, and Bailey, § 31-284b, § 31-294d, § 31-301. Factual findings. Prior decision at Bailey, 15 Conn. Workers' Comp. Rev. Op. 433, 3152 CRB-5-95-8 (September 3, 1996), infra, § 31-301. Factual findings.

Tucholski v. Rex Forge, 3756 CRB-6-98-1 (January 8, 1999).
Claimant's attorney contended that appeal was filed late due to extenuating circumstances, including a change of personnel at the law firm. Because claimant's petition for review was not filed within the time limits required by § 31-301(a), the CRB dismissed it as untimely. CRB noted that even if it had the jurisdiction to consider the merits of the appeal it would have to affirm the trial commissioner's decision, which was based on the weight and credibility of the medical evidence.

Duntz v. Ales Roofing & Caulking Co., 3771 CRB-6-98-2 (December 22, 1998).
Respondent filed a late petition for review. Appeal had to be dismissed for lack of subject matter jurisdiction. CRB noted in dicta that the trier's decision would have been affirmed on the merits anyway, as it was a factual question concerning the existence of an employer-employee relationship. See also, **Duntz**, § 31-288.

Whelan v. Humphrey Chemical Co., Inc., 3726 CRB-3-97-11 (December 16, 1998).
Pro se claimant received four extensions of time to file various documents, but had still failed to file either Reasons for Appeal or a brief by the date of oral argument (which he did not attend). Appeal dismissed for failure to prosecute pursuant to Practice Book § 85-1. See also, **Whelan**, § 31-301. Factual findings.

Grimme v. Railroad Stores, Inc., 3722 CRB-5-97-11 (November 17, 1998).
Second Injury Fund filed brief one day before oral argument, without permission to file late brief. CRB declined to consider brief on appeal. See also, **Grimme**, § 31-301. Factual findings, § 31-349.

Fenn v. H.L. Bennett Jr., Inc., 3712 CRB-5-97-10 (November 16, 1998).
CRB dismissed pro se claimant's late appeal. CRB also noted that even if it had jurisdiction, it would affirm trial commissioner's decision because that decision was based upon the credibility of the evidence.

Harrison v. General Dynamics Corporation/Electric Boat Division, 3252 CRB-8-96-1 (November 9, 1998).
CRB dismissed late cross-appeal; claimant could not prevail on contention that issue of offset under § 31-293 was one of subject matter jurisdiction that could be raised at any time. See also, **Harrison**, § 31-310.

Reynolds v. Atlantic Foods, 3676 CRB-7-97-9 (October 20, 1998).
Claimant filed nothing in support of his appeal other than petition for review, and did not appear at oral argument. Appeal dismissed for failure to prosecute under Practice Book 85-1.

Samela v. New Haven, 3677 CRB-3-97-9 (October 20, 1998), **aff'd**, 54 Conn. App. 902 (1999)(per curiam).
CRB dismissed appeal due to late petition for review. See also, **Samela**, § 31-311.

Danise v. JMJB, Inc., d/b/a The Brake Shop Mechanic, 3681 CRB-7-97-9 (October 19, 1998).
Fund failed to file reasons for appeal or brief in support of petition for review, and did not appear at oral argument. CRB dismissed appeal pursuant to Practice Book § 85-1 for failure to prosecute.

Kovac v. Kecko Piping Company, 3806 CRB-4-98-4 (October 2, 1998).
Appeal moot as trier granted Motion To Reopen earlier decision dismissing claim.

Bowman v. Jack's Auto Sales, 3622 CRB-8-97-6 (August 26, 1998).
Appellants failed to file Motion to Correct, so many of their arguments on appeal were foreclosed by the board's inability to review the factual findings. See also, **Bowman**, § 31-315.

Mycek v. U.S. Surgical Corp., 3669 CRB-3-97-8 (August 26, 1998).
CRB did not dismiss petition for review for pro se claimant's failure to file timely reasons for appeal, as a document was filed that served as both reasons for appeal and brief, and its tardiness did not prejudice the respondent. However, the claimant did not file a Motion to Correct, thus limiting the CRB to the commissioner's findings, which directly supported the dismissal of the pro se's claim. CRB discussed facts of case only for claimant's benefit.

Caffery v. New Britain, 3866 CRB-6-98-7 (August 12, 1998), **aff'd**, 54 Conn. App. 902 (1999).
Appeal dismissed as petition for review was filed beyond statutory time period.

McCarthy v. AT&T Communications, Inc., 3689 CRB-6-97-9 (August 7, 1998).
Pro se claimant failed to file reasons for appeal, but did submit a brief that outlined the basis of her petition for review. CRB declined to dismiss appeal, as the rules of procedure are relaxed for pro se claimants. CRB did note that the claimant's failure to file a Motion to Correct limited the board to the trier's factual findings on review. See also, **McCarthy**, § 31-301. Factual findings.

Johnson v. Manchester Bus Service, Inc., 3863 CRB-1-98-8 (August 5, 1998).
Appeal moot as trier vacated Finding. Prior decision at Johnson, 3472 CRB-1-96-11 (April 1, 1998), § 31-308(b), § 31-308(c).

Levey v. Farrel Corp., 3649 CRB-4-97-7 (July 30, 1998).
CRB was limited to factual findings of trial commissioner on review due to claimant's failure to file Motion to Correct. See also, **Levey**, § 31-308(a).

Simeone v. Tilcon Tomasso, 3616 CRB-3-97-4 (July 28, 1998).
No Motion to Correct was filed, so trial commissioner's factual findings had to remain intact. Findings supported dismissal of heart attack claim. CRB also noted that trial commissioner had discretion to believe testimony of doctor who testified that there was no causal connection between the claimant's employment and his heart attack.

Markham v. Summit Finishing Division, 3843 CRB-5-98-6 (July 22, 1998).
CRB dismissed appeal where the respondents filed a petition for review from an order of the trial commissioner that was subsequently vacated. The respondents' appeal became moot when the trier's order was vacated.

Mayo v. Cupid Linen Services, 3682 CRB-1-97-9 (July 14, 1998).
Pro se claimant filed late petition for review (and no other documents in support of appeal). Appeal dismissed for lack of jurisdiction.

Shanklin v. UTC/CTVIP, 3537 CRB-5-97-2 (June 22, 1998).
Trial commissioner did not err in ruling on late Motion to Correct, as trier may extend time for filing that motion. See also, **Shanklin**, § 31-308(b).

Yuille v. Bridgeport Hospital, 3735 CRB-4-97-12 (June 10, 1998).
Frivolous appeal, last-minute withdrawal. Sanctions awarded to claimant. See also, **Yuille**, § 31-301c, § 31-327. Subsequent decision at Yuille, 4525 CRB-4-02-5 (April 28, 2003).

Czujak v. Bridgeport, 3535 CRB-4-97-2 (June 10, 1998).
Late appeal by claimant had to be dismissed as untimely. See also, **Czujak**, § 7-433c, § 31-300, § 31-307a, § 31-315. Subsequent decision at Czujak, 4371 CRB-4-01-3 (April 8, 2002), § 31-297, § 31-301(g).

Perrelli v. Stack, Inc., 3546 CRB-3-96-1 (June 4, 1998).
CRB dismissed late petition for review. Prior decision at Perrelli, 16 Conn. Workers' Comp. Rev. Op. 211, 3243 CRB-3-95-12 (June 6, 1997), infra, § 31-294c.

Richard v. U.S. Repeating Arms, 3558 CRB-3-97-3 (June 1, 1998).
Pro se claimant failed to file Motion to Correct. CRB could not review factual findings (which were based on evidentiary credibility anyway).

Hyatt v. Ames Department Stores, Inc., 3533 CRB-6-97-2 (May 14, 1998).
CRB dismissed claimant's appeal pursuant to Practice Book § 4184A, where the claimant failed to file a motion to correct, reasons of appeal, or a brief and failed to appear at oral argument.

Dowling Considine v. Slotnik, 3468 CRB-4-96-11 (May 6, 1998).
Claimant moved for sanctions against respondents for filing a bad faith appeal, citing Practice Book § 4184B and § 4165.4. CRB granted motion. Respondents appealed § 31-355 order against Second Injury Fund because they were afraid that if claimant received benefits, and ultimately lost on appeal, she would not pay them back. Respondent offered no substantive defense to either § 31-301(f) mandate of payment pending appeal or § 31-355 order. See, **Dowling**, § 31-290, § 31-296. See also, **Dowling**, § 31-301(f) notes. Prior decision at Dowling, 3062 CRB-4-95-5, 3277 CRB-4-96-2 (February 5, 1997), aff'd, rev'd and remanded in part, 244 Conn. 781 (1998)(with dissenting opinion), § 31-275(9), § 31-288, § 31-301. Appeal procedure, § 31-307.

Cafaro v. Emerson Carpentry, 3528 CRB-8-97-1 (April 24, 1998).
The claimant's petition for review was not filed within the time limit required by § 31-301(a) and CRB thus dismissed it as untimely. CRB did not agree with claimant's argument that the ten day appeal period should not commence until receipt of the trial commissioner's decision.

Collins v. Waterbury Nursing Center/Crescent Manor, 3554 CRB-5-97-3 (April 24, 1998).
CRB dismissed the claimant's petition for review because it was not filed within the time limits required by § 31-301(a). The ten day appeal period commences upon the date the trial commissioner's decision is sent, not the date of receipt.

Stabile v. Bridgeport Hospital, 3642 CRB-4-97-7 (April 9, 1998).
CRB dismissed respondents' appeal pursuant to Practice Book § 4184A, where the respondents failed to file a motion to correct, reasons of appeal, or a brief and failed to appear at oral argument.

Coley v. Camden Associates, Inc., 3432 CRB-2-96-9 (April 6, 1998).
Corrections not ruled on by trial commissioner are presumed denied for purposes of appeal. See also, **Coley**, § 31-300, § 31-301. Factual findings, § 31-343. Prior decision at Coley, 3432 CRB-2-96-9 (February 28, 1997), rev'd, 243 Conn. 311 (1997), § 31-301(f).

Phillips v. Phillips d/b/a We Care Day Care, 3578 CRB-1-97-3 (April 2, 1998), **aff'd**, 52 Conn. App. 902 (1999)(per curiam).
CRB dismissed the claimant's petition for review because it was not filed within the time limit set by § 31-301(a).

Couto-Radcliff v. Glen Hill Convalescent, 3576 CRB-7-97-3 (April 2, 1998).
Appeal dismissed for failure to file timely appeal. The respondents contended that they filed a timely appeal from the denial of their Motion to Correct. The respondents Motion to Correct was filed well beyond the ten-day appeal period. The filing of a Motion to Correct after the ten-day appeal period does not serve to extend the appeal period. Compare Buccieri, § 31-301, this section.

Tsimbidaros v. Jackson, 3575 CRB-4-97-3 (April 2, 1998).
CRB dismissed the claimant's petition for review because it was not filed within the time limit established by § 31-301(a).

Dubret v. Fairfield/Police Dept., 3495 CRB-4-96-12 (April 1, 1998).
Panel granted Motion to Dismiss appeal for failure to prosecute with due diligence. Noted: Commission policy is that counsel who appeals to CRB can not withdraw appearance on claimant's behalf unless substitute counsel is designated.

Moawad v. American Eagle, 3701 CRB-6-97-10 (March 9, 1998).
CRB granted the claimant's attorney's request to withdraw his appearance.

McKenna v. Thorne & Cleaves, Inc., 3557 CRB-7-97-3 (February 4, 1998).
Appeal dismissed where issue on appeal is resolved by prior decision of the board. See, McKenna, 3365 CRB-7-96-6 (July 29, 1997).

Fusciello v. Ronnie Demeo, Inc., 3406 CRB-8-96-8 (February 4, 1998).
Claimant failed to file a Motion to Correct, so he was limited to the trier's findings on appeal. See also, **Fusciello**, § 31-307. Prior decision at Fusciello, 12 Conn. Workers' Comp. Rev. Op. 283, 1535 CRB-6-92-10 (June 7, 1994), § 31-275(1), § 31-275(16),

§ 31-307. Subsequent decision at Fusciello, 4340 CRB-6-01-1 (January 7, 2002), § 31-301. Factual findings, § 31-307.

Iacobucci v. Marriott Corp., 3562 CRB-4-97-3 (January 30, 1998).
CRB dismissed the claimant's appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4184A, where the claimant failed to file a motion to correct, reasons of appeal, or a brief and failed to appear at oral argument.

Pistritto v. Hartford Hospital, 3451 CRB-1-96-10 (January 28, 1998).
CRB dismissed the pro se claimant's appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4184A where the claimant failed to file a motion to correct, reasons of appeal, or a brief and failed to appear at oral argument.

Algiere v. General Dynamics Corporation/Electric Boat Division, 3466 CRB-8-96-11 (January 27, 1998).
Appellee's motion to dismiss denied where claimant contended that the appellants did not file a timely petition for review. The appellants contended that they did file a timely petition for review and that the district office was merely unable to locate it. The CRB held that, given that a motion to correct was filed within the time permitted for the filing of a petition for review along with the appellants' motion for extension of time to file reasons for appeal, the appellants substantially complied with § 31-301(a). Additionally, an issue not referred to in a brief or in Reasons of Appeal is deemed abandoned.

Hurley v. Bridgeport, 3435 CRB-4-96-9 (January 20, 1998).
Claimant filed his appeal after 5:00 p.m. on the tenth day following notice of the decision, and it was not stamped in by the District Office until the next business day. Held: appeal petition late; petition for review dismissed. Appeal had to be filed by the close of the business day in order to be considered as having been filed on that date. CRB also noted that merits warranted dismissal, as trier's decision that claimant did not suffer repetitive trauma injury was based on the medical reports of several doctors. See also, **Hurley**, § 31-301. Factual findings.

Powell v. Xerox Corp., 3452 CRB-2-96-10 (January 16, 1998).
Pro se claimant filed nothing in support of his appeal aside from the petition for review itself. Case dismissed pursuant to Practice Book § 4184A.

Vastola v. A.C.E.S., 3448 CRB-3-96-10 (January 16, 1998).
Claimant filed late petition for review, and no documents in support of her appeal. Appeal dismissed.

Dacres v. Zeigler, 3401 CRB-7-96-8 (January 6, 1998).
Petition for review was filed one day late. Board lacks jurisdiction to consider appeal. Plus, no Motion to Correct, and issue on appeal was a question of fact.

Buccieri v. Pacific Plumbing Supply Co., 3286 CRB-7-96-3 (December 30, 1997), **aff'd**, 53 Conn. App. 671 (1999).
Appeal from trial commissioner's granting of Motion to Correct which changed the trial commissioner's conclusion. See also, **Buccieri,** § 31-301. Factual findings and § 31-301-4. Correction of Finding.

Schiaroli v. UTC/Pratt & Whitney, 3555 CRB-3-97-3 (December 30, 1997).
Pro se claimant failed to file a Motion to Correct, so CRB could not review the accuracy of the trier's factual findings. Regardless, ample support existed in the record for the trier's decision. Subsequent decision at Schiaroli, 3988 CRB-5-99-3 (March 7, 2000), supra, § 31-294d.

Torres v. United Illuminating, 3723 CRB-3-97-11 (December 16, 1997).
Trier awarded § 31-308a benefits after informal hearing. No record available for review. Respondents' appeal dismissed.

Hutchings v. Bob's Discount Furniture, 3372 CRB-5-96-7 (December 4, 1997).
No one appeared on behalf of the claimant/appellant at oral argument, and no brief or Motion to Correct was filed. Appeal dismissed pursuant to § 4184A of the Practice Book for failure to prosecute with proper diligence.

Reith v. Alpine Tree Care, 3556 CRB-7-97-3 (December 4, 1997).
The trial commissioner's decision in the instant case was based upon an informal hearing. Accordingly, this matter is remanded for a formal hearing as we are unable to engage in a meaningful review and cannot properly consider this appeal in accordance with § 31-301.

Kulig v. Crown Supermarket, 3335 CRB-6-96-5 (November 25, 1997), **rev'd**, 250 Conn. 603 (1999).
Dismissal of late petition for review. Supreme Court reversed board's dismissal. Although ten day appeal period begins to run when notice is sent by the commissioner, statutory time period may be tolled if party wishing to appeal establishes, that through no fault of his own, he did not receive notice within ten days of the date that notice was sent.

Connole v. J&J Blasting, Inc., 3696 CRB-7-97-9 (November 20, 1997).
Respondents' counsel appealed $250 fine imposed against it for failure to appear. No record for CRB to examine. Appeal dismissed.

Muldoon v. New England Installation, 3415 CRB-4-96-8 (November 3, 1997).
The trial commissioner's decision was based upon an informal hearing, and thus no transcript or exhibits exist regarding the underlying proceeding. Accordingly, CRB remanded the matter as it was unable to engage in a meaningful review and could not properly consider this appeal in accordance with § 31-301. Prior decision at Muldoon**,** 10 Conn. Workers' Comp. Rev. Op. 255, 1226 CRD-4-91-5 (January 13, 1993), rev'd, 33 Conn. App. 695 (1994), rev'd, 231 Conn. 469 (1994), aff'd on remand, 37 Conn. App. 266 (1995); Muldoon, 3345A, 3345B CRB 4-96-5 (November 3, 1997). Subsequent decision at Muldoon, 3552 CRB-4-97-3 (August 24, 1998).

Ricci v. Redstone Development Corp., 3370 CRB-3-96-6 (October 29, 1997).
Respondent contested percentage of permanent partial disability and total disability award, implicating the accuracy of the trier's findings. However, no Motion to Correct was filed. Thus, the findings must stand, and as they supported the trier's conclusions, the board affirmed the commissioner's decision.

Cortesi v. Warner, 3598 CRB-1-97-5 (October 27, 1997).
See, **Cortesi**, Admin. Reg. § 31-301-9. Additional evidence.

Gyadu v. D'Addario Industries, 3617 CRB-5-97-4 (October 9, 1997), **rev'd,** 53 Conn. App. 179 (1999), **appeal dismissed** by Board June 15, 1999. The board dismissed the claimant's petition for review as it was not filed within the time limit established by § 31-301(a).
The Appellate Court reversed and remanded the case to the board because the board had not made a factual determination as to when the trial commissioner's decision had been mailed to the parties. Upon remand, the board found that the record indicated that the Finding and Award was properly mailed to all parties pursuant to a signed certification in the file. Accordingly, the board dismissed the claimant's appeal as untimely in Gyadu v. D'Addario Industries, 3617 CRB-5-97-4 (June 15, 1999). Upon further consideration by the three member board, after oral argument was presented by the claimant, the board again dismissed the claimant's appeal as untimely in Gyadu v. D'Addario Industries, 3617 CRB-5-97-4 (March 8, 2000).

Schreck v. Stamford, 3322 CRB-7-96-4 (September 23, 1997), **rev'd**, 51 Conn. App. 92 (1998), **cert. granted**, 247 Conn. 955 (1999), **rev'd**, 250 Conn. 592 (1999).
CRB dismissed claimant's appeal as untimely where it was filed thirteen days after the trial commissioner's decision had been issued. The CRB was unpersuaded by the claimant's attorney's contention that the post office had attempted delivery in a timely manner but that his office was closed on that date and he did not receive the trial commissioner's decision until after the ten-day period had expired. Appellate Court reversed on ground that statute requires decision to be sent to claimant personally before appeal period starts to run; mailing it to the claimant's attorney is insufficient. Supreme Court reversed, and held that where a party is represented by an attorney, the ten day appeal period begins to run on the date that notice is sent to the *attorney* rather than to the claimant. However, the court explained that where, as here, the claimant has consistently maintained that his attorney did not receive notice until after the ten day period, the claimant was entitled to establish this contention, and if successful to have his appeal reinstated.

St. Lot v. Franklin Mushroom Farm, 3331 CRB 2-96-4 (September 23, 1997).
CRB dismissed the claimant's appeal because it was filed twelve days after the trial commissioner's decision had been issued. Also, claimant failed to prosecute his appeal with due diligence.

Aquino v. Clairol, Inc., 3527 CRB-7-97-1 (September 17, 1997).
CRB remanded case to trial commissioner where all of the parties agreed that this matter should be remanded for a clarification of his decision. Subsequent decision at Aquino, 3802 CRB-7-98-4 (March 3, 1999), § 31-307.

Noga v. Colin Service Systems, Inc., 3361 CRB-6-96-6 (September 16, 1997).
Respondents moved to dismiss appeal for late petition for review, as it was filed on June 10, 1996, 11 days after notice of the trial commissioner's decision was mailed. However, June 9, 1996 was a Sunday, and Practice Book § 4010 states that when the offices of a court are closed on the last day for filing a paper, the paper may be filed on the next day when such office is open. Motion to dismiss denied.

Curtiss v. State/Dept. of Mental Retardation Region 2, 3220 CRB-6-95-11 (August 20, 1997).
Failure to file Motion to Correct limits CRB to the commissioner's findings. See also, **Curtiss**, § 31-307.

Cummings v. Twin Tool Manufacturing, 3641 CRB-1-97-6 (August 4, 1997), **aff'd**, 48 Conn. App. 915 (1998)(per curiam).
The claimant's petition for review was not filed within the time limit set by § 31-301(a) and was thus dismissed as untimely. See prior decision at Cummings, 3395 CRB 1-96-8 (July 15, 1997), aff'd, 48 Conn. App. 914 (1998)(per curiam).

Schilling v. New Departure-Hyatt Division, 3290 CRB-6-96-3 (August 4, 1997).
CRB declined to dismiss appeal for late filing of claimant's brief where brief was only two weeks late and respondents did not show any prejudice from the delay. See also, **Schilling**, § 31-308.

Zito v. General Dynamics Corporation/Electric Boat Division, 3478 CRB-8-96-11 (July 9, 1997).
The CRB dismissed the Second Injury Fund's appeal on the basis of Practice Book § 4184A, failure to prosecute with due diligence. The CRB vacated its June 27, 1997 bench ruling where a majority of the panel members granted the appellee's Motion To Dismiss for failure to timely file an appeal petition. (Note one panel member dissented from the bench ruling.) In its earlier bench ruling the majority found that the Fund's filing of an appeal on November 22, 1996 following the November 12, 1996 Finding and Award was untimely as it was filed beyond the ten days permitted by § 31-301(a). After further reflection the panel vacated its earlier ruling on the basis of Practice Book § 4010, which provides, "in determining the last day for the filing of papers, the last day shall, and the first day shall not, be counted." However, the panel then dismissed the appeal on the basis of the Fund's failure to prosecute with due diligence as no Reasons For Appeal nor Motion To Correct were filed by the Fund until after the matter was scheduled for oral argument. The CRB noted that transcripts and exhibits were available to the Fund prior to the scheduling of this matter.

Pesce v. Mitchell Bate Company, 16 Conn. Workers' Comp. Rev. Op. 231, 3236 CRB-5-95-12 (June 23, 1997).
Failure to file Motion to Correct limits CRB to facts found in the decision. Only legal conclusions may be reviewed. See also, **Pesce**, § 31-294e.

Kudlacz v. Lindberg Heat Treating, 16 Conn. Workers' Comp. Rev. Op. 214, 3407 CRB-8-96-8 (June 6, 1997), **aff'd,** 49 Conn. App. 1 (1998) (with dissenting opinion), **rev'd**, 250 Conn. 581 (1999).
Late appeal. Claimant's attorney argued he did not receive a copy of the decision until after the ten-day period had expired; however, the date notice is *sent* is the date the time period begins to run, and the certification shows that it went out 13 days before the appeal was filed. CRB does not have discretion to make exceptions; appeal dismissed. Supreme Court reversed CRB and held although ten day appeal period begins to run when notice is sent by the commissioner, statutory time period may be tolled if party wishing to appeal establishes, that through no fault of his own, he did not receive notice within ten days of the date that notice was sent.

Perrelli v. Stack, Inc., 16 Conn. Workers' Comp. Rev. Op. 211, 3243 CRB-3-95-12 (June 6, 1997).
CRB found that the claimant's petition for review was filed twelve days after the trial commissioner's decision was issued, and thus appeal must be dismissed as untimely under § 31-301(a). See also, **Perrelli,** § 31-294c. Subsequent decision at Perrelli, 3546 CRB-3-96-1 (June 4, 1998), supra.

Ayres v. United Methodist Homes of Connecticut, 16 Conn. Workers' Comp. Rev. Op. 193, 3207 CRB-4-95-10, 3294 CRB-4-96-3 (May 20, 1997).
Claimant failed to appear at oral argument, and failed to file a brief or Reasons of Appeal in either matter. Although pro se claimants are accorded leniency regarding procedural rules of the CRB, the panel had no way of performing meaningful review here. Appeals dismissed pursuant to Practice Book § 4184A.

Harris v. Hartford Hospital, 16 Conn. Workers' Comp. Rev. Op. 187, 3292 CRB-1-96-3 (May 16, 1997).
CRB dismissed the claimant's petition for review which was filed over five months after the trial commissioner's decision had been issued. The filing of a motion to correct after the ten-day appeal period has expired does not extend that appeal period.

Schiano v. Bliss Exterminating, 16 Conn. Workers' Comp. Rev. Op. 189, 3315 CRB-4-96-4 (May 16, 1997).
While benefits due claimant as far back as 1989 remained unpaid, Second Injury Fund appealed commissioner's ruling that it had unduly delayed payment and that it should pay a $25,000 attorney's fee. Fund then requested extensions of time while awaiting transcript, which reportedly had not been received. After the claimant objected, the Fund admitted that it had received and then misplaced the transcript, and was currently waiting for a replacement. Held: Workers' Compensation Act is remedial in nature, and relief should ensue as quickly and efficiently as possible. Lack of communication between attorneys at Fund and lack of organization in this case have led to unnecessary

delay in these proceedings. Fund's appeal dismissed, and attorney's fees awarded to claimant for costs associated with appeal. Remanded to commissioner for determination of those costs under § 31-327(b). CRB also noted that requests for extensions of time should seek relief only through a date certain. Subsequent decisions in Schiano, 3436 CRB-4-96-10 (April 8, 1998), aff'd, 57 Conn. App. 406 (2000), § 31-293; Schiano, 4104 CRB-4-99-8 (February 21, 2001), rev'd, 260 Conn. 21 (2002), § 31-278, § 31-303, and § 31-300. Prior decision at Schiano, 1852 CRB-4-93-9 (December 7, 1994), aff'd, 57 Conn. App. 406 (2000), § 31-293, § 31-301. Appeal procedure.

Evans v. City of Shelton, 16 Conn. Workers' Comp. Rev. Op. 155, 3108 CRB-4-95-6 (May 2, 1997), **dismissed for lack of a final judgment**, A.C. 17196 (January 14, 1998). Late reasons for appeal make an appeal voidable, not void. No prejudice to claimant from respondent's minor error, so CRB denied Motion to Dismiss. Chairman also declined to disqualify himself on the ground that the law firm representing the claimant has had repeated conflicts with him in another case. His appearance on the review panel was consistent with state case law regarding recusal and disqualification. See also, **Evans**, § 31-275(16), § 31-301. Factual findings, notes on Rules of Professional Conduct.

Hines v. Linc Scientific Imaging, 3037 CRB-8-95-3 (April 14, 1997).
CRB requires all parties to file a separate brief. However, pro se claimants generally are accorded leniency regarding procedural rules. As claimant's Reasons of Appeal adequately explained her claims of error, panel denied respondents' Motion to Dismiss appeal. Also, an issue not yet discussed at an informal hearing is not ripe for review. See also, **Hines**, § 31-315, § 31-308a.

Lirot v. Mashantucket Pequot Gaming, 3400 CRB-2-96-8 (April 7, 1997).
Section 31-301(b) requires this board to review a trial commissioner's decision on the record of the proceedings below. Because there was no formal hearing in this case, there were neither exhibits nor a transcript for CRB to review on appeal. Case remanded. Subsequent decision at Lirot, 4015 CRB-2-99-3 (March 13, 2000), aff'd, 62 Conn. App. 908 (2001)(per curiam), cert. denied, 257 Conn. 908 (2001), § 31-296.

Fusco v. J.C. Penney Company, 1952 CRB-4-94-1 (March 20, 1997).
Trier did not err when he denied Motion to Correct in part. Motions to Correct need not be granted unless findings are unsupported by evidence, they fail to include admitted or undisputed facts, or the corrections are immaterial because the outcome of the case would not be altered. See also, Knoblaugh, infra; Plitnick, infra.

Lestage v. Yellow Freight Systems, Inc., 3044 CRB-5-95-4 (March 19, 1997).
Appeal dismissed pursuant to Practice Book § 4184A as claimant failed to prosecute with proper diligence. Claimant failed to file a brief or appear at oral argument.

Spano v. Frank Teti Siding, 3181 CRB-6-95-10 (March 19, 1997).
Without any transcripts to substantiate the claimant's contentions, CRB unable to engage in meaningful review and cannot properly consider this appeal in accordance with § 31-301. Therefore, claimant's appeal dismissed.

In re: Veterans Memorial Medical Center, 3063 CRB-8-95-5 (March 14, 1997). **Four separate decisions.** Please refer to notes on § 31-294d for background of VMMC cases. In these particular situations, two of the cases were accepted as compensable (Heck and Pirone), while the other two were dismissed by triers for lack of jurisdiction (Charest and Swift). All of these appeals should have been withdrawn before the three-day oral argument session on April 1-3, 1996. Respondents filed a motion for costs and fees against VMMC. Granted. As § 31-301(e) provides that the procedure in appealing a commissioner's award is the same as that used in an appeal from the Superior Court to the
Supreme Court, the CRB applied the Rules of Appellate Procedure, which allow the imposition of costs and fees against a party for presenting unwarranted or frivolous issues on appeal. See Practice Book § 4184B(4), (5), (8); § 4165.4.

Chuley v. Pratt & Whitney, 3375 CRB-3-96-7 (March 7, 1997).
Pro se claimant's petition for review dismissed for failure to prosecute. Claimant's appeal petition included on its face some indecipherable information. Claimant failed to appear at oral argument and documents filed the day of the scheduled CRB oral argument were either available prior to the trial commissioner's decision, were part of the record below or indecipherable. Additionally, it does not appear the documents were provided to opposing counsel. CRB held even if the filings were to be considered as a motion to present additional evidence, the motion would be denied as claimant failed to meet criteria set forth in Admin. Reg. § 31-301-9.

Cavanaugh v. American Wire Corp., 3214 CRB-4-95-11 (March 4, 1997).
CRB dismissed appeal from trial commissioner's order. Because the trial commissioner recused herself due to a conflict of interest, the trial commissioner should not have made any rulings or orders. The trial commissioner's order is thus null and void, and as there is no valid decision from which to appeal, the appeal is dismissed.

Jencik v. Chief Automotive Systems, 3376 CRB-5-96-7 (February 28, 1997).
The respondents failed to file a brief and failed to appear at oral argument before this board. In addition, the respondents failed to file their reasons of appeal in a timely manner pursuant to § 31-301-2. Accordingly, by a bench ruling the CRB dismissed the respondents' appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4184A.

Deming v. State/Dept. of Veterans Affairs, 3523 CRB-2-97-1 (February 26, 1997).
Appeal from trier's dismissal of claimant's § 31-290a claim. CRB has no statutory authority to hear or decide § 31-290a matters. See, Rondini, 10 Conn. Workers' Comp. Rev. Op. 210, 1231 CRD-6-91-5 (December 4, 1992). Additionally, grounds for dismissal as claimant's appeal was filed more than ten days after the trier's Finding was issued.

Gamber v. Olin Mills, Inc., 3194 CRB-4-95-10 (February 19, 1997).
The respondents failed to file reasons of appeal, a motion to correct, or a brief, and did not appear at oral argument before this board. Accordingly, CRB dismissed the appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4184A.

Falcone v. United Parcel Service, 3209 CRB-3-95-11 (February 11, 1997).
Claimant filed petition for review 30 days after decision was sent by commissioner; no explanation given for lateness. Also, no motion to correct or reasons of appeal. Even though claimant pro se, CRB dismissed appeal under Practice Book § 4184A.

Dowling v. Slotnik, 3062 CRB-4-95-5, 3277 CRB-4-96-2 (February 5, 1997), **aff'd, rev'd and remanded in part**, 244 Conn. 781 (1998)(with dissenting opinion).
Board ordinarily dismisses grounds for appeal first raised at oral argument, although issue briefly addressed here. Appeal filed timely, as tenth day of appeal period was Washington's Birthday, a state holiday. Claimant filed two motions to dismiss for failure to prosecute with due diligence; the former, being untimely under Practice Book § 4056, was denied. The latter correctly noted that the respondents had not filed any documents in support of their appeal, including a Motion to Correct. Although the respondents lost their right to challenge any of the factual findings, the case was not dismissed. The respondents had also filed an earlier, premature appeal, which this board declined to allow them to withdraw; however, the CRB held their brief filed in support of the first appeal to apply to the second as well, noting the unusual procedural circumstances of the case. See also, **Dowling**, § 31-275(9), § 31-288, § 31-307. Subsequent decision at Dowling, 3468 CRB-4-96-11 (May 6, 1998), § 31-290, § 31-296, § 31-301. Appeal procedure, § 31-301(f).

Hickey v. E.J.C. Transportation, 3180 CRB-5-95-10 (February 5, 1997).
Respondents claimed entitlement to credit against future liability, as claimant settled with employer's uninsured motorist carrier. Trial commissioner held that respondent could assert moratorium, but further hearings would have to be held to determine whether employer perfected claim and extent of credit, if any. Claimant appealed. Respondents moved to dismiss. Claimant agreed that his appeal was premature. Appeal dismissed.

Goodridge v. American Felt & Filter, 3151 CRB-2-95-8 (January 24, 1997).
No motion to correct, so findings must be accepted as uncontroverted on review. See also, **Goodridge**, § 31-349.

Jusiewicz v. Reliance Automotive, 3140 CRB-6-95-8 (January 24, 1997).
No motion to correct, so findings stand. August 17, 1995 petition for review timely; August 7, 1995 Corrected Finding and Award amended August 2, 1995 decision, thus superseding it as to the date the ten-day appeal period began. See also, **Jusiewicz**, § 31-301. Factual findings.

Matey v. Dember, 3153 CRB-5-95-8 (January 10, 1997), **aff'd in part, rev'd in part**, 256 Conn. 456 (2001).
Motion to dismiss Fund appeals denied; although Fund did not file Reasons for Appeal, claimant did not file Motion to Dismiss within 10 days of the date the Reasons of Appeal were due. Therefore, their absence is deemed waived. This issue was not addressed in the Supreme Court's decision. See also, **Matey**, § 31-315 and § 31-355(a). Prior decision at Matey, 5 Conn. Workers' Comp. Rev. Op. 104, 516 CRD-5-86 (June 14, 1988), appeal dismissed**,** 210 Conn. 626 (1989)(per curiam), § 31-278, § 31-310,

Matey, 1189 CRD-5-91-3 (April 5, 1991), § 31-301. Appeal procedure. Subsequent decision at Matey, 3848 CRB-7-98-6 (July 7, 1999), aff'd in part and rev'd in part, 256 Conn. 456 (2001), § 31-355(b), Matey, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), appeal dismissed for failure to comply with Supreme Court's directive, 85 Conn. App. 198 (2004).

Germosen v. Matlaw's Food Products, 3099 CRB-7-95-5 (January 6, 1997).
Although absence of rulings on motions for extension of time and motion to correct made it hard to hold Second Injury Fund to precise deadlines regarding Reasons of Appeal, appellant still proceeded without diligence. No Reasons for Appeal or brief were filed, and Fund allowed confusion in case to continue through date of oral argument without attempting to augment the incomplete file or obtain rulings on its motions. Appeal dismissed.

Doyle v. New Haven, 3038 CRB-3-95-4 (January 3, 1997).
Failure to file Motion to Correct limits board to commissioner's factual findings in reviewing decision. See also, **Doyle**, § 31-301. Factual findings.

Basurto v. State/Boneski Treatment Center, 3115 CRB-2-95-7 (December 24, 1996).
Commissioner ordered benefits sent directly to attorney because of questions about claimant's competency. Attorney then sought to withdraw representation. Commissioner denied request, ordering him to continue receiving benefits for placement in interest-bearing escrow account, and to provide an accounting of benefits already received. Appeal then filed on behalf of both attorney and client. Respondent filed Motion to Dismiss. No Reasons of Appeal or brief were filed by the appellants, and no one appeared at oral argument. Dismissal granted for failure to prosecute with proper diligence.

Lathrope v. Teledyne Penn Union, 3491 CRB-4-96-12 (December 24, 1996).
CRB denied claimant's Motion For Permission To Extend Appeal, Motion To Correct and Motion To Submit Additional Evidence. CRB noted that it lacked the authority to extend the time for filing appeals. The CRB also noted that if the claimant sought to file a Motion To Submit Additional Evidence she was free to do so.

Herwerth v. Groton, 3105 CRB-2-95-6 (December 24, 1996), **aff'd**, 45 Conn. App. 922 (1997)(per curiam).
CRB not required to grant timely motion to dismiss for late reasons of appeal. Claimant had filed a motion for extension of time, and filed reasons for appeal before denial of that motion was issued. Two week delay not shown to prejudice respondent. See also, **Herwerth**, § 31-296.

Fabian v. Pitney Bowes, Inc., 3104 CRB-7-95-6 (December 23, 1996).
CRB granted respondents' motion to dismiss the claimant's appeal for late filing of reasons of appeal where the motion to dismiss was timely filed. See also, **Fabian**, § 31-315.

Bennings v. State/Dept. of Correction, 3213 CRB-4-95-11 (December 18, 1996).
CRB did not dismiss the claimant's appeal for failure to file a legal brief, noting that the claimant, acting pro se, had filed reasons of appeal and a letter explaining his reasons of appeal. In addition, the claimant appeared at oral argument before this board. CRB also noted that the respondent employer did not file a legal brief or any motions or documents on appeal. See also, **Bennings,** supra, § 31-307.

O'Connor v. United Parcel Service, 3124 CRB-4-95-7 (December 18, 1996).
The claimant has failed to file reasons of appeal, a motion to correct, or a brief, and the claimant did not appear at oral argument before this board. As the claimant has neglected to actively pursue his appeal, CRB dismissed the appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4184A.

Cooper v. Sisters of Mercy, 3218 CRB-6-95-11 (December 10, 1996).
Untimely reasons of appeal, motion to correct. Respondents moved to dismiss. Claimant then filed Reasons for Appeal and Motion to Correct. Commissioner ruled on motion to correct, denying all corrections; CRB presumes tardiness of motion waived. Panel noted that failure to file Motion to Correct would not make appeal void, but would limit appellant to findings in original decision. Late reasons of appeal, however, make an appeal voidable, provided Motion to Dismiss is timely filed. Respondents' motion was late, so CRB denied Motion to Dismiss pro se claimant's appeal. See also, **Cooper**, § 31-301. Factual findings.

Loomis v. Colchester Egg Farm, 3047 CRB-5-95-4 (December 10, 1996).
Commissioner is never required to file a memorandum of decision in conjunction with his award or dismissal under Reg. § 31-301-3; language of regulation is discretionary. Trial commissioner is generally not required to explain why he finds one witness more credible than another. See also, **Loomis**, § 31-308a.

Currin v. State/DMR Region 2, 16 Conn. Workers' Comp. Rev. Op. 137, 2183 CRB-6-94-10 (November 27, 1996).
CRB dismissed the claimant's appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4055 where the claimant failed to file a motion to correct or a legal brief and did not appear at oral argument before this board. In addition, CRB explained that even if it were to consider the claimant's appeal, the trial commissioner's decision would be affirmed as the record supported the trial commissioner's determination that the claimant was not temporarily totally disabled pursuant to § 31-307.

Jones v. Lillibridge, 16 Conn. Workers' Comp. Rev. Op. 143, 3149 CRB-2-95-6 (November 27, 1996).
Pro se respondent attempted to raise issues on appeal. However, since he did not file a petition for review, he also did not file a Motion to Correct, thus limiting him to the trial commissioner's findings, which supported total disability award. See also, **Jones**, § 31-291.

Brown v. Interstate Pallet Co., 16 Conn. Workers' Comp. Rev. Op. 64, 3064 CRB-3-95-2 (October 25, 1996).
Respondents moved to dismiss appeal on ground that Reasons of Appeal were untimely filed. CRB ruled that failure to file timely Reasons of Appeal makes the appeal voidable, but not void. Here, where Reasons for Appeal were arguably only three days late and no one was prejudiced by their tardiness, board opted to deny Motion to Dismiss. See also, **Brown**, § 31-301. Factual findings.

Coles v. Star, Inc., 16 Conn. Workers' Comp. Rev. Op. 67, 3239 CRB-7-95-12 (October 25, 1996).
CRB determined that without a transcript or findings of fact, it was unable to engage in meaningful review and could not properly consider this appeal in accordance with § 31-301. Accordingly, CRB remanded the matter to the trial commissioner for a formal hearing and decision. See also, **Coles,** § 31-279.

Martin v. Starlift Equipment Co., 16 Conn. Workers' Comp. Rev. Op. 61, 3103 CRB-3-95-6 (October 18, 1996).
Petition for review filed thirteen days after date on trial commissioner's Finding and Award. Appeal must be filed within ten days after meaningful notice of the commissioner's decision is sent to appellant. Respondents implicitly contended that notice was not sent out on the date of the Finding and Award. Finding of date notice was sent is necessary to gauge timeliness of appeal, so case remanded to trial commissioner for such a determination.

Santino v. Richard Auto Transport, 16 Conn. Workers' Comp. Rev. Op. 37, 3227 CRB-3-95-7 (October 9, 1996).
The employer failed to file reasons of appeal, a motion to correct, or a brief, and the employer did not appear at oral argument before CRB. Thus, the panel dismissed the employer's appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4055.

Federchuck v. UTC/Pratt & Whitney, 15 Conn. Workers' Comp. Rev. Op. 476, 2298 CRB-2-95-2 (September 16, 1996).
Failure to file Motion to Correct or challenge legality of finding that claimant did not seek light duty work after a certain date means finding must remain intact. Similarly, factual basis of finding that claimant was not union employee cannot be challenged without Motion to Correct, as existing findings support that conclusion. See also, **Federchuck**, § 31-301. Factual findings, and § 31-294(a).

Norton v. James Fleming Trucking, Inc., 15 Conn. Workers' Comp. Rev. Op. 472, 2119 CRB-1-94-8 (September 16, 1996).
Appellant failed to file a brief. CRB noted it has discretion to dismiss appeal, although it did not do so here. See also, **Norton**, § 31-298.

Hall v. Gilbert & Bennett Mfg. Co., 15 Conn. Workers' Comp. Rev. Op. 459, 3139 CRB-7-95-8 (September 9, 1996), **rev'd**, 241 Conn. 282 (1997).
Supreme Court explained that CRB properly determined that it had jurisdiction to decide an appeal taken from the trial commissioner's oral ruling. The court also discussed the issue of whether the CRB's decision which remanded the case to the trial commissioner constituted an appealable final judgment. See also, **Hall**, § 31-349.

Altamura v. Altamura Landscaping, 15 Conn. Workers' Comp. Rev. Op. 427, 2170 CRB-7-94-10 (September 3, 1996).
Respondents filed motion to dismiss on grounds that Reasons for Appeal were late under Admin. Reg. § 31-301-2. Motion denied: unclear that motion to dismiss was timely filed, and respondents showed no prejudice from late Reasons of Appeal. See also, **Altamura**, § 31-294c, and § 31-278.

Bailey v. State/Greater Hartford Community College, 15 Conn. Workers' Comp. Rev. Op. 433, 3152 CRB-5-95-8 (September 3, 1996), **appeal dismissed,** A.C. 16397 (December 5, 1996).
Claimant filed motion to dismiss appeal on ground that petition for review was filed in wrong district office. Denied. Language in statute requiring appeal to be filed in office where award originated dates back to time when jurisdiction was vested in the district rather than in the commission as a whole. Under current framework, commissioners move about various districts, and jurisdiction is vested in Commission in general. Here, claim arose in First District, and was transferred to Fifth District when trial commissioner was reassigned there. Filing of appeal in First District not sufficient ground for dismissal. See also, **Bailey**, § 31-301. Factual findings (incomplete record overlooked in part). Subsequent decisions in Bailey, 3694 CRB-1-97-9 (January 12, 1999), aff'd in part, rev'd, in part 65 Conn. App. 592 (2001), § 31-298, § 31-301. Appeal procedure, and Bailey, 3922 CRB-2-98-10 (November 30, 1999), aff'd in part, rev'd in part, 65 Conn. App. 592 (2001), § 31-300, § 31-307, § 31-284b, § 31-294d, § 31-301. Factual findings; Bailey, 3694 CRB-1-97-9 (January 12, 1999), supra and § 31-298.

Craft v. State/Dept. of Revenue Services, 15 Conn. Workers' Comp. Rev. Op. 431, 3089 CRB-1-95-6 (September 3, 1996).
"Motion to Stay Appeal Time Limitation" construed as appeal notice. No documents filed to support appeal. Practice Book § 4055 dismissal.

Lapia v. Stratford, 15 Conn. Workers' Comp. Rev. Op. 422, 3109 CRB-4-95-6 (August 29, 1996), **rev'd**, 47 Conn. App. 391 (1997).
The claimant appellee filed a "Motion for Default Judgment for Failure to Defend Appeal" based upon the respondent's failure to file a timely brief. Motion denied, as no prejudice shown. See also, **Lapia**, § 31-327.

Thomas v. Cash Oil, 15 Conn. Workers' Comp. Rev. Op. 410, 2272 CRB-3-95-1 (August 28, 1996).
The employer has failed to file reasons of appeal, a motion to correct, or a brief. As the employer has neglected to actively pursue its appeal, pursuant to a bench ruling CRB

dismissed the employer's appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4055.

Thornton v. Kabel, 15 Conn. Workers' Comp. Rev. Op. 353, 3027 CRB-4-95-3 (June 26, 1996).
It is not the responsibility of the commissioner to cull out certain portions of the record which support corrections sought where appellant fails to refer to specific portions of the evidence. See also, **Thornton**, § 31-275(9).

Herbali v. Lyn-Jay International, 2194 CRB-1-94-11 (June 25, 1996).
The claimant failed to file a brief and has failed to appear at oral argument before this board. As the claimant neglected to actively pursue his appeal, pursuant to a bench ruling CRB dismissed the claimant's appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4055. **NOTE:** Dismissal vacated and appeal reopened (July 12, 1996). Appeal was subsequently withdrawn.

Bell v. Bridgeport Hospital, 15 Conn. Workers' Comp. Rev. Op. 328, 3121 CRB-4-95-7 (June 24, 1996), **appeal dismissed**, A.C. 16192 (October 31, 1996).
Respondent's appeal from trier's granting of claimant's Motion to Preclude dismissed. Appellant failed to file a brief or appear at oral argument.

Beloski v. Selmix-Alco, 15 Conn. Workers' Comp. Rev. Op. 313, 2275 CRB-5-95-1 (June 21, 1996).
Nothing filed in support of appeal besides petition for review. Practice Book § 4055 dismissal.

Nichols v. United Technologies Corp./Sikorsky Aircraft, 15 Conn. Workers' Comp. Rev. Op. 311, 2239 CRB-4-94-12 (June 21, 1996).
The Fund has failed to file a motion to correct or a brief, and has failed to appear at oral argument before this board. Accordingly, CRB dismissed the appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4055.

Vega v. Waltsco, Inc., 15 Conn. Workers' Comp. Rev. Op. 307, 2078 CRB-2-94-6 (June 21, 1996), **aff'd**, 46 Conn. App. 298 (1997).
Appeal must be filed within ten days of entry of award, which period begins to run on day meaningful notice of decision is sent. Here, Finding and Award was dated May 26, 1994, on which day a copy was presumably sent to the claimant. Claimant's attorney did not learn of the decision until June 3, however, and was unaware that his client had already received a copy in the mail until June 7. Petition for review was filed two days later. Held, meaningful notice was sent on May 26, 1994; § 31-300 requires a copy of the decision to be sent to each party, and "party" cannot be construed to exclude the claimant himself. Appeal dismissed.

Chase v. State/Dept. of Motor Vehicles, 15 Conn. Workers' Comp. Rev. Op. 292, 2185 CRB-2-94-9 (June 20, 1996), **rev'd**, 45 Conn. App. 499 (1997).
Claimant appealed from commissioner's decision that claimant did not establish compensable injury; he also raised an issue that the CRB addressed in a prior appeal (See, Chase, 10 Conn. Workers' Comp. Rev. Op. 181, 1305 CRD-2-91-9 (September 1,

1992)), where the board affirmed the commissioner's denial of the claimant's Motion to Preclude. The Appellate Court dismissed the appeal from that decision for lack of final judgment. Subsequently, our Supreme Court decided Pereira v. State, 228 Conn. 535 (1994). Held, although this board has abandoned the strict compliance rule since Pereira, it declined to overrule its prior decision in Chase. Board does not normally readdress questions decided or amenable to decision in earlier appeals, and its earlier decision became the law of the case. Supreme Court's Pereira decision does not give the CRB authority to reopen prior decisions; Appellate Court might consider issue, however, once the case is ripe for appeal. Also, claimant's failure to file Motion to Correct precluded challenge to commissioner's factual findings. Appellate Court reversed, 45 Conn. App. 499 (1997), on the ground that claimant's notice was sufficient to trigger the 20-day period within which the state had to contest compensability. Fact that plaintiff's claim was subsequently dismissed on merits did not stop it from being a "bona fide" claim.

Cioffi v. Trumbull Mariot, 15 Conn. Workers' Comp. Rev. Op. 297, 2209 CRB-4-94-11 (June 20, 1996).
As the claimant's appeal was not filed within the time limits required by § 31-301(a), CRB dismissed it as untimely.

Jernigan v. Industrial Components, 15 Conn. Workers' Comp. Rev. Op. 305, 3054 CRB-6-95-4 (June 20, 1996).
The claimant's petition for review was not filed within the time limits required by § 31-301(a) and thus CRB dismissed it as untimely.

Rivera v. Novarro, 15 Conn. Workers' Comp. Rev. Op. 285, 3013 CRB-5-95-3 (June 20, 1996).
Both claimant appellant and Second Injury Fund failed to actively prosecute their appeals with due diligence. Appeals dismissed.

Khazzaka v. The Torrington Company, 15 Conn. Workers' Comp. Rev. Op. 273, 3330 CRB-5-96-4 (June 18, 1996).
Appellee's Motion to Dismiss granted where appeal is the result of the trial commissioner's ruling on a motion and there is no record available for appellate review. Subsequent decision at Khazzaka, 3508 CRB-96-04 (May 26, 1998), and Khazzaka, 3966 CRB-5-99-01 (March 2, 2000).

Eligio v. DiLauro Brothers, 15 Conn. Workers' Comp. Rev. Op. 253, 2212 CRB-3-94-11 (May 24, 1996).
No Motion to Correct, so factual findings must remain intact. See also, **Eligio**, § 31-308(a).

Salvatore v. Salter's Express Co., Inc., 15 Conn. Workers' Comp. Rev. Op. 238, 2184 CRB-5-94-10 (May 9, 1996).
As the Fund has failed to file a timely brief, CRB dismissed the appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4055.

Howser v. Olsen Mobeck & Associates, 15 Conn. Workers' Comp. Rev. Op. 221, 2250 CRB-6-94-12 (April 29, 1996).
Practice Book § 4055 dismissal; claimant failed to file Brief, Motion to Correct, Reasons of Appeal.

Pearston v. Carrier Corporation, 15 Conn. Workers' Comp. Rev. Op. 196, 3167 CRB-8-95-9 (April 19, 1996).
The trial commissioner granted the Fund's motion for an extension for the filing of a motion to correct, however, the Fund never filed a motion to correct. Moreover, the Fund did not file its reasons of appeal until it submitted its brief approximately four months after its petition for review had been filed. As the Fund has neglected to actively pursue its appeal, CRB dismissed the appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4055. (Fund reprimanded because at oral argument the Fund's representative admitted that the Fund was in possession of the transcripts prior to filing the motions for extension of time in which motions the Fund contended that it *had not yet received said transcripts*.)

Trankovich v. Frenish, Inc. d/b/a Chamberlain's Ambulance, 15 Conn. Workers' Comp. Rev. Op. 194, 3053 CRB-3-95-4 (April 19, 1996), **rev'd**, 47 Conn. App. 628 (1998).
Respondents filed a motion to dismiss pro se claimant's appeal based upon the claimant's failure to prosecute her appeal with due diligence. CRB issued a bench ruling denying the respondents' motion to dismiss. Reversed on other grounds. See also, **Trankovich**, § 31-310.

Redick v. State/Dept. of Income Maintenance, 15 Conn. Workers' Comp. Rev. Op. 176, 2152 CRB-1-94-9 (March 22, 1996).
Appeal dismissed for failure to actively pursue appeal where claimant failed to file motion to correct and filed a late brief (two days prior to CRB hearing).

Francetic v. Westport, 15 Conn. Workers' Comp. Rev. Op. 169, 3246 CRB-4-96-1 (February 16, 1996).
Trial commissioner vacated his decision. Therefore, resulting appeal dismissed for mootness.

Kulhawik v. Ace Beauty Supply, 15 Conn. Workers' Comp. Rev. Op. 159, 2116 CRB-2-94-8 (February 1, 1996).
No reasons of appeal filed; appeal defective, subject to dismissal despite lack of objection by respondents on that ground. Defect can be considered in decision. See also, **Kulhawik**, § 31-308a.

Cyr v. Domino's Pizza, 15 Conn. Workers' Comp. Rev. Op. 151, 2168 CRB-1-94-10 (January 26, 1996), **aff'd**, 45 Conn. App. 199 (1997).
Untimely appeal. Timeliness depends on date meaningful notice was sent. Appellant allegedly received notice of decision five weeks after date of decision; however, delivery by certified mail was attempted twice during first five days following decision at the

address provided by claimant's attorney. Meaningful notice was sent on date of decision; appeal dismissed.

Mendoza v. Raposo, 15 Conn. Workers' Comp. Rev. Op. 155, 2172 CRB-7-94-10 (January 26, 1996).
Respondent improperly filed reasons of appeal with district office, late Motion to Correct, and a late brief, which prejudiced the claimant. Although board went on to consider merits, counsel was admonished and strongly advised to read CRB notices more carefully in future. (Case was affirmed on merits, as basis for findings existed in evidence.)

Ricigliano v. Rex Forge, 15 Conn. Workers' Comp. Rev. Op. 142, 2190 CRB-6-94-10 (January 18, 1996), **dismissed, lack of final judgment**, A.C. 15655 (May 2, 1996).
CRB denied motion to dismiss for failure to prosecute (late brief) due to compelling circumstances.

Seltenreich v. Stone & Webster, 15 Conn. Workers' Comp. Rev. Op. 135, 2196 CRB-3-94-10 (January 17, 1996).
Failure to file Motion to Correct limited CRB to commissioner's findings, which supported decision.

Garitta v. East Haven, 15 Conn. Workers' Comp. Rev. Op. 117, 2258 CRB-3-95-1 (January 11, 1996).
CRB dismissed the Fund's appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4055 where the Fund failed to file a motion to correct or a brief, and failed to appear at oral argument before this board.

Almonte v. ITT Sealectro, 15 Conn. Workers' Comp. Rev. Op. 99, 2222 CRB-6-94-12 (December 11, 1995).
CRB dismissed appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4055 where neither reasons for appeal nor brief filed by appellant.

Taubl v. Harry Damberg, Inc., 15 Conn. Workers' Comp. Rev. Op. 97, 2165 CRB-7-94-9 (December 11, 1995).
The claimant failed to file his reasons for appeal or a brief, and failed to appear at oral argument before this board. As the claimant neglected to actively pursue his appeal, CRB dismissed the appeal for failure to prosecute with proper diligence pursuant to Practice Book § 4055.

Totten v. Tyree Brothers Environmental Services, Inc., 15 Conn. Workers' Comp. Rev. Op. 101, 2240 CRB-2-94-12 (December 11, 1995).
CRB dismissed the claimant's appeal because the respondents' voluntary compliance with the claimant's request for production had resulted in the claimant's appeal being moot.

Ferguson v. State/Norwich State Hospital, 15 Conn. Workers' Comp. Rev. Op. 95, 3045 CRB-2-95-3 (December 8, 1995).
CRB dismissed the claimant's appeal from the trial commissioner's approval of the Form 36 which was based upon an informal hearing. Where there is no written or printed record of the proceedings before the trial commissioner and no findings of fact, the Compensation Review Board cannot properly consider the appeal in accordance with § 31-301-1.

Mitchell v. Timex Corp., 15 Conn. Workers' Comp. Rev. Op. 92, 2164 CRB-5-94-10 (December 8, 1995).
Pro se claimant/appellant filed portions of the transcript and some copies of exhibits on the day before the CRB oral argument. Even if CRB were to consider this to be her legal brief and reasons of appeal, it was nevertheless late, and therefore appeal dismissed for failure to prosecute.

Raucci v. W.H. Brady Co., 15 Conn. Workers' Comp. Rev. Op. 86, 2201 CRB-3-94-11 (December 7, 1995).
Late appeal dismissal; meaningful notice sent more than ten days before petition for review filed.

Lee v. State/Dept. of Correction, 15 Conn. Workers' Comp. Rev. Op. 68, 2130 CRB-5-94-8 (December 6, 1995).
Nothing filed in support of appeal; case dismissed under P. B. § 4055.

Giannotti v. Stop & Shop Companies, Inc., 2018 CRB-3-94-4 (December 5, 1995).
CRB dismissed the respondent's appeal because it was not filed within the time limit prescribed by § 31-301(a) C.G.S. CRB explained that a state holiday would only extend the time period for filing an appeal where it occurred on the final day of the appeal period.

Jablonowski v. Grande East Construction, 15 Conn. Workers' Comp. Rev. Op. 61, 2095 CRB-2-94-7 (December 5, 1995).
No documents filed in support of appeal, including brief. Dismissed pursuant to Practice Book § 4055.

Draughn v. Wallace Int'l Silversmiths, 14 Conn. Workers' Comp. Rev. Op. 374, 2290 CRB-3-93-11 (October 4, 1995), **aff'd**, 42 Conn. App. 910 (1996)(per curiam).
Claimant's petition for review was filed three months late, therefore dismissed as untimely because it was not filed within the time limits required by § 31-301(a).

Gostyla v. Masonic Home & Hospital, 14 Conn. Workers' Comp. Rev. Op. 372, 2156 CRB-8-94-9 (October 4, 1995).
Late petition for review; no documents to support appeal. P. B. § 4055.

Mellor v. Pleasure Valley Mobile Homes, 14 Conn. Workers' Comp. Rev. Op. 378, 3018 CRB-2-95-3 (October 4, 1995).
Late appeal; failure to prosecute pursuant to P. B. § 4055.

Bourassa v. State/Dept. of Correction, 14 Conn. Workers' Comp. Rev. Op. 348, 2060 CRB-2-94-5 (September 22, 1995).
State indicated in Reasons of Appeal that it was challenging findings based on evidence, but did not file a Motion to Correct or brief. Appeal dismissed; Practice Book § 4055.

Allingham v. Burns International Security, 14 Conn. Workers' Comp. Rev. Op. 333, 1977 CRB-1-94-2 (September 20, 1995).
See also, **Allingham**, § 31-298 (question of timeliness of appeal).

Spatafore v. Yale University, 14 Conn. Workers' Comp. Rev. Op. 310, 2011 CRB-3-94-4 (September 14, 1995), **aff'd**, 239 Conn. 408 (1996).
Commissioner attempted to withdraw his decision as alternative to ruling on Motion to Correct. Held, such action not permissible without request from parties; commissioner no longer had jurisdiction over determination of issues on appeal, and irregularity that would invalidate award as a whole was not present here. Respondent's Motion to Correct deemed denied for purposes of appeal, as respondent prevailed on merits anyway. See also, **Spatafore**, § 31-275(1).

McNerney v. New Haven, 2098 CRB-3-94-7 (September 5, 1995).
CRB denied motion to dismiss the respondent's appeal based upon the respondent's failure to prosecute its appeal with due diligence due to compelling circumstances regarding attorney's hospitalization and due to claimant's willingness to reschedule in order to allow respondent time to file a brief.

Hess v. Connecticut Veterinary Hospital, 14 Conn. Workers' Comp. Rev. Op. 235, 2255 CRB-6-94-12 (August 10, 1995).
Appeal dismissed pursuant to Practice Book § 4055; late petition for review, no other documents filed. CRB had stated at oral argument it would dismiss appeal if not withdrawn. Motions to dismiss moot.

Murano v. General Dynamics Corporation/Electric Boat Division, 14 Conn. Workers' Comp. Rev. Op. 226, 2195 CRB-8-94-10 (August 7, 1995).
Second Injury Fund's appeal from the trier's Finding and Award dismissed as moot in light of the trier's granting of the appellant's Motion to Reopen and Vacate, and Motion to Correct.

Collier v. Kingswood Oxford School, 14 Conn. Workers' Comp. Rev. Op. 184, 2213 CRB-6-94-11 (June 29, 1995).
CRB dismissed claimant's appeal which was filed eleven days after Finding and Award had been issued by commissioner. Claimant contended that his attorney did not timely notify him of the Finding and Award, but did not contend that his attorney did not timely receive the decision.

Sawyer v. Spring Industries, 14 Conn. Workers' Comp. Rev. Op. 178, 2085 CRB-2-94-6 (June 29, 1995).
Employer filed late appeal to CRB and did not appear at oral argument before CRB. CRB rejected employer's contention that only "business days" should be counted in the

ten day appeal period. Employer did not contend that he received trial commissioner's decision in an untimely manner, therefore there is no need to remand on this issue.

Lee v. ABB Combustion Engineering, 14 Conn. Workers' Comp. Rev. Op. 157, 2134 CRB-1-94-8 (June 27, 1995).
Where commissioner did not reduce decision to writing until three months after oral denial of motion, appeal period began running on date written decision issued. See also, **Lee**, § 31-298.

Velez v. Gravure, 14 Conn. Workers' Comp. Rev. Op. 50, 1997 CRB-3-94-2 (May 4, 1995).
Untimely filing of motion to appeal trier's finding dismissed. In addition, no reasons for appeal, brief or motion to correct was filed. Appeal dismissed.

Pereira v. Taylor & Fenn Co., 14 Conn. Workers' Comp. Rev. Op. 16, 1816 CRB-1-93-8 (April 28, 1995).
Claims raised in appellee's brief not considered; no petition for review or Reasons of Appeal were filed by appellee.

Fecto v. Kelly's Contracting, 13 Conn. Workers' Comp. Rev. Op. 330, 1921 CRB-1-93-12 (April 26, 1995).
Claimant agreed to withdraw appeal and accepted $1,700 in satisfaction of his claim; when it was discovered that the stipulation lacked a necessary date, the claimant refused to date the stipulation. Held, claimant does not have license to ignore his obligation under the settlement and keep the respondents' money. Claimant ordered to date stipulation or return full amount paid by respondents plus ten percent interest.

Cruz v. Sheraton Hartford Hotel, 13 Conn. Workers' Comp. Rev. Op. 308, 1560 CRB-1-92-11 (April 25, 1995).
Where no prejudice shown, CRB did not exercise its discretion to set aside the decision for Second Injury Fund's failure to defend appeal with due diligence pursuant to Practice Book § 4055. See also, **Cruz**, § 31-300.

Bell v. U. S. Home Care Certified of Connecticut, 13 Conn. Workers' Comp. Rev. Op. 294, 1792 CRB-1-93-8 (April 21, 1995), **aff'd**, 40 Conn. App. 934 (1996)(per curiam).
Failure to file Motion to Correct limits CRB to findings of commissioner. See also, **Bell**, § 31-275(1).

Brockett v. Branford Paving, Inc., 13 Conn. Workers' Comp. Rev. Op. 271, 1840 CRB-3-93-9 (April 19, 1995).
Appeal dismissed for failure to comply with § 31-301(a) and for failure to prosecute with due diligence pursuant to Practice Book § 4055. See also, **Brockett**, § 31-301-9. Additional evidence.

Grey v. Greenwood Health Care Center, 13 Conn. Workers' Comp. Rev. Op. 273, 1854 CRB-1-93-9 (April 19, 1995).
Appeal dismissed where appellant failed to file reasons for appeal, a brief or a motion to correct. Additionally, CRB has broad discretion in choosing to grant or deny continuances. CRB denied request for continuance made at oral argument.

McBreairty v. D.B.D., Inc., 13 Conn. Workers' Comp. Rev. Op. 259, 1781 CRB-7-93-7 (April 18, 1995).
Failure to file reasons of appeal pursuant to Administrative Regulation § 31-301-2, along with failure to file brief, led to dismissal of claimant's appeal for failure to prosecute. See Practice Book § 4055. See also, **McBreairty**, § 31-307b.

Wright v. Institute of Professional Practice, 13 Conn. Workers' Comp. Rev. Op. 262, 1790 CRB-3-93-8 (April 18, 1995).
Failure to file Motion to Correct limits CRB to commissioner's findings. See also, **Wright**, § 31-308(a).

O'Connor v. United Parcel Service, 13 Conn. Workers' Comp. Rev. Op. 204, 1741 CRB-4-93-5 (March 30, 1995).
Appeal from denial of further § 31-308a benefits. Petition for review was filed fourteen days after entry of Finding and Dismissal; claimant received decision nine days before filing of appeal. Held, respondents entitled to raise this defense in brief because subject matter jurisdiction of CRB implicated. Held, Appellate Court decision in Conaci, 36 Conn. App. 298 (1994), mandates that ten-day period begins to run on date party wanting to appeal is sent meaningful notice of commissioner's decision. Question as to whether CRB has power to make finding as to date notice sent; as decision on merits required remand, case also remanded for finding as to date notice sent by commissioner.

Maio v. L.G. Defelice, Inc., 13 Conn. Workers' Comp. Rev. Op. 197, 1734 CRB-5-93-5 (March 22, 1995).
Arguments in Reasons of Appeal deemed abandoned when neither briefed nor raised at oral argument. See also, **Maio**, § 31-301. Factual findings.

Dawson v. J.C. Higgins Corp., 13 Conn. Workers' Comp. Rev. Op. 190, 2122 CRB-3-94-8 (March 21, 1995).
Appeal petition or papers in support of an appeal must exist in order for CRB to have jurisdiction. CRB vacated their own bench ruling granting respondents' Motion to Dismiss where only motion to correct was filed and no petition for review or other papers in support of an appeal were filed.

Baccielo v. Business Products, Inc., 13 Conn. Workers' Comp. Rev. Op. 163, 1732 CRB-4-93-5 (March 9, 1995).
Claimant argued commissioner-ordered medical examination improper in brief, but did not object to order when given, and did not raise issue in Motion to Correct or Reasons of Appeal. Thus, CRB declined to address issue further. (Note 1.) See also, **Baccielo**, § 31-275(1).

Scoville v. Enfield Honda, 13 Conn. Workers' Comp. Rev. Op. 161, 1767 CRB-1-93-6 (March 8, 1995).
Claimant's appeal dismissed as untimely where appeal was filed twenty-three days after Finding and Dismissal had been issued, and where claimant did not contend that he received commissioner's decision in an untimely manner.

Calderwood v. Milford, 13 Conn. Workers' Comp. Rev. Op. 154, 2253 CRB-3-95-1 (March 1, 1995) (Dismissal order).
Denial of motion for sanctions vacated by trial commissioner after petition for review filed; appeal dismissed for mootness.

Esquillin v. Pinto Lavado Enterprises, 13 Conn. Workers' Comp. Rev. Op. 148, 1914 CRB-2-93-12 (February 1, 1995).
Appeal dismissed pursuant to Practice Book § 4005 where appellant failed to file motion to correct, reasons of appeal, or brief.

Green v. Labor Force of America, Inc., 13 Conn. Workers' Comp. Rev. Op. 146, 1908 CRB-3-93-11 (February 1, 1995).
Appeal dismissed pursuant to Practice Book § 4005 where employer/appellant failed to timely file a brief.

Latulippe v. Derekseth Homes, Inc., 13 Conn. Workers' Comp. Rev. Op. 140, 1839 CRB-1-93-9 (February 1, 1995).
Appeal dismissed where claimant failed to file a brief or appear at oral argument before the CRB.

Krauss v. Beebe Woodworking, 13 Conn. Workers' Comp. Rev. Op. 126, 1915 CRB-2-93-12 (January 31, 1995).
Appeal dismissed by CRB bench ruling for failure to prosecute with due diligence where employer failed to file reasons for appeal, a brief, or a motion to correct.

Sargent v. Rybczyk Plumbing & Heating, 13 Conn. Workers' Comp. Rev. Op. 128, 1974 CRB-6-94-2 (January 31, 1995).
Appellant has burden to provide CRB with adequate record for review. See Practice Book § 4061. See also, **Sargent**, § 31-300 and § 31-301. Factual findings.

Duchesneau v. Cornucopia Natural Foods, 13 Conn. Workers' Comp. Rev. Op. 104, 1993 CRB-2-94-3 (January 25, 1995).
Appeal dismissed pursuant to Practice Book § 4005 where the respondents failed to file their reasons for appeal, a brief, or a motion to correct, and did not appear at oral argument before the CRB.

Kaczynski v. FCD Corporation/Mark IV, 13 Conn. Workers' Comp. Rev. Op. 102, 1954 CRB-3-94-1 (January 25, 1995).
Appeal dismissed where the claimant failed to file his reasons for appeal, a brief, or a motion to correct, and where the claimant did not appear at oral argument before this board.

Eldridge v. Transport Drivers, 13 Conn. Workers' Comp. Rev. Op. 75, 2229 CRB-2-94-12 (January 4, 1995).
Appeal dismissed absent a record of the trial proceedings wherein respondents' Form 36 was approved. See also, **Eldridge**, § 31-296, Voluntary agreements (discontinuation of payments).

Landry v. Transtar, Inc., 13 Conn. Workers' Comp. Rev. Op. 66, 1971 CRB-2-94-2 (December 28, 1994).
Trier's ruling off the record on a Motion to Quash does not allow for an adequate appellate review. Remanded in order to produce a written or printed record.

Lennon v. Genest Subaru Motors, 13 Conn. Workers' Comp. Rev. Op. 63, 1589 CRB-5-92-12 (December 28, 1994).
Appeal dismissed where motion to dismiss for failure to file a brief within the time set out in the Compensation Review Board's calendar, is timely filed. See also, **Lennon** § 31-308a. Additional compensation.

Harper v. Hartford, 13 Conn. Workers' Comp. Rev. Op. 58, 1600 CRB-1-92-12 (December 27, 1994).
Appeal from dismissal of anxiety disorder dismissed where appellee's motion to dismiss for failure to file timely reasons for appeal is timely filed. See, Sager v. GAB Business Services, Inc., 11 Conn. App. 693 (1987).

Fitzgerald v. State/Whiting, 13 Conn. Workers' Comp. Rev. Op. 56, 2215 CRB-8-94-11 (December 21, 1994).
Appeal from informal disfigurement evaluation dismissed where CRB has no written or printed record of proceedings below to review.

Schiano v. Bliss Exterminating, 13 Conn. Workers' Comp. Rev. Op. 45, 1852 CRB-4-93-9 (December 7, 1994).
Claimant made motion for default judgment for lack of diligence in defending appeal where Second Injury Fund filed copy of trial brief rather than appellee's brief two days before oral argument, thus prejudicing claimant. CRB did not set aside judgment pursuant to Practice Book § 4055, but did grant motion to strike brief of Fund and prohibited counsel from raising new issues at oral argument pursuant to Practice Book § 4018. See also, **Schiano**, § 31-293. Subsequent decisions in Schiano, 3315 CRB-4-96-4 (May 16, 1997), § 31-301. Appeal procedure; Schiano, 3436 CRB-4-96-10 (April 8, 1998), aff'd, 57 Conn. App. 406 (2000), § 31-293; Schiano, 4104 CRB-4-99-8 (February 21, 2001), rev'd, 260 Conn. 21 (2002), § 31-278, § 31-303, and § 31-300.

Hebert v. RWA Roofing & Sheet Metal, 13 Conn. Workers' Comp. Rev. Op. 43, 1750 CRB-2-93-6, 1899 CRB-2-93-11, 2129 CRB-2-94-8 (December 6, 1994).
Tapes and stenographic notes of formal hearing were lost, precluding appellant from providing necessary transcript. Held, CRB powerless to perform meaningful review; matter remanded for further proceedings on principal employer issue. As compensability finding was not appealed, § 31-355 order against Second Injury Fund stands. See also, **Hebert**, § 31-291, § 31-301. Appeal procedure, and § 31-355(b).

Capasso v. Fusco Corporation, 13 Conn. Workers' Comp. Rev. Op. 30, 1622 CRB-3-93-1, 1920 CRB-3-93-11 (November 8, 1994).
It is not the duty of the Compensation Review Board or the trial commissioner to cull through the evidentiary record to ascertain what evidence may support corrections sought by the appellant. See also, **Capasso** § 31-308a Additional compensation.

Smith v. Capiezello, 13 Conn. Workers' Comp. Rev. Op. 37, 1712 CRB-2-93-4 (November 8, 1994).
Trier's findings, even if disputed, will not be altered where the legal conclusion would remain the same despite the corrections. See also, **Smith** § 31-275(1) and § 31-301. Factual findings.

Plitnick v. Knoll Pharmaceuticals, 13 Conn. Workers' Comp. Rev. Op. 26, 1699 CRB-8-93-4 (November 7, 1994).
Corrections sought by appellant would not alter the findings of the trial commissioner where most of the corrections sought consist of statements in depositions taken out of context and without a commissioner's assessment as to credibility. See also, **Plitnick** § 31-275(1) and § 31-301. Factual findings.

Burke v. Abacus Transfer & Storage, 13 Conn. Workers' Comp. Rev. Op. 19, 1782 CRB-3-93-7 (November 3, 1994).
Neither reasons for appeal nor brief filed by appellant; although motion for extension of time to file Motion to Correct filed, Motion to Correct itself not filed. Further, no one appeared at oral argument. Appeal dismissed for failure to prosecute with proper diligence. Practice Book § 4055.

Wilkinson v. General Dynamics Corporation/Electric Boat Division, 13 Conn. Workers' Comp. Rev. Op. 11, 1605 CRB-2-92-12 (November 3, 1994).
CRB will not disturb finding where corrections sought in motion to correct contradict supported facts found by trial commissioner. See also, **Wilkinson** § 31-310.

Horta v. American Rental Centers, 12 Conn. Workers' Comp. Rev. Op. 400, 1822 CRB-5-93-8 (September 9, 1994).
Petition for review filed twenty-seven (27) days after entry of the award clearly untimely. Additionally, appellant failed to file any additional appellate documents or appear on date of scheduled oral argument. Such a lack of diligence constitutes grounds for dismissal.

Vigneri v. Utility Industrial Company, 12 Conn. Workers' Comp. Rev. Op. 402, 1433 CRB-2-92-6 (September 9, 1994).
Where appellant fails to file a brief before the CRB, issues raised on appeal are deemed abandoned. See also, **Vigneri** § 31-299b and § 31-315.

Hutchinson v. C. Cowles & Company, 12 Conn. Workers' Comp. Rev. Op. 387, 1934 CRB-3-93-12 (August 29, 1994).
Issues raised on appeal moot where trier vacates his finding.

Hirth v. United Parcel Service, 12 Conn. Workers' Comp. Rev. Op. 353, 1497 CRB-1-92-8 (August 2, 1994).
Issues raised in reasons for appeal that are not briefed are deemed abandoned. See also, **Hirth** § 31-298.

Medina v. New England Wrecker Service, 12 Conn. Workers' Comp. Rev. Op. 332, 1696 CRB-2-93-4 (July 5, 1994).
Appeal dismissed for failure to prosecute where appellant failed to file reasons of appeal, a brief, or appear at scheduled appellate hearing.

Montagna v. Milford Hospital, 12 Conn. Workers' Comp. Rev. Op. 319, 2072 CRB-3-94-6 (June 30, 1994).
Appeal dismissed for failure to file within the time prescribed by statute.

Garrison v. Brown, 12 Conn. Workers' Comp. Rev. Op. 310, 1706 CRB-2-93-4 (June 17, 1994).
Appeal dismissed pursuant to Practice Book § 4055 where appeal record only contains a petition for review.

Micklos v. Iseli Company, 12 Conn. Workers' Comp. Rev. Op. 302, 1450 CRB-5-92-7 (June 17, 1994).
CRB found hearing loss claim timely filed. However, extent of disability and trier's finding that no hearing loss was sustained during claimed period affirmed as appellant failed to provide CRB with an adequate record for review. See also, **Micklos** § 31-294c.

Orlando v. Makula, 12 Conn. Workers' Comp. Rev. Op. 296, 1556 CRB-3-92-11 (June 13, 1994).
See, **Orlando** § 31-301. Factual findings and § 31-307.

Freeman v. Hull Dye & Print, 12 Conn. Workers' Comp. Rev. Op. 259, 1516 CRB-5-92-9 (June 2, 1994), **rev'd**, 39 Conn App. 717 (1995).
The CRB dismissed widow's appeal on the basis that her appeal was not timely filed. The Appellate Court reversed and remanded the matter back to the CRB for a determination as to whether the time requirements of § 31-301(a) were satisfied consistent with the Appellate Court's previous ruling in Conaci v. Hartford Hospital, 36 Conn. App. 298 (1994). See also, **Freeman**, § 31-275(15) and § 31-294c.

Flowers v. Benny's of Connecticut, 12 Conn. Workers' Comp. Rev. Op. 162, 1527 CRB-2-92-10 (April 26, 1994).
Challenge to denial of motion to correct must fail where corrections sought would not alter legal conclusion. See also, **Flowers** § 31-275(1), § 31-298 and § 31-301. Factual findings.

Messier v. General Dynamics Corporation/Electric Boat Division, 12 Conn. Workers' Comp. Rev. Op. 157, 1495 CRB-2-92-8 (April 26, 1994).
Issue raised as to applicable compensation rate for occupational disease claim rendered moot and cross appeal dismissed. Trier's ruling on appellant's motion to correct

obliterated any controversy with respect to appellant's claim. See also, **Messier** § 31-308(b) and § 31-308(c).

Vetro v. Banton Dry Wall, Inc., 12 Conn. Workers' Comp. Rev. Op. 154, 1316 CRD-3-91-10 (April 22, 1994).
Employer's appeal without merit where issue presented on appeal is from a nonexistent ruling by the trial commissioner. See also, **Vetro**, § 31-298 and § 31-301-9. Additional evidence.

Pothier v. Stanley-Bostitch/The Bostitch Company, 12 Conn. Workers' Comp. Rev. Op. 153, 1850 CRB-3-93-9 (April 15, 1994).
Appeal dismissed where trier vacates finding that was the subject of the underlying action from which the appeal was taken.

Perkins v. Rudy Fogg & Son, 12 Conn. Workers' Comp. Rev. Op. 241, 1697 CRB-2-93-4 (March 28, 1994).
Appeal dismissed for failure to prosecute with due diligence where no reasons for appeal or brief was filed and appellant failed to appear at oral argument.

Smith v. Boland, 12 Conn. Workers' Comp. Rev. Op. 234, 1502 CRB-7-92-9 (March 28, 1994).
CRB bound by trier's findings, where findings are supported by evidence, absent the filing of a motion to correct. See also, **Smith**, § 31-291.

Gomes v. O & G Industries, 12 Conn. Workers' Comp. Rev. Op. 232, 1610 CRB-4-92-12 (March 23, 1994).
Appeal from oral ruling granting approval of a Form 36 dismissed. Absent a written or printed record, the CRB cannot adequately consider an appeal.

Mansfield v. State/Dept. of Correction, 12 Conn. Workers' Comp. Rev. Op. 226, 1388 CRB-1-92-3 (March 23, 1994).
Appeal dismissed pursuant to § 31-301(a) as it was not filed within statutory time period. See also, **Mansfield**, § 31-308(b)(c).

DeLucia v. Modena, 12 Conn. Workers' Comp. Rev. Op. 212, 1471 CRB-3-92-7 (March 15, 1994).
An appellant who fails to take a timely appeal cannot challenge a commissioner's Finding and Award by taking a timely appeal from a subsequent Supplemental Finding and Award. See also, **DeLucia**, § 31-275(16)[formerly 31-275(8)] and § 31-299b.

Haugh v. Leake & Nelson, 12 Conn. Workers' Comp. Rev. Op. 201, 1421 CRB-2-92-5 (March 15, 1994).
Claimant's attempt to reassert claim for entitlement to a higher compensation rate previously before CRB properly rejected by commissioner. See, § 31-310, Haugh v. Leake & Nelson, 9 Conn. Workers' Comp. Rev. Op. 148, 1066 CRD-8-90-7 (June 5, 1991). See also, **Haugh**, § 31-284b, § 31-300 and § 31-307.

Schena v. State/Connecticut Correctional Institute, 12 Conn. Workers' Comp. Rev. Op. 75, 1530 CRB-8-92-10 (February 3, 1994).
Issues not briefed are deemed abandoned. See also, **Schena**, § 31-294c.

Menard v. East Windsor, 12 Conn. Workers' Comp. Rev. Op. 62, 1400 CRB-1-92-3 (February 1, 1994).
Factual findings affirmed where appeal mounts a wholesale attack on findings and no motion to correct, transcript of evidence, or brief is filed.

Carter v. Travelers Insurance Company, 12 Conn. Workers' Comp. Rev. Op. 51, 1599 CRB-1-92-12 (January 26, 1994).
Appeal dismissed for failure to prosecute where no reasons of appeal, motion to correct or brief is filed. Further, appellant's request that CRB reconsider dismissal denied.

Divita v. Thames Valley Steel, 12 Conn. Workers' Comp. Rev. Op. 50, 1541 CRB-2-92-10 (January 26, 1994).
Where the only document submitted was a petition for review, appeal dismissed for failure to prosecute.

McNulty v. Stamford, 12 Conn. Workers' Comp. Rev. Op. 32, 1332 CRD-7-91-10 (January 26, 1994), **rev'd**, 37 Conn. App. 835 (1995).
CRB considered various motions and petitions for review alleging procedural defects. CRB denied, dismissed or held rulings on motions harmless error. See also, **McNulty**, § 31-301-9. Additional evidence, § 31-306, § 7-433c (where appellate court reversed CRB and held that the second injury fund was not liable to municipalities for payments pursuant to § 7-433c).

Mingrone v. Burndy Corporation, 12 Conn. Workers' Comp. Rev. Op. 19, 1403 CRB-7-92-3 (January 13, 1994).
CRB rejected respondents' criticism of CRB's prior decision remanding this appeal. CRB directed trier to grant motion to preclude as well as to conduct any other proceedings necessary to resolve disputed issues relevant to dependent widow's claim for compensation. Remand was neither "inappropriate" nor "merely delayed the process of appellate review." See, Mingrone, 9 Conn. Workers' Comp. Rev. Op. 252, 1109 CRD-7-90-9 (November 21, 1991). Also see, **Mingrone**, § 31-294c.

Discuillo v. Stone & Webster, 12 Conn. Workers' Comp. Rev. Op. 1, 1366 CRD-2-91-12 (January 4, 1994).
Issues raised on appeal moot where trier withdrew his Finding and Award.

Wilson v. F.J. Dahill, 11 Conn. Workers' Comp. Rev. Op. 298, 1873 CRB-3-93-10 (December 14, 1993).
Issues raised by appeal moot and appeal dismissed where trial commissioner vacates his written decision.

Taylor v. Madrigal Audio Labs, 11 Conn. Workers' Comp. Rev. Op. 290, 1545 CRB-8-92-11 (December 8, 1993).
Appeal dismissed for failure to file petition for review within ten days where trier's decision is received within the original ten day appeal period. But See, Conaci v. Hartford Hospital, 11 Conn. Workers' Comp. Rev. Op. 184, 1263 CRD-1-91-7 (September 24, 1993), rev'd, 36 Conn. App. 298 (1994).

Milardo v. Shuck Petroleum, 11 Conn. Workers' Comp. Rev. Op. 279, 1559 CRB-8-92-11 (November 22, 1993).
CRB granted respondents' motion to dismiss appeal as claimant's brief was untimely filed. Brief was filed only four days prior to oral argument. See also, **Milardo**, § 31-301-9. Additional evidence.

Almahdi v. State/Somers Correctional Institute, 11 Conn. Workers' Comp. Rev. Op. 251, 1355 CRD-2-91-12 (November 10, 1993).
Appeal dismissed as untimely where appeal is filed beyond the tenth day and there is no indication the trier's written decision was not received within the ten-day appeal period nor was an explanation offered justifying filing beyond the time requirements contained in § 31-301(a).

Sinkowski v. Continental Auto, 11 Conn. Workers' Comp. Rev. Op. 243, 1398 CRB-8-92-3 (November 9, 1993).
Appeal dismissed where claimant fails to file reasons of appeal, a brief, or appear at oral argument before the Compensation Review Board.

Lightborne v. Stamford, 11 Conn. Workers' Comp. Rev. Op. 218, 1550 CRB-7-92-11 (November 1, 1993).
Appeal dismissed pursuant to Practice Book § 4055 as appellant's failure to timely file its brief unreasonably prejudiced the appellee in its defense to the appeal.

Marshall v. UTC/Pratt & Whitney, 11 Conn. Workers' Comp. Rev. Op. 204, 1317 CRD-1-91-10 (September 27, 1993).
Motion to dismiss for lack of final judgment filed by respondents following claimant's appeal from the trier's ruling denying claimant's motion to preclude, dismissed. Statutory language provides CRB with authority to hear and decide rulings on motions to preclude. See also, **Marshall**, § 31-294c. Subsequent decision at Marshall, 3623 CRB-1-97-6 (August 20, 1998), aff'd, 55 Conn. App. 902 (1999)(per curiam), cert. denied, 252 Conn. 904 (1999), § 31-294c.

Anderson v. State/UConn Health Center, 11 Conn. Workers' Comp. Rev. Op. 197, 1318 CRD-6-91-10 (September 23, 1993).
Factual findings must stand where respondents attack the quality of evidence without reference to specified transcript pages or authoritative cite. See also, **Anderson**, § 31-275(1).

Conaci v. Hartford Hospital, 11 Conn. Workers' Comp. Rev. Op. 184, 1263 CRD-1-91-7 (September 14, 1993), **rev'd**, 36 Conn. App. 298 (1994).
Appeal petition must be filed within ten days after notice to parties of the entry of a written decision where parties receive decision within the ten day appeal period. When a party does not receive notice of a written decision within the original ten day appeal period, the time for filing the appeal is extended. Here, notice was received on the eighth day and there was no explanation as to why the appeal could not be filed within the ten day appeal period. CRB dismissed appeal as untimely. Appellate Court reversed CRB and held appeal period begins to run on the day on which the party wishing to appeal is sent meaningful notice of the trial commissioner's decision. Commission records must disclose when notice is sent.

Lederman v. Friendly Ice Cream Corporation, 11 Conn. Workers' Comp. Rev. Op. 180, 1420 CRB-5-92-5 (September 3, 1993).
Appeal dismissed for failure to prosecute where claimant failed to file a brief or appear before the CRB at a scheduled CRB hearing date. See also, **Lederman**, § 31-301-9.

Whalen v. General Building Supply Company, 11 Conn. Workers' Comp. Rev. Op. 177, 1294 CRD-1-91-9 (September 3, 1993).
A Motion to Correct filed more than eight months after the issuance of a finding was clearly untimely filed. Also, Motion to Correct failed to cite where evidentiary support could be found for the corrections sought. See also, **Whalen**, § 31-301. Factual findings.

Petta v. Waterbury Hospital, 11 Conn. Workers' Comp. Rev. Op. 161, 1310 CRD-5-91-9 (August 23, 1993).
Record on review inadequate where parties failed to order transcript of proceedings below. See also, **Petta**, § 31-298, § 31-299b, § 31-300 and § 31-308a.

St. Amour v. General Dynamics Corporation/Electric Boat Division, 11 Conn. Workers' Comp. Rev. Op. 146, 1286 CRD-2-91-8 (August 10, 1993).
Remanded as CRB cannot engage in any meaningful review without all of the transcripts and exhibits from earlier proceedings below. See also, **St. Amour**, § 31-294c.

Flynn v. State/Dept. of Mental Health, 11 Conn. Workers' Comp. Rev. Op. 129, 1602 CRB-1-92-12 (June 16, 1993).
Matter remanded as there is no record of the proceedings below nor was the "agreement of the parties" to which the trier refers to in his finding ever signed by the parties.

Brophy v. Bridgeport Hospital, 11 Conn. Workers' Comp. Rev. Op. 112, 1643 CRB-4-93-2 (June 9, 1993).
Appeal dismissed as claimant failed to comply with statutory time frame for filing an appeal.

Lapoint v. Bozzuto's, Inc., 11 Conn. Workers' Comp. Rev. Op. 117, 1726 CRB-5-93-4 (June 9, 1993).
Appeal petitions dismissed as trier vacated prior ruling and finding. Issues which arguably may be raised by appeal petitions are now moot.

Patterson v. Carolina Freight, 11 Conn. Workers' Comp. Rev. Op. 115, 1711 CRB-3-93-4 (June 9, 1993).
Ten day statutory deadline inapplicable even though claimant's appeal was filed late as appeal was from an oral ruling as a result of an informal hearing. Remanded for further proceedings absent a written or printed record.

Ward v. UTC/Pratt & Whitney Aircraft, 11 Conn. Workers' Comp. Rev. Op. 110, 1735 CRB-1-93-5 (June 4, 1993).
Trier's granting of respondents' Motion to Vacate Finding renders appeal moot as there exists no underlying action from which an appeal may be taken.

Hargatai v. Copy Data, Inc., 11 Conn. Workers' Comp. Rev. Op. 106, 1475 CRB-4-92-7 (June 2, 1993).
Appeal dismissed for failure to prosecute as appellant failed to file appellate documents in a timely fashion. Filing documents 3 days prior to date of scheduled oral argument does not persuade CRB to consider documents timely. See Practice Book § 4055.

Warchola v. U.S. Gypsum Specialists, 11 Conn. Workers' Comp. Rev. Op. 108, 1444 CRB-1-92-6 (June 2, 1993).
Remanded for further proceedings as trier issued a finding after an informal hearing. A record must be established before the CRB can review issues which may possibly be raised on appeal.

Guerrera v. Times Microwave Corporation, 11 Conn. Workers' Comp. Rev. Op. 104, 1430 CRB-8-92-6 (May 27, 1993).
CRB lacks jurisdiction over petition for review filed beyond statutorily mandated time requirement. Also, where appellant fails to file reasons of appeal or brief, appeal dismissed for failure to prosecute pursuant to Practice Book § 4055.

Jones v. Middletown Mfg., 11 Conn. Workers' Comp. Rev. Op. 56, 1296 CRD-8-91-9 (April 5, 1993).
Appeal dismissed as CRB lacks jurisdiction over § 31-290a claims. However, appellant failed to file reasons for appeal, motion to correct or a brief. Therefore, appeal dismissible for failure to prosecute. See also, **Jones**, § 31-290a.

Levasseur v. General Dynamics Corporation/Electric Boat Division, 11 Conn. Workers' Comp. Rev. Op. 34, 1244 CRD-2-91-6 (February 26, 1993).
Trier's decision was based on stipulated facts agreed to by respondent-employer and claimant at informal hearing. However, the matter involved the Second Injury Fund. Thus, absent the Fund's consent, a real party in interest, the contested issues must be addressed at a formal hearing so an evidentiary record can be established and the CRB will then have the opportunity for adequate appellate review. See also, **Levasseur**, § 31-349.

Bevans v. Milford, 11 Conn. Workers' Comp. Rev. Op. 21, 1487 CRB-3-92-8 (February 18, 1993).
Appeal dismissed where trier vacates his finding. Hence, issues which arguably may be raised on appeal are now moot.

Rydecki v. West Hartford/Board of Education, 11 Conn. Workers' Comp. Rev. Op. 22, 1613 CRB-1-93 (February 18, 1993).
See, Bevans, infra.

Cowles v. Colt's Manufacturing Company, Inc., 11 Conn. Workers' Comp. Rev. Op. 19, 1071 CRD-1-90-7 (February 17, 1993).
See, Schick, infra.

Schick v. Windsor Airmotive Division, 11 Conn. Workers' Comp. Rev. Op. 17, 1033 CRD-1-90-6 (February 16, 1993), **motion to dismiss appeal for lack of final judgment denied**, 31 Conn. App. 819 (1993), **aff'd**, 34 Conn. App. 673 (1994).
Remanded as trier resigned shortly after appeal was filed and never ruled on the Motion to Correct. See also, **Schick**, § 31-278.

Vasseur v. Konica Business Machines, 10 Conn. Workers' Comp. Rev. Op. 228, 1467 CRB-1-92-7 (January 4, 1993).
CRB dismissed appeal from trial commissioner's oral ruling granting respondent-employer's Form 36 as there was no written or printed record of proceedings below.

Bogli v. Glastonbury, 10 Conn. Workers' Comp. Rev. Op. 226, 1537 CRB-8-92-10 (December 28, 1992).
Appeal from Order granting § 31-308a benefits as the result of an informal hearing dismissed. There must be further proceedings below to establish a written or printed record before the CRB can properly consider an appeal.

Warchola v. U.S. Gypsum Specialists, 1444 CRB-1-92-6 (December 28, 1992).
Appeal dismissed as trier's Finding was issued as a result of an informal hearing. CRB Order vacated (January 14, 1993).

Duclos v. Northeast Lightning Protection, 10 Conn. Workers' Comp. Rev. Op. 225, 1451 CRB-1-92-7 (December 28, 1992).
Appeal from Finding issued as the result of an informal hearing dismissed. There must be further proceedings below to establish a written or printed record before the CRB can properly consider an appeal.

Demay v. State/Dept. of Correction, 10 Conn. Workers' Comp. Rev. Op. 224, 1584 CRB-2-92-12 (December 18, 1992).
Appeal from trier's oral ruling granting Form 36 dismissed. There must be further proceedings below to establish a written or printed record before the CRB can properly consider an appeal.

Molbury v. Midwest Drivers Corporation, 10 Conn. Workers' Comp. Rev. Op. 202, 1278 CRD-7-91-8 (November 12, 1992).
Pro se claimant failed to file reasons of appeal, motion to correct and brief or why claimant was appealing trial commissioner's decision. However, the CRB by reviewing record below and correspondence from claimant, inferred basis of appeal as a challenge to trial commissioner's failure to find claimant totally disabled after a certain date. CRB held evidence in conflict and thus, conclusion was supported.

Chute v. Mobil Shipping and Transportation, 10 Conn. Workers' Comp. Rev. Op. 183, 1321 CRD-7-91-10 (September 1, 1992), **aff'd**, 32 Conn. App. 16 (1993), **cert. denied**, 227 Conn. 919 (1993).
Corrected findings do not necessarily mandate a different outcome. See also, **Chute**, § 31-275(9), and § 31-294c.

Crochiere v. Enfield/Board of Education, 10 Conn. Workers' Comp. Rev. Op. 165, 1069 CRD-1-90-7 (August 27, 1992), **aff'd**, 227 Conn. 333 (1993).
Claimant's cross appeal dismissed for failure to file appeal within ten days as required by statute. In addition, CRB found trier's refusal to act on Motion to Correct was not error as respondents-appellants original Motion failed to include portions of evidence which would support requested corrections, no extension was sought, and subsequent Motion to Correct was not filed within the time requirements set forth in Adm. Reg. § 31-301-4. See also, **Crochiere**, § 31-275(1), § 31-284(a), § 31-294c, § 31-298, § 31-301. Factual findings.

Campbell v. Manchester Memorial, 10 Conn. Workers' Comp. Rev. Op. 151, 1182 CRD-5-91-2 (June 30, 1992).
Trier must re-examine correction sought as evidentiary record, although incomplete, seems to indicate support for correction of factual finding. Appellant is responsible for assuring adequacy of record on appeal. This includes assuring exhibits which may support a particular correction to a factual finding are before the CRB panel. Support for a correction to a factual finding can be found in a transcript reference which is before the CRB panel and a remand is being granted for other reasons. See also, **Campbell**, § 31-294c.

Gonzalez v. Meriden-Wallingford Hospital, 10 Conn. Workers' Comp. Rev. Op. 127, 1178 CRD-8-91-2 (May 21, 1992).
Appeal dismissed where respondents failed to file a brief or memorandum directing the CRB to portions of evidentiary record in support of their argument. It is not the duty of the CRB to find the evidence pertaining to corrections sought.

Svarplaitis v. Kimberly Clark Corporation, 10 Conn. Workers' Comp. Rev. Op. 124, 1264 CRD-7-91-7 (May 15, 1992).
Mailbox rule, i.e. if a document is mailed on a certain date, then it is filed on that date, does not apply. Appellant failed to file appeal within ten days, therefore appeal dismissed.

Ward v. Chesebrough-Ponds, Inc., 10 Conn, Workers' Comp. Rev. Op. 111, 1161 CRD-7-91-1 (May 8, 1992).
Appeal filed in chairman's office by the tenth day arguably substantially complied with § 31-301 time requirements. Also, CRB relied on Supreme Court decision Trinkley v. Ella Grasso Regional Center, 220 Conn. 739 (1992). As Trinkley suggests a showing of prejudice is needed by the party seeking dismissal for an untimely appeal filing and as no allegation of prejudice was present in this matter, appeal considered timely filed. See also, **Ward**, § 31-301. Factual findings.

Nevers v. Environmental Waste Removal, 10 Conn. Workers' Comp. Rev. Op. 96, 1166 CRD-5-91-1 (April 23, 1992).
Fund's appeal sustained and matter remanded. Where there is no record or transcript of proceedings below; CRB cannot perform any meaningful review.

Smith v. New Haven, 10 Conn. Workers' Comp. Rev. Op. 93, 1154 CRD-3-90-12 (April 20, 1992).
CRB dismissed appeal for failure to prosecute where no reasons of appeal or brief was filed.

Romeo v. H & L Chevrolet, Inc., 10 Conn. Workers' Comp. Rev. Op. 72, 1149 CRD-7-90-12 (March 31, 1992).
Where claimant's request that trial commissioner should have recused himself in the proceedings below and the request for recusal was not an issue below or mentioned in claimant's reasons of appeal but mentioned for the first time in appellant's brief before the CRB, such request will not be considered for the first time on appeal. Also, commissioner below was obligated to perform administrative functions, and his finding that no record of a timely filed notice of claim was not an action which resulted in the denial of claimant's due process right to an impartial arbiter. See also, **Romeo**, § 31-294c and § 31-278.

McCarthy v. 10 Star Corporation, 10 Conn. Workers' Comp. Rev. Op. 64, 1134 CRD-2-90-11 (March 16, 1992).
Factual findings must stand where no motion to correct is filed. See also, **McCarthy**, § 31-308(b).

Lynch v. Red Star Express, 10 Conn. Workers' Comp. Rev. Op. 75, 1133 CRD-3-90-11 (March 9, 1992).
Factual findings of trial commissioner must stand where no motion to correct is filed. See also, **Lynch**, § 31-300.

Deleon v. Dunkin Donuts, 10 Conn. Workers' Comp. Rev. Op. 39, 1113 CRD-3-90-9 (January 23, 1992).
CRB need not consider corrections sought in a Motion to Correct which would not alter the legal outcome. See also, **Deleon**, § 31-301. Factual findings.

Peters v. State/Southern Connecticut State University, 10 Conn. Workers' Comp. Rev. Op. 32, 1103 CRD-3-90-8 (January 13, 1992).
Where issue on appeal is not included in Reasons of Appeal and is only raised in brief submitted before CRB, CRB need not consider issue. Remanded on § 31-308 issue. See also, **Peters**, § 31-294c, and § 31-308(c).

Barlow v. Charlotte Hungerford Hospital, 9 Conn. Workers' Comp. Rev. Op. 274, 1076 CRD-5-90-7 (December 13, 1991).
Ten day statutory deadline for filing an appeal inapplicable where trier lacked authority to make any ruling or finding as appellant, a party of interest, was not notified of evidentiary hearing below. Jurisdictional defense can be raised at any time. See also, **Barlow**, § 31-284b.

Tessier v. Kogut Florist and Nurseryman, Inc., 9 Conn. Workers' Comp. Rev. Op. 288, 1088 CRD-8-90-7 (December 13, 1991).
Appeal filed within ten (10) day statutory period in the chairman's office timely filed as the chairman has statewide jurisdiction. See also, **Tessier**, § 31-301. Factual findings, § 31-290c, and § 31-307.

Richard v. Catholic Mutual Relief Society of America, 9 Conn. Workers' Comp. Rev. Op. 272, 1067 CRD-1-90-7 (December 6, 1991).
Where no Motion to Correct is filed Factual findings must stand. See also, **Richard**, § 31-284(a).

Fecto v. Kelly's Contracting, 9 Conn. Workers' Comp. Rev. Op. 256, 1027 CRD-5-90-5 (November 27, 1991).
Where no Motion to Correct is filed, trier's factual finding must stand. See also, **Fecto**, § 31-301. Factual findings.

Fournier v. Economy Spring, 9 Conn. Workers' Comp. Rev. Op. 246, 1141 CRD-6-90-11 (October 31, 1991).
Appeal dismissed for failure to comply with statutory time requirements.

Colucci v. Mattatuck Manufacturing Co., 9 Conn. Workers' Comp. Rev. Op. 234, 1000 CRD-5-90-4 (October 30, 1991).
As no Motion to Correct was filed, the facts found must stand. Additionally, where trier made no final judgment concerning claimant's right wrist injury; appeal premature. See also, **Colucci**, § 31-301. Factual findings.

Parks v. PDQ's Restaurant, 9 Conn. Workers' Comp. Rev. Op. 230, 991 CRD-2-90-3 (October 30, 1991).
Remanded in order to permit respondents opportunity for a full evidentiary hearing as date of formal hearing below conflicted with respondent's schedule which the district office was aware of in advance.

Gatewood v. Hartford, 9 Conn. Workers' Comp. Rev. Op. 220, 1006 CRD-1-90-4 (October 21, 1991).
Facts as found by trial commissioner must stand where no Motion to Correct is filed. See, Mack v. Blake Drug, 152 Conn. 523 (1965). See also, **Gatewood**, § 7-433c.

Bonner v. Correia & Son Construction, 9 Conn. Workers' Comp. Rev. Op. 193, 1127 CRD-3-90-11 (August 29, 1991).
Appeal dismissed for failure to comply with statutorily mandated time requirements for filing an appeal.

Shaskus v. Structural Accessories, Inc., 9 Conn. Workers' Comp. Rev. Op. 197, 1061 CRD-5-90-6 (August 29, 1991).
Appeal dismissed for failure to comply with statutorily mandated time requirements for filing an appeal.

Imbrogno v. Stamford Hospital, 9 Conn. Workers' Comp. Rev. Op. 174, 967 CRD-7-90-1 (August 2, 1991), **aff'd**, **rev'd & remanded in part**, 28 Conn. App. 113 (1992), **cert. denied**, 223 Conn. 920 (1992).
Appeal from a denial of a Motion to Correct is a procedural superfluity when there exists a proper and timely appeal record. See also, **Imbrogno**, § 31-301. Factual findings, § 31-300.

Crossway v. Newington, 9 Conn. Workers' Comp. Rev. Op. 167, 978 CRD-6-90-2 (June 28, 1991).
Where appellant fails to file a Motion to Correct the findings must stand. See also, **Crossway**, § 7-433c.

Kempesta v. Hendels Gas & Oil Co., 9 Conn. Workers' Comp. Rev. Op. 152, 998 CRD-2-90-4 (June 5, 1991).
Matter remanded for further proceedings as trier's award of compensation benefits and medical expenses resulted from an informal hearing and CRD cannot properly review without a record of the proceeding below.

Palmer v. UTC/Pratt & Whitney, 9 Conn. Workers' Comp. Rev. Op. 150, 1079 CRD-8-90-7 (June 5, 1991).
Claimant's appeal sought review of an informal disfigurement evaluation. As there was no record below for the CRD to review, matter remanded for further proceedings.

Merchant v. J.S. Nasin Company, 9 Conn. Workers' Comp. Rev. Op. 122, 952 CRD-2-89-11 (May 1, 1991).
Cross appeal dismissed for failure to comply with time requirements of § 31-301(a). See also, **Merchant**, § 31-298.

Madden v. Moore Special Tool, 9 Conn. Workers' Comp. Rev. Op. 107, 834 CRD-4-89-3 (April 8, 1991).
CRD waived compliance with procedural technicalities in order to protect pro se claimant's rights as factual finding was incorrect.

Matey v. Estate of Sarah Dember, 1189 CRD-5-91-3 (April 5, 1991).
Issues addressed on appeal rendered moot where trial commissioner grants motion to set aside and reopen proceedings below. Prior decision at Matey, 5 Conn. Workers' Comp. Rev. Op. 104, 516 CRD-5-86 (June 14, 1988), appeal dismissed**,** 210 Conn. 626 (1989)(per curiam), § 31-278, § 31-310. Subsequent decision at Matey**,** 3153 CRB-5-95-8 (January 10, 1997), aff'd in part, rev'd in part, 256 Conn. 456 (2001), supra, § 31-315, § 31-355(a), Matey, 3848 CRB-7-98-6 (July 7, 1999), aff'd in part and rev'd in part, 256 Conn. 456 (2001), § 31-355(b), Matey, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), appeal dismissed for failure to comply with Supreme Court's directive, 85 Conn. App. 198 (2004).

Corona v. Uniroyal Chemical, Inc., 9 Conn. Workers' Comp. Rev. Op. 105, 987 CRD-5-90-3 (March 13, 1991).
Appeal dismissed where respondent had actual notice of the Finding and Award within the ten-day appeal period and failed to file a timely appeal.

Bennett v. East Hartford, 1155 CRD-1-90-11 (March 11, 1991).
Matter remanded where there is no record or transcript of evidence below for CRD to review.

Kica v. Mattatuck Manufacturing Co., 9 Conn. Workers' Comp. Rev. Op. 103, 930 CRD-5-89-10 (March 7, 1991).
Where original trial commissioner died before a decision was reached and parties agreed to submit matter based on record and evidence presented before the original trial commissioner to the subsequent commissioner for a decision, claimant is not entitled to a de novo hearing. See, Foley v. New Britain, 1 Conn. Workers' Comp. Rev. Op. 147, 47 CRD-6-81 (August 3, 1982).

Lauriano v. Reliance Automotive, 9 Conn. Workers' Comp. Rev. Op. 96, 934 CRD-8-89-11 (March 4, 1991).
Appeal dismissed where appellant failed to prosecute with due diligence.

Delaney v. Camelot Nursing Home, 1049 CRD-2-90-6 (February 7, 1991).
DRG. See, Burdick v. Frito Lay, Inc., 9 Conn. Workers' Comp. Rev. Op. 64, 1048 CRD-2-90-6 (February 7, 1991).

Burdick v. Frito-Lay, Inc., 9 Conn. Workers' Comp. Rev. Op. 64, 1048 CRD-2-90-6 (February 7, 1991).
Matter remanded. Without a proper transcript of the proceedings below, CRD cannot properly review record on appeal. See, Case v. McClinch Crane, 7 Conn. Workers' Comp. Rev. Op. 92, 727 CRD-7-88-4 (October 4, 1989).

Laime v. American Standard, 9 Conn. Workers' Comp. Rev. Op. 62, 914 CRD-2-89-9 (February 6, 1991).
Matter remanded where there is no record of proceedings below for CRD to review. See also, **Laime**, § 31-298.

Trinkley v. State/Ella Grasso Regional Center, 9 Conn. Workers' Comp. Rev. Op. 58, 924 CRD-5-89-10 (February 6, 1991), **rev'd**, 220 Conn. 739 (1992).
Appeal petition received by facsimile transmission substantially complied with § 31-301. On appeal, Supreme Court held that as the record was devoid of any finding as to when the appellant received notice of the trial commissioner's decision, there is a strong presumption of regularity which attaches to the timeliness of appeals to the CRD. Further, disputes as to the timeliness of an appeal do not deprive the CRD of jurisdiction over the appeal where appellee has failed to assert any showing of prejudice. See also, **Trinkley**, § 5-142(a).

Mancini v. A. Laugeni & Son, Inc., 9 Conn. Workers' Comp. Rev. Op. 45, 739 CRD-5-88-6 (February 4, 1991).
CRD limited to considering only issues raised at the time of trial or assigned as issues on appeal. See also, **Mancini**, § 31-306.

Russo v. Stamm Construction Co., Inc., 1167 CRD-6-91-1 (January 29, 1991).
Where finding and award is vacated, appeal from that award is therefore moot.

Tarver v. Meriden Yellow Cab Co., 8 Conn. Workers' Comp. Rev. Op. 165, 877 CRD-8-89-6 (September 27, 1990).
Appeal dismissed for failure to file within 10 day statutory period.

Waddington v. Electric Boat/Division of General Dynamics, 8 Conn Workers' Comp. Rev. Op. 149, 720 CRD-2-88-4 (September 6, 1990).
Remanded. Where transcripts of the proceedings below are not obtainable, record is incomplete.

Stevens v. Hartford, 8 Conn. Workers' Comp. Rev. Op. 134, 831 CRD-1-89-2 (August 6, 1990).
Appeal petition not late where original mailing resulted in postal service's non-delivery of Finding and Award. Further, where office of commissioner closed for legal holiday on date petition for review was due, receipt next business day acceptable. See also, **Stevens**, § 31-300.

Weaver v. Jessman Motors, Inc., 8 Conn. Workers' Comp. Rev. Op. 138, 793 CRD-5-88-12 (August 6, 1990).
Appeal dismissed where appellant failed to provide transcript and the issue to be determined necessitated review of the evidence below.

Morant v. Stanadyne, Inc., 8 Conn. Workers' Comp. Rev. Op. 116, 828 CRD-1-89-2 (June 19, 1990).
Appeal filed after 10th day untimely. However, matter may be re-opened below if requirements of § 31-315 are satisfied.

Perrotti v. Portland Chemical, 8 Conn. Workers' Comp. Rev. Op. 105, 836 CRD-8-89-3 (June 6, 1990).
See, **Perrotti**, § 31-299b.

Halliday v. Daw's Critical Care Registry, 8 Conn. Workers' Comp. Rev. Op. 74, 797 CRD-7-88-12 (April 27, 1990).
CRD cannot reassess factual finding of trial commissioner. Matter must be remanded to trial commissioner for his determination as to the appropriate legal conclusion to be reached after further proceedings. See also, **Halliday**, § 31-291, § 31-301. Factual findings.

Famiglietti v. Dossert Corp., 8 Conn. Workers' Comp. Rev. Op. 65, 804 CRD-5-88-12 (April 17, 1990).
Appeal dismissed where appellant failed to file appeal petition within 10 days as required by statute.

Trantolo v. Trantolo & Trantolo, 8 Conn. Workers' Comp. Rev. Op. 69, 823 CRD-6-89-2 (April 17, 1990).
Whether an issue raised on appeal may be considered where the issue was not raised at the trial level is controlled by Practice Book § 4185. See also, **Trantolo**, § 31-294c, § 31-300.

Cormier v. Macke Company, 8 Conn. Workers' Comp. Rev. Op. 63, 799 CRD-2-88-12 (March 23, 1990).
Where finding regarding date of injury is legally inconsistent with other facts found matter must be remanded. See also, **Cormier**, § 31-301. Factual findings.

Sibilio v. Modern Printing & Lithography, 8 Conn. Workers' Comp. Rev. Op. 35, 770 CRD-7-88-9 (February 21, 1990).
Remanded. Confusion over dates of occurrences.

Spataro v. Mattioli Construction, 8 Conn. Workers' Comp. Rev. Op. 41, 784 CRD-4-88-10 (February 21, 1990).
Where appellant failed to provide specific assignments of error in commissioner's evidentiary rulings, issue will not be reviewed. See also, **Spataro**, § 31-294d, § 31-301-9. Additional evidence.

Rushton v. VIP Limousine, 7 Conn. Workers' Comp. Rev. Op. 117, 756 CRD-7-88-8 (December 6, 1989).
Motions to Correct do not toll the statutory time limitation for filing appeals when filed beyond appeal period.

Case v. McClinch Crane, 7 Conn. Workers' Comp. Rev. Op. 92, 727 CRD-7-88-4 (October 4, 1989).
Incomplete transcripts of the record below require remand for proper review to be possible. See also, **Case**, § 31-298.

Zeoli v. Healy-Ford Subaru, 873 CRD-5-89-6 (1989).
Appeal dismissed for mootness.

Johnston v. ARA Services, Inc., 7 Conn. Workers' Comp. Rev. Op. 19, 765 CRD-7-88-8 (June 29, 1989).
Appeal dismissed for failure to comply with § 31-301 and § 31-301-2.

Jagush v. Litton-Winchester Electronics, 7 Conn. Workers' Comp. Rev. Op. 1, 609 CRD-7-87 (June 9, 1989).
No reasons of appeal filed, therefore appeal is subject to dismissal.

Campbell v. Vaccaro's Restaurant, 863 CRD-8-89-5 (1989).
Appeal dismissed.

Tutsky v. Y.M.C.A. of Greenwich, 6 Conn. Workers' Comp. Rev. Op. 167, 543 CRD-7-87 (June 5, 1989), **no error**, 21 Conn. App. 806 (1990)(per curiam).
Late second appeal petition dismissed.

Mauro v. General Dynamics Corporation/Electric Boat Division, 713 CRD-2-88-3 (1989).
Case ordered remanded for trial proceedings so a transcript record can be prepared.

Hankey v. Hamden Steel and Aluminum Corp., 6 Conn. Workers' Comp. Rev. Op. 153, 644 CRD-5-87 (April 28, 1989).
Appellee's Motion to Dismiss on the basis of the untimely filing of the appellant's Reasons of Appeal not allowed where Motion to Dismiss not filed within 10 days of document's due date. Practice Book § 4056. See, Sager v. GAB Business Services, Inc., 11 Conn. App. 693 (1987).

Kinney v. State, 6 Conn. Workers' Comp. Rev. Op. 143, 786 CRD-3-88-11 (April 6, 1989).
Motion To Dismiss for late filed reasons of appeal denied until jurisdictional issues are resolved by Supreme Court in Reservation by CRD under § 31-324.

Diana v. C.H. Nickerson & Company, 6 Conn. Workers' Comp. Rev. Op. 123, 597 CRD-5-87 (March 10, 1989).
Where factual findings are not in compliance with Administrative Regulation § 31-301-3 and legal conclusion not supported by the factual findings, matter remanded for further proceedings. Also, appeal held timely under § 31-301 as petition was filed the next business day after a legal holiday.

Franzese v. Lombard Brothers, 6 Conn. Workers' Comp. Rev. Op. 109, 585 CRD-5-87 (February 23, 1989).
Articulation from CRD proper where exact basis for decision unclear.

Richardson v. H.B. Sanson, Inc., 6 Conn. Workers' Comp. Rev. Op. 107, 590 CRD-1-87 (February 23, 1989).
Whether appeal should be dismissed due to late filing of brief is matter of discretion. Further, issues not briefed are deemed abandoned.

Hall v. McLean Home, 6 Conn. Workers' Comp. Rev. Op. 80, 577 CRD-5-87 (January 9, 1989).
Remanded for articulation of precise theory of liability; several specific incidents or the result of repetitive trauma.

Poventud v. Eagle Four, 6 Conn. Workers' Comp. Rev. Op. 72, 775 CRD-5-88-10 (December 30, 1988).
Use of motion in limine not permitted in this forum.

Murdock v. Squires, 6 Conn. Workers' Comp. Rev. 64, 550 CRD-7-87 (December 1, 1988).
Appeal dismissed where appeal petition filed after time permitted by § 31-301(a).

Plourde v. Scovill Manufacturing Co., 6 Conn. Workers' Comp. Rev. Op. 67, 521 CRD-5-86 (December 1, 1988).
CRD has power under Practice Book § 4055 to dismiss appeal where claimant failed to file Motion to Correct or Reasons of Appeal.

Calvanese v. Springfield Sugar, 6 Conn. Workers' Comp. Rev. Op. 52, 549 CRD-1-87 (October 21, 1988).
Matter remanded where testimony of expert witnesses as to causation was undisputed but trial commissioner was unpersuaded by them. Fairness requires findings show why the trial commissioner was not persuaded by the experts' testimony.

Kwasnik v. Drico Corp., 6 Conn. Workers' Comp. Rev. Op. 50, 549 CRD-1-87 (October 21, 1988).
Issue not briefed deemed abandoned.

Morehouse v. Coffman's Lawn Sprinkler Service, 6 Conn. Workers' Comp. Rev. Op. 49, 591 CRD-7-87 (October 19, 1988).
Appeal dismissed where appellant failed to file briefs or appear at oral argument and appellee filed a Motion to Dismiss pursuant to § 4055 Practice Book.

Daniele v. Angelo Monarca, Inc., 6 Conn. Workers' Comp. Rev. Op. 25, 519 CRD-3-86 (1988).
See, **Daniele**, § 31-298.

Erdos v. Stratford, 6 Conn. Workers' Comp. Rev. Op. 24, 532 CRD-4-86 (September 19, 1988).
Matter remanded for further proceedings where parties so stipulated.

King v. Jukonski Truck Sales & Service, Inc., 6 Conn. Workers' Comp. Rev. Op. 1, 616 CRD-6-87 (August 12, 1988).
Motion to dismiss for failure to file timely reasons of appeal not granted where movant failed to comply with Practice Book § 4056 as required by Sager v. GAB Business Services, Inc., 11 Conn. App. 693 (1987). Also CRD considered merits of claim in order to comply as nearly as possible with time requirements under § 31-301.

Sorbello v. Gagnon, 6 Conn. Workers' Comp. Rev. Op. 3, 567 CRD-6-87 (August 12, 1988).
Matter remanded where transcript unavailable.

Black v. London & Egazarian Associates, Inc., 5 Conn. Workers' Comp. Rev. Op. 126, 483 CRD-7-86 (June 29, 1988).
CRD is vested with authority to review rulings on Motion to Preclude. See also, **Black**, § 31-294c and § 31-301. Factual findings.

Imbrogno v. Stamford Hospital, 5 Conn. Workers' Comp. Rev. Op. 99, 610 CRD-8-87 (June 9, 1988).
Claimant's filing of Motion to Correct 11 days after rendering of finding and award was not timely and did not arrest judgment in the absence of a timely filed Petition for Review. Further a Petition for Review filed within 10 days after a commissioner's denial of Motion for Reargument does not entitle appellate review as to any issue other than denial of motion. See later Imbrogno, § 31-300 and § 31-301. Factual findings.

Robillard v. Puckett, 5 Conn. Workers' Comp. Rev. Op. 72, 458 CRD-2-86 (April 28, 1988).
Matter dismissed for failure to prosecute the appeal with due diligence. Practice Book § 4055.

Lepino v. Electrolux Corp., 5 Conn. Workers' Comp. Rev. Op. 64, 561 CRD-7-87 (April 26, 1988).
Respondents' appeal dismissed where Motion to Extend Time to File Reasons was granted and gave an extension of time until two weeks after trial commissioner's ruling, and Reasons of Appeal were not submitted until after the extended time period.

Falborn v. Perkin Elmer Corp., 5 Conn. Workers' Comp. Rev. Op. 60, 619 CRD-7-87 (April 14, 1988).
Respondents' appeal dismissed under § 31-301-2 and Practice Book § 4056 as reasons of appeal were not submitted within time period permitted.

Barnes v. Levine Distributors, 5 Conn. Workers' Comp. Rev. Op. 49, 468 CRD-2-86 (April 7, 1988).
Where appellant's appeal alleged the trial commissioner's finding was unsupported by any evidence a Motion to Produce Transcript would be granted and rehearings permitted if necessary.

Kismann v. Perry, 5 Conn. Workers' Comp. Rev. Op. 131, 563 CRD-2-87 (June 29, 1987).
CRD dismissed appeal due to appellant's failure to prosecute where appellant failed to file Reasons of Appeal, Motion to Correct or Brief.

Baran v. Colen Displays, 4 Conn. Workers' Comp. Rev. Op. 107, 371 CRD-7-84 (June 20, 1987).
Respondents' failure to file reasons of appeal within § 31-301-2 resulted in dismissal of respondents' appeal.

Wilson v. Springfield Sugar, 4 Conn. Workers' Comp. Rev. Op. 66, 272 CRD-1-83 (May 11, 1987).
Failure to file reasons of appeal within time required by § 31-301-2 will result in dismissal.

Coco v. Dunham-Bush, Inc., 4 Conn. Workers' Comp. Rev. Op. 48, 415 CRD-1-85 (April 9, 1987).
Failure to appear at oral argument or to file a brief will result in dismissal.

Giguere v. Delta Rubber Co., 4 Conn. Workers' Comp. Rev. Op. 49, 428 CRD-2-85 (April 9, 1987).
Where claimant made a motion to reopen and such motion was granted and the finding and dismissal was vacated, there was no final judgment on which the CRD could act.

Irving v. Hoyland, 4 Conn. Workers' Comp. Rev. Op. 25, 249 CRD-7-83 (March 4, 1987).
Motion to extend time for filing Motion to Correct is within time required for filing of Motion to Correct.

Fisher v. State, 4 Conn. Workers' Comp. Rev. Op. 3, 413 CRD-1-85 (February 26, 1987).
Failure to file reasons of appeal within time period directed in § 31-301-2 will result in dismissal.

Ginoni v. Sikorsky Aircraft, 3 Conn. Workers' Comp. Rev. Op. 144, 301 CRD-4-84 (January 26, 1987).
Failure to file Reasons of Appeal within time period prescribed by § 31-301-2 will result in dismissal. See, Sager v. GAB Business Services, Inc., 11 Conn. App. 693 (1987).

Paskowski v. Connecticut Spring & Stamping Corp., 3 Conn. Workers' Comp. Rev. Op. 134, 205 CRD-6-83 (January 21, 1987).
See, Kiernan, supra.

Kiernan v. Roadway Express, Inc., 3 Conn. Workers' Comp. Rev. Op. 129 (December 23, 1986), **no error**, 15 Conn. App. 625 (1988), **cert. denied**, 210 Conn. 801 (1988).
Failure to file Reasons of Appeal within time permitted by an extension of time will result in dismissal.

Lund v. American Fabrics, 3 Conn. Workers' Comp. Rev. Op. 123, 447 CRD-4-86 (December 23, 1986).
Failure to file Reasons of Appeal within prescribed period under § 31-301-2 will result in dismissal.

McIninch v. New London, 3 Conn. Workers' Comp. Rev. Op. 115, 245 CRD-2-83 (December 22, 1986).
Appeals that do not comply with § 31-301-1 will result in dismissal.

Cocoran v. Seal, Inc., 3 Conn. Workers' Comp. Rev. Op. 114, 250 CRD-5-83 (December 8, 1986).
Failure to file Reasons of Appeal within ten days of Petition for Review as prescribed in § 31-301-2 will result in dismissal.

Cutler v. Pepperidge Farm, Inc., 3 Conn. Workers' Comp. Rev. Op. 106, 285 CRD-7-83 (December 2, 1986).
Appeal dismissed where no Reasons for Appeal filed by extended time period.

Tomkinson v. Stockwell, 3 Conn. Workers' Comp. Rev. Op. 101, 218 CRD-4-83 (November 28, 1986).
Failure to file Reasons of Appeal or Motion to Extend Time for such filing within period prescribed by § 31-301-2 is grounds for dismissal.

Emmens v. Southbury Food Center, 3 Conn. Workers' Comp. Rev. Op. 73, 455 CRD-5-86 (October 7, 1986).
Failure to file reasons of appeal within time period permitted by extension will result in dismissal.

Belle v. St. Johnsbury Trucking Co., 3 Conn. Workers' Comp. Rev. Op. 72, 495 CRD-4-86 (October 6, 1986).
Failure to file appeal within 10 days of Finding and Award results in dismissal.

Wright v. Infeld, 3 Conn. Workers' Comp. Rev. Op. 62, 434 CRD-4-85 (July 10, 1986).
See, Belle, supra.

Sager v. GAB Business Services, Inc., 430 CRD-3-85 (April 9, 1986), **error**; **further proceedings**, 11 Conn. App. 693 (1987).
CRD dismissed appeal for failure to comply with Administrative Regulation § 31-301-2. Appellate Court found error and held Practice Book § 4056 was controlling. A Motion to Dismiss for failure to file papers within the time allowed must be filed within ten days after the time when the papers were required to be filed, otherwise the Motion to Dismiss is late and the defect is waived.

Lane v. State/Norwich Hospital, 3 Conn. Workers' Comp. Rev. Op. 28, 373 CRD-2-85 (January 29, 1986).
See, Belle, supra.

Champagne v. F. & S. Oil Co., 3 Conn. Workers' Comp. Rev. Op. 18, 423 CRD-5-85 (October 28, 1985).
See, Belle, supra.

Domizio v. Domizio Enterprises, Inc., 3 Conn. Workers' Comp. Rev. Op. 19, 423 CRD-5-85 (October 28, 1985).
Failure to file Reasons of Appeal within time period directed under Administrative Regulation § 31-301-2 will result in dismissal.

Duncan v. Waterbury, 3 Conn. Workers' Comp. Rev. Op. 1, 168 CRD-5-82 (August 14, 1985).
Where appellant sought correction of factual finding objection should be made in accordance with Administrative Regulation § 31-301-4. Correction of Finding.

Short v. Family Services, 2 Workers' Comp. Rev. Op. 125, 180 CRD-4-82 (March 1, 1985).
Dismissed for failure to prosecute.

Reising v. General Dynamics Corporation/Electric Boat Division, 2 Conn. Workers' Comp. Rev. Op. 123, 361 CRD-2-84 (February 25, 1985).
Failure to file reasons of appeal within 10 days results in dismissal. See, Domizio, supra.

Andrews v. Sal's Express Co., 2 Conn. Workers' Comp. Rev. Op. 110, 228 CRD-4-83 (December 3, 1984).
Although respondent's Motion to Correct was filed late, Commissioner's granting of said motion impliedly extended time for filing.

Barton v. Weller Farms, Inc., 2 Conn. Workers' Comp. Rev. Op. 101, 320 CRD-1-84 (August 17, 1984).
See, Belle, supra.

Johnson v. Courtland Gardens Convalescent Home, 2 Conn. Workers' Comp. Rev. Op. 82, 154 CRD-7-82 (July 27, 1984).
See, Domizio, supra.

Damiano v. State, 2 Conn. Workers' Comp. Rev. Op. 66, 196 CRD-2-83, 197 CRD-2-83, 198 CRD-2-83, 199 CRD-2-83 (June 19, 1984).
See, Belle, supra.

Fortin v. State, 2 Conn. Workers' Comp. Rev. Op. 33, 138 CRD-6-82 (September 19, 1983).
Cross-appeal dismissed due to untimely filing.

Sullivan v. Northwind Energy Insulators, Inc., 2 Conn. Workers' Comp. Rev. Op. 12, 146 CRD-4-82 (May 23, 1983), **no error**, 2 Conn. App. 689 (1984), **cert. denied**, 195 Conn. 801 (1985).
Commissioner's failure to rule on Motion to Disqualify held harmless error as issuance of Finding and Award made matter moot.

Foley v. New Britain, 1 Conn. Workers' Comp. Rev. Op. 147, 47 CRD-6-81 (August 3, 1982).
See citation listed under § 7-433.

Gavin v. New Britain, 1 Conn. Workers' Comp. Rev. Op. 151, 46 CRD-6-81 (August 3, 1982).
See, Foley, supra.

Karas v. Hamilton Standard Division/U.T.C., 1 Conn. Workers' Comp. Rev. Op. 26, 45 CRD-6-81 (February 20, 1981).
See, Belle, supra .

Golub v. State, 1 Conn. Workers' Comp. Rev. Op. 3, 4 CRD-2-79 (April 2, 1980).
See, Belle, supra.

Ilewicz v. State, 1 Conn. Workers' Comp. Rev. Op. 5, 10 CRD-2-80 (April 2, 1980).
See, Belle, supra.

Sec. 31-301. Factual findings.

Byrd v. Bechtel/Fusco, 4765 CRB-2-03-12 (December 17, 2004).
Trial commissioner was entitled to rely on medical opinions of two physicians who did not find it medically probable that claimant's back, knee, and hip symptoms were related to compensable ankle injury. See, **Byrd**, § 31-279(c), § 31-301. Appeal procedure.

Russo v. City of Hartford, 4769 CRB-1-04-1 (December 15, 2004).
CRB remanded case where findings were contradictory with facts found and underlying evidence in record.

Horobin v. West Haven, 4724 CRB-3-03-9 (December 2, 2004).
Insufficient evidence in record to support finding of outstanding $2,860 medical bill dating back to 1993, given 2001 letter from same treater that lists unpaid balance as $460. See, **Horobin**, § 31-296. Voluntary agreements (approval of), § 31-300, § 31-301. Factual findings, § 31-307, § 31-349, § 31-298.

O'Connor v. Mass. Electric Construction Co., 4734 CRB-2-03-10 (November 4, 2004).
CRB affirmed trier's conclusion that claimant sustained an injury to his back which arose out of and during the course of his employment. It is the trier's responsibility to make credibility determinations regarding the accuracy of the claimant's testimony regarding how the alleged injury took place.

Malsan v. Town of West Hartford, 4746 CRB-6-03-10 (September 27, 2004).
Board reversed trier's conclusion that the claimant's September 2002 wrist pain was caused by an April 2001 compensable wrist injury. There was no medical opinion in the record to support causation. Board explained that it is not common knowledge that a wrist sprain would cause painful symptoms without further aggravation over a year later.

Carney-Bastrzycki v. Hospital for Special Care, 4722 CRB-6-03-9 (September 3, 2004).
CRB refused to remand case where mistake in dates was not instrumental to causation determination. CRB also upheld trier's determinations regarding medical opinions. See also, **Carney-Bastrzycki**, § 31-301-9.

Strona v. Textron Lycoming, 4700 CRB-3-03-7 (August 6, 2004).
CRB remanded matter for trial de novo where trial commissioner's findings were without evidentiary support. Prior decision at Strona, 4398 CRB-4-01-5 (August 6, 2002).

Rego v. A1 Auto Detailing, 4704 CRB-8-03-7 (August 5, 2004).
CRB affirmed trier's finding claimant's injuries were not caused by horseplay. See also, **Rego**, § 31-284(a).

Belanger v. J&G Belanger Concrete Construction, 4684 CRB-6-03-6 (July 28, 2004).
CRB affirmed trier's finding that incidents subsequent to 1997 compensable back injury did not constitute new or intervening injury that broke causal connection. CRB traditionally defers to trier's findings as to whether or not a particular incident legally

amounts to substantial cause of physical injury. Treating physician's testimony did not cast doubt upon his written reports supporting compensability, as he maintained his position that claimant's back weakness persisted following 1998 discectomy, and current L5-S1 disc problems were natural evolution of compensable injury process. See also, **Belanger**, § 31-301. Appeal procedure.

Kuelesza v. O & G Industries, 4692 CRB-4-03-7 (May 25, 2004).
CRB affirmed trier's finding regarding causation where conflicting medical opinions existed. See also, **Kuelesza**, § 31-301. Appeal procedure.

Bowee v. Comcast Cablevision, 4604 CRB-3-03-1 (May 12, 2004).
CRB found trier's finding regarding dates of temporary total supported by medical evidence. See also, **Bowee**, § 31-308(b).

Distassio v. HP Hood, Inc., 4592 CRB-4-02-11 (May 5, 2004).
CRB remanded case where trier failed to make factual finding regarding causation of injury. See also, **Distassio**, § 31-294c.

Papapietro v. Bristol, 4674 CRB-6-03-6 (May 3, 2004).
Whether claimant's residence in an assisted living facility with some hours of nursing assistance was reasonable care is a factual determination. See also, **Papapietro**, § 31-294d and § 31-301. Appeal procedure.

Garcia v. Complete Change Landscaping Tree Removal, 4670 CRB-5-03-5 (May 3, 2004).
See, **Garcia**, § 31-307.

Hummel v. Marten Transport, Ltd., 4667 CRB-5-03-5 (May 3, 2004).
CRB upheld trial commissioner's finding job-related stress and job's limitations on time for other activities substantial factors in chain of events which led to claimant's fatal heart attack. See also, **Hummel**, § 31-301. Appeal procedure.

Jacobson v. General Dynamics/Electric Boat Div., 4642 CRB-2-03-3 (March 12, 2004).
CRB affirmed trial commissioner's conclusion claimant, dependent spouse, entitled to surviving spouse benefits. Decedent died as a result of lung cancer and was found to have been exposed to asbestos while working for EB at a facility in Conn. for some periods in the 1960's and 1970's. In the course of employment history, decedent also worked for EB at a site in R.I. and for Butler Bros, another R.I. employer. Trier found those exposures to asbestos, if any, were not significant. Appellant appealed trier's failure to find asbestos exposure while decedent worked at Butler Bros and EB in Rhode Island. CRB affirmed. Decedent's asbestos exposure is matter determined by the weight and credibility assigned. Evidence existed which supported decedent was not significantly exposed to asbestos while employed by Rhode Island employers. Thus, no factual basis for apportionment under § 31-299b exists.

Schenkel v. Richard Chevrolet, Inc., 4639 CRB-8-03-3 (March 12, 2004).
CRB standard of review for trial commissioner's factual findings restated. Medical evidence supported finding that claimant was amplifying symptoms and no longer entitled to temporary total disability benefits. Trier was entitled to find treating physician's opinion regarding percentage of permanency more persuasive than that of respondent's examiner. However, remand was necessary to clarify degree of accountability of earlier compensable injury for post-fusion-surgery increase in disability. See also, **Schenkel**, § 31-294d, § 31-295(c), § 31-307, § 31-308(b), § 31-349.

Peck v. Somers, 4640 CRB-1-03-2 (March 5, 2004).
CRB upheld trial commissioner's dismissal based on factual findings. See also, **Peck**, § 7-433c, § 31-301-4.

Parisi v. Yale University, 4606 CRB-3-02-12 (March 4, 2004).
CRB affirmed trier's factual findings as supported by evidence in record. Claimant needs to prove exposure to harmful substance at workplace caused physical injury and rendered him disabled.

Soto-Velez v. Michael's Chrysler Plymouth, 4628 CRB-2-03-2 (February 3, 2004).
Trier's factual findings were supported by evidence in the record, not contrary to law and not based on unreasonable inferences. Although the trial commissioner did not reference OSHA report specifically in his findings, he did consider it. Trier's factual determination that the claimant did not suffer from R.A.D.S. was supported by the medical testimony in the record. See also, **Soto-Velez**, § 31-301-4.

Maitland v. Home and Buildings Control, 4623 CRB-3-03-2 (January 13, 2004).
Evidence supported trier's finding that November 2000 injury produced only a temporary aggravation of pre-existing fibromyalgia, rather than a long-term disabling fibromyalgic condition with attendant depression. CRB could not override trier's determination of credibility on appeal.

Paige v. Hartford Insurance Co., 4594 CRB-2-02-12 (January 9, 2004).
CRB affirmed trier's factual findings as supported by the record, not contrary to law and not based on unreasonable inferences. Claimant's burden of proof is to present sufficient evidence allowing the trier to make a finding in support of the claim. The claimant must go beyond merely presenting a prima facie case. See also, **Paige**, § 31-298, § 31-294c.

Sullivan v. H.W. Sandora & Sons, Inc., 4603 CRB-3-02-12 (December 29, 2003).
Testimonial and medical evidence supported trial commissioner's determination that claimant's fall while shoveling snow (and resultant shoulder injury) was caused by sudden, severe arm pain attributable to earlier compensable injury. Mechanism of injury is readily understandable by lay person. Also, sufficient evidence existed to support finding that claimant was entitled to benefits under § 31-308a. See also, **Sullivan**, § 31-275(1), § 31-308a.

Fiorillo v. Bridgeport, 4585 CRB-4-02-11 (December 17, 2003), **appeal dismissed for lack of a final judgment**, A.C. 24991 (May 5, 2004).
Trial commissioner determines credibility of evidence. Statements that may not have been specifically contradicted need not be deemed probative. Where two doctors opined that claimant would not have work capacity given her various symptoms and complaints, trier was entitled to rely on those opinions and disregard evidence that would have supported a contrary outcome. See also, **Fiorillo**, § 31-298, § 31-301-4, § 31-307a, § 31-307. Prior decision at 4337 CRB-4-01-1 (November 19, 2001), vacated, S.C. 16736 (December 16, 2002).

Murray v. Mass Mutual Life Ins. Co., 4590 CRB-1-02-11 (November 20, 2003).
Given context, ambiguous wording in finding did not indicate misunderstanding of case by trier. At most, it was scrivener's error that did not require action on review. Cubital tunnel syndrome claim was properly found compensable given opinion of treating physician. Existence of total disability is also question of fact, and trier was not required to accept opinion of vocational rehabilitation specialist that claimant was completely unemployable given competitive nature of job market. See also, **Murray**, § 31-294d, § 31-296. Voluntary agreements (discontinuance of payments), § 31-300, § 31-307, § 31-308(a).

Fantasia v. Milford Fastening Systems, 4574 CRB-4-02-9 (September 30, 2003), **rev'd**, 86 Conn. App. 270 (2004), **cert. denied**, 272 Conn. 919 (2005).
CRB affirmed trier's finding of temporary total disability benefits following this tribunal's remand to the commissioner in Fantasia v. Milford Fastening Systems, 4332 CRB-4-00-12 (January 15, 2002). Trier articulated award, explaining that February 13, 1996 was date of maximum medical improvement. CRB was not persuaded by claimant's argument that trier's use of maximum medical improvement date reflected in the Voluntary Agreement signed by the claimant and approved by another commissioner was without legal foundation. Appellate Court reversed. Though CRB's initial remand to articulate inconsistent findings was appropriate, following trier's issuance of that articulation, CRB should have declared commissioner's findings inconsistent, as trier failed to comply with remand order inasmuch as he substituted new findings on period of total disability. Board was directed to reverse decision and remand case to new commissioner for formal hearing. See also, **Fantasia**, § 31-307; prior decision at Fantasia, infra, § 31-307.

Burke v. Shaw's Supermarkets, Inc. 4503 CRB-6-02-3 (August 25, 2003), **appeal dismissed**, A.C. 24693 (February 17, 2004).
CRB affirmed trier's dismissal of claim that cervical spine problems and surgery were causally related to the claimant's employment with the respondent during which she worked in the deli department. While the evidence presented was conflicting, there was evidence to support the trier's conclusion. Additionally, even though a trial commissioner may find a claimant's testimony credible he is not required to accept the claimant's opinion as to the causal relationship between the employment and the claimed injury where countervailing evidence is offered. See also, **Burke** § 31-301-4

Nau v. Polycast Technology Corp., 4555 CRB-7-02-8 (August 25, 2003).
CRB affirmed trier's conclusion that claimant's fall did result in an injury to his thumb but not his shoulder and neck in light of testimony of a previous automobile collision. See also, **Nau** § 31-301-4.

Strong v. UTC/Pratt & Whitney, 4563 CRB-1-02-8 (August 25, 2003).
See, **Strong**, § 31-275(1)(no apportionment allowed for portion of disability due to pre-existing emphysema that was not work-related, even if condition developed simultaneously with work-related asbestosis); § 31-308(b)(trier had discretion to credit report of physician who was within AMA guidelines in diagnosing claimant with 48% lung impairment, despite evidence that could have supported a lower rating), § 31-275(15); § 31-349.

Monaco v. School Transportation Services, 4549 CRB-3-02-7 (July 8, 2003).
CRB affirmed trier's conclusion claimant's knee injury arose out of and in the course of her employment. Claimant was a school bus driver who claimed that she fell on loose stones in the parking area of the employer. Claimant initially gave an incorrect date of injury. Respondents contended that the claimant's testimony was not credible. CRB reminded parties that the trial commissioner determines the weight and credibility of the testimony presented.

Ciarci v. Niro Brothers/Mason Enterprises, 4536 CRB-1-02-6 (June 17, 2003).
See, **Ciarci** § 31-275-1.

Salerno v. Mount Sinai Hospital, 4518 CRB-1-02-4 (April 9, 2003).
Whether claimant furnished medical care sufficient to satisfy constructive notice provision of § 31-294c(c) is a factually dependent question. See also, **Salerno,** § 31-294c.

Santiago v. PMI, Inc., 4513 CRB-6-02-4 (March 27, 2003).
CRB affirmed the trial commissioner's ruling that claimant was not entitled to a permanent partial disability rating of the upper extremity where claimant suffered the loss of use of several of his fingers. There was medical evidence to support his conclusion that the claimant's claim of a disability to his shoulder was not related to the work place accident. See also, **Santiago,** 31-308(b).

Valletta v. State/DMR, 4543 CRB-5-02-6 (March 26, 2003).
CRB affirmed trial commissioner's finding and conclusion claimant was entitled to temporary total disability for a period following the date of an approved Form 36. Respondent's contention that no change of circumstance existed warranting an award of temporary total disability benefits not persuasive. Such determinations are factual in nature and thus, within the province of the trial commissioner. In this case the claimant suffered a 45% permanent partial disability to her back. A vocational expert testified as to claimant's employment limitations. See also, **Valletta**, § 31-296.

Krajewski v. Atlantic Machine Tool Works, Inc., 4500 CRB-6-02-3 (March 7, 2003).
Claimant failed to meet burden of proof with regard to compensability of injuries that were claimed to be sequelae of 1981 shoulder injury, insofar as they were caused by

falls due to effects of medication. Claim for increased permanency similarly dismissed on credibility grounds. However, CRB remanded for articulation on one issue where medical reports cited by trier did not clearly support dismissal of wrist injury claim, as stated by dismissal order. See, **Krajewski**, § 31-278, § 31-284b, § 31-290a, § 31-301. Appeal procedure, § 31-301-9, § 31-312, § 31-313, § 31-315; prior decisions at Krajewski, 15 Conn. Workers' Comp. Rev. Op. 44, 2120 CRB-6-94-8 (November 28, 1995), § 31-308a; Krajewski, 11 Conn. Workers' Comp. Rev. Op. 54, 1387 CRD-6-92-2 (April 1, 1993), § 31-290a.

Vazquez v. Unifirst Corp., 4498 CRB-4-02-3 (March 7, 2003).
Trier accepted claimant's explanation that language barrier caused certain doctors' reports to omit mention of workplace duties as alleged cause of back injury. CRB affirmed. Evidence supported outcome of case. Trier was not required to specifically discuss co-workers' testimony that claimant seemed to understand English reasonably well, and was free to draw his own inferences regarding credibility.

Dzialo v. B&B Industries, 4509 CRB-2-02-3 (March 5, 2003).
CRB affirmed trial commissioner's findings and conclusion claimant did not suffer an injury that arose out of and in the course of his employment. Trier found claimant not to be credible and thus, dismissed his claim that he injured his back when he was struck by a blade on an excavator and knocked into a ditch. The trier found the testimony of another witness who testified that the claimant was not struck by the excavator to be more credible. Determinations as to weight and credibility assigned to testimony solely within trier's purview.

Fiore v. House & Garden Shop, 4494 CRB-7-02-2 (February 28, 2003).
CRB explained finality of judgment concept to pro se claimant who sought to reopen claim in order to retry issues of credibility. See also, **Fiore**, § 31-315. Prior decision at Fiore, 3747 CRB-7-97-12 (April 5, 1999), infra; § 31-301-9.

Gagliardi v. Eagle Group, Inc., 4496 CRB-2-02-2 (February 27, 2003), **aff'd**, 82 Conn. App. 905 (2004)(per curiam).
Evidence adequately supported trier's finding that claimant's disability and need for surgery were not probable result of compensable fall suffered in January 2001, where he had suffered back problems since 1990, and experienced heightened pain during the several months prior to his fall. See also, **Gagliardi**, § 31-294f. Prior decision at Gagliardi, 4012 CRB-1-99-4 (July 20, 2000).

Bastek v. Camco Fittings Co., 4487 CRB-3-02-2 (February 25, 2003).
CRB affirmed trier's compensability finding. Inconsistencies between claimant's testimony and history in medical report were for trier to resolve, and he was entitled to accept claimant's explanation of discrepancies. Ambiguity regarding date of injury ("on or about March 15, 1996") was not problematic, as respondents did not allege prejudice from defect in notice. Claimant felt back pain while moving heavy steel bar. Compensability of initial injury could be established without expert testimony, but medical evidence needed to show that symptoms of two years later were attributable to that incident. CRB held that medical opinion relied on by trier was, in conjunction with

other evidence, sufficient to show reasonably probable causal connection. See also, **Bastek**, § 31-294c.

Papa v. Jeffrey Norton Publishers, Inc., 4486 CRB-3-02-1 (February 25, 2003).
CRB affirmed trier's finding of total disability based on medical reports that directly established said disability within reasonable degree of medical probability. Total disability was sufficiently documented. See also, **Papa**, § 31-296. Voluntary agreements (discontinuance of payments), § 31-301-9, § 31-307.

Avila v. Parcel Port, 4481 CRB-3-02-1 (February 13, 2003).
Board remanded for clarification of conflicting findings regarding cause of injury. Award created uncertainty as to whether trier was identifying specific date of injury, period of repetitive trauma covering claimant's short-term employment at Parcel Port, or long-term repetitive trauma that included her 14-year history of physically taxing jobs. See also, **Avila**, § 31-307.

Caldwell v. Shaw's Supermarkets, Inc., 4493 CRB-3-02-2 (February 13, 2003).
CRB affirmed trial commissioner's ruling that claimant's bilateral trigger thumb condition was causally related to her employment.

Alling v. Davis & Geck, 4483 CRB-7-02-1 (December 20, 2002).
CRB affirmed trier's finding that workplace injury arose out of employment. Proposed corrections that trier denied were not material and undisputed facts. See also, **Alling**, § 31-275(1).

Bombardier v. CT Valley Fitness Center, 4475 CRB-6-02-1 (November 20, 2002).
See, **Bombardier**, § 31-301. Appeal procedure.

Bourgeois v. Meadow Lawn Care, 4463 CRB-6-01-11 (November 18, 2002).
CRB reversed trier's conclusion that claimant sustained 35.7% hearing loss in left ear only. Physician had identified *total* hearing loss of 35.7% due to exposure from backfiring lawnmower. Board noted that trier may still accept or reject all or part of physician's opinion. Case remanded. See also, **Bourgeois,** § 31-308(b).

Persico v. Sikorsky Aircraft Corp., 4464 CRB-4-01-12 (November 15, 2002).
No error where trier failed to mention corroborative testimony of two of claimant's co-workers in dismissal order. Claimant failed to file Motion to Correct as required by Admin. Reg. § 31-301-4; moreover, trier may omit evidential facts that are immaterial to outcome of case, such as those relating to testimony that trier deems unpersuasive.

Sprague v. Lindon Tree Service, Inc., 4460 CRB-2-01-11 (November 15, 2002), **aff'd**, 80 Conn. App. 670 (2003).
CRB upheld trier's finding of compensability, which was primarily based on claimant testifying that lower back pain began following a day of hard work cutting and moving trees. Relationship between lifting of heavy objects and low back injuries is matter of common understanding. Physicians' reports adequately substantiated claim, despite being dependent on history provided by claimant. See also, **Sprague**, § 31-275(16).

Ortiz v. Highland Sanitation, 4439 CRB-4-01-9 (November 12, 2002).
See, **Ortiz**, § 31-295 (where interest award was inconsistent with corrected findings, CRB remanded for clarification); see also, **Ortiz**, § 31-300.

Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002).
In affirming decision, CRB discussed roles of trier and review board for benefit of pro se claimant. No medical evidence in record linked degenerative lower back condition with 1999 compensable back injury, and trier did not err by dismissing claim. See also, **Duddy**, § 31-296. Voluntary agreements (discontinuance of payments), § 31-298, § 31-307.

Arcano v. Stamford/Board of Education, 4447 CRB-7-01-10 (October 10, 2002), **aff'd**, 81 Conn. App. 761 (2004).
CRB affirmed trier's finding as to period of total disability due to cerebral vascular accident, and amount of attorney's fee awarded for undue delay. Findings will not be disturbed where there is evidentiary support. See also, **Arcano**, § 31-300, § 31-301. Factual findings.

Laneve-Annino v. Intracorp, 4441 CRB-8-01-9 (September 18, 2002).
Evidence supported trier's finding that claimant did not prove entitlement to temporary partial disability benefits. Relationship of neck injury to 1996 compensable accident was uncertain, according to treating physician's reports, and more than one doctor stated that effects of 1995 and 1996 compensable back injuries did not add to additional permanent back disability. See also, **Laneve-Annino**, § 31-308a, § 31-308(a).

Napolitano v. Bridgeport, 4388 CRB-4-01-5 (September 6, 2002).
Trier's decision regarding permanent partial impairment rating of heart was based on opinions of independent medical examiner and commissioner's examiner, both of which were stated within reasonable degree of medical probability. Physicians are not required to adhere to AMA Guides to Evaluation of Permanent Impairment if alternate basis for assessment of loss of organ use is evident. Not reversible error where trier explains why he finds particular test unreliable, even if he is not *required* to give reasons for his conclusions under Admin. Reg. § 31-301-3. See also, **Napolitano**, § 31-278, § 31-301-9, § 31-308(b).

Prescott v. Community Health Center, Inc., 4426 CRB-8-01-8 (August 23, 2002).
Two of claimant's three issues on appeal—failure of commissioner to make findings of (a) unreasonable contest and (b) total disability retroactive to date of injury—were "prototypical questions of fact," to which CRB had to apply deferential standard of review. See also, **Prescott**, § 31-300, § 31-307, § 31-310.

Duval v. O-Z Gedney, 4440 CRB-5-01-9 (August 12, 2002).
CRB affirmed trier's conclusion that injury did not arise out of or in course of employment where claimant's testimony was found not to be credible. Additionally, board affirmed trier's alternative conclusion that, even if injury occurred as alleged, it was not a substantial cause of claimant's medical condition.

Fox v. New Britain General Hospital, 4414 CRB-6-01-7 (August 6, 2002).
Medical evidence supported finding that 1998 hip injury was causal factor in claimant's current symptoms. Chronic degenerative condition was rendered worse following that injury and resulting bursitis, which required surgery, and claimant did not recover to same degree as she had following earlier hip operation. Trier drew reasonable inferences from evidence. See also, **Fox**, § 31-294d, § 31-308(a), § 31-308a.

Phaiah v. Danielson Curtain (C.C. Industries), 4409 CRB-2-01-6 (June 7, 2002).
CRB set forth standard of review for fact-finder's decision. Medical evidence supported trier's findings, and denial of claimant's request for back surgery was reasonable. See also, **Phaiah**, § 31-294d, § 31-294f.

Champagne v. O.Z. Gedney, 4425 CRB-5-01-8 (May 16, 2002).
Trier is entitled to accept all, part or none of any doctor's medical opinion. No error where trier found testimony of independent medical examiner and commissioner's examiner more persuasive with regard to absence of lung permanency or total disability, while also finding treating physician's testimony more persuasive with regard to existence of early simple silicosis in lungs. See also, **Champagne**, § 31-294f.

Morneault v. D M & M Restaurants, 4389 CRB-3-01-5 (March 27, 2002).
Trier did not misapply law as to burden of proof in finding that respondents failed to posit theory as to source of claimant's injury and need for medical treatment. Statement merely reflected that, where respondents' defense largely consisted of attacks on credibility of witnesses, and claimant made out prima facie case, respondents failed to offer adequate grounds to maintain their defense. See also, **Morneault,** § 31-275(1).

Bellman v. Christy's Market, 4387 CRB-6-01-5 (March 25, 2002).
See, **Bellman**, § 31-301. Appeal procedure (dicta regarding CRB's obligation to uphold trier's credibility determinations).

Sherman v. University of Conn./ Dining Services, 4380 CRB-2-01-4 (March 1, 2002).
Question of fact as to whether claimant's low back injury was caused by compensable incident where he was hit by garage door. Treating physician's opinion supported trier's conclusion that injury was compensable.

Bryan v. Sheraton-Hartford Hotel, 3320 CRB-1-96-4 (January 29, 2002), **aff'd**, 74 Conn. App. 901 (2002), **cert. denied**, 263 Conn. 916 (2003).
Pursuant to Appellate Court remand, CRB considered claimant's appeal from trier's original decision, and affirmed its finding that she suffered compensable back strain, but did not meet burden of proof that she also sustained shoulder injury or any internal/gastrointestinal or other injuries, including lost pregnancies. See also, **Bryan**, § 31-308a. See related cases: Bryan, 3730 CRB-1-97-11 (May 7, 1999), rev'd, 62 Conn. App. 733 (2001), § 31-298; and Bryan, 3320 CRB-1-96-4 (March 12, 1997), § 31-301-9.

Hamzi v. Danbury Hospital, 4352 CRB-7-01-2 (January 16, 2002), **aff'd**, 74 Conn. App. 911 (2003)(per curiam).
Board affirmed trier's conclusion that claimant's back condition and need for surgery were caused by lifting incident, although trier did not cite any medical opinion in

support of causation. It is common knowledge that lifting something heavy, such as a patient, may cause serious back injury, especially where, as here, symptoms and need for treatment occurred immediately following incident.

Marcoux v. Allied Signal, 4366 CRB-4-01-3 (January 16, 2002).
CRB explained scope of its review to pro se claimant. Factual findings were supported by treating physician's testimony regarding etiology of carpal tunnel syndrome and its distinction from prior treatment for lateral epicondylitis, which was an accepted injury. See also, **Marcoux**, § 31-301. Appeal procedure.

Nunes v. State/Dept. of Motor Vehicles, 4360 CRB-2-01-2 (January 16, 2002).
Testimony and medical reports supported trier's findings that claimant's post-traumatic stress disorder was related to earlier work incident at DMV along with incident that immediately preceded his departure; that disability was not caused by substance abuse; and that claimant was totally disabled for several months between leaving DMV and obtaining work at a laundry. See also, **Nunes**, § 31-275(1), § 31-275(16).

Fantasia v. Milford Fastening Systems, 4332 CRB-4-00-12 (January 15, 2002).
Board remanded case to trier for articulation of decision where trier did not award total disability benefits, yet found persuasive a doctor's opinion that claimant was temporarily totally disabled. See also, **Fantasia**, § 31-307. See subsequent decision at Fantasia, 4574 CRB-4-02-9 (September 30, 2003)**,** rev'd, 86 Conn. App. 270 (2004), cert. denied, 272 Conn. 919 (2005). § 31-301. Factual findings, § 31-307.

Fusciello v. Ronnie Demeo, Inc., 4340 CRB-6-01-1 (January 7, 2002).
Trier dismissed claimant's request for temporary total disability or § 31-308a benefits. No proof that injury-related medical condition had significantly worsened from several years earlier, when previous claim for total disability benefits was dismissed. CRB noted that factual findings in prior decisions cannot be re-litigated under principle of res judicata. Thus, claimant would have had to demonstrate some change in condition in order to establish new disability claim. See also, **Fusciello**, § 31-307. Prior decisions at Fusciello, 3406 CRB-8-96-8 (February 4, 1998), § 31-301. Appeal procedure, § 31-307; Fusciello, 12 Conn. Workers' Comp. Rev. Op. 283, 1535 CRB-6-92-10 (June 7, 1994), § 31-275(1), § 31-275(16), § 31-307.

Perrelli v. Yale University, 4350 CRB-4-01-1 (December 20, 2001).
CRB affirmed trier's finding of compensability. Doctor's inability to state that pneumothorax was caused by workplace lifting incident within "reasonable medical probability" was not solely dispositive of legal sufficiency of diagnosis, as one could conclude from substance of doctor's opinion that claimant's injury more likely than not caused him to suffer pneumothorax. No absolute requirement that doctor be able to assign numerical probability percentage, or be able to conclusively rule out all other possible causes.

Alicea v. ABCD of Bridgeport, 4318 CRB-4-00-12 (November 15, 2001).
Claimant's failure to persuade trier that she was disabled from work as a result of compensable psychiatric condition was matter of evidentiary credibility. No error.

Kelly v. Dunkin' Donuts, 4278 CRB-4-00-8 (November 1, 2001).
Trier permissibly ascribed claimant's need for pain management to chronic complaints of shoulder pain rather than recent aggravation. Evidence supported finding that elbow injury was aggravation of previous injury, rather than completely new symptom. Further, insufficient evidence existed to establish causal basis for apportioning liability for injuries under common-law theory, as doctor's report distinguished symptoms caused by recent aggravation from symptoms caused by ongoing complaints. See also, **Kelly**, § 31-299b, § 31-349. Subsequent decision at Kelly, 4621 CRB-4-03-2 (April 5, 2004). Section 31-299b, § 31-301, § 31-349.

Niklewski v. K-Tron Manufacturing, 4299 CRB-5-00-10 (October 25, 2001).
CRB affirmed trial commissioner's dismissal of claim. Decision depended on assessment of evidentiary credibility.

Briggs v. American Medical Response, 4302 CRB-3-00-9 (September 24, 2001).
Medical reports of claimant's treating physician established permanent partial disability rating and, by implication, maximum medical improvement date. Respondents failed to show that physician's method of gauging reduced heart function was scientifically incorrect. Absence of maximum medical improvement date in findings did not invalidate permanency rating, as one could infer that treater and independent medical examiner were both satisfied that claimant would not improve. Also, respondents did not seek articulation of maximum medical improvement date via Motion to Correct. See also, **Briggs**, § 31-298, § 31-301-9.

Benjamin v. Uniroyal Technology, 4304 CRB-7-00-10 (September 19, 2001).
CRB's affirmance of dismissal order was based on trier's authority to determine testimonial credibility. Here, witnesses testified that claimant did not have to do heavy lifting at workplace, and he did not ascribe his need for surgery to a work-related injury either prior to scheduled surgery or in a disability form he completed afterward. Trier was entitled to find that claimant offered insufficient proof to prevail on claim.

Garofalo v. Jarvis Products Corp., 4249 CRB-8-00-6 (September 12, 2001).
CRB affirmed trier's finding that claimant suffered compensable repetitive trauma injury to knee, and trier's authorization of medical bills and temporary partial disability period . Nature and etiology of injury were of moderate complexity; combination of testimony and Dr. Cambridge's reports constituted sufficient evidence to support trier's conclusions. Citing Keenan v. Union Camp Corp., 49 Conn. App. 280 (1998), CRB noted that, if record contains medical evidence that supports trier's conclusion, it must infer that he considered and relied on that evidence even if this has not been explicitly stated in opinion itself. See also, **Garofalo**, § 31-294d.

Smith v. Federal Express Corp., 4242 CRB-7-00-5 (August 22, 2001).
CRB affirmed trier's decision. Respondents objected to finding stating that "every doctor who treated Claimant" opined that he was totally disabled, as requested correction pointed out a doctor who had seen claimant for rehabilitation purposes and thought him capable of returning to sedentary work. CRB held that, by denying correction, trier was demonstrating that he did not find that doctor's opinion credible. No

need to cite mere evidential facts in decision. Also, finding that doctors concluded further surgery was "not an option" does not preclude future consideration of that issue should circumstances, or a doctor's opinion, change.

Franco v. Dependable Motors, Inc. d/b/a Branford Dodge, 4281 CRB-3-00-8 (July 17, 2001).
Trier dismissed claim that employment caused emotional stress, exacerbating an underlying cardiac condition that caused claimant to suffer unstable angina. Trier concluded that underlying heart disease was not work related, and that as emotional stress caused only somatic symptoms of chest pain, it was not compensable under § 31-275(16)(B)(ii)-(iii). Claimant argued that employment stress exacerbated heart condition and led to angina, which constitutes a compensable mental-physical injury. CRB agreed that substantial aggravation of pre-existing condition may be sufficient to establish compensability. However, whether claimant's alleged stress so aggravated his pre-existing non-work related cardiac condition so as to cause him to suffer a compensable injury was a factual issue for the trier. As record fully supported decision on causation, board did not address claimant's argument that his angina condition constituted a mental-physical injury rather than a mental-mental injury under § 31-275(16)(B)(ii), and did not discuss whether claim was precluded by § 31-275(16)(B)(iii). See also, **Franco**, § 31-275(16).

Barretta v. Thermal Acoustics, Inc., 4142 CRB-3-99-11 (July 12, 2001).
Board affirmed trier's finding that angina pectoris resulted from longstanding and pre-existing coronary arteriosclerosis, contributed to by multiple (non-work-related) risk factors such as heavy smoking. Claimant argued that it was precipitated by stress caused by his attendance at independent medical examination involving his accepted psychiatric claim. As there were conflicting medical opinions in record, this was factual decision for trier. See also, **Barretta**, § 31-301. Appeal procedure.

Christoforo v. Christoforo's Northford Gardens, 4260 CRB-3-00-6 (July 2, 2001).
Claimant argued on appeal that trier should have identified his left knee condition, which manifested itself during a trip to Florida during the winter of 1997/1998, as an aggravation of a compensable May 10, 1996 injury. Board explained that causation of claimant's condition was a question of fact for commissioner, and affirmed trier's decision. See also, **Christoforo**, § 31-294c, § 31-301. Appeal procedure, § 31-301-4.

Labadie v. Norwalk Rehabilitation Servs., 4254 CRB-7-00-6 (June 21, 2001).
Where parties stipulated to facts, and offered no evidence other than sealed copy of claimant's deposition, appeal raised only questions of law, which require less deference to trier's conclusions on review. Parties agreed that NRS normally reimbursed claimant for travel between homes of NRS patients, but not from her own home to that of her first daily patient. Trier incorporated these findings with a reservation, stating that claimant was uncertain as to what was being reimbursed. CRB reversed. Claimant's deposition indicated uncertainty as to how NRS calculated precise amounts of reimbursement, but she directly stated that they would not cover bus fare from her home to her first assignment. Parties' stipulation postdated deposition. Trier thus had insufficient evidence upon which to contradict stipulated facts. See also, **Labadie**, § 31-275(1).

Subsequent decision at Labadie, 4529 CRB-7-02-5 (June 3, 2003), rev'd, 84 Conn. App. 220 (2004).

Cirrito v. Resource Group Ltd. of Conn., 4248 CRB-1-00-6 (June 19, 2001).
CRB must apply highly deferential standard of review to trier's factual findings. Any doctor's opinion averred within reasonable degree of medical probability may serve as foundation for trier's findings. Establishment of maximum medical improvement date is such a factual issue. Here, treating physician had testified that he would defer to surgeon's opinion in matters regarding back surgery, but expressed disagreement with surgeon's assertion that claimant had reached maximum improvement given brief amount of time that had elapsed since surgery. CRB affirmed trier's reliance on opinion of treating physician, which independently met "reasonable degree of medical probability" standard. See also, **Cirrito**, § 31-294d, § 31-300, § 31-298.

Ciocci v. Morrison Knudsen, Inc., 4244 CRB-1-00-5 (June 1, 2001).
Trier's finding was subject to two readings, one of which was consistent with current compensation rate and trier's denial of claimant's motion to reopen. CRB must construe findings in manner consistent with conclusion, if possible. See also, **Ciocci**, § 31-301. Appeal procedure, § 31-310, § 31-315.

Fox-Gould v. Brooks Pharmacy, 4215 CRB-2-00-3 (May 23, 2001).
Board affirmed trier's conclusion that claimant failed to sustain burden of proof that she injured her back either by falling down or lifting a heavy container. Issue was one of credibility. Trier found claimant's testimony not credible, and her version of events uncorroborated by any of her co-workers. See also, **Fox-Gould**, § 31-301-4.

Canevari v. C.R. Gibson Co., 4231 CRB-7-00-5 (May 14, 2001).
Circumstances of back injury allowed trier to rely primarily on claimant's testimony in finding injury compensable. Physicians' testimony linking herniated discs to lifting incident was optional in this case, as causal link between lifting heavy objects and lower back injuries falls within realm of common knowledge. Doctors' opinions corroborated claimant's physical condition, and indicated that back injury could plausibly have been caused by moving heavy boxes. Whether or not such a lifting incident occurred was the key question, whose resolution depended on trier's evaluation of claimant's testimony.

Freeman v. UTC/Sikorsky Aircraft, 4225 CRB-4-00-4 (May 4, 2001), **aff'd**, 68 Conn. App. 904 (2002)(per curiam).
Board affirmed trier's decision that disc herniation was not caused by prior compensable back injury. Trier of fact had discretion to assess credibility of all evidence, including testimony of claimant and of independent medical examiner who reviewed medical records. Prior decision at Freeman, 3568 CRB-4-97-4 (June 3, 1998), infra.

Donaldson v. Duhaime, 4213 CRB-6-00-3 (April 30, 2001).
Doctor maintained opinion regarding cause of claimant's disability even after being confronted with medical history information that might have altered his diagnosis. As opinion was stated within reasonable degree of medical probability, trier was entitled to credit it over opinion of respondents' expert. No error in limitation of total disability

award to period between commencement of claimant's treatment with psychiatrist and last formal hearing, as trier was not required to accept physician's description of claimant as victim of incurable mental illness. See also, **Donaldson**, § 31-294d, § 31-298, § 31-307.

Kisson v. Shawmut National Bank, 4188 CRB-5-00-2 (March 16, 2001).
Claimant suffered repetitive trauma injury to arm in 1995. CRB affirmed trier's finding that current elbow symptoms were attributable to that injury in light of supporting medical evidence and corroborating testimony. Trier also found that increased work activity in 1998-99 aggravated claimant's condition, but did not constitute either a new specific or repetitive trauma injury. Thus, trier ruled that liability did not have to be apportioned between earlier and later insurers. CRB remanded for articulation in light of Appellate Court decision in Epps v. Beiersdorf, Inc., 41 Conn. App. 430 (1996), which held that such "aggravations" constitute compensable injuries under § 31-275(1)(D) (an occupational disease provision), as employer takes employee in the state of health in which it finds employee. Board stated that "aggravation" has certain legal implications, in light of Epps; some percentage of causation may have to be attributed to later repetitive trauma exposure that caused condition to flare up. See also, **Kisson**, § 31-301-9, § 31-299b.

Bond v. Stratford, 4167 CRB-4-99-12 (March 7, 2001).
Board affirmed trier's finding that heart and hypertension condition was substantially enhanced by repetitive trauma that claimant experienced during his 20 years of employment as a laborer. Opinion of treating physician was stated within reasonable degree of medical probability, even though doctor acknowledged that other stressors probably also contributed to development of claimant's condition. See also, **Bond**, § 294c.

Mosman v. Sikorsky Aircraft Corp., 4180 CRB-4-00-1 (March 1, 2001).
Trier's decision not to authorize surgery and to award further temporary total disability and temporary partial disability benefits was based on medical reports properly in evidence. Also a credibility issue. See also, **Mosman**, § 31-297, § 31-298, § 31-294f.

Garcia v. Tully, 4209 CRB-7-00-3 (March 1, 2001).
Existence of employer-employee relationship implicates trier's subject matter jurisdiction over claim. However, appeal was filed late, so CRB was not in position to question accuracy of factual findings that established jurisdiction—which themselves were based on inferences of evidentiary credibility. See also, **Garcia**, § 31-301. Appeal procedure.

Warren v. Federal Express Corp., 4163 CRB-2-99-12 (February 27, 2001).
CRB provided detailed explanation for pro se claimant of trial commissioner's role and CRB's role on review. Trier's decision affirmed, as it hinged on assessments of credibility and choice to believe independent medical examiner's opinion over that of treating physician. Board stressed that claimant has burden of proof in case, which required convincing expert testimony to satisfy here due to nature of injury and facts surrounding treatment. See also, **Warren**, § 31-301. Appeal procedure, § 31-301-9.

Piko v. Jarvis Products Corp., 4181 CRB-8-00-1 (February 23, 2001).
Board affirmed trier's decision that claimant sustained compensable heart attack after broaching approximately 25 to 20 pieces of steel, which demanded considerable physical force. Respondents contended on appeal that trier erred in finding that claimant's job duties included broaching on that day. Question of fact for trier.

Horn v. State/Department of Correction, 4177 CRB-3-00-1 (February 22, 2001).
CRB recapitulated standard of review of trier's factual findings, and dismissed claimant's allegations of error. Testimony of co-worker was sufficient to establish that claimant had admitted to having smoking habit prior to alleged onset of workplace stress. Also, independent medical examiner's opinion fell within bounds of acceptable, reliable expert testimony. Diagnosis as to cause of heart attack was expressed within reasonable degree of medical probability, and doctor's allegedly alternative medical practice did not raise obvious doubts regarding validity of his methodology. See also, **Horn**, § 5-145a. Prior decision at Horn, 3727 CRB-3-97-11 (December 16, 1998), § 31-294c, § 5-145a.

Daubert v. Borough of Naugatuck, 4189 CRB-5-00-2 (February 22, 2001), **rev'd**, 71 Conn. App. 600 (2002), **rev'd,** 267 Conn. 583 (2004).
In reversing CRB's affirmance of trial commissioner's decision, Appellate Court held that findings of fact consisting of recitals of witness testimony had not been incorporated into trier's subsequent findings and conclusions, and thus could not serve as basis for decision. Supreme Court reversed Appellate Court ruling and reinstated decisions of trial commissioner and CRB, but did not address subsidiary issue of whether recitals of witness testimony had been incorporated into trier's findings and conclusions. See also, **Daubert**, § 31-275(1).

Cartier v. National Graphics, Inc., 4115 CRB-3-99-8 (February 21, 2001).
Affirmance of trier's decision that claimant sustained compensable back injury. In support of their appeal, respondents argued that trier erred by denying Motion to Correct, which they contended included "undisputed material facts." Board explained that, to contrary. two findings that respondents were disputing clearly involved conflicting testimony, and thus trier was not required to grant corrections. Within discretion of trier to accept claimant's testimony on this issue.

D'Agostino v. Hamilton Standard, 4146 CRB-6-99-11 (February 21, 2001).
Board affirmed trier's conclusion that spinal condition was compensable, where pre-existing degenerative disease (which was not related to work) was aggravated by work duties, causing claimant to be symptomatic. Within trier's discretion to choose among competing medical opinions.

Gimmartino v. State/Department of Veterans Affairs, 4150 CRB-6-99-11 (February 9, 2001).
Affirmance of trier's conclusion that claimant's condition subsequent to October 27, 1992 was not caused by compensable head injury, as it was based upon trier's assessment of evidence, and was fully supported by record. Trier chose to disregard

opinion of psychologist because (a) inaccurate medical history was provided to him, and (b) respondents were not able to complete his cross-examination.

Grajales v. Aero-Clean Demolition Contractors, 4202 CRB-7-00-3 (January 25, 2001).
Trier rejected testimony by claimant and witnesses regarding circumstances of alleged injury. Dismissal order affirmed.

Kuznier v. Modern Woodcrafts, Inc., 4156 CRB-6-99-11 (December 22, 2000).
Claimant alleged that someone at his workplace had drugged him with opiates. A toxicologist testified that, if the claimant's version of the facts were true, the drugs were most likely administered at the workplace. Trier dismissed claim, finding claimant's testimony unpersuasive and doctor's opinion speculative. CRB affirmed, as claim depended wholly on the credibility of claimant's story.

Goldberg v. Ames Department Stores, 4160 CRB-1-99-2 (December 19, 2000).
CRB affirmed finding of compensability and reliance on opinion of treating physician, despite alleged discrepancies in that doctor's records and testimony. Trier was entitled to draw his own inferences from the evidence, and did not have to explain decision to credit claimant's doctor over respondents' doctor.

Ford v. Carpenter Chapman, 4128 CRB-3-99-9 (November 30, 2000).
CRB affirmed trier's finding that claimant did not reach maximum medical improvement between February and October 1998. Though doctors offered permanency ratings, they did not state that claimant's condition had stabilized, and treater indicated that he wanted to wait before declaring that MMI had been reached, as pain symptoms continued to evolve. Factual issue. See also, **Ford**, § 31-294d, § 31-308(a), § 31-308(b).

Bilotta v. Connecticut Natural Gas Corp., 4106 CRB-1-99-8 (October 5, 2000).
See, **Bilotta**, § 31-300, § 31-308(b) (briefly discussing validity of diagnostic methodology and trier's authority to credit one doctor over another). Prior decision at Bilotta, 3536 CRB-1-97-2 (May 26, 1998), § 31-308(a), § 31-308(b).

Costa v. Torrington Company, 4097 CRB-5-99-8 (July 28, 2000).
Trier did not err by finding that physician's deposition established causal connection between workplace chemical exposure and cirrhosis of the liver within reasonable degree of medical probability. Opinion not based upon conjecture despite lack of reported cases tying trichloroethylene and trichloroethane exposure to chronic liver disease as opposed to acute liver injuries. See also, **Costa**, § 31-301-4.

Noble v. Allstate Insurance, 4157 CRB-5-9-12 (July 28, 2000), **aff'd**, 67 Conn. App. 160 (2001).
CRB affirmed trier's conclusion that claimant did not sufficiently prove that he suffered mental stress and physical illness as a result of harassment by supervisor. Decision was based upon credibility of evidence, and was further supported by opinion of independent medical examiner. Subsequent decision at Noble, 4074 CRB-5-99-7, 4096 CRB-5-99-7 (January 10, 2002), § 31-301. Appeal procedure.

Rodrigues v. American National Can, 4043 CRB-5-99-4 (July 26, 2000).
Trier did not err by awarding temporary partial disability benefits beyond alleged date of maximum medical improvement, as he had discretion to either ignore doctor's report, or interpret it as stating that surgery might still benefit claimant. See also, **Rodrigues**, § 31-301. Appeal procedure, § 31-308(a). Subsequent decision at Rodrigues, 4329 CRB-7-00-12 (January 2, 2002), § 31-279-3, § 31-296, § 31-298, § 31-301-9.

Francis v. White Oak Corp., 4032 CRB-6-99-4 (July 20, 2000).
CRB affirmed trier's conclusion that claimant failed to meet burden of proof regarding alleged back injury or alleged re-injury. Trial commissioner found claimant's testimony unpersuasive. Trier not required to accept physician's medical opinion regarding causation, especially where opinion was dependent in part upon claimant's description and history of his injury.

Gagliardi v. Raimondo Maintenance, LLC, 4012 CRB-1-99-4 (July 20, 2000).
CRB affirmed trier's finding of compensable injury. Respondents argued that claimant's testimony was inconsistent and contradictory, and that employer's evidence demonstrated injury could not have occurred in manner described by claimant. Trier specifically addressed credibility, and found claimant's testimony to be more credible than that offered by respondent employer. See also, **Gagliardi**, § 31-307. Subsequent decision at Gagliardi, 4496 CRB-2-02-2 (February 27, 2003), aff'd, 82 Conn. App. 905 (2004)(per curiam).

Palma v. Manuel A. Pinho Landscaping, Inc., 4047 CRB-7-99-5 (July 18, 2000).
Trier ruled respondents' evidence disputing occurrence of injury more credible than claimant's evidence establishing said mishap. CRB construed erroneous listing of date of injury in findings as a scrivener's error, as date was correctly reported elsewhere, trier's decision did not presume claimant was reporting an inconsistent date of injury, and claimant did not move to correct errors. Reference by trier to statement made at informal hearing deemed harmless error where transcript unavailable for review, and trier found claimant's testimony less credible than respondents'. See also, **Palma**, § 31-301. Appeal procedure.

Stankiewicz v. Rockville Memorial Nursing Home, 3959 CRB-2-99-1 (June 28, 2000).
CRB affirmed trial commissioner's dismissal of claim, which rested on negative assessment of claimant's credibility, and was supported by some of the (conflicting) medical records.

Simmons v. Temporary Labor Corp., 3975 CRB-6-99-2 (May 25, 2000).
Claimant suffered from carpal tunnel symptoms in right wrist. Trier found that they were related to a one-week assignment she performed while affiliated with TLC, a temporary employment agency for whom she worked a total of 86 hours. CRB affirmed ruling. Issue was factual, and both medical and testimonial evidence supported compensability. Fact that claimant only worked briefly for TLC did not preclude finding that she sustained repetitive trauma during that period. Claimant began complaining of symptoms after sorting metal key rings for five days, and had never complained of

wrist/hand pain before. Difficulty claimant had in comprehending questions and articulating certain responses did not require trier to draw a negative inference as to her credibility, as claimant was from Jamaica and had a limited educational and employment background. See also, **Simmons**, § 31-300, § 31-275(1).

Bennett v. Federal Express Corp., 4023 CRB-4-99-4 (May 22, 2000).
See, **Bennett**, § 31-296, Voluntary agreements (discontinuance of payments) (date of maximum medical improvement is a question of fact for trial commissioner).

Minck v. Truegreen Chemlawn, 4003 CRB-4-99-3 (April 18, 2000).
Regarding the issue of temporary total disability, trier found treating physician's opinion did not rise to the "reasonable degree of medical probability" level. CRB reiterated that no "magic words" are required in a medical diagnosis. Because treating physician "unequivocally" opined that claimant was totally disabled for the period in question, it was error to conclude that his opinion did not possess required "degree of medical probability." However, as the judge of credibility, trier may choose not to follow medical opinion where he finds it not to be credible or convincing. Unclear whether the trial commissioner had based his decision on these grounds, so matter was remanded for articulation.

Gibbons v. UTC/Pratt & Whitney, 4000 CRB-8-99-3 (April 12, 2000), **aff'd**, 63 Conn. App. 482 (2001), **cert. denied**, 257 Conn. 905 (2001).
CRB found no error in trier's dismissal of claim that heart attack was compensable injury. Claimant had stated that a particular supervisor had placed him in a stressful situation at the workplace on the date of injury, but respondents showed that said individual was not at work on that date. Trier has sole authority to determine credibility of witnesses.

Figliola v. Ogden Services, 4013 CRB-7-99-4 (March 27, 2000).
CRB affirmed trial commissioner's approval of Form 36. Trier was not required to rely upon the report of the treating physician that described the claimant as being totally disabled just because it was the most recent medical record. Fact-finder has discretion to accept or reject any medical opinion in evidence. See also, **Figliola**, § 31-301. Appeal procedure.

VanStraten v. Hartford Courant, 3999 CRB-8-99-3 (March 23, 2000).
Commissioner properly concluded that claimant's need for knee surgery was due to compensable injury. Medical opinions supported finding of causal connection, and trier was entitled to believe claimant's explanation of discrepancy in the treating physician's report concerning the date his symptoms began.

Outlaw v. Pray Automotive of Greenwich, 3981 CRB-7-99-2 (March 23, 2000).
CRB affirmed trier's ruling that claimant's continued symptoms of pain were related to 1988 compensable injury, as medical reports of two authorized treating physicians did not establish that subsequent events were responsible for her current pain symptoms. See also, **Outlaw**, § 31-294d.

Burse v. American International Airways, Inc., 3986 CRB-2-99-3 (March 3, 2000), **rev'd on other grounds**, 262 Conn. 31 (2002).
CRB discussed denial of Motion to Correct as part of trier's power to determine credibility of evidence. See also, Burse, § 31-284(a). Prior decision at Burse, 3480 CRB-2-96-12 (November 7, 1997), dismissed for lack of a final judgment, A.C. 17825 (January 14, 1998), rev'd, 262 Conn. 31 (2002)(Supreme Court held that CRB and trial commissioner improperly found that subject matter jurisdiction over claim existed in Connecticut, as contacts were legally insufficient), § 31-278.

Flemmings v. Waveny Care Center, Inc., 3963 CRB-7-99-1 (March 2, 2000).
CRB affirmed trier's decision that claimant sustained compensable injury despite her poor memory and inconsistent testimony regarding date of injury. See also, **Flemmings**, § 31-279-3.

Sendra v. Plainville Board of Education, 3961 CRB-6-99-1 (January 20, 2000).
Trier evaluates proposed changes in Motion to Correct with same fact-finding discretion he uses to judge credibility of witnesses and evidence. No error in denial of Motion to Correct here. Requested corrections were based upon the testimony of witnesses, upon whom trier was not required to rely. Testimony also established a situation that was susceptible to different inferences regarding teacher's relationship to school mountain biking club. Finally, proposed corrections were immaterial. See also, **Sendra**, § 31-275(16).

Dallaire v. Paper Delivery Inc., 3951 CRB-6-98-12 (January 19, 2000).
CRB affirmed trier's finding of causal connection between compensable slip and fall injury and migraine headaches suffered later (as well as weight loss and dulling of certain senses). Claimant's failure to disclose earlier treatment for headaches did not compel trier to discount his testimony, as those headaches appeared to be of a different nature. Medical opinions could be construed as stating diagnosis within reasonable degree of medical probability even though only objective evidence of migraines was in history that claimant provided to his doctors.

Pantanella v. Enfield Ford, 3937 CRB-1-98-11 (January 7, 2000), **aff'd**, 65 Conn. App. 46 (2001), **cert. denied**, 258 Conn. 930 (2001)(along with Case No. 3377).
CRB affirmed trier's factual finding that the appellant CIGA waived statute of nonclaim defense against claimant through a combination of inaction and the statements of its attorney at a formal hearing. CRB also affirmed trier's denial of Motion to Reopen record, as CIGA offered no new information to demonstrate that its attempt to depose doctor contrary to trier's order was reasonable, nor did it show that a 1994 report of said doctor was actually withheld by other parties. Trier was entitled to rely on the tardiness of the appellant's request to depose this physician as a ground for denying this request. See also, **Pantanella**, § 31-299b, § 31-300, § 31-298, § 31-315. Subsequent decision at Pantanella, 4220 CRB-1-00-4 (December 19, 2000), § 31-298, § 31-300; prior decision at Pantanella, 3377 CRB-1-96-7 (January 28, 1998), infra and § 31-298, 31-299b, § 31-355(e).

Bailey v. State/Greater Hartford Community College, 3922 CRB-2-98-10 (November 30, 1999), **aff'd in part, rev'd in part**, 65 Conn. App. 592 (2001).
See, **Bailey**, § 31-300, § 31-307, § 31-284b, § 31-294d. Prior decisions at Bailey, 3694 CRB-1-97-9 (January 12, 1999), aff'd in part, rev'd in part, 65 Conn. App. 592 (2001), § 31-298, § 31-301. Appeal procedure; Bailey, 15 Conn. Workers' Comp. Rev. Op. 433, 3152 CRB-5-95-8 (September 3, 1996), § 31-301. Appeal procedure, § 31-301. Factual findings.

Menard v. People's Bank, 3887 CRB-2-98-9 (November 23, 1999).
CRB affirmed finding that claimant did not sustain burden of proof that she suffered a back injury at work. Trier's decision was based upon assessment of evidentiary credibility, including testimony of the claimant that she found to be inconsistent and unpersuasive. As claimant failed to prove that she sustained a compensable injury, it is of no moment that respondents did not present any medical evidence.

Dubay v. D.R. Templeman Company, 3890 CRB-6-98-9 (October 14, 1999).
CRB affirmed trier's finding that claimant failed to sustain burden of proof that her shoulder condition was caused by an alleged incident with a machine at work. Claimant's credibility was at issue, as trial commissioner found that she did not give a history of a machine jamming and pulling her arm to any of her physicians prior to the independent medical examination. Trier chose to rely upon the IME doctor, who opined that claimant's injury was not caused by her employment.

Pilewski v. Danbury Auto Park, 3916 CRB-7-98-10 (September 23, 1999).
Trier was not persuaded by claimant's testimony that her need for back surgery increased as a result of her compensable injury. CRB affirmed dismissal of claim for compensation, and ruled that claimant's total disability claim was also dismissed by implication when the trier denied her Motion to Correct, which sought to add a finding of disability.

Paradis v. Arnco Sign Company, 3773 CRB-8-98-2 (September 22, 1999).
Claimant sought payment of unpaid medical bills. Because trier made no findings regarding these bills, CRB could not review this issue on appeal. Panel advised claimant to request a hearing at the district level.

Saporoso v. Aetna Life & Casualty, 3759 CRB-1-98-11 (September 3, 1999).
Claimant argued that trier erred by finding that "litigation neurosis" caused her disability. Testimony of both medical experts established that the claimant's anxiety over pending litigation was a major factor in causing her condition, so CRB affirmed the commissioner's ruling. See also, **Saporoso**, § 31-300.

Mikishka v. Meriden, 3869 CRB-8-98-7 (September 3, 1999).
See, **Mikishka**, § 31-308 (b) and (c). Prior decision at Mikisha v. Meriden, 16 Conn. Workers' Comp. Rev. Op. 178, 3574 CRB-8-97-3 (May 2, 1997)

Dubay v. M & R Express, 3847 CRB-1-98-6 (September 2, 1999).
CRB affirmed trial commissioner's decision that claimant failed to sustain his burden of proof that he suffered an injury to his shoulder while unloading a truck at work. It was

within the discretion of the trial commissioner to assess the credibility of the testimony. Although the claimant testified that he was injured during an incident which occurred while unloading the truck, the testimony of witnesses along with other evidence supported the conclusion that the claimant was *not* involved in the unloading incident.

Lalanne v. Town of Greenwich, 3914 CRB-7-98-10 (September 2, 1999).
CRB affirmed trier's decision that claimant failed to sustain burden of proof that he suffered compensable injury to his cervical spine while opening a door at work. Trial commissioner was not required to rely upon the report of the claimant's treating physician regarding causation. See also, **Lalanne**, § 31-300.

Palandro v. Bernie's Audio-Video T.V. & App., 3876 CRB-3-98-8 (September 2, 1999).
CRB affirmed trier's dismissal of compensation claim. Decision rested on issues of credibility, and the trier did not abuse his discretion concerning the inferences he drew from the evidence.

Malafronte v. Med-Center Home Health Care, 3888 CRB-7-98-9 (August 31, 1999).
CRB affirmed trier's finding that claimant sustained a compensable injury to her back while pushing a patient in a wheelchair. Although there were inconsistent dates of injury in the record, it was within the discretion of trial commissioner to find claimant's testimony credible. Furthermore, her treating physician opined with reasonable medical certainty that the injury was caused by claimant's employment even though he did not use the "magic words" of reasonable medical probability. See also, **Malafronte**, § 31-300.

Moawad v. American Eagle, 3701 CRB-6-97-10 (August 25, 1999).
CRB affirmed trial commissioner's conclusion that claimant's compensable 1994 injury did not precipitate his need for surgery and was not a substantial factor in producing symptoms in August of 1995. The trier's decision was fully supported by the record, including the opinion of the physician who conducted an independent medical examination (IME) at the request of the respondents.

Krevis v. Bridgeport, 3857 CRB-4-98-7 (August 18, 1999), **aff'd**, 63 Conn. App. 328 (2001).
Claimant had burden of proving causal link between his § 7-433c hypertension claim and his current medical condition, including need for diabetes drug. Trier found that he had not done so. Affirmed; trier has authority to disregard any medical testimony to begin with, plus two doctors testified that hypertension and diabetes were unrelated. See also, **Krevis**, § 7-433c, § 31-301. Appeal procedure, § 31-307.

Funaioli v. New London, 3814 CRB-2-98-5 (June 16, 1999), **aff'd**, 61 Conn. App. 131 (2000).
CRB affirmed trier's decision that claimant's disability was caused by his obsession with his workers' compensation claims, and was not substantially due to his 1992 compensable mental stress injury. Panel discussed meaning of "substantial causation," and reiterated that trier is never required to believe the testimony of an expert medical

witness, even if unopposed. Tanner v. Conservation Commission, 15 Conn. App. 336 (1988), distinguished (Appellate Court held that agency could not disregard expert testimony where its members lacked their own expertise and knowledge). The experts in this case all testified that the claimant's anger and depression, insofar as they existed, were caused to some degree by his agitation over his legal struggles. Trier was entitled to credit testimony of doctor who downplayed the severity of the claimant's disability, and who expressed doubt as to the connection between his condition and his single 1992 depressive episode. Prior decision at Funaioli, 3346 CRB-1-96-5 (November 4, 1997), rev'd, 52 Conn. App. 194 (1999), § 31-294c.

Crouse v. A.A.I.S., Inc., 3797 CRB-3-98-4 (June 16, 1999).
It was within power of trial commissioner to rule that claimant's hip condition was not aggravated by his 1997 compensable injury, and that he was capable of light duty work. See also, **Crouse**, § 31-301-9.

Dengler v. Special Attention Health Services, 3780 CRB-3-98-2 (June 15, 1999), **aff'd**, 62 Conn. App. 440 (2001).
CRB reversed finding that February 1997 broken leg was related to August 1996 back injury. Trial commissioner relied exclusively on testimony of claimant and her brother that her fall down the stairs at her home was caused by lumbar spine instability. There was no medical evidence, however, to corroborate the connection in any way. See also, **Dengler**, § 31-307, § 31-348.

Soto v. Hawie Manufacturing, 3787 CRB-4-98-3 (May 21, 1999).
CRB affirmed trial commissioner's dismissal of claim. Trier committed no error in his interpretation of workplace videotape, nor did he err by relying on a certain doctor's opinion regarding lack of causal connection between operation of foot press and repetitive trauma. Prior decision at Soto, 16 Conn. Workers' Comp. Rev. Op. 196, 3238 CRB-4-95-12 (May 20, 1997), § 31-298.

Cabral v. Metropolitan District Employees, 3770 CRB-1-98-2 (May 13, 1999).
Doctor's testimony established within reasonable degree of medical probability that claimant suffered 50% permanent partial lung disability due to toxic exposure at waste disposal plant. Trier had discretion to accept his diagnosis, even though it was based on methodology not widely implemented in area hospitals. CRB must presume that this particular diagnosis seemed scientifically tenable to the trier, and review board is not in a position to override trier's judgment. See also, **Cabral**, § 31-298.

Wooten v. UTC/Pratt & Whitney, 3674 CRB-6-97-9 (May 7, 1999).
Trier granted Motion to Correct, deleting findings of certain temporary total disability periods. Claimant argued on appeal that original findings were supported by evidence. CRB agreed, but the findings as amended were also supported by evidence, and it was the trial commissioner's prerogative to choose between crediting the doctor's medical reports and adhering strictly to the contents of his deposition. Also, in corrected findings, trier deleted order that respondents pay a certain physician's outstanding bills. Because awards left intact the findings that physician was within chain of referral and

that his care was required by the compensable injury, CRB ruled that any outstanding bills were still payable. See also, **Wooten**, § 31-301. Appeal procedure, § 31-294d.

Allen v. Griffin Health Services Corp., 3768 CRB-4-98-2 (April 27, 1999).
Factual findings supported trial commissioner's conclusions (no Motion to Correct). CRB enumerated scope of its review of factual issues. See also, **Allen**, § 31-301. Appeal procedure.

Horne v. Phoenix Soil, Inc., 3824 CRB-5-98-5 (April 12, 1999).
Respondents appealed based on trier's acceptance of claimant's testimony over that of three other witnesses regarding circumstances of injury. Affirmed; simple credibility issue.

Fiore v. LRT, Inc. d/b/a House & Garden Shop, 3747 CRB-7-97-12 (April 5, 1999).
CRB affirmed trier's decision that claimant's breathing condition was not caused by working conditions. It was within the discretion of the trial commissioner, as the trier of fact, to consider all of the testimony and to assess the credibility of the witnesses. See also, **Fiore**, § 31-301-9. See subsequent decision at Fiore, 4494 CRB-7-02-2 (February 28, 2003), § 31-301. Factual findings, § 31-315.

Granata v. Waldbaum's, 3742 CRB-3-97-12 (March 11, 1999).
CRB affirmed trial commissioner's conclusion that claimant's wrist and thumb conditions were not caused by her employment. Claimant argued that the trier erred by relying on the opinion of the IME physician because his opinion was based on an inaccurate history of claimant's surgery dates. This issue was delved into during the formal hearing, including extensive questioning of the IME physician. It was within the discretion of the commissioner to determine the weight of the evidence and the credibility of the witnesses. See also, **Granata**, § 31-301-9.

Croxford v. Columbia Mfg., 3758 CRB-2-98-1 (March 1, 1999).
CRB affirmed trial commissioner's finding that claimant's injury was compensable. Simple issue of choosing between conflicting medical opinions.

Hyde v. Stop & Shop Companies, 3728 CRB-4-97-11 (February 18, 1999).
Findings initially seemed to contain inconsistencies regarding claimant's entitlement to § 31-308(b) benefits and attorney's fees/interest for undue delay, and the respondents' apparent award of an offset for benefits already paid. CRB held that the apparent discrepancies in the trier's award could be resolved upon a closer reading of the decision. Trier's finding that respondents had failed to issue Form 36 (thus preventing them from discontinuing temporary partial disability benefits) seemed to conflict with finding that respondents were "entitled to take credit for the above payments . . . as payment of § 31-308(a) benefits." CRB explained that trier did not use "credit" to mean "an offset" in that context; she simply meant that the benefits were to be construed as paid temporary partial disability benefits. Such a reading was borne out by the fact that the trier awarded the claimant interest on the portion of the permanent partial disability award that was not timely paid; if an offset was appropriate, the portion of the award already tendered via check would have exceeded the amount of the benefits due after

implementation of the offset. Further, the corrections denied by the trier are consistent with the non-offset meaning of the word "credit." See also, **Hyde**, § 31-296 Voluntary agreements (discontinuance of payments), § 31-300.

Sealey v. Pfizer, Inc., 3708 CRB-8-97-10 (January 28, 1999).
CRB affirmed trier's dismissal of mesothelioma claim where decedent sustained insignificant asbestos exposure at respondent's work site. Medical testimony was not misconstrued, and trier had discretion to disregard any testimony he found unpersuasive. Claimant failed to satisfy burden of proof.

Perry v. Carewell Rest Home, 3713 CRB-3-97-10 (December 29, 1998).
CRB affirmed the trial commissioner's decision that the claimant's back condition was not caused by an alleged lifting incident at work, where the conclusion was based upon credibility. Specifically, the trial commissioner found that the claimant did not give a history of a work-related injury to her treating physicians, and also found that the claimant's history and symptoms which she gave to the various treaters were inconsistent. See also, **Perry**, § 31-301-9. Additional evidence.

Grimme v. Railroad Stores, Inc., 3722 CRB-5-97-11 (November 17, 1998).
Where facts found are inconsistent with conclusion, or no facts have been found to support it, CRB cannot affirm. See also, **Grimme**, § 31-301. Appeal procedure, § 31-349.

Cramer v. Cramer, 3710 CRB-4-97-10 (November 9, 1998).
See, **Cramer**, § 31-275(1), § 31-301-9. Additional Evidence, § 31-301-4. Correction of finding.

Pyrdol v. General Dynamics Corporation/Electric Boat Division, 3504 CRB-2-96-12 (November 9, 1998).
Trial commissioner had discretion to accept one doctor's opinion over another concerning the attributability of mesothelioma to asbestos exposure at Electric Boat versus earlier exposure at the Navy. Decedent testified that exposure was more severe at Electric Boat. See also, **Pyrdol**, § 31-310.

Pekar v. Warnaco, Inc./Warner's Division, 3611 CRB-4-97-5, 3721 CRB-4-97-10 (October 16, 1998).
See, **Pekar**, § 31-294c.

Mendoza v. Cly Del Mfg. Co., 3655 CRB-5-97-8 (August 28, 1998).
Issue on appeal was dependent on testimony and within discretion of trial commissioner as the finder of evidentiary credibility. Affirmed.

Bratchell v. United Parcel Service, 3637 CRB-7-97-7 (August 10, 1998).
CRB affirmed trial commissioner's decision that claimant's psychiatric condition was not caused by his compensable injury. It was within the discretion of the trial commissioner to credit the opinion of the independent medical examiner rather than the opinion of the claimant's treating psychiatrist.

McCarthy v. AT&T Communications, Inc., 3689 CRB-6-97-9 (August 7, 1998).
Trial commissioner found that claimant's alleged cervical problems were not related to her 1990 injury. There were medical reports that directly supported the trial commissioner's decision, and it was within his purview as the finder of fact to disregard the testimony of the claimant in favor of other witnesses. See also, **McCarthy**, § 31-301. Appeal procedure.

Ivan-Marrotte v. State/DMR, 3599 CRB-2-97-4 (July 28, 1998).
CRB reversed trial commissioner's decision that claimant's right leg condition was caused by her compensable injury to her *left* leg. There was no medical opinion that diagnosed such an etiology with reasonable medical certainty.

Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998).
Claimant has burden of proving causal connection between compensable injury and disability, and trial commissioner is not required to credit any particular medical report. Here, respondents' independent medical examiner issued a report questioning the link between claimant's upper extremity impairment and his work injury. Trier's refusal to find entire condition compensable affirmed. See also, **Pallotto**, § 31-301-9. Additional evidence.

Cantoni v. Xerox Corporation, 3630 CRB-2-97-6 (July 17, 1998), **dismissed for lack of final judgment**, A.C. 18686 (December 2, 1998), **aff'd**, 251 Conn. 153 (1999).
Where trial commissioner clearly misinterpreted the substance of the treating physician's report in discussing his testimony in her finding and dismissal, the CRB ruled that the case had to be remanded for a new trial. Doctor's testimony was integral to case, and error could not be considered immaterial to its outcome.

Rivera v. Chesebrough Ponds, 3587 CRB-3-97-4 (July 14, 1998).
CRB affirmed trial commissioner's decision, which was simply a matter of determining evidentiary credibility.

Roche v. Danbury Hospital, 3592 CRB-7-97-5 (July 13, 1998).
Commissioner found claimant's injury compensable despite her inability to pinpoint the exact date upon which she was hurt. CRB held that the essential issues in the respondents' appeal were factual, and that they came down to questions of credibility. See also, **Roche**, § 31-275(1), § 31-294c.

Carroll v. The Print Shoppe, 3614 CRB-4-97-5 (June 8, 1998).
CRB affirmed trial commissioner's decision finding claimant's injury compensable. Trier was the evaluator of credibility, and was entitled to credit claimant's testimony over that of her employers despite the fact that she admitted to lying on her employment application and failed to mention previous back injuries at a deposition. Also, trier did not violate § 31-301-4 by phrasing certain findings with the preface "the claimant testified that . . . ." Contents of those statements recited in the findings directly supported the commissioner's conclusions, and CRB was able to discern the basis of her decision.

Gaudino v. Chromium Process, 3585 CRB-4-97-4 (June 5, 1998).
See, **Gaudino**, § 31-294c notes.

Kingsland v. Mattatuck Manufacturing Co., 3619 CRB-5-97-5 (June 5, 1998).
CRB affirmed the trial commissioner's decision where the conclusion that the claimant's cervical disc condition was caused by a prior automobile accident rather than by the claimant's employment was fully supported by the record.

Talamona v. Dalton Enterprises, Inc., 3684 CRB-5-97-9 (June 5, 1998).
CRB affirmed the trial commissioner's conclusion that the claimant's right hand condition was caused by overuse due to a prior compensable left hand injury. The respondents contended that the claimant's right hand condition was caused by repetitive trauma at work and therefore should be deemed a new injury. The CRB explained that the right hand condition constituted a medical sequela of the original compensable injury, and thus the date of injury remained the same.

Matejek v. Tilcon Tomasso Inc., 3584 CRB-6-97-4 (June 4, 1998).
CRB affirmed the trial commissioner's decision that the claimant's disability and medical treatment subsequent to the date of a non-work related accident was not caused by a prior compensable injury. The trier's decision was supported by the opinion of the physician who performed the independent medical examination.

Freeman v. UTC/Sikorsky Aircraft, 3568 CRB-4-97-4 (June 3, 1998).
CRB affirmed commissioner's dismissal of claim. Only evidence supporting occurrence of injury was claimant's testimony, and the commissioner was not required to give it credence. Other evidence showed inconsistency in reported date of injury, and claimant's supervisor did not recall being told of the injury, contrary to claimant's allegation. Subsequent decision at Freeman, 4225 CRB-4-00-4 (May 4, 2001), aff'd, 68 Conn. App. 904 (2002)(per curiam), supra.

Perry v. Commercial Interior Systems, 3571 CRB-7-97-4 (June 3, 1998).
Dismissal of claim was affirmed, as credibility of a claimant's description of how an injury occurred is a factual question for the trial commissioner.

Mancini v. Allied Signal Aerospace Co., 3565 CRB-5-97-3 (June 2, 1998).
Claimant was diagnosed with reflex sympathetic dystrophy by two doctors. Commissioner found accordingly, and found her condition was related to work injuries. Respondents sought reversal of that decision on grounds evidence did not support it. Affirmed. Commissioner was entitled to credit doctors' testimony.

D'Onofrio v. Orange, 3564 CRB-3-97-3 (June 1, 1998).
Trial commissioner denied corrections that concerned either facts dependent on the credibility of witnesses or facts that would have been cumulative to the existing findings. Affirmed. See also, **D'Onofrio**, § 31-275(1).

Noga v. Colin Service Systems, 3361 CRB-6-96-6 (June 1, 1998).
Trial commissioner inferred from the testimony of two witnesses that the employer did not provide transportation to the claimant to and from work. The testimony supported that finding, and the trier's decision to dismiss the claim for an injury arising out of a car accident on the way to work was affirmed by the CRB.

Caltabiano v. Tony's Huntington Inn, 3544 CRB-8-97-2 (May 26, 1998).
Where, as here, the commissioner's determination is based upon the weight and credibility that he has accorded the evidence, the CRB will not disturb such a determination. The trial commissioner found that the claimant's testimony was not credible regarding his contention that he had been evaluating restaurants at the time of his automobile accident, and thus dismissed the claim.

Dalling v. Dalling Hauling, Inc., 3615 CRB-4-97-5 (May 26, 1998).
CRB remanded case to trial commissioner where findings did not address all of the issues raised during formal hearings. See also, **Dalling**, § 31-300.

Osos v. Tony's Huntington Inn, 3545 CRB-8-97-2 (May 26, 1998).
Where, as here, the commissioner's determination is based upon the weight and credibility that he has accorded the evidence, the CRB will not disturb such a determination. The trial commissioner found that the claimant's testimony was not credible regarding her contention that she had been evaluating restaurants at the time of her automobile accident, and thus dismissed the claim.

Willett-Pine v. Community Residences, 3534 CRB-8-97-2 (May 20, 1998).
Decision of trial commissioner dismissing medical provider's claim for payment of medical bills affirmed, as it was supported by the evidence in the record. See also, **Willett-Pine**, § 31-301-9. Additional evidence.

Barron v. City Printing, Inc., 3497 CRB-3-96-12 (April 29, 1998), **aff'd**, 55 Conn. App. 85 (1999).
See, **Barron**, § 31-294c, § 31-299b.

Tanzi v. New Britain, 3420 CRB-6-96-9 (April 28, 1998).
Doctor's opinion regarding relationship of needle stick to contraction of hepatitis C was stated with sufficient medical probability to establish causation. Trier's decision affirmed. See also, **Tanzi**, § 31-298.

Rivera v. New Britain, 3501 CRB-6-96-12 (April 28, 1998).
The CRB affirmed the trial commissioner's determination that the claimant sustained a compensable injury to his back while breaking up a fight between two students. Where the medical evidence is conflicting, it is the trier of fact who must determine the weight and credibility of the evidence. See also, **Rivera**, § 31-294f, Medical examinations.

Dixon v. United Illuminating Co., 3543 CRB-4-97-3 (April 9, 1998), **aff'd**, 57 Conn. App. 51 (2000).
Trial commissioner was impressed with testimony of psychologist, whose opinion she reasonably relied on in finding decedent's suicide non-compensable. Further, claimant would have had to persuade commissioner that the opinions of certain doctors were reliable even absent the psychologist's testimony, as the claimant had the burden of proof here. Commissioner was entitled to question the reliability of the other witnesses, and to find fault in the history provided to the doctors. CRB has no authority to reverse the factual inferences drawn by the trial commissioner. Also, proper test of legal causation for suicide was used. See also, **Dixon**, § 31-298.

Coley v. Camden Associates, Inc., 3432 CRB-2-96-9 (April 6, 1998).
Commissioner's findings regarding claimant's need for medication and inability to return to work because of effects of work-related carbon monoxide poisoning were supported by both testimony and medical evidence. Failure to change findings in accord with respondents' requested corrections was not error. See also, **Coley**, § 31-300, § 31-301. Appeal procedure, § 31-343. Prior decision at Coley, 3432 CRB-2-96-9 (February 28, 1997), rev'd, 243 Conn. 311 (1997), § 31-301(f).

Hurd v. United Methodist Homes, 3358 CRB-4-96-5 (April 1, 1998).
CRB affirmed trial commissioner's determination that claimant's depression and attempted suicide was compensable because it was caused by her prior compensable back injury. Whether the requisite causation existed was based upon the credibility of the testimony and the weight of the evidence. Trial commissioner was required to find that the compensable injury was a substantial cause of the incident, but was not required to find that it was the only cause. (*Frankl, C.*, **dissenting**) Claimant's conduct constituted willful misconduct and thus should not have been found compensable. See also, **Hurd**, § 31-284(a).

Pontoriero v. Sanzo Concrete Construction, Inc., 3492 CRB-4-96-12 (March 6, 1998).
Panel affirmed trial commissioner's dismissal of claim for psychiatric overlay to 1987 back injury. Psychiatrist's opinion supported decision, and trier found claimant's testimony to be less than credible. See also, **Pontoriero**, § 31-308a.

Ramadhar v. Bourdon Forge Co., 3487 CRB-8-96-11 (March 6, 1998).
CRB affirmed the trial commissioner's determination that the claimant did not suffer from silicosis. It was the trial commissioner's duty to evaluate the claim based on the medical evidence currently before him, and to determine the credibility of the expert testimony. The trial commissioner's conclusion is fully supported by the record and may not be disturbed.

Rolon v. Philson Inc., 3433 CRB-6-96-10 (February 25, 1998).
CRB affirmed trial commissioner's determination that claimant failed to prove that he sustained a compensable injury to his knee while at work. The trial commissioner found that the claimant's testimony was not credible.

DeMartino v. L.G. Defelice, Inc., 3524 CRB-4-97-1 (February 18, 1998).
Two medical reports in evidence supported dismissal of the claim for temporary total disability benefits. See also, **DeMartino**, § 31-301-9. Additional evidence.

Cable v. Bic Corporation, 3387 CRB-3-96-7 (February 3, 1998).
CRB affirmed commissioner's decision to dismiss claimant's shoulder and elbow injury claims. Corrections were either dependent on credibility of claimant's testimony or sought redundant findings, and were permissibly denied by the trier. Commissioner's express doubt as to claimant's credibility and the tentative nature of the medical opinions that had been offered to establish causation were consistent with the outcome of this case.

Savanella v. O&G Industries, 3396 CRB-4-96-8 (February 3, 1998).
Two doctors' opinions supported the trier's decision that the claimant's employment and his 1985 compensable back injury did not contribute to his need for a hip replacement years later. Claimant had argued that one opinion was based on a faulty diagnosis and on pre-examination meetings with the respondents, while the other did not offer a conclusion as to the issue of aggravation of the prior hip condition. Affirmed.

Swaggerty v. Mattie's Service Station, 3378 CRB-6-96-7 (February 3, 1998).
See, **Swaggerty**, § 31-298.

Celon v. Alternative Personnel Services, 3453 CRB-4-96-10 (January 30, 1998).
Trial commissioner determined that claimant's testimony that he slipped and fell while working was not credible. Affirmed.

Pantanella v. Enfield Ford, 3377 CRB-1-96-7 (January 28, 1998), **aff'd**, 65 Conn. App. 46 (2001), **cert. denied**, 258 Conn. 930 (2001)(along with Case No. 3937).
Medical opinion established apportionment of liability for permanent partial disability within reasonable degree of medical probability. Trier could have interpreted statements in report to refer to general difficulty of diagnosing apportionment percentages without precluding a more certain diagnosis in the instant case. Plus, level of diagnostic certainty that a doctor can reach regarding causation percentages is diminished by the difficulty of separating causal factors. Given the situation here, the doctor's opinion sufficed as a medical basis for apportionment. See also, **Pantanella**, § 31-298, § 31-299b, § 31-355(e). Subsequent decisions in Pantanella, 4220 CRB-1-00-4 (December 19, 2000), § 31-298, § 31-300; Pantanella, 3937 CRB-1-98-11 (January 7, 2000), supra and § 31-299b, § 31-300, § 31-298, § 31-315.

Steigerwald v. U.S. Surgical, 3425 CRB-7-96-9 (January 28, 1998).
CRB affirmed the trial commissioner's conclusion that the claimant failed to sustain her burden of proof that she suffered an injury to her back while walking from the employer's parking lot. The claimant's credibility was at issue due to the varied histories she had provided regarding the incident.

Pothier v. Stanley-Bostitch/The Bostitch Company, 3411 CRB-3-96-8 (January 21, 1998).
See, **Pothier**, § 31-275(16). See also reference in § 31-301. Factual findings.

Hurley v. Bridgeport, 3435 CRB-4-96-9 (January 20, 1998).
See, **Hurley**, § 31-301. Appeal procedure.

Buccieri v. Pacific Plumbing Supply Co., 3286 CRB-7-96-3 (December 30, 1997), **aff'd**, 53 Conn. App. 671 (1999).
Appeal from trial commissioner's granting of Motion to Correct, which changed the trial commissioner's conclusion. See also, **Buccieri**, § 31-301-4. Correction of finding, § 31-301. Appeal procedure.

Johnston v. AAR Circamet, 3363 CRB-1-96-6 (December 11, 1997).
Claimant argued it was unreasonable to infer from the facts that he was not entitled to benefits during the 15-month period between his layoff and his second surgery for torn knee ligaments. CRB explained that trial commissioner has the power to weigh the credibility of any medical opinion, even an uncontradicted one, and can choose to adopt part of a diagnosis while ignoring another part. Here, the trier cited testimony stating that the second tear probably occurred sometime during the six months prior to the second surgery, and the claimant could not prove exactly when that was. He was also collecting unemployment, which indicates he was capable of working. Affirmed.

O'Reilly v. General Dynamics Corporation/Electric Boat Division, 3339 CRB-2-96-5 (December 5, 1997), **rev'd**, 52 Conn. App. 813 (1999).
Trier accepted testimony of doctor regarding "synergistic relationship" between smoking and workplace asbestos exposure in causing lung cancer, and found case compensable. Although evidence supports findings that claimant was exposed to asbestos, treating physician never went beyond saying that this exposure "could" have played a significant role in claimant's development of lung cancer. Doctor relied on general synergistic effect of asbestos exposure and smoking toward lung cancer in drawing this connection; he could not pinpoint the exact cause in this case. CRB ruled that testimony did not reach the level of diagnostic certainty necessary to qualify his opinion as being medically probable within a reasonable degree. Trial commissioner's decision reversed. Appellate Court reversed CRB, however, stating that the testimony of the physician in question was indeed sufficient to support the trial commissioner's decision, and that the absence of the magic word "probable" was not dispositive.

Kincaid-Ross v. State/State Library, 3350 CRB-1-96-5 (December 4, 1997).
Commissioner found that claimant suffered a compensable repetitive trauma injury, awarding permanency, temporary total, and interest and attorney's fees. CRB reversed. Despite deferential standard of review on appeal, there must be competent medical evidence in the record to establish causation. Here, the trier did not state which doctor she was relying on, and did not discuss medical causation at all. It is questionable whether either of the medical opinions that addresses causation rises beyond the level of speculation, but trier did not even indicate which one she found persuasive. Remanded. Permanency award and unreasonable contest award reversed as well, as the respondent was not notified they were at issue at the formal hearing, and there are insufficient grounds for such awards given the panel's decision on causation.

Campbell v. UTC/Norden Systems, 3295 CRB-4-96-3 (November 20, 1997).
Doctor testified that claimant suffered from degenerative disc disease, but that degeneration had been significantly augmented by repetitive trauma from employment. This supports finding of compensable injury. However, case remanded for further findings regarding permanent partial disability (doctor testified that impairment was only 15%, but commissioner found a 20% impairment), apportionment (no findings made regarding role of separate period of exposure while self-employed, and more than one insurer on risk), and the duration of temporary total disability benefits (indefinite period awarded in decision). See also, **Campbell**, § 31-299b, § 31-307.

Johnson v. UTC/Pratt & Whitney, 3312 CRB-5-96-4 (November 19, 1997).
Commissioner found that increase in claimant's work load, etc., led to her depression, although he dismissed permanent partial disability and hypertension claims. Respondents argued on appeal that he should have dismissed the occurrence of a compensable psychiatric injury in the first place. Held: trier determines credibility of medical opinions. Findings were a bit scant regarding medical evidence of causation, but one doctor did say that job stress caused her initial disability, and trier referred to his opinion with apparent approval. Affirmed. (*Frankl, C.*, **dissenting**) Doctor could not say claimant was disabled within reasonable degree of medical probability, and the remainder of the evidence is insufficient to establish a disability.

Ferrara v. The Hospital of St. Raphael, 3260 CRB-3-96-2 (November 18, 1997), **aff'd**, 54 Conn. App. 345 (1999), **cert. denied**, 251 Conn. 916 (1999).
Both parties argued that the medical testimony in this case did not support certain findings and conclusions. CRB reminded parties of trier's discretion regarding the weight of medical opinions and the difficulty of overturning such findings on review. Here, none of the reports relied on by the trier were legally unreliable. Trier did not err in discontinuing disability benefits as of date of the report. See also, **Ferrara**, § 31-298.

Wilson-Shirley v. Yale University, 3355 CRB-3-96-6 (November 4, 1997).
CRB affirmed commissioner's award of compensation for hip replacement surgery and associated disability. Corrections were properly denied, as they were largely attempts by the respondents to stress different aspects of facts already found. Trier was not required to credit the opinion of the § 31-294f examiner over the other doctors. The reasons she gave in her decision for disregarding his testimony were legitimate, and another doctor's reports met the standard of reasonable degree of medical probability. See also, **Wilson-Shirley**, § 31-294f.

Muldoon v. New England Installation, 3345A and 3345B CRB-4-96-7 (November 3, 1997).
CRB affirmed trial commissioner's decision that the decedent's exposure to asbestos from 1975 to 1984 significantly contributed to his death and constituted a proximate cause. Claimant had entered into a previously approved stipulation for asbestos exposure through 1975. See also, **Muldoon** § 31-349. See also Muldoon, 10 Conn. Workers' Comp. Rev. Op. 255, 1226 CRD-4-91-5 (January 13, 1993), rev'd, 33 Conn. App. 695 (1994), rev'd, 231 Conn. 469 (1994), aff'd on remand, 37 Conn. App. 266 (1995). Muldoon, 3415 CRB-4-96-8 (November 3, 1997). Subsequent decision at Muldoon, 3552 CRB-4-97-3 (August 24, 1998).

Weiss v. Chesebrough Ponds, 3392 CRB-3-96-8 (September 23, 1997), **aff'd**, 51 Conn. App. 106 (1998).
CRB affirmed trial commissioner's determination that claimant's carpal tunnel was caused by her work duties. Respondents contended that treating physician's opinion was not reliable because it was based upon claimant's oral history which was not stated in physician's report. Trial commissioner was entitled to infer that claimant conveyed to her treating physician the same description of her work duties that she provided during the formal hearing. If respondents doubted this, they could have deposed the doctor.

Reeder v. Zohne Industries, 3313 CRB-5-96-3 (August 21, 1997), **aff'd**, 49 Conn. App. 904 (1998)(per curiam).
None of the doctors whose testimony the claimant offered into evidence said that his skin condition was probably caused by workplace chemical exposure. Fact that respondents offered no contrary evidence did not relieve claimant of burden of proving his case. Dismissal of claim affirmed. See also, **Reeder**, § 31-301-9. Additional evidence.

Kolomiets v. Syncor International Corp., 16 Conn. Workers' Comp. Rev. Op. 234, 3251 CRB-7-96-1 (June 23, 1997).
Commissioner justifiably denied corrections that were either recitals of testimony, cumulative and immaterial facts, suggested inferences from the evidence regarding which the trier permissibly drew contrary inferences, or conclusions of law dependent on those changes. See also, **Kolomiets**, § 31-275(1). Appellate Court reversed CRB on other issues. See subsequent decision at Kolomiets, 4578 CRB-7-02-11 (July 8, 2003).

Roy v. UTC/Pratt & Whitney, 16 Conn. Workers' Comp. Rev. Op. 179, 3131 CRB-1-95-7 (May 12, 1997), **aff'd,** 48 Conn. App. 904 (1998)(per curiam), **cert. denied**, 245 Conn. 906 (1998).
Claimant alleged that his situation at work caused him stress, and led to his heart attack. The trier noted his personal and family history of heart disease, his voluntary entry into a program that made his job harder, and other factors in dismissing the claim. Held: claimant has burden of proving compensable injury within a reasonable degree of medical probability. Trial commissioner, as fact-finder, simply did not find evidence convincing enough. Medical reports were not overwhelmingly supportive of claimant's case, and personal history placed claimant at high risk of heart trouble. Affirmed. See also, **Roy**, § 31-294c.

Evans v. Shelton, 16 Conn. Workers' Comp. Rev. Op. 155, 3108 CRB-4-95-6 (May 2, 1997), **dismissed for lack of a final judgment**, A.C. 17196 (January 14, 1998).
Trier found that exposure to nonspecific workplace irritants resulted in a compensable repetitive trauma injury. CRB stressed trier's power to review the evidence and draw his own factual inferences from the testimony. Two doctors testified that the claimant's exposure to allergens at work materially contributed to the development of her asthma; the fact that the claimant's own statements played a part in developing those diagnoses did not render them legally unreliable. Trier was not required to credit respondent's time cards, nor should he have held claimant's failure to submit a building inspection report into evidence against her under Secondino v. U.S. Gas Company, 147 Conn. 672 (1960). CRB also held that trier did not improperly "fuse" the definitions of repetitive trauma and occupational disease under the Act. Asthmatic conditions can be repetitive trauma injuries. (*Frankl, C.*, **dissenting**) Inconsistent factual findings and conclusions; claimant's history inaccurate, and provides the basis for both doctors' opinions. Attendance records indicate claimant stopped working at city hall two weeks before the doctor observed her wheezing. Based on treating physician's logic, her symptoms should have been alleviated by then. Irritants cited are commonplace in everyday life. See also,

Evans, § 31-275(16), § 31-301. Appeal procedure, notes on Rules of Professional Conduct.

Hodgdon v. UTC/Pratt & Whitney, 16 Conn. Workers' Comp. Rev. Op. 164, 3150 CRB-1-95-8 (May 2, 1997).
Issue of maximum medical improvement date relates to extent of disability, and is a factual determination for the trial commissioner, who has the authority to weigh the credibility of the evidence and to choose among various medical reports or parts of reports. No error here. See also, **Hodgdon**, § 31-298.

Keenan v. Union Camp Corp., 16 Conn. Workers' Comp. Rev. Op. 174, 3202 CRB-4-95-11 (May 2, 1997), **rev'd**, 49 Conn. App. 280 (1998).
Doctor relied exclusively on the history the claimant provided in relating his initial compensable leg injury to a subsequent fall down the stairs at home. He found no physical evidence linking the two events, and did not explain their connection in medical terms. CRB reversed trier's decision to award compensation, as the substance of the expert testimony was legally insufficient to establish causation within a reasonable degree of medical probability. Appellate Court reversed CRB and held there was sufficient medical evidence before the trial commissioner for her to conclude that the claimant suffered a traumatic brain injury as a result of his fall, and that his fall was caused by leg weakness that resulted from a compensable workplace injury.

Benlock v. New Haven Terminal/Cilco Terminal, 3034 CRB-4-95-4 (April 25, 1997), **aff'd**, 48 Conn. App. 250 (1998)(per curiam).
CRB affirmed trier's decision that job stress superimposed on preexisting risk factors caused the claimant's heart attack. As the finder of fact, the trier was entitled to deny the proposed corrections of the respondents, as some of the facts were irrelevant to the outcome of the case, while others depended on conflicting testimony. Doctor's opinion that stress was "probably" a cause of his heart attack was given with a reasonable degree of medical probability. Traditional proximate cause concepts apply in heart attack cases. (*Frankl, C.*, **dissenting**) Claimant did not offer sufficient evidence to prove heart attack work-related under any test. Doctor's opinion was clearly obtained after claimant's counsel became aware she had insufficient proof to win her pending case, and doctor was aware he was testifying for this purpose. See also, **Benlock**, § 31-275.

Ubaldo v. Cold Metal Products, 3223 CRB-6-95-11 (April 25, 1997).
Claimant was injured climbing over a fence to get inside his employer's premises, as he was late for work and no one was at the guard shack to let him in the gate. Case was dismissed. CRB ruled that trier did not have to explain which parts of the claimant's testimony he didn't find credible [See Admin. Reg. § 31-301-3]. His determination that the claimant was not a credible witness cannot be overturned by this board. No error.

Roy v. General Dynamics Corporation/Electric Boat Division, 3284 CRB-1-96-2 (April 14, 1997), **aff'd**, 47 Conn. App. 924 (1997), **cert. denied**, 244 Conn. 907 (1998).
CRB affirmed the trial commissioner's conclusion that the claimant's physical and mental conditions were not causally related to his employment. CRB will not disturb a trial commissioner's decision where, as here, the commissioner's determinations are

based upon the weight and credibility that he has accorded the evidence. See also, **Roy**, § 31-301-9. Additional evidence.

Bell v. McCarthy, 3216 CRB-6-95-11 (April 10, 1997).
Claimant testified as to circumstances of his back injury, and explained why he did not tell respondent about injury right away. Trial commissioner was entitled to credit this testimony, and CRB may not reassess his decision. Award affirmed.

McQuiller v. The Miller Company, 3219 CRB-6-95-11 (April 10, 1997).
Trier did not have to grant respondents' requested correction seeking alternate interpretation of doctor's statement regarding absence of pre-existing problem in claimant's wrist. Statement could be construed as trier interpreted it. Respondents' failure to challenge findings regarding medical opinion that trial commissioner ultimately relied on means that those findings remain intact on review, and provide support for the decision. See also, **McQuiller**, § 31-349.

Brown v. Connecticut Aerosol, 3169 CRB-3-95-5 (April 7, 1997).
In reviewing denial of Motion to Correct, CRB may not reassess trier's determinations of evidentiary credibility. Claimant has burden to prove causal link between employment and disability, and trier may choose to credit or ignore any of the medical evidence he presents, even if there is no contrary testimony. See also, **Brown**, § 31-298.

Smith v. UTC/Pratt & Whitney, 3134 CRB-3-95-6 (April 4, 1997).
Trier dismissed claim for cervical and back injuries. Claimant argued that he disregarded undisputed evidence, and improperly based his decision on the fact that no doctor used the term "reasonable medical probability." CRB explained that, although the "magic" words "reasonable degree of medical probability" are not necessary, the claimant must still prove causal connection based on the substance of the medical testimony. Here, the reports cited by the claimant do not reach a conclusion regarding the origin of the claimant's symptoms, and the commissioner was not required to infer proof of causation from those reports.

Figueroa v. Laidlaw Transit, 3154 CRB-4-95-9 (March 4, 1997).
Factual determinations are within the province of the trial commissioner. The weight and credibility to be given the evidence presented is determined by the trial commissioner. Furthermore, the trial commissioner has the right to reject testimony even if seemingly uncontradicted. See also, **Figueroa,** § 31-294d, and § 31-308a.

Desantis v. Middlebury, 3182 CRB-5-95-10 (February 27, 1997).
CRB affirmed the trial commissioner's determination that the claimant's injury constituted a new and identifiable injury. The trial commissioner did not find the claimant's prior injuries to be concurrent and contributing causes of the claimant's nerve impingement and resulting need for surgery. As the trial commissioner's determination was based upon the weight and credibility which he accorded the evidence, and is fully supported by the record, CRB will not disturb that determination.

Pronovost v. UTC/Pratt & Whitney, 3166 CRB-6-95-9 (February 11, 1997).
Trial commissioner did not err in crediting opinion of independent medical examiner over that of treating physician. Medical expert's opinion is seldom unreliable as a matter of law, and trial commissioner assigns degree of credibility to give evidence. Further, even if IME's opinion was unreliable, commissioner would not have to credit opinion of treating physician. Claimant has burden of proof of showing causal connection between compensable injury and allegedly related injury to different body part. See also, **Pronovost**, § 31-301-9.

Jusiewicz v. Reliance Automotive, 3140 CRB-6-95-8 (January 24, 1997).
Commissioner found doctor's arguments regarding permanent pelvic impairment unpersuasive. Claimant appealed, arguing no evidence was submitted to contradict that opinion. Held: trial commissioner is entitled to weigh credibility of all medical opinions, including uncontradicted ones. CRB may not reevaluate commissioner's decision on credibility. Affirmed. See also, **Jusiewicz**, § 31-301. Appeal procedure.

Sherman v. Construction & General Laborers Union Local 390, 3056 CRB-5-95-5 (January 8, 1997).
CRB affirmed trial commissioner's determination that claimant's left shoulder injury was not caused by a compensable automobile accident. It was within the discretion of the trial commissioner, as the trier of fact, to accord greater weight to the opinion of the physician who conducted the independent medical examination than to the opinions of the claimant's treaters.

Jaworski v. A.B. Chance Co., 3006 CRB-3-95-2 (January 6, 1997).
Trier can accept or reject the testimony of witnesses and draw inferences from evidence, but CRB may order remand in cases where the facts found are inconsistent with the trial commissioner's conclusion. See also, **Jaworski**, § 31-294d and § 31-349.

Doyle v. New Haven, 3038 CRB-3-95-4 (January 3, 1997).
Findings supported conclusion that medical treatment (dental) was reasonable and related to claimant's compensable injury; trier is arbiter of credibility battle among expert medical witnesses. See also, **Doyle**, § 31-301. Appeal procedure.

Simmons v. Hall's Motor Express, 3055 CRB-1-95-5 (January 3, 1997).
The trial commissioner concluded that the claimant failed to sustain his burden of proof that surgery was causally related to his prior compensable injuries. The claimant contended that the respondents' attorney *conceded* liability for the surgery during the formal hearing. CRB discussed a Supreme Court decision which stated: "[if] a party... *unequivocally* concedes a fact, such concession for the purposes of the trial, has the force of a judicial admission, and a party is bound thereby *unless* the court, in its reasonable discretion, allows the concession to be later withdrawn, explained or modified, if it appears to have been made by improvidence or mistake." CRB concluded that trial commissioner allowed the attorney to withdraw his initial concession.

Dakos v. Acme Wire, 3072 CRB-2-95-6 (December 23, 1996).
CRB affirmed the trial commissioner's conclusion that the claimant failed to meet his burden of proof that his asbestos pleuritis was caused by exposure to asbestos during his employment. Trial commissioner's decision was based on his assessment of the facts and credibility of the witnesses.

Keating v. UTC/Pratt & Whitney Aircraft, 3059 CRB-2-95-5 (December 20, 1996).
On appeal to CRB, the respondents contend that the trial commissioner's conclusion that the claimant's injury arose out of and in the course of his employment was based upon insufficient medical evidence and impermissible factual inferences. Specifically, the respondents contend that the claimant had numerous cardiac risk factors which were not related to his employment, and that the medical evidence does not support a conclusion that factors relating to his employment caused his heart attack. CRB found no error on the part of the trial commissioner, as issue was one of fact and credibility.

Desrosier v. Newington, 3091 CRB-6-95-6 (December 16, 1996), **aff'd**, 47 Conn. App. 920 (1997)(per curiam).
Claimant injured back; trial commissioner found that it was related to pre-existing spondylolysis, and not a prior work injury. Claim dismissed. CRB affirmed; medical expert's opinion is seldom unreliable as a matter of law, as it would have to be so unreasonable that no rational person could believe it. Commissioner entitled to rely on doctor's deposition in dismissing claim.

Minneman v. Norwich/Board of Education, 2294 CRB-2-95-2 (December 13, 1996), **aff'd**, 47 Conn. App. 913 (1997)(per curiam), **cert. denied**, 243 Conn. 962 (1998).
Commissioner found that claimant failed to prove compensable injury from secondhand smoke and cold air exposure in Norwich school system. Affirmed; the credibility of the doctor whose testimony the commissioner relied on in his findings is an issue for the trier to address, not the CRB. Ultimately, this was a standard case of choosing between different doctors' opinions. Trier did not accept claimant's version of the facts, or the etiology of her condition. See also, **Minneman**, § 31-298, § 31-300.

Cooper v. Sisters of Mercy, 3218 CRB-6-95-11 (December 10, 1996).
Pro se claimant challenged commissioner's findings based on contention that employer's representatives lied at formal hearings, and that doctor's records regarding claimant's history were inaccurate. CRB explained that it cannot review decisions that rely on the credibility of expert and lay witnesses. Claimant has burden of proving existence of compensable injury to trial commissioner. Evidence supported findings here. See also, **Cooper**, § 31-301. Appeal procedure.

White v. UTC/Pratt & Whitney, 16 Conn. Workers' Comp. Rev. Op. 139, 3048 CRB-8-95-3 (November 27, 1996).
CRB held that the record fully supported the trial commissioner's determination that the claimant's acid burns were caused by his job duties. Where, as here, the commissioner's determination is based upon the weight and credibility that he has accorded the evidence, we will not disturb such a determination. See also, **White**, § 31-308(c).

Ohlmann v. Canterbury Trails Farm, 16 Conn. Workers' Comp. Rev. Op. 99, 3075 CRB-7-95-6 (November 13, 1996).
CRB affirmed the trial commissioner's determination that the claimant's cervical condition was not caused by a compensable horseback riding accident of July 10, 1990. The trial commissioner found that the independent examiner, an orthopedic surgeon, issued a report that an MRI of the claimant's spine did not indicate any abnormalities, and he found no ratable impairment of the spine. Moreover, the trial commissioner found that none of the medical reports in the record, with the exception of a report by a physical therapist, made any reference to a neck injury until 1993. It was within the discretion of the trial commissioner, as the trier of fact, to accord little or no weight to the claimant's testimony that her neck condition was caused by the July 10, 1990 accident. Where, as here, the commissioner's determination is based upon the weight and credibility that he has accorded the evidence, we will not disturb such a determination.

Brown v. Interstate Pallet Co., 16 Conn. Workers' Comp. Rev. Op. 64, 3064 CRB-3-95-2 (October 25, 1996).
Claimant alleged low back injury at work. Commissioner found his recollection of events inconsistent with medical history, company records, testimony of witnesses, and climactological data, and ruled that he had not established his claim. Affirmed. Occurrence of injury is epitome of factual question reserved for trial commissioner, who determines the credibility of the evidence. CRB will not disturb findings unless unsupported by evidence. Corrections sought by claimant were completely dependent on assumption of his own credibility, which CRB cannot indulge in. See also, **Brown**, § 31-301. Appeal procedure.

Vasilescu v. Consolidated Freightways, 16 Conn. Workers' Comp. Rev. Op. 53, 2225 CRB-7-94-12 (October 18, 1996).
Commissioner failed to rule either way as to causal connection between compensable back injury and psychiatric treatment, finding that claimant's testimony left the issue unclear. This was inconsistent with her order that all outstanding medical bills for authorized psychiatric treatment be paid upon proof of connection with back injury. Also, both treating physicians and both independent medical examiners linked back injury with psychiatric condition, so CRB was unsure what additional evidence the commissioner felt was necessary. Reversed and remanded for further proceedings.

Kramer v. Johnson, 16 Conn. Workers' Comp. Rev. Op. 43, 2217 CRB-6-94-11 (October 16, 1996).
Trier failed to make any factual findings or conclusions as to whether the putative employer had control over the alleged employee's work activities relating to a roofing project. Further, the finding lacks evidentiary support concerning payment for services and is unclear as to whether respondent and claimant had an employment agreement. Remanded.

Federchuck v. UTC/Pratt & Whitney, 15 Conn. Workers' Comp. Rev. Op. 476, 2298 CRB-2-95-2 (September 16, 1996).
Sufficient medical evidence existed to support conclusion that claimant suffered a compensable psychological injury from his employment. Adding further findings pursuant to respondents' Motion to Correct would not change outcome of decision. (*Frankl, C.,* **dissenting**) (finding of compensable injury lacks evidentiary support. No identifiable workplace trauma to claimant; instead, evidence shows that lifelong emotional problems spilled over into claimant's employment). See also, **Federchuck**, § 31-301. Appeal procedure, and § 31-284(a).

Mulroy v. Becton Dickinson, 15 Conn. Workers' Comp. Rev. Op. 455, 2295 CRB-8-95-2 (September 6, 1996), **aff'd**, 48 Conn. App. 774 (1998).
Commissioner found that claimant had contracted occupational disease as a result of exposure to neurotoxic chemicals at workplace. CRB dismissed respondents' appeal, as commissioner had authority to find facts and determine credibility of evidence. Expert medical testimony was provided to establish causal link between employment and disability. Witnesses testified to presence of chemicals in workplace, and doctor offered opinion linking neuropathy to workplace chemical exposure. CRB cannot reevaluate whether levels of chemical exposure were too low to be harmful on appeal. See also, **Mulroy**, § 31-298 and later **Mulroy**, 16 Conn. Workers' Comp. Rev. Op. 7, 2295 CRB-8-95-2 (October 2, 1996), § 31-301c (Interest added on award affirmed on appeal). See also **Mulroy**, 4083 CRB-5-99-7 (September 29, 2000), § 31-349.

Bailey v. State/Greater Hartford Community College, 15 Conn. Workers' Comp. Rev. Op. 433, 3152 CRB-5-95-8 (September 3, 1996), **appeal dismissed**, A.C. 16397 (December 5, 1996).
Trial commissioner awarded temporary total disability benefits where claimant offered as sole evidence of disability period a letter from a treating physician assigning 33 months of disability without giving an underlying cause for diagnosis. Claimant had also been student teaching and attending school during that time period. Held, state's failure to file transcripts of formal hearings would normally result in the dismissal of its appeal. However, the claimant did not argue that the missing transcripts would support her claim. Instead, she represented that the findings revolved around stipulated facts. Even taking into account the commissioner's fact-finding authority, there was insufficient evidence in the record to establish a reasonably medically probable relationship between the claimant's medical condition and her total disability through January 1994. Thus, the case was remanded for new proceedings concerning extent of disability. See also, **Bailey**, § 31-301. Appeal procedure. Subsequent decisions in Bailey, 3694 CRB-1-97-9 (January 12, 1999), aff'd in part, rev'd in part, 65 Conn. App. 592 (2001), § 31-298, § 31-301. Factual findings, Bailey, 3922 CRB-2-98-10 (November 30, 1999), aff'd in part, rev'd in part, 65 Conn. App. 592 (2001), § 31-300, § 31-307, and Bailey, supra, § 31-284b, § 31-294d and Bailey, 3694 CRB-1-97-9 (January 12, 1999), § 31-298, § 31-301. Appeal procedure.

Monaco v. Metal Masters, Inc., 15 Conn. Workers' Comp. Rev. Op. 415, 2245 CRB-3-94-12 (August 29, 1996).
See, **Monaco**, § 31-307.

Green v. State/University of Connecticut, 15 Conn. Workers' Comp. Rev. Op. 412, 2283 CRB-2-95-1 (August 28, 1996).
Commissioner ruled that claimant failed to meet burden of establishing causal relationship between post-polio syndrome and work injury. Claimant argued on appeal that commissioner ruled she had failed to introduce sufficient evidence to meet her burden of proof, and that this amounted to a ruling on a nonsuit rather than a determination of the credibility of the evidence. Held, the commissioner discussed and considered the substance of the medical reports. This was not the equivalent of a nonsuit or summary judgment; rather, it was a standard evaluation of the evidence. Affirmed.

Landry v. North American Van Lines/Transtar, Inc., 15 Conn. Workers' Comp. Rev. Op. 397, 1971 CRB-2-94-2 (August 16, 1996).
Trial commissioner had discretion to choose between two conflicting medical opinions. See also, **Landry**, § 31-294d, § 31-296.

Mierzejewski v. BIC Corporation, 15 Conn. Workers' Comp. Rev. Op. 394, 3015 CRB-3-95-2 (August 14, 1996).
CRB affirmed trial commissioner, where it was clear that the commissioner's decision was dependent upon the weight and credibility which he afforded the evidence. CRB will not disturb conclusions which are so based.

Lopez v. Chieppo Charter, Inc., 15 Conn. Workers' Comp. Rev. Op. 378, 2269 CRB-3-95-1 (July 12, 1996).
CRB affirmed the trial commissioner's decision that the claimant failed to sustain his burden of proof that he suffered an injury arising out of and in the course of his employment with the respondent employer. The trial commissioner found that the claimant's testimony that he fell from a ladder while at work was not credible. See also, **Lopez**, § 31-301-9. Additional evidence.

Hayden-Leblanc v. New London Broadcasting Co., 15 Conn. Workers' Comp. Rev. Op. 314, 2128 CRB-2-94-8 (June 24, 1996).
The commissioner's determination that the claimant's fall at work was not a substantial cause of her lumbar symptomalogy was clearly based upon the weight which he accorded the evidence, including medical records and testimony. CRB will not disturb such a determination. *Earlier decision considered whether claimant filed a timely notice of claim*. See, Hayden-Leblanc, 12 Conn. Workers' Comp. Rev. Op. 3, 1373 CRD-2-92-1 (January 5, 1994).

Rogers v. Laidlaw Transit, 15 Conn. Workers' Comp. Rev. Op. 318, 2154 CRB-3-94-9 (June 24, 1996), **rev'd**, 45 Conn. App. 204 (1997)(per curiam).
Commissioner has authority to determine credibility of witnesses and evidence in finding facts; findings can be changed only if they are unsupported by evidence or if they omit undisputed material facts, and legal conclusions stand unless they result from

misapplied law or from illegal inferences drawn from facts. Here, commissioner relied on medical reports in finding knee surgery work-related. Medical expert must establish relationship as reasonable medical probability to qualify as competent evidence, although no "magic words" are necessary. Medical reports in question did not establish such a probability; statement of doctor was primarily a legal conclusion couched in language of § 31-349. No medical conclusions in the doctor's reports supported his relation of medial meniscus tear to knee replacement surgery. Appellate Court reversed CRB with direction to affirm trial commissioner, noting appeal hearing is not a de novo hearing. Determination that knee replacement surgery was attributable to the claimant's work injury is a question of fact reserved for the trial commissioner. See also, **Rogers**, § 31-349.

Glenn v. Glenn Fence Co., 15 Conn. Workers' Comp. Rev. Op. 249, 2132 CRB-1-94-8 (May 21, 1996), **aff'd**, 45 Conn. App. 906 (1997)(per curiam).
Only proof of compensability of back injuries was claimant's own testimony; no witnesses to injury produced, and confusion abounded over date of injury. It was not unreasonable for the commissioner to doubt the accuracy of the claimant's testimony. Adverse inference rule in Secondino, 147 Conn. 672 (1960), held inapposite, commissioner did not hold against claimant his failure to produce a particular witness, but noted that no witnesses were produced to help him meet his burden of proof. See also, **Glenn**, § 31-301-9. Additional evidence.

Casanovas v. Acme United Corp., 15 Conn. Workers' Comp. Rev. Op. 235, 2179 CRB-4-94-10 (May 9, 1996).
Discrepancy in medical reports regarding circumstances of alleged injury supports commissioner's conclusion that claimant did not sustain his burden of proof. Affirmed. See also, **Casanovas**, § 31-301-9. Additional evidence.

Seeger v. Naugatuck, 15 Conn. Workers' Comp. Rev. Op. 240, 2220 CRB-5-94-11 (May 9, 1996).
Sufficient evidence existed to support trial commissioner's finding that claimant's employment aggravated his lymphedema.

Jarema v. UTC/Pratt & Whitney, 15 Conn. Workers' Comp. Rev. Op. 214, 2065 CRB-8-94-6 (April 29, 1996).
In a ruling the trial commissioner denied the respondents' Motion to Dismiss based on statute of limitations, C.G.S. § 31-294, because there is evidence that claimant received medical care from the employer for the injury within one year of the date of the injury. However, the trial commissioner did not issue any findings of fact regarding the timeliness of the claimant's notice of claim or regarding the furnishing of medical care. As the commissioner did not make any findings of fact and no transcript has been provided, CRB unable to adequately review the respondents' appeal. Therefore, remanded to the trial commissioner.

Jarvis v. Lego Systems, Inc., 15 Conn. Workers' Comp. Rev. Op. 202, 2210 CRB-1-94-11 (April 23, 1996).
Trial commissioner's dismissal of claim was based on a determination of credibility between conflicting lay witnesses. Although the findings contain superfluous recitals of facts, the basis for the decision is still clear; Motion to Correct properly denied as well.

Sharkey v. Triangle/PWC, 15 Conn. Workers' Comp. Rev. Op. 127, 2111 CRB-6-94-7 (January 17, 1996).
Motion to Correct properly denied; some corrections were immaterial, while as to others, commissioner has power to determine credibility of evidence.

Clinton v. Lego Systems, Inc., 15 Conn. Workers' Comp. Rev. Op. 109, 2188 CRB-1-94-10 (January 11, 1996).
Commissioner found insufficient evidence to establish a compensable injury. Affirmed; records support finding regarding abdominal pain diagnosis, and CRB cannot re-evaluate the credibility of evidence on appeal.

Odom v. Sawyer Industrial Services, 15 Conn. Workers' Comp. Rev. Op. 80, 2131 CRB-3-94-8 (December 7, 1995).
Trial commissioner found that claimant failed to prove repetitive trauma injury, as medical evidence was inconsistent. Affirmed; commissioner is charged with determining the credibility of witnesses.

Leroux v. Lenders Bagel Bakery, 15 Conn. Workers' Comp. Rev. Op. 41, 2110 CRB-3-94-7 (November 28, 1995).
Trial commissioner concluded medical evidence insufficient to relate lumbar spine surgery to ankle injury. Affirmed. Some of corrections sought by claimant merely attempted to restate doctors' medical conclusions regarding causation and to elaborate on his pain symptoms and medical treatment history; those could be denied because they had no impact on legal conclusion. Authority of commissioner to assess credibility of medical evidence entitled him to deny other suggested corrections.

Hunter v. UTC/Pratt & Whitney, 14 Conn. Workers' Comp. Rev. Op. 397, 1988 CRB-1-94-3 (October 17, 1995), **aff'd,** 43 Conn. App. 918 (1996)(per curiam), **cert. denied**, 240 Conn. 902 (1997).
The commissioner ruled that the fatal cancer which was discovered during the surgery for the claimant's compensable back injury was not causally related to his fall at work. The decedent's widow contended that the fall hastened the death. The trial commissioner concluded that the decedent's compensable back injury did not have a significant effect on the decedent's survival or longevity. Therefore, CRB affirmed the commissioner.

Wheeler v. Brake Systems, Inc., 14 Conn. Workers' Comp. Rev. Op. 400, 2015 CRB-4-94-4 (October 17, 1995).
The commissioner ruled that the claimant failed to meet his burden of proving that his lung cancer was causally related to his asbestos exposure at work. The medical evidence was sufficient to support the commissioner's determination, as there was medical evidence presented indicating that the asbestos was not a substantial cause of the lung

cancer, and there was a medical opinion presented which indicated that the claimant's smoking was the major cause of his lung cancer.

Smith v. Aetna Life & Casualty, 14 Conn. Workers' Comp. Rev. Op. 336, 2006 CRB-1-94-3 (September 20, 1995), **aff'd**, 43 Conn. App. 910 (1996)(per curiam).
No error in denial of Motion to Correct; most of corrections would have had no impact on outcome, while others were inconsistent with existing findings or dependent on credibility of testimony. See also, **Smith**, § 31-294c, and § 31-298.

Dennis-Hoyle v. Omni Home Health, 14 Conn. Workers' Comp. Rev. Op. 308, 2003 CRB-3-94-3 (September 14, 1995).
CRB affirmed the commissioner's conclusion that the claimant's injury did not arise out of and in the course of her employment as a visiting nurse's aide. The commissioner found that the claimant's injury occurred while the claimant was driving from her residence to visit her first patient scheduled for that day, and that the claimant had not yet commenced working, but was merely on her way to her first appointment.

Ferrigno v. Buffalo Specialty, 14 Conn. Workers' Comp. Rev. Op. 303, 1953 CRB-2-94-1 (September 14, 1995).
See, **Ferrigno**, § 31-275(1).

Levesque v. Consumer Interstate, 14 Conn. Workers' Comp. Rev. Op. 280, 1886 CRB-2-93-10 (September 11, 1995).
Trial commissioner determined that claimant did not prove causal relationship between disability and employment. Affirmed. Doctor's medical opinion speculative; no error in commissioner's failure to credit doctor's opinion. Fact that back sprain occurred at work not controlling; an act can be too trivial to constitute a legal cause of injury.

Sylvia v. Victorian Salon, 14 Conn. Workers' Comp. Rev. Op. 270, 1976 CRB-2-94-2 (September 6, 1995).
Commissioner found claimants had not proven compensability of heart attack. Affirmed; question of compensability is factual, and it is within commissioner's purview to evaluate weight of testimony. Motion to Correct properly denied, as corrections were both superfluous to outcome of case and dependent on witness credibility. No conclusive evidence in record.

Gagne v. The Waterproofing Co., 14 Conn. Workers' Comp. Rev. Op. 245, 1967 CRB-1-94-2 (August 30, 1995).
Evidence and testimony supported conclusion that knee injury suffered while arising from couch was causally connected to earlier compensable injury; inconsistencies in doctor's testimony were explained. Case directly in line with Hernandez v. Gerber Group, 222 Conn. 78 (1992).

Prescott v. Echlin, Inc., 14 Conn. Workers' Comp. Rev. Op. 191, 2029 CRB-3-94-4 (July 13, 1995), **appeal dismissed**, A.C. 16150 (February 5, 1997).
CRB affirmed trial commissioner's finding that claimant's injury occurred on June 14, 1991, and was not repetitive trauma continuing until 12/2/91. Notice of claim was thus late. Commissioner has discretion to interpret medical reports; evidence could have gone

either way. Failure to use "reasonable degree of medical probability" in medical report not harmful. CRB also denied Motion to Submit Additional Evidence based on prior availability of report.

Coull v. Capitol Auto Service, 14 Conn. Workers' Comp. Rev. Op. 187, 1966 CRB-8-94-2 (July 7, 1995).
Commissioner's decision affirmed. No finding was made regarding the issue of future medical treatment, and further trigger point injection therapy was neither approved nor disapproved. Such a decision did not have to be made by the commissioner at that time, so there was no error.

Peters v. Corporate Air, Inc., 14 Conn. Workers' Comp. Rev. Op. 91, 1679 CRB-5-93-3 (May 19, 1995).
CRB affirmed commissioner's denial of benefits where commissioner concluded that claimant failed to sustain burden of proving that back injury occurred in the course of employment. Commissioner found that claimant lacked credibility due to inconsistencies in his testimony and in evidence. See also, **Peters**, § 31-275(1).

Webb v. Pfizer, Inc., 14 Conn. Workers' Comp. Rev. Op. 69, 1859 CRB-5-93-9 (May 12, 1995).
CRB affirmed commissioner's award of § 31-308(a) benefits for skull fracture and related symptoms. Role of CRB in reviewing factual findings addressed; commissioner has power to determine facts, weight of evidence, and credibility of testimony. Commissioner must include in findings only the ultimate facts essential to the case at hand, as well as his conclusions and the parties' claims of law; opinions or beliefs of commissioner, and the reasons for his conclusions, do not belong in the Finding and Award. Commissioner *may* file memorandum of decision discussing reasoning behind decision if he so chooses. Motion to correct need not be granted if outcome of case will not be affected.

Nasinka v. Ansonia Copper & Brass, 13 Conn. Workers' Comp. Rev. Op. 332, 1592 CRB-5-92-12 (April 27, 1995).
In deciding whether to apportion liability, commissioner must make factual determination as to cause of disability. Conclusions of commissioner must stand if supported by facts found, and if not the result of incorrect application of law to facts. Commissioner also entitled to determine credibility of doctors and other witnesses who testified, and to accept parts of expert testimony and reject other parts. See also, **Nasinka**, § 31-298.

Radzvilla v. Bridgeport Hospital, 13 Conn. Workers' Comp. Rev. Op. 337, 1771 CRB-4-93-7 (April 27, 1995).
Existence of prior back injury and consistency of medical evidence are both decisions for trier of fact.

Ettienne-Modeste v. Bloomfield, 13 Conn. Workers' Comp. Rev. Op. 327, 1789 CRB-1-93-9 (April 26, 1995).
Pro se claimant appealed from finding that evidence did not support further disability. Held, as the fact-finder, the commissioner was within his authority not to cite certain testimony in his findings, and to decide which medical evidence to accept.

Calinescu v. CFD Associates, 13 Conn. Workers' Comp. Rev. Op. 298, 1794 CRB-8-93-8 (April 21, 1995), **aff'd,** 40 Conn. App. 912 (1996).
Commissioner found that claimant did not establish that shoulder injury occurred by pulling refrigerator up stairs, as such motion was inconsistent with diagnosis of treating physician. Held, commissioner was entitled to decide that claimant's testimony was not credible enough to support connection between injury and employment. CRB involvement in a decision regarding physical effects of lifting refrigerator would be inappropriate; factual issue. See also, **Calinescu**, § 31-301-9. Additional evidence.

Paternostro v. Turner Construction Co., 13 Conn. Workers' Comp. Rev. Op. 251, 1723 CRB-5-93-5 (April 18, 1995).
Testimony of claimant and treating physician supported findings that claimant was exposed to asbestos during all relevant periods and that exposure caused claimant's disability, so CRB bound by commissioner's findings. See also, **Paternostro**, § 31-275(1).

Hawley v. Shell Oil Co., 13 Conn. Workers' Comp. Rev. Op. 246, 1663 CRB-4-93-3 (April 17, 1995).
Commissioner was not required to rely on treating physician's testimony over that of independent medical examiner's. Province of trier of fact to assess credibility; evidence to support conclusion that claimant was capable of light work.

Santry v. Fermont Division, 13 Conn. Workers' Comp. Rev. Op. 230, 1768 CRB-4-93-6 (April 13, 1995).
Board cannot substitute its conclusions for commissioner's; commissioner's role to consider credibility of witnesses and determine facts. See also, **Santry**, § 31-294c.

Genovesi v. Choice Designs, Inc., 13 Conn. Workers' Comp. Rev. Op. 218, 1745 CRB-5-93-6 (April 12 1995).
Commissioner was entitled to credit claimant's testimony in determining wage-earning capacity. See also, **Genovesi**, § 31-308a.

Bowman v. Jack's Auto Sales, 13 Conn. Workers' Comp. Rev. Op. 192, 1721 CRB-1-93-5 (March 22, 1995), **aff'd**, 54 Conn. App. 296 (1999).
Remand needed to determine whether it was improper to credit respondents with payment against claimant's specific award, as well as to determine relationship of disability to different injury. Reference to 1985 injury inconsistent with granting of Motion to Correct, as date of employment changed to May 1986; remand appropriate where conclusions inconsistent with facts found by commissioner. See also, **Bowman**, § 31-308a. Subsequent decision at Bowman, 16 Conn. Workers' Comp. Rev. Op. 223,

3384 CRB-1-96-7 (June 18, 1997) and Bowman, 3622 CRB-8-97-6 (August 26, 1998), § 31-301. Appeal procedure, § 31-315.

Maio v. L.G. Defelice, Inc., 13 Conn. Workers' Comp. Rev. Op. 197, 1734 CRB-5-93-5 (March 22, 1995).
Claimant argued that testimony of company foreman was inconsistent and unreliable. Held, commissioner has duty to decide whether testimony is believable; CRB cannot question that decision. Also, claimant not deprived of opportunity to cross-examine witness where his attorney was present at deposition. See also, **Maio**, § 31-301. Appeal procedure.

Griffith-Patton v. Department of Agriculture, 13 Conn. Workers' Comp. Rev. Op. 177, 1888 CRB-1-93-11 (March 10, 1995), **aff'd**, 41 Conn. App. 911 (1996)(per curiam), **cert. denied**, 237 Conn. 930 (1996).
Commissioner entitled to determine whether witness' testimony is believable, even where no contradictory evidence set forth. CRB does not review conclusions that depend on weight of evidence or credibility of witnesses. See also, **Griffith-Patton**, § 31-294c.

Wrighten v. Burns International Security, 13 Conn. Workers' Comp. Rev. Op. 173, 1659 CRB-2-93-2 (March 10, 1995).
Commissioner found testimony of doctor that injury was not work-related more persuasive than testimony of claimant's other doctors. As it is province of trier of fact to assess weight and credibility of testimony, CRB will not question his decision. Motion to Correct properly denied, as requested corrections would not alter legal conclusion. See also, **Wrighten**, § 31-308a.

Campbell v. Manchester Memorial Hospital, 13 Conn. Workers' Comp. Rev. Op. 157, 1754 CRB-1-93-6 (March 8, 1995), **dismissed for lack of final judgment**, A.C. 14611 (May 24, 1995).
Commissioner not required to credit entirety of one doctor's testimony; factual basis existed for findings, and this board did not disturb them. See also, **Campbell**, § 31-294c.

Nihan v. Bussman Cooper Industries, 13 Conn. Workers' Comp. Rev. Op. 155, 1747 CRB-6-93-6 (March 8, 1995).
Evidence supported conclusion that employment did not exacerbate pre-existing sarcoidosis. Commissioner had discretion to determine which expert medical opinion to believe in face of conflicting opinions regarding occupational disease.

Knoblaugh v. Greenwood Health Center, 13 Conn. Workers' Comp. Rev. Op. 150, 1608 CRB-1-92-12 (February 6, 1995).
Motion to Correct properly denied, as substitution of factual findings would not have had an impact on the decision even though some facts undisputed. Ultimate conclusion regarding occurrence of new injury supported by evidence and not to be disturbed by CRB; other corrections ignore authority of commissioner to determine credibility. See also, **Knoblaugh**, § 31-315, § 31-349, and § 31-355(b).

Lourenco v. Cammisa, 13 Conn. Workers' Comp. Rev. Op. 118, 1661 CRB-1-93-3 (January 31, 1995).
Commissioner's conclusion as to 6/21/91 date of temporary total disability inconsistent with facts found; no evidence in record that claimant's condition changed between 8/8/89 and 1/22/92. CRB ordered remand for new hearing due to insufficient evidence.

Sargent v. Rybczyk Plumbing & Heating, 13 Conn. Workers' Comp. Rev. Op. 128, 1974 CRB-6-94-2 (January 31, 1995).
Commissioner was entitled to credit report of doctor who had treated claimant until several weeks before the date of his report, even though the report of the succeeding treating physician was contradictory regarding date of claimant's work capacity as projected into near future. This decision falls within the authority of the commissioner to determine witness and evidence credibility. See also, **Sargent**, § 31-300, § 31-301. Appeal procedure.

Uva v. Valleries Transportation Service, 13 Conn. Workers' Comp. Rev. Op. 106, 1625 CRB-7-93-1 (January 30, 1995).
Where findings unsupported by evidence, CRB must remand for further proceedings. See also, **Uva**, § 31-307b.

Saporoso v. Aetna Life & Casualty Insurance Co., 13 Conn. Workers' Comp. Rev. Op. 88, 1513 CRB-1-92-9 (January 23, 1995).
Remanded where trier's finding approving respondent's Form 36 contains summaries of medical evidence unsupported by factual findings.

Conetta v. Stamford, 13 Conn. Workers' Comp. Rev. Op. 68, 1491 CRB-7-92-8 (December 29, 1994).
Remanded where trier's findings contain many recitals of evidence and claims of the parties. Additionally, conclusion dismissing police officer's psychiatric claim was legally inconsistent with subordinate facts found. See also, **Conetta**, § 31-275(1) and § 31-294c. See also, Conetta v. Stamford, 16 Conn. Workers' Comp. Rev. Op. 228, 3231 CRB-7-95-12 (June 23, 1997), appeal dismissed, 246 Conn. 281 (1998).

Phelan v. Soda Construction Co., 13 Conn. Workers' Comp. Rev. Op. 53, 1583 CRB-3-92-12 (December 20, 1994).
Determination of witness credibility and weight to give evidence within province of trial commissioner. See also later Phelan, 1979 CRB-3-94-3; 2107 CRB-3-94-7, 14 Conn. Workers' Comp. Rev. Op. 389 (October 17, 1995) in § 31-310, infra. See also, **Phelan**, § 31-275(9), § 31-291, and § 31-355(b).

Smith v. Capiezello, 13 Conn. Workers' Comp. Rev. Op. 37, 1712 CRB-2-93-4 (November 8, 1994).
Evidence supports finding claimant failed to establish a causal connection between an earlier accepted head injury and an alleged back injury for which treatment was not received until several years later. See also, **Smith**, § 31-275(1) and § 31-301. Appeal procedure.

Plitnick v. Knoll Pharmaceuticals, 13 Conn. Workers' Comp. Rev. Op. 26, 1699 CRB-8-93-4 (November 7, 1994).
Trier's finding claimant's back injury and subsequent surgery arose out of the course of employment supported by medical evidence. Remanded for further evidence where finding of incapacity is awarded beyond a date supported by evidence. Discussion of pertinent case law on what material facts are and what findings should include. See also, **Plitnick**, § 31-275(1) and § 31-301. Appeal procedure.

Carr v. Southern New England Telephone Co., 13 Conn. Workers' Comp. Rev. Op. 21, 1846 CRB-3-93-9 (November 4, 1994), **appeal dismissed**, A.C. 14126 (January 18, 1995), **cert. denied**, 233 Conn. 910 (1995).
Trier's finding dismissed four of five alleged injuries. See also, **Carr**, § 31-301-9. Additional evidence.

Colello v. Dresser Industries, 13 Conn. Workers' Comp. Rev. Op. 14, 1691 CRB-4-93-4 (November 3, 1994).
Commissioner credited testimony of claimant despite alleged inconsistencies and medical reports of two physicians who relied on subjective complaints of back pain by claimant. Held, witness credibility is determined by commissioner, who uses his judgment. Same goes for weight of medical reports. Not impermissible for doctor to take declarations of pain into account when making diagnosis. No unreasonable or illegal inference drawn from facts.

Searles v. West Hartford Board of Education, 12 Conn. Workers' Comp. Rev. Op. 414, 1617 CRB-1-93-1 (September 28, 1994), **aff'd**, 40 Conn. App. 902 (1996)(per curiam).
Evidence supports finding automobile accident did not occur on property under the control of employer nor was claimant, a school teacher, required to be present at school on that date. Additionally, disability from congenital aneurysm not causally related to employment. See also, **Searles**, § 31-275(1), § 31-294c and § 31-301-9. Additional evidence.

Holmes v. G.A. Masonry Corp., 12 Conn. Workers' Comp. Rev. Op. 369, 1588 CRB-5-92-12 (August 11, 1994).
Factual finding as to apportionment of liability not supported by deposition testimony of physician. Trier's decision vacated and matter remanded for further proceedings. See also, **Holmes**, § 31-294c and § 31-299b. Subsequent decision at Holmes, 3338 CRB-8-96-5 (December 16, 1997), § 31-294c, 4027 CRB-5-99-4 (November 7, 2000), § 31-349, Holmes, 4375 CRB-6-01-4 (March 4, 2002), aff'd, 76 Conn. App. 563 (2003).

Miller v. TVCCA, 12 Conn. Workers' Comp. Rev. Op. 348, 1675 CRB-2-93-3 (July 29, 1994), **aff'd**, 39 Conn. App. 935 (1995) (per curiam).
Evidence supports trier's finding of period of total incapacity and lack of causal relationship between compensable injury and later back surgery. See also, **Miller**, § 31-301-9. Additional evidence.

Cummings v. Twin Tool Mfg. Co., 12 Conn. Workers' Comp. Rev. Op. 341, 1542 CRB-1-92-10 (July 11, 1994), **aff'd**, 40 Conn. App. 36 (1996).
See, **Cummings**, § 31-296, § 31-298, § 31-301-9. Additional evidence and § 31-307.

Conroy v. Keri Corporation, 12 Conn. Workers' Comp. Rev. Op. 321, 1534 CRB-3-92-10 (July 5, 1994).
See, **Conroy**, § 31-275(1) and § 31-306.

Ocasio v. Toyotomi, USA, 12 Conn. Workers' Comp. Rev. Op. 330, 1668 CRB-7-93-2 (July 5, 1994).
Based on the credibility of claimant's testimony and inconsistencies in evidence, trier properly concluded claimant failed to meet his burden of proof that he sustained a work related injury.

Ventresca v. Pathmark Supermarkets, 12 Conn. Workers' Comp. Rev. Op. 328, 1655 CRB-4-93-2 (July 5, 1994).
Although medical opinions differed, trier's finding that claimant's cervical spine condition was not related to an earlier work injury is supported by evidence.

Orlando v. Makula, 12 Conn. Workers' Comp. Rev. Op. 296, 1556 CRB-3-92-11 (June 13, 1994).
Respondents sought to correct trier's finding to include the undisputed fact that claimant delayed knee surgery because of his inability to pay for the surgery. CRB held requested correction would not alter legal outcome. See also, **Orlando**, § 31-301. Appeal procedure and § 31-307.

Busak v. Stamford, 12 Conn. Workers' Comp. Rev. Op. 291, 1562 CRB-7-92-11 (June 8, 1994), **aff'd**, 39 Conn. App. 919 (1995)(per curiam).
Dismissal of claim for low back injury and resulting surgeries affirmed. Within trier's discretion to determine credibility of witnesses and weight to be accorded their testimony. See also, **Busak**, § 31-294c.

Duncan v. Dow Chemical Company, 12 Conn. Workers' Comp. Rev. Op. 276, 1442 CRB-2-92-6 (June 7, 1994).
Trier's refusal to find facts as set forth in motion to correct proper where findings and conclusion are based on medical opinions as to causality. See also, **Duncan**, § 31-275(16)[formerly 31-275(8)].

O'Connor v. Connecticut Light & Power Company, 12 Conn. Workers' Comp. Rev. Op. 265, 1536 CRB-8-92-10 (June 2, 1994).
Within trier's discretion to specifically accept opinion of IME physician as opposed to other physicians in finding claimant's depression was not caused by work stress. See also, **O'Connor**, § 31-275(1) and § 31-275(16)[formerly 31-275(8)].

Gesualdi v. Natkin & Company, 12 Conn. Workers' Comp. Rev. Op. 250, 1493 CRB-6-92-8 (May 25, 1994).
See, **Gesualdi**, § 31-294(e). Medical care refusal.

Flowers v. Benny's of Connecticut, 12 Conn. Workers' Comp. Rev. Op. 162, 1527 CRB-2-92-10 (April 26, 1994).
Factual finding dismissing mental stress claim will not be disturbed where conclusions reached did not result from incorrect applications of the law or from inferences illegally or unreasonably drawn from these facts. See also, **Flowers**, § 31-275(1), § 31-298 and § 31-301. Appeal procedure.

Greenwood v. Perkin Elmer Corporation, 12 Conn. Workers' Comp. Rev. Op. 160, 1517 CRB-7-92-9 (April 26, 1994), **aff'd**, 39 Conn. App. 907 (1995)(per curiam).
Medical opinion, although conflicting, supports trier's finding claimant suffered a traumatic brain injury in addition to previously approved back and neck injuries. See also, **Greenwood**, § 31-275(16)[formerly 31-275(8)].

Morris v. A & A Acoustics, 12 Conn. Workers' Comp. Rev. Op. 221, 1488 CRB-7-92-8 (March 22, 1994).
As an appellate tribunal, CRB will not disturb commissioner's conclusions unless they are without evidence, contrary to law or based on unreasonable factual findings. See also, **Morris**, § 31-298 and § 31-301-9. Additional evidence.

Besade v. Interstate Security Services, 12 Conn. Workers' Comp. Rev. Op. 103, 1383 CRB-2-92-2 (February 28, 1994), **aff'd**, 37 Conn. App. 903 (1995).
Trier's finding that claimant suffers from chronic fatigue syndrome and that claimant's symptoms are causally related to her 1980 compensable injury supported by medical evidence. See also, **Besade**, § 31-298 and § 31-308(a). Prior decision at Besade, 6 Conn. Workers' Comp. Rev. Op. 83, 593 CRD-2-87 (January 13, 1989), no error, 212 Conn. 441 (1989).

Scrivano v. UTC/Pratt & Whitney, 12 Conn. Workers' Comp. Rev. Op. 87, 1501 CRB-1-92-9 (February 14, 1994).
Trier's award vacated and matter remanded as evidence was insufficient to find claimant's coronary artery disease which necessitated surgery in 1990 was causally related to his employment and further was related to a compensable angina attack in 1984.

Moffett v. Tighe Williams Salon, 12 Conn. Workers' Comp. Rev. Op. 83, 1489 CRB-4-92-8 (February 9, 1994).
Claimant's challenge to correct trier's findings unavailing where findings are supported by evidence. See also, **Moffett**, § 31-275(1).

Dusto v. Rogers Corporation, 12 Conn. Workers' Comp. Rev. Op. 80, 1496 CRB-1-92-8 (February 4, 1994).
Where medical evidence is in conflict, trier's determination that no causal relationship existed between compensable workplace groin injury and later back condition supported by medical evidence.

Gianfrancisco v. A & P Tea Company, 12 Conn. Workers' Comp. Rev. Op. 48, 1429 CRB-7-92-6 (January 26, 1994), **aff'd**, 36 Conn. App. 924 (1994)(per curiam).
Based on inconsistencies in the evidence, trier denied claimant's alleged injury to her feet. Trier is free to believe all or none of claimant's testimony.

Laprey v. N. Grondhal & Sons, 11 Conn. Workers' Comp. Rev. Op. 324, 1380 CRB-2-92-1 (December 23, 1993).
Medical evidence fails to support claimant's contention he suffered a knee injury during the course of employment.

Maylott v. Williams, 11 Conn. Workers' Comp. Rev. Op. 320, 1353 CRD-6-91-12 (December 23, 1993).
Evidence supports trier's finding that claimant's work related fall was not the cause of a later left hip replacement. See also, **Maylott**, § 31-298.

Peterson v. The Hartford Courant, 11 Conn. Workers' Comp. Rev. Op. 296, 1389 CRB-1-92-3 (December 8, 1993), **aff'd**, 36 Conn. App. 937 (1994)(per curiam).
CRB will not retry factual issues presented below where the trial commissioner failed to credit claimant's version as to how alleged back injury occurred. Also, trier's failure to draw adverse inference from respondents' failure to produce witnesses to refute claimant's testimony is not a basis for reversal. See also, **Peterson**, § 31-301-9. Additional evidence.

Tscheppe v. H.B. Ives Company, 11 Conn. Workers' Comp. Rev. Op. 281, 1386 CRB-3-92-2 (November 23, 1993), **aff'd**, 36 Conn. App. 903 (1994)(per curiam).
Trier did not credit claimant's testimony concerning an alleged workplace back injury. CRB affirmed trier's dismissal of claim.

Davis v. New London/Board of Education, 11 Conn. Workers' Comp. Rev. Op. 245, 1346 CRD-2-91-11 (November 10, 1993), **dismissed, lack of final judgment**, A.C. 13053 (February 16, 1994).
Claimant's date of injury and compensability of claim as found by trial commissioner must stand where evidence supports finding. However, matter remanded where trier made findings concerning amount of medical benefits, claimant's compensation rate, date of maximum medical improvement, temporary disability and extent of permanent disability where parties stipulated to the issues before the trier and these issues were not among the issues stipulated. See also, **Davis**, § 31-294d.

Pinto v. B.C. Hardware Superior Products, 11 Conn. Workers' Comp. Rev. Op. 210, 1351 CRD-6-91-12 (October 5, 1993), **aff'd**, 36 Conn. App. 905 (1994)(per curiam).
Trier found claimant suffered injuries to his neck, back, leg, shoulder and left knee when corrugated steel pipes fell from a flatbed truck entangling claimant as they fell to the ground. Respondents' contention claimant only suffered a left knee injury erroneous as evidence presented supports trier's finding.

Goodrow v. W.J. Barney Corporation, 11 Conn. Workers' Comp. Rev. Op. 207, 1315 CRD-2-91-9 (September 27, 1993).
Sufficient evidence below to support trier's conclusion that claimant suffered a new injury to his foot and did not aggravate a pre-existing injury.

Beninato v. Specialty Framing, Inc., 11 Conn. Workers' Comp. Rev. Op. 200, 1306 CRD-8-91-9 (September 24, 1993), **aff'd**, 36 Conn. App. 911 (1994).
Trier's factual findings and legal conclusions are based on IME psychiatrist's testimony which directly disputes treating physician's testimony. As findings support trier's conclusion and evidence supports conclusion with a reasonable medical certainty, trier's finding that the events at work were not a substantial factor in precipitating claimant's disabling psychiatric condition will not be disturbed on appeal. See also, **Beninato**, § 31-275(1).

Fletcher v. UTC/Pratt & Whitney, 11 Conn. Workers' Comp. Rev. Op. 182, 1322 CRD-8-91-10 (September 13, 1993).
Claimant failed to establish that his low back injury arose out of a workplace incident. It is within the trier's discretion to believe some or all of the testimony before him. Claimant's version of how the claimed injury occurred apparently was viewed by the trier commissioner as incredible. CRB affirmed trier's dismissal of claim. See also, **Fletcher**, § 31-300.

Whalen v. General Building Supply Company, 11 Conn. Workers' Comp. Rev. Op. 177, 1294 CRD-1-91-9 (September 3, 1993).
Testimony and evidence concerning claimed back injury conflicting. Trier dismissed claim as there existed inconsistent testimony as to the date, time and events occurring before and after claimant's alleged fall. CRB affirmed as finding and conclusion was based on the weight and credibility of evidence before the trier of fact. See also, **Whalen**, § 31-301. Appeal procedure.

Clarke v. UTC/Sikorsky Aircraft, 11 Conn. Workers' Comp. Rev. Op. 170, 1327 CRD-4-91-10 (September 2, 1993).
CRB affirmed trier's finding that claimant's back injury was causally related to the accepted work related neck injury sustained during the course of employment.

St. Germaine v. Consolidated Precast, Inc., 11 Conn. Workers' Comp. Rev. Op. 139, 1290 CRD-5-91-9 (July 14, 1993).
Evidence supports trier's finding that claimant sustained a new back injury, was totally disabled for a period and had an increased permanent partial disability. Respondents sought finding of relapse or recurrence of a previous compensable back injury. CRB affirmed trier's finding noting, however, a different conclusion may have been reached had the CRB assessed the facts. However, trier's conclusion was not so unreasonable to justify judicial interference. Also, CRB granted claimant's counsel's motion to withdraw upon completion of all matters relating to the appeal and the appellate process.

Hunt v. Mirror Polishing and Plating Co., 11 Conn. Workers' Comp. Rev. Op. 61, 1254 CRD-5-91-7 (April 21, 1993).
CRB affirmed trier's holding which found a number of successive employers liable for claimant's back injuries and subsequent disabilities. See also, **Hunt**, § 31-300.

Boynton v. American Cyanamid, 11 Conn. Workers' Comp. Rev. Op. 58, 1267 CRD-8-91-8 (April 6, 1993).
CRB affirmed trier's finding that claimant's back injury and subsequent permanent partial disability did not arise out of and during the course of employment. Conclusions of trier are supported by evidence. See also, **Boynton**, § 31-275(1) and § 31-301-9. Additional evidence.

Lange v. J & B Excavating & Paving, 11 Conn. Workers' Comp. Rev. Op. 42, 1249 CRD-3-91-6 (March 18, 1993).
Trier's determination claimant's back injury did not arise out of or during the course of employment based on evidence. See also, **Lange**, § 31-301-9. Additional evidence.

Fitzpatrick v. Wellington's Auto Ranch, Inc., 10 Conn. Workers' Comp. Rev. Op. 247, 1194 CRD-4-91-3 (January 11, 1993).
CRB affirmed trier's ruling disqualifying claimant's counsel as the matter in dispute involved the interpretation and application of the language of a stipulation negotiated by claimant's counsel. Claimant's counsel was a necessary witness in the proceedings below. See also, **Fitzpatrick**, § 31-301-9. Additional evidence.

Pereira v. State/Dept. of Children & Youth Services, 10 Conn. Workers' Comp. Rev. Op. 229, 1209 CRD-7-91-4 (January 7, 1993), **aff'd**, 228 Conn. 535 (1994).
Where evidence before trier concerning claim for work related mental stress is in conflict and trier's finding is supported by evidence, CRB will not disturb trier's final determination. Claimant failed to meet her burden of proof that her claimed mental injury was a result of stress in the work place. See also, **Pereira**, § 31-275(1) and Pereira, 9 Conn. Workers' Comp. Rev. Op. 9, 906 CRD-7-89-8 (January 8, 1991), dismissed, lack of final judgment, A.C. 9884 (March 20, 1991).

Lesczynski v. New Britain Memorial, 10 Conn. Workers' Comp. Rev. Op. 205, 1289 CRD-6-91-9 (December 2, 1992).
CRB affirmed trier's finding claimant failed to provide any evidence as to an alleged period of total incapacity for a claimed recurrence of a previous compensable back injury. Also, there was insufficient evidence to causally relate certain medical expenses to the original injury or demonstrate a causal relationship between the claimed disability and a previous injury which arose out of and in the course of employment. See also, **Lesczynski**, § 31-307, and § 31-301-9. Additional evidence.

Crochiere v. Enfield/Board of Education, 10 Conn. Workers' Comp. Rev. Op. 165, 1069 CRD-1-90-7 (August 27, 1992), **aff'd**, 227 Conn. 333 (1993).
CRB affirmed trier's conclusion that claimant's claim for mental stress was compensable. Claimant, a music teacher, was accused of inappropriately touching a female student. As a result claimant received unfavorable publicity and was terminated

from employment. The stress of these events resulted in claimant's breakdown for which he was hospitalized. CRB's review of case law and previous holdings reveal there need not be a physical component to a mental injury claim. See also, **Crochiere**, § 31-275(1), 31-284(a), § 31-294c, § 31-298, and § 31-301. Appeal procedure.

Migliaccio v. Sanzo Construction Co., 10 Conn. Workers' Comp. Rev. Op. 161, 1197 CRD-7-91-2 (August 5, 1992).
Trier found claimant sustained a compensable head injury when he was hit by falling bricks and pieces of cement which totally disabled him for nine days following the injury. CRB affirmed trier's conclusion claimant failed to sustain his burden of proof that he was entitled to temporary total benefits for the subsequent period claimed.

Neal v. UTC/Pratt & Whitney, 10 Conn. Workers' Comp. Rev. Op. 163, 1199 CRD-8-91-3 (August 5, 1992).
See, **Neal**, § 31-275(1).

Chemero v. Westreco, Inc., 10 Conn. Workers' Comp. Rev. Op. 142, 1081 CRD-7-90-7 (June 29, 1992).
See, **Chemero**, § 31-296 and § 31-315.

Germe v. Conway Eastern Express, 10 Conn. Workers' Comp. Rev. Op. 148, 1180 CRD-3-91-2 (June 29, 1992).
Trier's finding that claimant sustained an injury to his neck and right shoulder will not be disturbed on appeal where trier's conclusion is based on weight and credibility accorded to claimant's testimony. Also, as hearing notice referred to neck and shoulder injury, respondents had ample time to present evidence at the formal hearing below as to causation and employment relationship, and thus the scope of the formal hearing was not limited to the approval of the Form 36. See also, **Germe**, § 31-296.

Marzano v. Luis, 10 Conn. Workers' Comp. Rev. Op. 129, 1181 CRD-5-91-2 (May 21, 1992).
Factual finding claimant's injury to his right index finger did not arise out of and in the course of his employment is supported by evidence and will not be disturbed on appeal. Further, no Motion to Correct was filed. Therefore, the facts found by the trial commissioner must stand. See also, **Marzano**, § 31-294d.

Ward v. Chesebrough-Ponds, Inc., 10 Conn. Workers' Comp. Rev. Op. 111, 1161 CRD-7-91-1 (May 8, 1992).
Trier concluded there were insufficient facts presented to sustain claimant's burden of proof that his disability arose from exposure to asbestos in the workplace. While the CRB may not agree with the trier's determination, the conclusions reached were not so unreasonable as to justify appellate interference. See also, **Ward**, § 31-301. Appeal procedure.

Miner v. Watertown, 10 Conn. Workers' Comp. Rev. Op. 100, 971 CRD-5-90-1 (April 28, 1992).
Where there exists confusion over actual date of injury, date found by trial commissioner must stand. See also, **Miner**, § 31-308(a), § 31-308(b) and § 31-300.

Gianfrancisco v. A & P Tea Company, 10 Conn. Workers' Comp. Rev. Op. 94, 1124 CRD-7-90-10 (April 23, 1992).
Remanded. Where finding recites evidence and includes very few actual findings of fact, CRB unable to discern factual basis which resulted in legal conclusions reached.

Nasinka v. Ansonia Copper and Brass, 10 Conn. Workers' Comp. Rev. Op. 85, 1153 CRD-5-90-12 (April 20, 1992).
CRB remanded trier's finding with direction to grant claimant's Motion to Reopen. Medical reports of independent medical exam ordered by trial commissioner and received subsequent to conclusion of formal hearings below must be entered into evidence. Additionally, trier cannot base his conclusions on medical reports not entered into evidence. See also, **Nasinka**, § 31-301-9. Additional evidence and § 31-315.

Altieri v. B.K.S. Excavating, Inc., 10 Conn. Workers' Comp. Rev. Op. 83, 1146 CRD-3-90-12 (April 10, 1992).
Reversed. Trier failed to allow Second Injury Fund the opportunity to litigate whether a potential principal employer liability claim existed pursuant to § 31-291. The fact that the trial commissioner found B.K.S. Excavating the uninsured employer does not eliminate the need to fully litigate and hear evidence regarding a possible § 31-291 principal employer claim. See also, **Altieri**, § 31-275(10), § 31-291 and § 31-355(b).

Zawadzki v. Kochanowicz, 10 Conn. Workers' Comp. Rev. Op. 62, 1120 CRD-5-90-10 (February 26, 1992).
CRB review of record below indicates trial commissioner relied on the credibility of the witnesses in finding claimant was an employee and not an independent contractor. Also, as evidence could suggest an employer/employee relationship and trier found such existed, CRB cannot say trier's conclusion arose from an unreasonable factual inference or that his conclusion was so unreasonable as to justify appellate interference. See also, **Zawadzki**, § 31-275(9).

Canfield v. Consolidated Freightways, 10 Conn. Workers' Comp. Rev. Op. 59, 1125 CRD-7-90-10 (February 21, 1992).
See, **Canfield**, § 31-301-9. Additional evidence.

Goncalves v. Cornwall & Patterson, 10 Conn. Workers' Comp. Rev. Op. 43, 1111 CRD-4-90-9 (January 28, 1992).
Remanded as trier's conclusion claimant was able to work, however no work was found or available during period in question lacks evidentiary factual findings. Work search procedure is an informally accepted evidentiary basis to demonstrate a willingness to work. However, it is not the only evidentiary means by which a claimant may demonstrate reasonable efforts to find work. See also, **Goncalves**, § 31-296.

Deleon v. Dunkin Donuts, 10 Conn. Workers' Comp. Rev. Op. 39, 1113 CRD-3-90-9 (January 23, 1992).
CRB affirmed trial commissioner's finding claimant's neck injury was related to his 1985 work injury. The CRB also affirmed findings as to the period of temporary total disability, date of maximum medical improvement and award of permanent partial

disability benefits to the back and cervical spine as they were supported by evidence and the review of the CRD is limited. See also, **Deleon**, § 31-301. Appeal procedure.

Perkowski v. Walbro/Whitehead Engineering, 10 Conn. Workers' Comp. Rev. Op. 37, 1101 CRD-8-90-8 (January 22, 1992).
Trier's finding claimant failed to establish his cervical disc condition was work related will not be disturbed on appeal where, as here, the ultimate determination was an assessment of credibility.

Black v. London & Egazarian, 10 Conn. Workers' Comp. Rev. Op. 25, 1098 CRD-7-90-8 (December 30, 1991), **rev'd other grounds**, 30 Conn. App. 295 (1993).
CRD affirmed trier's finding dependent widow failed to sustain her burden of proof that decedent's cardiac arrest and death arose in and out of the course of his employment as factual finding was based on the weight and credibility he gave to the evidence and medical testimony presented. Appellate Court found commissioner improperly denied Motion to Preclude, thereby reversing CRD's ruling. Appellate Court found claimant's notice complied with § 31-321 in that the notice was in fact properly deposited as certified mail. Postal worker's unsuccessful attempt to obtain a signed receipt does not constitute non-compliance. Also, claimant's letter included all the information necessary under § 31-294 to satisfy notice requirements. Furthermore, intend to file language in claimant's letter apprised employer of an imminent claim under the Workers' Compensation Act. See also, **Black**, § 31-294c.

Gurski v. Concessionair, Division of Delaware North, 9 Conn. Workers' Comp. Rev. Op. 282, 1218 CRD-7-91-4 (December 16, 1991).
Trier's finding claimant's back injury did not arise out of and in the course of her employment supported by evidence. No medical evidence to support claim. See also, **Gurski**, § 31-301-9. Additional evidence.

Tessier v. Kogut Florist and Nurseryman, Inc., 9 Conn. Workers' Comp. Rev. Op. 276, 1088 CRD-8-90-7 (December 13, 1991).
Remanded as factual findings concerning period of claimed total disability inconsistent with trier's conclusion. See also, **Tessier**, § 31-301. Appeal procedure; § 31-290c, § 31-307.

Ruh v. Della Construction Co., 9 Conn. Workers' Comp. Rev. Op. 269, 1034 CRD-7-90-6 (December 5, 1991).
Remanded as trier concluded evidentiary hearings without giving claimant the opportunity to cross-examine as provided by § 52-174(c). See also, **Ruh**, § 31-298 and § 31-307.

Carvalko v. Bassick Company, 9 Conn. Workers' Comp. Rev. Op. 258, 767 CRD-4-88-9 (December 2, 1991).
Trier's finding that claimant's date of injury for hearing loss claim was the last date of exposure to the noisy environment will not be disturbed on appeal. See also, **Carvalko**, § 31-294c.

Fecto v. Kelly's Contracting, 9 Conn. Workers' Comp. Rev. Op. 256, 1027 CRD-5-90-5 (November 27, 1991).
Trier's finding that claimant sustained an injury which arose out of and during the course of his employment will not be disturbed. Trier's conclusions are based on the weight and credibility of conflicting evidence below. See also, **Fecto**, § 31-301. Appeal procedure.

Corcoran v. Corcoran Moving and Storage, Inc., 9 Conn. Workers' Comp. Rev. Op. 237, 1030 CRD-5-90-6 (October 31, 1991).
CRD affirmed trier's factual finding that claimant's vehicular accident while trying to avoid striking a deer, which accident rendered claimant a paraplegic, was not caused by claimant's intoxication. Claimant was within the scope of his employment at the time of the accident. See also, **Corcoran**, § 31-284(a), § 31-307 and § 31-308(b).

Colucci v. Mattatuck Manufacturing Co., 9 Conn. Workers' Comp. Rev. Op. 234, 1000 CRD-5-90-4 (October 30, 1991).
CRD affirmed trier's finding that claimant's right knee injury, headaches and psychiatric difficulties were not causally related to her compensable cervical spine injury and carpal tunnel syndrome. The determination of causal relationship lies with the trier along with the weight and credibility to be accorded all the evidence. See also, **Colucci**, § 31-301. Appeal procedure.

Northrop v. Boehringer Ingelheim, 9 Conn. Workers' Comp. Rev. Op. 228, 1032 CRD-7-90-6 (October 30, 1991).
Trier's finding that claimant's back injury was causally related to a previous compensable back injury will not be disturbed on appeal unless found without evidence, contrary to law, or based on unreasonable or impermissible factual inferences.

Higdon v. James O'Connell Moving Service, 9 Conn. Workers' Comp. Rev. Op. 218, 1003 CRD-2-90-4 (October 1, 1991).
CRD affirmed trier's finding that respondent employer's spouse was cloaked with authority and acting as respondent's agent in directing claimant to perform work. Therefore, claimant's injury arose out of and during the course of his employment. See, Higdon v. James O'Connell Moving Service, 4 Conn. Workers' Comp. Rev. Op. 5, 392 CRD-2-85 (February 27, 1987).

Cummings v. Twin Manufacturing, Inc., 9 Conn. Workers' Comp. Rev. Op. 199, 1023 CRD-1-90-5 (August 29, 1991), **aff'd**, **rev'd in part**; **further proceedings**, 29 Conn. App. 249 (1992).
Trier's determination of date of maximum medical improvement supported by evidence. See also, **Cummings**, § 31-300, § 31-294d.

Imbrogno v. Stamford Hospital, 9 Conn. Workers' Comp. Rev. Op. 174, 967 CRD-7-90-1 (August 2, 1991), **aff'd**, **rev'd and remanded in part**, 28 Conn. App. 113 (1992), **cert. denied**, 223 Conn. 920 (1992).
Factual findings concerning payment of medical expenses and unreasonable attorney's fee will not be disturbed unless found without evidence, are based on unreasonable

inferences or contrary to law. Appellate Court held § 31-300 allows a discretionary award of both interest and attorney's fees or neither, but does not allow an award of one and not the other. Remanded for a further award of interest. See also, **Imbrogno**, § 31-300, § 31-301. Appeal procedure.

Benham v. Edgerton, Inc., 9 Conn. Workers' Comp. Rev. Op. 169, 977 CRD-4-90-2 (July 17, 1991).
Trier's finding that claimant suffered a compensable injury which accelerated or triggered an aseptic necrosis of the right hip will not be disturbed where issues raised on appeal concern conflicting evidence and corrections which would not alter the legal outcome. See also, **Benham**, § 31-275(1).

Tomkus v. Upjohn Company, 9 Conn. Workers' Comp. Rev. Op. 163, 972 CRD-3-90-1 (June 28, 1991).
Commissioner's finding that claimant's myocardial infarction arose in and out of the course of his employment will not be disturbed as there was sufficient medical evidence and testimony to satisfy proximate causation requirements. See also, **Tomkus**, § 31-275(1), § 31-294c and § 31-298.

Mecelli v. D'Addario Industries, 9 Conn. Workers' Comp. Rev. Op. 151, 959 CRD-7-89-12 (June 5, 1991).
There was sufficient medical evidence presented below to support trier's denial of temporary total benefits during period claimant claimed total disability.

Moore v. Blakeslee Prestress, Inc., 9 Conn. Workers' Comp. Rev. Op. 124, 947 CRD-3-89-11 (May 3, 1991).
CRD affirmed trier's finding claimant failed to meet his burden of proof he sustained a compensable back injury where finding is supported by evidence.

D'Agostino v. Waterbury, 10 Conn. Workers' Comp. Rev. Op. 4, 942 CRD-5-89-11 (April 15, 1991).
Trier's factual finding claimant suffered a new back injury and claimant's new back injury was not the result of an uninterrupted chain of causation stemming from a previous compensable event will not be disturbed as finding was supported by evidence.

Madden v. Moore Special Tool, 9 Conn. Workers' Comp. Rev. Op. 107, 208, 834 CRD-4-89-3 (April 8, 1991) (September 3, 1991).
Remanded as factual finding that claimant underwent a myelogram, and one of claimant's treating physicians had the benefit of that myelogram, was incorrect.

Charette v. Jensen Mobile Home, 10 Conn. Workers' Comp. Rev. Op. 1, 936 CRD-6-89-11 (March 19, 1991).
Remanded as trial commissioner's finding that no medical provider ever concluded with reasonable medical certainty that claimant's pre-existing condition was aggravated by his work fall only addressed medical causation not legal causation. Discussion of reasonable medical certainty and reasonable medical probability standard.

Pina v. Leitkowski Construction Co., 9 Conn. Workers' Comp. Rev. Op. 38, 907 CRD-2-89-8 (February 1, 1991).
Trial court has broad discretion to determine both the relevancy and remoteness of evidence. Also, unless the record discloses facts found without evidence or fails to include material facts, factual finding must stand. See also, **Pina**, § 31-291.

Ludwig v. PYA, Monarch Foods, 9 Conn. Workers' Comp. Rev. Op. 26, 905 CRD-6-89-8 (January 17, 1991).
Finding that claimant's work-related fall aggravated and accelerated pre-existing condition will not be disturbed unless conclusion was without evidence, contrary to law, or based on unreasonable or impermissible factual inferences. Also, post-surgical condition found compensable.

Hoffman v. Platinum Vacations of New England, 8 Conn. Workers' Comp. Rev. Op. 174, 867 CRD-7-89-5 (November 30, 1990).
Trier's determination as to proximate causation will not be disturbed where medical expert testified within reasonable medical probability claimant's myocardial infarction was not causally related to near miss motor vehicle accident.

Smeriglio v. Froelich Transportation, 8 Conn. Workers' Comp. Rev. Op. 166, 872 CRD-7-89-6 (October 26, 1990).
Questions of causal relationship are questions of fact and findings on such factual issues will not be set aside unless resulting from an incorrect application of the law, based on illegal or unreasonable factual inferences, or without evidence.

Lathrop v. Kimberly Clark Corp., 8 Conn. Workers' Comp. Rev. Op. 156, 852 CRD-7-89-4 (September 21, 1990), **aff'd**, 24 Conn. App. 837 (1991).
Factual finding that claimant suffered a new injury attributable in a material degree to the conditions described in two Certificates of Acknowledgment of Physical Defects will not be disturbed. See also, **Lathrop**, § 31-325 and § 31-349.

Sgambato v. Simkins Industries, Inc., 8 Conn. Workers' Comp. Rev. Op. 131, 825 CRD-3-89-2 (August 6, 1990).
See, Fair v. People's Savings Bank, infra. See also, **Sgambato**, § 31-301-9. Additional evidence.

Hill v. Pitney Bowes, 8 Conn. Workers' Comp. Rev. Op. 98, 832 CRD-7-89-3 (May 17, 1990).
The factual findings of a trial commissioner will not be altered even if the correction sought was not in dispute and if the requested correction would not alter the legal conclusion. See also, **Hill**, § 31-290a, § 31-313.

Knudsen v. GSD, Inc., 8 Conn. Workers' Comp. Rev. Op. 81, 829 CRD-8-89-3 (May 9, 1990).
Where appellant failed to file a Motion to Correct trial commissioner's factual findings must stand. See also, **Knudsen**, § 31-315.

Halliday v. Daw's Critical Care Registry, 8 Conn. Workers' Comp. Rev. Op. 74, 797 CRD-7-88-12 (April 27, 1990).
Trial commissioner's conclusion based on inconsistent factual findings remanded for further factual findings. See also, **Halliday**, § 31-291, § 31-301. Appeal procedure.

Belanger v. Bechtel Construction Co., 8 Conn. Workers' Comp. Rev. Op. 72, 768 CRD-8-88-9 (April 25, 1990).
Where claimant failed to file a Motion to Correct, the factual findings of the trial commissioner must stand. See also, **Belanger**, § 31-275(1).

Velilla v. UTC/Hamilton Standard Div., 8 Conn. Workers' Comp. Rev. Op. 66, 926 CRD-1-89-10 (April 17, 1990).
Decision of a Social Security Administrative Law Judge as to supplemental Social Security benefits is not res judicata as to findings and conclusions under our Act. See also, **Velilla**, § 31-315.

Cormier v. Macke Company, 8 Conn. Workers' Comp. Rev. Op. 63, 799 CRD-2-88-12 (March 23, 1990).
Remanded to clarify date of injury to which trial commissioner was attributing disability. See also, **Cormier**, § 31-301. Appeal procedure.

Connell v. Long Line Trucking Co., Inc., 8 Conn. Workers' Comp. Rev. Op. 54, 801 CRD-2-88-12 (March 21, 1990).
Commissioner's finding will not be disturbed where physician's testimony constitutes a sufficient basis to find reasonable probability claimant's back injury arose in and out of the course of employment. See, Aurora v. Miami Plumbing & Heating, Inc., 2 Conn. Workers' Comp. Rev. Op. 113, 238 CRD-7-83 (December 10, 1984), aff'd, 6 Conn. App. 45 (1986).

Kroczewski v. Old Fox Chemical, Inc., 8 Conn. Workers' Comp. Rev. Op. 13, 730 CRD-1-88-5 (January 5, 1990).
Trial commissioner's finding that claimant failed to meet the burden of proof as to the claimed additional disabilities will not be disturbed. While CRD may well have reached a different conclusion and given more weight to those doctors' opinions which found a causal relationship, that decision was not one for the CRD to make. See also, **Kroczewski**, § 31-301-9. Additional evidence.

Golymbieski v. GTE Sylvania, 7 Conn. Workers' Comp. Rev. Op. 87, 704 CRD-5-88-3 (September 25, 1989).
Trial commissioner's finding claimant's disabling illnesses resulted from personal problems which pre-existed employment and not from stress in the employment must stand where there is evidence to support such findings. See also, **Golymbieski**, § 31-275(1).

Samuel v. Housing Authority of Bridgeport, 7 Conn. Workers' Comp. Rev. Op. 54, 685 CRD-4-88-1 (August 10, 1989).
Trial commissioner's finding claimant's death was caused by a fall which arose out of and in the course of employment and award to surviving dependents will not be

disturbed when there was evidence to support the trial commissioner's finding and conclusion.

Grossman v. Darien Pool Service, 7 Conn. Workers' Comp. Rev. Op. 28, 596 CRD-7-87 (July 12, 1989).
Sufficient medical testimony supports trial commissioner's finding that subsequent injuries suffered are causally related to original compensable injury.

Henderson v. Electric Boat, 7 Conn. Workers' Comp. Rev. Op. 26, 646 CRD-2-87 (July 12, 1989).
Trial commissioner's finding that claimant's injuries predate his compensable injury will not be disturbed on appeal.

Jagush v. Litton-Winchester Electronics, 7 Conn. Workers' Comp. Rev. Op. 1, 609 CRD-7-87 (June 9, 1989).
Trial commissioner's finding as to causal connection must be based on reasonable medical probabilities. However, trial commissioner's conclusion that the evidence proffered by the physician was not demonstrated with reasonable medical certainty was within trial commissioner's discretion.

Laine v. New England Aircraft, 6 Conn. Workers' Comp. Rev. Op. 138, 536 CRD-6-86 (April 5, 1989).
Where evidence in conflict as to reversibility of claimant's lung condition award for loss of lung function permitted. Factual findings will not be disturbed where supported by evidence and conclusion not unreasonable. See, Fair, infra § 31-301. Factual findings.

Lester v. Edward McCarthy Construction, Inc., 6 Conn. Workers' Comp. Rev. Op. 141, 600 CRD-7-87 (April 5, 1989).
Weight and credibility accorded to conflicting evidence is within the discretion of the trial commissioner.

Cholewinski v. Brake Systems, Inc., 6 Conn. Workers' Comp. Rev. Op. 105, 601 CRD-4-87 (January 27, 1989).
Matters concerning the weight and credibility of witnesses and evidence are solely within the purview of the trial commissioner.

Cruz v. Consolidated Industries, 6 Conn. Workers' Comp. Rev. Op. 92, 580 CRD-5-87 (January 20, 1989).
Failure to file a Motion to Correct the trial commissioner's factual findings limits the CRD's review to matters of law.

Hall v. The Dayton Rogers Corp., 6 Conn. Workers' Comp. Rev. Op. 74, 578 CRD-7-87 (January 5, 1989).
Within trial commissioner's discretion to credit weight to evidence presented. No Motion to Correct limits review to questions of law.

Smith v. United Technologies Corp., 6 Conn. Workers' Comp. Rev. Op. 61, 142 CRD-6-82(2) (November 14, 1988).
See, **Smith**, § 31-308(c).

Kwasnik v. Drico Corp., 6 Conn. Workers' Comp. Rev. Op. 50, 549 CRD-1-87 (October 21, 1988).
Commissioner's findings will not be set aside when based on weight and credibility of evidence.

Daniele v. Angelo Monarca, Inc., 6 Conn. Workers' Comp. Rev. Op. 25, 519 CRD-3-86 (1988).
Trial Commissioner's factual findings not limited to issue of compensability where claimant's attorney gave statement of issues and respondents made no objection.

Debarros v. A.L. Singleton, 6 Conn. Workers' Comp. Rev. Op. 22, 498 CRD-5-86 (September 19, 1988), **no error**, 21 Conn. App. 107 (1990).
Trial commissioner's conclusion that a physician's testimony did not satisfy the parameters of reasonable medical probability is within his province. See also, **Debarros**, § 31-298.

Simpson v. Northeast Utilities, 5 Conn. Workers' Comp. Rev. Op. 135 (July 12, 1988).
See, Fair, infra.

Gallagher v. Edmunds Manufacturing Co., 5 Conn. Workers' Comp. Rev. Op. 133, 494 CRD-6-86 (June 30, 1988).
Trial commissioner's finding as to causal connection will not be disturbed unless based on impermissible inferences or contrary to law.

Delcarmine v. Fire Prevention Service, Inc., 5 Conn. Workers' Comp. Rev. Op. 123, 311 CRD-7-84 (June 27, 1988).
The trial commissioner's factual findings must stand where rooted in substantial evidence and not contrary to law.

Lorenzo v. Frank B. Hall Inc., 5 Conn. Workers' Comp. Rev. Op. 107, 478 CRD-6-86 (June 15, 1988), **no error**, 17 Conn. App. 824 (1989)(per curiam).
There was evidence to support commissioner's finding as to claimant's impairment of his cardiovascular system. See, Fair, infra.

Matey v. Dember, 5 Conn. Workers' Comp. Rev. Op. 104, 516 CRD-5-86 (June 14, 1988), **appeal dismissed,** 210 Conn. 626 (1989)(per curiam).
See, **Matey**, § 31-310. Subsequent decisions Matey, 1189 CRD-5-91-3 (April 5, 1991), § 31-301. Appeal procedure, Matey, 3153 CRB-5-95-8 (January 10, 1997), aff'd in part and rev'd in part, 256 Conn. 456 (2001), § 31-301. Appeal procedure, § 31-315, § 31-355(a), Matey, 3848 CRB-7-98-6 (July 7, 1999), aff'd in part and rev'd in part, 256 Conn. 456 (2001), § 31-355(b), Matey, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), appeal dismissed for failure to comply with Supreme Court's directive, 85 Conn. App. 198 (2004).

Mathieu v. C & M Corp., 5 Conn. Workers' Comp. Rev. Op. 82, 463 CRD-2-86 (May 1, 1988).
The trial commissioner's conclusion that the chain of causation to a previous injury was interrupted by a new injury would not be disturbed where not unreasonable.

Charland v. Hartford, 5 Conn. Workers' Comp. Rev. Op. 56, 417 CRD-1-85 (April 8, 1988).
Trial commissioner's conclusion would not be disturbed where supported by evidence and the evidence below was in conflict.

Bailey v. Guilford, 5 Conn. Workers' Comp. Rev. Op. 47, 464 CRD-3-86 (April 7, 1988).
Whether the claimant experienced a recurrence of a back injury while at work is a factual conclusion which will not be disturbed unless contrary to law or based upon impermissible factual inferences.

Carpentino v. Perkins Trucking Co., 5 Conn. Workers' Comp. Rev. Op. 40, 488 CRD-3-86 (April 6, 1988), **no error**, 18 Conn. App. 810 (1989)(per curiam).
Trial commissioner's conclusion predicated on evidence which was in conflict will not be disturbed on appeal.

Daniels v. Hartford, 5 Conn. Workers' Comp. Rev. Op. 7, 459 CRD-1-86 (March 23, 1988), **no error**, 17 Conn. App. 819 (1988)(per curiam), **cert. denied**, 210 Conn. 809 (1989).
Trial commissioner's findings will not be disturbed where supported by evidence and not so unreasonable as to justify judicial interference.

Hutchinson v. State, 5 Conn. Workers' Comp. Rev. Op. 10, 292 CRD-2-84 (March 23, 1988).
See, **Hutchinson**, § 7-433(c).

Horkheimer v. Stratford, 4 Conn. Workers' Comp. Rev. Op. 139, 163 CRD-4-82 (December 31, 1987).
Trial commissioner did not err in denying Motion to Correct where appellant failed to make specific references to evidence supporting motion.

Fusco v. TRW Geometric Tool, 4 Conn. Workers' Comp. Rev. Op. 132, 472 CRD-3-86 (December 16, 1987).
Error for the trial commissioner to make any decision on issue of liability transfer to Second Injury Fund where parties had no opportunity to litigate issue.

Muir v. Trailways of New England, 4 Conn. Workers' Comp. Rev. Op. 118, 480 CRD-6-86 (November 5, 1987).
There was evidence presented below which supported the trial commissioner's finding as to the period for which temporary total benefits was awarded.

Laprade v. Robbins, 4 Conn. Workers' Comp. Rev. Op. 100, 505 CRD-7-87 (June 12, 1987).
Where evidence below was in conflict factual findings of trial commissioner will not be disturbed where dependent on the weight and credibility of witnesses.

Hebert v. New Departure Hyatt Bearings, 4 Conn. Workers' Comp. Rev. Op. 94, 300 CRD-6-84 (June 12, 1987), **no error**, 14 Conn. App. 819 (1988)(per curiam).
Issues of causation are factual determinations which will not be disturbed if reasonably supported.

Morais v. Truelove & MacLean, 4 Conn. Workers' Comp. Rev. Op. 98, 295 CRD-5-84 (June 12, 1987).
Trial commissioner's finding of 2 and 1/2% loss of foot remanded where unsupported by evidence.

Monroe v. Twin County Sanitation Co., 4 Conn. Workers' Comp. Rev. Op. 78, 337 CRD-2-84 (June 2, 1987).
Factual findings will stand where supported by sufficient evidence.

D'Abbraccio v. Southern Conn. Gas Co., 4 Conn. Workers' Comp. Rev. Op. 75, 441 CRD-3-86 (May 21, 1987).
CRD modified decision of trial commissioner to include finding second injury was materially and substantially greater.

Fair v. People's Savings Bank, 4 Conn. Workers' Comp. Rev. Op. 71, 289 CRD-4-83 (May 21, 1987), **rev'd**, 207 Conn. 535 (1988).
CRD made certain factual findings which reversed the conclusion of the trial commissioner. Supreme Court reversed CRD holding that the trial commissioner is the trier of facts and the conclusion drawn by the trial commissioner from the facts must stand unless without evidence, contrary to law or based on unreasonable or impermissible factual inferences.

Schwartz v. Meriden, 4 Conn. Workers' Comp. Rev. Op. 67, 291 CRD-6-83 (May 13, 1987).
Factual findings of trial commissioner will stand unless contrary to law or based on impermissible inferences.

Neumann v. Southern Conn. Gas Co., 4 Conn. Workers' Comp. Rev. Op. 62, 265 CRD-4-83 (May 8, 1987).
See, Parandes, infra.

Parandes v. Hartford, 4 Conn. Workers' Comp. Rev. Op. 56, 222 CRD-1-83 (April 20, 1987).
Factual conclusions of trial commissioner will not be disturbed unless they result from an incorrect application of the law to the subordinate facts or from all inference illegally or unreasonably drawn from them. Adzima v. UAC/Norden Div., 177 Conn. 107, 118 (1979).

Damelio v. Anaconda, Inc., 4 Conn. Workers' Comp. Rev. Op. 31, 281 CRD-5-83 (March 4, 1987), **no error**, 15 Conn. App. 805 (1988)(per curiam), **cert. denied**, 208 Conn. 814 (1988).
Factual findings based on conflicting evidence will not be disturbed.

Morro v. UTC/Sikorsky Aircraft Div., 4 Conn. Workers' Comp. Rev. Op. 10, 347 CRD-4-84 (March 2, 1987).
CRD will not substitute its judgment for that of trier of fact.

Higdon v. James O'Connell Moving Serv., 4 Conn. Workers' Comp. Rev. Op. 5, 392 CRD-2-85 (February 27, 1987).
A finding and award should contain subordinate facts pertinent to inquiry. If not conforming - remand for further proceedings.

Gadacy v. Busk, 4 Conn. Workers' Comp. Rev. Op. 1, 431 CRD-4-85 (February 26, 1987).
Appellate review of factual findings limited to a determination if there was an incorrect application of law or if findings are based on illegal or unreasonable factual inferences.

Fortier v. State, 3 Conn. Workers' Comp. Rev. Op. 142, 230 CRD-4-83 (January 22, 1987).
Determination of maximum medical improvement date requires a finding of fact and will not be disturbed unless contrary to law, unsupported by evidence or unreasonable.

Parizeau v. State, 3 Conn. Workers' Comp. Rev. Op. 137, 194 CRD-2-83 (January 22, 1987).
Commissioner's factual findings will stand unless contrary to law or based on impermissible inferences.

Cuddy v. Greenwich Hospital, 3 Conn. Workers' Comp. Rev. Op. 127 (December 23, 1986).
Where commissioner factually concluded no causal connection was shown between injury and workplace, the findings of fact will not be disturbed.

Magaraci v. AMF Alcort, 3 Conn. Workers' Comp. Rev. Op. 119, 204 CRD-5-83 (December 23, 1986).
Findings of fact will not be changed unless they are the result of an incorrect application of law or based on impermissible or unreasonable factual inferences.

O'Leary v. New Britain, 3 Conn. Workers' Comp. Rev. Op. 108, 236 CRD-6-83 (December 2, 1986).
Commissioner's finding will not be disturbed where it was in his discretion to credit medical evidence.

Ashton v. Soneco Services, Inc., 3 Conn. Workers' Comp. Rev. Op. 60, 359 CRD-1-84 (May 5, 1986).
Compensation Review Division will not substitute its findings or conclusions for that of the trial commissioner where the findings and conclusions are supported by sufficient evidence, although evidence was in conflict.

McDonough v. Connecticut Bank & Trust, 3 Conn. Workers' Comp. Rev. Op. 46, 184 CRD-2-82 (April 1, 1986), **no error**, 204 Conn. 104 (1987).
Where commissioner's findings were based on sufficient medical evidence, findings will not be disturbed.

McGuire v. Capitol Magnetics, 3 Conn. Workers' Comp. Rev. Op. 30, 257 CRD-7-83 (February 5, 1986).
Where trial commissioner's Finding and Award is supported by sufficient evidence, although evidence was in conflict, appellate tribunal will not substitute its conclusions for those of the trial Commissioner.

Glabicki v. Stanley Works, 3 Conn. Workers' Comp. Rev. Op. 26, 243 CRD-6-83 (January 23, 1986).
Where trial commissioner's Finding and Award is inconsistent with evidence presented below, matter is to be remanded for correction and/or additional proceedings.

Chapo v. Westport, 3 Conn. Workers' Comp. Rev. Op. 14, 170 CRD-4-82 (August 20, 1985).
Trial commissioner's denial of Motion to Correct held proper.

Platt v. UTC/Pratt & Whitney Aircraft Div., 3 Conn. Workers' Comp. Rev. Op. 3, 164 CRD-6-82 (August 16, 1985).
Where trial commissioner's Finding and Award did not state the claims of law, case remanded to determine the materiality of the factual findings and if it was error to deny appellant's Motion to Correct.

De Lancy v. General Electric Co., 2 Conn. Workers' Comp. Rev. Op. 105, 276 CRD-4-83 (October 19, 1984).
Finding as to date of total incapacity will not be disturbed where amply supported.

Ortiz v. Peabody Engineering Co., 2 Conn. Workers' Comp. Rev. Op. 102, 239 CRD-7-83 (August 29, 1984).
Where commissioner's finding is based on expert testimony, factual finding will not be disturbed.

Peura v. McLean Trucking Co., 2 Conn. Workers' Comp. Rev. Op. 74, 143 CRD-7-82 (July 24, 1984).
Where commissioner's finding is based on conflicting testimony, conclusion will not be overruled when it is based on credibility.

Bowen v. Stanadyne, Inc., 2 Conn. Workers' Comp. Rev. Op. 60, 232 CRD-1-83 (June 19, 1984).
Where commissioner's findings are based on evidence which is in conflict, commissioner's findings will not be disturbed.

Kelesides v. Bongiorno's Supermarket, 2 Conn. Workers' Comp. Rev. Op. 56, 152 CRD-7-82 (May 31, 1984).
Where commissioner's factual findings are not without evidence, conclusions will not be disturbed.

Bass v. Highway Safety Division, 2 Conn. Workers' Comp. Rev. Op. 48, 241 CRD-1-83 (May 23, 1984).
Where medical evidence is in conflict, commissioner's findings will not be disturbed unless unreasonably reached.

Gorneault v. United Cable T.V., 2 Conn. Workers' Comp. Rev. Op. 43, 160 CRD-6-82 (December 14, 1983).
Where evidence is in conflict, commissioner's findings of fact will not be disturbed unless unreasonable.

Emhoff v. State, 2 Conn. Workers' Comp. Rev. Op. 7, 139 CRD-2-82 (May 11, 1983).
Conclusion of commissioner where evidence is in conflict will not be overruled.

Gecewicz v. Sealtest Foods Div., 1 Conn. Workers' Comp. Rev. Op. 195, 77 CRD-1-81 (October 21, 1982).
When commissioner's factual conclusions depend on weight and credibility of witnesses, appellate panel will not disturb.

Luddie v. Foremost Insurance Co., 1 Conn. Workers' Comp. Rev. Op. 187, 90 CRD-6-81 (September 13, 1982), **no error,** 5 Conn. App. 193 (1985).
Where commissioner's finding was a conclusion without evidence, matter remanded for further factual findings.

Cable v. Torrington Special Products, 1 Conn. Workers' Comp. Rev. Op. 168, 82 CRD-5-81 (August 18, 1982).
Appellate review of evidence is limited to whether commissioner's conclusion was based on sufficient evidence.

Cortes v. Allegheny Ludlum Steel Corp., 1 Conn. Workers' Comp. Rev. Op. 173, 61 CRD-3-81 (August 18, 1982).
Commissioner is the trier of facts and ultimate judge of credibility and weight to be accorded witnesses testimony.

Correa v. New England Forge, 1 Conn. Workers' Comp. Rev. Op. 164, 48 CRD-6-81 (August 13, 1982).
Commissioner could award 5% permanent partial to the back rather than 10% permanent partial sought where evidence showed pre-existing injury.

Kasuba v. Hunt-Pierce Corp., 1 Conn. Workers' Comp. Rev. Op. 157, 79 CRD-3-81 (August 6, 1982).
Although there may have been inconsistencies in the expert's testimony, the conclusions of the expert are not necessarily vitiated.

Bielik v. Scovill Manufacturing Co., 1 Conn. Workers' Comp. Rev. Op. 110, 52 CRD-5-81 (January 27, 1982).
Compensation Review Division is limited on appeal to affirming, modifying or reversing commissioner's decision.

Minski v. Plastic Wire & Cable, 1 Conn. Workers' Comp. Rev. Op. 88, 73 CRD-2-81 (December 29, 1981).
Where there is some evidence which substantiates commissioner's findings, findings must stand.

Mongillo v. New Haven, 1 Conn. Workers' Comp. Rev. Op. 90, 55 CRD-3-81 (December 29, 1981).
Commissioner is the ultimate judge of witnesses credibility and the weight to be accorded to testimony when evidence is in conflict.

Moore v. Southern New England Telephone Co., 1 Conn. Workers' Comp. Rev. Op. 76, 44 CRD-7-80 (November 10, 1981).
Commissioner's conclusion not unreasonable.

Perez v. U.S. Prolam, Inc., 1 Conn. Workers' Comp. Rev. Op. 74, 36 CRD-7-80 (November 4, 1981).
Commissioner under no duty to reveal which witnesses he did not believe.

Carlino v. Danbury Hospital, 1 Conn. Workers' Comp. Rev. Op. 61, 25 CRD-7-80 (October 14, 1981).
See also Carlino, Id. at 119 and 219, **no error**, 1 Conn. App. 142 (1984), **cert. denied**, 192 Conn. 802 (1984). Commissioner's findings must contain relevant facts or matter will be remanded.

Pike v. Glass Containers Corp., 1 Conn. Workers' Comp. Rev. Op. 46, 9 CRD-2-80 (June 18, 1981).
Factual conclusions of commissioner will not be overturned unless unreasonably reached.

Starke v. State, 1 Conn. Workers' Comp. Rev. Op. 48, 21 CRD-2-80 (June 18, 1981).
Where evidence presented was conflicting, the commissioner's findings will not be disturbed.

DeGeorge v. Casolo, 1 Conn. Workers' Comp. Rev. Op. 34, 24 CRD-7-80 (May 26, 1981).
Factual conclusion of commissioner will not be disturbed unless reached without any evidence or contrary to all evidence.

McGrath v. New London, 1 Conn. Workers' Comp. Rev. Op. 32, 14 CRD-2-80 (May 14, 1981), **aff'd**, 38 Conn. Sup. 324 (1982).
Compensation Review Division panel will not substitute its conclusions of fact unless commissioner's conclusion was wholly without basis.

Pashtenko v. C.W. Blakeslee & Sons, 1 Conn. Workers' Comp. Rev. Op. 24, 22 CRD-3-80 (January 29, 1981).
Factual conclusions drawn by commissioner based on conflicting evidence will not be disturbed.

Donato v. Pantry Pride, 1 Conn. Workers' Comp. Rev. Op. 21, 2 CRD-4-79 (January 26, 1981), **aff'd**, 37 Conn. Sup. 836 (1981).
Factual conclusions based on conflicting evidence and not the result of incorrect application of law will not be disturbed.

Miller v. Aisco Farms, 1 Conn. Workers' Comp. Rev. Op. 10, 13 CRD-2-80 (October 16, 1980).
Factual conclusions made by commissioner based on conflicting evidence will not be disturbed.

Sec. 31-301(f). Payments pending appeal.

Bailey v. State, 4744 CRB-1-03-10 (December 3, 2004).
See, **Bailey**, § 31-301(g); see also, **Bailey**, § 31-298.

Hummel v. Marten Transport, LTD., 4760 CRB-5-03-12 (November 19, 2004).
CRB remanded case to trier in order to make a specific order of benefits to be paid. Prior decision at Hummel, 4667 CRB-5-03-5 (May 3, 2004). See also, **Hummel**, § 31-307.

Soares v. Glass Industries, 4140 CRB-3-99-10 (April 10, 2001).
CRB affirmed trier's denial of Second Injury Fund's § 31-301(g) claim. Fund sought reimbursement from insurer of overpayments made to claimant while Fund was paying pending appeal pursuant to § 31-301(f). Under statute, claimant must ultimately make restitution, as he is the one unjustly enriched. See also, **Soares**, § 31-300. Prior decision at Soares, 12 Conn. Workers' Comp. Rev. Op. 189, 1377 CRB-3-92-1 (May 4, 1994), § 31-297, § 31-300, § 31-307b, § 31-315.

Karnane v. Saks Fifth Avenue, 4214 CRB-7-00-3 (March 29, 2001).
See, **Karnane**, § 31-349 (§ 31-301(f) was not dispositive in this case because appeal was taken from transfer order rather than from an award of benefits). Prior decisions at Karnane, 3918 CRB-7-98-10 (January 7, 2000), and Karnane, 3947 CRB-7-98-12 (November 7, 2000), aff'd, 67 Conn. App. 385 (2001).

Mosman v. Sikorsky Aircraft Corp., 4180 CRB-4-00-1 (March 1, 2001).
See, **Mosman**, § 31-298.

Muldoon v. New England Installation, 3552 CRB-4-97-3 (August 24, 1998).
See, **Muldoon,** § 31-300. Prior decision at Muldoon, 10 Conn. Workers' Comp. Rev. Op. 255, 1226 CRD-4-91-5 (January 13, 1993), rev'd, 33 Conn. App. 695 (1994), rev'd, 231 Conn. 469 (1994), aff'd on remand, 37 Conn. App. 266 (1995); Muldoon, 3345A, 3345B CRB-4-96-5 (November 3, 1997); Muldoon, 3415 CRB-4-96-8 (November 3, 1997).

Dowling Considine v. Slotnik, 3468 CRB-4-96-11 (May 6, 1998).
See, **Dowling**, § 31-290, § 31-296, § 31-301. Appeal procedure. Prior decision at Dowling, 3062 CRB-4-95-5, 3277 CRB-4-96-2 (February 5, 1997), aff'd, rev'd and remanded in part, 244 Conn. 781 (1998)(with dissenting opinion) at § 31-275(9), § 31-288, § 31-301. Appeal procedure, § 31-307.

Coley v. Camden Associates, Inc., 3432 CRB-2-96-9 (February 28, 1997), **rev'd**, 243 Conn. 311 (1997).
Amendment to statute in P.A. 95-277 made employer or insurer liable for unpaid awards pending appeal instead of Second Injury Fund. CRB held that this change did not have a retroactive effect, despite Annechiarico v. Friendly Ice Cream Co., 6 Conn. Workers' Comp. Rev. Op. 18, 640 CRD-7-87 (September 16, 1988). Good sense and justice require interpretation of statute consistent with remedial spirit of Workers' Compensation Act. Allowing Fund's layer of protection to be removed makes a claimant less likely to receive benefits until his appeal is resolved, as happened in this case. CRB will not read statute to affect more claimants than required by the express language of the amended statute. Use of "date of injury" rule affirmed. Reversed by Supreme Court, which held that the legislative change must be applied retroactively. The court explained that the legislation was procedural in nature and did not affect the parties' substantive rights, and that the legislative intent to reduce the financial burden on the Fund would be undermined if it were applied prospectively only. Subsequent decision at Coley, 3432 CRB-2-96-9 (April 6, 1998), § 31-343, § 31-300, § 31-301. Appeal procedure, § 31-301. Factual findings.

Yablonski v. Danbury Hospital, 15 Conn. Workers' Comp. Rev. Op. 166, 3107 CRB-7-95-7 (February 13, 1996).
The commissioner's order that the Fund pay compensation benefits pursuant to § 31-301(f) C.G.S is not proper as there was no underlying order that the employer or its insurer pay the claimant any specified benefits.

Pereira v. Taylor & Fenn Co., 14 Conn. Workers' Comp. Rev. Op. 16, 1816 CRB-1-93-8 (April 28, 1995).
Where underlying order being appealed is against Second Injury Fund itself, the Fund is still required to pay the award pending outcome of the appeal. See also, **Pereira**, § 31-298.

Laine v. New England Aircraft, 6 Conn. Workers' Comp. Rev. Op. 138, 536 CRD-6-86 (April 5, 1989).
See, Annechiarico, § 31-301(f) infra [formerly 31-301(b)].

Brown v. Bon Dental Lab, 6 Conn. Workers' Comp. Rev. Op. 132, 594 CRD-7-87 (March 28, 1989).
See, Annechiarico, § 31-301(f) infra [formerly 31-301(b)].

Waddington v. Electric Boat Division of General Dynamics, 6 Conn. Workers' Comp. Rev. Op. 127, 720 CRD-2-88-4 (March 27, 1989).
See, Annechiarico, § 31-301(f) infra [formerly 31-301(b)].

Besade v. Interstate Security Services, 6 Conn. Workers' Comp. Rev. Op. 83, 593 CRD-2-87 (January 13, 1989), **no error**, 212 Conn. 441 (1989).
Second Injury Fund liable for payment pending appeal even though claim predated statute's enactment. Subsequent decision at Besade, 12 Conn. Workers' Comp. Rev. Op. 103, 1383 CRB-2-92-2 (February 28, 1994), aff'd, 37 Conn. App. 903 (1995).

Annechiarico v. Friendly Ice Cream Co., 6 Conn. Workers' Comp. Rev. Op. 18, 640 CRD-7-87 (September 16, 1988).
Application of law permitting payment of benefits pending appeal may be applied retrospectively.

Sec. 31-301(g). Repayment of compensation.

Bailey v. State, 4744 CRB-1-03-10 (December 3, 2004).
Where Appellate Court reversed award of total disability on ground that respondent had been denied opportunity to conduct independent medical examination in contravention of law, and remanded case for further proceedings, trial commissioner acted prematurely in ordering repayment of award pursuant to § 31-301(g). Proceedings contemplated on remand are more than ministerial, so definition of "final judgment" under State v. Curcio, 191 Conn. 27, 31 (1983), has not been satisfied. Underlying issue of entitlement to benefits is still pending before this agency, as neither a final award nor a final dismissal has been entered. See, **Bailey**, § 31-298, § 31-301(f). Prior decisions at Bailey, 3922 CRB-2-98-10 (November 30, 1999), aff'd in part, rev'd in part, 65 Conn. App. 592 (2001), § 31-300, § 31-307, § 31-284b, § 31-294d, § 31-301. Factual findings; Bailey, 3694 CRB-1-97-9 (January 12, 1999), rev'd, 65 Conn. App. 592 (2001), § 31-298, § 31-301. Appeal procedure; and at Bailey, 15 Conn. Workers' Comp. Rev. Op. 433, 3152 CRB-5-95-8 (September 3, 1996), § 31-301. Appeal procedure, § 31-301. Factual findings.

Czujak v. Bridgeport, 4371 CRB-4-01-3 (April 8, 2002).
CRB ruled that date of final adjudication resulting in denial of compensation was Supreme Court's January 19, 2000 denial of certification of appeal. Claimant ordered to begin paying interest on overpayment as of that date. See also, **Czujak**, § 31-297. Prior decision at Czujak, 3535 CRB-4-97-2 (June 10, 1998), aff'd, 55 Conn. App. 789 (1999), cert. denied, 252 Conn. 920 (2000), § 7-433c, § 31-300, § 31-301. Appeal procedure, § 31-307a, § 31-315.

Sec. 31-301-4. Correction of Finding.
[Administrative Regulation]

Brown v. State/DMR, 4748 CRB-6-03-11 (October 18, 2004).
Commissioner's denial of Motion to Correct affirmed where there was evidence supporting trier's findings and the granting of other corrections sought would not compel a different result. Additionally, the appellant's motion failed to provide the trier with specific references in the record supporting the corrections sought. See also, **Brown**, § 31-298, § 31-308a.

Jacobson v. General Dynamics/Electric Boat Div., 4642 CRB-2-03-3 (March 12, 2004).
CRB affirmed denial of Motion to Correct where evidence existed supporting the trier's not making the factual finding requested by appellants. Additionally, the trier had two opportunities to find as per the appellant's request, one at the conclusion of the proceedings and when presented with the Motion to Correct. Thus, trier's failure to find in accordance with appellant's request cannot be attributed to oversight.

Peck v. Somers, 4640 CRB-1-03-2 (March 5, 2004).
Trial commissioner need not grant corrections irrelevant to the outcome of the case. See also, **Peck**, § 7-433c, § 31-301. Factual findings.

Soto-Velez v. Michael's Chrysler Plymouth, 4628 CRB-2-03-2 (February 3, 2004).
Where claimant fails to a file a Motion to Correct CRB's review is limited to existing factual findings. See also, **Soto-Velez**, § 31-301. Factual findings.

Brown v. State/Dept. of Correction, 4609 CRB-1-03-1 (December 17, 2003).
Motion to Correct should be used to dispute factual accuracy of a commissioner's findings. See also, **Brown,** § 31-275(16). Personal Injury.

Fiorillo v. Bridgeport, 4585 CRB-4-02-11 (December 17, 2003), **appeal dismissed for lack of a final judgment**, A.C. 24991 (May 5, 2004).
Corrections seeking to add findings based on allegedly undisputed testimony of witnesses need not be granted where outcome of case would not be affected. See also, **Fiorillo**, § 31-298, § 31-301. Factual findings, § 31-307a. See also, **Fiorillo**, § 31-307. Prior decision at Fiorillo, 4337 CRB-4-01-1 (November 19, 2001), vacated, S.C. 16736 (December 16, 2002).

Burke v. Shaw's Supermarkets, Inc., 4503 CRB-6-02-3 (August 25, 2003), **appeal dismissed**, A.C. 24693 (February 17, 2004).
CRB found no error in trier's refusal to grant claimant's Motion to Correct as the changes sought were either in dispute or would not compel a different outcome. See also, **Burke** § 31-301. Factual findings.

Nau v. Polycast Technology Corp., 4555 CRB-7-02-8 (August 25, 2003).
CRB affirmed trier's partial denial of a Motion to Correct and noted that testimony of a fact that is not directly contradicted is not in itself sufficient to show that the fact was admitted or undisputed. See also, **Nau** § 31-301. Factual findings.

Beedle v. Don Oliver Home Improvement, 4491 CRB-3-02-2 (February 28, 2003).
Denial of corrections implies that trier was not persuaded by underlying testimony; CRB cannot draw contrary inference on appeal. See also, **Beedle**, § 31-275(9).

Robare v. Robert Baker Companies, 4328 CRB-1-00-12 (January 2, 2002).
CRB has subject matter jurisdiction over appeal from denial of a Motion to Correct where no papers were filed within ten days of underlying decision. However, board expressed hesitance to allow "back door" route to review of merits, and thus limited

scope of review to errors in denial of Motion to Correct. See also, **Robare**, § 31-301. Appeal procedure.

Brinson v. Finlay Brothers Printing Co., 4307 CRB-1-00-10 (November 1, 2001), **aff'd**, 77 Conn. App. 319 (2003).
No error in denial of Motion to Correct. Requested findings involved medical opinions in which two doctors allegedly questioned causation, while third physician had opined with reasonable medical certainty that claimant's condition was caused by employment. Additionally, where physician opined with reasonable medical certainty that ailment was work-related, trier could deny requested finding that doctor admitted that there was no *conclusively* proven cause of fibromyalgia. See also, **Brinson**, § 31-296, 31-308(a).

Christoforo v. Christoforo's Northford Gardens, 4260 CRB-3-00-6 (July 2, 2001).
Board affirmed trier's decision that claimant did not sustain compensable injury. Claimant argued on appeal that trier erred by not making findings regarding his contention that he was on Florida business trip when his knee injury manifested itself. However, in his Motion to Correct claimant requested finding that he was on said trip. By denying that motion, trier was indicating that she was not so persuaded. See also, **Christoforo**, § 31-294c, § 31-301. Appeal procedure, § 31-301. Factual findings.

Fox-Gould v. Brooks Pharmacy, 4215 CRB-2-00-3 (May 23, 2001).
Board denied claimant's Motion to Submit Additional Evidence where claimant did not provide reason for failing to present such evidence during the formal hearing, and where evidence described (additional medical reports) appeared to be cumulative. See, **Fox-Gould**, § 31-301. Factual findings.

Gary v. State/Department of Correction, 4208 CRB-8-00-3 (January 4, 2001), **rev'd**, 68 Conn. App. 590 (2002).
Discussion regarding Motion to Correct when requested changes are based upon credibility of evidence. See also, **Gary**, § 31-315.

Covert v. Patterson, 4094 CRB-3-99-8 (September 29, 2000).
CRB affirmed trial commissioner's partial denial of Motion to Correct. Claimant was essentially trying to retry her case, and it was the duty of the fact-finder to consider the testimony and exhibits in the record, assess their credibility, and draw inferences and legal conclusions based on his impressions. When the trier reviews a Motion to Correct, he must evaluate the proposed changes in that same capacity. See also, **Covert**, § 31-294d, § 31-296 Voluntary Agreements (discontinuance of payments), § 31-301-9.

Costa v. Torrington Company, 4097 CRB-5-99-8 (July 28, 2000).
CRB denied claimant's Motion to Dismiss one of respondents' amended Reasons for Appeal. Whether or not an extension of time to file said reasons was sought in order for trier to rule on Motion to Correct, an appellant is entitled to amend reasons for appeal at any time, absent prejudice, under Practice Book § 63-4(b), and denial of Motion to Correct may be assigned as a reason for appeal under § 31-301-6 and § 31-301-7. A separate appeal need not be filed from denial of Motion to Correct. Also, trier did not err by denying request to correct findings, as trier did not mischaracterize doctor's opinion

and the nature of safety information regarding chemical toxicity. See also, **Costa**, § 31-301. Factual findings.

Burke v. Wal-Mart Stores, Inc., 4037 CRB-2-99-4 (July 11, 2000).
Respondents argued that the trial commissioner erred in denying their Motion to Correct, which sought to add findings regarding claimant's health subsequent to date of injury. Trier had denied this request, noting that respondents sought to add information from claimant's deposition, which had not been admitted into evidence. Respondents argued that the deposition had been admitted into evidence, as it was entered as part of a set of documents which were reviewed by a physician along with his deposition, which was marked as an exhibit. CRB explained that it need not determine whether the deposition was entered into evidence because the respondents' proposed correction was immaterial. It addressed the claimant's condition subsequent to her injury, while the only issue at the formal hearing was the compensability of the injury itself. See also, **Burke**, § 31-275(16).

Davis v. State/University of Connecticut, 3822 CRB-2-98-5 (August 17, 1999).
See, **Davis**, § 31-275(1). See subsequent decision at Davis, 4212 CRB-2-00-3 (June 8, 2001), § 31-275(1).

Cramer v. Cramer, 3710 CRB-4-97-10 (November 9, 1998).
See, **Cramer**, § 31-275(1), § 31-301. Factual findings, § 31-301-9. Additional evidence.

Courtright v. State/Connecticut Valley Hospital, 3573 CRB-6-97-4 (June 5, 1998).
Claimant did not request certain findings regarding increased disability or changed conditions of fact in her Motion to Correct, and did not provide specific enough information regarding requested corrections to support her claim for continued total disability. Trial commissioner affirmed. See also, **Courtright**, § 5-142(a), § 31-315.

Baribault v. Harben Flooring Co, Inc., 3579 CRB-7-97-3 (June 4, 1998).
Claimant did not request corrections regarding circumstances surrounding injury, so finding that injury arose out of and in the course of employment must stand, even though little discussion of subordinate facts was present in decision. See also, **Baribault**, § 31-278, § 31-288.

Buccieri v. Pacific Plumbing Supply Co., 3286 CRB-7-96-3 (December 30, 1997), **aff'd**, 53 Conn App. 671 (1999).
Appeal from trial commissioner's granting of Motion to Correct, which changed the trial commissioner's conclusion. Contrary to claimant's contention, a trial commissioner may grant a motion to correct which changes both findings of fact and the ultimate conclusion regarding compensability. The claimant's appeal from the granting of the motion to correct survives even though the original appeal was withdrawn following the granting of the motion to correct. See also, **Buccieri,** § 31-301. Factual findings, § 31-301. Appeal procedure.

Sec. 31-301-9. Additional evidence.
[Administrative Regulation]

Scott v. Bridgeport, 4853 CRB-3-04-8 (December 22, 2004).
CRB affirmed trier's decision to allow new evidence where remand from prior appeal was ordered in order for the claimant to have the "opportunity to present evidence." See prior decision at Scott, 4637 CRB-4-03-2 (February 24, 2004).

DelConte v. State/Dept. of Correction, 4766 CRB-8-03-12 (December 8, 2004).
CRB denied claimant's motion to submit additional evidence. Claimant failed to use due diligence to obtain evidence that was in existence at the time of the formal hearings. See also, **DelConte**, § 31-294c.

Carney-Bastrzycki v. Hospital for Special Care, 4722 CRB-6-03-9 (September 3, 2004).
CRB refused to allow claimant to submit medical report available prior to formal hearing. See also, **Carney-Bastrzycki**, § 31-301. Factual findings.

Rurak v. Sweet Life Inc., 4630 CRB-1-03-2 (February 6, 2004).
A Motion to Submit Additional Evidence is the vehicle to submit additional evidence to the Commission Review Board. Claimant's evidence was submitted at the time of oral argument on the appeal without an indication that it was provided to the opposing party. The evidence will not be considered as part of the record. See also, **Rurak**, § 31-301. Appeal procedure, § 31-296.

Carlson v. United Technologies Int'l, 4533 CRB-1-02-6 (June 3, 2003).
Motion to submit affidavit of claims adjuster denied where materiality was questionable, and no reason was given as to why such an affidavit could not have been obtained during trial. See also, **Carlson**, § 31-294c.

Krajewski v. Atlantic Machine Tool Works, Inc., 4500 CRB-6-02-3 (March 7, 2003).
Documents sent to CRB along with appeal papers did not meet standards necessary to satisfy admissibility standard of § 31-301-9. See, **Krajewski**, § 31-278, § 31-284b, § 31-290a, § 31-301. Appeal procedure, § 31-301. Factual findings, § 31-312, § 31-313, § 31-315; prior decisions at Krajewski, 15 Conn. Workers' Comp. Rev. Op. 44, 2120 CRB-6-94-8 (November 28, 1995), § 31-308a; Krajewski, 11 Conn. Workers' Comp. Rev. Op. 54, 1387 CRD-6-92-2 (April 1, 1993), § 31-290a.

Papa v. Jeffrey Norton Publishers, Inc., 4486 CRB-3-02-1 (February 25, 2003).
Respondents moved to submit additional evidence at oral argument by asking CRB to take administrative notice of approved Form 36. As form was part of official record, was not disputed, and had already been noticed by trier, CRB agreed to take notice of the form. See also, **Papa**, § 31-296. Voluntary agreements (discontinuance of payments), § 31-301. Factual findings, § 31-307.

Napolitano v. Bridgeport, 4388 CRB-4-01-5 (September 6, 2002).
CRB noted that police board's finding regarding disability rating, much like Social Security Administration ruling, is not generally material to determination of permanent

partial impairment by Workers' Compensation Commission. See also, **Napolitano**, § 31-278, § 31-301. Factual findings, § 31-308(b).

Cotugno v. Lexington Caterers, Inc., 4390 CRB-2-01-5 (June 21, 2002).
Motion to Submit Additional Evidence denied. One report was cumulative, and CRB was unconvinced that it could not have been provided to trier before record closed. One report was reasonably disregarded by trier because it was provided by social worker rather than a practitioner of "healing arts" under § 20-1, while related letter should have been introduced earlier, as claimant's need for detoxification due to narcotics addiction was properly at issue. See also, **Cotugno**, § 31-294d.

Donlin v. Cytec Industries, Inc., 4415 CRB-7-00-7 (June 5, 2002), **aff'd**, 77 Conn. App. 903 (2003)(per curiam).
Additional evidence submitted with claimant's appeal was treated as a Motion to Submit Additional Evidence and was denied, where claimant could have obtained medical reports prior to formal hearing but offered no reason for failing to do so. CRB will not allow trial of cases in piecemeal manner. See also, **Donlin**, § 31-308(b).

Drew v. Sears Roebuck & Co., 4400 CRB-7-01-5 (May 2, 2002).
CRB denied pro se's Motion to Submit Additional Evidence where implicated documents were available long before formal hearing and should have been presented as evidence at trial. See also, **Drew**, § 31-301. Appeal procedure, § 31-315.

Rodrigues v. American National Can, 4329 CRB-7-00-12 (January 2, 2002).
CRB denied Motion to Submit Additional Evidence where claimant sought to introduce medical reports from physicians whom he saw after close of formal hearing. Reports could have been acquired prior to formal. See also, **Rodrigues**, § 31-279-3, § 31-296. Voluntary agreements (discontinuance of payments), § 31-298. Prior decision at Rodrigues, 4043 CRB-5-99-4 (July 26, 2000), § 31-301. Appeal procedure, Factual findings, § 31-308a.

Briggs v. American Medical Response, 4302 CRB-3-00-9 (September 24, 2001).
CRB denied motion to submit into evidence doctor's report and preliminary correspondence between attorneys in re: respondents' attempt to obtain certain test results. Tests had been performed over a year earlier, and revised medical report—which was based solely on those test results—could have been obtained before formal hearing if the need had been anticipated. See also, **Briggs**, § 31-298, § 31-301. Factual findings.

D'Amico v. State/Department of Correction, 4287 CRB-5-00-9 (August 3, 2001), **aff'd**, 73 Conn. App. 718 (2002), **cert. denied**, 262 Conn. 933 (2003).
Motion to submit report of rehabilitation hospital doctor denied where discharge summary concerned a time period several months subsequent to closing date of total disability claim. See also, **D'Amico**, § 31-307. Prior decision at D'Amico, 4029 CRB-5-99-4 (May 18, 2000), § 31-294d.

Audi v. Blakeslee Arpaia Chapman, 4234 CRB-3-00-5, 4151 CRB-3-99-11 (June 26, 2001).
Motion to Submit Additional Evidence denied where trier permissibly refused to reopen record to allow witness to testify for second time, and respondent sought to introduce same evidence via appeal route. Witness was available throughout trial. See also, **Audi**, § 31-298, § 31-315, § 31-296, § 31-307. See prior decision Audi, 3418 CRB-3-96-9 (August 4, 1997), § 31-349. Also see subsequent decision Audi, 4311 CRB-3-00-10, 4624 CRB-3-03-2 (February 10, 2004), § 31-278, § 31-284(b), § 31-288, § 31-300.

Fox-Gould v. Brooks Pharmacy, 4215 CRB-2-00-3 (May 23, 2001).
Board denied Motion to Submit Additional Evidence where claimant did not provide reason for failing to present medical reports during formal hearing, and where evidence appeared to be cumulative. See also, **Fox-Gould**, § 31-301. Factual findings.

Scott v. Wal-Mart Stores, Inc., 4185 CRB-4-00-2 (April 10, 2001).
Where respondents were unable to authenticate Form 43 sufficiently to get it into evidence at trial, CRB did not allow it to be reintroduced on appeal along with certified mail receipts indicating that it was delivered to, and signed for by, an employee of this Commission. Proffered evidence was actually an undated, unstamped copy of a Form 43. Possible error by this agency in processing Form 43 did not excuse respondents' failure to offer certified mail receipts at trial as proof that notice to contest liability was properly sent and delivered. No "good reason" adduced for failing to present evidence at trial. See also, **Scott**, § 31-294c.

Kisson v. Shawmut National Bank, 4188 CRB-5-00-2 (March 16, 2001).
Motion to Submit Additional Evidence denied where appellant failed to anticipate that doctor's earlier medical records would be necessary to aid in establishing causation. Scheduling of emergency formal hearing supported basis of motion, but appellants had been disputing origin of elbow condition for well over a year, and were quite aware of causation issues. See also, **Kisson**, § 31-301. Factual findings, § 31-299b.

Warren v. Federal Express Corp., 4163 CRB-2-99-12 (February 27, 2001).
Pro se claimant filed motion to submit additional evidence without describing nature of evidence or reasons for its earlier omission. Despite leniency granted to pro se claimants regarding procedure, CRB denied motion because it lacked necessary information. See also, **Warren**, § 31-301. Appeal procedure, § 31-301. Factual findings.

Tomaszek v. Girard Motors, 4166 CRB-2-99-12 (February 23, 2001), **aff'd**, 70 Conn. App. 122 (2002)(per curiam).
Motion to Submit Additional Evidence denied where claimant failed to explain why evidence was offered after record had been closed, and offered no indication that evidence is really new or was undiscoverable with due diligence at time of original hearings. See also, **Tomaszek**, § 31-315.

Covert v. Patterson, 4094 CRB-3-99-8 (September 29, 2000).
In her Motion to Submit Additional Evidence, claimant sought to submit a Form 36, a Form 43, and a proposed voluntary agreement, all of which she had received well after

the last formal hearing. CRB explained that it did not have jurisdiction over these issues, as the proper procedure would be to request an informal hearing, and if no agreement could be reached, a formal hearing could be held. The board explained that an appeal would be possible from the decision of the trial commissioner who would conduct this formal hearing, but that no such appeal had yet reached the board. See also, **Covert**, § 31-294d, § 31-296 Voluntary Agreements (discontinuance of payments), § 31-301-4.

Osowiecki v. O & G Industries, 3993 CRB-5-99-3 (April 13, 2000).
Where additional evidence was discoverable at time of trial and alleged reason for failure to present this evidence was inadvertence, CRB denied claimant's motion. See also, **Osowiecki**, § 31-294f.

Saleh v. Poquonock Giant Grinder Shop, 4005 CRB-1-99-3 (March 13, 2000).
CRB denied respondent's Motion to Submit Additional Evidence where additional evidence was discoverable at the time of trial and no reason was given for failure to present it at that time. See also, **Saleh**, § 31-279-2, § 31-298, § 31-300, § 31-315.

DiBello v. Barnes Page Wire Products, 3970 CRB-7-99-2 (March 2, 2000), **aff'd**, 67 Conn. App. 361 (2001), **cert. granted**, 260 Conn. 915 (2002), **appeal withdrawn** (June 26, 2002).
Motion to Submit Additional Evidence denied where insurer and employer were involved in dispute over existence of coverage on date of injury, and employer sought to introduce a form letter from the insurer that implied the existence of an insurer-employer relationship on date of injury. Notice was unlikely to mislead employer at this late stage of the proceedings, and was not material. See also, **DiBello**, § 31-278, § 31-294c, § 31-301. Appeal procedure, § 31-348. Subsequent decision at DiBello, 4290 CRB-7-00-9 (September 25, 2001), § 31-300, § 31-308a.

Kearse v. Labor Force of America, 3968 CRB-3-99-1 (February 1, 2000).
CRB affirmed trial commissioner's conclusion that claimant entered into a contract of service with LFA which subsequently lent him to Tait Moving Company. LFA was thus liable to pay compensation for the claimant's compensable injury pursuant to § 31-292. Though appellants argued in their Motion to Submit Additional Evidence that they were not aware that the lent employee statute was at issue, nevertheless the elements of this statute (whether claimant entered into an employment contract with LFA which then lent his services to Tait Moving Company) were covered in depth during the formal hearing, and the evidence described in appellant's motion would have been relevant even in the absence of § 31-292. Accordingly, with the additional evidence having been discoverable at the time of trial and no good reason for the failure to present this evidence at that time having been given, the Motion to Submit Additional Evidence was denied. See also, **Kearse**, § 31-292.

Prioli v. State/Connecticut State Library/Arts Commission, 3955 CRB-6-98-12 (January 13, 2000), **aff'd**, 64 Conn. App. 301 (2001), **cert. denied**, 258 Conn. 917 (2001).
CRB denied Motion to Submit Additional Evidence where appellant failed to offer desired testimony at formal hearing because of failure to anticipate that commission

would not enforce a particular agreement. This was a tactical decision, and appellant must accept the results. See also, **Prioli**, § 31-278, § 31-290a, § 31-301. Appeal procedure, § 31-315, § 31-327. Subsequent ruling in Prioli, 3955 CRB-6-98-12 (October 16, 2000), § 31-301c.

Dudley v. Wadsworth Glen, 3942 CRB-8-98-12 (October 14, 1999), **aff'd**, 60 Conn. App. 907 (2000)(per curiam).
CRB denied pro se claimant's request to submit tape recording of physician, where he did not allege a good reason for failing to present such evidence at the formal hearing. See also, **Dudley**, § 31-294d.

Lyons v. Wasley Products, Inc., 3788 CRB-6-98-3 (June 18, 1999).
CRB denied claimant's Motion to Submit Additional Evidence in the form of a Social Security decision. Board has repeatedly held that decisions regarding Social Security disability are not material to Chapter 568 claims insofar as the standards used by the Social Security Administration differ from those used by the Workers' Compensation Commission.

Contreras v. Montana Bakery, 3819 CRB-7-98-5 (June 16, 1999).
Documents proffered by successor counsel in attorney's fee dispute were not material to issue before CRB. See also, **Contreras**, § 31-327(b).

Crouse v. A.A.I.S., Inc., 3797 CRB-3-98-4 (June 16, 1999).
Claimant sought to submit evidence that was available at the time of trial. Motion denied. See also, **Crouse**, § 31-301. Factual findings.

Fiore v. House & Garden Shop, 3747 CRB-7-97-12 (April 5, 1999).
CRB denied claimant's request to submit sketches of employer's place of business, as such evidence was clearly available at the time of the formal hearing. See also, **Fiore**, § 31-301. Factual findings. See subsequent decision at Fiore, 4494 CRB-7-02-2 (February 28, 2003), § 31-301. Factual findings, § 31-315.

Granata v. Waldbaum's, 3742 CRB-3-97-12 (March 11, 1999).
Claimant's Motion to Submit Additional Evidence was denied by CRB where the deposition transcript which the claimant sought to submit was in existence at the time of the formal hearing and was not offered into evidence at that time. See also, **Granata**, § 31-301. Factual findings.

Surozenski v. Glass Container Corp., 3753 CRB-2-97-12 (February 23, 1999).
CRB affirmed trier's denial of counsel's Motion to Disappear, and denied motion to submit as additional evidence several letters that explained that counsel and its client, the self-insured administrator, had been discharged by the respondent employer, which was in bankruptcy. Letters were available at time of hearing, and were merely self-serving statements offering legal analysis by interested parties. CRB stressed that law firm had represented both parties throughout claim, and pro se claimant should not be left with no one to negotiate with on the other side (no substitute counsel was offered to represent the employer). (*Frankl, C.,* **dissenting**) Letters are material, as they establish

that the firm is no longer acting as counsel in this case. See also, **Surozenski**, § 31-301. Appeal procedure.

Harris v. UTC/Pratt & Whitney, 3762 CRB-1-98-1 (February 23, 1999), **aff'd**, 56 Conn. App. 912 (2000)(per curiam), **cert. denied**, 253 Conn. 907 (2000).
Motion to Submit Additional Evidence denied, as the admissibility of psychologist's reports was an issue for the trial commissioner, and a letter sent from the Chairman to the claimant and copied to all parties was part of the record already. See also, **Harris**, § 31-294f, § 31-315. Prior decision at Harris, 15 Conn. Workers' Comp. Rev. Op. 357, 3143 CRB-5-95-8 (June 26, 1996), § 31-275(17), § 31-298.

Perry v. Carewell Rest Home, 3713 CRB-3-97-10 (December 29, 1998).
CRB denied claimant's request to submit additional evidence, where the evidence was available at the time of the formal hearing, but not admitted into evidence. There was no evidence in the transcript to support the claimant's contention that her attorney was confused and inadvertently failed to include several medical reports in a binder which was submitted as an exhibit. See also, **Perry**, § 31-301. Factual findings.

Gouborn v. United Illuminating, 3594 CRB-3-97-4 (November 17, 1998).
CRB granted Motion to Submit Additional Evidence where evidence consisted of proof that notice was delivered to Second Injury Fund before October 1, 1995 filing deadline. See also, **Gouborn**, § 31-349.

Cramer v. Cramer, 3710 CRB-4-97-10 (November 9, 1998).
See, **Cramer**, § 31-275(1), § 31-301. Factual findings. Section 31-301-4. Correction of finding.

Rhodes v. Bourdon Forge Company, Inc., 3720 CRB-2-97-11, 3650 CRB-2-97-7 (October 13, 1998).
The claimant sought to submit an additional medical report subsequent to the last formal hearing. The CRB affirmed the trial commissioner's denial of that request, as the evidence was not really new or undiscoverable with due diligence prior to the close of the formal hearing.

Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998).
Motion to Submit Additional Evidence and Testimony sought to submit medical report that was issued after last formal hearing. Claimant did not demonstrate that this report was undiscoverable earlier, and description of evidence suggested that it might prove to be cumulative. Motion denied. See also, **Pallotto**, § 31-301. Factual findings

Willett-Pine v. Community Residences, 3534 CRB-8-97-2 (May 20, 1998).
Medical provider appealed from ruling of trial commissioner that respondents were not liable for claimant's medical bills. Provider attempted to offer additional evidence, but the only reason it was not submitted at the formal hearing was that the provider failed to appear on its own behalf. Motion denied. See also, **Willett-Pine**, § 31-301. Factual findings.

DeMartino v. L.G. Defelice, Inc., 3524 CRB-4-97-1 (February 18, 1998).
Claimant could not introduce additional evidence. Medical report from 1997 was a clarification of earlier report, and could have been obtained earlier. Letters from attorney were not material to central issue in case, and previous award is already part of the record. See also, **DeMartino**, § 31-301. Factual findings.

Koscak v. Agentry Employment Systems, 3438 CRB-6-96-10 (February 9, 1998).
Respondent temporary employment agency was found to be the employer under the Workers' Compensation Act. Trier also found that there was no persuasive evidence making the company that used the claimant's services an employer. Respondents sought to introduce as additional evidence a Superior Court decision that held that the company that used the claimant's services could not be sued in Superior Court because it was an employer under the Act, and a civil suit was barred by the exclusivity provision in § 31-284(a). Motion granted. Importance of consistency in decision-making discussed; Superior Court decision was relevant evidence. Also, it was unclear that the respondents knew about the Superior Court decision before the date proposed findings were due. (Trier's decision was issued after the Superior Court decision came out).

Cortesi v. Warner, 3598 CRB-1-97-5 (October 27, 1997).
Claimant moved to submit as additional evidence an affidavit by a Federal Express employee establishing that its petition for review was delivered to the District Office on the ninth day after notice of the commissioner's decision was sent. Petition for review had not been stamped "received" until four days later, and was apparently late. Motion granted, appeal not dismissed. See also, **Cortesi**, § 31-301. Appeal procedure.

Thibodeau v. Rizzitelli, 3373 CRB-4-96-7 (October 14, 1997).
Motion to Submit Additional Evidence granted where commissioner found that insurer had canceled insurance policy coverage on May 15, 1994, and appellant sought to introduce a civil complaint seeking payment of unpaid premium for coverage provided between September 29, 1993 and September 29, 1994. See also, **Thibodeau**, § 31-348.

Reeder v. Zohne Industries, 3313 CRB-5-96-3 (August 1, 1997), **aff'd**, 49 Conn. App. 904 (1998)(per curiam).
Claimant did not show that he or his doctor ever attempted to obtain safety data sheets before the formal hearing. CRB cannot now grant request to admit those reports as additional evidence. See also, **Reeder**, § 31-301. Factual findings.

Roy v. General Dynamics Corporation/Electric Boat Division, 3284 CRB-1-96-2 (April 14, 1997), **aff'd**, 47 Conn. App. 924 (1997), **cert. denied**, 244 Conn. 907 (1998).
CRB concluded that the claimant has failed to show good reason for presenting medical records after the formal hearing had been closed, and thus denied the claimant's request to submit additional evidence. Moreover, the claimant offered no indication that the proffered evidence was really new or that it was undiscoverable with due diligence at the time of the original hearings. See also, **Roy**, § 31-301. Factual findings.

Abdule v. Walnut Hill Convalescent, 3383 CRB-6-96-7 (March 25, 1997).
CRB denied claimant's motion to submit additional evidence where evidence was available and could have been obtained with due diligence during formal hearing. The claimant sought to present a letter from the treating physician.

Bryan v. Sheraton-Hartford Hotel, 3320 CRB-1-96-4 (March 12, 1997).
CRB granted the claimant's motion to submit additional evidence, a doctor's report, pursuant to Admin. Reg. § 31-301-9. The trial commissioner had found that the reports issued by said doctor did not substantiate the claimant's claim that she had a shoulder condition which was caused by the compensable injury. The doctor's report submitted by the claimant had been issued after the formal hearing and contradicted his prior reports which were relied upon by the trial commissioner. The CRB also noted that the claimant had acted *pro se*. But see later Bryan after remand, 3730 CRB-1-97-11 (May 7, 1999), rev'd, 62 Conn. App. 733 (2001); see also later case in which board, pursuant to Appellate Court remand, considered claimant's appeal from trier's original decision and affirmed said decision- Bryan, 3320 CRB-1-96-4 (January 29, 2002), aff'd, 74 Conn. App. 901 (2002), cert. denied, 263 Conn. 916 (2003), § 31-301. Factual findings.

Ryba v. West-Con, 3196 CRB-2-95-10 (February 27, 1997).
See, **Ryba**, § 31-296.

Pronovost v. UTC/Pratt & Whitney, 3166 CRB-6-95-9 (February 11, 1997).
Claimant's need for additional medical reports was due to failure to anticipate the nature of respondents' contradictory evidence at trial. Not a good reason for failing to present evidence at formal hearing. Also, evidence regarding bias is not backed up by concrete information, and mere allegations are not enough to warrant reopening case on appeal. Motion denied. See also, **Pronovost**, § 31-301. Factual findings.

Bailey v. Stripling Auto Sales, 15 Conn. Workers' Comp. Rev. Op. 369, 3095 CRB-2-95-6 (June 28, 1996).
See, **Bailey**, § 31-278. See subsequent decision Bailey, 3461 CRB-3-96-11 (April 9, 1998), § 31-315 and Bailey, 4516 CRB-2-02-4 (May 8, 2003), § 31-298, § 31-307a.

Alicea v. Tamarack Country Club, 15 Conn. Workers' Comp. Rev. Op. 265, 3088 CRB-7-95-6 (June 4, 1996).
In their Motion to Submit Additional Evidence, the respondents seek to submit further medical reports in support of their contention that the claimant's pre-existing condition materially and substantially contributed to his injury. The respondents contend that such evidence should be allowed on the basis that subsequent to the trial commissioner's Finding and Order, the Supreme Court of Connecticut issued Rowe v. Plastic Design, Inc., 37 Conn. App. 131 (March 7, 1995). CRB denied the motion as the evidence was not undiscoverable during the course of the proceedings below, and was cumulative.

Marandino v. Marandino's d/b/a John Marandino, 3130 CRB-6-95-7 (June 4, 1996).
The trial commissioner found that the decedent was a sole proprietor at the time he suffered a fatal heart attack on May 20, 1992, and thus was not covered under the Workers' Compensation Act. The trial commissioner further found that the claimant had

not elected to be covered under the workers' compensation system pursuant to § 31-275(10). The claimant seeks to present evidence regarding "the customary practice... for an insurance agent to take care of any filings concerning election of coverage forms with the Workers' Compensation Commission...." CRB denied motion as such evidence was available at time of formal hearing. See also, **Marandino**, § 31-275(9).

Smith v. UTC/Pratt & Whitney, 3134 CRB-3-95-6 (June 4, 1996).
In her motion to submit additional evidence, the claimant seeks to present a medical opinion from her treating physician regarding the claims for neck and low back injuries which were dismissed by the trial commissioner. In support of the claimant's motion, the claimant contends that her physician refused to examine her because of an unpaid balance of approximately $109. During the formal hearing process, the claimant did not advise the trial commissioner that she was unable to obtain a medical examination from her treating physician, nor did the claimant raise this issue at the formal hearing in the form of a motion for a continuance until she could obtain such evidence. As the claimant has not preserved this issue on the record, but rather is raising it now for the first time on appeal, CRB denied the motion.

Ross v. Swift, 15 Conn. Workers' Comp. Rev. Op. 210, 2292 CRB-6-95-2 (April 23, 1996).
Respondents sought to introduce evidence of their bankruptcy, even though it was available at time of formal hearing. CRB normally rejects such evidence; however, the federal bankruptcy statute and relevant case law specifically provide that a discharge in bankruptcy renders any judgment on a discharged debt null and void. Purpose of law is to make it unnecessary for the discharged debtor to do anything at all in state court action. Thus, employer's failure to plead Chapter 7 discharge as a defense to the claimant's claim does not preclude assertion of that defense here. Remanded for findings as to actual scope of discharge.

Falkowski v. International Fuel Cells Corp., 15 Conn. Workers' Comp. Rev. Op. 119, 3016 CRB-1-95-2 (January 11, 1996).
The respondents filed a motion to submit additional evidence in order to present evidence of the decedent's earnings prior to his retirement, contending that the decedent's benefit rate was improperly determined. At oral argument, claimant did not deny that his benefit rate was incorrect. Therefore, CRB construed respondents' motion as a motion to reopen pursuant to § 31-315 and remanded for a new determination of the benefit rate.

Kennedy v. Heavy Duty Nelson Electric, 15 Conn. Workers' Comp. Rev. Op. 88, 2139 CRB-5-94-9 (December 8, 1995).
Pro se claimant had counsel at time of formal hearing, and counsel chose not to pursue certain evidence due to cost of producing it. That decision was tactical, and additional evidence offered by claimant was thus available at time of formal hearing. Motion to submit additional evidence denied. Also, trial commissioner's acceptance of the testimony of claimant's co-workers over that of other witnesses was permissible, as it is commissioner's job to determine credibility. Commissioner's dismissal of back injury claim affirmed.

Krajewski v. Atlantic Aerospace Textron, 15 Conn. Workers' Comp. Rev. Op. 44, 2120 CRB-6-94-8 (November 28, 1995).
See, **Krajewski**, § 31-308a for discussion of Motion to Submit Additional Evidence.

Fusco v. J.C. Penney Company, 1952 CRB-4-94-1 (November 1, 1995).
Motion to submit additional evidence granted, in part, where despite attempts by the claimant and the Respondent to obtain presence of treater at the formal hearings, he consistently made himself unavailable and impossible to subpoena. This board is troubled by this alleged conduct on the part of a treating physician.

Dunn v. Roadway Express, Inc., 3005 CRB-3-95-2 (September 18, 1995).
Claimant sought to introduce September 1994 videotape of claimant's activities. Motion denied; issue was claimant's condition on August 18, 1993, the alleged date of injury, and whether medical treatment the following day was necessary. Inference videotape might create as to claimant's credibility would not likely affect decision on reasonableness of treatment.

Lopez v. Chieppo Charter, Inc., 15 Conn. Workers' Comp. Rev. Op. 378, 2269 CRB-3-95-1 (September 18, 1995).
Motion to submit additional evidence denied. Although the claimant contended that he attempted to subpoena the witness but that he could not be located for service of a subpoena prior to the formal hearing, the trial commissioner found that the witness was employed by the respondent and was available at the time of the formal hearing. See also, **Lopez**, § 31-301. Factual findings.

Swegel v. UTC/Pratt & Whitney, 14 Conn. Workers' Comp. Rev. Op. 316, 2270 CRB-1-95-1 (September 14, 1995).
Due to compelling circumstances, board exercised its equitable powers by construing the claimant's motion to submit additional evidence as a motion to modify the award based on changed conditions of fact under § 31-315. The compelling circumstances included the fact that subsequent to the close of the formal hearing, the claimant's treater and an IME (requested by the employer) both agreed that surgery was necessary. The trial commissioner had found that surgery was not necessary.

Ayres v. United Methodist Home of Conn., 14 Conn. Workers' Comp. Rev. Op. 228, 1743 CRB-4-93-6 (August 10, 1995), **aff'd**, 44 Conn. App. 927 (1997)(per curiam), **cert. denied**, 243 Conn. 934 (1997).
CRB denied pro se claimant's second motion to submit additional evidence which was presented for the first time at oral argument before this board. Claimant sought to introduce evidence that her disability worsened. CRB advised claimant that she should present such evidence in a motion to reopen under § 31-315.

Ayres v. United Methodist Home of Conn., 14 Conn. Workers' Comp. Rev. Op. 220, 1743 CRB-4-93-6 (August 7, 1995), **aff'd**, 44 Conn. App. 927 (1997)(per curiam), **cert. denied**, 243 Conn. 934 (1997).
CRB denied pro se claimant's request to introduce numerous documents, which were available at the time of her formal hearings, immaterial, or cumulative. CRB explained requirements of § 31-301-9.

Prescott v. Echlin, Inc., 14 Conn. Workers' Comp. Rev. Op. 191, 2029 CRB-3-94-4 (July 13, 1995).
See, **Prescott**, § 31-301. Factual findings.

Walter v. State/Services for the Blind, 14 Conn. Workers' Comp. Rev. Op. 107, 1694 CRB-2-93-4 (June 2, 1995), **aff'd**, 63 Conn. App. 1 (2001).
Commissioner did not err in granting state's motion to reopen where state had alleged that it did not receive timely notice of hearing, claimants could not show prejudice, and commissioner had not yet issued award. Commissioner has considerable discretion on motions to reopen, and Admin. Reg. § 31-297(b)-1 gives commissioner power to waive filing requirements of the party opposing the Motion to Preclude. Section 31-301-9 not applicable here, as motion to reopen not made to CRB. See also, **Walter**, § 31-294c. Subsequent decision at Walter, 3785 CRB-2-98-3 (June 18, 1999), aff'd, 63 Conn. App. 1 (2001), § 31-301. Appeal procedure.

Kasperski v. Bell Atlantic Corp., 2106 CRB-6-94-7 (May 15, 1995).
A motion to submit additional evidence may not properly be used to alter a party's evidentiary decisions based on trial tactics or lack of diligence regarding the presentation of evidence at a formal hearing. Therefore, CRB denied claimant's request to submit a medical report that opined the percentage of permanent disability attributable to the compensable injury.

Casanovas v. ACME United Corp., 15 Conn. Workers' Comp. Rev. Op. 235, 2179 CRB-4-94-10 (May 10, 1995).
The claimant sought to introduce live testimony from his treater to establish that he initially complained of certain injuries which the commissioner held not to be causally related to the claimant's compensable chemical burn. CRB denied motion, as it was claimant's burden to prove causation and claimant chose to present medical reports rather than live testimony at the trial level. See also, **Casanovas**, § 31-301. Factual findings.

Holle v. The William Backus Hospital, 14 Conn. Workers' Comp. Rev. Op. 166, 169, 2039 CRB-2-94-4 (May 10, 1995).
Commissioner held that claimant, a nurse, failed to sustain her burden of proving that she suffered injuries as a result of a vaccine administered by the employer. At time of formal hearings, claimant's treater was unable to render an opinion regarding causation because of several "unanswered questions." Claimant sought to introduce, as new evidence, the treater's recent opinion regarding causation. CRB held that the recent medical opinion was not undiscoverable, nor was the opinion itself based upon new or undiscoverable information, and that claimant failed to act with due diligence by waiting

three years to procure the opinion. Distinguished from Canfield v. Consolidated Freightways, 10 Conn. Workers' Comp. Rev. Op. 59, 1127 CRD-7-90-10 (1992).

Rogers v. Crawford & Company, 2154 CRB-3-94-9 (May 4, 1995).
The claimant/appellee, who was awarded benefits by the commissioner, sought to introduce a medical report in order to respond to issues raised by employer/appellant on appeal. CRB denied request, as evidence was cumulative and could have been procured at time of trial.

Calinescu v. CFD Associates, 13 Conn. Workers' Comp. Rev. Op. 298, 1794 CRB-8-93-8 (April 21, 1995), **aff'd,** 40 Conn. App. 912 (1996).
Cumulative evidence will not be admitted unless likely to produce a different result. Motion denied. See also, **Calinescu**, § 31-301. Factual findings.

Brockett v. Branford Paving, Inc., 13 Conn. Workers' Comp. Rev. Op. 271, 1840 CRB-3-93-9 (April 19, 1995).
Motion to submit additional evidence will not be considered where appeal is dismissed as untimely. See also, **Brockett**, § 31-301. Appeal procedure.

Glenn v. Glenn Fence Company, 2132 CRB-1-94-8 (April 10, 1995).
Claimant sought to introduce testimony of out-of-state witnesses whose whereabouts were unknown at time of hearing. Because the reason for the absence of those witnesses at trial was the claimant's failure to anticipate their necessity, claimant was not relieved of responsibility for their presence. No showing made that witnesses could not have been located and deposed before the formal hearing. Not a "good reason;" motion denied. See also, Glenn, 15 Conn. Workers' Comp. Rev. Op. 249, aff'd, 45 Conn. App. 906 (1997)(per curiam), § 31-301. Factual findings.

Sharkey v. Triangle/PWC, 15 Conn. Workers' Comp. Rev. Op. 127, 2111 CRB-6-94-7 (March 21, 1995).
In support of his motion to submit additional evidence, the claimant sought to introduce testimony from his supervisor and a co-worker, neither of whom appeared at the trial level, to testify that the claimant's injury occurred during the course of his employment. The claimant contended that those witnesses were not presented at the formal because the claimant was not aware that the issue of "in the course of" was disputed by the respondents. CRB denied motion, and noted that claimant was aware, through the Form 43, that respondents disputed his claim that the injury occurred at work.

Rapuano v. Standard Builders, Inc., 1975 CRB-5-94-2 (January 13, 1995).
Claimant's vocational expert not relied on by commissioner because expert had not inquired into claimant's prior work history, I.Q., dexterity, etc. Held, claimant could not introduce report taking those factors into account, as evidence could have been made available at trial. Failure to anticipate necessity or relevance of evidence not a "good reason." Claimant also alleged evidence immaterial, which conflicts with § 31-301-9.

Cappelletti v. Charles Construction, 1958 CRB-5-94-1 (December 13, 1994).
Out-of-court statement proffered by respondent contradicting claimant's testimony inadmissible; no cross-examination had been allowed. Also, respondent's need to leave

hearing early to pick up his son was not a "good reason" to fail to offer evidence; continuance could have been requested. Statement available at time of hearing. Motion denied.

Carr v. Southern New England Telephone Co., 13 Conn. Workers' Comp. Rev. Op. 21, 1846 CRB-3-93-9 (November 4, 1994), **appeal dismissed**, A.C. 14126 (January 18, 1995), **cert. denied**, 233 Conn. 910 (1995).
Appellant's failure to have available medical reports introduced into evidence and marked either for identification or full exhibits below is not "good reason" for CRB to grant motion to submit additional evidence at appellate level. See also, **Carr**, § 31-301. Factual findings.

Searles v. West Hartford Board of Education, 12 Conn. Workers' Comp. Rev. Op. 414, 1617 CRB-1-93-1 (September 28, 1994), **aff'd**, 40 Conn. App. 902 (1996)(per curiam).
CRB denied pro se claimant's motion to submit additional evidence where evidence sought to be admitted existed prior to trial proceedings. Additionally, claimant failed to state why evidence was material and why it was not submitted below. See also, **Searles**, § 31-275(1), § 31-294c and § 31-301. Factual findings.

Miller v. TVCCA, 12 Conn. Workers' Comp. Rev. Op. 348, 1675 CRB-2-93-3 (July 29, 1994), **aff'd**, 39 Conn. App. 935 (1995).
Motion to submit additional medical records fails to state good reasons for failure to present below. See also, **Miller**, § 31-301. Factual findings.

Cummings v. Twin Tool Mfg. Co., 12 Conn. Workers' Comp. Rev. Op. 341, 1542 CRB-1-92-10 (July 11, 1994), **aff'd**, 40 Conn. App. 36 (1996).
Claimant's motion to submit additional evidence failed to satisfy administrative requirements. See also, **Cummings**, § 31-296, § 31-298, § 31-301. Factual findings and § 31-307.

Ocasio v. Toyotomi, USA, 12 Conn. Workers' Comp. Rev. Op. 330, 1668 CRD-7-93-2 (July 5, 1994).
Claimant sought to challenge the credibility of certain eyewitness testimony, to add additional medical evidence, truck shipping records and some evidence as to worker harassment. CRB found evidence was readily discoverable at the time of the proceedings below. Further, reasons given for failing to present the evidence below insufficient.

Soares v. Glass Industries, 12 Conn. Workers' Comp. Rev. Op. 189, 1377 CRB-3-92-1 (May 4, 1994).
Claimant's motion to submit additional documents and request that said documents be admitted into evidence granted where parties appearing before the CRB agreed to submission. Respondent's motion to submit additional evidence denied.

Vetro v. Banton Dry Wall, Inc., 12 Conn. Workers' Comp. Rev. Op. 154, 1316 CRD-3-91-10 (April 22, 1994).
Appellant's motion contending it was denied the opportunity to participate and present evidence below denied as CRB found record shows appellant was afforded the

opportunity to participate, and further, a representative of respondent employer was present at hearings below. See also, **Vetro**, § 31-298 and § 31-301. Appeal procedure.

Morris v. A & A Acoustics, 12 Conn. Workers' Comp. Rev. Op. 221, 1488 CRB-7-92-8 (March 22, 1994).
Motions to submit additional evidence denied. See also, **Morris**, § 31-298 and § 31-301. Factual findings.

Burgos v. United Technologies/Sikorsky Aircraft Division, 12 Conn. Workers' Comp. Rev. Op. 204, 1441 CRB-4-92-6 (March 15, 1994).
Request to submit additional evidence denied where claimant failed to satisfy requirements of administrative regulation. See also, **Burgos**, § 31-294d and § 31-308a.

McNulty v. Stamford, 12 Conn. Workers' Comp. Rev. Op. 32, 1332 CRD-7-91-10 (January 26, 1994), **rev'd**, 37 Conn. App. 835 (1995).
CRB held evidence which respondent employer sought to add was unnecessary given the conclusion reached on the merits. See also, **McNulty**, § 31-301. Appeal procedure, § 31-306, § 7-433c (where appellate court reversed CRB and held that the second injury fund was not liable to municipalities for payments pursuant to § 7-433c).

Peddle v. Finish Line Cafe, 12 Conn. Workers' Comp. Rev. Op. 27, 1396 CRB-2-92-2 (January 18, 1994).
CRB granted respondents' motion to submit additional evidence thereby admitting into evidence copies of documents stemming from a third party action filed in superior court. See also, **Peddle**, § 31-275(1), § 31-284(a), § 31-294c.

Ortiz v. United Sewing, Inc., 1760 CRB-4-93-6 (December 21, 1993).
Issues raised by respondents' motion to submit additional evidence moot where trier vacates his supplemental finding.

Peterson v. The Hartford Courant, 11 Conn. Workers' Comp. Rev. Op. 296, 1389 CRB-1-92-3 (December 8, 1993), **aff'd**, 36 Conn. App. 937 (1994)(per curiam).
Motion to submit additional evidence denied where motion failed to identify evidence, its materiality or the reasons why it was not presented below. See also, **Peterson**, § 31-301. Factual findings.

Milardo v. Shuck Petroleum, 11 Conn. Workers' Comp. Rev. Op. 279, 1559 CRB-8-92-11 (November 22, 1993).
Motion to submit additional evidence denied where movant failed to satisfy the requirements of Administrative Regulation § 31-301-9. See also, **Milardo**, § 31-301. Appeal procedure.

Cooper v. Seymour, 11 Conn. Workers' Comp. Rev. Op. 274, 1336 CRD-5-91-11 (November 19, 1993).
Motion to submit additional evidence denied where movant failed to satisfy the requirements of Administrative Regulation § 31-301-9. See also, **Cooper**, § 7-433c.

Coates v. Turbine Components, 11 Conn. Workers' Comp. Rev. Op. 264, 1365 CRD-3-92-1 (November 18, 1993).
Motion to correct is not the proper vehicle to introduce additional evidence. See also, **Coates**, § 31-307.

Lederman v. Friendly Ice Cream Corporation, 11 Conn. Workers' Comp. Rev. Op. 180, 1420 CRB-5-92-5 (September 3, 1993).
Claimant's motion to submit additional evidence denied due to claimant's failure to satisfy the requirements of Adm. Reg. § 31-301-9. See also, **Lederman**, § 31-301. Appeal procedure.

D'Anna v. Kimberly Clark Corporation, 1580 CRB-7-92-12 (August 31, 1993).
Claimant's motion to submit additional evidence denied on the basis of Administrative Regulation § 31-301-9 and CRB's holding in Daniele v. Angelo Monarca, Inc., 6 Conn. Workers' Comp. Rev. Op. 25, 519 CRD-3-86 (1988). Here, claimant sought to introduce into evidence the trial commissioner's notes from an informal hearing. As claimant did in fact testify at a formal hearing below, any information claimant wished to proffer concerning her decision to delay surgery should have been introduced through her own testimony.

Busak v. Stamford, 1562 CRB-7-92-11 (August 31, 1993).
Claimant sought to present additional medical evidence of either testimony or a report of IME physician. CRB denied claimant's motion as reasons why evidence was not submitted below failed to satisfy the requirements of Administrative Regulation § 31-301-9.

O'Connor v. Connecticut Light & Power Company, 1536 CRB-8-92-10 (May 27, 1993).
Motion to submit additional evidence denied where movant failed to satisfy the requirements of Administrative Regulation § 31-301-9.

Boynton v. American Cyanamid, 11 Conn. Workers' Comp. Rev. Op. 58, 1267 CRD-8-91-8 (April 6, 1993).
Where there exists no explanation as to why the medical testimony sought to be proffered was not presented in the initial proceedings below, in the reopened proceedings below, why such testimony was not available to be presented below, nor does it appear to be new evidence, CRB will not disturb trier's denial of claimant's Motion to Submit New Evidence. See also, **Boynton**, § 31-275(1) and § 31-301. Factual findings.

Castlevetro v. Gravymaster, 1463 CRB-3-92-7 (April 5, 1993).
Motion to submit additional evidence denied where movant failed to satisfy the requirements of Administrative Regulation § 31-301-9.

Haugh v. Leake-Nelson, 1421 CRB-2-92-5 (April 5, 1993).
Claimant sought to enter additional medical evidence to support his claim for temporary total benefits. CRB denied claimant's motion to submit additional evidence. CRB found

medical evidence was not "of such character and force that it would be likely to cause a different result." Metall v. Aluminum Co. of America, 154 Conn. 48, 53 (1966).

Lange v. J & B Excavating & Paving, 11 Conn. Workers' Comp. Rev. Op. 42, 1249 CRD-3-91-6 (March 18, 1993).
Failure of claimant's former counsel to appreciate the probative effect of live testimony by claimant's treating physician insufficient reason for granting motion to submit additional evidence. See also, **Lange**, § 31-301. Factual findings.

Byars v. Whyco Chromium Company, 11 Conn. Workers' Comp. Rev. Op. 39, 1257 CRD-5-91-7 (March 10, 1993), **dismissed, lack of final judgment**, 33 Conn. App. 667 (1994).
Affirmed trier's denial of claimant's request to submit new evidence as record fails to demonstrate trier abused his discretion. See also, **Byars**, § 31-294, § 31-296 and § 31-300.

Krouse v. Holmgren Subaru, 11 Conn. Workers' Comp. Rev. Op. 37, 1251 CRD-2-91-6 (February 26, 1993).
Remanded where trial commissioner denied claimant, a car salesman, now employed as a security guard, partial wage loss benefits based on evidence before him. On appeal pro se claimant in a motion to correct and before the CRB offered evidence concerning salespersons average weekly wages contrary to evidence presented below. CRB concluded claimant should be afforded the opportunity to present the evidence and the trier must consider this new evidence before reaching a final determination. See also, **Krouse**, § 31-308(a).

Fitzpatrick v. Wellington's Auto Ranch, Inc., 10 Conn. Workers' Comp. Rev. Op. 247, 1194 CRD-4-91-3 (January 11, 1993).
Claimant alleges evidence was proffered below but was not admitted by the trial commissioner. CRB denied Motion to Submit Additional Evidence holding evidence should have accompanied Motion to Correct as claimant sought to show evidence was excluded by the trial commissioner and would support corrections sought. See also, **Fitzpatrick**, § 31-301. Factual findings.

Lesczynski v. New Britain Memorial, 10 Conn. Workers' Comp. Rev. Op. 205, 1289 CRD-6-91-9 (December 2, 1992).
Claimant claims testimony of treating physician was not presented at proceedings below as claimant failed to recognize the importance of securing counsel. CRB found claimant's inability to appreciate the impact of not providing testimony of a treating physician in the proceedings before the trial commissioner fails to demonstrate the evidence was material or a good reason for failing to present that testimony in the proceedings before the trial commissioner. See also, **Lescznyski**, § 31-301. Factual findings and § 31-307.

In Re: Employee Staffing Of America, 1395 CRB-3-92-3 (November 24, 1992). Motion to submit additional evidence and testimony denied where movant failed to

satisfy the requirements of Administrative Regulation § 31-301-9. Further, movant failed to appear before CRB at scheduled date of oral argument.

Murach v. New Britain, 10 Conn. Workers' Comp. Rev. Op. 89, 1172 CRD-6-91-2 (April 20, 1992).
Motion to present additional evidence denied where claimant failed to provide good reasons why evidence was not offered below. See also, **Murach**, § 7-433c and § 31-294c.

Nasinka v. Ansonia Copper and Brass, 10 Conn. Workers' Comp. Rev. Op. 85, 1153 CRD-5-90-12 (April 20, 1992).
CRB remanded trier's finding with direction to grant claimant's Motion to Reopen. Medical reports of independent medical exam ordered by trial commissioner and received subsequent to conclusion of formal hearings below must be entered into evidence. Additionally, trier cannot base his conclusions on medical reports not entered into evidence. See also, **Nasinka**, § 31-301. Factual findings and § 31-315.

Canfield v. Consolidated Freightways, 10 Conn. Workers' Comp. Rev. Op. 59, 1125 CRD-7-90-10 (February 21, 1992).
Remanded as medical evidence proffered is of such force and character that it may result in a different conclusion. Record fails to indicate whether trial commissioner considered medical report of treating physician which was not available at the time of the trier's decision. As trier previously based his decision on treating physician's medical report and that same treating physician in a later medical report is now not certain that surgery is reasonable or necessary, trier must consider new evidence. See also, **Canfield**, § 31-294d and § 31-301. Factual findings.

Gurski v. Concessionair, Division of Delaware North, 9 Conn. Workers' Comp. Rev. Op. 282, 1218 CRD-7-91-4 (December 16, 1991).
Where claimant gave CRD no reason why evidence was not available and submitted at evidentiary hearing below and CRD found evidence cumulative of other testimony, claimant's request to submit statement of additional witness denied. See also, **Gurski**, § 31-301. Factual findings.

Grey v. Greenwood Health Care Center, 9 Conn. Workers' Comp. Rev. Op. 266, 1062 CRD-1-90-6 (December 5, 1991).
Remanded as additional medical evidence offered is material and relevant and was not discoverable in the evidentiary proceedings below.

Sgambato v. Simkins Industries, Inc., 8 Conn. Workers' Comp. Rev. Op. 131, 825 CRD-3-89-2 (August 6, 1990).
CRD would not grant Motion to Present Additional Evidence where evidence was immaterial. See also, **Sgambato**, § 31-301. Factual findings, § 31-307.

Rogers v. Mitchell, 8 Conn. Workers' Comp. Rev. Op. 90, 803 CRD-7-88-12 (May 14, 1990).
Commissioner accorded considerable latitude in deciding Motions to Submit Additional Evidence. See also, **Rogers**, § 31-275(9). See, Spataro v. Mattioli Construction, infra.

Spataro v. Mattioli Construction, 8 Conn. Workers' Comp. Rev. Op. 41, 784 CRD-4-88-10 (February 21, 1990).
Motion to submit additional evidence denied where claimant failed to demonstrate materiality and was given prior opportunities to present evidence below. See also, **Spataro**, § 31-294d.

Kroczewski v. Old Fox Chemical, Inc., 8 Conn. Workers' Comp. Rev. Op. 13, 730 CRD-1-88-5 (January 5, 1990).
Failure to permit additional evidence was not an abuse of discretion where it is obvious the trial commissioner exhaustively reviewed the voluminous record. See also, **Kroczewski**, § 31-275(1).

Tanner v. Walgren Tree Experts, 6 Conn. Workers' Comp. Rev. Op. 129, 748 CRD-8-88-7 (March 27, 1989).
Motion To Submit Additional Evidence denied because the poor quality of the transcript could not be expected to make a difference in the result of the case.

Murdock v. Squires, 6 Conn. Workers' Comp. Rev. 64, 550 CRD-7-87 (December 1, 1988).
Affirmed trial commissioner's ruling denying motion to present additional evidence where evidence was not new or undiscoverable with due diligence at time of original hearing.

Lindholm v. Moscowitz, 6 Conn. Workers' Comp. Rev. Op. 7, 527 CRD-7-86 (August 18, 1988).
Affirmed trial commissioner's ruling denying Motion to Present Additional Evidence where the reason for failure to present it in earlier proceedings was a failure to appear due to a mistake as to the date of the hearing.

Brusca v. Color Tech, Inc., 3 Conn. Workers' Comp. Rev. Op. 81, 50 CRD-7-81 (November 6, 1986).
Commissioner is granted considerable discretion in decisions regarding Motions to Submit Additional Evidence, therefore under Administrative Regulation § 31-301-9 it was proper to deny claimant's motion.

Chapo v. Westport, 3 Conn. Workers' Comp. Rev. Op. 14, 170 CRD-4-82 (August 20, 1985).
Under Administrative Regulation § 31-301-9. Additional evidence will only be considered by the Compensation Review Division if material.

Woehrle v. Bridgeport, 2 Conn. Workers' Comp. Rev. Op. 35, 175 CRD-4-82 (October 4, 1983).
Claimant not permitted to present new evidence where more than a year had passed since decision and claimant had not indicated the nature of the new evidence.

Baker v. Colt Industries, 2 Conn. Workers' Comp. Rev. Op. 4, 106 CRD-1-81 (May 13, 1983).
Compensation Review Division refused to admit additional evidence.

Sec. 31-301b. Appeal of Decision of Compensation Review Board

Day v. Middletown, 16 Conn. Workers' Comp. Rev. Op. 200, 3264 CRB-8-96-2 (May 20, 1997), **appeal dismissed for lack of jurisdiction**, A.C. 17283 (September 17, 1997), **cert. granted**, 243 Conn. 939 (1997), **rev'd and remanded to appellate court**, 245 Conn. 437 (1998), **aff'd**, 59 Conn. App. 816 (2000), **cert. denied**, 254 Conn. 945 (2000).
Supreme Court ruled in Day v. Middletown, 245 Conn. 437 (1998), that the Appellate Court should not have dismissed the defendants appeal for lack of jurisdiction, as § 31-301b allows an attorney to appeal a decision reducing his fee. See also, **Day**, § 31-327.

Sec. 31-301c. Costs of Appeal. Interest added to award affirmed on appeal.

Prioli v. State/Connecticut State Library/Arts Commission, 3955 CRB-6-98-12 (October 16, 2000).
CRB denied claimant's counsel's Motion For Payments, which inaccurately cited applicable statute. Prior decision at Prioli, 3955 CRB-6-98-12 (January 13, 2000), aff'd, 64 Conn. App. 301 (2001), cert. denied**,** 258 Conn. 917 (2001), § 31-278, § 31-290a, § 31-301. Appeal procedure, § 31-301-9, § 31-315, § 31-327.

Yuille v. Bridgeport Hospital, 3735 CRB-4-97-12 (June 10, 1998).
Respondent, who was sanctioned by trial commissioner for undue delay and ordered to pay interest and attorney's fees, filed a frivolous appeal with the CRB that it withdrew the day before oral argument. CRB ruled that respondent was additionally liable for 10% interest per annum on all unpaid benefits through the date of the appellate decision, as well as attorney's fees associated with appeal. See also, **Yuille**, § 31-301. Appeal procedure, § 31-327. Subsequent decision at Yuille, 4525 CRB-4-02-5 (April 28, 2003).

Thaller v. Albert Philopena, Inc., 3477 CRB-8-96-11 (March 18, 1998).
Interest and $500 attorney's fee levied against Second Injury Fund where appeal was withdrawn after Fund failed to diligently pursue it.

Mulroy v. Becton Dickinson, 16 Conn. Workers' Comp. Rev. Op. 7, 2295 CRB-8-95-2 (October 2, 1996).
By a ruling on claimant's motion for reconsideration, the CRB ordered respondents to pay interest on the amount of the award unpaid during the pendency of the appeal at the rate prescribed in § 37-3a C.G.S. See also, Mulroy, 15 Conn. Workers' Comp. Rev. Op. 455, 2295 CRB-8-95-2 (September 6, 1996), aff'd, 48 Conn. App. 774 (1998), § 31-298 and § 31-301, Factual findings and later Mulroy, 4083 CRB-5-99-7 (September 29, 2000), § 31-349.

Dumont v. State/Southern Connecticut State University, 11 Conn. Workers' Comp. Rev. Op. 122, 1320 CRD-3-91-10 (June 16, 1993).
CRB granted interest at the rate permitted by statute on award affirmed on appeal and not paid during the pendency of the appeal. See also, **Dumont**, § 31-275(1) and § 31-306.

McConnell v. Hewitt Associates, 8 Conn. Workers' Comp. Rev. Op. 32, 764 CRD-7-88-8 (February 5, 1990).
Interest awarded pending appeal. See also, **McConnell**, § 31-294d, § 31-307.

Bernier v. Cunningham Reporting Associates, 5 Conn. Workers' Comp. Rev. Op. 137, 502 CRD-1-86 (July 15, 1988).
Interest awarded to claimant pursuant to § 31-301c.

Sec. 31-303. Day when compensation payments become due. Penalty for late payments.

Matey v. Dember, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), **appeal dismissed for failure to comply with Supreme Court's directive**, 85 Conn. App. 198 (2004).
Affirmed trier's finding that interest not due under this section as no order was issued against the Fund. See also, **Matey,** § 31-278, § 31-307, § 31-307a, § 31-300. See, Matey v. Dember, 256 Conn. 456 (2004).

Ruffino v. Middletown, 4508 CRB-8-02-3 (March 12, 2003).
See, **Ruffino**, § 7-433c.

Melendez v. Valley Metallurgical¸ 4178 CRB-2-00-1 (May 1, 2001), **appeal dismissed**, A.C. 23921 (May 14, 2003), **cert. denied**, 266 Conn. 904 (2003).
Section 31-303 did not apply to unduly delayed adjustment of benefits where there was no award, stipulation or voluntary agreement specifically requiring payment of such enumerated sums. See also, **Melendez**, § 31-278, § 31-298, § 31-300, and see May 24, 2001 ruling on motion to correct/articulate CRB decision in Melendez, § 31-301. Appeal procedure. Related decision in Melendez, 4178 CRB-2-00-1 (November 19, 2003), rev'd, 86 Conn. App. 880 (2005)(no jurisdiction to rule on motion to reopen CRB decision), § 31-301. Appeal procedure.

Schiano v. Bliss Exterminating Co., 4104 CRB-4-99-8 (February 21, 2001), **rev'd**, 260 Conn. 21 (2002).
Where original award ordered not only disability benefits for claimant, but interest and attorney's fees as well based on undue delay in payment of compensation, CRB reversed trier's ruling that penalty provision of § 31-303 did not apply to the portion of the award attributable to attorney's fees and interest. Statute does not purport to distinguish between disability payments due to claimant and payments awarded to others to whom fees are due for services provided to claimant, though panel questioned wisdom of such broad statutory language. Supreme Court reversed CRB's decision, holding that, despite plain language of § 31-303, its legislative history and other provisions of Act provide compelling evidence that legislature did not intend attorney's fees to be subject to § 31-303 penalty. See also **Schiano**, § 31-278, § 31-300. Prior decisions at Schiano, 3436 CRB-4-96-10 (April 8, 1998), and Schiano, 1852 CRB-4-93-9 (December 7, 1994), aff'd, 57 Conn. App. 406 (2000), both discussed at § 31-293 and, with regard to the

1994 CRB decision, § 31-301. Appeal procedure as well, and Schiano, 3315 CRB-4-96-4 (May 16, 1997), § 31-301. Appeal procedure.

Borici v. State/Southbury Training School, 3718 CRB-6-97-11 (January 14, 2000).
CRB affirmed trial commissioner's award of a twenty- percent penalty. Respondent argued that § 31-303 does not apply to a stipulation for a full and final settlement because § 31-303 refers only to a voluntary agreement or an award. This issue has recently been considered in Davis v. Forman School, 54 Conn. App. 841 (1999), where the Appellate Court held that § 31-303 applies to stipulations. Whether the claimant was prejudiced due to the late payment is not material. See also, **Borici**, § 31-297.

Waheed v. State/Dept. of Education, 3801 CRB-2-98-4 (January 13, 2000).
CRB affirmed trial commissioner's award of a twenty- percent penalty. Respondent argued that § 31-303 does not apply to a stipulation for a full and final settlement because § 31-303 refers only to a voluntary agreement or an award. This issue has recently been considered in Davis v. Forman School, 54 Conn. App. 841 (1999), where the Appellate Court held that § 31-303 applies to stipulations.

Casey v. Northeast Utilities, 3191 CRB-6-95-10 (June 17, 1998), **aff'd**, 249 Conn. 365 (1999).
CRB held that the trial commissioner properly issued a penalty against the Fund for failure to pay an award within ten days, as it would be unreasonable to construe the penalty provision of § 31-303 as applying only to employers and insurers. (*Wilson, C.*, **dissenting**) The twenty- percent penalty under § 31-303 for failure to make payments within ten days applies only to an employer or its insurer and does not apply to the Fund.

Davis v. The Forman School, 3026 CRB-5-95-3 (January 30, 1998), **aff'd**, 54 Conn. App. 841 (1999).
The trial commissioner assessed a five thousand dollar penalty against the insurer for its failure to pay an approved stipulation within ten days, pursuant to P.A. 93-228, § 14, which amended § 31-303 to allow for the imposition of a fine for failure to make payments within ten days following a voluntary agreement or award. The insurer contended that P.A. 93-228, § 14 may not be applied retroactively and that the provision does not apply to stipulations. The CRB affirmed the trial commissioner's decision, and held that P.A. 93-228, § 14 applies to stipulations which are approved on or after July 1, 1993, the effective date of the legislation. (*Wilson, C.,* **dissenting**) The penalty provision applies only to a voluntary agreement or an award, but does not apply to a stipulation.

Sec. 31-306. Dependents' compensation.

Stevenson v. Edward W. Stevenson & Sons, 4710 CRB-5-03-8 (December 17, 2004).
Dependent spouse sought § 31-306 benefits. Claim found untimely. See also, Stevenson, 4480 CRB-8-02-1 (January 3, 2003), See, **Stevenson,** § 31-294c(a).

Jacobson v. General Dynamics/Electric Boat Div., 4642 CRB-2-03-3 (March 12, 2004).
See, **Jacobson** § 31, 275(1)(D), § 31-299b, § 31-300, § 31-301. Factual findings, § 31-301-4.

Weymouth v. East Windsor-Police Department, 4550 CRB-1-02-7 (April 3, 2003).
CRB reversed trier's decision to ignore principle of stare decisis and hold that claimant widow was not entitled to continuation of group health insurance benefits pursuant to § 31-284b. Board reaffirmed importance of stare decisis, and reaffirmed holding of Sansone v. Enfield, 3885 CRB-1-98-9 (November 11, 1999), infra, with additional reasoning provided in support of its position. See also, **Weymouth**, § 31-284b.

Bartlett v. J.B. Williams Soap Factory, 4511 CRB-8-02-3 (March 3, 2003).
See, **Bartlett**, § 31-294c.

Bergeson v. New London/Police Dept., 4489 CRB-2-02-2 (February 21, 2003), **aff'd**, 269 Conn. 763 (2004).
See, **Bergeson**, § 7-433c (City cannot be reimbursed by Fund for COLAs paid to dependent widow where claim arose under § 7-433c).

Stevenson v. Edward W. Stevenson & Sons, 4480 CRB-8-02-1 (January 8, 2003).
See, **Stevenson,** § 31-294c; see also, **Stevenson**, § 31-301. Appeal procedure.

Cunningham v. Monroe Group, 4322 CRB-4-00-12 (December 20, 2001).
CRB affirmed trier's ruling that Second Injury Fund is required to reimburse respondents for all COLAs paid to claimants/dependents on account of decedent's March 23, 1997 injury. Board relied on its earlier analysis of COLA-restoration provision of § 31-307a(c).

Kuehl v. Z-Loda Systems Engineering, 4172 CRB-7-00-1 (July 12, 2001), **aff'd**, 265 Conn. 525 (2003).
Board affirmed trier's determination that claimant widow failed to file timely notice of her claim for benefits as required by § 31-294c. Board explained that § 31-306 claims require separate notice from original notice of claim for spouse's injury. See also, **Kuehl**, § 31-294c.

Wislocki v. Prospect, 4226 CRB-5-00-4 (July 5, 2001), **aff'd**, 72 Conn. App. 444 (2002), **cert. denied**, 262 Conn. 906 (2002).
CRB affirmed trier's ruling that surviving spouse who was not yet acquainted with decedent at time of compensable injury was not entitled to dependent's benefits under § 31-306 when he died years later from effects of that injury.

Collins v. Bridgeport, 4241 CRB-4-00-5 (June 21, 2001).
See, **Collins**, § 31-308(b).

Tardy v. Abington Constructors, 4105 CRB-2-99-8 (October 30, 2000), **aff'd**, 71 Conn. App. 140 (2002).
See, **Tardy**, § 31-294c.

Lesco v. Glass Crafters, 3915 CRB-3-98-10 (January 19, 2000).
See, **Lesco**, § 31-293.

Sansone v. Enfield, 3885 CRB-1-98-9 (November 18, 1999).
CRB affirmed trial commissioner's ruling that a survivor collecting dependent death benefits under § 31-306 is entitled to continued health insurance coverage under § 31-284b. Dispositive factor was intent behind § 31-284b, which is to maintain the income of employees who suffer work-related injuries, and the fact that dependents are also implicated as intended beneficiaries of § 31-284b. (*Frankl. C.,* **dissenting**) Humanitarian purpose of Workers' Compensation Act does not permit intentionally distorted readings of statute; benefits under § 31-306 are expressly set forth, and do not include § 31-284b coverage. See also, **Sansone**, § 31-298, § 31-284b.

Rutledge v. State/Dept. of Public Safety/State Police, 3831 CRB-2-9-5 (June 21, 1999), **aff'd**, 63 Conn. App. 370 (2001).
Trier correctly ruled that the COLA calculation formula set forth in Gil v. Courthouse One, 239 Conn. 676 (1997), applies to a widow who was entitled to the maximum compensation rate on account of the decedent's 1983 injury, through the July 1, 1998 effective date of Public Act 98-104.

Harbec v. Stone & Webster Engineering, 3628 CRB-8-97-6 (October 16, 1998).
See, **Harbec**, § 31-296. Subsequent decision at Harbec, 4308 CRB-8-00-10 (August 29, 2001), § 31-299b.

Belanger v. American Optical, 3353 CRB-1-96-5 (January 22, 1998).
Decedent developed mesothelioma in 1992, died in 1994. Dependent husband began receiving benefits, along with COLAs, in 1994 per trier's order. Respondents argued that dependent spouse's claim was separate, and that date of death should control entitlement to COLAs. CRB affirmed; statute specifically states that dependents receiving compensation based on "death arising from a compensable injury occurring on or after October 1, 1977, and before July 1, 1993" are entitled to COLAs. Language not ambiguous. Further, date of injury rule still functions as presumption of legislative intent within workers' compensation context.

Krampetz v. Uniroyal, Inc., 3310 CRB-5-96-3 (September 23, 1997).
Claimant had burden of proving she was a surviving dependent of decedent, but failed to offer direct proof of that fact. She failed to refute a notation on doctor's report stating that decedent lived alone and had separated from his wife. Although relatively weak evidence, trier was entitled to give it weight. See also, **Krampetz**, § 31-296.

Duni v. UTC/Pratt & Whitney, 14 Conn. Workers' Comp. Rev. Op. 137, 2052 CRB-1-94-5 (June 12, 1995), **aff'd**, 239 Conn. 19 (1996).
Stipulation provided for full settlement of "all claims due or to become due at any time in favor of anybody" arising out of decedent spouse's injuries; wife not party to settlement. Held, dependent death claim emanates from same injury that caused death despite difference in class of compensation awarded to dependents. Thus, such a claim can be terminated by settlement. Without a showing of fraud by parties to stipulation, or

further exposure to asbestos after date of settlement agreement, said agreement bars § 31-306 claim here.

Green v. General Dynamics Corporation/Electric Boat Division, 13 Conn. Workers' Comp. Rev. Op. 113, 1651 CRB-2-93-2 (January 31, 1995), **rev'd on other grounds**, 44 Conn. App. 112 (1996), **rev'd**, 245 Conn. 66 (1998).
Second Injury Fund not required under § 31-306(a)(2) to pay COLAs where injury occurred in 1989. Appellate Court reversed, as failure of decedent to earn any wages during the 26 weeks prior to his incapacity meant that he had no average weekly wage, and therefore dependent spouse was not entitled to benefits. Reversed by Supreme Court, which held that wage calculation should be based upon § 31-310c [Rev. to 1991], as that statute was intended by legislature to clarify a related statute. See also, **Green**, § 31-309, and § 31-310.

Conroy v. Keri Corporation, 12 Conn. Workers' Comp. Rev. Op. 321, 1534 CRB-3-92-10 (July 5, 1994).
Decedent's disabled son entitled to benefits as trier found son a presumptive dependent. See also, **Conroy**, § 31-275(1) and § 31-301. Factual findings.

Davis v. Norwich, 12 Conn. Workers' Comp. Rev. Op. 272, 1563 CRB-2-92-11 (June 2, 1994), **aff'd**, 232 Conn. 311 (1995).
See, **Davis**, § 31-349.

Wannagot v. Shelton, 12 Conn. Workers' Comp. Rev. Op. 256, 1512 CRB-4-92-9 (June 2, 1994), **aff'd**, 38 Conn. App. 754 (1995), **cert. denied**, 235 Conn. 919, 920 (1995).
Trier properly determined that claimant widow had been overpaid compensation benefits where benefits were paid at the maximum weekly compensation rate. Section 7-314a sets the average weekly earnings of the decedent as the average weekly earnings of production workers. Claimant widow was entitled to sixty-six and two thirds percent of the average production wage in effect on the date of her husband's heart attack which caused his death.

LaChance v. United Technologies Corp./Pratt & Whitney Division, 12 Conn. Workers' Comp. Rev. Op. 53, 1345 CRD-1-91-11 (January 27, 1994).
Where decedent's right to specific payments becomes vested during his lifetime, that portion of specific award allocable to the time period after death is payable to dependents or decedent's estate. CRB held trier erred in finding decedent's daughter the sole presumptive dependent as she was married, 25 years of age and no longer dependent on her father at the time of his death. CRB therefore modified trier's decision to require vested unpaid specific to be paid to decedent's estate.

McNulty v. Stamford, 12 Conn. Workers' Comp. Rev. Op. 32, 1332 CRD-7-91-10 (January 26, 1994), **rev'd**, 37 Conn. App. 835 (1995).
CRB reversed trier's finding that dependent widow was only entitled to cost of living adjustments from the date of decedent's death. CRB held dependent widow is entitled to cost of living adjustments from the date of decedent's injury/disease. Further, based on

the amendments of § 31-306 as provided in P.A. 92-31 the waiting period provided in § 31-306(1) as it existed at the time of decedent's injury is inapplicable and the claimant is entitled to the four thousand dollar burial expense. Trier's finding that claimant was to reimburse the employer for the payment of four thousand dollars reversed. See also, **McNulty**, § 31-301. Appeal procedure, § 31-301-9. Additional evidence, § 7-433c (where appellate court reversed CRB and held that the second injury fund was not liable to municipalities for payments pursuant to § 7-433c).

Bush v. Quality Bakers of America, 12 Conn. Workers' Comp. Rev. Op. 24, 1412 CRB-7-92-4 (January 13, 1994).
Retroactive reimbursement through the second injury fund authorized by § 31-306(b) inapplicable where dependent widow was entitled to and received benefits immediately following spouse's death as injury and death occurred on the same day.

Capen v. General Dynamics Corporation/Electric Boat Division, 11 Conn. Workers' Comp. Rev. Op. 326, 1394 CRB-2-92-3 (December 30, 1993), **aff'd**, 38 Conn. App. 73 (1995).
See, **Capen**, § 31-294c, § 31-299b.

Deremer v. General Dynamics Corporation/Electric Boat Division, 11 Conn. Workers' Comp. Rev. Op. 317, 1375 CRB-2-92-1 (December 23, 1993).
Maximum compensation rate received by dependent widow is the rate in effect on the date of decedent's first incapacity not the maximum in effect at the date of decedent's last employment. See also, **Deremer**, § 31-309.

Maloney v. Russell Manufacturing Co., 11 Conn. Workers' Comp. Rev. Op. 313, 1371 CRB-8-92-1 (December 23, 1993).
Trier's finding that decedent's wife was regularly receiving support thereby satisfying statutory requirements of § 31-306 will not be disturbed on appeal. See also, **Maloney**, § 31-307.

Dumont v. State/Southern Connecticut State University, 11 Conn. Workers' Comp. Rev. Op. 122, 1320 CRD-3-91-10 (June 16, 1993).
Trier's award to dependent widow for benefits pursuant to § 31-306 affirmed. Trier found based on medical evidence, that decedent, a French professor, who while leading a study tour in Europe, suffered a fatal heart attack caused by stress and physical activity. Trier's conclusion that decedent's death arose out of and in the course of employment will not be disturbed as medical testimony refers to the standard of reasonable medical probability. See also, **Dumont**, § 31-275(1) and § 31-301c(b).

Daly v. Sikorsky Aircraft/UTC, 10 Conn. Workers' Comp. Rev. Op. 47, 1104 CRD-4-90-9 (January 29, 1992).
Benefits to surviving dependent children are governed by the law as it existed at the time of injury. Section 31-306 did not provide for benefits to dependent children after reaching eighteen at the time of decedent's injury. Therefore, the CRB affirmed trier's ruling dismissing claimant's claim for continued benefits until age twenty-two.

Mancini v. A. Laugeni & Son, Inc., 9 Conn. Workers' Comp. Rev. Op. 45, 739 CRD-5-88-6 (February 4, 1991).
Factual finding claimant is a dependent in fact will not be disturbed on appeal where evidence supports trier's conclusion. See also, **Mancini**, § 31-301. Appeal procedure.

McCurdy v. State, 9 Conn. Workers' Comp. Rev. Op. 22, 887 CRD-4-89-6 (January 10, 1991), **aff'd**, 26 Conn. App. 466 (1992), **rev'd**, 227 Conn. 261 (1993).
Trier's finding that widow was neither a presumptive dependent nor a dependent in fact was a factual finding which will not be disturbed on appeal. Supreme Court reversed CRB and held that the estate was entitled to the payment of specific benefits although at the time of decedent's death, due to unrelated causes, he was receiving temporary total benefits. See also, **McCurdy**, § 31-295, § 31-308(b).

Ancona v. Norwalk, 8 Conn. Workers' Comp. Rev. Op. 49, 810 CRD-7-89-1 (February 26, 1990), **aff'd**, 217 Conn. 50 (1991).
See, Kachaluba v. Greenwich, 8 Conn. Workers' Comp. Rev. Op. 46, 766 CRD-7-88-9 (February 26, 1990), aff'd, 217 Conn. 50 (1991).

Kachaluba v. Greenwich, 8 Conn. Workers' Comp. Rev. Op. 46, 766 CRD-7-88-9 (February 26, 1990), **aff'd**, 217 Conn. 50 (1991).
Survivor's benefits pursuant to § 31-306 and balance of decedent's § 31-308(d) permanent partial award cannot be paid concurrently. Rossomondo v. Ridgewood Nurseries, 7 Conn. Workers' Comp. Rev. Op. 89, 846 CRD-3-89-4 (October 3, 1989). Spousal benefits calculated from date of injury not date of death. See also, Rossomondo, § 31-349.

Simpson v. Northeast Utilities, 5 Conn. Workers' Comp. Rev. Op. 135, 510 CRD-2-86 (July 12, 1988).
Trial commissioner's finding that claimant did not receive regular support from estranged husband was a factual finding which would not be disturbed on appeal.

Maher v. State, 5 Conn. Workers' Comp. Rev. Op. 19, 374 CRD-4-85 (March 24, 1988).
Claim not time barred as it was the claim of the dependent widow and not of deceased employee.

Brown v. Charles of Vienna, Inc., 4 Conn. Workers' Comp. Rev. Op. 152, 462 CRD-2-86 (February 16, 1988).
Appeal dismissed for failure to prosecute.

Iacomacci v. Trumbull, 4 Conn. Workers' Comp. Rev. Op. 126, 351 CRD-4-84 (November 19, 1987), **no error**, 209 Conn. 219 (1988).
Amendment of § 31-306(i) eliminating waiting period for widowed benefits could not be applied retroactively.

Collier v. Milford, 3 Conn. Workers' Comp. Rev. Op. 121, 261 CRD-3-83 (December 23, 1986), **no error**, 206 Conn. 242 (1988).
Although claimant and decedent made annual trips to states that recognize common law marriage, their relationship was contracted in Connecticut, the state of their domicile which does not recognize common law marriages. No benefits awarded.

Sec. 31-307. Total disability and occupational disease.

Horobin v. West Haven, 4724 CRB-3-03-9 (December 2, 2004).
Sufficient evidence existed to support finding of continuing total disability. No specific cutoff date was prescribed in doctor's report, which stated that gradual return-to-work plan should be implemented "when appropriate." See, **Horobin**, § 31-296. Voluntary agreements (approval of), § 31-300, § 31-301. Appeal procedure; § 31-301. Factual findings; § 31-349. See also, **Horobin**, § 31-298.

Hummel v. Marten Transport, LTD., 4760 CRB-5-03-12 (November 19, 2004).
CRB remanded case to trier for consideration of whether offset applies to widow's benefits. Prior decision at Hummel, 4667 CRB-5-03-5 (May 3, 2004). See also, **Hummel**, § 31-301(f).

Moran v. Southern Connecticut State University, 4735 CRB-5-03-10 (September 9, 2004).
CRB affirmed trial commissioner's determination claimant was not totally disabled during a particular period where the only medical opinion regarding such was tentative.

Pasquariello v. Stop & Shop Companies, Inc., 4730 CRB-7-03-9 (September 3, 2004).
CRB found § 31-307(e) offset could not be waived under any circumstance.

Calabro v. Northeast Graphics, Inc., 4707 CRB-3-03-8 (July 27, 2004).
CRB remanded award of temporary total disability benefits for lack of requisite factual basis. See also, **Calabro**, § 31-300.

Bidoae v. Hartford Golf Club, 4693 CRB-6-03-7 (June 23, 2004).
Trial commissioner makes the determination whether claimant met burden of proving eligibility for § 31-307 benefits. See also, **Bidoae** § 31-301. Appeal procedure. Prior decision at Bidoae, 4424 CRB-6-01-8 (June 27, 2002).

Garcia v. Complete Change Landscaping Tree Removal, 4670 CRB-5-03-5 (May 3, 2004).
The claimant lost the tip of his small finger and severed the tendon on his ring finger on his non-master hand while operating a wood chipper. The Second Injury Fund appealed claiming the trier's temporary total award from September 11, 2001 through December 31, 2001 was without evidentiary support. CRB noted the trier could have reasonably inferred from the medical evidence that claimant was totally disabled for the period of the trier's award. See also, **Garcia**, § 31-308(b).

Schenkel v. Richard Chevrolet, Inc., 4639 CRB-8-03-3 (March 12, 2004).
Medical evidence supported cessation of temporary total disability benefits. Trier not required to rely on claimant's testimony. With regard to permanent total disability, no evidence in record suggested that claimant suffered from incurable imbecility or mental illness, so CRB declined to address argument further. See also, **Schenkel**, § 31-294d, § 31-295(c), § 31-301. Factual findings, § 31-308(b), **Schenkel**, § 31-349.

Fiorillo v. Bridgeport, 4585 CRB-4-02-11 (December 17, 2003), **appeal dismissed for lack of a final judgment**, A.C. 24991 (May 5, 2004).
See, **Fiorillo**, § 31-301. Factual findings. See also, **Fiorillo**, § 31-298, § 31-301-4, § 31-307a. Prior decision at Fiorillo, 4337 CRB-4-01-1 (November 19, 2001), vacated, S.C. 16736 (December 16, 2002).

Murray v. Mass Mutual Life Ins. Co., 4590 CRB-1-02-11 (November 20, 2003).
Existence of total disability is a question of fact. Trier was not required to accept opinion of vocational rehabilitation specialist that claimant was completely unemployable given competitive nature of job market, thereby establishing total disability pursuant to Osterlund v. State, 135 Conn. 498 (1949). Respondents' witness, also a vocational specialist, opined claimant was employable despite physical limitations and limited cognitive/educational skills. See also, **Murray**, § 31-294d, § 31-296. Voluntary agreements (discontinuance of payments), § 31-300, § 31-301. Factual findings, § 31-308(a).

Fantasia v. Milford Fastening Systems, 4574 CRB-4-02-9 (September 30, 2003), **rev'd**, 86 Conn. App. 270 (2004), **cert. denied**, 272 Conn. 919 (2005).
CRB affirmed trier's award of temporary total benefits following remand directive in Fantasia v. Milford Fastening Systems, 4332 CRB-4-00-12 (January 15, 2002). Appellate court reversed on ground that trier failed to properly follow remand directive. See **Fantasia**, § 31-301, Factual findings; see also prior decision at Fantasia, § 31-301. Factual findings; infra.

Simotas v. Norwalk Hospital, 4530 CRB-7-02-5 (May 20, 2003).
CRB affirmed trier's finding claimant was no longer totally disabled, but remanded for finding as to when claimant's entitlement to temporary total disability should cease. See also, **Simotas**, § 31-300.

Matey v. Dember, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), **appeal dismissed for failure to comply with Supreme Court's directive**, 85 Conn. App. 198 (2004).
Affirmed trier's finding that claimant was totally disabled for period of July 1, 1995 through December 31, 2001. Also affirmed Commissioner's finding that claimant was totally disabled until a specific date. Setting a finite date not improper as claimant did not meet the statutory criteria for permanent total disability nor does it offend claimant's rights under § 31-296. See also, **Matey**, § 31-278, § 31-307a, § 31-300, § 31-303. See, Matey v. Dember, 256 Conn. 456 (2004).

Milliot v. Yale University, 4527 CRB-3-02-5 (May 14, 2003).
Trier found claimant totally disabled through 10/9/00. Medical progress reports prepared by treating physician kept claimant out of work until 10/9/00; however, doctor subsequently explained that claimant was medically able to perform light duty work as of 9/1/00. CRB affirmed trier's finding. Claimant should not be faulted for following contemporaneous recommendations of treating physician, evidence existed in record to support finding of total disability, and there was no evidence that claimant was either offered light duty work or told that such work might be available to him while broken arm was recuperating. See also, **Milliot**, § 31-300.

Bailey v. Willimantic Dodge/Nissan, 4516 CRB-2-02-4 (May 8, 2003).
Claimant sustained compensable hip injury. Prior total disability claim was denied through May 9, 1995 formal hearing. Respondents herein sought to preclude claimant from pursuing subsequent total disability claim from May 10, 1995 forward. Trier denied motion to dismiss claim that alleged res judicata, and denied motion to preclude introduction of evidence that was allegedly based on reports considered at prior hearings. CRB affirmed. Total disability is matter of continuing proof, and commissioner retains jurisdiction to consider whether compensable injury has caused subsequent periods of disability, absent full and final settlement of that claim. Res judicata does not apply, though under collateral estoppel doctrine, earlier factual findings may have some preclusive effect in later action. See also, **Bailey**, § 31-298. See prior decisions at Bailey v. Stripling Auto Sales, Inc., 3461 CRB-3-96-11 (April 9, 1998), § 31-315 ; Bailey, 15 Conn. Workers' Comp. Rev. Op. 369, 3095 CRB-2-95-6 (June 28, 1996), § 31-278, § 31-298, § 31-301-9.

Yuille v. Bridgeport Hospital, 4525 CRB-4-02-5 (April 28, 2003).
Trier awarded claimant COLAs based upon conclusion that she had experienced five years of total disability. CRB reversed and remanded, as said conclusion was not supported by findings of fact. Medical evidence did not clearly establish long periods of disability prior to surgery, and trier did not explain his interpretation of that evidence, nor did he discuss interplay of claimant's testimony and separate record of total disability payments introduced as exhibit. See also, **Yuille**, § 31-301. Appeal procedure, § 31-307a. Prior decision at Yuille, 3735 CRB-4-97-12 (June 10, 1998), § 31-301. Appeal procedure, § 31-301c, § 31-327.

Hansen v. State, 4531 CRB-5-02-5 (March 25, 2003).
CRB affirmed trial commissioner's ruling that the claimant had a work capacity and thus, the Form 36 was appropriately approved and claimant was not totally disabled. See also, **Hansen,** § 31-296.

Papa v. Jeffrey Norton Publishers, Inc., 4486 CRB-3-02-1 (February 25, 2003).
Medical evidence supported trier's finding of total disability from March 1999 through present, even though treating physician did not address issue of work capacity until 2000 and 2001. No error for trier to award ongoing benefits beyond date of formal hearing, as evidence indicated claimant's condition was unchanging. Respondents and treating physician have duty to monitor claimant's condition, and respondents may challenge benefits paid beyond date of last formal hearing by filing Form 36 if reasonable ground

exists to contest claim for ongoing disability. See also, **Papa**, § 31-296. Voluntary agreements (discontinuance of payments), § 31-301. Factual findings, § 31-301-9.

Avila v. Parcel Port, 4481 CRB-3-02-1 (February 13, 2003).
CRB remanded case for trier to determine total disability through date of June 2001 formal hearing, where trier had originally ordered that total disability after November 2000 be the subject of additional medical opinions by treating physician, presumably due to lack of evidence in record. See also, **Avila**, § 31-301. Factual findings.

Regan v. Torrington, 4456 CRB-5-01-11 (October 25, 2002).
Claimant was entitled to total disability award, as trier properly addressed issue. Jurisdictional argument over "sick time" reimbursement implicitly involved total disability finding, and parties seemed to assume that claimant lacked a work capacity at time trial briefs were submitted. Given absence of strict pleading rules, the listing of various issues in hearing notices that bespoke recognition of entitlement to total disability compensation allowed trier to make such an award. See also, **Regan**, § 31-278, § 31-300.

Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002).
CRB explained for benefit of pro se claimant that she was not entitled to total disability benefits during period of time where she worked light duty hours and received wage differential benefits under § 31-308(a), regardless of her belief that, in hindsight, doctor might have better served her medical needs by declaring her totally disabled. See also, **Duddy**, § 31-296. Voluntary agreements (discontinuance of payments); § 31-298; § 31-301. Factual findings.

Arcano v. Stamford/ Board of Education, 4447 CRB-7-01-10 (October 10, 2002), **aff'd**, 81 Conn. App. 761 (2004).
CRB affirmed trial commissioner's finding as to claimant's period of total disability due to cerebral vascular accident. CRB also affirmed amount of attorney's fee award for undue delay. See also, **Arcano**, § 31-300, § 31-301. Factual findings.

Figueiredo v. Barridon Corp., 4442 CRB-1-01-9 (August 16, 2002).
Trier could disregard vocational report of Easter Seals, to whom claimant had been sent by Division of Workers' Rehabilitation, without explaining why he was doing so. Just as a trier may disregard a § 31-294f examiner's report, trier here was entitled to instead credit reports by physician and vocational rehabilitation specialist that identified jobs that the claimant was able to perform despite his severe master hand injury. Ultimately, claimant failed to meet his burden of proof, as CRB cannot undo trier's fact-finding discretion.

Prescott v. Community Health Center, Inc., 4426 CRB-8-01-8 (August 23, 2002).
Trier found claimant totally disabled from effective date of her resignation of employment, rather than date of injury. Though doctors pronounced her totally disabled, claimant in fact performed work from her home, for which she was paid, through date of resignation. CRB agreed that claimant who is performing job duties is not totally

disabled from that job. See also, **Prescott**, § 31-300, § 31-301. Factual findings, § 31-310.

Devanney v. Woodcock Refrigeration Co., 4403 CRB-8-01-6 (July 29, 2002).
Affirmance of finding that heel and ankle injuries left claimant totally disabled, based on medical condition and report of vocational specialist. No need for work searches given his pain level and functional restrictions. Finding of permanent total disability pursuant to § 31-307(c)(2) reversed, as claimant retained limited use of his feet.

Covaleski v. Casual Corner, 4419 CRB-1-01-7 (June 27, 2002).
CRB affirmed trier's ruling that mentally retarded sufferer of cerebral palsy with compensable hip injury was totally disabled, even though he was able to perform piece work at rehabilitation center. CRB distinguished fitness for light duty job in competitive job market from participation in rehabilitative workshop that offers social and counseling opportunities to mentally retarded clients, while also allowing them to do piece work for fraction of minimum wage. Trier was entitled to conclude that claimant had no true earning capacity. See also, **Covaleski**, § 31-294d, § 31-296. Voluntary agreements (discontinuance of payments).

Fuessenich v. State/Dept. of Public Safety/State Police, 4416 CRB-1-01-7 (June 21, 2002).
No error in finding that heart attack victim who returned to work after three months of recovery and rehabilitation was entitled to total disability benefits until the day he was cleared by doctor to return to full duty. Trier need not apply hindsight by reasoning that claimant must have been capable of light duty work for at least a few weeks before returning to state trooper duties. See also, **Fuessenich**, § 29-4a, § 31-308(b).

Esposito v. Waldbaum's, Inc., 4333 CRB-3-00-12 (February 28, 2002), **aff'd**, 78 Conn. App. 472 (2003).
CRB affirmed ruling that Social Security offset provision of § 31-307(e) does not apply where claimant's date of injury was before July 1, 1993 effective date of statute, irrespective of when a given disability period began. Section 31-307(e) made substantive change in law, and neither statute nor its legislative history contains anything that would rebut presumption of § 55-3 C.G.S. that such a statute applies only prospectively.

Carlson v. Bic Corporation, 4364 CRB-3-01-2 (January 29, 2002).
Board affirmed trier's award of § 31-307 benefits despite respondents' argument on appeal that videotape showed claimant to be less disabled than she presented herself as being. Trier specifically addressed videotapes, including findings that two doctors viewed said tapes and did not alter opinion that claimant was totally disabled. Also, respondents argued it was improper to award total disability benefits beyond date of last formal hearing. Board explained that trier may award ongoing benefits, and set forth its legal reasoning.

Fantasia v. Milford Fastening Systems, 4332 CRB-4-00-12 (January 15, 2002).
Board remanded case to trier for articulation where trier did not award total disability benefits despite finding persuasive a § 31-294f examiner's opinion stating that claimant

was temporarily totally disabled. See also, **Fantasia**, § 31-301. Factual findings. See subsequent decision at Fantasia, 4574 CRB-4-02-9 (September 30, 2003)**,** rev'd, 86 Conn. App. 270 (2004), cert. denied, 272 Conn. 919 (2005). § 31-301. Factual findings, § 31-307.

Fusciello v. Ronnie Demeo, Inc., 4340 CRB-6-01-1 (January 7, 2002).
See, **Fusciello**, § 31-301. Factual findings. Prior decisions at Fusciello, 3406 CRB-8-96-8 (February 4, 1998), § 31-301. Appeal procedure, § 31-307; Fusciello, 12 Conn. Workers' Comp. Rev. Op. 283, 1535 CRB-6-92-10 (June 7, 1994), § 31-275(1), § 31-275(16), § 31-307.

Greene v. UTC/Pratt & Whitney, 4312 CRB-8-00-11 (November 7, 2001).
Board affirmed trier's finding that claimant was not temporarily totally disabled where treating physician opined that she was physically capable of light duty employment.

Rayhall v. Akim Co., Inc., 4321 CRB-2-00-12 (November 5, 2001), **aff'd**, 263 Conn. 328 (2003).
See, **Rayhall**, § 31-278 (CRB unable to review constitutionality of § 31-307(e)), § 31-295, § 31-298, § 31-308(b).

LaPierre v. UTC/Pratt & Whitney, 4305 CRB-8-00-10 (October 23, 2001).
Board affirmed trier's award of four weeks of temporary total disability benefits. Claimant argued that she was not told by treater that she was released to light duty work. Trier's determination was supported by deposition testimony of treater, and thus board affirmed said ruling. See also, **LaPierre**, § 31-296, § 31-308(a).

D'Amico v. State/Department of Correction, 4287 CRB-5-00-9 (August 3, 2001), **aff'd**, 73 Conn. App. 718 (2002), **cert. denied**, 262 Conn. 933 (2003).
CRB affirmed trier's dismissal of claim for total disability benefits, as trier was not bound to credit opinions of physicians who thought him totally disabled. Burden of proof remained on claimant to persuade trier that his evidence was credible. See also, **D'Amico**, § 31-301-9. Prior decision at D'Amico, 4029 CRB-5-99-4 (May 18, 2000), § 31-294d.

Laliberte v. United Security, 4264 CRB-5-00-7 (July 26, 2001), **aff'd**, 261 Conn. 181 (2002).
CRB affirmed trier's ruling that, absent specific statutory permission to suspend benefits, incarcerated claimant remained entitled to receive total disability benefits as long as he can prove continuing absence of work capacity via medical evidence. Lengthy decision; nature of total disability benefits and other states' decisions discussed in-depth. (*Mastropietro, Ch.,* **dissenting**) (Claimant was incarcerated for voluntary act; thus, he has removed himself from labor marketplace. With no work legally available for him anywhere, claimant cannot be deemed "totally disabled" from any given job. Situation of illegal alien distinguished.)

Audi v. Blakeslee Arpaia Chapman, 4234 CRB-3-00-5, 4151 CRB-3-99-11 (June 26, 2001).
See, **Audi**, § 31-298 (insufficient notice that total disability at issue); § 31-301-9, § 31-315, § 31-296 voluntary agreements (discontinuance of payments). See prior decision Audi, 3418 CRB-3-96-9 (August 4, 1997), § 31-349. Subsequent decision Audi, 4311 CRB-3-00-10, 4624 CRB-3-03-2 (February 10, 2004), § 31-278, § 31-284(b), § 31-288, § 31-300.

Calderoni v. B & T Contractors, 4207 CRB-5-00-3 (May 4, 2001).
Affirmance of trier's conclusion that claimant was not totally disabled. Trier had incorporated findings and conclusions of prior decision (which had not been appealed) into his decision. Previous conclusion was that claimant's work-related injuries were not substantial cause of inability to work. Subsequently, trier in instant case reviewed evidence, and concluded that claimant had failed to sustain burden of proving a substantial change in medical condition with regard to his compensable injuries.

Donaldson v. Duhaime, 4213 CRB-6-00-3 (April 30, 2001).
See, **Donaldson**, § 31-294d, § 31-298, § 31-301. Factual findings (trier not bound to find claimant permanently disabled due to incurable mental illness).

Azzarito v. State/Office of the County Sheriff, 4173 CRB-7-00-1 (April 26, 2001).
Nine-month gap in claimant's visits to treating physician did not prevent trier from finding total disability during that span of time. Trier was entitled to credit doctor's opinion that claimant's condition had not changed based on doctor's familiarity with claimant's symptoms and history, along with claimant's own testimony regarding his reasons for not returning promptly to treat.

Wierzbicki v. Federal Reserve Bank of Boston, 4147 CRB-1-99-11 (December 19, 2000).
No error in trial commissioner's denial of total disability benefits, as he was not persuaded by claimant's evidence due to inconsistencies in doctor's testimony. See also, **Wierzbicki**, § 31-294c, § 31-300.

Vetre v. State/Dept. of Children and Families, 3443 CRB-6-98-12 (November 28, 2000).
CRB affirmed trial commissioner's finding that claimant was totally disabled on account of knee injury. Medical evidence in record strongly supported that conclusion, even though no discussion of the matter occurred on the record at trial. CRB ruled that disability issue was subsumed within more general question of compensability of psychiatric condition that allegedly stemmed from accepted knee injury. See also, **Vetre**, § 31-297, § 31-298, § 31-300. Prior decisions at Vetre, 3948 CRB-6-98-12 (February 14, 2000), § 31-298, § 31-301. Appeal procedure, and Vetre, 3443 CRB-6-96-10 (January 16, 1998), § 31-298. Subsequent decisions at Vetre, 4378 CRB-6-01-4 (March 14, 2002), Vetre, 4728 CRB-6-03-9 (October 8, 2003).

Brown v. State/Dept. of Mental Health & Addiction Services, 4053 CRB-2-99-5 (July 27, 2000), **aff'd**, 66 Conn. App. 882 (2001)(per curiam), **cert. denied**, 259 Conn. 913 (2002).
Record offered sufficient support for early portion of total disability award, as trier had discretion to rely on a particular doctor's office notes. However, that one-time diagnosis could not sustain four-plus years of total disability, which is a matter of continuing proof. Lack of updated medical reports required CRB to reverse the majority of the award. CRB found no error in trier's award of benefits dating back to February 1994, where a formal hearing was held in December 1994 on a previous total disability claim. Transcripts, prior award supported trier's determination that the scope of the previous hearing only concerned total disability through date of October 1992 Form 36. Trier may expand scope of hearing to include total incapacity through present date, but he is not required to do so where parties agree to limit issues. See also, **Brown**, § 31-298; § 31-296 Voluntary agreements (discontinuance of payments). Prior decision at Brown, 3100 CRB-2-95-6 (December 23, 1996), § 31-296 Voluntary agreements (discontinuance of payments), see also, **Brown** ,§ 31-298.

Gagliardi v. Raimondo Maintenance, LLC., 4012 CRB-1-99-4 (July 20, 2000).
CRB remanded award of temporary total disability benefits to trial commissioner for clarification where the claimant admitted during his testimony that he returned to work during this period. Medical reports were unclear regarding his disability status, and appeared to indicate that the claimant was partially disabled rather than totally disabled. See also, **Gagliardi**, § 31-301. Factual findings. Subsequent decision at Gagliardi, 4496 CRB-2-02-2 (February 27, 2003), aff'd, 82 Conn. App. 905 (2004)(per curiam).

Agosto v. Bridgeport, 3967 CRB-4-99-1 (April 12, 2000).
Board affirmed trial commissioner's finding that claimant continued to be temporarily totally disabled due to her numerous physical restrictions, her need to lie down during the day, and her narcotic pain medication. Trier further found that claimant had a restricted employment history, and had been out of the work force for sixteen years. See also, **Agosto**, § 31-294f.

Wlodyka v. First National Stores, 4025 CRB-2-99-4 (March 15, 2000).
CRB affirmed trial commissioner's conclusion that claimant did not meet her burden of proof regarding her claim that she had been totally disabled since 1960. See also, **Wlodyka**, § 31-298.

Draughn v. Wallace International Silversmith, 3917 CRB-3-98-10 (January 20, 2000).
CRB affirmed trier's conclusion that claimant was no longer totally disabled. Although two physicians testified that he was totally disabled, it was within the discretion of the trier to rely upon the opinion of the physician who testified with reasonable medical probability that the claimant had a work capacity. Prior decision at Draughn, 14 Conn. Workers' Comp. Rev. Op. 374, 2290 CRB-3-93-11 (October 4, 1995), aff'd, 42 Conn. App. 910 (1996)(per curiam), § 31-301. Appeal procedure.

Karnane v. Saks Fifth Avenue, 3918 CRB-7-98-10 (January 7, 2000).
CRB affirmed trier's finding that claimant was temporarily totally disabled after reaching maximum medical improvement. CRB remanded matter to trial commissioner for an order reducing the payment of benefits in accordance with § 31-307(e), which requires that compensation paid to an employee for total incapacity be reduced while he is entitled to receive old age insurance benefits pursuant to the federal Social Security Act. Subsequent decision at Karnane, 3947 CRB-7-98-12 (November 7, 2000), aff'd, 67 Conn. App. 385 (2001), § 31-349, Karnane, 4214 CRB-7-00-3 (March 29, 2001), § 31-349.

Bailey v. State/Greater Hartford Community College, 3922 CRB-2-98-10 (November 30, 1999), **aff'd in part, rev'd in part**, 65 Conn. App. 592 (2001).
Trier found claimant was totally disabled from date of her 1991 mental stress injury through January 1994. Respondent argued on appeal that the record did not support his conclusion, as claimant attended school and student-taught during that time. CRB affirmed finding of total disability; claimant's ability to achieve academic goals and accept certain responsibilities was not solely determinative of work capacity. Psychiatric difficulties left claimant without the autonomy of a normal adult, and there was evidence to indicate that claimant was not prepared to cope with the pressure of returning to the workplace. Claimant's request for benefits from employer's "sick leave bank" was not an admission that her disability was not work-related, and it was unclear that the trier had jurisdiction over the issue of reimbursement given the lack of evidence regarding claimant's union contract, its ancillary nature to the issue of disability, and the limited nature of the proceedings, which were held pursuant to a remand. Prior decision at Bailey, 15 Conn. Workers' Comp. Rev. Op. 433, 3152 CRB-5-95-8 (September 3, 1996), § 31-301. Appeal procedure, § 31-301. Factual findings. Trier's award of § 31-284b insurance benefits and medical bills was affirmed, however, as entitlement to those benefits was part of her total disability status; no further proof was needed. See also, **Bailey**, § 31-300, § 31-284b, § 31-294b, § 31-301. Factual findings. Prior decision at Bailey, 3694 CRB-1-97-9 (January 12, 1999), aff'd in part, rev'd in part, 65 Conn. App. 592 (2001), § 31-298, § 31-301. Appeal procedure.

Murray v. Black Tie Limousine, 3899 CRB-3-98-9 (November 4, 1999).
CRB affirmed trier's decision that respondent was temporarily totally disabled due to a compensable injury. Board noted that the medical evidence presented by the claimant was "not extremely enlightening" regarding his fitness for any type of reasonable employment. However, respondents presented no evidence to the contrary. Record sufficed to support trier's decision. See also, **Murray**, § 31-275(9), § 31-294d. Prior decision at Murray, 3306 CRB-3-96-3 (August 21, 1997), § 31-315.

Garcia v. Legare Plumbing & Heat, 3856 CRB-2-98-7 (September 23, 1999).
CRB affirmed trier's decision claimant was totally disabled for 14-month period in 1994-95. Though neither of the doctors relied upon by the trier directly addressed the period of total disability, it was reasonable to extrapolate from their testimony that claimant suffered from severe, disabling headaches that occurred frequently, and that his right arm injury was severe enough to prevent him from obtaining employment.

Claimant, who suffered memory problems due to head injury, testified uncertainly that he thought he had worked during some of the total disability period, but trier was not required to rely on that testimony. See also, **Garcia**, § 31-308(b).

Trimachi v. State/ Workers' Compensation Commission, 3749 CRB-1-97-12 (August 25, 1999).
CRB affirmed trier's denial of temporary total disability. Where medical evidence is conflicting, decision is one of fact for trial commissioner. See also, **Trimachi**, § 31-294d, § 31-279(c).

Krevis v. Bridgeport, 3857 CRB-4-98-7 (August 18, 1999), **aff'd**, 63 Conn. App. 328 (2001).
Claimant argued that respondent should be estopped from contesting total disability claim, because respondent obtained waiver of claimant's life insurance premium from the carrier on the ground the claimant was totally disabled under the contract. Trier found that the standards of disability were different, and dismissed that argument. CRB affirmed. It was not patently unreasonable for the respondent to take differing positions regarding total disability where the definition of total disability was less stringent under the insurance contract. Further, claimant did not show that he detrimentally relied on the respondents' position regarding total disability. See also, **Krevis**, § 7-433c, § 31-301. Appeal procedure, § 31-301. Factual findings.

Dengler v. Special Attention Health Services, 3780 CRB-3-98-2 (June 15, 1999), **aff'd**, 62 Conn. App. 440 (2001).
Award of total disability benefits beyond February 16, 1997 was undone where CRB reversed finding that February 1997 broken leg was related to compensable back injury of August 1996, and there was no /medical evidence that the back injury played a part in any disability after that date. See also, **Dengler**, § 31-301. Factual findings, § 31-348.

Aquino v. Clairol, Inc., 3802 CRB-7-98-4 (March 3, 1999).
Respondents contended that claimant's total disability was caused by her pre-existing hip and left leg condition rather than by the injuries sustained during a compensable fall at work. Board affirmed trier's conclusion that claimant's total disability was caused by the compensable fall, as this was a factual issue and was supported by the record and by the findings of fact. Prior decision at Aquino, 3527 CRB-7-97-1 (September 17, 1997), § 31-301. Appeal procedure.

Rhodes v. Bourdon Forge Company, Inc., 3720 CRB-2-97-11, 3650 CRB-2-97-7 (October 13, 1998).
CRB affirmed the trial commissioner's conclusion that the claimant's temporary total disability ceased on August 18, 1996, and that his temporary partial disability ceased on October 1, 1996. Determination of the claimant's periods of disability was dependent upon the weight and credibility of the testimony, including medical evidence, and thus was a matter for the trier as the finder of fact. See also, **Rhodes**, § 31-308(a).

Cooper v. Storer Communications, 3671 CRB-2-97-8 (July 24, 1998).
Trial commissioner found claimant to be totally disabled, reversing decision of another commissioner at emergency informal hearing on Form 36. However, the trial commissioner explicitly found the opinions of two doctors who thought that the claimant could work more credible than the conflicting opinions, and also found that the claimant did not introduce evidence to show that he needed vocational retraining or other special assistance before returning to work. CRB held that the facts did not support a conclusion of total disability, and reversed.

Hidvegi v. Nidec Corporation, 3607 CRB-5-97-5 (June 15, 1998).
CRB affirmed the trial commissioner's award of ongoing temporary total disability benefits, despite the claimant's failure to conduct a work search. Although the claimant may have had a theoretical light duty capability, the commissioner found that her physical restrictions, age, limited education, and lack of transferable skills collectively rendered her labor unmarketable. This conclusion is supported by the opinions of her treating physician and a vocational rehabilitation specialist.

Garcia v. Bridgeport, 3595 CRB-4-97-4 (June 8, 1998).
Existence of continuing total disability is a question of fact, and trier was not required to deem credible the medical reports offered by the claimant in support of his claim for continued total disability following maximum medical improvement.

Early v. Maryland Insurance Group, 3517 CRB-8-97-2 (April 24, 1998).
The CRB affirmed the trial commissioner's decision that the claimant, who sustained a compensable aggravation of her asthma, was temporarily totally disabled. Under the circumstances of this case, including the claimant's repeated asthma attacks, the opinion of her treating physician that she could not work unrestricted while construction was being done at her place of employment, and the employer's decision not to allow her to work, it was reasonable for the trial commissioner to infer that the claimant was temporarily totally disabled. In addition, the CRB held that the employer's request for a reduction of payments (offset) under the employer's disability plan should be pursued in another forum.

Meredina v. Anderson Insurance Co., 3460 CRB-3-96-11 (April 8, 1998).
The CRB affirmed the trial commissioner's determination that the claimant continued to be temporarily totally disabled after reaching maximum medical improvement, even though claimant may have been able to perform "some type of work."

Fusciello v. Ronnie Demeo, Inc., 3406 CRB-8-96-8 (February 4, 1998).
Trier found that claimant had not been temporarily totally disabled since 1987. Affirmed. Total disability is a question of fact, and the trier found that the claimant had not established that he lacked a light duty capability or the background to take advantage of it. Trier can conclude that work searches are unnecessary given a claimant's individual circumstances, but is not required to forgo proof that employment cannot be obtained. Here, commissioner's examiner testified that claimant could work, and the commissioner was not persuaded that the claimant would be unable to find a job that did not involve heavy physical labor. See also, **Fusciello**, § 31-301. Appeal procedure (no

Motion to Correct filed). Prior decision at Fusciello, 12 Conn. Workers' Comp. Rev. Op. 283, 1535 CRB-6-92-10 (June 7, 1994), § 31-275(1), § 31-275(16), § 31-307. Subsequent decision at Fusciello, 4340 CRB-6-01-1 (January 7, 2002), § 31-301. Factual findings, § 31-307.

Degiacomo v. Arwood Corp., 3486 CRB-1-96-12 (January 21, 1998). Trial commissioner's denial of continued temporary total disability benefits was based upon the record, and was affirmed by CRB. See also, **Degiacomo** § 31-307, § 31-308a.

Santala v. New Britain General Hospital, 3298 CRB-8-96-3 (November 25, 1997).
Disability status of a claimant at any given time is a question of fact. Here, trier was entitled to rely on medical report attributing claimant's unemployability to her psychological state, which was not clearly related to her compensable back injury. See also, **Santala**, § 31-296.

Campbell v. UTC/Norden Systems, 3295 CRB-4-96-3 (November 20, 1997).
See, **Campbell**, § 31-299b, § 31-301. Factual findings.

Curtiss v. State/Dept. of Mental Retardation Region 2, 3220 CRB-6-95-11 (August 20, 1997).
Claimant must prove total disability as point of fact. Claimant did not present evidence to rebut respondent's claim that he was not totally disabled, respondent introduced videotape of the claimant working at his coin and jewelry shop on several occasions, and his earning records for the past three years included income from the store. Affirmed. See also, **Curtiss**, § 31-301. Appeal procedure (claimant failed to file Motion to Correct).

Ruiz-Dugue v. Greenwich Hospital, 16 Conn. Workers' Comp. Rev. Op. 208, 3267 CRB-7-96-2 (May 22, 1997).
The trial commissioner concluded that the claimant failed to produce credible evidence of temporary total disability for the period from July 2, 1990 through April 10, 1995. CRB affirmed, as the determination was a question of fact for the trial commissioner. See also, **Ruiz-Dugue**, § 31-308(b)(c).

Liano v. Bridgeport, 3299 CRB-4-96-2 (March 25, 1997).
CRB concluded that the trial commissioner's determination that the claimant was no longer totally disabled was fully supported by the record, including an independent medical examiner's report. See, **Liano**, § 31-294c, § 31-297, § 31-296 Voluntary agreements (discontinuance of payments). Subsequent decisions at Liano, 3561 CRB-4-97-3 (June 3, 1998), rev'd in part, 55 Conn. App. 75 (1999), cert. denied, 252 Conn. 909 (1999), § 31-300; Liano, 3447 CRB-4-96-10 (January 6, 1998), aff'd, 51 Conn. App. 905 (per curiam), cert. denied, 248 Conn. 907 (1999), § 7-433c; companion decision at Liano, 3199 CRB-4-95-10 (March 25, 1997), § 31-279-3, § 31-298, § 31-307. Prior decision at Liano, 14 Conn. Workers' Comp. Rev. Op. 201, 2033 CRB-4-94-5 (July 25, 1995), appeal and cross appeal dismissed, lack of final judgment, A.C. 15082 (June 6, 1996), cert. denied, 238 Conn. 906 (1996), § 7-433b, § 31-300, § 31-310.

Barnett v. Harborview Manor, 3189 CRB-3-95-10 (February 27, 1997).
Total disability is a factual issue. Respondents presented no evidence to contradict doctor's testimony that there was no meaningful trade the claimant could pursue. No error in finding of ongoing disability. See also, **Barnett**, § 31-294e.

Ryba v. West-Con, 3196 CRB-2-95-10 (February 27, 1997).
See, **Ryba**, § 31-296 (existence of total disability is an issue of fact).

Dowling v. Slotnik, 3062 CRB-4-95-5, 3277 CRB-4-96-2 (February 5, 1997), **aff'd, rev'd and remanded in part**, 244 Conn. 781 (1998)(with dissenting opinion).
Fact that claimant was an illegal alien unable to obtain other employment in United States did not prevent her from qualifying for total disability benefits, although once she was medically able to work, she would no longer qualify. See also, **Dowling**, § 31-275(9), § 31-288, and § 31-301. Appeal procedure. Subsequent decision at Dowling, 3468 CRB-4-96-11 (May 6, 1998), § 31-290, § 31-296, § 31-301. Appeal procedure, § 31-301(f).

Bennings v. State/Dept. of Correction, 3213 CRB-4-95-11 (December 18, 1996).
CRB affirmed the trial commissioner's determination that the claimant was not temporarily totally disabled for a certain period. Issue was one of fact, and was supported by the record.

Monaco v. Metal Masters, Inc., 15 Conn. Workers' Comp. Rev. Op. 415, 2245 CRB-3-94-12 (August 29, 1996).
Respondents appealed commissioner's denial of Form 36 on ground that evidence did not support continuation of temporary total disability benefits. Affirmed; total disability is a question of fact, and medical reports could be interpreted as establishing total disability. Commissioner not required to find residual light duty capability. (*Tracy, C.,* **dissenting**) (insufficient evidence of disability).

Ciarleglio v. D.I. Chapman Company, 15 Conn. Workers' Comp. Rev. Op. 380, 2076 CRB-3-94-6 (August 6, 1996).
CRB affirmed the trial commissioner's conclusion that the claimant's injury did not render him unable to work, and thus denied the claimant's request for temporary total disability benefits pursuant to § 31-307 C.G.S. The trial commissioner found that following his injury the claimant continued working until his business closed due to financial difficulties. Furthermore, the claimant's unrelated civil law suit was the cause of seventy percent of his mental stress, and was the cause of his inability to accept an employment offer.

Gerena v. Rockbestos Co., 14 Conn. Workers' Comp. Rev. Op. 394, 1986 CRB-5-94-3 (October 17, 1995).
The respondents contended that the commissioner improperly awarded the claimant temporary total disability benefits pursuant to § 31-307 despite evidence that the claimant had a capacity to perform limited light duty work. CRB affirmed the trial commissioner's decision. The commissioner's conclusion that the claimant was totally incapacitated was supported by the record, including: (1) pain of lower back; (2) the

claimant's physical limitations limit him to a sedentary desk job; (3) the claimant is over sixty years of age, and (4) the claimant has limited education and experience for desk jobs.

Hurley v. Bridgeport, 14 Conn. Workers' Comp. Rev. Op. 366, 2037 CRB-4-94-5 (September 26, 1995).
CRB affirmed commissioner's denial of permanent partial award of the brain. A claimant's reduced employability does not require an award of permanent partial disability. See also, **Hurley**, § 31-296.

Rapuano v. Standard Builders, Inc., 14 Conn. Workers' Comp. Rev. Op. 290, 293, 1975 CRB-5-94-2 (September 11, 1995).
In the instant case, the commissioner concluded that the claimant had "failed to produce credible evidence that he is in fact totally disabled from any occupation which his education, training, physical ability and experience might reasonably allow him to pursue," and denied the claim for total disability. CRB affirmed, as the factual determination regarding the claimant's alleged total disability was based upon the weight and credibility which the trial commissioner accorded the evidence.

Rose v. Hartford Hospital, 14 Conn. Workers' Comp. Rev. Op. 249, 1980 CRB-1-94-3 (August 30, 1995).
Claimant is totally deaf and is close to illiterate. Practiced carpentry until suffering a 15 percent permanent partial disability of his back. Medical reports established light work capability, but doctor and vocational specialist thought claimant's labor was in fact unmarketable. Commissioner found claimant totally disabled. Held, total disability and light duty capability are questions of fact for trial commissioner; record supports his findings. Work search advisable, but not specifically required in all cases. Also, no evidence to support reopening of voluntary agreement on ground that it was executed under duress; fact that claimant was totally disabled after June 29, 1993 did not require a finding of total disability before that date as well.

Cotton v. Bartlett Nuclear, Inc., 14 Conn. Workers' Comp. Rev. Op. 231, 1929 CRB-2-93-12 (August 10, 1995).
CRB remanded issue of temporary total award made by commissioner because number of weeks of total disability was not supported by the record. See also, **Cotton**, § 31-275(1).

Guerrera v. Grodel Manufacturing Co., 13 Conn. Workers' Comp. Rev. Op. 305, 1832 CRB-1-93-9 (April 21, 1995).
Although factors cited by claimant, i.e. lack of fluency in English, fifth-grade education, etc., generally support total disability, report of vocational expert and some of the medical evidence suggested otherwise. Commissioner made reasonable factual determination.

Pelletier v. M & M Builders, Inc., 13 Conn. Workers' Comp. Rev. Op. 266, 1740 CRB-5-93-5 (April 19, 1995).
Claimant's entitlement to benefits under § 31-307(e) [now (c)] for total loss of use of legs is unaffected by future wage earning capacity. Claimant's current employment did not prevent commissioner from properly awarding benefits.

Coutu v. Interroyal Corp., 13 Conn. Workers' Comp. Rev. Op. 215, 1680 CRB-2-93-3 (April 12, 1995), **appeal dismissed**, A.C. 14694 (October 25, 1995).
Claimant injured in 1974, totally disabled in 1986. Claimant refused back surgery to ease pain. Was practically unemployable, although theoretically capable of light sedentary work. Second Injury Fund filed Form 36 to discontinue payment of total disability benefits, which commissioner approved. Commencement of specific award ordered. Held, existence of total disability is a factual question for the trier of fact; there was testimony that the claimant could do light sedentary work, and had no motivation to return.

Johnson v. Park Avenue Restoration, 13 Conn. Workers' Comp. Rev. Op. 209, 1748 CRB-4-93-6 (March 30, 1995).
Claimant received temporary total disability until 7/10/92 despite evidence that she reached maximum medical improvement on 1/15/92. Held, medical testimony existed to effect that claimant was totally disabled until 7/10/92; fact that maximum medical improvement may have been reached earlier irrelevant, as worker can reach maximum medical improvement and still be entitled to total disability benefits. No suggestion was made that claimant had requested payment of specific award as discussed in McCurdy v. State, 227 Conn. 261 (1993).

Santiago v. Metropolitan Insurance Co., 12 Conn. Workers' Comp. Rev. Op. 388, 1631 CRB-6-93-1 (September 1, 1994), **appeal dismissed** (February 3, 1995).
Medical records and physician's testimony support finding of total disability during period claimed. Approved Form 36 subsequently vacated by trial commissioner. See also, **Santiago**, § 31-296 and § 31-315.

Maerkle v. Triangle/PWC, 12 Conn. Workers' Comp. Rev. Op. 384, 1572 CRB-2-92-11 (August 17, 1994).
The arbiter of whether a claimant is totally incapacitated is the trial commissioner. Where a hypothetical employment position appears to satisfy claimant's physical needs, other pertinent evidence relied on by trier supports finding of total incapacity.

Madden v. Moore Special Tool, 12 Conn. Workers' Comp. Rev. Op. 373, 1688 CRB-4-93-4 (August 12, 1994).
Although medical evidence as to incapacity to work was in conflict, determination that claimant was not totally disabled during period claimed was not without evidentiary support.

Cummings v. Twin Tool Mfg. Co., 12 Conn. Workers' Comp. Rev. Op. 341, 1542 CRB-1-92-10 (July 11, 1994), **aff'd**, 40 Conn. App. 36 (1996).
Within power of trial commissioner to reject opinion of treating physician concerning period of total disability. See also, **Cummings**, § 31-296, § 31-298, § 31-301. Factual findings and § 31-301-9. Additional evidence.

Orlando v. Makula, 12 Conn. Workers' Comp. Rev. Op. 296, 1556 CRB-3-92-11 (June 13, 1994).
Temporary total benefits payable during period claimant delayed having knee surgery because employer refused to pay for surgery related to the compensable injury. See also, **Orlando**, § 31-301. Factual findings and Appeal procedure.

Fusciello v. Ronnie Demeo, Inc., 12 Conn. Workers' Comp. Rev. Op. 283, 1535 CRB-6-92-10 (June 7, 1994).
Evidence presented supports finding of total incapacity. However, CRB corrected trier's finding of total incapacity beyond the last date claimant saw his treating physician as that finding is not supported by medical evidence. See also, **Fusciello**, § 31-275(1) and § 31-275(16)[formerly 31-275(8)]. Subsequent decision at Fusciello, 3406 CRB-8-96-8 (February 4, 1998), supra, § 31-301. Appeal procedure and Fusciello, 4340 CRB CRB-6-01-1 (January 7, 2002), § 31-301. Factual findings, § 31-307.

Tessier v. Kogut Florist and Nurseryman, Inc., 12 Conn. Workers' Comp. Rev. Op. 175, 1435 CRB-8-92-6 (May 2, 1994).
Trier's post remand finding reversed. Factual findings state claimant was active in business during period of claimed total disability. As the destruction of claimant's capacity to earn failed to exist, claimant was not totally disabled and must reimburse insurer for benefits paid. Prior decision at, Tessier, 9 Conn. Workers' Comp. Rev. Op. 276, 1088 CRD-8-90-7 (December 13, 1991).

Granoff v. New Haven, 12 Conn. Workers' Comp. Rev. Op. 166, 1555 CRB-3-92-11 (April 29, 1994).
Temporary total disability benefits denied to school teacher disabled from teaching duties who actively continued to operate his own real estate agency during period he was disabled from teaching.

Prioleau v. Larosa Construction, 12 Conn. Workers' Comp. Rev. Op. 140, 1432 CRB-8-92-6 (April 7, 1994).
Award for total disability affirmed where trier's award is based on period after claimant received treatment although physician's testimony supports a finding of total disability prior to receiving treatment. Trier's inference was reasonable that claimant was not totally disabled prior to seeking treatment. See also, **Prioleau**, § 31-299b, § 31-308(b) and § 31-349.

Woznicki v. Meriden Yellow Cab, 12 Conn. Workers' Comp. Rev. Op. 238, 1509 CRB-8-92-9 (March 28, 1994).
Where factual foundation for physician's opinion that claimant was totally disabled was insufficient, commissioner reasonably concluded claimant was capable of light duty work. See also, **Woznicki**, § 31-308a. Additional Compensation.

Dickey v. Harris Graphics, 12 Conn. Workers' Comp. Rev. Op. 218, 1481 CRB-2-92-8 (March 22, 1994).
While treating physician's opinion would have justified a conclusion claimant was totally disabled, trier was not compelled to reach such a conclusion in light of other evidence before him.

Haugh v. Leake & Nelson, 12 Conn. Workers' Comp. Rev. Op. 201, 1421 CRB-2-92-5 (March 15, 1994).
Determination of total disability is a factual issue to be decided by the trial commissioner. See also, **Haugh**, § 31-284b, § 31-300, and § 31-301. Appeal procedure.

Mulligan v. F.S. Electric, 12 Conn. Workers' Comp. Rev. Op. 91, 1424 CRB-4-92-5 (February 15, 1994), **rev'd in part**, 231 Conn. 529 (1994).
See, **Mulligan**, § 31-307b and § 31-310.

Lee v. Bridgeport Housing Authority, 12 Conn. Workers' Comp. Rev. Op. 58, 1416 CRB-4-92-5 (January 27, 1994).
CRB affirmed trier's finding awarding temporary total benefits during a certain period. Contention that total disability extended beyond that period because the claim was undisputed and no Form 36 was filed erroneous. See also, **Lee**, § 31-296.

Farkash v. Gerelco, Inc., 12 Conn. Workers' Comp. Rev. Op. 9, 1566 CRB-8-92-11 (January 12, 1994).
Period of temporary total disability award upheld where medical evidence supports trier's finding claimant was totally disabled, although during part of the period in question claimant was being treated by an unauthorized physician. See also, **Farkash**, § 31-294d.

Maloney v. Russell Manufacturing Co., 11 Conn. Workers' Comp. Rev. Op. 313, 1371 CRB-8-92-1 (December 23, 1993).
Dependent widow's claim (decedent's estate) that decedent was entitled to temporary total benefits denied where trier found decedent was already disabled by a stroke prior to being diagnosed with occupational mesothelioma as a result of asbestos exposure in the workplace. See also, **Maloney**, § 31-306.

Coates v. Turbine Components, 11 Conn. Workers' Comp. Rev. Op. 264, 1365 CRD-3-92-1 (November 18, 1993).
Claimant sought temporary total benefits for period beyond that found by the trial commissioner and also sought to reopen the last evidentiary hearing by filing a motion to correct in order to introduce evidence concerning total incapacity beyond the last evidentiary hearing. CRB held medical evidence although extensive and conflicting supported trier's finding concerning periods of total incapacity. CRB further held that a

motion to correct is not the proper vehicle to introduce additional evidence. A determination of whether claimant remained totally disabled beyond the last evidentiary hearing must be addressed by further proceedings below not before this appellate tribunal. See also, **Coates**, § 31-301-9. Additional evidence.

Damelio v. Anaconda, Inc., 11 Conn. Workers' Comp. Rev. Op. 221, 1363 CRD-5-91-12 (November 3, 1993).
Claimant alleged total incapacity continued due to a myelogram performed in 1972 for a back injury sustained in 1950 wherein claimant contends some of the contrast medium spilled into his brain and has remained there causing multiple symptoms. Medical evidence before trier was conflicting. Trier rejected treating physician's opinion that claimant remained totally disabled and relied on IME physician's opinion and concluded claimant's total disability ceased in 1984 at which time claimant was capable of performing light work. CRB held there was evidence to support such a conclusion.

Graziano v. St. Mary's Hospital, 11 Conn. Workers' Comp. Rev. Op. 10, 1230 CRD-5-91-5 (February 8, 1993).
Claimant entitled to receive § 31-308a benefits for a 1981 injury and temporary total benefits for a separate 1985 injury simultaneously. This is not considered double compensation. Trier found with or without the injury of 1985, claimant's diminished earning capacity would have continued. Remanded to determine amount of benefits due. See also, **Graziano**, § 31-296, § 31-308a and § 31-310.

Codding v. Colchester Egg Farms, Inc., 11 Conn. Workers' Comp. Rev. Op. 4, 1232 CRD-2-91-5 (February 4, 1993).
Remanded where trier found claimant totally disabled during a time he was actively employed although earning less than his previous job paid. See also, **Codding**, § 31-299b and § 31-349.

Sweeney v. Waterbury, 10 Conn. Workers' Comp. Rev. Op. 240, 1225 CRD-5-91-5 (January 7, 1993).
Claimant, a school teacher, was paid full salary during the period of temporary total incapacity. During that period claimant received medical treatment. Claimant sought entitlement to both full salary under collective bargaining agreement and compensation benefits for time spent receiving medical treatment. CRB has limited jurisdiction which does not permit interpretation of contractual agreements. Further, if employer has paid a greater sum than amounts due under § 31-307 and § 31-312 the CRB has no power to order further sums to be paid. See also, **Sweeney**, § 31-310 and § 31-312.

Lesczynski v. New Britain Memorial Hospital, 10 Conn. Workers' Comp. Rev. Op. 205, 1289 CRD-6-91-9 (December 2, 1992).
CRB affirmed trier's finding claimant failed to provide any evidence as to an alleged period of total incapacity for a claimed recurrence of a previous compensable back injury. Also, there was insufficient evidence to causally relate certain medical expenses to the original injury or demonstrate a causal relationship between the claimed disability and a previous injury which arose out of and in the course of employment. See also, **Lesczynski**, § 31-301. Factual findings and § 31-301-9. Additional evidence.

Peterson v. Standard Structural Steel, 10 Conn. Workers' Comp. Rev. Op. 200, 1211 CRD-6-91-4 (November 12, 1992).
Claimant is not entitled to receive concurrent payment of temporary total and permanent partial benefits. See, Paternostro v. Edward Coon Co., 217 Conn. 42 (1991).

Corona v. Briganti, 10 Conn. Workers' Comp. Rev. Op. 113, 1160 CRD-7-91-1, 1240 CRD-7-91-5 (May 8, 1992).
Period of temporary total disability is a factual determination based on the weight and credibility to be accorded the evidence presented. See also, **Corona**, § 31-294d.

Tessier v. Kogut Florist and Nurseryman, Inc., 9 Conn. Workers' Comp. Rev. Op. 276, 1088 CRD-8-90-7 (December 13, 1991).
Remanded as trier's conclusion as to period claimant was eligible to receive and period claimant was not eligible to receive total incapacity benefits inconsistent with facts found and evidence presented. See also, **Tessier**, § 31-290c, § 31-301. Factual findings and Appeal procedure.

Ruh v. Della Construction Co., 9 Conn. Workers' Comp. Rev. Op. 269, 1034 CRD-7-90-6 (December 5, 1991).
CRD affirmed trier's finding awarding claimant temporary total benefits as there was evidence to support trier's conclusion. See also, **Ruh**, § 31-301. Factual findings, § 31-298.

Corcoran v. Corcoran Moving and Storage, Inc., 9 Conn. Workers' Comp. Rev. Op. 237, 1030 CRD-5-90-6 (October 31, 1991).
CRD affirmed trier's finding which awarded claimant total disability benefits for disabling condition which rendered claimant a paraplegic even though claimant sought benefits under § 31-308(b). See also, **Corcoran**, § 31-301, § 31-284(a) and § 31-308(b).

Holevinski v. State/Southbury Training School, 9 Conn. Workers' Comp. Rev. Op. 215, 988 CRD-5-90-3 (September 12, 1991).
Whether claimant is totally disabled is a factual determination. See also, **Holevinski**, § 31-296, § 31-300. Remanded on § 31-300 issue.

Lagueux v. Veilleux, 9 Conn. Workers' Comp. Rev. Op. 177, 876 CRD-6-89-6 (August 13, 1991).
Trier's finding claimant was not totally disabled during period in question will not be disturbed on appeal where there is evidence below which supports the trier's conclusions. See also, **Lagueux**, § 31-315, § 31-308a.

Marchitto v. Hamden Upholstery Co., 9 Conn. Workers' Comp. Rev. Op. 138, 953 CRD-3-89-12 (May 24, 1991).
Trier's finding claimant continued to be totally disabled due to an occupationally related lung disease despite reaching maximum medical improvement will not be disturbed on appeal where evidence clearly supports commissioner's finding. Remanded to determine date of lung incapacity and whether compensation rate was properly determined.

Castro v. General Electric, 9 Conn. Workers' Comp. Rev. Op. 73, 904 CRD-6-89-8 (February 20, 1991).
Receipt of social security benefits does not render claimant ineligible to receive § 31-307 benefits. Remanded to determine if claimant remained totally disabled after last evidentiary hearing. See, Neurath v. UTC/Pratt & Whitney, 7 Conn. Workers' Comp. Rev. Op. 99, 725 CRD-6-88-4 (October 20, 1989).

Palmer v. State/Fairfield Hills, 9 Conn. Workers' Comp. Rev. Op. 53, 900 CRD-4-89-7 (February 4, 1991).
Under § 5-142(a), provisions for state employees, claimant cannot elect for collection of benefits pursuant to § 31-307. Remedy for benefits lies under § 5-142(a). See also, **Palmer**, § 5-142(a). N.B. But see, § 5-142(a) Trinkley v. State of Conn., 220 Conn. 739 (1992); Jones v. State of Conn., 220 Conn. 721 (1992).

Beckwith v. Apollo Design Service, Inc., 9 Conn. Workers' Comp. Rev. Op. 34, 903 CRD-1-89-8 (January 17, 1991).
Finding that claimant remained totally disabled supported by evidence.

Sgambato v. Simkins Industries, Inc., 8 Conn. Workers' Comp. Rev. Op. 131, 825 CRD-3-89-2 (August 6, 1990).
Determinations as to total disability are factual. See also, **Sgambato**, § 31-301. Factual findings, § 31-301-9. Additional evidence.

Orcutt v. Ohmweave Co., 8 Conn. Workers' Comp. Rev. Op. 125, 822 CRD-2-89-2 (August 2, 1990).
Where claimant was not working during the twenty six weeks preceding the diagnosis of an occupational disease, average weekly wage to be determined by last date worked, not the prevailing wage. See also, **Orcutt**, § 31-294c.

Paternostro v. The Edward Coon Co., 8 Conn. Workers' Comp. Rev. Op. 113, 817 CRD-5-89-2 (June 19, 1990), **aff'd**, 217 Conn. 42 (1991).
Remanded. Temporary total benefits under § 31-307 and specific indemnity benefits pursuant to § 31-308(b) cannot be paid concurrently.

Traylor v. Poquonnock Bridge Fire District, 8 Conn. Workers' Comp. Rev. Op. 59, 788 CRD-2-88-11 (March 23, 1990).
Remanded to correct Finding and Award incapacity benefits where found but not so ordered. See also, **Traylor**, § 31-308a.

McConnell v. Hewitt Associates, 8 Conn. Workers' Comp. Rev. Op. 32, 764 CRD-7-88-8 (February 5, 1990).
Conclusion as to total incapacity is within trier's discretion. See also, **McConnell**, § 31-294d, § 31-307.

French v. Greenwich, 7 Conn. Workers' Comp. Rev. Op. 115, 698 CRD-7-88-2 (November 30, 1989).
Where treating physician testified claimant was capable of light duty, commissioner's finding denying temporary total benefits will stand.

Neurath v. UTC/Pratt & Whitney, 7 Conn. Workers' Comp. Rev. Op. 99, 725 CRD-6-88-4 (October 20, 1989).
Remanded to determine if claimant's total incapacity existed beyond date of last evidentiary hearing.

Heyward v. The Joseph Kelly Co., Inc., 7 Conn. Workers' Comp. Rev. Op. 30, 635 CRD-3-87 (July 24, 1989).
Claimant not entitled to temporary total where disability was from former occupation and not work generally. See also, **Heyward**, § 31-349.

Minotti v. State, 6 Conn. Workers' Comp. Rev. Op. 165, 611 CRD-2-87 (June 2, 1989).
Trial commissioner's finding as to total incapacity will not be disturbed where evidence was in conflict. See also, **Minotti**, § 5-142a.

Lepino v. Electrolux Corporation, 6 Conn. Workers' Comp. Rev. Op. 146, 719 CRD-7-88-3 (April 13, 1989).
Calculation of average weekly wage relates to date of incapacity, not date of last risk exposure. See also, **Lepino**, § 31-310.

Brown v. Bon Dental Lab, 6 Conn. Workers' Comp. Rev. Op. 132, 594 CRD-7-87 (March 28, 1989).
Time of injury shall be date of total or partial incapacity to work as a result of an occupational disease.

Hicks v. State/Dept. of Administrative Services, 6 Conn. Workers' Comp. Rev. Op. 111, 429 CRD-5-85 (February 23, 1989), **no error**, 21 Conn. App. 464 (1990), **cert. denied**, 216 Conn. 804 (1990).
Trial commissioner's conclusions on duration of disability will not be disturbed when supported by medical evidence. See also, **Hicks**, § 31-300, § 31-308(c), § 31-308a.

Stearns v. First National Supermarkets, 6 Conn. Workers' Comp. Rev. Op. 103, 588 CRD-1-87 (January 26, 1989).
Trial commissioner's conclusion as to continuing total incapacity will not be disturbed where evidence in conflict.

Besade v. Interstate Security Services, 6 Conn. Workers' Comp. Rev. Op. 83, 593 CRD-2-87 (January 13, 1989), **no error**, 212 Conn. 441 (1989).
Remanded for further evidentiary hearings to determine if claimant's total incapacity existed beyond the last evidentiary hearing. Subsequent decision at Besade, 12 Conn. Workers' Comp. Rev. Op. 103, 1383 CRB-2-92-2 (February 28, 1994), aff'd, 37 Conn. App. 903 (1995).

Antonucci v. Hartford, 5 Conn. Workers' Comp. Rev. Op. 151, 511 CRD-1-86 (July 29, 1988).
See, **Antonucci**, § 7-433c.

Mazzone v. Norwalk, 5 Conn. Workers' Comp. Rev. Op. 111, 482 CRD-7-86 (June 21, 1988).
Payments of temporary total benefits are dependent upon finding that claimant suffered a total incapacity to work. Claimant's attendance of DWR rehabilitation program was not inconsistent with a finding that claimant was totally disabled. Also respondents entitled to credit against specific indemnity benefits due for period claimant was paid temporary total but claimant was employed.

Whitney v. Lapoint Garden Center, 5 Conn. Workers' Comp. Rev. Op. 74, 497 CRD-7-86 (April 29, 1988).
Awards for temporary total disability and the time period for which they are to be awarded is a matter within the discretion of the trial commissioner.

Neumann v. Southern Connecticut Gas Co., 4 Conn. Workers' Comp. Rev. Op. 62, 265 CRD-4-83 (May 8, 1987).
Awards for total disability are based on factual findings and conclusions of trial commissioner.

Damelio v. Anaconda, Inc., 4 Conn. Workers' Comp. Rev. Op. 31, 281 CRD-5-83 (March 4, 1987), **no error**, 15 Conn. App. 805 (1988)(per curiam), **cert. denied**, 208 Conn. 814 (1988).
A finding that claimant was not totally disabled is a factual finding.

Borg v. Waterford Country School, 2 Conn. Workers' Comp. Rev. Op. 70, 156 CRD-2-82 (July 3, 1984).
Where concurrent causes resulted in disability, apportionment of liability between successive employers is correct.

Kevorkian v. Peter Paul, Inc., 2 Conn. Workers' Comp. Rev. Op. 26, 121 CRD-5-82 (July 11, 1983).
Interruption of specific indemnity permitted where claimant was found to be entitled to temporary total disability benefits.

Cable v. Torrington Special Products, 1 Conn. Workers' Comp. Rev. Op. 168, 82 CRD-5-81 (August 18, 1982).
Total disability payments permitted until claimant reached maximum medical improvement, not date of claimant's ability to do some lifting.

Masse v. Becton Dickinson Co., 1 Conn. Workers' Comp. Rev. Op. 83, 83 CRD-5-81 (December 8, 1981).
Award under § 31-307 is in commissioner's discretion after claimant reaches maximum medical improvement.

Moore v. Southern New England Telephone Co., 1 Conn. Workers' Comp. Rev. Op. 76, 44 CRD-7-80 (November 10, 1981).
Compensation rate applicable to most recent injury when claimant suffered a series of compensable injuries.

LaBoda v. Watertown, 1 Conn. Workers' Comp. Rev. Op. 63, 51 CRD-5-81 (October 26, 1981).
Commissioner not limited to only awarding benefits under § 31-308 where evidence of total incapacity to work exists.

Sec. 31-307a. Cost of living adjustment.

Malz v. State/University of Connecticut Health Center, 4701 CRB-6-03-7 (August 20, 2004).
In settlement of disputed total disability claim, respondents agreed to pay two-thirds of difference between TT rate and § 31-308a rate (if applicable) for the 29-month period in question. Trier found that this established total disability status for that period within meaning of § 31-307a. CRB reversed. Agreement did not constitute acceptance of disputed claim, based on language of stipulation. Trier erred by using that period as part of five-year total disability computation under § 31-307a. See also, **Malz**, § 31-296. Voluntary agreements (approval of), § 31-349, § 31-299b.

Fiorillo v. Bridgeport, 4585 CRB-4-02-11 (December 17, 2003), **appeal dismissed for lack of a final judgment**, A.C. 24991 (May 5, 2004).
Designation of claimant who has been totally disabled for five years or more as "totally incapacitated permanently" for purposes of § 31-307a(c) does not vest claimant with irrevocable permanent total disability status such as that contemplated by § 31-307(c). Five-year total disability category only exists for purposes of determining COLA eligibility. See also, **Fiorillo**, § 31-298, § 31-301. Factual findings, § 31-301-4, § 31-307. Prior decision at Fiorillo, 4337 CRB-4-01-1 (November 19, 2001), vacated, S.C. 16736 (December 16, 2002).

Matey v. Dember, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), **appeal dismissed for failure to comply with Supreme Court's directive**, 85 Conn. App. 198 (2004).
Modified commissioner's calculation of claimant's compensation rate with COLAs for the period of July 1, 1995 through December 31, 2001. See also, **Matey,** § 31-278, § 31-307, § 31-300, § 31-303. See, Matey v. Dember, 256 Conn. 456 (2004).

Yuille v. Bridgeport Hospital, 4525 CRB-4-02-5 (April 28, 2003).
See, **Yuille**, § 31-301. Appeal procedure, § 31-307. Prior decision at Yuille, 3735 CRB-4-97-12 (June 10, 1998), § 31-301. Appeal procedure, § 31-301c, § 31-327.

Wagner v. New Milford Medical Group, 4553 CRB-7-02-7 (April 3, 2003).
CRB affirmed trier's ruling that Fund is required to reimburse insurer for COLAs payable from date of December 20, 1995 injury forward, and affirmed ruling that COLAs are payable retroactively to start of five-year disability period. Board relied on Hasselt v. Lufthansa German Airlines, 262 Conn. 416 (2003), as controlling authority. As for proper method of calculating COLAs, trier correctly calculated COLAs using graduated method that implemented different percentages for each year forward from

October 1, 1996, rather than applying the 2001 COLA percentage increase to all 324 weeks that had elapsed between injury date and last formal hearing.

Hasselt v. Lufthansa German Airlines, 4345 CRB-7-01-1 (December 7, 2001), **aff'd**, 262 Conn. 416 (2003).
Fund is required to reimburse employers for all COLAs paid on claims arising from injuries occurring between July 1, 1993 and October 1, 1997.

Fiorillo v. Bridgeport, 4337 CRB-4-01-1 (November 19, 2001), **vacated**, S.C. 16736 (December 16, 2002).
Section 31-307a(c) requires Second Injury Fund to reimburse employer for all adjustments paid on claims arising from injuries that occurred on or after July 1, 1993, and before October 1, 1997. Plain language of statute would be strained by any other reading, and "date of injury" rule precludes retroactive imposition of substantive obligations against persons or corporations. Supreme Court vacated commissioner's finding and award, and by implication CRB decision as well, after parties to appeal agreed that award and stipulation of facts were based on incorrect assumption that claimant had reached five years of total disability, a prerequisite to eligibility for COLAs under § 31-307a(c). Subsequent decision at Fiorillo, 4585 CRB-4-02-11 (December 17, 2003), appeal dismissed for lack of a final judgment, A.C. 24991 (May 5, 2004).

Lizcano v. Holiday Inn Crowne Plaza, 4036 CRB-7-99-4 (May 24, 2000).
See, **Lizcano**, § 31-296, Voluntary agreements (approval of), § 31-310 (COLAs available for concurrent employment benefits).

Herbert v. State/Dept. of Mental Health & Addiction Services/Cedarcrest, 3766 CRB-6-98-2 (May 13, 1999).
See, **Herbert**, § 5-142(a).

Meyer v. Raybestos Products Co., 3610 CRB-8-97-5 (October 20, 1998).
Trier properly ruled that claimant who was injured in 1980 but was not temporarily totally disabled until 1990 was entitled to COLAs covering changes in the maximum weekly wage rate from 1980 to the present. Section 31-307a refers only to the date of injury, and the statute is not ambiguous.

Czujak v. Bridgeport, 3535 CRB-4-97-2 (June 10, 1998), **aff'd**, 55 Conn. App. 789 (1999), **cert. denied**, 252 Conn. 920 (2000).
CRB discussed applicability of COLAs to § 7-433c benefits. See also, **Czujak**, § 7-433c, § 31-300, § 31-301. Appeal procedure, § 31-315. Subsequent decision at Czujak, 4371 CRB-4-01-3 (April 8, 2002), § 31-297, § 31-301(g).

Gil v. Courthouse One, 15 Conn. Workers' Comp. Rev. Op. 227, 3278 CRB-6-96-3 (May 1, 1996), **rev'd**, 239 Conn. 676 (1997).
CRB reconsidered the issue of the calculation of Cost of Living Adjustments for persons injured prior to October 1, 1991. The CRB reexamined its earlier ruling in Taylor v. P.J. Ladola's 12 Conn. Workers' Comp. Rev. Op. 378, 1526 CRB-1-92-10 (August 17, 1994) and Wolfe v. JAB Enterprises, Inc., 14 Conn. Workers' Comp. Rev. Op. 127, 1875 CRB-3-93-10 (June 5, 1995). The CRB concluded that Taylor wrongly concluded

that the amendments affecting COLAs contained in P.A. 91-339, i.e., the calculation of the COLA based on a percentage amount and not a flat dollar amount, were procedural in nature and not substantive. The Supreme Court reversed the CRB and held that COLAs should be calculated based on the percentage of increase in the maximum compensation rate between the year for which the COLA is sought and the maximum compensation rate as of October 1, 1990. That amount should then be multiplied by the claimant's base rate and added to the claimant's COLA as of October 1, 1990.

Wolfe v. JAB Enterprises, Inc., 14 Conn. Workers' Comp. Rev. Op. 127, 1875 CRB-3-93-10 (June 5, 1995).
Under 1991 change in statute from dollar amount increases to percentage-based increases, prior COLAs should not be included in the COLA determination for any given year. Statutory formula unambiguously requires base rate to be multiplied by the percentage difference between the maximum rates at the date of injury and in the present year, as demonstrated in the opinion. Change in method of calculation only applies prospectively. But see Gil v. Courthouse One, 239 Conn. 676 (1997).

Owens v. R. R. Donnelley & Sons, 14 Conn. Workers' Comp. Rev. Op. 28, 1892 CRB-2-93-11 (May 3, 1995).
Claimant suffered a compensable leg injury in 1980, and a disability to her back in 1988 because of an altered gait resulting from the first injury. Held, evidence supported decision that 1988 injury was not a recurrence, but was causally related to the first injury as in Hernandez v. Gerber Group, 222 Conn. 78 (1992). Because first injury compensable, employer liable for sequelae as well. Therefore, § 31-307a applies instead of § 31-307b, as the latter applies only to relapses or recurrences. Applicable compensation rate was 1980 wage, as claimant was unemployed at time of back injury. Section 31-307a entitled claimant to difference between 1980 maximum rate and 1988 maximum rate, as well as to COLAs accruing after that date. See also, **Owens**, § 31-300, and § 31-310.

Taylor v. P.J. Ladola's, 12 Conn. Workers' Comp. Rev. Op. 378, 1526 CRB-1-92-10 (August 17, 1994).
Annual cost of living adjustment (COLA) due to continued total disability as a result of traumatic injuries sustained from a fall occurring in July 1991 should be calculated by using percentage increase set out in P.A. 91-339. Discussion of former chairman, workers' compensation commission's reference to legislative intent.

Sec. 31-307b. Relapse/Recurrent injuries.

Mikula v. First National Supermarkets, Inc., 3754 CRB-3-97-12 (May 11, 1999), **aff'd**, 60 Conn. App. 592 (2000).
Trier's decision that back injury was a new injury rather than a recurrence affirmed by CRB. Factual determination for trial commissioner. Claimant was performing duties outside work restriction when injured. See also, **Mikula**, § 31-308(a).

Martinez v. Gordon Rubber & Packaging Co., 3348 CRB-4-96-6 (May 4, 1998).
The trial commissioner determined that claimant sustained a new injury to his back rather than an aggravation of a prior back injury. CRB identified no medical evidence in the record to support trial commissioner's determination, and thus remanded for further proceedings. Subsequent decision at Martinez, 3828 CRB-5-98-6 (July 22, 1999), § 31-279-3.

Desantis v. Middlebury, 3182 CRB-5-95-10 (February 27, 1997).
See, **Desantis**, § 31-301.

Hanzlik v. James Freccia Auto Body, 15 Conn. Workers' Comp. Rev. Op. 2, 1984 CRB-7-94-3 (November 1, 1995), **aff'd**, 43 Conn. App. 908 (1996)(per curiam).
See, **Hanzlik**, § 31-275(1).

Greenhalgh v. General Dynamics Corporation/Electric Boat Division, 14 Conn. Workers' Comp. Rev. Op. 174, 2063 CRB-2-94-5 (June 29, 1995).
CRB affirmed commissioner's conclusion that claimant suffered a relapse of a back injury rather than a new injury. Respondents in their appeal sought to retry the facts, which this board will not do.

McBreairty v. D.B.D., Inc., 13 Conn. Workers' Comp. Rev. Op. 259, 1781 CRB-7-93-7 (April 18, 1995).
Where the circumstances could arguably support a finding of either a recurrent injury or a new injury, the commissioner has the power to make that factual determination. Sufficient evidence existed to support finding that claimant's injuries were both new injuries. See also, **McBreairty**, § 31-301. Appeal procedure.

Cote v. Pratt & Whitney Aerospace Co., 13 Conn. Workers' Comp. Rev. Op. 243, 1636 CRB-2-93-2 (April 17, 1995).
Claimant suffered first injury while employed by Pratt, and reinjured back many years later with different employer. Held, version of statute effective at time of injury controls. No requirement that employee continue to work for same employer for statute to apply; employer still has duty to provide benefits to disabled employee whose original injury was compensable. Statute also provides for COLAs. See also, **Cote**, § 31-309.

Uva v. Valleries Transportation Service, 13 Conn. Workers' Comp. Rev. Op. 106, 1625 CRB-7-93-1 (January 31, 1995).
Despite power of commissioner to make factual findings, no evidence existed to support the conclusion that claimant's back problem resulted solely from repetitive trauma rather than from recurrence of original injury. Remanded. See also, **Uva**, § 31-301. Factual findings.

Elderkin v. Hamilton Pavilion, 13 Conn. Workers' Comp. Rev. Op. 99, 1650 CRB-2-93-2 (January 25, 1995), **aff'd**, 40 Conn. App. 943 (1996)(per curiam), **motion for reconsideration denied** (May 2, 1996), **cert. denied**, 237 Conn. 925 (1996).
Determination of new injury vs. recurrence is one for trial commissioner to make. Here, evidence existed to support determination that injury resulting from fall down stairs was not caused by prior compensable injury. Commissioner had discretion not to rely on

testimony that first injury was substantial factor in causing second injury, and had discretion to determine that accident constituted an intervening cause.

Perry v. Union Lyceum Taxi Co., 13 Conn. Workers' Comp. Rev. Op. 16, 1695 CRB-4-93-4 (November 3, 1994).
Commissioner found claimant's back injury was a recurrence of an earlier injury and ordered prior employer's insurer to compensate claimant. Respondents argued that findings required conclusion that claimant suffered a new injury under § 31-275. Held, question of new injury or recurrence is a factual determination for the commissioner. Circumstances could have supported a finding either way. Affirmed.

Capone v. UTC/Sikorsky Aircraft, 12 Conn. Workers' Comp. Rev. Op. 419, 1468 CRB-4-92-7 (September 29, 1994).
Trier erred in denying claim for § 31-307b benefits by holding claimant never recovered from an earlier back injury although he returned to work. By reasoning in Mulligan v. F.S. Electric, 231 Conn. 529 1994), 12 Conn. Workers' Comp. Rev. Op. 91, 1424 CRB-4-92-5 (February 15, 1994). CRB reversed trier concluding claimant need not make a full recovery to be eligible for § 31-307b benefits, it is enough that he recovered sufficiently so that he no longer was eligible for § 31-307 total disability benefits. (*Doyle, C.,* **dissenting**) Disagree with majority opinion and application in Mulligan. Opposing view on statutory language "return to work" and "after recovery." Trier's finding that claimant did not fully recover from a 1985 injury is supported by the evidence and should be affirmed on appeal.

Maldonado v. Connecticut Container, 12 Conn. Workers' Comp. Rev. Op. 350, 1681 CRB-3-93-4 (July 29, 1994).
CRB affirmed finding that back surgery was due to an earlier compensable injury and not caused by later workplace repetitive trauma or a new workplace injury.

Cale v. Correia Excavators, Inc., 12 Conn. Workers' Comp. Rev. Op. 338, 1662 CRB-1-93-3 (July 8, 1994), **aff'd**, 39 Conn. App. 905 (1995)(per curiam).
Intervening non work-related injury was the cause of current disability, not a prior compensable injury.

Soares v. Glass Industries, 12 Conn. Workers' Comp. Rev. Op. 189, 1377 CRB-3-92-1 (May 4, 1994).
Insurer's contention that claimant suffered two separate knee injuries and payment for the later injury was paid by mistake unpersuasive. Whether an injury is new or a recurrence is a factual determination. See also, **Soares**, § 31-297, § 31-300 and § 31-315.

Mulligan v. F.S. Electric, 12 Conn. Workers' Comp. Rev. Op. 91, 1424 CRB-4-92-5 (February 15, 1994), **rev'd in part**, 231 Conn. 529 (1994).
CRB reversed trier's decision. CRB held statute only requires claimant return to work after a relapse or recurrence. The claimant need not make a full recovery. Claimant's return to work after receiving temporary total benefits entitled him to § 31-307b benefits when he again became totally disabled even though claimant received medical treatment

and experienced pain during the period of his return to work. Supreme Court affirmed CRB's determination. However, reversed CRB on § 31-310 issue. See also, **Mulligan**, § 31-307 and § 31-310.

Mellor v. Pleasure Valley Mobile Homes, 11 Conn. Workers' Comp. Rev. Op. 270, 1393 CRB-2-92-3 (November 18, 1993).
Trier's determination that claimant sustained a new back injury by aggravating a previous compensable back injury sufficiently supported by evidence below.

Erickson v. Grand Union Company, 11 Conn. Workers' Comp. Rev. Op. 127, 1325 CRD-7-91-10 (June 16, 1993).
Claimant failed to prove that the back pain he experienced constituted a recurrence of a previous compensable back injury.

Snyder v. Americo-U-Haul of Connecticut, 10 Conn. Workers' Comp. Rev. Op. 232, 1219 CRD-5-91-4 (January 7, 1993).
Claim for recurrent back injury denied where claimant failed to seek medical treatment during total disability period claimed until approximately 3 months after alleged recurrence and treating physician's diagnosis was primarily based on physical exam and subsequent treatment. Also, evidence before trier from IME indicated physician was unable to determine if claimant was totally disabled during period claimed. Remanded on § 31-308(b) issue. See also, **Snyder**, § 31-308(b).

Watson v. American Cyanamid, 9 Conn. Workers' Comp. Rev. Op. 90, 911 CRD-8-89-8 (March 1, 1991).
Factual finding will not be disturbed on appeal where evidence supports trier's conclusion.

Colas v. Marriott Food Services, 9 Conn. Workers' Comp. Rev. Op. 86, 939 CRD-7-89-11 (February 26, 1991).
CRD remanded for further proceedings where question of legal causation and medical causation as separate concepts remained unanswered by trier; therefore liability of employer or employers for claimants' injury or injuries requires determination.

Greiger v. Leake & Nelson, 9 Conn. Workers' Comp. Rev. Op. 17, 890 CRD-4-89-6 (January 10, 1991).
Claimant must receive § 31-307 benefits in order for § 31-307b to apply. See also, **Greiger**, § 31-294d.

Glynn v. Terry Corporation, 8 Conn. Workers' Comp. Rev. Op. 87, 806 CRD-2-89-1 (May 14, 1990).
Determination of whether injury is a recurrence or relapse of prior injury is a factual determination. See also, **Glynn**, § 31-349.

Mathieu v. C & M Corp., 5 Conn. Workers' Comp. Rev. Op. 82, 463 CRD-2-86 (May 11, 1988).
Trial commissioner's determination that an injury was not a recurrence as it was outside the chain of causation stemming from a previous injury affirmed by CRD.

Chirigos v. Bassick Co., 4 Conn. Workers' Comp. Rev. Op. 110, 277 CRD-4-83 (September 24, 1987).
Increase in permanent partial incapacity after relapse will be paid at the rate set at the time of the original injury.

Janov v. General Electric Co., 4 Conn. Workers' Comp. Rev. Op. 44, 491 CRD-4-86 (March 27, 1987).
Whether an injury is a relapse or recurrence of a prior injury is a factual determination to be made by the trial commissioner.

Sec. 31-308(a). Temporary partial/Wage differential.

Thomas v. Greenwich, 4697 CRB-7-03-7 (August 10, 2004).
CRB upheld trial commissioner's finding that claimant was temporarily partially disabled due to hypertension for four-month period, but entitled to no weekly benefits due to his failure to accept light-duty work. Evidence supported light-duty capacity. Trier was not required to resolve in claimant's favor ambiguous testimony of claimant and fire department chief as to whether light duty work was actually offered, as claimant has burden of proving entitlement to benefits.

Sullivan v. H.W. Sandora & Sons, Inc., 4603 CRB-3-02-12 (December 29, 2003).
See, **Sullivan**, § 31-301. Factual findings, § 31-275(1).

Dzamko v. Danbury, 4588 CRB-7-02-11 (November 26, 2003).
Respondents appealed part of order that waived claimant's job searches on a prospective basis and ordered § 31-308(a) benefits beyond the date of the formal hearing. CRB affirmed trier's conclusion work searches not required where no light duty work would be available due to claimant's restrictions and the fact that respondent had no light duty work. Commissioner can award § 31-308(a) benefits beyond the date of the final hearing. Respondent is not precluded from filing Form 36 where circumstances change following the formal hearing.

Murray v. Mass Mutual Life Ins. Co., 4590 CRB-1-02-11 (November 20, 2003).
Claimant was entitled to temporary partial disability benefits, as her sedentary work restrictions were due to cubital tunnel symptoms that had not yet resolved or reached maximum medical improvement. Filing of Form 36 did not require cut-off of benefits, as testimony of claimant's vocational rehabilitation specialist and her inability to secure employment after exhaustive job searches could be taken as evidence that claimant would not have found light duty employment during three-month period prior to commencement of work search process. CRB also noted that job searches are not actually required by § 31-308(a); other evidentiary means may be used to show entitlement to benefits, depending on totality of circumstances. See also, **Murray**, § 31-294d, § 31-296. Voluntary agreements (discontinuance of payments), § 31-300, § 31-301. Factual findings, § 31-307.

Laneve-Annino v. Intracorp, 4441 CRB-8-01-9 (September 18, 2002).
See, **Laneve-Annino**, § 31-301. Factual findings (evidence supported denial of temporary partial disability award). See also, **Laneve-Annino**, § 31-308a.

Fox v. New Britain General Hospital, 4414 CRB-6-01-7 (August 6, 2002).
Doctor's reports discussing claimant's symptoms were prepared one or two months after expiration of three-month § 31-308(a) award. This did not render them irrelevant. Evidence indicated that diminished work hours were due to physical limitations discussed in reports. See also, **Fox**, § 31-294d, § 31-301. Factual findings, § 31-308a.

Richardson v. Bic Corp., 4413 CRB-3-01-7 (August 5, 2002).
Evidence of claimant's physical disability and need for surgery was clear, but trier made no findings as to "ready and willing to work" requirement of statute, nor did he determine earning capacity during 28-month stretch of temporary partial disability. Remanded for ruling on whether claimant would have found light duty employment had she been ready and willing to work, or alternatively, extent of her earning capacity. See also, **Richardson**, § 31-308a.

Martin v. A. Aiudi & Sons, 4384 CRB-6-01-5 (April 25, 2002).
Trier denied § 31-308(a) benefits where he found that claimant would be entitled to $17,317.08 in benefits (based upon reduced earnings from employer), but already made more than that working at his privately owned business. Claimant had been a truck driver, but light duty restrictions included no driving or heavy lifting; during "light duty" period, claimant commenced work at his ice-cream business. Trier incorrectly used earnings from privately owned business to "offset" § 31-308(a) benefits. Instead, if claimant's compensable injury partially disabled him so that he could not perform his customary work, and if he meets statutory criteria of § 31-308(a), he may be entitled to wage differential based upon difference between "wages currently earned by an employee in a position comparable to the position held by the injured employee before his injury" and amount he is able to earn (including his earnings at his privately owned business) following his injury.

Brinson v. Finlay Brothers Printing Co., 4307 CRB-1-00-10 (November 1, 2001),
aff'd, 77 Conn. App. 319 (2003).
No error in trier's award of ongoing temporary partial disability benefits. Board adopted reasoning set forth in Hidvegi v. Nidec Corporation, 3607 CRB-5-97-5 (June 15, 1998) and Morris v. A & A Acoustics, 3429 CRB-7-96-9 (August 8, 1997), where it concluded that Cummings v. Twin Tool Manufacturing Company, Inc., 40 Conn. App. 36 (1996), did not take away discretion of trial commissioner to award continuing temporary total disability benefits. See also, **Brinson**, § 31-296, § 31-301-4.

LaPierre v. UTC/Pratt & Whitney, 4305 CRB-8-00-10 (October 23, 2001).
Board affirmed trier's award of four weeks of temporary partial benefits, limited to weeks for which claimant had documented a work search. Claimant argued that § 31-308(a) does not require work search. Board affirmed, explaining that it was within trier's discretion to require one, especially where, as here, claimant's credibility was at issue.

See also, **LaPierre**, § 31-296. Voluntary agreements (discontinuance of payments), § 31-307.

Baldino v. Corcoran & Son Landscaping & Paving, 4275 CRB-4-00-8 (July 23, 2001).
Board affirmed trier's decision denying § 31-308(a) benefits where claimant's testimony regarding job searches was not credible. Also, board explained that it is claimant's burden to prove, and not respondents' burden to disprove, eligibility for § 31-308(a) benefits. See also, **Baldino**, § 31-298.

Amato v. Preferred Insulation/Pfizer, Inc., 4201 CRB-4-00-3 (May 29, 2001).
Trier found claimant able to care for son daily, and thus awarded § 31-308(a) benefits based on ability to work as day care provider 30 hours per week. Claimant had endured injuries to his arms, and suffered from severe pain. No evidence in record regarding physical ability required to be employable as a day care provider, or whether claimant had such ability (e.g., vocational expert's report). Remanded.

Pellegren v. Pratt & Whitney, 4196 CRB-1-00-2 (March 29, 2001).
CRB affirmed trier's adoption of temporary partial disability benefit calculation method advocated by claimant. Benefit rate should be 75% of difference between wages earned by employee in comparable position (including overtime) and amount earned by claimant after injury, without reducing either part of the mathematical equation by a maximum compensation rate prior to arrival at a differential amount. Respondent did not establish that reference to § 31-310 C.G.S. and its wage tables required trier to rely exclusively on those tables in this situation. See also, **Pellegren**, § 31-310.

Ford v. Carpenter Chapman, 4128 CRB-3-99-9 (November 30, 2000).
CRB affirmed trier's finding that claimant was temporarily partially disabled during period between release for light duty work and surgery eight months later. No error in accepting claimant's explanation that he did not record results of job searches because insurance adjuster told him that his weekly benefits were being converted from temporary total disability to permanent partial impairment payments. Claimant's testimony that he briefly pursued two independent business ventures, neither of which provided him with any remuneration, did not require inference that claimant was not properly available to work. See also, **Ford**, § 31-294d, § 31-301. Factual findings, § 31-308(b).

Christman v. State/Dept. of Correction, 4134 CRB-1-99-10 (October 16, 2000).
Trier granted a set of Forms 36 filed by respondent, who sought to discontinue claimant's benefits. Trier declared that sums paid were in nature of temporary partial disability benefits, and made Forms 36 effective over six months after they were filed. CRB reversed award and remanded case for articulation, as claimant apparently had been found to have a work capacity at the time the first Form 36 was filed. Findings did not indicate that he had demonstrated unavailability of light duty work, and it was also unclear whether trier deemed him capable of performing a "recuperative post" that his employer had made available for him. See also, **Christman**, § 31-301. Appeal procedure, § 31-296.

Rodrigues v. American National Can, 4043 CRB-5-99-4 (July 26, 2000).
CRB affirmed award of temporary partial disability benefits. Claimant's testimony and sporadic job search efforts were sufficient to convince trier that he had made sincere efforts to find work. Statute does not require job searches, nor does it require a gap-free work search record. Trier was not bound to infer that claimant was trying to sabotage job search efforts by showing prospective employers a form detailing his work restrictions. CRB also stated that claimant was responsible for paying back unemployment benefits received concurrently with temporary partial benefits under § 31-258. Employer not entitled to offset. Rental income from the two-unit apartment house claimant owns and manages was not improperly excluded from his earnings under § 31-308(a), as it was essentially passive income, and the claimant's management duties did not require the type of effort that would be indicative of a work capacity. See also, **Rodrigues**, § 31-301. Factual findings, Appeal procedure. Subsequent decision at Rodrigues, 4329 CRB-7-00-12 (January 2, 2002), § 31-279-3, § 31-296, § 31-298, § 31-301-9.

Zito v. Stop & Shop, 3929 CRB-3-98-11 (February 17, 2000).
CRB affirmed trier's decision in which he chose to accept some, but not all, of the opinion rendered by the § 31-294f examiner. Trier found that claimant was capable of sedentary work and thus was not totally disabled, and awarded benefits under § 31-308(a). (*Delaney, C.,* **dissenting**) Insufficient findings of fact were made to support an award under § 31-308(a), specifically whether the claimant adequately pursued light duty work. Recommends remand. See also, **Zito**, § 31-294f.

Mikula v. First National Supermarkets, **Inc.**, 3754 CRB-3-97-12 (May 11, 1999), **aff'd**, 60 Conn. App. 592 (2000).
CRB affirmed trier's decision. Claimant's bare assertion that he looked for work was not strong evidence, but trier had discretion to rely upon it in absence of contrary proof. No work search documentation required under § 31-308(a). See also, **Mikula**, § 31-307b.

Heene v. Professional Ambulance Service, Inc., 3743 CRB-6-97-12 (January 8, 1999).
Claimant's cleaning business, which he operated as a sole proprietor outside the Workers' Compensation Act, did not qualify as concurrent employment under § 31-310, so trier concluded that claimant's earnings in that capacity should not be included as amounts earned under § 31-308(a). CRB reversed. Section 31-310 sets forth an "average weekly wage," but § 31-308(a) refers only to "the amount [the claimant] is able to earn after the injury." Statute does not limit "amounts earned" to sums derived from a qualifying employer under § 31-275(10). Where statutory language is unambiguous, CRB may not divert from its plain meaning. See also, **Heene**, § 31-300, § 31-310 (citation only). (*Vargas, C.,* **dissenting**) Remedial purpose of Act is inconsistent with the exclusion of concurrent employment wages under § 31-310 and simultaneous inclusion of those same wages for the purpose of § 31-308(a).

Rhodes v. Bourdon Forge Company, Inc., 3720 CRB-2-97-11, 3650 CRB-2-97-7 (October 13, 1998).
The CRB affirmed the trial commissioner's conclusion that the claimant's temporary total disability ceased on August 18, 1996, and that his temporary partial disability ceased on October 1, 1996. The determination of the claimant's periods of disability was

dependent upon the weight and credibility of the testimony, including medical evidence, and thus was a determination for the trial commissioner as the finder of fact. See also, **Rhodes,** § 31-307.

Simon v. International Brotherhood of Boilermakers, 3645 CRB-5-97-7 (August 12, 1998).
CRB affirmed denial of § 31-308(a) benefits where claimant voluntarily retired at age sixty, did not conduct any job searches, and testified that he did not intend to work.

Levey v. Farrel Corp., 3649 CRB-4-97-7 (July 30, 1998).
Where trial commissioner found that claimant's light duty employment with respondent was terminated for cause, trier was within her discretion in declining to award compensation under § 31-308(a) for temporary partial disability. Wages offered during light duty employment are taken as claimant's earning capacity under the statute, and trier is entitled to construe termination for cause as tantamount to a refusal to perform suitable light duty work. See also, **Levey**, § 31-301. Appeal procedure.

Bilotta v. Connecticut Natural Gas, 3536 CRB-1-97-2 (May 26, 1998).
CRB affirmed trial commissioner's denial of § 31-308(a) benefits where trial commissioner found that claimant retired for reasons other than his compensable injury and did not search for other work. See also, **Bilotta**, § 31-308 (b)(c). Subsequent decision at Bilotta, 4106 CRB-1-99-8 (October 5, 2000), § 31-308(b).

Ronzone v. Connecticut Fine Blanking Corp., 3522 CRB-4-97-1 (May 15, 1998).
The CRB affirmed the trial commissioner's award of § 31-308(a) benefits where claimant was released to light duty, but was not able to perform the light duty position offered by the employer.

Anglero v. State/Dept. of Administrative Services, 3457 CRB-8-96-11 (March 5, 1998).
Record supported commissioner's award of § 31-308(a) benefits to claimant. CRB rejected respondent's claim that trial commissioner was really awarding § 31-308a discretionary benefits, but failed to make a clear distinction. See also, **Anglero**, § 31-300.

Degiacomo v. Arwood Corp., 3486 CRB-1-96-12 (January 21, 1998).
Trial commissioner's denial of § 31-308(a) benefits affirmed by CRB. See also, **Degiacomo** § 31-307, § 31-308a.

Kropf v. Lloyd Davis, D.D.S., 3229 CRB-8-95-12 (August 27, 1997).
The trial commissioner found that, due to compensable bilateral carpal tunnel, the claimant, a dental hygienist, was not able to work her normal schedule of four days per week. The claimant returned to work with the employer within her physician's medical restrictions. The trial commissioner thus awarded the claimant benefits pursuant to § 31-308(a) due to the reduction in wages caused by her compensable injury. CRB affirmed.

Eligio v. DiLauro Brothers, 15 Conn. Workers' Comp. Rev. Op. 253, 2212 CRB-3-94-11 (May 24, 1996).
Claimant who did not seek light duty work, but had a light duty capacity, was denied § 31-308(a) benefits. CRB held trial commissioner entitled to surmise from failure to seek work that claimant had not proven entitlement to benefits. But see, Shimko v. Ferro Corp., 40 Conn. App. 409 (1996). See also, **Eligio**, § 31-301. Appeal procedure.

Croft v. Connecticut Transit, 15 Conn. Workers' Comp. Rev. Op. 190, 1635 CRB-1-93-2 (April 2, 1996).
With respect to claimant's alleged back injury, CRB affirmed commissioner's finding that claimant failed to sustain her burden of proof on causation. With respect to accepted neck injury, commissioner's (corrected) conclusion that claimant was not entitled to temporary partial disability benefits was reversed due to inconsistent findings, and remanded.

McMahon v. Metropolitan District, 14 Conn. Workers' Comp. Rev. Op. 360, 2001 CRB-1-94-3 (September 22, 1995).
The claimant sustained injuries to his lungs caused by the inhalation of chemicals, which caused the claimant's lungs to become sensitized, but which did not cause any permanent impairment. The commissioner did not award benefits pursuant to § 31-308(a) because he concluded that the claimant voluntarily left a suitable position for a lower paying position. CRB affirmed the denial of § 31-308(a).

Webb v. Pfizer, Inc., 14 Conn. Workers' Comp. Rev. Op. 69, 1859 CRB-5-93-9 (May 12, 1995).
See, **Webb**, § 31-301. Factual findings. Section 31-308(d) discretionary award also implicated.

Dextraze v. Lydall, Inc., 14 Conn. Workers' Comp. Rev. Op. 52, 1615 CRB-2-92-12 (May 10, 1995).
Evidence shows claimant sought suitable light duty work with employer and was refused. Additionally, claimant attempted to find work elsewhere without success before applying for social security retirement benefits. The filing for social security retirement benefits in and of itself does not mean claimant no longer intended to work. Trier's award of partial wage loss benefits proper. Respondents claim of surprise of trier's award of § 31-308(a) and § 31-308a benefits due to lack of notice that these issues would be considered at proceeding below unavailing where evidentiary proceedings stretched over six hearing dates in three years and evidentiary testimony indicates partial wage loss benefits were discussed. See also, **Dextraze**, § 31-308(b)(c), and § 31-310.

Angell v. Guida Seibert Dairy, 14 Conn. Workers' Comp. Rev. Op. 7, 1836 CRB-1-93-9 (April 28, 1995).
See, **Angell**, § 31-308(b).

Shimko v. Ferro Corp., 13 Conn. Workers' Comp. Rev. Op. 255, 1744 CRB-7-93-5 (April 18, 1995), **rev'd**, 40 Conn. App. 409 (1996).
Where commissioner found that claimant had light work capability and had not pursued it, and that finding was supported by evidence, commissioner was not required to award § 31-308(a) benefits. Appellate Court reversed, noting there were insufficient facts to determine whether other suitable work was available. Further, statute does not require as a condition of receiving benefits that claimant prove he sought light work. See also, **Shimko**, § 31-284b, and § 31-308(b)(c).

Wright v. Institute of Professional Practice, 13 Conn. Workers' Comp. Rev. Op. 262, 1790 CRB-3-93-8 (April 18, 1995).
Whether claimant satisfies criteria for entitlement to full weekly compensation is a factual issue to be decided by the commissioner. Evidence regarding duplicated job searches, limited search efforts supported decision of commissioner limiting temporary partial disability benefits. See also, **Wright**, § 31-301. Appeal procedure.

Tyc v. Calabrese Construction Co., 13 Conn. Workers' Comp. Rev. Op. 71, 1529 CRB-5-92-10 (December 29, 1994).
Claimant not entitled to full weekly compensation, as claimant did obtain other work during seventeen weeks of thirty-month disability period on which determination of earning capacity could properly be based. See also, **Tyc,** § 31-300. Subsequent decision at Tyc, 3061 CRB-5-95-5 (December 10, 1996), § 31-310.

Sharp v. James Wright Precision, 12 Conn. Workers' Comp. Rev. Op. 293, 1596 CRB-2-92-12 (June 8, 1994).
Claimant's disability due to work related contact dermatitis did not prevent claimant from securing suitable work which did not involve contact with chemical irritants. See, Ferrara v. Clifton Wright Hat Co., 125 Conn. 140 (1939).

Besade v. Interstate Security Services, 12 Conn. Workers' Comp. Rev. Op. 103, 1383 CRB-2-92-2 (February 28, 1994), **aff'd**, 37 Conn. App. 903 (1995).
Evidence supports trier's holding that claimant sustained a wage difference as her employment activities were within the limits of her physical capabilities. However, claimant failed to provide evidence to support a finding for an increase in calculating her average weekly wage based on the percentage increase in the average production wage. See also, **Besade**, § 31-301. Factual findings and § 31-298. Prior decision at Besade, 6 Conn. Workers' Comp. Rev. Op. 83, 593 CRD-2-87 (January 13, 1989), no error, 212 Conn. 441 (1989).

Petta v. Waterbury Hospital, 11 Conn. Workers' Comp. Rev. Op. 161, 1310 CRD-5-91-9 (August 23, 1993).
Wage differential should be calculated on the basis of claimant's weekly earnings not on an hourly basis. See also, **Petta**, § 31-298, § 31-299b, § 31-300 and § 31-301. Appeal procedure.

Krouse v. Holmgren Subaru, 11 Conn. Workers' Comp. Rev. Op. 37, 1251 CRD-2-91-6 (February 26, 1993).
Remanded where trial commissioner denied claimant, a car salesman, now employed as a security guard, partial wage loss benefits based on evidence before him. See also, **Krouse**, § 31-301-9. Additional evidence.

Brunet v. UNC/Aerospace Norwich Division, 10 Conn. Workers' Comp. Rev. Op. 221, 1204 CRD-2-91-3 (December 17, 1992).
Remanded as evidence fails to support trier's conclusion claimant was partially disabled due to job related stress during period following total disability. Evidence demonstrated treating physician returned claimant to work with no restrictions and merely expressed the hope that job stress could be reduced.

Miner v. Watertown, 10 Conn. Workers' Comp. Rev. Op. 100, 971 CRD-5-90-1 (April 28, 1992).
Trier's finding contingent upon claimant showing a wage loss existed as a result of his light duty status. See also, **Miner**, § 31-300, § 31-301. Factual findings and § 31-308(b).

Hansen v. Robert Gordon, D.D.S., 8 Conn. Workers' Comp. Rev. Op. 181, 856 CRD-1-89-4 (December 14, 1990), **aff'd**, 221 Conn. 29 (1992).
Claimant suffered a compensable partial incapacity as a result of contracting Hepatitis Type B. See also, **Hansen**, § 31-275(15).

Gordon v. St. Vincent's Medical Center, 8 Conn. Workers' Comp. Rev. Op. 22, 758 CRD-4-88-8 (January 18, 1990).
Trier's determination claimant failed to satisfy necessary statutory elements in her job search efforts will not be disturbed.

Donovan v. United Technologies Corp., 7 Conn. Workers' Comp. Rev. Op. 5, 632 CRD-4-87 (June 9, 1989).
Employer is not liable for wage differential of lower paying position when a position of pay equal to previous job was refused.

Zipoli v. Watertown Board of Education, 6 Conn. Workers' Comp. Rev. Op. 158, 679 CRD-5-88-1 (June 1, 1989).
Remanded. Finding lacked subordinate facts to support commissioner's calculation of § 31-308(a) benefits.

Foss v. Continental Forest Industries, 5 Conn. Workers' Comp. Rev. Op. 1, 341 CRD-6-84 (March 9, 1988).
If payments were paid pursuant to § 31-308(a) claimant must reimburse unemployment compensation fund under § 31-258.

Fortin v. State, 2 Conn. Workers' Comp. Rev. Op. 116, 138 CRD-6-82 (January 14, 1985).
Nurse who was attending college full-time to develop skills because she was no longer able to engage in same employment after injury held entitled to half of full pay.

Reiske v. State, 2 Conn. Workers' Comp. Rev. Op. 84, 128 CRD-4-82 (July 27, 1984).
Claimant awarded compensation at full rate under § 31-308 for period during which she was unable to find appropriate work in the labor area surrounding her home.

Donahue v. Milford, 1 Conn. Workers' Comp. Rev. Op. 200, 92 CRD-3-81 (November 1, 1982).
Awards under § 31-308 for partial incapacity do not include dependency allowance or cost of living adjustment.

Spaulding v. Thames Valley Steel Corp., 1 Conn. Workers' Comp. Rev. Op. 39, 3 CRD-2-79 (June 3, 1981).
Claimant to be eligible for compensation need not meet conditions where exceptions are met.

Sec. 31-308(b). Permanent partial. Scheduled/Unscheduled.

Dobson v. Thames Valley Sanitation, 4645 CRB-6-03-3 (July 22, 2004).
CRB affirmed trial commissioner's award of 35% loss of use of knee. Also held respondents not entitled to apportionment under § 31-275(1)(D) as the 26.25% loss of use of the knee related to a pre-exiting injury and under Cashman v. McTiernan School, Inc., 130 Conn. 401 (1943) apportionment only permitted where the pre-existing disease is a pre-existing occupational disease. See also, **Dobson**, § 31-300.

Maddaloni v. State/University of Connecticut, 4679 CRB-2-03-6 (June 4, 2004).
Claimant has burden to prove eligibility for § 31-308(b) benefits. The determination of maximum medical improvement date is within the province of the trial commissioner. See also, **Maddaloni**, § 31-295.

Bowee v. Comcast Cablevision, 4604 CRB-3-03-1 (May 12, 2004).
CRB affirmed trier's determination to award a proportional part of maximum weeks for injured coccyx not actually removed. See also, **Bowee**, § 31-301. Factual findings.

Garcia v. Complete Change Landscaping Tree Removal, 4670 CRB-5-03-5 (May 3, 2004).
Second Injury Fund appealed from the commissioner's permanent partial award for the 22% loss of use of his non-master hand. Fund claimed award was limited by law to a 50% loss of use of the small finger and 27% loss of use of the ring finger. CRB held trial commissioner may take into account the impact of the loss of use of the fingers on the claimant's use of the whole hand. See also, **Garcia**, § 31-307.

Schenkel v. Richard Chevrolet, Inc., 4639 CRB-8-03-3 (March 12, 2004).
Trier was entitled to find treating physician's opinion regarding percentage of permanency more persuasive than that of respondent's examiner. However, remand was necessary to clarify degree of accountability of earlier compensable injury for subsequent disability, where trier relied on opinions of a treating physician who stated that claimant's lumbar fusion surgery was more due to effects of original L4-L5 work injury than it was to subsequent compensable L5-S1 injury. If permanency is

apportionable among compensable injuries, the issue must be addressed by trial commissioner. Remanded to resolve inconsistent findings. See also, **Schenkel**, § 31-294d, § 31-295(c), § 31-301. Factual findings, § 31-307, § 31-308(b); **Schenkel**, § 31-349.

Krol v. A.V. Tuchy, Inc., 4613 CRB-4-03-1 (January 29, 2004).
Trier determined that claimant had reached maximum medical improvement (combined) of back and knee as of February 28, 2000, with back having reached that status as of July 27, 1999. Affirmed. Medical reports supported these findings. Trier was not required to credit a different doctor's opinion that synergistic effect of back and knee injuries prevented claimant from reaching maximum medical improvement until TLSO brace was obtained and Synvisc injections had ceased. See also, **Krol**, § 31-296. Voluntary agreements (discontinuance of payments).

Strong v. UTC/Pratt & Whitney, 4563 CRB-1-02-8 (August 25, 2003).
Where claimant qualified for "Class 3" impairment under AMA guidelines, trier was within his authority to credit report of doctor that awarded claimant 48% permanency rating of lungs, even though some evidence existed that could have supported a lower rating. Doctor's diagnosis was not medically unreasonable. See, **Strong**, § 31-275(1)(no apportionment allowed for portion of disability due to pre-existing emphysema that was not work-related, even if condition developed simultaneously with work-related asbestosis), § 31-275(15); § 31-301. Factual findings, § 31-349.

Landry v. Light Metals Coloring Co., 4514 CRB-6-02-4 (April 3, 2003).
CRB affirmed trier's dismissal of permanency claim. Doctor's 15% rating was not based on any ascertainable methodology; rather, he admittedly "picked a number" that sounded relatively low to him. Further, trier had discretion to disregard doctor's report and deposition, despite absence of any medical report to the contrary.

Santiago v. PMI, Inc., 4513 CRB-6-02-4 (March 27, 2003).
CRB affirmed the trial commissioner's ruling that claimant was not entitled to a permanent partial disability rating of the upper extremity where claimant suffered the loss of use of several of his fingers. In this particular instance the claimant claimed that he was entitled to a loss of use of his upper extremity due to a shoulder impairment that he claimed related to the work place accident. See also, **Santiago,** § 31-301. Factual findings.

Bourgeois v. Meadow Lawn Care, 4463 CRB-6-01-11 (November 18, 2002).
Trier's conclusion claimant sustained a 35.7% loss to his left ear reversed and remanded where treating physician's opinion was that claimant sustained a 35.7% *overall* hearing loss. See also, **Bourgeois,** § 31-301. Factual findings.

Napolitano v. Bridgeport, 4388 CRB-4-01-5 (September 6, 2002).
Medical opinions supported finding that claimant was not entitled to 35% impairment rating, despite treater's testimony that he suffered from moderate ventricular hypertrophy and deserved "Class 3" rating as per AMA Guides to Evaluation of Permanent Impairment. Other methods of diagnosing permanency may also be used, and

both independent medical examiner and commissioner's examiner questioned existence and origin of ventricular hypertrophy. See also, **Napolitano**, § 31-278, § 31-301. Factual findings, § 31-301-9.

Fuessenich v. Dept. of Public Safety/State Police, 4416 CRB-1-01-7 (June 21, 2002).
No error in trier's reliance on doctor's diagnosis of 20% permanent impairment to heart. Doctor adequately explained basis of his opinion that other parts of heart had increased blood-pumping activity to compensate for death of part of heart muscle, despite normal blood output of organ as whole. Case distinguished from Barton v. Ducci Electrical Contractors, Inc., 4374 CRB-6-01-4, infra. See also, **Fuessenich**, § 29-4a, § 31-307.

Donlin v. Cytec Industries, Inc., 4415 CRB-7-00-7 (June 5, 2002), **aff'd**, 77 Conn. App. 903 (2003)(per curiam).
Board affirmed trier's denial of "whole person"-based permanency rating, and advised that claimant may request permanency when physician rates scheduled body part under § 31-308(b). See also, **Donlin**, § 31-301-9.

Barton v. Ducci Electrical Contractors, Inc., 4374 CRB-6-01-4 (March 25, 2002).
Following Supreme Court decision in Barton, 248 Conn. 793 (1999), which held § 31-308(b) constitutional, claimant sought compensation for permanent partial impairment to skin insofar as it caused permanent loss of or loss of use of several scheduled body parts. CRB held that this action was not precluded by doctrine of res judicata, as law did not clearly provide this route to compensation prior to Supreme Court ruling. However, CRB reversed trier's award of 20% permanency to five scheduled body parts, as treating dermatologist had simply extrapolated 20% permanency rating of skin to each of those body parts, rather than evaluating overall remaining function of said parts in light of skin damage. Rating was not given within reasonable degree of medical probability. Remanded. Prior decision at Barton, 3569 CRB-8-97-3 (March 26, 1998), § 31-308(b) (constitutional issue certified to Appellate Court, and later to Supreme Court).

Safford v. Owens Brockway, 4335 CRB-4-00-12 (January 9, 2002), **rev'd**, 262 Conn. 526 (2003).
No error in awarding claimant 20% permanent partial impairment of upper arm where doctor's accepted opinion prescribed 20% permanency of shoulder. Trier is not required to use AMA formula in converting shoulder disability to arm disability. Evidence offered alternate method of converting rotator cuff repair to upper extremity impairment, and contained reports suggesting claimant's surgery results were not optimal, as she continued to have pain. (*Metro, C.,* **dissenting**)(doctor's subsequent letter was clearly intended to clarify disability rating as being 12% rather than 20%). Supreme Court reversed, holding that there was no competent medical evidence in record to establish a 20% permanency rating, and that trier erred by substituting his own opinion for that of medical experts.

Rayhall v. Akim Co., Inc., 4321 CRB-2-00-12 (November 5, 2001), **aff'd**, 263 Conn. 328 (2003).
See, **Rayhall**, § 31-278, § 31-295 (temporary partial disability benefits payable until multiple injured body parts all reach maximum medical improvement), § 31-298, § 31-307.

Collins v. Bridgeport, 4241 CRB-4-00-5 (June 21, 2001).
Trier decided not to retroactively apply P.A. 89-346, which made permanency benefits payable to children of decedent in equal shares absent surviving spouse or dependents. Affirmed. Date of injury rule applicable to § 31-308(d), as its enactment constituted substantive change in law. See also, **Collins**, § 31-306.

Smith v. John's Tree Service, 4272 CRB-3-00-7 (June 19, 2001).
CRB affirmed trier's award of 17% permanency to hand where claimant lost parts of two fingers in woodcutting accident. Doctor's report would have medically supported award for hand permanency or award for permanency to individual fingers. Trier not precluded from taking into account impact of finger loss on whole hand by virtue of § 31-308(b)'s specific remedy for lost phalanges of individual fingers. If logical relationship exists between body parts, impact of single injury on multiple parts may be considered, with duplicate compensation for interrelated body parts (such as fingers and hand) being offset.

Stonkus v. Foster Wheeler, 4194 CRB-4-00-2 (May 1, 2001).
CRB affirmed award of 10% permanent partial disability to lumbar spine. See also, **Stonkus**, § 31-279-9.

Faroni v. Country Club of Waterbury, 4175 CRB-5-00-1 (January 25, 2001).
CRB affirmed trier's adoption of 40% permanency rating by § 31-294f examiner despite claimant's assertion that basis for rating was unclear. Fact-finder's discretion to gauge credibility of experts allowed him to disregard opinion of treating physician, while examiner's opinion had been given within reasonable degree of medical probability. Claimant did not subpoena this doctor for cross-examination on witness stand, and CRB was in no position to judge accuracy of his opinion by independently applying AMA guidelines to complex injury involving several discrete body parts. See also, **Faroni**, § 31-294f.

Morin v. Miller Company, 4164 CRB-8-99-12 (December 19, 2000).
CRB affirmed trier's adoption of physician's permanent partial impairment rating for hearing loss, which was based on AMA guidelines. Board held that AMA formula does not, as a matter of law, impermissibly exclude actual hearing loss from its disability calculation. Based on the evidence before her, trier reasonably ruled that this formula, which is designed to determine hearing-loss handicap based on ability to perceive frequencies of normal speech, is the best means of calculating a claimant's loss of use of hearing function under the workers' compensation statute. CRB cannot reverse such a factual determination.

Ford v. Carpenter Chapman, 4128 CRB-3-99-9 (November 30, 2000).
At request of both parties, CRB remanded case to trial commissioner for further findings on issue of claimant's entitlement to permanency benefits for injury to his abdominal wall, which is not explicitly listed in the statutory tables. See also, **Ford**, § 31-294d, § 31-301. Factual findings, § 31-308(a).

Sharkey v. Stamford, 4068 CRB-7-99-6 (November 17, 2000).
Trial commissioner properly concluded that claimant's heart disease constituted a compensable injury under § 7-433c, and that a prior permanent partial award of 4.5% of the heart (for hypertension) had to be deducted from the 37% permanent partial impairment in order to prevent a double recovery. CRB explained that, in order to prevent double recovery, § 31-349(a) has consistently been applied by deducting from a permanency award any compensation paid or payable due to a prior permanent partial impairment of the same body part. See also, **Sharkey**, § 31-300, § 31-349.

Boccuzzi v. Norwalk Courtyard Marriott, 4123 CRB-7-99-9 (October 11, 2000).
Trier found that claimant's low back condition (including possible need for surgery) was caused by his compensable injury, but that he had not yet reached maximum medical improvement. Trier ordered claimant to return to an IME physician regarding whether his need for surgery was caused by the compensable injury, noting that causation "shall not be an issue" for the IME doctor to address. In their appeal, respondents contended that said restriction improperly limited their ability to litigate whether any of the claimant's PPD was caused by two earlier injuries. CRB explained that a commissioner is only empowered to decide how much compensation is appropriate given the condition of the claimant at the time of the proceedings. As the claimant had not yet reached MMI, no determination regarding PPD could have been made. At some point in future, permanency may be assessed, and a physician may offer an opinion as to whether any of the PPD was due to the prior injuries.

Bilotta v. Connecticut Natural Gas Corp., 4106 CRB-1-99-8 (October 5, 2000).
CRB affirmed trier's award of 200 weeks of discretionary benefits for a 1973 injury. Chronic pain in territory of ilioinguinal nerve and scrotum severely limited claimant's physical activities, and was not duplicative of permanency to left leg. Trier entitled to consider "whole-person" ratings in calculating percentage of loss of organ, or loss of use of its function, even though award itself cannot be for whole-person disability. Benefit award was consistent with the law, though trier should have better articulated reasons for his findings given discretionary nature of award. See also **Bilotta**, § 31-300, § 31-301. Factual findings. Prior decision at Bilotta, 3536 CRB-1-97-2 (May 26, 1998), § 31-308(a), § 31-308(b).

Mahoney v. Bill Mann Tree Service, 4095 CRB-4-99-8 (August 10, 2000), **aff'd**, 67 Conn. App. 134 (2001).
Claimant has burden of establishing permanency rating to body part. CRB affirmed trier's finding that, on remand, the record contained no credible evidence establishing such a percentage. See also, **Mahoney**, § 31-308a. Prior decision at Mahoney, 16 Conn. Workers' Comp. Rev. Op. 17, 3025 CRB-4-95-3 (October 4, 1996), § 31-294d, § 31-298.

Carlson v. Waste Conversion Technologies, 4035 CRB-3-99-4 (May 24, 2000).
CRB affirmed trier's determination that claimant sustained a 45% permanent partial disability of the lungs. Respondents argued that this assessment was based upon his condition if he was *not* taking medication, but in fact the claimant *was* taking medication, which reduced his disability to 25%. Board cited Larson's Treatise, which supports the ruling that loss of use should be judged on the basis of the uncorrected impairment. Therefore, loss of use will not be ruled out because symptoms are controlled by medication.

Garcia v. Legare Plumbing & Heat, 3856 CRB-2-98-7 (September 23, 1999).
Evidence supports 20% permanent partial impairment rating of claimant's brain. At time of injury (1990), § 31-308(d) was applicable, as the brain was not yet a scheduled organ. Impairment of the brain has a directly proportional effect upon the function of the whole person, and trier did not err by inferring a 20% brain disability from the doctor's report concerning the impairment of "complex integrated cerebral functions" as they affected claimant's ability to perform daily activities. See also, **Garcia**, § 31-307.

Mikishka v. Meriden, 3869 CRB-8-98-7 (September 3, 1999).
CRB affirmed trier's scarring award, and his finding that claimant suffered a compensable injury. Issue was one of credibility of witnesses, and trier believed claimant's story over that of his co-workers. Variance among doctor, trial commissioner in description of lesion on scalp could merely indicate progression of skin condition on head. As for argument that the scar evaluation hearing was held over two years after date of injury, CRB noted that claimant requested hearings on scar over a year prior to the trier's evaluation, and that delays were due to other parties or the demands of the system itself. See also, **Mikishka**, § 31-301. Factual findings. Prior decision at Mikishka v. Meriden, 16 Conn. Workers' Comp. Rev. Op. 178, 3574 CRB-8-97-3 (May 2, 1997).

Valentine v. State/Dept. of Correction, 3862 CRB-1-98-7 (September 3, 1999).
Trier awarded a 20% permanent partial disability of the left hip. Record indicated claimant had previously received a 16.25% permanent partial disability of the left knee. Because the knee and the hip are both considered to be the "leg" for purposes of permanency, CRB remanded issue to the trial commissioner. See also, **Valentine**, § 31-275(1).

Bryan v. Sheraton-Hartford Hotel, 3730 CRB-4-98-5 (May 7, 1999), **rev'd**, 62 Conn. App. 733 (2001).
After remand from CRB in Bryan, 3320 CRB-1-96-4 (March 12, 1997) [§ 31-301-9], trier considered the evidence presented pursuant to the remand and concluded that 10% of the claimant's permanency was due to her compensable injury of December 1989. See also, **Bryan**, § 31-298.

Kluttz v. Estate of Glenn Howard, 3738 CRB-4-97-12 (February 18, 1999).
Trier properly relied on most recent medical report in setting date of maximum medical improvement, as it was the only one that unequivocally stated claimant's condition no longer required treatment. See also, **Kluttz**, § 31-278. Prior decision at Kluttz, 10 Conn.

Workers' Comp. Rev. Op. 195, 1199 CRD-4-91-3 (November 5, 1992), aff'd, 228 Conn. 401 (1994), § 31-278, § 31-355.

Jones v. Maaco of Greater Bridgeport, 3634 CRB-4-97-4 (August 5, 1998).
See, **Jones**, § 31-296.

Shanklin v. UTC/CTVIP, 3537 CRB-5-97-2 (June 22, 1998).
Commissioner found that claimant had 10% permanent partial disability due to sciatica symptoms, but did not assign the disability to a specific body part. Initial compensable injury was a broken ankle, but sciatica seemed to be located in pelvic/buttocks area, and was caused by altered gait. CRB remanded case to trier to make finding as to which body part the sciaticalogical impairment affected. See also, **Shanklin**, § 31-301. Appeal procedure.

Ricigliano v. Rex Forge, 3476 CRB-6-96-11 (April 8, 1998), **aff'd**, 53 Conn. App. 158 (1999), **cert. dismissed,** 252 Conn. 404 (2000).
High-frequency hearing loss case where trial commissioner relied on medical opinion based on AMA formula in awarding only .62% permanent partial disability. Case was originally remanded to trier with instruction not to limit consideration to AMA guidelines. See, Ricigliano, 15 Conn. Workers' Comp. Rev. Op. 142, 2190 CRB-6-94-10 (January 18, 1996). Trier reached same decision, stating that he found the opinion of Dr. Yanagisawa more credible than that of Dr. Friedman, who advocated a 35% permanent partial disability rating based on an alternative test. Held: trier has authority to choose among conflicting medical opinions, and board must affirm his decision.

Neal v. UTC/Pratt & Whitney, 3496 CRB-1-96-12 (April 6, 1998).
Claimant suffered from dermatitis on hands due to exposure to chemicals at workplace. Respondents contended that trial commissioner erred by awarding § 31-308(d) benefits for permanent partial impairment in addition to a previous award for disfigurement of the same body part. CRB found that awards for both disfigurement and permanent partial disability to same body part do not constitute double compensation. However, trial commissioner's findings did not specify the exact basis for this award, so the case was remanded for further findings.

Johnson v. Manchester Bus Service, Inc., 3472 CRB-1-96-11 (April 1, 1998).
Trial commissioner awarded a 15% permanent partial disability of the back. CRB remanded in order for determination of permanent impairment caused by claimant's *prior* work-related injury in another state. Even if prior impairment was not paid, it was "payable" pursuant to § 31-349 and thus must be subtracted from resulting permanency. Subsequent decision at Johnson, 3863 CRB-1-98-8 (August 5, 1998), § 31- 301 Appeal procedure.

Barton v. Ducci Electric, 3569 CRB-8-97-3 (March 26, 1998), 248 Conn. 793 (1999).
CRB reserved the following issue to the Appellate Court pursuant to § 31-324: Whether § 31-308(b) deprives claimants of equal protection or due process of law by providing permanent partial disability benefits for some, but not all, organs and body parts? In Barton v. Ducci Electrical Contractors, Inc., 248 Conn. 793 (1999), the state Supreme

Court held that § 31-308(b) as amended by P.A. 93-228 does not violate the equal protection clause of either the United States constitution or the state constitution. The court declined to address the issue of due process because it was not adequately briefed by the parties. The claimant had been burned in a fire and sought permanent partial disability benefits for the injury to his skin. The court held that § 31-308(b) as amended by P.A. 93-228 does *not* provide a trial commissioner with discretion to award permanent partial disability of an unscheduled body part. (*Berdon, J.*, **dissenting** in part). Justice Berdon noted that the claimant's burns were severe and left him permanently disabled, yet the trial commissioner did not compensate him for his skin injuries because the skin is not listed as a scheduled body part. Justice Berdon opined that under the majority's decision, the claimant's skin injuries are compensable, even though the skin is not specifically enumerated under § 31-308(b), to the extent that his burn injury is "related to the loss of or loss of use of a scheduled body part or member, i.e., the portions of the plaintiff's body covered by the injured skin." (fn. 14) (internal quotations omitted). Subsequent decision at Barton, 4374 CRB-6-01-4 (March 25, 2002), § 31-308(b).

Schilling v. New Departure-Hyatt Division, 3290 CRB-6-96-3 (August 4, 1997).
Claimant suffered high-frequency hearing losses from workplace exposure. Pursuant to AMA formula, which trier followed, claimant suffered no permanent hearing loss entitling him to permanent partial disability benefits. Majority held that the decision should be affirmed. The only permanent partial disability diagnosis given in the record is the zero percent one based on the AMA guidelines. No alternative test and permanent partial disability rating was offered into evidence by the claimant, even though the doctors acknowledged the limitations of the AMA formula and agreed that the claimant had suffered significant hearing loss above 2000 Hz. (*Vargas, C.*, **dissenting**) AMA formula fails to compensate claimant for actual loss that is included in § 31-308. Such a result is unreasonable given the spirit of the Workers' Compensation Act. Cites with approval Ricigliano v. Rex Forge, 15 Conn. Workers' Comp. Rev. Op. 142, 2190 CRB-6-94-10 (May 2, 1996). See also, **Schilling**, § 31-301. Appeal procedure.

Chialastri v. Angelo's Trucking, 16 Conn. Workers' Comp. Rev. Op. 239, 3256 CRB-8-96-1 (June 24, 1997).
Claimant was injured on December 19, 1990, resulting in a 28% permanent partial disability of the brain. At that time, the brain was not a scheduled organ under § 31-308; therefore, the commissioner awarded 163.8 weeks of benefits under § 31-308(d) (presumably on a scale of 585 weeks). Subsequently, the statute was amended to reduce the maximum weeks of compensation payable from 780 weeks to 520 weeks, and the brain was assigned the maximum of 520 weeks. The claimant argues that, based on that scale, his specific award should have been calculated based on a maximum of 780 weeks of compensation, and he should have received 218.4 weeks of benefits. Held: P.A. 93-228 § 19 is totally inapplicable here. Retroactive application of a statute is only appropriate when the legislature specifically expresses such an intent, or if the new statute is procedural or merely clarifies existing law. This statute had a clear substantive effect. Also, there is no evidence that the commissioner abused his discretion by basing his award on a maximum of 585 weeks of benefits rather than 780. Section 31-308(d)

was general in its terms, prescribing no amount or length of any award, and making awards discretionary rather than mandatory. Award affirmed.

Bowman v. Jack's Auto Sales, 16 Conn. Workers' Comp. Rev. Op. 223, 3384 CRB-1-96-7 (June 18, 1997), **aff'd**, 54 Conn. App. 296 (1999).
After remand, trier decided to disallow credit of 48.4 weeks against 78-week unscheduled permanency award. Reversed; both the initial award pursuant to voluntary agreement and the second, longer award were based on the effect of the claimant's dermatitis on the use of his hands. Although the unscheduled award was permissible (1977 injury), the initial award for loss of use of hands should have been offset. See also, **Bowman**, § 31-308a. See subsequent decision at Bowman, 3622 CRB-8-97-6 (August 26, 1998), § 31-301. Appeal procedure, § 31-315 and prior decision at Bowman, 13 Conn. Workers' Comp. Rev. Op. 192, 1721 CRB-1-93-5 (March 22, 1995), aff'd, 54 Conn. App. 296 (1999).

Ruiz-Dugue v. Greenwich Hospital, 16 Conn. Workers' Comp. Rev. Op. 208, 3267 CRB-7-96-2 (May 22, 1997).
The trial commissioner's conclusion that claimant did not sustain a permanent partial disability due to work injury was affirmed by CRB as it was based upon the weight and credibility which the trier accorded the evidence and was fully supported by the record. See also, **Ruiz-Dugue**, § 31-307.

Marchand v. UTC/Pratt & Whitney, 3135 CRB-6-95-8 (January 22, 1997).
CRB held that a trial commissioner's permanent partial disability assessment cannot merely be the average of several medical opinions, but must be supported by at least one medical opinion.

Uttenweiler v. General Dynamics Corporation/Electric Boat Division, 3110 CRB-8-95-6 (January 8, 1997).
CRB reversed trial commissioner's award of 22% permanency rating. CRB held that a permanent partial disability assessment cannot merely be the average of several medical opinions, but must be supported by at least one medical opinion. See also, **Uttenweiler**, § 31-294c.

Squitieri v. Mariano Cardillo & Sons, 3084 CRB-7-95-6 (January 6, 1997).
The trial commissioner determined that the decedent's dependent widow was entitled to receive permanent partial disability benefits pursuant to § 31-308(d). The respondents contend on appeal that the trial commissioner improperly concluded that the decedent had made a request for permanent partial disability benefits prior to his death. CRB reversed the trial commissioner's decision. CRB explained that the commissioner's determination that the entitlement to permanent partial disability benefits vested prior to the decedent's death was in error where the request was made *prior* to the date of maximum medical improvement.

White v. UTC/Pratt & Whitney, 16 Conn. Workers' Comp. Rev. Op. 139, 3048 CRB-8-95-3 (November 27, 1996).
On appeal, the claimant contended that the trial commissioner was required to issue a permanency award for a burn on the claimant's leg. The trial commissioner found that the claimant's injury "may not have reached maximum medical improvement and that the respondents are entitled to have (the) claimant undergo a course of treatment involving the medication Psoralen to determine whether or not the scar is permanent and significant in nature." CRB affirmed the trial commissioner's determination which was supported by medical testimony. See also, **White**, § 31-301.

Blassingame v. Acme Steel Co., 16 Conn. Workers' Comp. Rev. Op. 20, 3007 CRB-6-95-3 (October 8, 1996), **aff'd**, 45 Conn. App. 914 (1997)(per curiam).
Trial commissioner credited doctor's report diagnosing one percent hearing loss, even though all doctors' examinations revealed severe high frequency hearing loss. AMA formula relied on by doctor does not take into account very low or high frequency hearing losses in computing overall hearing loss. CRB affirmed commissioner's decision. Although board acknowledged its decision in Ricigliano, 15 Conn. Workers' Comp. Rev. Op. 142, 2190 CRB-6-94-10 (January 18, 1996), where it ruled that reliance on AMA guidelines resulted in an unfairly low permanent partial disability assessment, it stated that reversing the commissioner's decision would not comport with principles of appellate review of a trial commissioner's prerogative to find the facts amidst conflicting evidence. Thus, the commissioner's decision was affirmed. See also, **Blassingame**, § 31-298.

Bertalovitz v. Danbury, 15 Conn. Workers' Comp. Rev. Op. 186, 2204 CRB-7-94-11 (April 1, 1996).
Claimant's post-traumatic stress disorder was caused by an incident during his employment as a police officer. Commissioner concluded that this did not disable him from all employment, however, and that PTSD is a treatable anxiety disorder rather than a neurological impairment of the brain. Because insufficient evidence was presented to establish permanent loss of brain function, permanent partial disability benefits were denied. CRB affirmed that decision, as evidence supported the factual findings. Also, § 31-294d(c) allows commissioner to direct change of treating physician without a hearing.

Rogulski v. UTC/Pratt & Whitney Aircraft, 15 Conn. Workers' Comp. Rev. Op. 182, 2113 CRB-2-94-7 (April 1, 1996).
See, **Rogulski**, § 31-349 (scarring award not included in 104-week calculation).

Ricigliano v. Rex Forge, 15 Conn. Workers' Comp. Rev. Op. 142, 2190 CRB-6-94-10 (January 18, 1996), **dismissed for lack of final judgment,** A.C. 15655 (May 2, 1996).
Under compelling factual circumstances, CRB concluded that the trial commissioner's reliance on the AMA guidelines resulted in a permanent partial disability assessment which did not fairly or accurately reflect the claimant's undisputed high frequency hearing loss. Accordingly, CRB remanded issue to the trial commissioner in order to determine the claimant's permanent partial hearing loss without limiting the determination to the AMA guidelines. (*Frankl, C.,* **dissenting**) (would affirm the trial

commissioner's determination of the claimant's percentage of permanent hearing loss as this board has repeatedly held that the determination of the extent of an injured worker's permanent disability is within the trial commissioner's province as the trier of the facts).

Burr v. Hoffman Water Treatment Co., 14 Conn. Workers' Comp. Rev. Op. 180, 2125 CRB-8-94-8 (June 29, 1995).
Trial commissioner found that payment of benefits was requested over ten months before maximum medical improvement was reached. Under McCurdy v. State, 227 Conn. 261 (1993), claimant must request payment of specific award after maximum medical improvement is reached, as award does not vest until that time. Thus, commissioner erred in finding that dependent widow was entitled to unpaid portion of specific award. See also, **Burr**, § 31-298.

Golino v. Standard Builders, 14 Conn. Workers' Comp. Rev. Op. 103, 1510 CRB-1-92-9 (June 2, 1995).
Remanded. Trier's denial of additional permanent partial disability benefits was based on a fact not in evidence. Trier mistakenly inferred claimant had knowledge of doctor's report and the parties compromise was based on the consideration of that report. See also, **Golino**, § 31-308a.

Dextraze v. Lydall, Inc., 14 Conn. Workers' Comp. Rev. Op. 52, 1615 CRB-2-92-12 (May 10, 1995).
Trier relied on respondent's medical expert and subsequent report of treating physician when determining date of maximum medical improvement rather than treater's earlier permanent partial disability rating as date of maximum medical improvement. See also, **Dextraze**, § 31-308(a),a and § 31-310.

Angell v. Guida Seibert Dairy, 14 Conn. Workers' Comp. Rev. Op. 7, 1836 CRB-1-93-9 (April 28, 1995).
Commuted permanent partial benefits under § 31-308 interrupted by a period of temporary total disability will be applied after total disability ceases. Section 31-308(a) benefits will follow. See, Antonucci v. Hartford, 5 Conn. Workers' Comp. Rev. Op. 151, 511 CRD-1-86 (July 29, 1988). Trier properly determined the order in which benefits should be paid when temporary total interrupts period when commuted permanent partial benefits are being paid.

Shimko v. Ferro Corp., 13 Conn. Workers' Comp. Rev. Op. 255, 1744 CRB-7-93-5 (April 18, 1995), **rev'd**, 40 Conn. App. 409 (1996).
Commissioner did not abuse discretion in failing to award § 31-308(d) benefits where no evidence of permanent organ loss existed, and claimant's treating physician observed the disappearance of claimant's symptoms after he left employment with respondent. Reversed, on § 31-308(a) issue. See also, **Shimko**, § 31-284b, § 31-308(a).

Peters v. State/Southern Conn. State Univ., 13 Conn. Workers' Comp. Rev. Op. 131, 1616 CRB-5-92-12 (February 1, 1995).
Commissioner considered all listed statutory criteria in awarding benefits for loss of rectal function, abdominal wall and sexual potency under § 31-308(d) (repealed 1993).

No finding required as to effect of injuries on earning capacity, although such a finding would be permissible. Compensation under § 31-308(d) is in nature of specific award. See also, **Peters**, § 31-294c.

Tinsley v. J.H. Ney Company, 12 Conn. Workers' Comp. Rev. Op. 409, 1554 CRB-1-92-11 (September 16, 1994).
Employer's reliance on Extended Illness Income Protection Plan in order to receive a credit on specific award misplaced. Awards under § 31-308 do not represent actual lost wages as referred to in said policy. Furthermore, payments made under that policy are not for a work connected injury or illness. Recourse is with superior court and not with this forum. See also, **Tinsley**, § 31-314, Allowance for advance payments.

Salz v. Oliver's Taverne, 12 Conn. Workers' Comp. Rev. Op. 325, 1593 CRB-8-92-12 (July 5, 1994).
Medical evidence, although conflicting, supports trier's finding that claimant's disability did not increase and therefore claimant was not entitled to additional permanent partial benefits. See also, **Salz**, § 31-308a. Additional Compensation.

Messier v. General Dynamics Corporation/Electric Boat Division, 12 Conn. Workers' Comp. Rev. Op. 157, 1495 CRB-2-92-8 (April 26, 1994).
Trier's finding denying claimant estate's claim that decedent had reached maximum medical improvement as his terminal lung condition would never change, affirmed. CRB held trier's conclusion was based on medical evidence and must stand. See also, **Messier**, § 31-301. Appeal procedure.

Hall v. Gilbert & Bennett Mfg. Co., 12 Conn. Workers' Comp. Rev. Op. 146, 1449 CRB-7-92-7 (April 7, 1994), **order to dismiss granted**, A.C. 13523 (June 29, 1994), **cert. denied**, 231 Conn. 903 (1994).
CRB reversed trial commissioner's denial of claimant's request for a specific award where maximum medical improvement had been reached yet claimant continued to be totally disabled. Under McCurdy v. State, 227 Conn. 261 (1993), where an injured worker reaches maximum medical improvement his right to a permanency award has vested, therefore, the commissioner does not have discretion to deny such award if the worker requests that award. However, respondents are entitled to a credit against that award for any total disability benefits paid between the date of request and the date the injured worker is no longer totally disabled or dies. See also later Hall, § 31-301. Appeal procedure and § 31-349.

Prioleau v. Larosa Construction, 12 Conn. Workers' Comp. Rev. Op. 140, 1432 CRB-8-92-6 (April 7, 1994).
Remanded as CRB held claimant is entitled under § 31-349(a) to full permanency award where physician attributes half of disability rating to a pre-existing condition. Additionally, trier must determine whether claimant's pre-existing permanency was due to his prior workplace injury or some other cause. See also, **Prioleau**, § 31-299b, § 31-307 and § 31-349.

Mansfield v. State/Dept. of Correction, 12 Conn. Workers' Comp. Rev. Op. 226, 1388 CRB-1-92-3 (March 23, 1994).
CRB affirmed trier's conclusion denying claimant § 31-308 benefits for an accepted hypertension claim where physician's impairment rating of claimant's cardiovascular system was based on claimant's reduced employability. See also, **Mansfield**, § 31-301. Appeal procedure.

Kerins v. Johnson Controls, 12 Conn. Workers' Comp. Rev. Op. 72, 1419 CRB-8-92-5 (February 3, 1994).
Trier's decision affirmed. Medical opinion evidence as to date of maximum medical improvement and extent of disability amply supports trier's findings. Trier is not bound by medical opinion of treating physician.

Furrey v. Wells Fargo Alarm System, 11 Conn. Workers' Comp. Rev. Op. 192, 1307 CRD-3-91-9 (September 22, 1993).
Trier awarded claimant 234 weeks permanent partial disability of her temporomandibular joints based on criteria set forth in § 31-308(d), (now § 31-308(c)). CRB found award was not based on a whole person impairment. See also, **Furrey**, § 31-298.

Romanski v. West Hartford, 10 Conn. Workers' Comp. Rev. Op. 253, 1222 CRD-1-91-4 (January 13, 1993), **aff'd**, 34 Conn. 307 (1994).
Evidence reasonably supports a conclusion that claimant sustained a permanent physical impairment of the cardiovascular system due to hypertension. See also, **Romanski**, § 7-433c.

Snyder v. Americo-U-Haul of Connecticut, 10 Conn. Workers' Comp. Rev. Op. 232, 1219 CRD-5-91-4 (January 7, 1993).
Remanded as trier failed to address evidence as to whether claimant suffered a permanent partial disability of the back. CRB affirmed trier on § 31-307b issue. See also, **Snyder**, § 31-307b.

Peterson v. Standard Structural Steel, 10 Conn. Workers' Comp. Rev. Op. 200, 1211 CRD-6-91-4 (November 12, 1992).
Claimant is not entitled to receive concurrent payment of temporary total and permanent partial benefits. See, Paternostro v. Edward Coon Co., 217 Conn. 42 (1991).

Duso v. Emhart Corporation, 10 Conn. Workers' Comp. Rev. Op. 146, 1175 CRD-6-91-2 (June 29, 1992).
Trier's finding that claimant reached maximum medical improvement and sustained a 5% permanent partial disability of each hand due to compensable bilateral carpal tunnel syndrome supported by medical evidence.

Miner v. Watertown, 10 Conn. Workers' Comp. Rev. Op. 100, 971 CRD-5-90-1 (April 28, 1992).
Evidence before trier disclosed claimant suffered a permanent partial disability to his right arm. See also, **Miner**, § 31-300, § 31-301. Factual findings, § 31-308(a).

McCarthy v. 10 Star Corporation, 10 Conn. Workers' Comp. Rev. Op. 64, 1134 CRD-2-90-11 (March 16, 1992).
Trier based his award of 5% permanent partial disability of the right ankle on medical evidence which did not specifically evaluate pain and assign a percentage of disability for it. CRB finds no error in conclusions reached. See also, **McCarthy**, § 31-301. Appeal procedure.

Peters v. State/Southern Connecticut State University, 10 Conn. Workers' Comp. Rev. Op. 32, 1103 CRD-3-90-8 (January 13, 1992).
Remanded as trier relied on medical reports not entered into evidence and made part of the record below in awarding permanent partial disability benefits. See also, **Peters**, § 31-294c, § 31-301. Appeal procedure.

Roswell v. State/Southbury Training School, 10 Conn. Workers' Comp. Rev. Op. 19, 1094 CRD-5-90-8 (December 27, 1991), **aff'd**, 29 Conn. App. 432 (1992), **cert. denied**, 224 Conn. 922 (1992).
Dependent widow's claim for additional specific award based on the increase of decedent's permanent partial disability for loss of use of the heart denied. Trier found decedent totally disabled and decedent received temporary total benefits until his date of death.

St. Germain v. Waterbury, 9 Conn. Workers' Comp. Rev. Op. 290, 1084 CRD-5-90-8 (December 27, 1991).
Remanded as trier failed to make specific factual findings as to why claimant was not entitled to the number of weeks of benefits customarily awarded for twenty (20%) percent loss of use of both lungs and to indicate the statutory procedure followed in arriving at the conclusion reached.

Alger v. Rossi Corporation, 9 Conn. Workers' Comp. Rev. Op. 261, 1065 CRD-1-90-6 (December 5, 1991).
Trier's award based on loss of use of the brain supported by evidence. The amount of benefits awarded is discretionary depending upon the disabling effect of loss of or loss of function of the organ and not based on a set mathematical formula. See also, **Alger**, § 31-349.

Barter v. Greenwich Country Day School, 9 Conn. Workers' Comp. Rev. Op. 244, 966 CRD-7-90-1 (October 31, 1991).
Surviving spouse and estate are not entitled to § 31-308 specific benefits even though decedent was rated. No specific award was ever made or sought as decedent received temporary total benefits until his death. See, McCurdy v. State, 9 Conn. Workers' Comp. Rev. Op. 22, 887 CRD-4-89-6 (January 10, 1991), aff'd, 26 Conn. App. 466 (1992), rev'd, 227 Conn. 261 (1993) and Bacote v. Anaconda American Brass, 1 Conn. Workers' Comp. Rev. Op. 42, 18 CRD-5-80 (June 12, 1981).

Corcoran v. Corcoran Moving and Storage, Inc., 9 Conn. Workers' Comp. Rev. Op. 237, 1030 CRD-5-90-6 (October 31, 1991).
CRD affirmed trier's finding which awarded claimant total disability benefits for disabling condition which rendered claimant a paraplegic even though claimant sought benefits under § 31-308(b). See also, **Corcoran**, § 31-301, § 31-284(a) and § 31-307.

Straub v. Bolt Technology Corporation, 9 Conn. Workers' Comp. Rev. Op. 212, 1130 CRD-3-90-11 (September 12, 1991).
Award for 15% loss of use of the lumbar spine supported by evidence. See also, **Straub**, § 31-298, § 31-294f.

McCurdy v. State, 9 Conn. Workers' Comp. Rev. Op. 22, 887 CRD-4-89-6 (January 10, 1991), **aff'd**, 26 Conn. App. 466 (1992), **rev'd**, 227 Conn. 261 (1993).
Within trier's power to decide whether to award § 31-308 benefits when claimant reaches maximum medical improvement and remains totally disabled. Unmatured benefits pursuant to § 31-308 payable only to dependents eligible to receive them. Supreme Court reversed CRB and held that the estate was entitled to the payment of specific benefits although at the time of decedent's death, due to unrelated causes, he was receiving temporary total benefits. See also, **McCurdy**, § 31-295, § 31-306.

Williams v. Best Cleaners, 8 Conn. Workers' Comp. Rev. Op. 168, 843 CRD-1-89-3 (October 26, 1990).
Section 31-308(d) does not enumerate body parts as § 31-308(b) does. Where there is testimony to conclude that the lung function as a whole was incapacitated, and not just a piece of each lung, it was proper for the commissioner to transfer liability after 104 weeks of payment. See also, **Williams**, § 31-349.

Shallcross v. New London, 8 Conn. Workers' Comp. Rev. Op. 150, 935 CRD-2-89-10 (September 20, 1990).
Section 31-308(d) benefits payable under § 7-433c. See, Felia v. Westport, 214 Conn. 181 (1990), aff'd, 7 Conn. Workers' Comp. Rev. Op. 84, 703 CRD-4-88-3 (September 25, 1989) and Deschnow v. Stamford, 214 Conn. 394 (1990), aff'd, 7 Conn. Workers' Comp. Rev. Op. 86, 706 CRD-7-88-3 (September 25, 1989). Claimant entitled to same benefits as available under Chapter 568. See also, **Shallcross**, § 31-284b and § 31-283a.

Paternostro v. The Edward Coon Co., 8 Conn. Workers' Comp. Rev. Op. 113, 817 CRD-5-89-2 (June 19, 1990), **aff'd**, 217 Conn. 42 (1991).
See, **Paternostro**, § 31-307.

Stevens v. Raybestos Manhattan, 8 Conn. Workers' Comp. Rev. Op. 84, 833 CRD-4-89-3 (May 11, 1990), **aff'd**, 28 Conn. App. 226 (1992), **cert. denied**, 223 Conn. 921 (1992).
Disfigurement and unscheduled permanent partial. Permanent partial disability benefits due to asbestos exposure should be calculated on the basis of the average weekly wage at the time claimant was found to be permanently and partially disabled. See also, **Stevens**, § 31-310.

Misenti v. International Silver Co., 7 Conn. Workers' Comp. Rev. Op. 96, 729 CRD-6-88-9 (October 19, 1989), **no error**, 215 Conn. 206 (1990).
Finding that claimant is permanently partially disabled due to impaired motion of his hands caused by chronic skin dermatitis is within the discretion of the trial commissioner.

Vieta v. Consolidated Cigar, 7 Conn. Workers' Comp. Rev. Op. 48, 677 CRD-6-87 (August 3, 1989).
Employer liable for separate 104 week benefit period for each injury scheduled or unscheduled that may have arisen from same accident before transferring liability to the Fund. See also, **Vieta**, § 31-349.

Laine v. New England Aircraft, 6 Conn. Workers' Comp. Rev. Op., 138, 536 CRD-6-86 (April 5, 1989).
Where evidence in conflict as to reversibility of claimant's lung condition award for loss of lung function permitted.

Hicks v. State/Dept. of Administrative Services, 6 Conn. Workers' Comp. Rev. Op. 111, 429 CRD-5-85 (February 23, 1989), **no error**, 21 Conn. App. 464 (1990), **cert. denied**, 216 Conn. 804 (1990).
Claimant by accepting benefits under this section admits to legal inference that he is no longer totally disabled. See also, **Hicks**, § 31-300, § 31-307, § 31-308a.

Piscitelli v. Connecticut Coke/Eastern Gas and Fuel Associates, 6 Conn. Workers' Comp. Rev. Op. 94, 575 CRD-3-87 (January 26, 1989).
Commissioner did take into account statute's criteria. AMA Guidelines may be considered although whole man awards not permitted.

Plourde v. Scovill Manufacturing Co., 6 Conn. Workers' Comp. Rev. Op. 67, 521 CRD-5-86 (December 1, 1988).
Permanent partial benefits for a 30% loss of use of stomach cannot be paid simultaneously with temporary total benefits.

Smith v. United Technologies Corp., 6 Conn. Workers' Comp. Rev. Op. 61, 142 CRD-6-82(2) (November 14, 1988).
Affirmed trial commissioner's award for loss of use of umbilical skin where Finding & Award was adequately supported by factual findings. See, Smith, infra.

Debarros v. A.L. Singleton, 6 Conn. Workers' Comp. Rev. Op. 22, 498 CRD-5-86 (September 19, 1988) **no error**, 21 Conn. App. 107 (1990).
CRD affirmed dismissal of claim for loss of use of brain. See also, **Debarros**, § 31-298, § 31-301. Factual findings.

Antonucci v. Hartford, 5 Conn. Workers' Comp. Rev. Op. 151, 511 CRD-1-86 (July 29, 1988).
See, **Antonucci**, § 7-433c.

Macsata v. Stamford, 5 Conn. Workers' Comp. Rev. Op. 144, 377 CRD-7-85 (July 22, 1988).
Permanent partial benefits may not be awarded for unscheduled injuries which existed prior to law permitting such awards.

Delcarmine v. Fire Prevention Service, Inc., 5 Conn. Workers' Comp. Rev. Op. 123, 311 CRD-7-84 (June 27, 1988).
Determination of when claimant reached maximum medical improvement is a matter within trial commissioner's discretion.

Miner v. Federal Paperboard Co., 4 Conn. Workers' Comp. Rev. Op. 129, 333 CRD-2-84 (December 1, 1987).
Award for permanent partial benefits in lieu of total disability is a matter within the trial commissioner's discretion.

Mignosa v. New Britain, 3 Conn. Workers' Comp. Rev. Op. 75, 135 CRD-6-82 (October 8, 1986).
Once claimant has been properly paid benefits, a defense of laches will not bar later benefits even though claim has been inactive.

Laine v. New England Aircraft, 2 Conn. Workers' Comp. Rev. Op. 109, 195 CRD-6-83 (November 13, 1984).
Claimant may pursue an award under § 31-308(d) where injury was compensable.

Levesque v. State, 2 Conn. Workers' Comp. Rev. Op. 98, 231 CRD-6-83 (August 8, 1984).
Where commissioner awarded benefits for brain loss, Finding and Award must take into account statute's requirements.

Smith v. UTC/Pratt & Whitney Aircraft Div., 2 Conn. Workers' Comp. Rev. Op. 23, 142 CRD-6-82 (May 25, 1983).
Awards under this provision must be supported by facts showing statutory requirements were met.

Correa v. New England Forge, 1 Conn. Workers' Comp. Rev. Op. 164, 48 CRD-6-81 (August 13, 1982).
Claimant claimed 10% permanent partial disability of the back; Commissioner only awarded 5%.

Smith v. State, 1 Conn. Workers' Comp. Rev. Op. 95, 78 CRD-2-81 (January 4, 1982), **error**; **further proceedings**, 38 Conn. Sup. 648 (1983).
See later case listed under § 31-308(c).

Bacote v. Anaconda American Brass, 1 Conn. Workers' Comp. Rev. Op. 42, 18 CRD-5-80 (June 12, 1981).
Dependent widow was not entitled to specific compensation when decedent had remained on total temporary until his death from unrelated causes.

Sec. 31-308(c). Disfigurement.

Student v. Corometrics Medical Systems, Inc., 3980 CRB-8-99-2 (February 9, 2000).
CRB affirmed trial commissioner's scarring award, which mentioned another commissioner's assessment made during a prior informal hearing. Board cautioned that a trier should not review notes from a prior informal hearing. However, reference to informal hearing constituted harmless error, because the trier specifically stated that his scarring award was based upon his "own observation" and upon a physician's evaluation which was part of the record. See also, **Student**, § 31-275(1), § 31-294d, § 31-298.

Bilotta v. Connecticut Natural Gas, 3536 CRB-1-97-2 (May 26, 1998).
CRB affirmed the trial commissioner's denial of the claimant's request for a scarring award where the scar was caused by a second surgery for hernia repair and exploration of prior hernia operation. See also, **Bilotta**, § 31-308(a). Subsequent decision at Bilotta, 4106 CRB-1-99-8 (October 5, 2000).

Neal v. UTC/Pratt & Whitney, 3496 CRB-1-96-12 (April 6, 1998).
See, **Neal**, § 31-308(b).

Patel v. Connecticut Container Corp., 14 Conn. Workers' Comp. Rev. Op. 256, 1963 CRB-4-94-2 (August 31, 1995).
Compensable injury resulted in amputation of leg. Skin grafts made from claimant's abdomen to left leg stump. Commissioner made scarring award for donor site. Affirmed; Stitzer v. Rinaldi's Restaurant, 211 Conn. 116 (1989), is not controlling law because spinal surgery exception applied in that case. In contrast, exception relied on here was loss of member exception, which contemplates a substitute award under § 31-308(b). Because no such award is available for loss of skin at donor site, CRB determined statute should not be construed narrowly to prevent scarring award.

Flanagan v. Waterbury Hospital, 12 Conn. Workers' Comp. Rev. Op. 345, 1538 CRB-5-92-10 (July 29, 1994).
CRB affirmed scar/disfigurement award as the result of a cesarean section child birth necessitated by complications due to a compensable lumbar spine injury.

Tomkus v. Upjohn Company, 12 Conn. Workers' Comp. Rev. Op. 182, 1533 CRB-3-92-10 (May 2, 1994).
See, **Tomkus**, § 31-349.

Vargas v. Guilford Gravure, 11 Conn. Workers' Comp. Rev. Op. 28, 1253 CRD-3-91-7 (February 23, 1993).
Disfigurement award for permanent significant disfigurement of claimant's body caused by prescribed medication due to work related asthmatic condition upheld.

Faraci v. Connecticut Light & Power Co., 5 Conn. Workers' Comp. Rev. Op. 160, 508 CRD-2-86 (August 10, 1988).
See, **Faraci**, § 31-278.

Lukonis v. American Cyanamid Co., 5 Conn. Workers' Comp. Rev. Op. 129, 492 CRD-3-86 (June 29, 1988).
Law controlling benefits for scars and disfigurement will not be applied retroactively.

Cloutier v. General Dynamics Corporation/Electric Boat Division, 5 Conn. Workers' Comp. Rev. Op. 79, 424 CRD-2-85 (May 10, 1988).
See, McGowan v. General Dynamics Corp**.**, infra.

Stitzer v. Rinaldi's Restaurant, 4 Conn. Workers' Comp. Rev. Op. 104, 369 CRD-5-84 (June 15, 1987), **aff'd**, 15 Conn. App. 356 (1988), **rev'd**, **judgment directed**, 211 Conn. 116 (1989).
Surgical scar on anterior portion of neck and hip due to cervical fusion held compensable.

Repasi v. Jenkins Brothers, 4 Conn. Workers' Comp. Rev. Op. 82, 227 CRD-4-83 (June 11, 1987), **dismissed on other grounds**, 16 Conn. App. 121 (1988), **cert. denied**, 209 Conn. 817 (1988).
Act does not permit awards on basis of AMA whole person impairment assessment. However, such assessments may serve as evidence. Also scarring for non-scheduled injury was permitted.

Falcone v. United Technologies Corp., 4 Conn. Workers' Comp. Rev. Op. 54, 266 CRD-6-83, 267 CRD-6-83 (April 16, 1987).
Unclear from trial commissioner's finding and award if scar was significant.

McGowan v. General Dynamics Corporation/Electric Boat Division, 4 Conn. Workers' Comp. Rev. Op. 12, 273 CRD-2-83 (March 2, 1987), **error**, **judgment directed**, 15 Conn. App. 615 (1988), **aff'd**, 210 Conn. 580 (1989)(per curiam).
CRD held claimants entitled to scarring benefits in addition to federally provided Longshoremen's benefits. Reversed by Appellate Court. Appellate Court affirmed by Supreme Court.

Morro v. UTC/Sikorsky Aircraft, 4 Conn. Workers' Comp. Rev. Op. 10, 347 CRD-4-84 (March 2, 1987).
Scar award depends on trial commissioner's factual determination if the scar was significant.

Smith v. State, 3 Conn. Workers' Comp. Rev. Op. 69, 78 CRD-2-81 (September 11, 1986).
Contemporaneous payments for organ temporary total disability and organ loss permanent partial disability not permitted.

Scalora v. Dattco, Inc., 1 Conn. Workers' Comp. Rev. Op. 203, 157 CRD-6-82 (November 8, 1982), **reversed & remanded**, 39 Conn. Sup. 449 (1983).
CRD affirmed commissioner's ruling benefits for disfigurement under § 31-308 could not be paid concurrently with total incapacity benefits. Appellate Court reversed.

Sec. 31-308(d). Payment to employee, dependents, or children of any age.

Flouton v. Can, Inc., 4379 CRB-7-01-4 (March 13, 2002).
Issue: whether decedent's estate is entitled to receive vested but unmatured (i.e. unaccrued) permanent partial disability benefits pursuant to § 31-308(d). Board reviewed legislative history of P.A. 89-346, which lists class of eligible persons who can receive permanency benefits upon claimant's death as surviving spouse, dependents, or children of any age. Board concluded that decedents' estates did not fall within this class.

Sec. 31-308a. Additional compensation.

Brown v. State/DMR, 4748 CRB-6-03-11 (October 18, 2004).
CRB affirmed commissioner's dismissal of claim for additional 31-308a benefits. See also, **Brown**, § 31-301-4, § 31-298.

Dunlevy v. Infra Metals Corp., 4626 CRB-8-03-2 (April 5, 2004).
Trial commissioner declared that "no additional § 31-308a orders will be entered without evidence submitted by the claimant of an effort to increase his working hours . . . and/or supplement his income with an additional position and/or a major change in his medical status." Subsequent trial commissioner found that this order did not preclude him from awarding additional benefits under principle of res judicata. CRB agreed. First commissioner had authority to determine entitlement through date of formal hearing, based on claimant's status at that time. Commissioner did not have power, however, to circumscribe a future commissioner's discretion to determine whether alleged change in circumstances is sufficient to justify additional compensation. Language of initial order can only estimate conditions prerequisite to further award. Also, CRB ruled that definition of "earnings" under § 31-308a did not include claimant's settlement with Second Injury Fund for concurrent employment portion of § 31-308a claim. See also, **Dunlevy**, § 31-298, § 31-310.

Passeck v. Naugatuck, 4611 CRB-5-03-1 (January 13, 2004).
CRB affirmed trier's award of § 31-308a benefits to a retired firefighter who was collecting Social Security old age benefits. Although the claimant's physician believed the claimant was totally disabled due to his heart condition, the claimant continued to work at his part-time job. Acceptance of Social Security old age benefits does not in and of itself bar receipt of § 31-308a benefits. Additionally, the CRB affirmed the trier's finding that the claimant's curtailing of the number of hours he worked was related to his physical condition and not claimant's concern as to the adverse tax consequences of earning over a certain amount.

Starks v. State/University of Connecticut, 4467 CRB-2-02-12 (February 13, 2003), **rev'd**, 270 Conn. 1 (2004).
CRB adhered to holding in Iannarone v. State/Department of Mental Retardation, 4138 CRB-7-99-10 (June 15, 2001), infra, in affirming trier's decision to include state disability retirement pension in amount claimant is "able to earn" pursuant to § 31-308a.

Claimant did not offer evidence to demonstrate which state disability statute her pension originated under, and trier accordingly did not make finding that offset for workers' compensation benefits was required by disability statute. CRB explained that, if it is to fairly consider overruling precedent on the basis of clear conflict between Iannarone and language of State Employees' Retirement Act, statutory provisions applicable to claimant must be reliably established. Supreme Court reversed CRB decision, holding that State Employees' Retirement Act expressly mandates offset of certain workers' compensation benefits against disability retirement, no matter which state retirement plan applies to claimant (Tier I or Tier II). Court also noted that commissioner was required to consider provisions of retirement act, as interpretation of such was necessary to resolve case, even if record was inadequate regarding which retirement plan was in force here.

Rinaldi v. Enfield, 4459 CRB-1-01-11 (December 27, 2002), **aff'd**, 82 Conn. App. 505 (2004).
CRB ruled that "earnings" under § 31-308a do not include longevity-based retirement pensions, regardless of whether underlying claim is capped by § 7-433b(b). Social security old-age insurance benefits are also omitted from definition of "earnings." See also, **Rinaldi**, § 7-433c, § 31-278.

Smedley v. State/Department of Mental Retardation, 4461 CRB-5-01-11 (October 25, 2002), **rev'd**, 270 Conn. 32 (2004).
Supreme Court relied on its reasoning in companion case of Starks, supra, in holding that workers' compensation benefits under § 31-308a should not be offset by state disability retirement benefits. See also, **Smedley**, § 31-301. Appeal procedure.

Laneve-Annino v. Intracorp, 4441 CRB-8-01-9 (September 18, 2002).
CRB followed reasoning of McEnerney v. U.S. Surgical Corp., 4252 CRB-3-00-6 (October 16, 2001), aff'd, 72 Conn. App. 611 (2002), cert. denied, 262 Conn. 916 (2002), infra, in ruling that § 31-308a(b) did not give commissioner discretion to override durational limitation on benefits in § 31-308a(a). See also, **Laneve-Annino**, § 31-301. Factual findings; See also, **Laneve-Annino**, § 31-308(a).

Siebold v. Helicopter Support, Inc., 4392 CRB-3-01-5 (September 6, 2002).
See, **Siebold**, § 31-297 (claimant's physical condition is necessary component of § 31-308a claim for lost earning capacity).

Fox v. New Britain General Hospital, 4414 CRB-6-01-7 (August 6, 2002).
Claimant continued to work at prior nursing job 30 hours per week rather than 40. Trier found her qualified for two months of benefits. CRB affirmed, as under circumstances, trier could have concluded that claimant's performance of this job was indicative of her earning capacity. See also, **Fox**, § 31-294d, § 31-301. Factual findings, 31-308(a).

Richardson v. Bic Corp., 4413 CRB-3-01-7 (August 5, 2002).
CRB affirmed award of § 31-308a benefits. Evidence readily supported claimant's position that light duty work offered by employer was unsuitable to her needs. CRB remanded for recalculation of wage differential, as claimant was working only 16-hour

weeks, but was not restricted by doctor from working longer hours at light duty job. Direct comparison between average weekly wage at time of injury and gross weekly wages from part-time light duty job is insufficient; current earning capacity must be used instead. See also, **Richardson**, § 31-308(a).

McDaniel v. Wesleyan University, 4404 CRB-8-01-5 (April 3, 2002).
CRB affirmed trier's dismissal of § 31-308a claim where testimony of vocational specialist supported finding that earning capacity was not reduced by compensable injury, and trier considered factors listed in statute.

Belanger v. J & G Belanger Concrete Construction, 4368 CRB-6-01-3 (February 19, 2002).
Whether claimant meets statutory criteria of § 31-308a is factual question for trier. Here, claimant's evidence was found not credible. Denial of award affirmed. See also, **Belanger**, § 31-313. Prior decision at Belanger, 4238 CRB-6-00-5 (June 23, 2000), § 31-301. Appeal procedure and subsequent decision Belanger, 4684 CRB-6-03-6 (July 28, 2004), § 31-301. Appeal procedure, § 31-301. Factual findings.

Bryan v. Sheraton-Hartford Hotel, 3320 CRB-1-96-4 (January 29, 2002), **aff'd**, 74 Conn. 901 (2002), **cert. denied**, 263 Conn. 916 (2003).
Pursuant to Appellate Court remand, CRB considered appeal from trier's original decision, affirming finding that claimant suffered compensable back strain injury, but did not meet burden of proof that she also sustained shoulder injury or any internal/gastrointestinal or other injuries, including lost pregnancies. Additionally, no error found in trier's denial of § 31-308a benefits. See also **Bryan**, § 31-301. Factual findings. See related cases at, Bryan, 3730 CRB-1-97-11 (May 7, 1999), rev'd, 62 Conn. App. 733 (2001), § 31-298; Bryan, 3320 CRB-1-96-4 (March 12, 1997), § 31-301-9.

McEnerney v. U.S. Surgical Corp., 4252 CRB-3-00-6 (October 16, 2001), **aff'd**, 72 Conn. App. 611 (2002), **cert. denied**, 262 Conn. 916 (2002).
Claimant would have been entitled to continued § 31-308a benefits had she not moved to Florida. Unsuccessful work searches during year prior to move did not alter applicability of statutory language. Section 31-308a(b) does not grant trier additional authority to award benefits, but instead constitutes a restriction that permits awards only where circumstances warrant such compensation, even if claimant satisfies technical criteria of § 31-308a(a). CRB could not review constitutionality of in-state work restriction.

DiBello v. Barnes Page Wire Products, 4290 CRB-7-00-9 (September 25, 2001).
Trier awarded additional permanency benefits without making necessary subordinate findings regarding diminished earning capacity. CRB remanded for articulation, as insufficient information existed for review. See also, **DiBello**, § 31-300. Prior decision at Dibello, 3970 CRB-7-99-2 (May 2, 2000), aff'd, 67 Conn. App. 361 (2001), cert. granted, 260 Conn. 915 (2002), appeal withdrawn (June 26, 2002), § 31-278, § 31-294c, § 31-301. Appeal procedure, § 31-301-9, § 31-348.

Iannarone v. State/Department of Mental Retardation, 4138 CRB-7-99-10 (June 15, 2001).
CRB affirmed trier's inclusion of state disability retirement pension in amount claimant was "able to earn" for purpose of benefit calculation. Goal of wage replacement benefits is to replenish former income source, and claimant would be receiving more than he had prior to injury if he collected pension plus two-thirds of full difference between current earnings and wages he would have earned but for his compensable injury. Remanded because trier used net pension proceeds rather than gross pension proceeds in benefit calculation, as 1989 version of statute used pre-tax figures. NOTE: CRB's holding regarding inclusion of state disability retirement pension is no longer viable following Supreme Court decision in Starks, supra. See also, **Iannarone**, § 31-310, § 31-314. Prior decision at Iannarone, 4310 CRB-7-99-11 (December 6, 2000), § 31-301. Appeal procedure.

Smith v. BIC Corp., 4169 CRB-3-00-1 (April 30, 2001).
Respondents appealed trier's award of § 31-308a C.G.S. benefits, arguing that claimant had not searched for work. For injuries occurring prior to July 1, 1993 (the effective date of Public Act 93-228), § 31-308a does not specifically require a claimant to seek work, and job search is not only evidentiary means by which commissioner may determine that claimant qualifies for discretionary award of benefits. Award affirmed.

Mahoney v. Bill Mann Tree Service, 4095 CRB-4-99-8 (August 10, 2000), **aff'd**, 67 Conn. App. 134 (2001).
Commissioner not required to address issue of § 31-308a benefits on remand where no permanency was awarded. See also, **Mahoney**, § 31-308(b). Prior decision at Mahoney, 16 Conn. Workers' Comp. Rev. Op. 17, 3025 CRB-4-95-3 (October 4, 1996), § 31-294d, § 31-298.

German v. Burndy Corporation, 4007 CRB-5-99-3 (August 4, 2000).
Claimant argued that trier erred in denying further § 31-308a benefits without finding that his injury had changed, and without finding that suitable work was available for him. CRB found no merit to these arguments, as § 31-308a benefits are discretionary in nature, and the trier properly considered the statutory factors, including the employee's training, education, marketability, and the severity of his injury. Claimant sustained a 15% permanent partial disability of the back, and was able to perform numerous activities. The trial commissioner found that the claimant's training, including on-the-job training, qualified him for numerous employment possibilities. Thus, no abuse of discretion in denying further § 31-308a benefits.

Vescovi v. Yale University, 4039 CRB-3-99-4 (July 26, 2000).
Employer argued that trier erroneously awarded § 31-308a benefits after finding that the claimant did not search for work within his light duty capacity. CRB explained that evidence other than a job search may provide proof that claimant is unemployable, or is unable to make the same wages as he did previously. Here, trial commissioner found that claimant was able to perform light duty work during the period at issue, but that his employer did not provide him with suitable work. Moreover, claimant required light duty work for only a very *limited time*. Under these circumstances, trial commissioner

could infer that claimant was willing and able to work, but that searching for work for such a limited time would be futile.

Moran v. Continental Field Machine, 3990 CRB-2-99-3 (March 7, 2000).
CRB affirmed trial commissioner's award of additional permanent partial disability benefits with respect to its duration. At the time of 1992 injury, statute did not restrict the length of an award to the duration of the claimant's permanency award. However, CRB remanded with respect to the amount of benefits, as there was no evidence to establish wage differential beyond 1994. Trier improperly relied upon maximum weekly wage as the applicable compensation rate based on its use in a prior award of § 31-308a benefits that was based solely upon a stipulation by the parties. See also, **Moran**, § 31-278.

Chambrello v. Shaw's Supermarkets, 4008 CRB-6-99-3 (February 1, 2000).
Claimant was attending workers' rehabilitation classes three days per week. Inquiries into light duty employment for jobs at which she had prior experience were fruitless. No requirement to exhaust all potential job-seeking avenues. Trier could reasonably have concluded that she had no earning capacity. Award of benefits affirmed.

Katsigiannis v. Par Painting, Inc., 3639 CRB-4-97-7 (August 7, 1998).
Trial commissioner's denial of § 31-308a benefits to claimant affirmed. Claimant did not show that he was willing and able to work in the state of Connecticut as required by § 31-308a(b), and the comments of the claimant and a vocational expert indicated to the commissioner that he was not motivated to return to work or inclined to obtain work in Connecticut. Claimant also provided no information regarding the current earnings of an employee working at his former position. However, CRB noted that the trier should not categorically ignore the job that the claimant was performing at the time of his injury in determining his lost earning capacity simply because he had only been working at that job for two months.

Pontoriero v. Sanzo Concrete Construction, Inc., 3492 CRB-4-96-12 (March 6, 1998).
Panel affirmed trial commissioner's dismissal of claim for further discretionary benefits. Commissioner considered the appropriate statutory factors in making her decision. Additional findings relating to claimant's failure to maximize earning capacity were not erroneous; commissioner is not prohibited from taking said factor into account, although claimants are not required to introduce evidence of maximized earning potential in order to establish earning capacity for § 31-308a claim. See also, **Pontoriero**, § 31-301. Factual findings.

Degiacomo v. Arwood Corp., 3486 CRB-1-96-12 (January 21, 1998).
Trial commissioner's denial of benefits affirmed by CRB. See also, **Degiacomo** § 31-307, § 31-308(a).

Merola v. The Jackson Newspaper, Inc., 3344 CRB-3-96-5 (October 27, 1997).
Trier's award of § 31-308a benefits affirmed. Statutory change restricting duration of discretionary benefits to number of weeks of permanent partial disability benefits took

effect after the injury, and is inapplicable to this case. Law does not specifically require a claimant to seek work; commissioner may determine that a claimant qualifies for benefits by other means. Here, nature of injury and its severity justified an award without requiring the claimant to perform further work searches that would be fruitless. However, CRB noted for future cases that once a claimant turns 65 and begins receiving Social Security retirement checks, a showing that circumstances warrant the continued receipt of § 31-308a benefits should be required.

Perri v. Mitchell Motors, 16 Conn. Workers' Comp. Rev. Op. 242, 3259 CRB-6-96-1 (June 24, 1997).
See, **Perri**, § 31-300.

Bowman v. Jack's Auto Sales, 16 Conn. Workers' Comp. Rev. Op. 223, 3384 CRB-1-96-7 (June 18, 1997), **aff'd**, 54 Conn. App. 289 (1999).
Award of discretionary benefits affirmed, as prior decision in Bowman, 13 Conn. Workers' Comp. Rev. Op. 192, 1721 CRB-1-93-5 (March 22, 1995), settled this matter; change in duration of award was simply due to adjustment of permanency period. See also, **Bowman**, § 31-308(b). See subsequent decision Bowman, 3622 CRB-8-97-6 (August 26, 1998), § 31-301. Appeal procedure, § 31-315.

Hines v. Linc Scientific Imaging, 3037 CRB-8-95-3 (April 14, 1997).
Amount of money currently earned by claimant as a part-time secretary was not the only possible evidence of her earning capacity under § 31-308a. See also, **Hines**, § 31-301. Appeal procedure, § 31-315.

Figueroa v. Laidlaw Transit, 3154 CRB-4-95-9 (March 4, 1997).
It was within the discretion of the trial commissioner to deny the claimant's request for § 31-308a benefits as the claimant did not demonstrate that his earning power was adversely affected by his ten percent permanent partial disability of his lumbar spine, which the trial commissioner determined to be his only compensable injury. See also, **Figueroa**, § 31-294d, § 31-301. Factual findings.

Stefenski v. C. Raimondo & Sons, 3081 CRB-2-95-6 (January 8, 1997).
Permanent partial disability not disputed, and commissioner considered age, work history, claimant's gout, and reduction of earning capacity in making award. However, he reached no conclusion regarding cause of current disability, and actual extent of disability as it affects claimant's ability to work is not explained. Further, he made no finding as to how much someone working in claimant's former job currently earns. Remanded for further findings. See also, **Stefenski**, § 31-296 (discontinuation of payments).

Loomis v. Colchester Egg Farm, 3047 CRB-5-95-4 (December 10, 1996).
Commissioner awarded claimant 60 weeks of additional benefits, denying anything further. Claimant argues that limiting award was abuse of discretion. Affirmed; appropriate factors were clearly considered in the decision, and commissioner did not have to explain why he chose 60 weeks for length of award. See also, **Loomis**, § 31-301. Appeal procedure.

Rodriguez v. Remington Products, 16 Conn. Workers' Comp. Rev. Op. 115, 3069 CRB-4-95-5 (November 25, 1996).
Trial commissioner was not required to disregard job search evidence just because claimant failed to list name of specific person contacted; credibility issue. Circumstances of case adequately supported award of additional benefits. See also, **Rodriguez**, § 31-349.

Higbie v. UTC/Pratt & Whitney, 15 Conn. Workers' Comp. Rev. Op. 406, 2147 CRB-8-94-9 (August 28, 1996).
CRB reversed the trial commissioner's award of § 31-308a benefits. Specifically, the trial commissioner found that the claimant was capable of light duty work and also found that the employer offered the claimant light duty employment within his treating physician's restrictions. Accordingly, it was an abuse of discretion for the trial commissioner to award the claimant any benefits under § 31-308a.

Johnston v. Thames Permacrete Corp., 15 Conn. Workers' Comp. Rev. Op. 402, 2278 CRB-2-95-2 (August 16, 1996).
Evidence of claimant's physical limitations and reduced earning capacity, in conjunction with consideration of other statutory factors, supported award of § 31-308a benefits. Failure to submit searches for higher-paying jobs did not require denial of award, as claimant held several jobs, and was found to have a strong work ethic and to have tried to maximize earning capacity. No error in awarding benefits beyond length of permanent partial disability, as 1988 injury occurred prior to change in statute.

Caprio v. Upjohn Company, 15 Conn. Workers' Comp. Rev. Op. 373, 2123 CRB-3-94-8 (July 12, 1996), **dismissed for lack of final judgment**, A.C. 16230 (October 30, 1996).
The CRB affirmed the trial commissioner's award of § 31-308a benefits. The claimant had worked as a Chemical Operator B when he was injured, and subsequently the employer down-sized and laid off several persons in this category. The employer argued that the claimant, due to his seniority level, would have been laid off if he had been working, and thus argued that the earnings of a Chemical Operator B should not be used in determining the claimant's benefit rate pursuant to § 31-308a. The CRB rejected the employer's argument as the trial commissioner had made an inference that this figure constituted "the wages currently earned by an employee in a position comparable to the position held by such injured employee prior to his injury" as required by § 31-308a.

Bailey v. Stripling Auto Sales, 15 Conn. Workers' Comp. Rev. Op. 369, 3095 CRB-2-95-6 (June 28, 1996).
Commissioner denied § 31-308a benefits. Affirmed. Commissioner found little or no evidence regarding the scope of the claimant's current disability; claimant thus failed to meet burden of proving entitlement to benefits. See also, **Bailey**, § 31-278, and § 31-298. See subsequent decision Bailey, 3461 CRB-3-96-11 (April 9, 1998), § 31-315 and Bailey, 4516 CRB-2-02-4 (May 8, 2003), § 31-298, § 31-307a.

Kulhawik v. Ace Beauty Supply, 15 Conn. Workers' Comp. Rev. Op. 159, 2116 CRB-2-94-8 (February 1, 1996).
Grant/denial of benefits under § 31-308a is discretionary. As long as statutory factors are considered, decision must stand. See also, **Kulhawik**, § 31-301. Appeal procedure.

Serletti v. New Haven, 15 Conn. Workers' Comp. Rev. Op. 111, 2199 CRB-3-94-11 (January 11, 1996).
CRB affirmed trial commissioner's denial of further § 31-308a benefits after claimant had received 163 weeks of such benefits where claimant owned a limousine service which grossed over $100,000 per year but showed a yearly loss.

Krajewski v. Atlantic Aerospace Textron, 15 Conn. Workers' Comp. Rev. Op. 44, 2120 CRB-6-94-8 (November 28, 1995).
Commissioner is entitled to base award of further § 31-308a benefits on change in claimant's condition. Where requisite statutory factors were considered in findings, and claimant's condition remained unchanged, commissioner was entitled to deny benefits. Also, motion to submit decision of Social Security Administration as additional evidence denied; SSA standards in adjudicating total disability differ from the § 31-308a standards, and decision would not have affected that reasoning.

McGowan v. Waterbury Farrell, 14 Conn. Workers' Comp. Rev. Op. 319, 1964 CRB-1-94-2 (September 15, 1995), **aff'd**, 43 Conn. App. 917 (1996)(per curiam).
Claimant sought discretionary benefits. Commissioner dismissed claim. Affirmed; one of four medical reports prescribed no disability, and commissioner could rely on that. Statutory factors were taken into account. No abuse of discretion. See also, **McGowan**, § 31-294d.

Golino v. Standard Builders, 14 Conn. Workers' Comp. Rev. Op. 103, 1510 CRB-1-92-9 (June 2, 1995).
Trier's denial of discretionary wage loss benefits supported by record below. See also, **Golino**, § 31-303(b), Permanent partial. Scheduled/Unscheduled.

Clay v. Quality Insulation, 14 Conn. Workers' Comp. Rev. Op. 82, 1922 CRB-2-93-12 (May 12, 1995).
Claimant was awarded discretionary benefits while attending school pursuant to DWR-approved vocational rehabilitation program. He voluntarily reduced work hours to attend classes and study. Held, although commissioner's discretion is not completely unfettered, fact that claimant voluntarily reduced his hours to attend school did not prevent him from receiving benefits under § 31-308a. Humanitarian spirit of Workers' Compensation Act would not be served by penalizing a claimant who chooses to pursue another career after being permanently disabled from his former line of work by a compensable injury, especially where DWR has approved educational courses and is not providing claimant with financial benefits. Section 31-283a does not preclude commissioner from awarding benefits to claimant whose earning capacity has been compromised by injury.

Dextraze v. Lydall, Inc., 14 Conn. Workers' Comp. Rev. Op. 52, 1615 CRB-2-92-12 (May 10, 1995).
See, **Dextraze**, § 31-308(a), § 31-308(b), § 31-310.

Boughton v. Kimberly Clark Corp., 14 Conn. Workers' Comp. Rev. Op. 4, 1871 CRB-7-93-10 (April 28, 1995).
Claimant failed to seek work after retirement despite medical opinion that she was capable of light duty employment, and did not submit medical reports supporting claim for temporary total disability benefits. Held, statute may not require work searches, but procedure is accepted as evidentiary basis to demonstrate willingness to work. Sufficient evidence existed to support factual determination that claimant was not entitled to further benefits.

Richmond v. General Dynamics Corporation/Electric Boat Division, 13 Conn. Workers' Comp. Rev. Op. 345, 1825 CRB-2-93-8 (April 27, 1995).
No error in conditioning further discretionary benefits on a change in the claimant's medical condition. Commissioner has discretion to set duration of benefits, and appropriate factors were considered in this case.

Goodwin v. Stop & Shop, 13 Conn. Workers' Comp. Rev. Op. 301, 1830 CRB-3-93-9 (April 21, 1995).
Injury caused claimant to transfer from meat to grocery department. Commissioner based calculation of benefits in part on overtime pay formerly received, finding that, while overtime was unavailable in the grocery department, meat department still had overtime available. Held, § 31-308a use of "wages" instead of "average weekly earnings" does not exclude overtime pay. See, Vecca v. State, 29 Conn. App. 559 (1992). Fact that overtime work was not guaranteed in union contract did not preclude finding that claimant would actually have earned overtime if he had stayed in the meat department, thus earning more money.

Genovesi v. Choice Designs, Inc., 13 Conn. Workers' Comp. Rev. Op. 218, 1745 CRB-5-93-6 (April 12 1995).
Respondents argued that commissioner improperly determined claimant's earning capacity. Held, statute does not require presentation of evidence that claimant is "maximizing" earning capacity; performance of a job is acceptable evidence of earning capacity. Averaging of job salaries is acceptable method of determining earning potential. See also, **Genovesi**, § 31-301. Factual findings.

O'Connor v. United Parcel Service, 13 Conn. Workers' Comp. Rev. Op. 204, 1741 CRB-4-93-5 (March 30, 1995).
Commissioner's decision to deny additional benefits based solely on medical report showing decrease in percentage of disability. Held, commissioner's discretion broad, but not unfettered; commissioner failed to address findings showing diminished earning capacity in decision to deny benefits. Error not to consider other factors besides decrease in disability percentage, i.e. participation in DWR-approved program. Remanded.

Bowman v. Jack's Auto Sales, 13 Conn. Workers' Comp. Rev. Op. 192, 1721 CRB-1-93-5 (March 22, 1995), **aff'd**, 54 Conn. App. 289 (1999).
Commissioner found that claimant not totally disabled, but permanent partial impairment of hands had unusually high impact on him, so 104 weeks of discretionary benefits awarded. Held, claimant not specifically required to seek work to qualify for benefits, although job searches are encouraged; claimant here was not realistically employable in another capacity, and commissioner did not err in making award. See also, **Bowman**, § 31-301. Factual findings. Subsequent decision at Bowman, 16 Conn. Workers' Comp. Rev. Op. 223, 3384 CRB-1-96-7 (June 18, 1997) and Bowman, 3622 CRB-8-97-6 (August 26, 1998), § 31-301. Appeal procedure, § 31-315.

Wrighten v. Burns International Security, 13 Conn. Workers' Comp. Rev. Op. 173, 1659 CRB-2-93-2 (March 10, 1995).
Commissioner found that claimant was capable of performing job offered to him, for which he failed to report. No factual basis thus existed for discretionary award, as there was nothing to indicate what, if any, loss of earning capacity the claimant incurred. See also, **Wrighten**, § 31-301. Factual findings.

Lennon v. Genest Subaru Motors, 13 Conn. Workers' Comp. Rev. Op. 63, 1589 CRB-5-92-12 (December 28, 1994).
Job searches are not exclusive means to prove availability of work. Based on testimony of claimant and deposition testimony, trier's award of benefits based on evidence will not be disturbed. See also, **Lennon**, § 31-301. Appeal procedure.

Vuoso v. Custom Gunite Pools, 13 Conn. Workers' Comp. Rev. Op. 50, 1581 CRB-7-92-12 (December 7, 1994).
Benefits are not warranted under § 31-308a or § 31-307(a) if a claimant is capable of employment but chooses not to pursue it. Here, commissioner found claimant was physically able to perform other work, but did not attempt to find it or seek vocational retraining. Limited command of English language by claimant no excuse for failure to seek light duty work.

Capasso v. Fusco Corporation, 13 Conn. Workers' Comp. Rev. Op. 30, 1622 CRB-3-93-1, 1920 CRB-3-93-11 (November 8, 1994).
The fact that claimant returned to some type of construction work after being released for light duty, with physician recommended construction work restrictions, fails to support a finding to deny § 31-308a benefits. Evidence and underlying purpose of the workers' compensation act supports trier's award of benefits. See also, **Capasso**, § 31-301. Appeal procedure.

Salz v. Oliver's Taverne, 12 Conn. Workers' Comp. Rev. Op. 325, 1593 CRB-8-92-12 (July 5, 1994).
Trier's finding regarding claimant's earning capacity and resulting wage loss supported by evidence. See also, **Salz**, § 31-308(b).

Woznicki v. Meriden Yellow Cab, 12 Conn. Workers' Comp. Rev. Op. 238, 1509 CRB-8-92-9 (March 28, 1994).
A finding that claimant was partially disabled does not mandate an award for additional benefits as § 31-308a benefits are discretionary. See also, **Woznicki**, § 31-307.

Burgos v. United Technologies/Sikorsky Aircraft Division, 12 Conn. Workers' Comp. Rev. Op. 204, 1441 CRB-4-92-6 (March 15, 1994).
Within trier's discretion to decide whether compensable injury continued to adversely affect claimant's earning capacity. See also, **Burgos**, § 31-294d and § 31-301-9.

Mucha v. Caval Tool & Machine Co., 12 Conn. Workers' Comp. Rev. Op. 128, 1465 CRB-6-92-7 (February 28, 1994).
Trier's finding that claimant's inability to find employment was not the result of his work related injury properly supported a denial of § 31-308a benefits.

Camp v. White Oak Corporation, 12 Conn. Workers' Comp. Rev. Op. 121, 1443 CRB-6-92-6 (February 28, 1994).
Remanded. Trier misapplied statutory language as to the calculation of benefits, claimant's earning capacity and claimant's entitlement to benefits. Trier erred in applying compensation rate as part of the computation of claimant's wage loss difference. See also, **Camp**, § 31-294(e). Medical care refusal.

Civardi v. Norwich, 12 Conn. Workers' Comp. Rev. Op. 100, 1376 CRB-2-92-1 (February 28, 1994), **aff'd**, 231 Conn. 287 (1994).
Reversed. CRB held employer had standing to present evidence relative to employee's § 31-308a claims where liability had been transferred to the Fund. See also, **Civardi**, § 31-284b and § 31-349.

Farina v. Tony's Auto Sales, 11 Conn. Workers' Comp. Rev. Op. 96, 1282 CRD-5-91-8 (May 14, 1993).
Remanded. Trier's award of § 31-308a discretionary benefits inconsistent with trier's finding that claimant's evidence of diminished earning capacity was not persuasive.

Matteson v. American Standard, 11 Conn. Workers' Comp. Rev. Op. 74, 1216 CRD-2-91-4 (May 4, 1993).
Evidence before trier supports conclusion claimant could return to work as a result of carpal tunnel injuries. However, trier found claimant was totally disabled due to a condition unrelated to the compensable carpal tunnel injuries, therefore, any diminution in earnings or requisite work capacity did not meet criteria to award § 31-308a benefits.

Graziano v. St. Mary's Hospital, 11 Conn. Workers' Comp. Rev. Op. 10, 1230 CRD-5-91-5 (February 8, 1993).
Claimant entitled to receive § 31-308a benefits for a 1981 injury and temporary total benefits for a separate 1985 injury simultaneously. This is not considered double compensation. Trier found with or without the injury of 1985, claimant's diminished earning capacity would have continued. Remanded to determine amount of benefits due. See also, **Graziano**, § 31-296, and § 31-310.

Goncalves v. Cornwall & Patterson, 10 Conn. Workers' Comp. Rev. Op. 43, 1111 CRD-4-90-9 (January 28, 1992).
Remanded as trier's conclusion claimant was able to work, however no work was found or available during period in question lacks evidentiary factual findings. Work search procedure is an informally accepted evidentiary basis to demonstrate a willingness to work. However, it is not the only evidentiary means by which a claimant may demonstrate reasonable efforts to find work. See also, **Goncalves**, § 31-301. Factual findings, § 31-308a.

Lagueux v. Veilleux, 9 Conn. Workers' Comp. Rev. Op. 177, 876 CRD-6-89-6 (August 13, 1991).
Trier's denial of § 31-308a discretionary benefits will not be disturbed where testimony and record below indicate claimant failed to perform any job searches during period in question. Lack of comprehension of § 31-308a requirements does not support claim for entitlement. See also, **Lagueux**, § 31-307, § 31-315.

Traylor v. Poquonnock Bridge Fire District, 8 Conn. Workers' Comp. Rev. Op. 59, 788 CRD-2-88-11 (March 23, 1990).
Remanded to determine method of calculating benefits using statutory procedure. See also, **Traylor**, § 31-307.

Vincent v. New Milford, 8 Conn. Workers' Comp. Rev. Op. 27, 761 CRD-7-88-8 (February 5, 1990).
Section 31-308a benefits when construed with § 31-307 and § 31-309 cannot exceed basic compensation rate.

Hicks v. State/Dept. of Administrative Services, 6 Conn. Workers' Comp. Rev. Op. 111, 429 CRD-5-85 (February 23, 1989), **no error**, 21 Conn. App. 464 (1990), **cert. denied**, 216 Conn. 804 (1990).
Awards under this section are within trial commissioner's discretion and will not be upset unless conclusion reached was an abuse of discretion. See also, **Hicks**, § 31-300, § 31-307, § 31-308(c).

Fappiano v. Nutmeg Concrete Inc., 6 Conn. Workers' Comp. Rev. Op. 29, 652 CRD-3-87 (September 27, 1988).
Trial commissioner must compute actual amount due and that such computation must be based on evidence.

Foss v. Continental Forest Industries, 5 Conn. Workers' Comp. Rev. Op. 1, 341 CRD-6-84 (March 9, 1988).
Trial commissioner's use of unemployment compensation rate to determine earning capacity not permissible. Further, chamber maid's duties will not be administratively noticed as light duty and benefits under § 31-308a are applicable after payment for specific.

DeGeorge v. Casolo, 1 Conn. Workers' Comp. Rev. Op. 34, 24 CRD-7-80 (May 26, 1981).
Claimant awarded benefits under § 31-308a.

Sec. 31-308b. Dependency allowance.

Gyadu v. D'Addario Industries, 16 Conn. Workers' Comp. Rev. Op. 151, 3058 CRB-4-96-3 (May 2, 1997), **appeal dismissed**, A.C. 17260 (September 11, 1997), **motion for reconsideration denied** (October 24, 1997), **cert. denied**, 243 Conn. 961 (1998).
Claimant alleged entitlement to dependency allowance based on his responsibility for each of two nephews residing in Ghana, Africa. Said duty allegedly springs from an unwritten tribal custom that made him the children's caretaker when their mother, his sister, died four months before the claimant's compensable wrist injury. Trier found that the claimant offered insufficient evidence to prove that these children were his "children or stepchildren" within the meaning of the statute, e.g., guardianship documents or evidence of actual support. Affirmed. The legal definitions of "child" and "stepchild" do not contemplate the type of relationship the claimant is alleging with his nephews here. A statutory adoption process of some type would be necessary absent a biological parent-child relationship with the children.

Crook v. Academy Drywall Co., 8 Conn. Workers' Comp. Rev. Op. 154, 848 CRD-4-89-4 (September 21, 1990), **aff'd**, 219 Conn. 28 (1991).
Section 31-308b permits payment of dependency benefits at time of birth to a child conceived before the date of injury but born afterwards.

Sec. 31-309. Maximum compensation rate.

Cote v. Pratt & Whitney Aerospace Co., 13 Conn. Workers' Comp. Rev. Op. 243, 1636 CRB-2-93-2 (April 17, 1995).
Claimant originally injured in 1976 and reinjured in 1987 sought benefits at 1987 rate. Held, because injury occurred prior to 10/1/79, law in effect at time of injury controls; claimant entitled to 1976 maximum rate, as well as COLAs under § 31-307b. See also, **Cote**, § 31-307b.

Green v. General Dynamics Corporation/Electric Boat Division, 13 Conn. Workers' Comp. Rev. Op. 113, 1651 CRB-2-93-2 (January 31, 1995), **rev'd**, 44 Conn. App. 112 (1997), **rev'd**, 245 Conn. 66 (1998).
1989 maximum rate applicable; although employment ceased in 1978 when decedent retired, date of incapacity was 7/11/89. Appellate Court reversed, as failure of decedent to earn any wages during the 26 weeks prior to his incapacity meant that he had no average weekly wage, and therefore dependent spouse was not entitled to benefits. Reversed by Supreme Court, which held that wage calculation should be based upon § 31-310c [Rev. to 1991], as that statute was intended by legislature to clarify a related statute. See also, **Green**, § 31-306, and § 31-310.

Wannagot v. Shelton, 12 Conn. Workers' Comp. Rev. Op. 256, 1512 CRB-4-92-9 (June 2, 1994), **aff'd**, 38 Conn. App. 754 (1995), **cert. denied**, 235 Conn. 919, 920 (1995).
Trier properly determined that claimant widow had been overpaid compensation benefits where benefits were paid at the maximum weekly compensation rate. Section 7-314a

sets the average weekly earnings of the decedent as the average weekly earnings of production workers. Claimant widow was entitled to sixty six and two thirds percent of the average production wage in effect on the date of her husband's heart attack which caused his death.

Deremer v. General Dynamics Corporation/Electric Boat Division, 11 Conn. Workers' Comp. Rev. Op., 1375 CRB-2-92-1 (December 23, 1993).
Maximum compensation rate received by dependent widow is the rate in effect on the date of decedent's first incapacity not the maximum in effect at the date of decedent's last employment. See also, **Deremer**, § 31-306.

Spaulding v. Thames Valley Steel Corp., 1 Conn. Workers' Comp. Rev. Op. 39, 3 CRD-2-79 (June 3, 1981).
Maximum compensation rate as of January 1, 1979 was applicable where injury occurred after that date.

Sec. 31-310. Computation of average weekly wage.

Dunlevy v. Infra Metals Corp., 4626 CRB-8-03-2 (April 5, 2004).
Claimant was entitled to concurrent employment benefits for § 31-308a claim. Claimant settled concurrent employment portion of claim with Second Injury Fund. CRB affirmed trier's ruling that said settlement did not constitute earnings under § 31-308a. A settlement for concurrent employment benefits should not be counted as earnings against the very benefit of which they comprise a portion. See also, **Dunlevy**, § 31-298, § 31-308a.

Kazo v. Seymour, 4658 CRB-5-03-4 (March 31, 2004).
CRB found claimant-teacher actually employed 52 weeks under § 31-310 where parties stipulated claimant received an annual salary. Therefore, claimant's weekly average wage is calculated by dividing by 52.

Mackiewicz v. Aetna Life & Casualty, 4558 CRB-8-02-8 (August 14, 2003).
See, **Mackiewicz**, § 31-301. Appeal procedure.

Williamson v. Genesis Elder Care Corp., 4547 CRB-5-02-7 (July 29, 2003).
Trier did not err in finding that claimant's switch from part-time to full-time work six weeks before compensable injury did not result in formation of a new employment contract. CRB upheld use of full 52 weeks of wages to calculate average weekly wage.

Repay v. Basher Elec., 4541 CRB-4-02-6 (June 24, 2003).
CRB held that pursuant to § 31-310 and its provision relating to concurrent employment the Second Injury Fund was not responsible for reimbursement of that part of the COLA attributable to COLAs accrued prior to the 1991 statutory change in COLA calculations. Thus, the responsibility for the flat dollar COLAs to which a claimant was entitled remained with the carrier of the employer that the claimant was working for at the time of injury.

Prescott v. Community Health Center, Inc., 4426 CRB-8-01-8 (August 23, 2002).
Trier properly found that average weekly wage does not include sums received pursuant to employer's disability insurance policy. Claimant not entitled to have average weekly wage calculated based upon employment contract where claimant was forced to work part-time due to subsequent, non-work-related illness, and employer and claimant functionally agreed that she would be paid upon an hourly basis for her part-time work. See also, **Prescott**, § 31-300, § 31-301. Factual findings, 31-307.

Henley v. Pratt & Whitney, 4381 CRB-3-01-4 (March 1, 2002).
See, **Henley**, § 31-296 Voluntary agreements (discontinuance of payments).

McCurrey v. Nutmeg Express, 4342 CRB-5-01-1 (January 3, 2002).
Affirmance of trier's finding that claimant's average weekly wage was $400. Claimant testified that he worked 10-14 hours per day, 5-6 days per week, at pay rate of either $10 per hour or by number of deliveries performed. Respondents offered no documentary evidence of claimant's pre-injury salary, despite promising such records. Trier reasonably relied on best evidence available, which was testimonial. See also, **McCurrey**, § 31-288, § 31-300.

Iannarone v. State/Department of Mental Retardation, 4138 CRB-7-99-10 (June 15, 2001).
See, **Iannarone**, § 31-308a (inclusion of disability retirement benefits into benefit rate; error in using net pension benefits rather than gross pension benefits). See also, **Iannarone**, § 31-314. Prior decision at Iannarone, 4310 CRB-7-99-11 (December 6, 2000), § 31-301. Appeal procedure.

Ciocci v. Morrison Knudsen, Inc., 4244 CRB-1-00-5 (June 1, 2001).
Partial first week of employment is excluded from average weekly wage calculation, as is employment during week of injury. CRB did not reach merits of argument that date of worker's incapacity was relevant date for determining compensation, as no subordinate finding of alternative incapacity date was made, and errors of law cannot be basis of motions to open. See also, **Ciocci**, § 31-301. Appeal procedure, § 31-301. Factual findings, § 31-315.

Pellegren v. Pratt & Whitney, 4196 CRB-1-00-2 (March 29, 2001).
See, **Pellegren**, § 31-308(a) (concerning role of maximum compensation rate and tables vis-à-vis temporary partial calculation).

Donahue v. Southington, 4136 CRB-6-99-10 (November 30, 2000), **aff'd**, 259 Conn. 783 (2002).
Claimant, a municipal police officer, did not have Social Security and Medicare deducted from his weekly pay; instead, 6% of his wages were deducted weekly as a contribution to police officers' pension fund, which he would be eligible to access upon retirement. CRB held that compensation rate could be calculated using an alternative calculation table prepared by this Commission, and that § 31-310(b) did not require that the tables published pursuant to that statute be used for claimants who do not have FICA deducted from their weekly wages.

Stalker v. Derby, 4093 CRB-4-99-7 (August 10, 2000).
CRB affirmed trier's determination that claimant was acting as an independent contractor rather than an employee of the Connecticut Post. Board thus affirmed trier's conclusion that concurrent wage benefits provided under § 31-310 did not apply to concurrent employment with the Connecticut Post. Panel discussed cases which have rejected concurrent employment claims where there was no employee-employer relationship, or where this commission did not have jurisdiction over said relationship. See also, **Stalker**, § 31-279-3.

Lizcano v. Holiday Inn Crowne Plaza, 4036 CRB-7-99-4 (May 24, 2000).
Trial commissioner ruled that Second Injury Fund was liable for payment of COLAs for concurrent employment portion of claimant's benefits. CRB affirmed. Statute does not confine payment of COLAs to portion of benefits attributable to employer in whose services the claimant was injured, and it would be inconsistent with remedial tenor of Act for board to invent such a limitation. As COLAs are generally the responsibility of the party paying the underlying benefit (absent specific instruction otherwise), CRB ruled that the Fund stood in the shoes of the employer here, and was liable for COLAs as well as the base compensation rate for concurrent employment. Defects in Form 44 such as absence of signing date and omission of number of weeks of benefits paid did not preclude the commissioner from partially relying on the form. Total amount paid was available, and trier had discretion to accept it. See also, **Lizcano**, § 31-296 Voluntary agreements (approval of), § 31-307a.

Ellis v. Rogers Corp., 3767 CRB-8-98-2 (March 25, 1999).
CRB affirmed trier's ruling that claimant was entitled to wages earned on December 1994 date of injury/manifestation of occupational disease, even though he did not become incapacitated until 1997. "Date of incapacity" rule in Stevens v. Raymark Corporation/Raybestos Manhattan, 28 Conn. App. 226 (1992), does not apply in cases where claimant is not working at time of incapacity.

Falkowski v. International Fuel Cells Corp., 3679 CRB-1-97-9 (March 25, 1999).
CRB concluded that trier properly determined claimant's weekly benefit rate pursuant to § 31-310c. Claimant had retired prior to manifestation of occupational lung disease, and therefore trial commissioner found the benefit rate based upon the prevailing weekly wage at the time of the claimant's injury for a position equivalent to that held by the claimant prior to his retirement. This yielded a higher benefit rate than the rate based upon the 26 weeks prior to the claimant's retirement.

Pyrdol v. General Dynamics Corporation/Electric Boat Division, 3504 CRB-2-96-12 (November 9, 1998).
Section 31-310c was applicable to claimant dependent widow whose decedent was diagnosed with mesothelioma on June 22, 1993, 16 years after he retired from Electric Boat. See, Green v. General Dynamics Corp, 245 Conn. 66 (1998). Claimant was also entitled to COLAs pursuant to Belanger v. American Optical, 3353 CRB-1-96-5 (January 22, 1998). However, trier did not appear to have fully considered both methods of determining weekly compensation rate, so CRB remanded for articulation. See also, **Pyrdol**, § 31-301. Factual findings.

Harrison v. General Dynamics Corporation/Electric Boat Division, 3252 CRB-8-96-1 (November 9, 1998).
Supreme Court ruling in Green v. General Dynamics, 245 Conn. 66 (1998), regarding retroactivity of § 31-310c, controls issue of voluntary retirement by decedent in 1988, several years prior to manifestation of symptoms of mesothelioma. See also, **Harrison**, § 31-301. Appeal procedure.

Shea v. Pfizer Inc., 3667 CRB-2-97-8 (September 17, 1998).
Claimant was exposed to asbestos from 1950 until he retired in 1987. Claimant was diagnosed with asbestosis prior to 1987, but never missed any time from work due to asbestosis. CRB affirmed the trial commissioner's conclusion that the claimant's date of injury for purposes of § 31-294c was November 27, 1997, the date on which there was sufficient medical evidence to establish asbestosis. The relevant date for purposes of calculating the claimant's weekly benefit rate hinges on incapacity rather than diagnosis, and thus the CRB remanded the matter for a determination of the claimant's date of incapacity. CRB noted that where a claimant does not suffer any incapacity while employed, the relevant date becomes the date of the first assessment of permanent partial disability. See also, **Shea**, § 31-294c.

Mencarelli v. General Dynamics Corporation/Electric Boat Division, 3470 CRB-8-96-11 (August 28, 1998).
CRB affirmed the trial commissioner's award of benefits to the dependent widow of the deceased who died in 1993 due to carcinoma caused by asbestos exposure. Section 31-310c, which became effective October 1, 1990, applies to this case, and thus the trier properly calculated the claimant's benefit rate based upon the last twenty-six weeks worked by the decedent.

Hannan v. George A. Tomasso Construction Corp., 3589 CRB-2-97-4 (August 18, 1998).
Section 31-310 does not require a claimant to have concurrent employment formula used in calculating average weekly wage where average weekly wage would be decreased by use of concurrent employment. However, alternate formulas cannot be devised to supplement the ones in § 31-310 as per Trankovich v. Frenish, Inc., 47 Conn. App. 628 (1998).

Jordan v. General Dynamics Corporation/Electric Boat Division, 3206 CRB-8-95-11 (August 18, 1998).
CRB followed Supreme Court decision in Green v. General Dynamics Corp., 245 Conn. 66 (1998). Case remanded so that trier could compare prevailing wage at time occupational disease was diagnosed to wages earned by employee during last 26 weeks of employment with respondent. Trier appears to have considered only the latter alternative.

Heene v. Professional Ambulance Service, Inc., 3743 CRB-6-97-12 (January 8, 1999).
See, **Heene**, § 31-300, § 31-308(a) (notes mention concurrent employment provision).

Wilson v. Stamford, 3268 CRB-7-96-2 (November 7, 1997).
The record supports the trial commissioner's determination that the respondent assigned and regulated the extra duty assignments performed by the claimant, a police officer, and thus an inference that the respondent had control over these assignments is reasonable. Accordingly, the determination that compensation from said assignments should be included in the determination of the claimant's benefit rate was within the discretion of the trial commissioner. See also, **Wilson**, § 31-300. Subsequent decision at Wilson, 4506 CRB-7-02-3 (March 5, 2003), aff'd, 81 Conn. App. 339 (2004), cert. denied, 268 Conn. 918 (2004).

Ericson v. Perreault Spring & Equipment, 3200 CRB-5-95-11 (April 28, 1997).
Pursuant to order of CRB on remand, trial commissioner calculated that $19,000 year-end bonus translated into $365.38 per week, and that average weekly wage for 26 weeks preceding injury should be increased by that amount per week. Affirmed. In prior Ericson decision, CRB decided that bonus was allocable to weeks worked, and trier made a logical ruling on how to apportion that amount. In a footnote, CRB also noted that matters addressed in prior decisions of this board will not be readdressed later ("law of the case").

Trankovich v. Frenish, Inc. d/b/a Chamberlain Ambulance, 3053 CRB-3-93-4 (January 3, 1997), **rev'd**, 47 Conn. App. 628 (1998).
Claimant suffered compensable injury while working for ambulance company. She had been working full-time for that company for four months; prior to that, she worked there part-time, and also worked full-time for another employer. Trial commissioner calculated her compensation rate on the basis of the average of her full and part-time wages at the ambulance company during the 52 weeks preceding her injury, without taking into account wages paid by the other employer. Held: although, on its face, § 31-310 only allows concurrent employment benefits when the claimant worked for more than one employer on the date of injury, the statutory formula would place this claimant in an undeservedly difficult economic position. CRB ruled that trial commissioner should have used only the wages the claimant earned subsequent to her cessation of employment with her previous full-time employer. (*Wilson, C.,* **dissenting***)* (the statute is clear, and the findings support the commissioner's decision. Board cannot act as a super-legislature). Reversed by Appellate Court, which held that § 31-310 clearly requires that the claimant's average weekly wage be calculated by adding the total wages she received from her employer during the 52 weeks prior to her injury, and dividing that by the actual number of calendar weeks she was employed by the employer. Because she was not employed with her other part-time job at the time of her injury, it was not concurrent employment pursuant to § 31-310. See also, **Trankovich**, § 31-301. Appeal procedure.

Luce v. UTC/Pratt & Whitney, 3080 CRB-1-95-6 (December 16, 1996), **aff'd**, 47 Conn. App. 909 (1997)(per curiam), **aff'd**, 247 Conn. 126 (1998).
Trial commissioner properly excluded certain fringe benefits from claimant's average weekly wage. Definition of "wages" is narrower than that of "income" in § 31-284b. Based on unconstitutionality of § 31-284b as applied to insurance premiums paid by

private employers, it would be improper to include value of such premiums in weekly wage. Pension benefits are similarly distinguished from "wages" in § 31-284b definition as well. As for vacation and sick pay, CRB has held that they can be "wages" as long as they are dependent on hours worked, etc. Commissioner made factual determination that they were not so related, and CRB would not disturb that determination on review.

Tyc v. Calabrese Construction Co., 3061 CRB-5-95-5 (December 10, 1996), **appeal dismissed**, A.C. 16999 (September 17, 1997), **motion to reconsider denied** (November 5, 1997), **cert. denied**, 243 Conn. 966 (1998).
The CRB affirmed the trial commissioner's Supplemental Finding and Award which computed the claimant's average weekly wage so as to include 15 hours of overtime. The respondents appealed on the basis that the overtime computation was an issue controlled by § 31-76c and as § 31-76c was not part of the Workers' Compensation Act, the commissioner lacked jurisdiction to decide the issue. The CRB noted, inter alia, that the issue had previously been decided by the CRB in its earlier opinion in Tyc v. Calabrese Construction Co., 13 Conn. Workers' Comp. Rev. Op. 71, 1529 CRB-5-92-10 (December 29, 1994), and that the present appeal was merely an attempt to have the CRB reconsider its earlier decision in Tyc I. The CRB applied the law of the case and dismissed the appeal. After the CRB rendered its decision the Second Injury Fund filed a motion to reargue which was denied. See also, **Tyc**, § 31-308(a).

Rodriguez v. Devcon Enterprises, Inc., 15 Conn. Workers' Comp. Rev. Op. 362, 2244 CRB-3-94-12 (June 28, 1996).
Claimant sought to include monthly rental value of employer-provided (and HUD-subsidized) apartment in his compensation rate. Respondents agreed to include the portion of the rent they paid, but not the HUD portion. Trial commissioner agreed with respondents. CRB affirmed. Statute bases benefit rate on total wages received *from employer*; benefit from other source, including HUD, is not generally included in wages. Also, value of medical insurance premiums was properly excluded from wage computation; both the definition of "income" in § 31-284b and the fact that § 31-284b does not apply to private employers pursuant to a United States Supreme Court decision mandate that result.

Abercrombie v. Bartlett Nuclear, Inc., 15 Conn. Workers' Comp. Rev. Op. 346, 2271 CRB-8-95-1 (June 26, 1996).
Commissioner erroneously included temporary duplicate living expenses in claimant's average weekly wage. Although facts of case differed from Wonacott, 15 Conn. Workers' Comp. Rev. Op. 334, 2237 CRB-4-94-12 (June 25, 1996), in that testimony regarding the nature of the living expense payments was offered, the commissioner did not have sufficient evidence here to find that claimant established real economic gain from his living expenses, and that they were paid to him as compensation. Case was remanded for further consideration in light of Wonacott and this opinion.

Wonacott v. Bartlett Nuclear, Inc., 15 Conn. Workers' Comp. Rev. Op. 334, 2237 CRB-4-94-12 (June 25, 1996).
CRB reversed commissioner's decision to include living allowance in total wages. Parties had stipulated to facts of case, e.g., that the respondent only pays living expenses

to employees who qualify for a per diem allowance under the Internal Revenue Code. Commissioner held that neither party presented evidence as to actual living expenses and that federal regulation requiring return of unsubstantiated expenses by employee was thus unsatisfied. He thus ruled that the living expense payments should be included in the claimant's wages. Held, stipulation of facts, once accepted, deems the matters in the stipulation settled. As no evidence was offered at the formal hearing, the commissioner should not have held against the respondent the absence of evidence regarding actual expenses without giving it an opportunity to address that issue. Key to appeal was tax regulations stipulated to by parties; commissioner based his decision on actual expenses, which was irrelevant. Instead, claimant needed only to substantiate his travel days as long as his allowance did not exceed the applicable per diem rate, which it did not. Stipulated facts did not support including living expense payments in "wages;" reversed.

Phelan v. Soda Construction Co., 14 Conn. Workers' Comp. Rev. Op. 389, 1979 CRB-3-94-3, 2107 CRB-3-94-7 (October 17, 1995).
Date claimant receives paycheck has no impact on calculation of wages; all pay rightfully due to claimant during statutorily defined period was properly included in calculation. Trial commissioner's conclusion that claimant was temporarily totally disabled supported by evidence. Medical report clarifying dates of total disability was not improperly admitted given the latitude a commissioner has regarding evidence under § 31-298. See earlier Phelan, 13 Conn. Workers' Comp. Rev. Op. 53, 1583 CRB-3-92-12 (December 20, 1994), supra § 31-291.

Lemieux v. General Dynamics Corporation/Electric Boat Division, 14 Conn. Workers' Comp. Rev. Op. 383, 2077 CRB-2-94-6 (October 5, 1995).
Claimant argued that earnings as member of Connecticut National Guard constitute concurrent employment benefits under § 31-310. Held, § 27-67 grants authority to adjutant general over workers' compensation claims of members of Connecticut armed forces. State therefore is not an employer under § 31-275, as our jurisdiction over CNG member claims would be inconsistent with § 27-67. Concurrent employment claim dismissed.

Pascarelli v. Moliterno Stone Sales, 14 Conn. Workers' Comp. Rev. Op. 328, 2115 CRB-4-94-8 (September 15, 1995), **aff'd**, 44 Conn. App. 397 (1997).
Average weekly wage is based on total wages; does not include employer health plan contributions and payments to annuity and pension funds, even if based on number of hours worked. Definitions of income and wages distinguished. See also, **Pascarelli**, § 31-287.

Fiore v. Office Furniture Depot, 14 Conn. Workers' Comp. Rev. Op. 286, 1955 CRB-3-94-1 (September 11, 1995).
CRB considered original appeal in 1991 and remanded case for further findings. On remand, the trial commissioner gave the claimant the opportunity to establish her entitlement to overtime pay, and ruled that she had not proven her dental injuries compensable. Both conclusions were supported by the evidence; CRB had not ordered

contrary findings to be made on remand, as doing so would be beyond our power. Affirmed.

Liano v. Bridgeport, 14 Conn. Workers' Comp. Rev. Op. 201, 2033 CRB-4-94-5 (July 25, 1995), **appeal and cross appeal dismissed, lack of final judgment**, A. C. 15082 (June 6, 1996), **cert. denied**, 238 Conn. 906 (1996).
Commissioner improperly based compensation rate on 9/18/79 date of injury where claimant was not totally disabled until 5/16/83. Under Mulligan v. F.S. Electric, 231 Conn. 529 (1994), average weekly wage must be determined based on wages during 26 weeks prior to date of disability. Logic applies equally to § 7-433b cases. Also, affirmative defense of res judicata did not foreclose CRB consideration of this issue; no showing that 5/16/83 injury was ever considered by either party or the commissioner in prior proceedings. Note: § 31-308b(3) claim for educational allowance failed due to 1979 date of injury. See, **Liano**, § 7-433b, § 31-300. Note: This exact issue was addressed in Liano, 3561 CRB-4-97-3 (June 3, 1998), rev'd in part, 55 Conn. App. 75 (1999), cert. denied, 252 Conn. 909 (1999). The Appellate Court held that CRB improperly changed the claimant's date of injury. Specifically, the court explained that because the trial commissioner's decision "was a final judgment, [the claimant] was not entitled to have the commission adjust his weekly compensation on the basis of a date of injury of May 16, 1983, because he did not show that he met the requirements of § 31-315." See also, § 31-300. Other subsequent decisions at Liano, 3447 CRB-4-96-10 (January 6, 1998), aff'd, 51 Conn. App. 905 (per curiam), cert. denied, 248 Conn. 907 (1999), § 7-433c; Liano, 3299 CRB-4-95-10 (March 25, 1997), § 31-294c, § 31-297, § 31-301. Factual findings; Liano, 3199 CRB-4-95-10 (March 25, 1997), § 31-279-3, § 31-298, § 31-307.

Giovino v. West Hartford, 14 Conn. Workers' Comp. Rev. Op. 74, 1912 CRB-1-93-12 (May 12, 1995).
Claimant alleged hearing loss due to repeated exposure to gunfire, which constituted repetitive trauma injury. In order to determine weekly benefit rate, CRB applied Mulligan v. F.S. Electric, 231 Conn. 529 (1994), and held that weekly benefit rate should be based upon period immediately preceding his incapacity to work rather than last date of exposure. See also, **Giovino**, § 31-294c, and § 31-298.

Dextraze v. Lydall, Inc., 14 Conn. Workers' Comp. Rev. Op. 52, 1615 CRB-2-92-12 (May 10, 1995).
Trier need not accept handwritten wage statement as reliable evidence to amend voluntary agreement and increase compensation rate. See also, **Dextraze**, § 31-308(a), and § 31-308(b)(c).

Owens v. R. R. Donnelley & Sons, 14 Conn. Workers' Comp. Rev. Op. 28, 1892 CRB-2-93-11 (May 3, 1995).
See, **Owens**, § 31-307a, § 31-300; wage rate for 1988 injury causally related to 1980 injury relates back to 1980 injury where claimant unemployed at time of second injury.

Grillo v. Prestige Enterprises, Inc., 13 Conn. Workers' Comp. Rev. Op. 311, 1704 CRB-1-93-4 (April 25, 1995).
Second Injury Fund is normally liable for payment of concurrent employment benefits under statute. Where insurer failed to follow procedure in Form 44 for assessing liability against the Fund, however, the Fund could not be held liable. Consequently, liability for payment of benefits due the claimant fell on the insurer. See also, **Grillo**, § 31-300.

Frederick v. General Dynamics Corporation/Electric Boat Division, 13 Conn. Workers' Comp. Rev. Op. 290, 1776 CRB-2-93-7 (April 21, 1995), **rev'd**, 44 Conn. App. 124 (1996), **rev'd,** 245 Conn. 84 (1998).
Decedent voluntarily retired in 1984. Asbestos exposure during employment caused fatal mesothelioma. Respondents challenged commissioner's use of decedent's wages during his last 26 weeks with Electric Boat in 1983-84. Held, Green, 13 Conn. Workers' Comp. Rev. Op. 113, 1651 CRB-2-93-2 (January 31, 1995), controls. Section 31-310c C.G.S. need not be applied retroactively to reach this result, as formula used by commissioner clarified law existing before 1990 amendment to statute. Argument that recovery by dependent widow provides estate with windfall fails to take into account state constitutional considerations surrounding elimination of right to bring civil suit. See Article First, § 10; Daily v. New Britain Machine Co., 200 Conn. 562, 582-86 (1986). Reversed by Appellate Court; opinion in Green v. General Dynamics/Electric Boat Div.**,** 44 Conn. App. 112 (1996) controls, and failure of decedent to earn wages during 26 weeks prior to incapacity means that he had no average weekly wage, and his survivor is not entitled to benefits. Reversed by Supreme Court; opinion in Green v. General Dynamics/Electric Boat Div., 245 Conn. 66 (1998) controls, and the dependent widow and estate were entitled to benefits to be calculated pursuant to § 31-310c [Rev. to 1991].

Yale v. Allegheny Ludlum, 13 Conn. Workers' Comp. Rev. Op. 275, 1894 CRB-3-93-10 (April 19, 1995).
Profit sharing checks based upon hours worked by claimant were properly included as wages under statute. Commissioner entitled to determine credibility of conflicting testimony as to meaning of collective bargaining agreement and intent of parties regarding payments.

Pelletier v. M & M Builders, Inc., 13 Conn. Workers' Comp. Rev. Op. 266, 1740 CRB-5-93-5 (April 19, 1995).
Claimant suffered permanent paralysis of legs while working part-time for employer; claimant was seventeen at time of injury. Commissioner was entitled to increase claimant's average weekly wage by fifty percent under § 31-310; statute does not require proof that claimant was earning less than an adult doing the same job would have earned at the time of injury. See also, **Pelletier**, § 31-300, and § 31-307.

Green v. General Dynamics Corporation/Electric Boat Division, 13 Conn. Workers' Comp. Rev. Op. 113, 1651 CRB-2-93-2 (January 31, 1995), **rev'd**, 44 Conn. App. 112 (1996), **rev'd**, 245 Conn. 66 (1998).
Commissioner had authority to refer to decedent's 1978 wages in computing compensation for dependent widow, even though decedent's incapacity began in 1989,

long after his retirement. Although § 31-310c was not retroactively applicable, appropriate method of wage calculation before 10/1/90 was to look at the time when employer and employee last had an active contractual relationship. 1989 maximum compensation rate applicable as well. Appellate Court reversed, as failure of decedent to earn any wages during the 26 weeks prior to his incapacity meant that he had no average weekly wage, and therefore dependent spouse was not entitled to benefits. Reversed by Supreme Court, which held that wage calculation should be based upon § 31-310c [Rev. to 1991], as that statute was intended by legislature to clarify a related statute. See also, **Green**, § 31-306, and § 31-309.

Poulin v. General Dynamics Corporation/Electric Boat Division, 13 Conn. Workers' Comp. Rev. Op. 94, 1632 CRB-2-93-2 (January 25, 1995).
Claimant's benefits should be based on average weekly wage at time of injury, which is the date the disease causes the claimant to be totally or partially incapacitated from working in occupational disease cases. Because no evidence existed in record to support commissioner's use of a 1/14/86 permanent partial disability date, CRB remanded case. (Articulation issued.)

Tyc v. Calabrese Construction Co., 13 Conn. Workers' Comp. Rev. Op. 71, 1529 CRB-5-92-10 (December 29, 1994).
Remanded for recalculation of compensation rate to include overtime pay where trier found claimant worked fifty-five (55) hours per week. See also, **Tyc**, § 31-300 and § 31-308(a). Subsequent decision at Tyc, 3061 CRB-5-95-5 (December 10, 1996), supra.

Wilkinson v. General Dynamics Corporation/Electric Boat Division, 13 Conn. Workers' Comp. Rev. Op. 11, 1605 CRB-2-92-12 (November 3, 1994).
Commissioner found date of injury to be 9/14/88, awarded benefits based on claimant's weekly wage as of that date. Held, occupational disease benefits do not accrue until date of incapacity. Despite testimony that some symptoms of active lung disease existed as early as 1980, the evidence did not mandate a finding that impairment occurred before 1988, as there was also evidence to support the use of the latter date. (Articulation issued.) See also, **Wilkinson,** § 31-301. Appeal procedure.

Sellew v. Northeast Utilities, 12 Conn. Workers' Comp. Rev. Op. 135, 1422 CRB-8-92-5 (April 7, 1994), **dismissed for lack of final judgment**, A.C. 13541, 13542 (June 14, 1994).
Average weekly wage based on last day of work prior to retirement although incapacity as a result of occupational disease occurred later. See, Orcutt v. Ohmweave Co., 8 Conn. Workers' Comp. Rev. Op. 125, 822 CRD-2-89-2 (August 2, 1990). See also, **Sellew**, § 31-275(15), § 31-294 and § 52-572r.

Moxon v. State/Board of Trustees, Regional Community Colleges, 12 Conn. Workers' Comp. Rev. Op. 246, 1485 CRB-1-92-8 (March 29, 1994), **aff'd**, 37 Conn. App. 648 (1995).
See, **Moxon**, § 31-295 and § 31-315.

Ericson v. Perreault Spring & Equipment Co., 12 Conn. Workers' Comp. Rev. Op. 243, 1418 CRB-5-92-5 (March 29, 1994), **dismissed for lack of final judgment**, 38 Conn. App. 71 (1995).
CRB reversed trier's finding. CRB held employment contract contemplated a year-end bonus which was allocable to weeks worked during the calendar year. Although it was not received during the twenty-six weeks preceding claimant's date of injury, the profit sharing year-end bonus should be included in the calculation of the average weekly wage.

Mulligan v. F.S. Electric, 12 Conn. Workers' Comp. Rev. Op. 91, 1424 CRB-4-92-5 (February 15, 1994), **rev'd in part**, 231 Conn. 529 (1994).
Where there exists no occupational disease or repetitive trauma and total disability occurs subsequent to date of injury definitely located as to the time and place where the accident occurred, compensation rate is based on earnings at the time of injury not the time of incapacity to work. Supreme Court reversed CRB holding proper measure of compensation is based on the time of incapacity. Affirmed CRB on § 31-307b issue. See also, **Mulligan**, § 31-307 and § 31-307b**.**

Galpin v. Joyce Moving & Storage, Inc., 11 Conn. Workers' Comp. Rev. Op. 31, 1241 CRD-5-91-6 (February 26, 1993).
Remanded. Trier must consider evidence where remuneration for services performed by claimant as a lent employee indicates claimant may have performed work for the employer for twenty-six weeks prior to the date of his injury. Trier only considered a twelve week period when calculating claimant's average weekly wage. See also, **Galpin**, § 31-299.

Graziano v. St. Mary's Hospital, 11 Conn. Workers' Comp. Rev. Op. 10, 1230 CRD-5-91-5 (February 8, 1993).
In determining claimant's average weekly wage, trier included sick and vacation pay received during weeks claimant was not working. CRB remanded as vacation and sick pay earned are wages allocable to the period employee worked. They cannot be allocated to weeks in which claimant did not work. See, Kriedler v. Bic Pen Corp., 16 Conn. App. 437 (1988); Fulco v. Norwich Roman Catholic Diocesan Corp., 27 Conn. App. 800 (1992) and Ericson v. Perreault Spring & Equipment Co., 9 Conn. Workers' Comp. Rev. Op. 171, 1008 CRD-5-90-4 (July 17, 1991). See also, **Graziano**, § 31-296, § 31-307, and § 31-308a.

Sweeney v. Waterbury, 10 Conn. Workers' Comp. Rev. Op. 240, 1225 CRD-5-91-5 (January 7, 1993).
See, Arnold v. Tolland Board of Education, 10 Conn. Workers' Comp. Rev. Op. 235, 1220 CRD-2-91-4 (January 7, 1993). See also, **Sweeney**, § 31-307 and § 31-312.

Arnold v. Tolland Board of Education, 10 Conn. Workers' Comp. Rev. Op. 235, 1220 CRD-2-91-4 (January 7, 1993).
Trier's finding reversed. Trier found average weekly wage should be based on claimant's salary divided by the number of weeks over which claimant received it. CRB previously addressed this issue in Boulay and Glowa. CRB held claimant's average

weekly wage be computed on the basis of dividing total wages received during the 26 calendar weeks preceding the injury.

Fiore v. Office Furniture Depot, 10 Conn. Workers' Comp. Rev. Op. 15, 1093 CRD-3-90-8 (December 27, 1991).
Remanded as employment contract provided for time and a half for each Sunday worked and two (2) percent commission on sales. Computations on Voluntary Agreement derive from inconsistent or mistaken facts. See also, **Fiore**, § 31-296 and § 31-315.

Wislocki v. Prospect, 9 Conn. Workers' Comp. Rev. Op. 222, 1010 CRD-5-90-5 (October 21, 1991), **aff'd**, 27 Conn. App. 919 (1992)(per curiam), **aff'd**, 224 Conn. 479 (1993).
Volunteer fireman who sustained a compensable injury while performing fire duties and also employed full time by a local manufacturer not entitled to concurrent employment benefits as method of computation inconsistent with method prescribed under § 7-314a. See, Going v. Cromwell Fire District, 159 Conn. 53 (1970) and Benoit v. State, 9 Conn. Workers' Comp. Rev. Op. 58, 920 CRD-2-89-9 (February 6, 1991). See also, **Wislocki**, § 7-314a.

Ericson v. Perreault Spring & Equipment Company, 9 Conn. Workers' Comp. Rev. Op. 171, 1008 CRD-5-90-4 (July 17, 1991).
Trial commissioner's ruling granting claimant's request to reopen Voluntary Agreement to allow evidence on whether certain profit sharing sums paid at year end should have been included in the computation of his average weekly wage provided by § 31-310 will not be disturbed as § 31-315 provides a commissioner with ongoing jurisdiction during the whole compensation period applicable to the injury in question. See also, **Ericson**, § 31-315.

Haugh v. Leake & Nelson, 9 Conn. Workers' Comp. Rev. Op. 148, 1066 CRD-8-90-7 (June 5, 1991).
Average weekly wage to be determined by dividing total wages received by injured worker from the employer in whose service he is injured, even though claimant may have worked for many different employers during the 26 week period prior to his injury.

Glowa v. Waterbury, 9 Conn. Workers' Comp. Rev. Op. 114, 948 CRD-5-89-11 (April 8, 1991).
See, Boulay, infra. Factual difference as this claimant, unlike Boulay, was injured near the end of the school year.

Boulay v. Waterbury, 9 Conn. Workers' Comp. Rev. Op. 111, 941 CRD-5-89-11 (April 8, 1991), **aff'd**, 27 Conn. App. 483 (1992).
CRD corrected finding and remanded matter for computation of monies paid to a city teacher for chapter 568 benefits. Under union's contract teacher was entitled to full salary. Claimant received payment thereto and claimed total incapacity benefits for period of annual summer vacation. CRD held that the matter be remanded because if the claimant had received 66 2/3 of her annual salary then Chapter 568 payment of total incapacity benefits was satisfied.

Benoit v. State/Norwich State Hospital, 9 Conn. Workers' Comp. Rev. Op. 58, 920 CRD-2-89-9 (February 6, 1991).
State employee receiving full salary benefits under § 5-142(a) is not entitled to concurrent employment benefits pursuant to § 31-310. See also, **Benoit**, § 5-142(a). ***But see, Trinkley v. State, 220 Conn. 739 (1992) and Jones v. State, 220 Conn. 721 (1992).

Orcutt v. Ohmweave Co., 8 Conn. Workers' Comp. Rev. Op. 125, 822 CRD-2-89-2 (August 2, 1990).
See, **Orcutt**, § 31-294c, § 31-307.

Stevens v. Raybestos Manhattan, 8 Conn. Workers' Comp. Rev. Op. 84, 833 CRD-4-89-3 (May 11, 1990), **aff'd**, 28 Conn. App. 226 (1992), **cert. denied**, 223 Conn. 921 (1992).
See, **Stevens**, § 31-308(c).

Wilcox v. Naugatuck, 8 Conn. Workers' Comp. Rev. Op. 24, 812 CRD-5-89-1 (February 1, 1990), **no error**, 16 Conn. App. 676 (1988)(per curiam).
Expenses incurred to be deducted from earned commissions in order to arrive at true wages earned. Remanded to determine actual amount of concurrent employment wages.

Chodkowski v. UTC/Pratt & Whitney, 8 Conn. Workers' Comp. Rev. Op. 4, 736 CRD-3-88-5 (December 18, 1989).
The federal government is not an employer under the Act. Wages from U.S. Army Reserve are not considered concurrent employment as federal government is not an employer under the Act.

Lepino v. Electrolux Corporation, 6 Conn. Workers' Comp. Rev. Op. 146, 719 CRD-7-88-3 (April 13, 1989).
See, **Lepino**, § 31-307.

Matey v. Dember, 5 Conn. Workers' Comp. Rev. Op. 104, 516 CRD-5-86 (June 14, 1988), **appeal dismissed**, 210 Conn. 626 (1989)(per curiam).
Finding of money value of room and board must be supported by evidence. Subsequent decisions at Matey, 1189 CRD-5-91-3 (April 5, 1991), § 31-301. Appeal procedure, Matey, 3153 CRB-5-95-8 (January 10, 1997), aff'd in part and rev'd in part, 256 Conn. 456 (2001), § 31-301. Appeal procedure, § 31-315, § 31-355(a), Matey, 3848 CRB-7-98-6 (July 7, 1999), aff'd in part and rev'd in part, 256 Conn. 456 (2001), § 31-355(b), Matey, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), appeal dismissed for failure to comply with Supreme Court's directive, 85 Conn. App. 198 (2004).

Baran v. Colen Displays, 4 Conn. Workers' Comp. Rev. Op. 107 (June 20, 1987).
Computation of wages is to be based on weeks worked and is not to include sum earned the week claimant was injured.

O'Leary v. New Britain, 3 Conn. Workers' Comp. Rev. Op. 108, 236 CRD-6-83 (December 2, 1986).
Appropriate calculation of weekly wage relates to time of manifestation of injury which is date of incapacity.

Consiglio v. Hermann Forwarding Co., 2 Conn. Workers' Comp. Rev. Op. 67, 186 CRD-3-82 (July 3, 1984).
Evidence existed supporting claimant's claim that he was not merely a part-time, casual employee.

Sec. 31-310a. Average weekly wage of supernumerary policemen and volunteer police officers.

Netto v. Derby, 4535 CRB-4-02-6 (July 2, 2003).
See, **Netto**, § 31-275(9)(part-time trainee was considered employee; compensation rate thus determined as per § 31-310a).

Sec. 31-311. Replacement of artificial aids.

Samela v. New Haven, 3677 CRB-3-97-9 (October 20, 1998), **aff'd**, 54 Conn. App. 902 (1999)(per curiam).
Although appeal was dismissed for late petition for review, CRB also noted for benefit of pro se claimant that decision would have been affirmed on merits. Claimant did not allege a physical injury in First Report of Injury or Form 30C, as he reported that he had merely put his glasses down before one of his students grabbed, dropped, stepped on and broke them. Claimant later alleged that he had gotten sawdust in his eye before removing the glasses, and that he suffered conjunctivitis as a result. Trier reasonably found that no physical injury occurred, and properly denied § 31-311 claim, which requires such an injury. See also, **Samela**, § 31-301. Appeal procedure.

Sec. 31-312. Compensation for time lost for medical treatment and attendance at hearings.

Blaha v. Logistec Connecticut, Inc., 4544 CRB-3-02-6 (July 9, 2003).
Trier erred by awarding claimant mileage reimbursement for cost of travel to and from formal hearing. Statute only refers to travel to and from required medical appointments. See also, **Blaha**, § 31-298, § 31-300.

Krajewski v. Atlantic Machine Tool Works, Inc., 4500 CRB-6-02-3 (March 7, 2003).
Board noted that parking costs and taxicab fees are not generally authorized (absent door-to-door transportation that is medically required) as reimbursable costs. See also, **Krajewski**, § 31-278, § 31-284b, § 31-290a, § 31-301. Appeal procedure, § 31-301. Factual findings, § 31-301-9, § 31-313, § 31-315; prior decisions at Krajewski, 15 Conn.

Workers' Comp. Rev. Op. 44, 2120 CRB-6-94-8 (November 28, 1995), § 31-308a; Krajewski, 11 Conn. Workers' Comp. Rev. Op. 54, 1387 CRD-6-92-2 (April 1, 1993), § 31-290a.

Romano v. Logistec of Connecticut, 4199 CRB-3-00-2 (May 1, 2001).
Trier properly denied claimant's request for payment under § 31-312 C.G.S. Claimant did not filed a claim under Workers' Compensation Act, proceeding instead under Longshore and Harbor Workers' Compensation Act.

Sweeney v. Waterbury, 10 Conn. Workers' Comp. Rev. Op. 240, 1225 CRD-5-91-5 (January 7, 1993).
Claimant, a school teacher, was paid full salary during the period of temporary total incapacity. During that period claimant received medical treatment. Claimant sought entitlement to both full salary under a collective bargaining agreement and compensation benefits for time spent receiving medical treatment. CRB has limited jurisdiction which does not permit interpretation of contractual agreements. Further, if employer has paid a greater sum than amounts due under § 31-307 and § 31-312 the CRB has no power to order further sums to be paid. See also, **Sweeney**, § 31-310.

Fournier v. Sears, Roebuck & Company, 9 Conn. Workers' Comp. Rev. Op. 51, 908 CRD-7-89-8 (February 4, 1991).
Remanded to determine if claimant was receiving or eligible to receive workers' compensation benefits in order to ascertain entitlement for compensation for time lost for medical treatment during non-work hours.

Sec. 31-313. Transfer to suitable work.

Krajewski v. Atlantic Machine Tool Works, Inc., 4500 CRB-6-02-3 (March 7, 2003).
CRB noted that employer is not obligated to rehire claimant many years after injury and subsequent, legitimate lay-off, long after maximum medical improvement has been reached. See also, **Krajewski**, § 31-278, § 31-284b, § 31-290a, § 31-301. Appeal procedure, § 31-301. Factual findings, § 31-301-9, § 31-312, § 31-315; prior decisions at Krajewski, 15 Conn. Workers' Comp. Rev. Op. 44, 2120 CRB-6-94-8 (November 28, 1995), § 31-308a; Krajewski, 11 Conn. Workers' Comp. Rev. Op. 54, 1387 CRD-6-92-2 (April 1, 1993), § 31-290a.

Belanger v. J & G Belanger Concrete Construction, 4368 CRB-6-01-3 (February 19, 2002).
Factual issue as to whether employer has suitable light duty work available, but fails to provide it to employee. Evidence supported finding that no suitable work was available here. See also, **Belanger**, § 31-308a. Prior decision Belanger, 4238 CRB-6-00-5 (June 8, 2000), § 31-301. Appeal procedure and subsequent decision Belanger, 4684 CRB-6-03-6 (July 28, 2004), § 31-301. Appeal procedure and § 31-301. Factual findings.

Phillips v. Siemens Rolm, 3751 CRB-7-97-12 (December 11, 1998).
Trial commissioner's imposition of a fine for employer's failure to comply with § 31-313 in the amount of $350 for each day of non-compliance modified so as to conform with § 31-313's $500 limit.

Zienka v. New Britain, 11 Conn. Workers' Comp. Rev. Op. 143, 1407 CRB-6-92-4 (August 2, 1993), **aff'd**, 34 Conn. App. 913 (1994), **cert. denied**, 230 Conn. 905 (1994).
CRB affirmed trier's finding employer offered a suitable light duty position which claimant refused for medical reasons unrelated to his compensable injury. See also, **Zienka**, § 31-290a.

Hill v. Pitney Bowes, 8 Conn. Workers' Comp. Rev. Op. 98, 832 CRD-7-89-3 (May 17, 1990).
Determination of whether employer failed to provide claimant with suitable light duty work is a question of fact. See also, **Hill**, § 31-290a, § 31-301. Factual findings.

Fabianski v. State, 2 Conn. Workers' Comp. Rev. Op. 58, 235 CRD-5-83 (June 1, 1984).
Decision under § 31-313 must be made after an evidentiary hearing.

Sec. 31-314. Allowance for advance payments.

Halloran v. New Haven, 4770 CRB-3-04-1 (December 22, 2004).
CRB affirmed trier's ruling employer could not offset claimant's temporary total disability benefits by an amount equal to claimant's disability pension. CRB relied on Starks v. University of Connecticut, 270 Conn. 1 (2004) in which the court construed § 31-314's terms "paid…on account of the injury" did not refer to sums paid *because* of the injury.

Hammick v. Hartford, 4608 CRB-1-03-1 (December 29, 2003).
See, **Hammick**, § 31-278 (Commission has jurisdiction to consider payments made pursuant to collective bargaining agreement insofar as they constitute payments made on account of injury).

Iannarone v. State/Department of Mental Retardation, 4138 CRB-7-99-10 (June 15, 2001).
See, **Iannarone**, § 31-308a (inclusion of state disability retirement pension into discretionary benefit rate). See also, **Iannarone**, § 31-310. Prior decision at Iannarone, 4310 CRB-7-99-11 (December 6, 2000), § 31-301. Appeal procedure.

Tinsley v. J.H. Ney Company, 12 Conn. Workers' Comp. Rev. Op. 409, 1554 CRB-1-92-11 (September 16, 1994).
Employer entitled to reimbursement for first four weeks of full pay paid to injured employee pursuant to language contained in employer's personnel manual, workers' compensation description. See also, **Tinsley**, § 31-308(b).

Sec. 31-315. Modification of award or voluntary agreement.

Krajewski v. Atlantic Machine Tool Works, Inc., 4500 CRB-6-02-3 (March 7, 2003).
Claimant raised several issues that were decided in prior proceedings. No showing made that circumstances had changed in such a way that voluntary agreement or prior award could be opened. See also, **Krajewski**, § 31-278, § 31-284b, § 31-290a, § 31-301. Appeal procedure, § 31-301. Factual findings, § 31-301-9, § 31-312, § 31-313. Prior decisions at Krajewski, 15 Conn. Workers' Comp. Rev. Op. 44, 2120 CRB-6-94-8 (November 28, 1995), § 31-308a; Krajewski, 11 Conn. Workers' Comp. Rev. Op. 54, 1387 CRD-6-92-2 (April 1, 1993), § 31-290a.

Fiore v. House & Garden Shop, 4494 CRB-7-02-2 (February 28, 2003).
No basis under § 31-315 to reopen prior award, as claimant merely sought to retry facts. See also, **Fiore**, § 31-301. Factual findings. Prior decision at Fiore, 3747 CRB-7-97-12 (April 5, 1999), § 31-301. Factual findings; § 31-301-9.

Quesada v. T.J. Germaine Tree Service, 4471 CRB-7-01-12 (January 17, 2003).
Employer moved to modify award, in which potential principal employer was found not to have control of premises on date of injury, thereby relieving it of any liability under § 31-291. Employer alleged changed circumstances, as pertinent evidence was not presented to trier at time of trial. Motion to open denied absent proof that said evidence was not then available. CRB affirmed. Significant evidence came in at formal hearings relevant to role of Sunshine Supply Co. as possible principal employer, and deposition of Sunshine Supply's owner was admitted without objection. Given information available, parties could have sought presence of principal employer and/or property-owner at formal hearing. See also, **Quesada**, § 31-291.

Drew v. Sears Roebuck & Co., 4400 CRB-7-01-5 (May 2, 2002).
CRB affirmed denial of motion to reopen stipulation where pro se claimant had shown neither changed condition of fact nor duress. Official record contained nothing to counter findings. See also, **Drew**, § 31-301. Appeal procedure, § 31-301-9.

Rodriguez v. State/Dept. of Correction, 4317 CRB-1-00-11 (October 23, 2001), **rev'd**, 76 Conn. App. 614 (2003).
Trier's reopening of stipulation affirmed. Record did not establish mutual mistake of fact regarding inclusion of 1989 injury date in language of compromise, which was primarily intended to settle 1994 injury claim, and claimant did not testify that he failed to apprehend meaning of stipulation at time of approval hearing. However, counsel of record on 1989 hand injury claim was excluded from stipulation approval proceedings, and claimant never took necessary steps to officially replace him as counsel on that case. Stipulation invalidated because claimant's attorney on 1994 claim lacked authority to settle 1989 claim. Appellate Court agreed that record was insufficient to establish mutual mistake of fact, but disagreed with CRB's invalidation of stipulation due to non-participation of claimant's prior attorney. Claimant possessed authority to enter into stipulation with or without attorney present, and his signature on stipulation was sufficient to make it valid.

Bergin v. State/Department of Correction, 4200 CRB-8-00-3 (August 23, 2001), **aff'd**, 75 Conn. App. 591 (2003), **cert. denied**, 264 Conn. 903 (2003).
No error in denial of Motion to Reopen. Claimant contended that trier decided only her § 5-145a claim, while failing to address her Chapter 568 claim. Board found that trier dismissed both claims. See also, **Bergin**, § 5-145a, § 31-301. Appeal procedure.

Audi v. Blakeslee Arpaia Chapman, 4234 CRB-3-00-5, 4151 CRB-3-99-11 (June 26, 2001).
CRB affirmed reopening of voluntary agreement and Form 36 where claimant was virtually illiterate and spoke very little English, and relied upon instructions of insurance company representative to sign forms whose nature he did not understand. "Mistake" in signing agreement not due to negligence of claimant. See also, **Audi**, § 31-298, § 31-301-9, § 31-296 voluntary agreements (discontinuance of payments), § 31-307. See prior decision Audi, 3418 CRB-3-96-9 (August 4, 1997), § 31-349 and Also see subsequent decision Audi, 4311 CRB-3-00-10, 4624 CRB-3-03-2 (February 10, 2004), § 31-278, § 31-284(b), § 31-288, § 31-300.

Kudlacz v. Lindberg Heat Treating, 3407 CRB-8-96-8 (June 26, 2001), **aff'd**, 70 Conn. App. 559 (2002), **cert. denied**, 261 Conn. 927 (2002).
CRB affirmed trier's decision vacating voluntary agreement that had been issued by employer Lindberg, as agreement was based upon mutual mistake of fact. Voluntary agreement listed injury as compression fracture at L2 and L3 with injury date of June 3, 1992. Claimant testified at formal hearing that June 3, 1992 injury occurred while working for United Parcel Service, not Lindberg. Moreover, trier found that claimant's testimony was not credible, and thus concluded that claimant did not meet burden of proof that he sustained a compensable injury. See also, **Kudlacz**, § 31-298. Prior decision at Kudlacz, 16 Conn. Workers' Comp. Rev. Op. 214, 3407 CRB-8-96-8 (June 6, 1997), aff'd, 49 Conn. App. 1 (1998) (with dissenting opinion), rev'd, 250 Conn. 581 (1999), appeal reinstated, 3407 CRB-8-96-8 (July 21, 2000).

Ciocci v. Morrison Knudsen, Inc., 4244 CRB-1-00-5 (June 1, 2001).
Motion to modify average weekly wage and, ergo, compensation rate in voluntary agreement denied by trier. CRB affirmed. No mutual mistake of fact found by trier or CRB. Alternative argument resting on misapplication of law at time rate was set in voluntary agreement rejected, as subsequent changes in legal interpretation via Supreme Court decision are not retroactively applicable to non-pending cases. Also, no finding regarding necessary subordinate fact. See also, **Ciocci**, § 31-301. Appeal procedure, § 31-301. Factual findings, § 31-310.

Tomaszek v. Girard Motors, 4166 CRB-2-99-12 (February 23, 2001), **aff'd**, 70 Conn. App. 122 (2002)(per curiam).
CRB affirmed trier's denial of claimant's Motion to Open approved full and final stipulation. Claimant contended mental incompetence at the time he signed stipulation; however, trier found otherwise. See also, **Tomaszek**, § 31-301-9.

Gary v. State/ Department of Correction, 4208 CRB-8-00-3 (January 4, 2001), **rev'd**, 68 Conn. App. 590 (2002).
Trier denied respondent's Motion to Reopen, finding that respondent had accepted liability for claimant's § 5-145a hypertension claim with August 10, 1993 date of injury, and had paid indemnity and medical costs for several years without investigating injury. In support of appeal, respondent argued that claimant's notice of claim was untimely, and thus trier did not have subject matter jurisdiction over claim. No error. Board noted that trier found no evidence that claimant suppressed or withheld information, or misled respondent, and that information later found by respondent was easily discoverable and was not a newly discovered or changed condition of fact. As a result of respondent's lack of diligence and inattention to claim investigation, claimant relied to his detriment on its actions and was not unjustly enriched. Thus, respondent was estopped from revoking acceptance of hypertension claim or seeking reimbursement. See also, **Gary**, § 31-301-4.

Gagne v. Tilcon Inc., 4031 CRB-3-99-3 (May 25, 2000).
CRB affirmed trier's denial of claimant's request to open approved stipulation for 1984 injury. Trier found that claimant's multiple sclerosis, which was diagnosed in 1996, was not caused by his 1984 injury.

Saleh v. Poquonock Giant Grinder Shop, 4005 CRB-1-99-3 (March 13, 2000).
Board affirmed trier's decision allowing reopening of voluntary agreement to compensate claimant for increased permanent partial disability. See also, **Saleh**, § 31-279-3, § 31-298, § 31-300, § 31-301-9.

Prioli v. State/Connecticut State Library/Arts Commission, 3955 CRB-6-98-12 (January 13, 2000), **aff'd**, 64 Conn. App. 301 (2001), **cert. denied**, 258 Conn. 917 (2001).
CRB affirmed trier's refusal to reopen award of attorney's fees. No changed conditions of fact or mistakes were apparent within the meaning of § 31-315. See also, **Prioli**, § 31-278, § 31-290a, § 31-301. Appeal procedure, § 31-301-9, § 31-327. Subsequent ruling at Prioli, 3955 CRB-6-98-12 (October 16, 2000), § 31-301c.

Pantanella v. Enfield Ford, 3937 CRB-1-98-11 (January 7, 2000), **aff'd**, 65 Conn. App. 46 (2001), **cert. denied**, 258 Conn. 930 (2001)(along with Case No. 3377).
See, **Pantanella**, § 31-299b, § 31-300, § 31-301. Factual findings. See also, **Pantanella**, § 31-298. Subsequent decision at Pantanella, 4220 CRB-1-00-4 (December 19, 2000), § 31-298, § 31-300. Prior decision at Pantanella, 3377 CRB-1-96-7 (January 28, 1998), § 31-298, 31-299b, § 31-301. Factual findings, § 31-355(e).

Coppola v. L.G. DeFelice, Inc., 3850 CRB-3-98-6 (August 30, 1999).
CRB affirmed trial commissioner's decision granting claimant's Motion to Reopen an approved stipulation under which respondents had agreed to pay claimant $40,000 as a full and final settlement of his workers' compensation claim. Trier found that at the time stipulation agreement was approved, none of the parties were aware that claimant had sustained brain damage, and claimant would not have agreed to the settlement if he had known of the brain injury.

Harris v. UTC/Pratt & Whitney, 3762 CRB-1-98-1 (February 23, 1999), **aff'd**, 56 Conn. App. 912 (2000)(per curiam), **cert. denied**, 253 Conn. 907 (2000).
Trier appropriately declined to reopen decision where claimant had already filed an appeal from that ruling with CRB. See also, **Harris**, § 31-294f, § 31-301-9. Additional evidence. Prior decision at Harris, 15 Conn. Workers' Comp. Rev. Op. 357, 3143 CRB-5-95-8 (June 26, 1996), § 31-275(17), § 31-298.

Chase v. Honeywell, Inc., 3717 CRB-1-97-11 (January 28, 1999), **rev'd** *sub nom.*, O'Neil v. Honeywell, Inc., 66 Conn. App. 332 (2001), **cert. denied**, 259 Conn. 914 (2002).
CRB affirmed trier's granting of Fund's Motion to Reopen approved stipulation based upon equitable grounds. The stipulation had been approved at a time when Second Injury Fund had not been informed of the claimant's death, and Fund would not have agreed to the approval if it had been so advised. Appellate Court noted that the stipulation approval hearing was held without notification of said hearing to the Fund, without any representative of the Fund present, and without informing the Fund of the claimant's death. The court held that the trial commissioner exceeded his power by setting aside the approved stipulation on equitable grounds because there was no evidence that the Fund was prevented from making a defense by fraud, accident, mistake, surprise or improper management of the opposite party. Moreover, the court explained that neither the commission nor the claimant had a duty to inform the Fund of either the approval hearing or the claimant's death *after* the agreement had been signed. Secola v. State/Comptroller's Office, 3102 CRB-5-95-6 (February 26, 1997) distinguished.

Kent v. Pratt & Whitney, Inc., 3648 CRB-1-97-7 (October 13, 1998).
CRB affirmed trial commissioner's denial of claimant's Motion to Reopen. The claimant claimed negligence and (unsubstantiated) fraud on the part of his counsel and his treating physician. The claimant sought to reopen a 1994 Finding and Award from which he did not file a timely appeal. In order to address the merits of that decision, the claimant should have filed a timely appeal in 1994.

Mulligan v. NCH Corporation/Chemsearch Division, 3653 CRB-4-97-7 (September 17, 1998).
CRB affirmed trial commissioner's decision to reopen approved stipulation where trial commissioner did not follow canvassing procedure or obtain a completed "Stipulation and What It Means" form before approval. Claimant subsequently evinced a lack of understanding of the effect of the stipulation on his long-term disability claim caused by the respondents' failure to discuss that issue and by the imprecision of the stipulation itself.

Hyatt v. Milford, 3646 CRB-3-97-7 (August 28, 1998), **aff'd**, 57 Conn. App. 472 (2000), **cert. denied**, 254 Conn. 901 (2000).
See, **Hyatt**, § 7-433c.

Bowman v. Jack's Auto Sales, 3622 CRB-8-97-6 (August 26, 1998).
Commissioner granted motion to reopen Finding and Award in light of medical evidence that the claimant's doctor first obtained after the case was closed. CRB ruled that trier erred by reopening award simply because claimant's doctor changed mind regarding causation, especially where claimant did not show that his doctor could not have proved causation some other way in 1993. (*Miles, C.,* **dissenting**) Findings in trier's award, standing unchallenged (respondents did not file Motion to Correct), are sufficient to support reopening of case under § 31-315. Trier's conclusions merit deference. See also, **Bowman**, § 31-301. Appeal procedure.

Riedel v. F & F Concrete Corp., 3529 CRB-8-97-2 (July 24, 1998).
Claimant was pro se at the time he signed two voluntary agreements and had not yet obtained Dr. Becker's opinion that his disability was due to a combination of two compensable injuries rather than the second one alone. This did not amount to a changed condition of fact or a mistake of fact as a matter of law, and the trial commissioner was within his authority to deny the claimant's motion to open the voluntary agreements. Affirmed.

Czujak v. Bridgeport, 3535 CRB-4-97-2 (June 10, 1998), **aff'd**, 55 Conn. App. 789 (1999), **cert. denied**, 252 Conn. 920 (2000).
CRB discussed Supreme Court holding in Marone v. Waterbury, 244 Conn. 1 (1998), which states that an award may not be reopened because of a mistake of law as opposed to a mistake of fact. See also, **Czujak**, § 7-433c, § 31-300, § 31-301. Appeal procedure, § 31-307a. Subsequent decision at Czujak, 4371 CRB-4-01-3 (April 8, 2002), § 31-297, § 31-301(g).

Courtright v. State/Connecticut Valley Hospital, 3573 CRB-6-97-4 (June 5, 1998).
No abuse of discretion for trial commissioner to decline to reopen claimant's voluntary agreement. Claimant elected to receive benefits under § 5-142(a) instead of § 31-307, and did not offer evidence that circumstances had changed in any way, or that a mistake had been made. See also, **Courtright**, § 5-142(a), § 31-301-4. Correction of finding.

Aubin v. Union City Steel, 3463 CRB-7-96-11 (May 14, 1998).
CRB affirmed trial commissioner's decision to grant claimant's motion to set aside dismissal order, primarily relying on Murray v. Black Tie Limousine, 3306 CRB-3-96-3 (August 21, 1997). Claimant's attorney had believed that formal hearing was rescheduled, and did not attend; respondents moved to dismiss, and trial commissioner granted that motion. One month later, claimant moved to set aside dismissal order, and commissioner granted that motion. See, Murray, infra.

Bailey v. Stripling Auto Sales, 3461 CRB-3-96-11 (April 9, 1998).
Trial commissioner did not err by dismissing claimant's Motion to Reopen Finding and Award, which alleged that the previous trial commissioner was not competent to render a decision. The issue of another commissioner's physical and mental fitness to hold office is beyond the subject matter jurisdiction of a trial commissioner. The evidence offered by the claimant was incapable of materiality in this forum. Discussion of § 51-51i(c) C.G.S., which places authority to review a commissioner's competence with the

Judicial Review Council. See also, **Bailey**, 15 Conn. Workers' Comp. Rev. Op. 369, 3095 CRB-2-95-6 (June 28, 1996). Also see subsequent Bailey, 4516 CRB-2-02-4 (May 8, 2003), § 31-298, § 31-307a.

Marriott v. Northington Builders, 3357 CRB-1-96-5 (November 7, 1997).
CRB affirmed the trial commissioner's denial of the claimant's request to reopen an approved stipulation. In support of his appeal, the claimant reiterated the contentions presented to the trier that the stipulation was entered into due to accident and mutual mistake. Specifically, the claimant contended that it was an abuse of discretion for the trial commissioner to deny his motion to reopen because the Fund's discontinuance of health insurance premiums and the Fund's reduction in weekly benefit checks caused a significant, unanticipated change in conditions.

Murray v. Black Tie Limousine, 3306 CRB-3-96-3 (August 21, 1997).
After trial commissioner dismissed case for failure of claimant's attorney to appear and diligently prosecute claim, he suggested to claimant that he immediately file documents to reopen the matter. Nothing came forward, and the commissioner made a formal finding and dismissal. One month later, the claimant filed a motion to reopen the dismissal, and the commissioner granted it despite the respondents' arguments that the trier's jurisdiction terminated when the claimant failed to appeal his prior decision within ten days. CRB affirmed trier's decision. Section 31-315 does not prohibit a commissioner from reopening a case when a default dismissal has been entered. Subsequent decision at Murray, 3899 CRB-3-98-9 (November 4, 1999), § 31-275(9), § 31-294d, § 31-307.

Stickney v. Sunlight Construction, Inc., 3205 CRB-6-95-11 (April 25, 1997), **rev'd**, 48 Conn. App. 609 (1998), **aff'd,** 248 Conn. 754 (1999).
Trier granted motion to substitute Commercial Union for Aetna as the liable insurer on this claim. Affirmed. Facts of case clearly showed that Commercial Union was on the risk at the time of the injury, and that Aetna (which had not received a premium) had accepted the claim by mistake and in good faith, not being aware of other coverage. Commercial Union had also paid some hospital bills on this claim, and had not shown actual evidence of prejudice. Fact that Aetna waited 7½ years to move to reopen the award did not categorically bar a § 31-315 motion, as the statute sets no time limit on a motion to reopen. Both parties made errors here, including failing to notify this commission of insurance changes pursuant to § 31-348. Decision to open agreement was within commissioner's discretion, which was not abused. See also, **Stickney**, § 31-348. Appellate Court reversed on ground that CRB should not have reversed trier's decision that he lacked jurisdiction over this issue in Stickney, 12 Conn. Workers' Comp. Rev. Op. 364, 1738 CRB-6-93-5 (August 2, 1994).

Hines v. Linc Scientific Imaging, 3037 CRB-8-95-3 (April 14, 1997).
Decision to open and modify a voluntary agreement falls within the discretion of the trial commissioner. At least one medical report existed stating that the claimant's injury had stabilized, which supported the trier's finding that she had reached maximum medical improvement. See also, **Hines**, § 31-301. Appeal procedure, § 31-308a.

Santora v. A.C.E.S., 2299 CRB-3-95-11 (February 26, 1997).
Motion to reopen award legally insufficient where it alleged neither changed conditions of fact, fraud, accident or mistake in the judgment. However, ambiguous ruling left disposition of original case unclear. See also, **Santora**, § 31-298 and § 31-349.

Perez v. Franklin Mushroom Farm, 3177 CRB-2-95-10 (January 24, 1997).
CRB affirmed decision of the trial commissioner which granted the claimant's request to reopen an approved stipulation. In support of their appeal, the respondents contend that any misunderstanding or mistake regarding the terms of the stipulation occurred between the claimant and his attorney, but not between the parties. CRB explained that a trial commissioner's decision to open an approved stipulation falls within the trial commissioner's discretion and will be overturned on appeal only if such discretion was abused or if an unreasonable result was reached. In the instant case, the claimant contended that a significant change to the stipulation was made without his knowledge or consent.

Pinto v. General Signal Corp., 2277 CRB-5-95-1 (January 22, 1997), **dismissed for lack of final judgment**, A.C. 16874 (October 30, 1997).
After record had closed and parties had filed proposed findings, claimant obtained new counsel, who sought to reopen the formal hearing in order to introduce additional evidence. Trial commissioner granted that motion, stating that he had a right to reopen the case if he felt there was insufficient evidence to make a decision. CRB reversed; once record was closed and proposed findings were filed, commissioner did not have same discretion to reopen case that he would have before record was closed. Evidence that claimant sought to introduce was available at the first formal hearing; no good reason alleged to introduce further evidence. (*Vargas, C.,* **dissenting**) (majority is overemphasizing procedural details. Commissioner has discretion under § 31-298 to accept more evidence if he thinks it helpful, and respondents alleged no prejudice from granting of motion to open).

Matey v. Dember, 3153 CRB-5-95-8 (January 10, 1997), **aff'd in part and rev'd in part**, 256 Conn. 456 (2001).
Fund filed two petitions for review from denial of Motion to Reopen, having failed to appeal from the Finding and Award itself. Errors that might have been assigned on that appeal are no longer open to review. Further, Fund cannot reargue jurisdictional issue addressed in CRB's prior decision in this case (Matey, 5 Conn. Workers' Comp. Rev. Op. 104, 516 CRD-5-86 (June 14, 1988)). No error in denial of Motion to Reopen, as no changed conditions of fact, etc., alleged. Supreme Court reversed on these issues, holding that neither the commissioner nor the board had ever addressed in any substantive way the Fund's claim that it was entitled to an offset for claimant's civil suit settlement. In footnotes 9-11, the Supreme Court noted that there seemed to be no basis in the record for board's assertion that the Fund had not raised these issues in a timely manner. See also, **Matey**, § 31-301. Appeal procedure and § 31-355(a). Prior decision at Matey, 5 Conn. Workers' Comp. Rev. Op. 104, 516 CRD-5-86 (June 14, 1988), appeal dismissed, 210 Conn. 626 (1989)(per curiam), § 31-278, § 31-310. Subsequent decision at Matey, 3848 CRB-7-98-6 (July 7, 1999), aff'd in part and rev'd in part, 256 Conn.

456 (2001), § 31-355(b), Matey, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), appeal dismissed for failure to comply with Supreme Court's directive, 85 Conn. App. 198 (2004).

Marone v. Waterbury, 3117 CRB-5-95-7 (January 10, 1997), **aff'd**, 244 Conn. 1 (1998).
See, **Marone**, § 7-433c notes. Discussion of inapplicability of modification procedure to subsequent changes in case law.

Fabian v. Pitney Bowes, Inc., 3104 CRB-7-95-6 (December 23, 1996).
In dicta, the CRB addressed the issue of the claimant's request to reopen an approved stipulation of his workers' compensation claim for $82,500. The claimant filed a motion to reopen the stipulation on the basis that the claimant would not have entered into the stipulation if he had known that the proceeds would offset his pension benefits. The trial commissioner found that the employer's pension plan specifically provided that the pension benefits would be offset by any workers' compensation benefits, and that this provision contained in the pension plan was available to the claimant prior to the approval of the stipulation. The trial commissioner concluded that "there was no mutual mistake, fraud, or misrepresentation involved in reaching the stipulation...." The CRB affirmed the trial commissioner's denial of the claimant's motion to reopen the stipulation pursuant to § 31-315. See also, **Fabian**, § 31-301. Appeal procedure.

Infante v. Mansfield Construction, 3067 CRB-4-95-5 (December 18, 1996), **aff'd**, 47 Conn. App. 530 (1998).
Insurer sought to modify compensation rate after 6 years of making payments. Commissioner found no mutual mistake of fact, and declined to modify rate. Affirmed; no showing that finding was arbitrarily reached. See also, **Infante**, § 31-294d, and § 31-296.

Costa v. United Nuclear Corp., 16 Conn. Workers' Comp. Rev. Op. 101, 2296 CRB-2-95-1 (November 20, 1996).
Trial commissioner was not precluded from considering Motion to Reopen simply because three of her earlier rulings in the case had been appealed. Policy of state is to recognize continuous jurisdiction over award by commissioner during the whole compensable period. Also, decision to open stipulation fell within discretion of trier of fact; commissioner here testified to circumstances indicating claimant understood terms of agreement. See also, **Costa**, § 31-297a, and Rules of Professional Conduct.

Scalora v. Dattco Bus Co., 16 Conn. Workers' Comp. Rev. Op. 28, 2059 CRB-1-94-5 (October 9, 1996), **appeal dismissed**, A.C. 16522 (December 31, 1996).
Trial commissioner's decision not to reopen stipulation affirmed. Claimant executed affidavit stating that he understood he was still receiving treatment for dental problems, and would not be compensated for those future treatments. Commissioner was not required to accept claimant's testimony that he and his wife understood doctor had "guaranteed" life of claimant's dental splints. Whether stipulation was properly executed is question of fact, and commissioner found that prior commissioner had fully explained the terms of the stipulation to the claimant in his native Italian prior to approving it.

Although review of the findings shows no testimony to indicate that commissioner actually spoke to the claimant rather than his wife, the claimant did sign an affidavit that demonstrated significant measures were taken to accommodate the claimant and insure his understanding of the stipulation. Also, allegation that claimant's wife was incompetent to represent him not irrefutable; party alleging incapacity must meet burden of proof, and that was not done here. Affirmed.

Jaworski v. Four Seasons Limousine, 15 Conn. Workers' Comp. Rev. Op. 438, 2200 CRB-7-94-11 (September 5, 1996).
CRB affirmed trial commissioner's denial of claimant's request to reopen a voluntary stipulation. The decision whether to open a stipulated agreement falls within the trier's discretion and will be overturned only if such discretion was abused or if an unreasonable result was reached.

Petraroia v. City News & Tobacco, 15 Conn. Workers' Comp. Rev. Op. 268, 2211 CRB-5-94-11 (June 14, 1996).
See, **Petraroia**, § 31-352.

Bruce v. Bert Miller Associates, 15 Conn. Workers' Comp. Rev. Op. 47, 1872 CRB-1-93-10 (December 1, 1995).
See, **Bruce**, § 31-348.

Wallin v. Danbury, 14 Conn. Workers' Comp. Rev. Op. 353, 1940 CRB-7-93-11 (September 22, 1995).
CRB affirmed commissioner's denial of claimant's motion to reopen an approved voluntary agreement. In support of his appeal, the claimant argued that diagnostic tests show that the fusion sight of the claimant's surgery was not successful. However, the diagnostic tests which the claimant referred to were all issued prior to the approval of the voluntary agreement. Alleged change in conditions was based upon evidence which was known to the claimant at the time the voluntary agreement was approved.

Murphy v. West Haven, 14 Conn. Workers' Comp. Rev. Op. 300, 2197 CRB-3-94-10 (September 11, 1995).
Commissioner ordered Fund to reimburse insurer for § 7-433c benefits paid to dependent widow under § 31-306. Subsequent decision in McNulty v. Stamford, 37 Conn. App. 835 (1995), held Fund not liable for § 7-433c benefits, as they are outside Workers' Compensation Act. However, Fund filed a late appeal, and no supporting documents. Held, CRB overlooked poor appellate practice of Fund attorney, and construed appeal as motion to modify award based on changed conditions of fact under § 31-315. Remanded.

Fazzina v. Shepard Steel, 14 Conn. Workers' Comp. Rev. Op. 253, 1831 CRB-1-93-9 (August 31, 1995).
Commissioner denied claimant's motion to reopen an approved stipulation for the payment of an unpaid medical bill. The commissioner's determination that claimant understood stipulation when he signed it is a factual determination which is supported by

the record. The claimant in the instant case does not allege that a change of conditions has occurred, or that any new evidence has been discovered.

Southard v. Southard Development, 13 Conn. Workers' Comp. Rev. Op. 348, 1891 CRB-4-93-11 (April 27, 1995).
Trial commissioner did not abuse discretion in denying respondents' motion to reopen where insurer mistakenly entered into voluntary agreement even though insurance had been canceled on date of injury. Ten months had transpired between date of injury and request to reopen, and no change was alleged in the claimant's condition, nor were changed conditions of fact alleged by insurer. See, Hayden v. Wallace & Sons Mfg. Co., 100 Conn. 180 (1923). No evidence presented that voluntary agreement obtained fraudulently or mistakenly in a manner unconnected with CNA's own inattention to correct date of injury. See also, **Southard**, § 31-298.

Knoblaugh v. Greenwood Health Center, 13 Conn. Workers' Comp. Rev. Op. 150, 1608 CRB-1-92-12 (February 6, 1995).
"Changed factual condition" consisted of post-settlement revision of medical report. As commissioner saw both reports and expressly stated that original report disposed of issue, commissioner was not required to reopen settlement agreement. See also, **Knoblaugh**, § 31-301. Factual findings, § 31-349, and § 31-355(b).

Gonzalez v. Electric Transport (PENSKE), 13 Conn. Workers' Comp. Rev. Op. 6, 1729 CRB-1-93-5 (October 13, 1994).
Trier erred in denying motion to reopen stipulation based on mutual mistake where claim was settled absent knowledge of an outstanding medical bill. See also, **Gonzalez**, § 31-327.

Vigneri v. Utility Industrial Company, 12 Conn. Workers' Comp. Rev. Op. 402, 1433 CRB-2-92-6 (September 9, 1994).
Absent a request by any party the trial commissioner has the power to reopen and modify a voluntary agreement after notice and hearing and evidence presented. See also, **Vigneri**, § 31-299b and § 31-301. Appeal procedure.

Santiago v. Metropolitan Insurance Co., 12 Conn. Workers' Comp. Rev. Op. 388, 1631 CRB-6-93-1 (September 4, 1994), **appeal dismissed**, (February 3, 1995).
CRB held evidence before trier was of such character and force that it was proper for the trial commissioner to vacate his earlier approval of an uncontested Form 36. See also, **Santiago**, § 31-296 and § 31-307.

Stickney v. Sunlight Construction Co., 12 Conn. Workers' Comp. Rev. Op. 364, 1738 CRB-6-93-5 (August 2, 1994), **rev'd**, 48 Conn. App. 609 (1998), **aff'd**, 248 Conn. 754 (1999).
On remand trier must address whether voluntary should be reopened to substitute potentially liable insurer by addressing merits of the claim and equitable defenses raised. Reversed by Appellate Court, which held that the trial commissioner lacked subject matter jurisdiction over what was essentially an issue of contract law that did not implicate the rights of the injured employee. See also, **Stickney**, § 31-278, and § 31-348.

Subsequent decision at, Stickney, 3205 CRB-6-95-11 (April 25, 1997), § 31-348 and this section.

Loehn v. Vallerie Transportation Service, 12 Conn. Workers' Comp. Rev. Op. 267, 1544 CRB-7-92-10 (June 2, 1994).
Reversed and remanded. Commissioner without authority to grant motion to modify voluntary agreement where documented evidence to support claim to modify agreement predates commissioner approval of said agreement. See also, **Loehn**, § 31-349.

Freeman v. Hull Dye & Print, 12 Conn. Workers' Comp. Rev. Op. 259, 1516 CRB-5-92-9 (June 2, 1994), **rev'd on other grounds**, 39 Conn. App. 717 (1995).
Evidence supports trier's findings and conclusion, within reasonable medical probability, that decedent was exposed to Benzedrine in the workplace during his employment which exposure was a substantial factor in causing his bladder cancer and subsequent death. See also, **Freeman**, § 31-294c.

Soares v. Glass Industries, 12 Conn. Workers' Comp. Rev. Op. 189, 1377 CRB-3-92-1 (May 4, 1994).
CRB held proper vehicle to open voluntary where argument is made that benefits were paid by mistake is a motion to open. See also, **Soares**, § 31-297, § 31-300 and § 31-307b.

Moxon v. State/Board of Trustees, Regional Community Colleges, 12 Conn. Workers' Comp. Rev. Op. 246, 1485 CRB-1-92-8 (March 29, 1994), **aff'd**, 37 Conn. App. 648 (1995).
Record supports finding that calculation of compensation rate previously approved in voluntary agreement was correct. Time lost for medical visits and receipt of sick pay for time lost from work due to chemical exposure supports trier's conclusion regarding date of injury, first incapacity to work, and applicable compensation rate. See also, **Moxon**, § 31-295 and § 31-310.

Mongillo v. Terminal Taxi Co., 12 Conn. Workers' Comp. Rev. Op. 197, 1455 CRB-3-92-7 (March 7, 1994).
Remanded as trier erred in ruling on claimant's motion to reopen stipulation where claimant contended trier failed to explain said document before it was executed and approved. CRB held trier should have disqualified himself from ruling on motion to reopen as it was clear claimant was challenging the fact that the trier failed to explain the stipulated agreement.

Muldoon v. Homestead Insulation, 10 Conn. Workers' Comp. Rev. Op. 255, 1226 CRD-4-91-5 (January 13, 1993), **rev'd**, 33 Conn. App. 695 (1994), **rev'd**, 231 Conn. 469 (1994), **aff'd on remand**, 37 Conn. App. 266 (1995).
Claim for increased disability benefits was not barred by approved stipulation as said stipulation only refers to settlement of claims for occupational disease occurring between 1947 and 1974. Occurrences after 1974 constituted new evidence of a new injury which concerned parties other than those participating in the prior settlement. See

also, **Muldoon**, § 31-275(1), § 31-275(15), § 31-299b and § 31-284(a). Subsequent decisions.

Chemero v. Westreco, Inc., 10 Conn. Workers' Comp. Rev. Op. 142, 1081 CRD-7-90-7 (June 29, 1992).
Where finding is clear as to basis for conclusion and additional evidence proffered is merely cumulative trier's denial of claimant's Motion for Articulation and Motion for Modification will not be disturbed. See also, **Chemero**, § 31-296 and § 31-301. Factual findings.

Nasinka v. Ansonia Copper and Brass, 10 Conn. Workers' Comp. Rev. Op. 85, 1153 CRD-5-90-12 (April 20, 1992).
See, **Nasinka**, § 31-301. Factual findings and § 31-301-9. Additional evidence.

Gillette v. State/J.B. Gates Correctional Unit, 10 Conn. Workers' Comp. Rev. Op. 69, 1145 CRD-2-90-11 (March 26, 1992), **vacated and reissued** (July 8, 1992).
No grounds exist under § 31-315 for modification of a voluntary agreement for claim of state employee to receive benefits pursuant to § 5-142(a). Trier found claimant was not in the actual performance of guard duties at the time of his injury. See also, **Gillette**, § 5-142(a) and § 31-296.

Keating v. Allegheny Ludlum Steel Corp., 10 Conn. Workers' Comp. Rev. Op. 28, 1102 CRD-3-90-8 (January 13, 1992).
CRB affirmed trier's ruling which reopened a voluntary agreement executed in 1985 for permanent partial disability of the back and ordered temporary total benefits be paid for said period in question as record indicates that at the time the 1985 agreement was executed and approved it was not an unreasonable inference claimant was anticipating returning to work. See, Vetre v. New Britain, 3 Conn. Workers' Comp. Rev. Op. 20, 221 CRD-6-83 (November 14, 1985). **Keating**, remanded under § 31-349. See also, **Keating**, § 31-294d.

Fiore v. Office Furniture Depot, 10 Conn. Workers' Comp. Rev. Op. 15, 1093 CRD-3-90-8 (December 27, 1991).
Remanded as employment contract provided for time and a half for each Sunday worked and two (2) percent commission on sales. Computations on Voluntary Agreement derived from inconsistent or mistaken facts. See also, **Fiore**, § 31-296 and § 31-310.

Lagueux v. Veilleux, 9 Conn. Workers' Comp. Rev. Op. 177, 876 CRD-6-89-6 (August 13, 1991).
CRD limited to review of record before trial commissioner. Any offer of new evidence which would arguably alter the trier's decision should be made in accordance with § 31-315. See also, **Lagueux**, § 31-307, § 31-308a.

Ericson v. Perreault Spring & Equipment Company, 9 Conn. Workers' Comp. Rev. Op. 171, 1008 CRD-5-90-4 (July 17, 1991).
Trial commissioner's ruling granting claimant's request to reopen voluntary agreement to allow evidence on whether certain profit sharing sums paid at year end should have been included in the computation of his average weekly wage provided by § 31-310 will

not be disturbed as § 31-315 provides a commissioner with ongoing jurisdiction during the whole compensation period applicable to the injury in question. See also, **Ericson**, § 31-310.

Castro v. General Electric, 9 Conn. Workers' Comp. Rev. Op. 73, 904 CRD-6-89-8 (February 20, 1991).
Voluntary Agreement approved for specific benefits subject to modification where claimant remained totally disabled. See also, **Castro**, § 31-307.

Tutsky v. Y.M.C.A. of Greenwich, 9 Conn. Workers' Comp. Rev. Op. 29, 902 CRD-7-89-8 (January 17, 1991), **aff'd**, 28 Conn. App. 536 (1992).
Motion to Reopen denied where evidence proffered by claimant would not change ultimate conclusion.

Knudsen v. GSD, Inc., 8 Conn. Workers' Comp. Rev. Op. 81, 829 CRD-8-89-3 (May 9, 1990).
Motions to Reopen governed by § 31-315. Determination of whether changed conditions of fact exist is a conclusion to be drawn by the trier. See, Velilla, infra.

Velilla v. UTC/Hamilton Standard Div., 8 Conn. Workers' Comp. Rev. Op. 66, 926 CRD-1-89-10 (April 17, 1990).
Motion To Reopen. Trial commissioner's denial of Motion to Reopen will not be disturbed where the new evidence which claimant sought to proffer was a decision of a Social Security Administrative Law Judge as to supplemental Social Security benefits. See also, **Velilla**, § 31-301. Factual findings.

Vincent v. New Milford, 8 Conn. Workers' Comp. Rev. Op. 27, 761 CRD-7-88-8 (February 5, 1990).
Section 31-308a benefits when construed with § 31-307 and § 31-309 cannot exceed basic compensation rate, § 31-315. Decision modifiable where trial commissioner without jurisdiction to order payments in excess of those permitted by statute.

Garfitt v. Pfizer, Inc., 7 Conn. Workers' Comp. Rev. Op. 62, 742 CRD-3-88-6 (August 11, 1989).
Additional permanency award justified where change of circumstance supported by medical evidence.

Chrystal v. Richardson Construction Co., 7 Conn. Workers' Comp. Rev. Op. 36, 728 CRD-2-88-4 (July 25, 1989).
Modification of benefits. Motion to Reopen Stipulation denied where claimant conceded there had been no fraud or misrepresentation nor did claimant demonstrate a basis for reopening pursuant to § 31-315.

Davis v. Al's Auto Service, 7 Conn. Workers' Comp. Rev. Op. 3, 612 CRD-6-87 (June 9, 1989).
Affirmed trial commissioner's denial of respondent's Motion to Reopen under § 31-315 where respondent had opportunity to present evidence at earlier hearing.

Tutsky v. Y.M.C.A. of Greenwich, 6 Conn. Workers' Comp. Rev. Op. 167, 543 CRD-7-87 (June 5, 1989), **no error**, 21 Conn. App. 806 (1990).
Motion to Reopen denied; evidence supports conclusions of trial commissioner. See, Fair, § 31-301. Factual findings.

Besade v. Interstate Security Services, 6 Conn. Workers' Comp. Rev. Op. 83, 593 CRD-2-87 (January 13, 1989), **no error**, 212 Conn. 441 (1989).
Trial commissioner's ruling denying respondents' Motion to Reopen affirmed where new testimony would be merely cumulative. See also, **Besade**, § 31-275(1), § 31-301(f)[formerly 31-301(b)], § 31-307 and subsequent decision at Besade, 12 Conn. Workers' Comp. Rev. Op. 103, 1383 CRB-2-92-2 (February 28, 1994), aff'd, 37 Conn. App. 903 (1995).

Murdock v. Squires, 6 Conn. Workers' Comp. Rev. 64, 550 CRD-7-87 (December 1, 1988).
See, **Murdock**, § 31-301-9. Additional evidence.

Daniele v. Angelo Monarca, Inc., 6 Conn. Workers' Comp. Rev. Op. 25, 519 CRD-3-86 (1988).
Earlier stipulation did not preclude finding as to increased disability due to TMJ syndrome.

Imbrogno v. Stamford Hospital, 5 Conn. Workers' Comp. Rev. Op. 99, 610 CRD-8-87 (June 9, 1988).
Motions to Modify and or Reopen must provide support as to elements provided in statute. Commissioner's denial of motion affirmed.

Bjelka v. Norwalk Hospital, 5 Conn. Workers' Comp. Rev. Op. 21, 370 CRD-7-84 (March 28, 1988).
CRD held evidence uncovered in a federal proceeding subsequent to hearings in instant matter and which tended to show asbestos exposure at another employer's facility was grounds to reopen.

Diogostine v. Somers Thin Strip, 3 Conn. Workers' Comp. Rev. Op. 139, 282 CRD-5-83 (January 22, 1987).
New evidence showing increased incapacity would arguably be grounds for opening and modifying award.

Tomkinson v. Stockwell, 3 Conn. Workers' Comp. Rev. Op. 101, 218 CRD-4-83 (November 28, 1986).
Motion to Reopen denied where respondents claim of no receipt of hearing notices was disputed by signed mailing return receipts.

Murphy v. West Haven, 3 Conn. Workers' Comp. Rev. Op. 88, 126 CRD-3-82 (November 13, 1986).
To modify or open award statutory requirements must be satisfied.

Wiktor v. Connecticut Stamping & Bending, 3 Conn. Workers' Comp. Rev. Op. 57, 297 CRD-6-84 (May 1, 1986).
To comply with statute's requirements some evidence of changed conditions must be demonstrated.

Velilla v. UTC/Hamilton Standard Div., 3 Conn. Workers' Comp. Rev. Op. 35, 416 CRD-1-85 (February 19, 1986).
Modification of award requires evidence of change of circumstances.

Vetre v. New Britain, 3 Conn. Workers' Comp. Rev. Op. 20, 221 CRD-6-83 (November 14, 1985).
Modification of award permitted where claimant's capacity for gainful employment changed.

Kevorkian v. Peter Paul, Inc., 2 Conn. Workers' Comp. Rev. Op. 26, 121 CRD-5-82 (July 11, 1983).
Statutory requirement for modification held not applicable where voluntary agreement date and date of disability differ.

Sec. 31-316. Employers' first reports of injury.

Funaioli v. New London , 3346 CRB-1-96-5 (November 4, 1997), **rev'd**, 52 Conn. App. 194 (1999).
See, **Funaioli**, § 31-294c. Subsequent decision at Funaioli, 3814 CRB-2-98-5 (June 16, 1999), aff'd, 61 Conn. App. 131 (2000), § 31-301. Factual findings.

Russell v. Mystic Seaport Museum, 3274 CRB-2-96-2 (October 24, 1997), **aff'd**, 52 Conn. App. 255 (1999), **rev'd**, 252 Conn. 596 (2000).
Statute requires employers to keep records of injuries and report them to this Commission. A first report of injury does not inform its recipient that a workers' compensation claim will be filed, however, and will not be construed as a notice of claim. See also, **Russell**, § 31-294c.

Sec. 31-321. Manner of serving notices.

Morgan v. Hot Tomato's, Inc. DIP, 4377 CRB-3-01-3 (January 30, 2002).
CRB affirmed trier's granting of Motion to Preclude where employer did not receive certified letter containing Form 30C despite five delivery attempts by post office. Claimant need only demonstrate that adequate Form 30C had been sent by certified mail to employer's place of business in order to satisfy general notice requirements of § 31-321. See also, **Morgan**, § 31-294c.

McKenna v. Thorne & Cleaves, Inc., 3365 CRB-7-96-6 (July 29, 1997).
This section clearly requires notice to be sent to an employer's place of business rather than to the address of the statutory agent for service of process. See also, **McKenna**, § 31-294c.

Bonin v. Thames Valley Steel, 1492 CRB-2-92-8 (February 14, 1997), **appeal dismissed for lack of final judgment**, A.C. 16963 (May 28, 1997).
Claimant's inability to identify the person who signed for the certified letter containing his Form 30C did not make notice insufficient, as claimant sent notice by certified mail to employer's place of business. Claimant is not responsible for employer having responsible agent or employee in office at time of delivery. See also, **Bonin**, § 31-294c.

Allingham v. Burns International Security, 14 Conn. Workers' Comp. Rev. Op. 333, 1977 CRB-1-94-2 (September 20, 1995).
See, **Allingham**, § 31-298 (requirements of § 31-321 apply when notifying parties of decision).

Jimenez v. Montero, 14 Conn. Workers' Comp. Rev. Op. 40, 1826 CRB-4-93-8 (May 4, 1995).
Commissioner found that respondent had attempted to avoid service of process by refusing to accept service or sign for certified or registered mail, and had forced his wife to return a notice that she had signed for regarding 7/14/87 hearing. Commissioner also found that § 31-321 had been satisfied by sending of notice for 7/21/87 formal hearing. Held, findings supported by evidence. CRB recognized due process right of a party to be notified of workers' compensation proceedings. However, the respondent's attempts to avoid service of notice of formal hearing, as well as other conduct designed to circumvent workers' compensation laws, estopped him from claiming due process violation in this case.

In re: Employee Staffing of America, 13 Conn. Workers' Comp. Rev. Op. 278, 1395 CRB-3-92-3 (April 21, 1995).
Employer failed to appear at noncompliance hearing regarding violation of § 31-284(b); $1,000 fine entered against employer. Record did not specify whether personal service or service by registered mail was attempted on respondent pursuant to § 31-321. Held, where a fine was imposed against respondent in its absence, CRB must ensure that procedural due process requirements were satisfied in notifying respondent of proceedings. Lack of evidence regarding notice requires remand in this case.

Hveem v. State, 9 Conn. Workers' Comp. Rev. Op. 5, 897 CRD-5-89-7 (January 4, 1991).
Remanded to address issue as to whether disclaimer mailed to claimant's counsel and not to claimant sufficiently complied with statute so as to permit preclusion. Decided on other issues. See also, **Hveem**, § 31-294c.

O'Neill v. New King, Inc., 3 Conn. Workers' Comp. Rev. Op. 86, 190 CRD-6-82 (November 13, 1986).
See, Timothy, infra.

Timothy v. Upjohn, 2 Conn. Workers' Comp. Rev. Op. 1, 150 CRD-3-82 (February 25, 1983), **dismissed for lack of final judgment**, 3 Conn. App. 162 (1985).
Notice of claim for Chapter 568 benefits must be made in accord with § 31-321 if claimant seeks to preclude respondent from contesting liability.

Sec. 31-324. Reservation to appellate court.

Criscio v. State/Southern Conn. State Univ., 4271 CRB-3-00-7 (June 1, 2001).
Respondent filed a motion requesting that CRB reserve question as to whether Supreme Court should reconsider and reverse its holding in Cashman v. McTernan School, 130 Conn. 401 (1943). CRB denied motion on basis that Cashman has been law for some 6 decades, and appellate issue did not appear to present a "question which was *not* free from reasonable doubt," one of the prongs of test for determining whether question may be reserved to Appellate Court. See also, **Criscio,** § 31-275(1)(D).

Zeoli v. Norwalk Hospital Association, 3974 CRB-7-99-2 (March 13, 2000), **aff'd in part, rev'd in part**, 257 Conn. 527 (2001).
CRB, following Kuban v. Bridgeport Hospital, 3926 CRB-4-98-11 (September 23, 1999), declined to reserve the question of the respondents' constitutional objections to § 31-349c to the Appellate Court. The panel cited Barton v. Ducci Electrical Contractors, Inc., 248 Conn. 793 (1999), for the proposition that framing these issues as a reserved question would only serve to limit the potential scope of further appellate review. Supreme Court did not discuss this issue in its opinion. See also, **Zeoli**, § 31-349.

Kuban v. Bridgeport Hospital, 3926 CRB-4-98-11 (September 23, 1999), **appeal dismissed**, A.C. 20100 (January 5, 2000).
CRB declined to reserve constitutional questions of respondents to Appellate Court, as they were not justiciable by the board to begin with. By reserving them, CRB would only limit the potential scope of further review (citing Barton v. Ducci, 248 Conn. 793 (1999)(Trier's dismissal of § 31-349 transfer claim was underlain by medical panel's decision under § 31-349c; ruling of said panel is not appealable to CRB.)) See also, **Kuban**, § 31-278, § 31-349.

Barton v. Ducci Electric, 3569 CRB-8-97-3 (March 26, 1998).
See, **Barton**, § 31-308(b). Subsequent decision at Barton, 4374 CRB-6-01-4 (March 25, 2002), § 31-308(b).

Dixon v. United Illuminating Co., 2026 CRB-3-94-4, 36 Conn. App. 150 (1994), **order of transfer vacated and matter remanded**, 232 Conn. 758 (1995).
CRB reserved matter for the opinion of the appellate court to determine whether the chairman properly denied claimant's Motion for Hearing on Order of Transfer and Motion to Stay and whether the chairman's authority for said denial was proper under § 31-280. Appellate Court determined this matter raised issues of first impression which are not, in fact, free from reasonable doubt and transferred matter to the Supreme Court. Supreme Court held the chairman's transfer of this case from the fourth district to the

third district was not a proper exercise of his administrative powers under § 31-280 and that the CRB lacks appellate jurisdiction over appeals concerning the chairman's exercise of his administrative powers under § 31-280. See also, **Dixon**, § 31-280.

Kinney v. State, 6 Conn. Workers' Comp. Rev. Op. 143, 786 CRD-3-88-11 (April 6, 1989).
Motion To Dismiss for late filed reasons of appeal denied until jurisdictional issues are resolved by Supreme Court in Reservation by CRD under § 31-324. See also, **Kinney**, § 31-275(9), § 31-301-2.

Sec. 31-325. Acknowledgment of employees having physical conditions.

Rivera v. General Datacomm, Inc., 3853 CRB-5-98-7 (July 13, 1999).
CRB affirmed trier's finding that claimant's injury was materially attributable to the condition described in the acknowledgment. Medical evidence established sufficient causal connection between sarcoma surgery to knee, which included the removal of claimant's quadricep muscle, and his subsequent tibia fracture. Prior decision at Rivera, 3332 CRB-5-96-4 (January 16, 1998), infra.

Piselli v. Miscione & Ericson, 3388 CRB-3-96-7 (June 22, 1998).
CRB affirmed the trial commissioner's determination that the description of the claimant's defect ("15 to 20% permanent partial disability of the lumbar spine") was legally sufficient to meet the plain language requirements of § 31-325. However, CRB remanded the case for a determination of apportionment of the liability between the Fund and the employer on the risk for the first injury.

Fenn v. Hospital of St. Raphael, 3444 CRB-3-96-10 (February 25, 1998).
While playing softball, claimant separated his right shoulder acromioclavicular joint. Doctor described "grade III AC separat[ion] (healed)" in Acknowledgment of Physical Defect. Claimant subsequently tore his rotator cuff at work. Doctor opined that AC joint injury had nothing to do with rotator cuff tear, but contributed to overall disability of right shoulder. Held: liability does not transfer to Second Injury Fund. First, preexisting condition must materially contribute to the compensable injury or the direct results of that injury, and not merely impact on overall disability. Second, statutory condition that defect be "plainly described" was not met here; the acknowledgment failed to specify which shoulder had been injured, and did not explain what disability, if any, the claimant had incurred because of the AC separation. Affirmed.

Rivera v. General Datacom Industries, 3332 CRB-5-96-4 (January 16, 1998), **appeal dismissed,** A.C. 18056 (April 22, 1998).
Majority of CRB panel reversed trier's decision to deny request for transfer of liability to Second Injury Fund. "[S]/p surgery for sarcoma L. knee" was a specific enough description of the physical defect. Trier made a legal error by assuming that the description in the acknowledgment form had to be so specific that he could determine what the claimed defect was without looking at additional medical evidence. That is not the standard, however. Defect listed in form need only inform trier as to which body part

is subject to a preexisting condition. Remanded. (*Metro, C.,* **dissenting**) Defect listed here is merely a description of surgery performed on the claimant's knee. Trier did not err by finding it insufficient to inform him of the nature of that defect. Subsequent decision at Rivera, 3853 CRB-5-98-7 (July 13, 1999), supra.

Domijan v. New Britain, 15 Conn. Workers' Comp. Rev. Op. 288, 2067 CRB-6-94-6 (June 20, 1996).
Trial commissioner ruled that doctor's letter merely stated the legal conclusion that disability was attributable in a material degree to claimant's pre-existing condition, and denied transfer of claim to Second Injury Fund. Held, reversed. Commissioner overlooked doctor's reports that explained link between back sprain and pre-existing disc disease; if accepted, such evidence would constitute direct evidentiary support for respondents' position. Defect in Certificate of Acknowledgment need not directly cause subsequent injury in order for that injury to fall within Acknowledgment's scope. Case remanded for further findings. (*Vargas, C.,* **dissenting**) (trial commissioner was not required to accept credibility of evidence or its sufficiency).

Valechko v. Connecticut Light & Power, 15 Conn. Workers' Comp. Rev. Op. 55, 2062 CRB-6-94-6 (December 1, 1995), **aff'd**, 43 Conn. App. 902 (1996)(per curiam), **cert. denied**, 239 Conn. 952 (1996).
"15% loss L knee" adequately described claimant's prior condition so that trial commissioner could determine its relation to subsequent knee injury. (*Vargas, C.,* **dissenting**) (description in acknowledgment only indicates disability, not its cause. Actual medical diagnosis or disease should be included to give commissioner appropriate information to assess causal link between defect and compensable injury).

Wright v. UTC/Pratt & Whitney, 14 Conn. Workers' Comp. Rev. Op. 21, 1867 CRB-1-93-10 (April 28, 1995), **rev'd**, 41 Conn. App. 231 (1996).
Claimant suffered compensable left knee strain, prior to which certificate was approved noting left knee osteoarthritis. Commissioner found that pre-existing condition worsened severity of injury, and found case transferable to Second Injury Fund under § 31-349(a). Held, case was also transferable under § 31-325 and § 31-349(d), thus making first 104 weeks of disability responsibility of the Fund as well. Commissioner specifically found credible a report stating that osteoarthritis caused injury to be worse than it otherwise would have; thus, pre-existing condition contributed to both disability and injury. Sec. 31-325 applies.

Izzo v. Meriden-Wallingford Hospital, 13 Conn. Workers' Comp. Rev. Op. 90, 1567 CRB-8-92-11 (January 25, 1995), **rev'd**, 237 Conn. 259 (1996).
Claimant signed § 31-325 acknowledgment in 1983 while working for MWH, which was not approved by a commissioner until 9/91, and signed acknowledgment in 1983 while working for WWII, which was approved immediately. Claimant returned to MWH in 1984 and was injured there in 1986. WWII, MWH merged in 1/91. Held, commissioner approval not a ministerial act, so MWH acknowledgment ineffective to give right of § 31-349 transfer to employer; since merger had not occurred yet in 1986, WWII acknowledgment could not benefit MWH. Supreme Court reversed as § 31-325

does not require that the acknowledgment be approved prior to the date of the compensable injury; subsequent approval may be enough to render the form valid.

Charles v. Ansonia Copper & Brass, Inc., 12 Conn. Workers' Comp. Rev. Op. 228, 1447 CRB-5-92-6 (March 23, 1994).
Transfer denied where condition set out in acknowledgment failed to describe with sufficient specificity the injury for which transfer was sought. Therefore, commissioner could not determine the causal relationship between the described physical condition and a subsequent injury. See, Buikus v. Dunham Bush, Inc., 3 Conn. Workers' Comp. Rev. Op. 83, 149 CRD-1-82 (November 10, 1986).

Lathrop v. Kimberly Clark Corp., 8 Conn. Workers' Comp. Rev. Op. 156, 852 CRD-7-89-4 (September 21, 1990), **aff'd**, 24 Conn. App. 837 (1991).
Second Injury Fund to accept liability where trial commissioner's factual finding satisfies requirements of § 31-325 and § 31-349. See, Hehl v. Kimberly Clark Corp., 774 CRD-7-88-10 (February 21, 1990). See also, **Lathrop**, § 31-301, Factual findings and § 31-349.

Hehl v. Kimberly Clark Corp., 8 Conn. Workers' Comp. Rev. Op. 38, 774 CRD-7-88-10 (February 21, 1990).
See, **Hehl**, § 31-349.

Czipulis v. Hamilton Standard, 5 Conn. Workers' Comp. Rev. Op. 14, 345 CRD-1-84 (March 24, 1988).
See, Shea, infra.

McGhee v. UTC/Pratt & Whitney Div., 4 Conn. Workers' Comp. Rev. Op. 60, 271 CRD-1-83 (May 6, 1987).
Subsequent injury need not be actually caused by acknowledged defect only that the acknowledged defect made the subsequent disability greater in a material degree. See, Shea, infra.

Shea v. Cly-Del Manufacturing Co., 4 Conn. Workers' Comp. Rev. Op. 37, 390 CRD-5-85 (March 19, 1987).
The acknowledged physical defect need not be the proximate cause of subsequent injury.

Buikus v. Dunham-Bush, Inc., 3 Conn. Workers' Comp. Rev. Op. 83, 149 CRD-1-82 (November 10, 1986).
Where defect is plainly described the commission cannot go behind the words to construe a condition which was intended to be described.

Sec. 31-327. Fee approval.

Dilieto v. New Haven, 4709 CRB-3-03-8 (August 5, 2004).
CRB affirmed trial commissioner's distribution of attorney's fees between claimant's former and current counsel where there was no evidence of abuse of discretion.

Smith v. Harrow Industries Inc., 4662 CRB-8-03-4 (March 31, 2004), **appeal dismissed for lack of final judgment**, A.C. 25334 (September 14, 2004).
See, Smith v. SRS Communications Corp., 4661 CRB-8-03-4 (March 31, 2004), appeal dismissed for lack of final judgment, A.C. 25333 (September 14, 2004), infra.

Smith v. SRS Communications Corp., 4661 CRB-8-03-4 (March 31, 2004), **appeal dismissed for lack of final judgment**, A.C. 25333 (September 14, 2004).
CRB affirmed trial commissioner's finding of jurisdiction regarding fee dispute between claimant's counsel and that attorney's former law firm.

Toth v. American Frozen Foods, Inc., 4069 CRB-4-99-6 (August 9, 2000).
CRB remanded case to trier for articulation of method used in determining attorney's fee for claimant's counsel, as he did not explain the basis of his calculation, nor was it apparent from the record.

Prioli v. State/Connecticut State Library/Arts Commission, 3955 CRB-6-98-12 (January 13, 2000), **aff'd**, 64 Conn. App. 301 (2001), **cert. denied**, 258 Conn. 917 (2001).
Appellant, claimant's former counsel, had procured § 31-290a award for claimant. Initially, a 20% attorney's fee had been negotiated; however, after entry of retaliatory discharge finding several months prior to the rather substantial award, the appellant requested that the claimant sign a form entitling him to one-third of the gross award as an attorney's fee. Trier subsequently awarded the appellant a fee of $50,000; both parties appealed, but later withdrew appeals when a settlement was reached that prescribed that the respondent would pay $90,000 in counsel fees. Shortly thereafter, the appellant submitted an account reconciliation to the claimant that deducted $130,254 as an attorney's fee, along with almost $8,000 in additional charges. Claimant disputed this fee, and hired new counsel. After a formal hearing, a trial commissioner ruled that a reasonable attorney's fee was $75,000, inclusive of the prior $50,000 award. Appellant unsuccessfully moved to modify that decision, and then appealed to CRB. Board affirmed trier's ruling. There was support in the evidence for all of the trier's factual findings, including the lack of consideration for the subsequent fee agreement. No evidence that the appropriate factors relevant to a determination of attorney's fees had not been considered. Trier reasonably chose not to allot the appellant additional fees. Also, cases do not establish that this Commission lacks jurisdiction to disturb a memorialized fee arrangement. Commissioner has general authority to approve fees in proceedings held before this commission. See also, **Prioli**, § 31-278, § 31-290a, § 31-301. Appeal procedure, § 31-301-9, § 31-315. Subsequent ruling in Prioli, 3955 CRB-6-98-12 (October 16, 2000), § 31-301c.

Contreras v. Montana Bakery, 3819 CRB-7-98-5 (June 16, 1999).
Trial commissioner divided attorney's fee equally between original counsel and successor counsel. Successor counsel appealed, arguing that original counsel had mishandled case by misinterpreting the law regarding the eligibility of illegal aliens to receive temporary total disability benefits, by incorrectly treating their client as if he were an illegal alien, and by improperly withholding the file from him after original counsel's services were terminated. CRB affirmed. Despite appellee's failure to defend

itself on appeal, the trier's exercise of discretion had to be upheld, as there was some evidence to support his decision. Retention of file not necessarily improper under these facts. Credibility of testimony was matter of interpretation. See also, **Contreras**, § 31-301-9.

Yuille v. Bridgeport Hospital, 3735 CRB-4-97-12 (June 10, 1998).
Frivolous appeal, last-minute withdrawal. Sanctions awarded to claimant. See also, **Yuille**, § 31-301c, § 31-301. Appeal procedure. Subsequent decision at Yuille, 4525 CRB-4-02-5 (April 28, 2003).

Day v. Middletown, 16 Conn. Workers' Comp. Rev. Op. 200, 3264 CRB-8-96-2 (May 20, 1997), **appeal dismissed for lack of jurisdiction**, A.C. 17283 (September 17, 1997), **cert. granted**, 243 Conn. 939 (1997), **rev'd and remanded to appellate court**, 245 Conn. 437 (1998), **aff'd**, 59 Conn. App. 816 (2000), **cert. denied**, 254 Conn. 945 (2000).
Claimant argued that trier improperly awarded counsel $30,000 in attorney's fees in light of prior agreement for $20,000. CRB agreed. Although a commissioner is not precluded from considering the amount of time an attorney has spent on a contested case in ruling on a fee or award, the $30,000 figure was primarily based on a prior commissioner's recommendation that took into account the value of medical bills that the respondents paid pursuant to the settlement, which is improper under the Chairman's fee guidelines. Moreover, the claimant signed a fee agreement with replacement counsel noting that fee approval by a commissioner would be necessary. The fact that said counsel was not a party to the settlement agreement that set a $20,000 fee did not make him immune to the effect of that agreement. Trier's modification of settlement agreement reversed. Appellate Court then dismissed appeal. Supreme Court ruled in Day v. Middletown, 245 Conn. 437 (1998), that the Appellate Court should not have dismissed the defendants appeal for lack of jurisdiction, as § 31-301b allows an attorney to appeal a decision reducing his fee. See also, **Day**, § 31-301b. On remand to Appellate Court, the panel affirmed the CRB's reasoning in reducing the fee award, mainly citing this Commission's attorney's fee guidelines.

Lapia v. Stratford, 15 Conn. Workers' Comp. Rev. Op. 422, 3109 CRB-4-95-6 (August 29, 1996), **rev'd**, 47 Conn. App. 391 (1997).
CRB affirmed trial commissioner's order regarding attorney's fees. The reasonableness of an attorney's fee depends on many factors, and the actual amount which a commissioner may award for attorney's fees is a matter within his or her discretion. Reversed by Appellate Court, which found that the claimant had been denied due process because the award of attorney's fees had been made without notice to the claimant and the trial commissioner had engaged in ex parte communications with the claimant's former attorney. The court therefore remanded the matter for a formal hearing to determine attorney's fees. See also, **Lapia**, § 31-301. Appeal procedure.

Ayala v. Konover Residential Corp., 14 Conn. Workers' Comp. Rev. Op. 87, 1931 CRB-2-93-12 (May 12, 1995).
Claimant need not dispute attorney's fee for commissioner to exercise supervisory power under § 31-327(b); plain language of statute makes attorney's fees subject to

approval of the commissioner. No abuse of discretion in reducing fee by five percent; attorney's fee guidelines promulgated by Commission do not preclude commissioner from determining that less than 20 percent of stipulation amount is an appropriate fee in a given case.

McCrory v. White Oak Corporation, 10 Conn. Workers' Comp. Rev. Op. 108, 1262 CRD-1-91-7 (May 6, 1992).
Remanded. Trier approved attorney's fee based on hourly rate plus a percentage of claimant's recovery. CRB remanded in order to ascertain the proper basis for the fee awarded.

Tartakovsky v. Sohmer/Pratt & Read, 7 Conn. Workers' Comp. Rev. Op. 46, 666 CRD-8-87 (August 9, 1989).
See, **Tartakovsky**, § 31-300.

Gelinas v. St. Mary's Hospital, 7 Conn. Workers' Comp. Rev. Op. 65, 705 CRD-88-3 (August 16, 1989).
See, **Gelinas**, § 31-294c.

Ricci v. Peabody N.E., Inc., 6 Conn. Workers' Comp. Rev. Op. 54, 738 CRD-3-88-6 (October 26, 1988).
See, **Ricci**, § 31-294c.

Bode v. Deitsch Plastic Co., 1 Conn. Workers' Comp. Rev. Op. 226, 131 CRD-3-82 (December 9, 1982).
Attorney's fee of one third of claimant's recovery disallowed, trial commissioner's award of 20% upheld on appeal as CRD would not substitute its judgment for that of the trial commissioner.

Robinson v. Allied Grocers Cooperative, Inc., 1 Conn. Workers' Comp. Rev. Op. 132, 68 CRD-1-81 (July 13, 1982), **aff'd**, 39 Conn. Sup. 386 (1983).
Discussion of counsel's fees.

Sec. 31-340. Insurer directly liable to employee or dependent.

Paresi v. American Cruise Lines, 12 Conn. Workers' Comp. Rev. Op. 15, 1378 CRB-8-92-1 (January 13, 1994).
Since a workers' compensation insurance policy was in effect on crew worker's date of injury, respondent insurer could not disclaim its liability based on policy language excluding bodily injury to crew members. See also, **Paresi**, § 31-294c, § 31-343.

Sec. 31-341. Notice to insurer.

LaPoint v. Bozzuto's, Inc., 6 Conn. Workers' Comp. Rev. Op. 151, 523 CRD-5-86 (April 21, 1989).
Where insurer did not receive notice of evidentiary hearing, case remanded for further proceedings.

Sec. 31-343. Certain defenses not available against employee or dependent.

Coley v. Camden Associates, Inc., 3432 CRB-2-96-9 (April 6, 1998).
No record of workers' compensation insurance policy for either subcontractor or general contractor (both Massachusetts companies) was present in records at Chairman's office pursuant to § 31-348. Trier allowed employers to offer into evidence copies of insurance contracts that showed workers' compensation insurance coverage on date of injury. He refused to read the policies any further to determine if they applied to Connecticut injuries. Award made against subcontractor and its insurance company. CRB held that this case is controlled by the recent Appellate Court decision in Park v. Choi, 46 Conn. App. 596 (1997), cert. denied, which requires a workers' compensation commissioner to determine whether an insurance policy provides coverage for job-related injuries occurring in Connecticut before making an order against an insurer. Section 31-343 is not implicated unless the policy includes Connecticut coverage on its face. Case remanded for determination of whether insurance contracts in evidence apply to Connecticut. Board also ruled that insurers should be allowed to present evidence regarding those contracts. See also, **Coley**, § 31-300, § 31-301. Appeal procedure, § 31-301. Factual findings. Prior decision at Coley, 3432 CRB-2-96-9 (February 28, 1997), rev'd, 243 Conn. 311 (1997), § 31-301(f).

Park v. New York State Insurance Fund, 16 Conn. Workers' Comp. Rev. Op. 8, 2216 CRB-1-94-11 (October 3, 1996), **rev'd**, 46 Conn. App. 596 (1997).
See, **Park**, § 31-288 and § 31-355(b).

Paresi v. American Cruise Lines, 12 Conn. Workers' Comp. Rev. Op. 15, 1378 CRB-8-92-1 (January 13, 1994).
See, **Paresi**, § 31-340, § 31-294c.

Sec. 31-348. Insurance policy notification.

DeGruchy v. Buy, Sell or Hold Co., 4676 CRB-7-03-6 (July 27, 2004).
CRB affirmed trial commissioner's determination that no insurance policy was in effect at the time of the injury where the policy was issued without a request to do so and the record of the mistakenly issued policy only existed in another state.

Degnan v. Employee Staffing of America, Inc., a/k/a Labor Force of America, 4580 CRB-3-02-10 (October 27, 2003).
CRB is presumed to be aware of records in NCCI computer database, which indicated that insurance policy existed on date of injury. See also, **Degnan**, § 31-275(9), § 31-292, § 31-355(b).

Bell v. Thomas Lombardo & Charles Holt d/b/a N&E Private Investigation & Security, 4065 CRB-2-99-6; 4152 CRB-2-99-11 (November 27, 2000).
See, **Bell**, § 31-278.

DiBello v. Barnes Page Wire Products, 3970 CRB-7-99-2 (March 2, 2000), **aff'd**, 67 Conn. App. 361 (2001), **cert. granted**, 260 Conn. 915 (2002), **appeal withdrawn** (June 26, 2002).
Employer sought to assign liability to any of three different insurers. NCCI records showed no insurance in effect on 8/10/93 date of injury. First insurer, which covered employer through 2/26/93, was not required to file a notice of cancellation with NCCI in order for coverage to terminate on expiration date of the policy. Notice of nonrenewal, whether ambiguous or not, had no effect under § 31-348; cancellation requirement is only implicated where commission has reason to believe that a policy continues to be in effect. Finding of no coverage affirmed. Second insurer had not issued policy, but its agent had potentially defrauded employer out of its annual premium while providing employer with false certificates of insurance that listed second insurer as the carrier. CRB remanded for determination of whether insurer was bound to provide coverage due to agent's conduct. See, **DiBello**, § 31-278. Third insurer's policy took effect four days after injury. Filing of Form 43 by insurer that failed to mention lack of coverage as a defense did not prevent insurer from raising the issue later. Finding of no coverage affirmed. See, **DiBello**, § 31-294c. See also, **DiBello**, § 31-301. Appeal procedure, § 31-301-9. Subsequent decision at DiBello, 4290 CRB-7-00-9 (September 25, 2001), § 31-300, § 31-308a.

Dengler v. Special Attention Health Services, 3780 CRB-3-98-2 (June 15, 1999), **aff'd**, 62 Conn. App. 440 (2001).
Insurer sent notice to employer and this Commission stating that employer's policy would be canceled in 30 days if payment of past due premiums was not made. Trier correctly ruled that this did not constitute a cancellation notice under § 31-348, as it did not unequivocally state that coverage would terminate on a specific date. See also, **Dengler**, § 31-301. Factual findings, § 31-307.

Thibodeau v. Rizzitelli, 3373 CRB-4-96-7 (October 14, 1997).
Trial commissioner had authority to consider testimony of insurer's underwriting manager regarding the meaning of magnetic tapes sent to NCCI pursuant to § 31-348 policy coverage reporting requirements. Magnetic tapes showed that policy, originally canceled in May 1994, had been reinstated and then canceled again on August 2, 1994. Insurer's representative testified that the reinstatement in its computer system was done solely so maintenance could be performed on the policy (agent's commission adjustment), and not to reinstate coverage itself. Since this was relevant to whether

coverage existed in the first place, commissioner had the authority to consider such evidence. See also, **Thibodeau**, § 31-301-9. Additional evidence.

Stickney v. Sunlight Construction, Inc., 3205 CRB-6-95-11 (April 25, 1997), **rev'd**, 48 Conn. App. 609 (1998), **aff'd**, 248 Conn. 754 (1999).
See, **Stickney**, § 31-315.

Bruce v. Bert Miller Associates, 15 Conn. Workers' Comp. Rev. Op. 47, 1872 CRB-1-93-10 (December 1, 1995).
Insurance company mistakenly administered claim where effective date of policy was five days after injury occurred; insurance agent's actions led employer to believe he was insured prior to date of injury. Commissioner found insurer's failure to discern true date of injury was "tantamount to negligent mistake," and Workers' Compensation Act provided no authority to order Second Injury Fund to reimburse insurer for payments. Held, trial commissioner had jurisdiction to find insurance policy was not in effect at time of injury, and properly took into account circumstances surrounding issuance of the policy and insurer's investigation of the claim. Evidence supported findings of commissioner, which did not include a finding of actual negligence by the insurer. (*Santos, C.,* **concurring**) Trial commissioner did not have jurisdiction to consider claim for reimbursement.

Stickney v. Sunlight Construction Co., 12 Conn. Workers' Comp. Rev. Op. 364, 1738 CRB-6-93-5 (August 2, 1994), **rev'd**, 48 Conn. App. 609 (1998), **aff'd**, 248 Conn. 754 (1999).
See, **Stickney**, § 31-278 and § 31-315. See also, Stickney, 3205 CRB-6-95-11 (April 25, 1997), § 31-315 and this section.

Vernon v. V.J.R. Builders, Inc., 11 Conn. Workers' Comp. Rev. Op. 237, 1360 CRD-7-91-12 (November 8, 1993).
Reversed and remanded. CRB held trier erred in limiting his consideration of whether respondent employer had in existence a workers' compensation policy at the time of claimant's injury to the insurance records on file at the workers' compensation commission's central office. Trier must consider other evidence proffered.

O'Connell v. Indian Neck General Store, 6 Conn. Workers' Comp. Rev. Op. 42, 530 CRD-3-86 (October 6, 1988).
Trial commissioner has jurisdiction to determine if a contract of workers' compensation insurance existed at the time of injury.

Sec. 31-349. Filing requirements with Second Injury Fund.

Horobin v. West Haven, 4724 CRB-3-03-9 December 2, 2004).
Claimant fell from loading dock in 1991, sustaining injuries to back, knee, and other body parts; psychological condition arose as a result. Second Injury Fund became responsible for back injury pursuant to transfer provision of § 31-349, while other injuries remained with insurer CIRMA. Trial commissioner ruled that Fund and CIRMA

were jointly and severally liable for those injuries. CRB confirmed that they legally shared liability for this condition. However, because they had not been notified that a joint and several theory of liability was under consideration, CRB reversed that part of the order. The Fund and CIRMA had not yet attempted to determine proportional degrees of joint responsibility for psychological condition, which CRB encouraged them to do. See, **Horobin**, § 31-296. Voluntary agreements (approval of), § 31-300, § 31-301. Appeal procedure; § 31-301. Factual findings, § 31-307, § 31-298.

Malz v. State/University of Connecticut Health Center, 4701 CRB-6-03-7 (August 20, 2004).
Evidence supported trier's finding that second injury was substantial cause of claimant's total disability. CRB rejected insurer's argument that Hatt v. Burlington Coat Factory, 263 Conn. 279 (2003), infra, was distinguishable because it dealt with two injuries to same body part, while instant case concerns injuries to different body parts whose combined effect was causing current disability. Also, similarity to facts of Mund v. Farmers' Cooperative, Inc., 139 Conn. 338 (1952) would not establish repetitive trauma claim despite Court's discussion in Hatt, as § 31-299b is not worded in a manner that would readily encompass Mund's facts. Evidence did not require a finding that repetitive trauma was mechanism of injury. See also, **Malz**, § 31-296. Voluntary agreements (approval of), § 31-307b, § 31-299b.

Kelly v. Dunkin' Donuts, 4621 CRB-4-03-2 (April 5, 2004).
Travelers insurance was on risk for claimant's 1997 shoulder/elbow injury, and Century was on risk for 1999 injury. Trier originally apportioned liability under § 31-299b, relying on Dr. C's opinion stating that 99% of claimant's right shoulder and elbow symptoms were due to 1997 injury. In first Kelly appeal, CRB affirmed trier's finding that 1999 injury was an aggravation, relying in part on Dr. C's report. Board then held that § 31-299b cannot be used to apportion liability for two separate and distinct injuries, and remanded for further findings on issue of common-law apportionment. Remand was necessary because opinion of Dr. C. stated that need for ongoing pain management was due to 1997 injury, while two weeks of lost time were caused by 1999 aggravation. Suitability of case for common-law apportionment was unclear. On remand, trier revised findings by holding that Dr. C's report was not credible with regard to 99% attribution of symptoms to first injury. Trier instead found that claimant injured shoulder and elbow in January 1999, making Century responsible for all benefits. Century argued on appeal that trier impermissibly strayed from parameters of Dr. C's report. Board first noted that common-law apportionment theory is no longer viable given Supreme Court decision in Hatt v. Burlington Coat Factory, 263 Conn. 279, 306 (2003), *infra*. Thus, board must consider under § 31-349 whether second injury measurably contributed to claimant's disability of right upper extremity, as aggravation constitutes a new injury under the law. CRB also explained that, even if trier had continued to rely on 99%-1% division of causal responsibility for symptoms, this would still involve cognizable second injury under law. Employer and insurer on risk for second injury retain liability, as no exception is made for cases in which first injury is more serious than second injury. Further, board's prior decision contemplated that trial commissioner would need to go beyond Dr. C's report in order to meaningfully address apportionment, and no restriction

was placed on evidence that trier could consider. Affirmed. See prior decision at Kelly, 4278 CRB-4-00-8 (November 1, 2001), § 31-299b, § 31-301. Factual findings, infra, and § 31-349.

Schenkel v. Richard Chevrolet, Inc., 4639 CRB-8-03-3 (March 12, 2004).
See, **Schenkel**, § 31-308(b) (where two discrete compensable injuries contributed to fusion surgery that resulted in additional permanency, § 31-349 requires trier to address potential apportionment of responsibility). See also, **Schenkel**, § 294d, § 31-295(c), § 31-301. Factual findings, § 31-307.

Strong v. UTC/Pratt & Whitney, 4563 CRB-1-02-8 (August 25, 2003).
See, **Strong**, § 31-275(1)(no apportionment allowed for portion of disability due to pre-existing emphysema that was not work-related, even if condition developed simultaneously with work-related asbestosis); see also **Strong**, § 31-308(b)**,** § 31-275(15); § 31-301. Factual findings.

Ortiz v. United Illuminating Co, 4432 CRB-4-01-8 (August 8, 2002).
Based on CRB's opinion in Hatt v. Burlington Coat Factory, 4326 CRB-2-00-12 (December 19, 2001), aff'd, 263 Conn. 279 (2003). CRB held apportionment not available and affirmed assignment of sole liability for second injury to employer at time of second injury. CRB did not choose to use this case as an opportunity to revisit Hatt. See also, **Ortiz**, § 31-299.

Holmes v. G.A. Masonry Corp., 4375 CRB-6-01-4 (March 4, 2002), **aff'd**, 76 Conn. App. 563 (2003).
CRB upheld finding that claimant's complaints of low back pain were not medically significant enough to constitute disability within meaning of notice provision. Trier had exclusive authority to gauge severity of claimant's symptoms based on medical reports, and not all effects of an injury need be deemed significant enough to be "disabilities" or "medical impairments" within § 31-349 as interpreted by controlling case law. Prior decisions at Holmes, 4027 CRB-5-99-4 (November 7, 2000), § 31-349; Holmes, 3338 CRB-8-96-5 (December 16, 1997), § 31-294c; Holmes, 12 Conn. Workers' Comp. Rev. Op. 369, 1588 CRB-5-92-12 (August 11, 1994), § 31-294c, § 31-299b, § 31-301. Factual findings.

Hatt v. Burlington Coat Factory, 4326 CRB-2-00-12 (December 19, 2001), **aff'd**, 263 Conn 279 (2003).
CRB held that § 31-349, as interpreted by Fimiani v. Star Gallo Distributors, Inc., 248 Conn. 635 (1999), does not permit "common-law" apportionment of liability between two separate injuries as discussed in Mund v. Farmers' Cooperative, Inc., 139 Conn. 338 (1952), now that Second Injury Fund has been closed to new injuries. Where two injuries materially contribute to cause a permanent partial disability (which may be apportioned under § 31-349), cost of associated medical care and temporary disability benefits—either total or partial—must continue to be borne by insurer or insurers on risk for second injury alone. See also, **Hatt**, § 31-299b, § 31-301. Appeal procedure.

Wierzchowski v. CRL Industries, Cope, Inc., 4154 CRB-8-99-11, 4246 CRB-1-00-6 (November 5, 2001).
CRB affirmed trier's denial of Second Injury Fund's motion to dismiss transfer claim on ground that it remained pending after July 1, 1999. Issue has been settled by Giaimo v. New Haven, 257 Conn. 481 (2001), with Supreme Court ruling that July 1, 1999 deadline only pertains to eligibility of claim for transfer. Board affirmed trier's decision to deny transfer, however, on ground that respondents had failed to prove that timely notice was tendered to the Fund as per § 31-349(b). Respondents carry burden of proving that notice requirements were met, and discrepancy between certified mail receipt and notice prevented trier from knowing whether it was delivered before or after one-year mark prior to expiration of 104th week of disability. Trier permissibly inferred that respondents had not met burden of proof. As timely re-notification cannot save improperly filed claim, CRB declined to address § 31-349(e) issue.

Kelly v. Dunkin' Donuts, 4278 CRB-4-00-8 (November 1, 2001).
See, **Kelly**, § 31-299b, § 31-301. Factual findings. Subsequent decision at Kelly, 4621 CRB-4-03-2 (April 5, 2004), § 31-299b, § 31-301, § 31-349.

Chang v. Pizza Hut of America, Inc., 4122 CRB-6-99-9 (July 17, 2001).
Trier found that respondents' representative personally brought re-notice to Kevin Saba at the Second Injury Fund on September 29, 1995 (prior to the October 1, 1995 filing date) and that Saba refused delivery, though in the past he had accepted such personal deliveries. Board affirmed trier's conclusion that attempted delivery substantially complied with § 31-349(e). Case on point with Correnti v. Grossman's, Inc., 3858 CRB-8-98-7 (August 31, 1999). Prior decision at Chang, 4122 CRB-6-99-9 (November 28, 2000), § 31-301.

Karnane v. Saks Fifth Avenue, 4214 CRB-7-00-3 (March 29, 2001).
Trier found that Fund was responsible for administration of claim during pendency of Fund's appeal from decision ordering transfer pursuant to § 31-349. Board agreed with trier's holding that § 31-301(f) was not dispositive in this case because appeal was taken from transfer order rather than from award of benefits. However, CRB accepted Fund's argument that § 31-349(b) provides that employer or insurer is responsible for furnishing compensation during pendency of appeal from transfer order, and thus reversed trier's decision. Prior decisions at Karnane, 3947 CRB-7-98-12 (November 7, 2000), aff'd, 67 Conn. App. 385 (2001), infra, Karnane, 3918 CRB-7-98-10 (January 7, 2000), § 31-307.

McCarthy v. Yellow Freight Systems, Inc., 4051 CRB-7-99-5 (February 9, 2001).
CRB reversed finding that employer's notice to Fund was "given within a reasonable time" after employer first became aware of medical report indicating permanent partial disability. "Impossibility exception" implemented in Jaworski, infra, and Marano, infra, restricted to cases in which claimant did not file claim for compensation until after notice period had already elapsed. Here, employer knew of claim for benefits immediately after heart attack, with permanency being only issue it did not anticipate (due to inaccurate medical report).

Lynes v. Janazzo Heating & Air Conditioning, 4061 CRB-6-99-6 (January 17, 2001) **rev'd,** 9/19/01 (A.C. 21568).
CRB affirmed dismissal of respondents' request to transfer liability to Fund, where it was based on reasonable interpretation of medical panel's report. Trier was not persuaded that limited errors pointed out by respondents required invalidation of the entire report. Trier's decision understandable, as seven-page medical report may indeed contain some errors, but still constitute a reliable report overall. Appellate Court ordered that, under Giaimo v. New Haven, 257 Conn. 481 (2001), it was affirming CRB's ruling that transfer was not precluded by § 31-349h, but reversed and remanded case insofar as medical panel procedures that were implemented below were deemed inadequate by Giaimo..

Sharkey v. Stamford, 4068 CRB-7-99-6 (November 17, 2000).
Pursuant to § 31-349(a), board affirmed trier's conclusion that a prior permanent partial award of 4.5% of the heart (for hypertension) had to be deducted from the 37% permanent partial impairment caused by heart disease in order to prevent a double recovery. See also, **Sharkey**, § 31-300, § 31-308(b).

Weber v. Electric Boat, 4086 CRB-2-99-7 (November 13, 2000).
CRB denied Fund's § 31-349h motion to dismiss appeal for reasons stated in Zeoli, infra, and Kuban, infra, this section. Board then relied on Johnson, infra, and Fish, infra, this section, in reversing and remanding trier's dismissal of transfer case. Panel held that commissioner underestimated his own fact-finding authority by ruling that he was bound by § 31-349c medical panel's conclusion regarding role of subsequent occupational exposure in contributing to overall disability. Trier is bound by finding of panel regarding existence of previous disability, but must draw own conclusions as to whether the facts establish that this disability combined with subsequent workplace chemical/asbestos exposure to produce a disability materially and substantially greater than that (if any) which would have resulted from the occupational exposure alone. (*Wilson, C.,* **dissenting**) Legislature intended to quickly assess and eliminate as much Fund financial liability as possible when it passed Public Act 95-277. Medical panel's authority to resolve all factual issues concerning existence of previous disability should thus be given great respect, and be read as broadly as the statute's language implies.

Holmes v. G.A. Masonry Corp., 4027 CRB-5-99-4 (November 7, 2000).
Fund argued on appeal that trier erred by ordering it to accept liability for claimant's injury pursuant to transfer provisions of § 31-349. Specifically, the Fund argued that the trier erroneously relied upon the claimant's ability to perform his usual work duties in finding that he was not disabled (for purposes of the § 31-349 notice provision) for a period of almost three years. The board agreed, citing Karutz v. Feinstein and Herman, P.C., 59 Conn. App. 565 (2000), cert. denied**,** 254 Conn. 949 (2000), and remanded the case to the commissioner in order to determine the 104-week disability period without regard to claimant's return to work. Subsequent decision at Holmes, 4375 CRB-6-01-4 (March 4, 2002), aff'd, 76 Conn. App. 563 (2003). Prior decision at Holmes, 12 Conn. Workers' Comp. Rev. Op. 369, 1588 CRB-5-92-12 (August 11, 1994), § 31-294c, § 31-

299b, § 31-301. Factual findings, Holmes, 3338 CRB-8-96-5 (December 16, 1997), § 31-294c.

Karnane v. Saks Fifth Avenue, 3947 CRB-7-98-12 (November 7, 2000), **aff'd**, 67 Conn. App. 385 (2001).
Trial commissioner erred by applying the notice provision of Public Act 95-277 in the instant case because notice here was filed prior to July 1, 1995 (effective date of the legislation). CRB agreed with the Fund's argument that the trier erroneously relied upon the claimant's ability to continue his employment as evidence that he was not disabled for purposes of the § 31-349 notice period. Trier specifically found that claimant suffered serious injuries on July 16, 1993 (a rotator cuff tear and a meniscus tear) which eventually required surgeries, but found that the claimant was not disabled (for purposes of calculating the § 31-349 notice period) from the time of his injury through the date of his surgery, as he was able to continue his normal employment. The board explained that under the court's reasoning in Karutz v. Feinstein and Herman, P.C., 59 Conn. App. 565 (2000), cert. denied**,** 254 Conn. 949 (2000), the claimant was physically impaired (and thus disabled under § 31-349) from the date of his injury. Accordingly, the decision was reversed. Subsequent decision at Karnane, 4214 CRB-7-00-3 (March 29, 2001), supra. Prior decision at Karnane, 3918 CRB-7-98-10 (January 7, 2000), § 31-307.

Gillis v. White Oak Corporation, 4080 CRB-5-99-7 (October 20, 2000), **rev'd**, 73 Conn. App. 523 (2002), **cert. granted**, 262 Conn. 936 (2003).
CRB affirmed trial commissioner's conclusion that respondents provided proper notice pursuant to § 31-349 for a 1986 injury. Trier found that claimant sustained a compensable injury to his right knee on November 6, 1986 while working for the respondent employer; that while working for another employer, claimant had sustained a prior compensable injury to his right knee in 1981; and that he sustained a subsequent compensable injury to his right knee while working for a third employer in 1992. CRB affirmed the trier's finding that claimant was not disabled within the meaning of § 31-349 for two periods where there was "no evidence of medical or physical limitations or impairments attributable to the [1986] injury…." The board found no merit to the Fund's argument that the liability which could be transferred to the Fund was limited because claimant sustained a third injury in 1992. In a 2-1 decision, Appellate Court reversed rulings of trial commissioner and CRB regarding timeliness of notice. Majority opinion reiterated that existence of "disability" for purposes of § 31-349 notification period centers on whether claimant is medically impaired as a result of work-related injury. Trier's conclusion that claimant had fully recovered from 1986 injury and had returned to unimpaired medical status from March 1, 1987 through October 13, 1992 was inconsistent with finding that claimant had sustained a permanent partial impairment of 23.17 percent as of maximum medical improvement date of October 14, 1992. Court reasoned that, logically, claimant must have been continuously disabled between rate of 23.18 percent and 100 percent from time of 1986 injury through October 14, 1992. Thus, 104-week period expired in November 1988, making untimely the December 14, 1994 notice of intent to transfer. Note prior decision in Gillis v. White Oak Corporation and Waterbury Construction, 3337 CRB-5-96-5 (July 15, 1997), aff'd, 49 Conn. App. 630 (1998), cert. denied, 247 Conn. 919 (1998), § 31-294f.

Goody v. Thames Valley Steel Corp., 4085 CRB-2-99-7 (October 20, 2000).
Respondents sought transfer under § 31-349 for a claim which they paid under the Federal Longshore and Harbor Workers' Compensation Act. Trier concluded that respondents had never accepted claimant's claim under Chapter 568 and had never paid any benefits under that statute, and thus denied the respondents' request to transfer the claim to the Fund pursuant to § 31-349. CRB agreed. Additionally, the board agreed with the commissioner's determination that respondents failed to provide timely notice to the Fund.

Boccuzzi v. Norwalk Courtyard Marriott, 4123 CRB-7-99-9 (October 11, 2000).
See, **Boccuzzi**, § 31-308(b).

Mulroy v. Becton Dickinson & Co., 4083 CRB-5-99-7 (September 29, 2000).
CRB affirmed trier's determination that case involving occupational disease superimposed upon underlying genetic neuropathy did not have to be transferred to medical panel because there was no controversy regarding the existence of a previous disability. Commissioner could reasonably decide that issue of underlying neuropathy had been settled by previous decision, and Fund offered no evidence whatsoever to substantiate its assertion that the case should not transfer. Medical panel was designed to review cases in which there was a legitimate controversy based on some degree of conflicting evidence. CRB also upheld trier's conclusion that claimant's disease constituted a permanent partial impairment. Though she was asymptomatic prior to occupational exposure to toxic chemicals, the doctors did state that the claimant actually had the disease at the time of her injury, rather than a mere predisposition toward developing it. See also, **Mulroy**, 16 Conn. Workers' Comp. Rev. Op. 7, 2295 CRB-8-95-2 (October 2, 1996), § 31-301c; **Mulroy**, 15 Conn. Workers' Comp. Rev. Op. 455, 2295 CRB-8-95-2 (September 6, 1996), **aff'd**, 48 Conn. App. 774 (1998), § 31-298, § 31-301. Factual findings.

Johnson v. East Haven Hay & Grain Supply, Inc., 4075 CRB-3-99-7 (August 10, 2000).
CRB affirmed trier's dismissal of transfer claim, where trier relied on medical panel opinion discussing effect of preexisting injury on subsequent disability. Board held that trier was required to implement panel's ruling on existence of previous disability, but was entitled to make her own legal determination as to whether that disability materially and substantially increased the subsequent disability. Medical panel's opinion that prior injury did not materially increase the later disability was supported by medical report of treating physician that was part of the evidentiary record, and trier did not err in citing the panel's opinion in her Finding and Dismissal. Reasonable to find that 10% accountability did not constitute a substantial and material increase. Presence of preexisting permanent impairment does not require finding that condition has caused material and substantial increase in subsequent disability. Zeoli, infra, also cited re: Fund motion to dismiss appeal.

Masko v. Wallingford, 4076 CRB-8-99-7 (July 11, 2000), **aff'd**, 67 Conn. App. 276 (2001).
Majority of CRB panel affirmed trial commissioner's finding that respondent provided timely re-notification to Second Injury Fund by mailing letter via certified mail on September 28, 1995, even though notice was not received until October 2. Respondent introduced evidence tending to show that Fund did not receive certified mail on Friday, September 29 or Saturday, September 30, and trier found that post office had failed to make timely delivery of letter. CRB held that this subordinate fact, coupled with recent Supreme Court decision in Bittle v. Commissioner of Social Services**,** 249 Conn. 503 (1999), provided sufficient legal support for trier's ruling. Respondent complied with notice provision to best of its ability, and should not be blamed for actions of Fund or post office. Prior decision at Masko, 3225 CRB-6-955-12 (January 24, 1997), aff'd, 48 Conn. App. 515 (1998), § 31-275(1).

Giaimo v. New Haven, 4034 CRB-3-99-4 (May 22, 2000), **rev'd**, 257 Conn. 481 (2001).
Respondents challenged constitutionality of medical panel provision by filing a motion before the trial commissioner seeking a formal evidentiary hearing on the issue of medical qualification for transfer. Medical panel had opined that there was no preexisting disability, thus apparently precluding transfer. CRB ruled that it had no jurisdiction over the issues raised on appeal, and affirmed, citing Kuban v. Bridgeport Hospital, 3926 CRB-7-98-6 (September 23, 1999). Supreme Court reversed, holding that procedures attendant to medical panel provision violated respondents' right not to be deprived of property without due process of law under federal and state constitutions. Court began by dismissing claim of Fund that appeal was moot under § 31-349h, holding instead that any claim eligible for transfer to the Fund before July 1, 1999 might still be the subject of practical relief. Court then held that respondents had protected property interest in their statutory right to transfer claims to fund, which could not be abrogated without due process of law. Cece v. Felix Industries, Inc., 248 Conn. 457 (1999) distinguished. Procedures surrounding medical panel created unacceptable risk of erroneous determination of transfer claim, insofar as parties had no opportunity to object to appointment of medical panel members; statute did not require expert in field of claimant's injury to be on panel; parties had no chance to review, cross-examine, rebut or object to evidence presented to panel; parties could not review panel's medical findings following their examination of the claimant; no procedure had been implemented to ensure that panel applied appropriate legal standards governing burden of proof and statutory terms such as "materially and substantially greater;" parties had no opportunity to present argument to panel; and statute made panel's decision binding, with no right to seek correction of clearly erroneous factual findings or improper applications of the law.

Chappelle v. Manafort Bros., Inc., 4038 CRB-2-99-4 (March 27, 2000), **aff'd**, 63 Conn. App. 630 (2001), **cert. denied**, 257 Conn. 911 (2001).
CRB affirmed trial commissioner's ruling that claimant had previously received compensation for permanent partial impairment to right knee as part of a settlement for injuries sustained in a non-compensable automobile accident. Claimant contended that

insufficient evidence existed to establish that he had actually been compensated for the pre-existing 15% disability, but trier was able to reasonably surmise from the evidence that claimant either was paid, or could have been paid, damages for his disability as part of the personal injury settlement.

Zeoli v. Norwalk Hospital Association, 3974 CRB-7-99-2 (March 13, 2000), **aff'd in part, rev'd in part**, 257 Conn. 527 (2001).
CRB, citing Kuban v. Bridgeport Hospital, 3926 CRB-7-98-6 (September 23, 1999), refused to reserve question of § 31-349c's constitutionality to Appellate Court, preferring instead to affirm the trier's decision. CRB also addressed the Second Injury Fund's motion to dismiss the appeal for lack of subject matter jurisdiction, stating that the July 1, 1999 deadline in § 31-349h did not foreclose the respondents from appealing the trial commissioner's denial of their claim for transfer. Supreme Court affirmed CRB's ruling on § 31-349h issue, citing its reasoning in Giaimo v. New Haven, **rev'd,** 257 Conn. 481 (2001). However, Giaimo also required reversal and remand due to unconstitutionality of medical panel procedures that had been applied in the instant case. See also, **Zeoli**, § 31-324.

Hall v. Redland Brick, Inc., 3895 CRB-1-98-9 (November 4, 1999).
CRB affirmed trial commissioner's denial of respondents' request to transfer pursuant to § 31-349. Initial notice of December 1995 did not include $2,000 filing fee. Later notice of November 4, 1997 was over three years after the date of injury, and thus was untimely pursuant to § 31-349 as amended by Public Act 95-277. Respondents failed to demonstrate impossibility of timely notice here, as they had approximately nine months following the effective date of P.A. 95-277 to comply with the new law.

Kuban v. Bridgeport Hospital, 3926 CRB-4-98-11 (September 23, 1999), **appeal dismissed**, A.C. 20100 (January 5, 2000).
CRB declined request of respondents to reserve case for determination of Appellate Court, but affirmed trier's decision. Issue concerned the constitutionality of the medical panel provision in § 31-349c, which CRB did not have jurisdiction to substantively address. Panel discussed the unwillingness of the Supreme Court in Hall v. Gilbert & Bennett Mfg. Co., 241 Conn. 282 (1997), to address validity of § 31-349c absent an adequate factual record. Panel also discussed the meaning of the July 1, 1999 "eligibility for transfer" deadline in § 31-349(f), opining that it merely requires the employer or insurer to complete all requirements for transfer that are within its control. See also, **Kuban**, § 31-278, § 31-324.

Columbia v. Torrington, 3891 CRB-5-98-9 (September 22, 1999).
CRB affirmed trial commissioner's conclusion that, for the purposes of determining the 104 weeks of disability pursuant to § 31-349, claimant was not disabled from the time that he returned to full duty through the date of maximum medical improvement. Claimant was working eight hour days performing his regular job duties without restrictions, and the trier specifically found that during the period in question, he had no medical or physical limitations or impairments.

Rucker v. Pace Motor Lines, Inc., 3879 CRB-4-98-8 (September 17, 1999).
CRB affirmed trial commissioner's denial of respondents' request to transfer pursuant to § 31-349. Initial 1994 notice was too early under version of § 31-349 then in effect, and the second notice on June 30, 1995 (though arguably timely as an initial notice) must fail due to absence of re-notice as required by P.A. 95-277. The respondents argued that the Fund did not object to the defective initial notice in 1994 and was not prejudiced by the defect of its being filed too early. Board explained that § 31-349 time limitations must be strictly complied with, and Fund may not waive these statutory requirements.

Anastasio v. Mail Contractors of America, 3910 CRB-3-98-10 (August 31, 1999), **appeal dismissed**, 69 Conn. App. 385 (2002), **cert. denied**, 261 Conn. 914, 915 (2002).
CRB explained that P.A. 95-277 § 3(b) is only retroactive insofar as it applied to all pending cases effective on July 1, 1995. An injury occurring in May 1992 is not implicated by those notice provisions, as three years would have elapsed before the amendment's July 1995 effective date. Audi v. Blakeslee Arpaia Chapman, 3418 CRB-3-96-9 (August 4, 1997), distinguished. Commissioner's dismissal of claim for failure to file timely notice affirmed, as CRB declined to reverse finding that claimant was disabled beginning on the day following his injury instead of the day he first visited a doctor. Respondents' notice was thus filed two days late under § 31-349. Appellate Court disagreed with CRB's reasoning regarding timeliness of notice, holding that retroactive application of P.A. 95-277, § 3(b) extended time for filing notice of intent to transfer. However, CRB's ultimate holding was affirmed, as respondents did not fall within exemption for payment of $2000 notification fee, nor was it impossible to make such payment after P.A. 95-277 took effect.

Correnti v. Grossman's, Inc., 3858 CRB-8-98-7 (August 31, 1999).
CRB affirmed trier's decision that respondents' in-person presentation of re-notice to the Fund on September 29, 1995 substantially complied with § 31-349(e). (*Santos, C.*, **concurring**) As an alternative ground for affirming the trial commissioner's decision, CRB should also find that respondents complied with § 31-349(e) by sending the re-notice via certified mail on September 29, 1995 which was received by the Fund on October 2, 1995.

Raynor v. United Technologies Corp., 3855 CRB-6-98-7 (August 25, 1999).
Respondents provided re-notice to the Fund via certified mail, which was received by the Fund on Monday, October 2, 1995. Section 31-349(e) requires re-notice by October 1, 1995. Board held that in order to be timely, re-notice must be received by the Fund prior to October 1, 1995. (*Santos, C.,* **dissenting**) Because October 1, 1995 was a Sunday, notice received by the Fund on the next business day should be considered to be timely notice. Alternatively, notice sent by certified mail prior to October 1, 1995 should be deemed timely notice.

Walker v. Praxair, Inc., 3769 CRB-7-98-02 (August 17, 1999).
Trial commissioner found that respondent insurer failed to re-notify the Fund of a pending timely claim pursuant to Public Act 95-277, § 3(e). CRB remanded matter to trial commissioner to determine whether insurer had filed a timely new notice under § 3(b) of that act.

Genden v. American Airlines, 3912 CRB-5-98-10 (July 22, 1999), **rev'd**, 257 Conn. 520 (2001).
Trial commissioner found that a controverted issue existed regarding whether claimant's injury qualified for transfer to the Fund pursuant to § 31-349, and thus submitted the issue to the medical panel in accordance with § 31-349c. In support of their appeal, respondents contend that § 31-349c violates their due process rights under the Connecticut constitution and the United States constitution, and is also unconstitutionally vague. Respondents raised *only* constitutional issues on appeal, which the CRB may not decide. Board affirmed trial commissioner's decision, as the parties did not dispute his findings, including that the claimant's second injury occurred prior to July 1, 1995, and that a controverted issue existed regarding whether the claimant had a preexisting condition. Supreme Court reversed on ground that medical panel procedures were unconstitutional, as explained in Giaimo v. New Haven, rev'd, 257 Conn. 481 (2001). Prior decision at Genden, 3419 CRB-5-96-9 (June 4, 1998), § 31-278.

Bean v. Stal-Mac Corp., 3499 CRB-3-96-12 (June 30, 1999).
CRB affirmed trial commissioner's decision to transfer all liability for claimant's injuries to Second Injury Fund in light of Fimiani v. Star Gallo Distributors, Inc., 248 Conn. 635 (1999). Timely notice provided by claimant's second employer satisfied a subsequent employer's notice requirement under § 31-349, where both employers shared liability for the same injury period, and the Fund was given the necessary opportunity to investigate the claim. Also, claimant's doctor testified that she indeed suffered from a pre-existing disability prior to her 1985 traumatic right hand injury, and that she suffered further exposure after returning to work in 1996. Medically, case qualified for transfer to Fund.

Crute v. Gilman Corp., 3812 CRB-2-98-5 (June 18, 1999).
CRB affirmed trier's dismissal of request to transfer liability to Second Injury Fund. Untimely notice under previous version of § 31-349 (filed more than one year before 104th week of disability) could not be cured by the enactment of P.A. 95-277 § 3(b); insufficient notice remained insufficient, and renotification provision was not applicable. Respondents were not relieved of responsibility for failing to know about 1993 change in § 31-349 just because this Commission did not include the revised statute in Supplement No. 1 to Bulletin No. 42. Respondents also failed to meet initial notice requirement of § 31-349(b), as $2,000 notification fee was not provided to Fund until after the 90th day following the 104th week of disability had elapsed. "Substantial compliance" not applicable, as fee is an integral element of the statutory notice requirement.

Fish v. Caldor, Inc., 3840 CRB-7-98-6 (May 11, 1999).
CRB lacks jurisdiction over appeal taken directly from report of § 31-349c medical panel, as § 31-301(f) only allows appeals from awards, decisions on motions, or § 31-299b orders. Respondents argued that its arguments went beyond the scope of the report itself, and thus were within board's jurisdiction. CRB characterized report at this stage as a "mere piece of evidence," and noted that there were no factual findings or legal conclusions to review. Board also reiterated its lack of jurisdiction to deem a statute

unconstitutional. Panel then stated that the best interpretation of § 31-349c in light of constitutional guarantees of due process was to define "previous disability" more narrowly than is suggested by Olsen v. Dubois Chemicals, Inc., 3385 CRB-7-96-7 (December 29, 1997). Facts and legal conclusions regarding existence of second injury should not be delegated to medical panel as part of the "previous disability" determination. Procedure for processing case outlined. See also, **Fish**, § 31-278.

Szedlmayer v. Moore Special Tool Co., 3764 CRB-4-98-1 (March 25, 1999).
Respondents filed notice too early under version of § 31-349 in effect at time of injury (1994). They then filed a re-notification in September 1995 without including any attachments. Held: § 31-349 notice requirements not satisfied. 1995 letter could not be construed as a completion of notice under the prior version of § 31-349, as Public Act 95-277 had pre-emptive effect on pending cases.

Wells-Tavalozzi v. Bickford's Restaurant, 3736 CRB-6-97-12 (December 22, 1998).
CRB affirmed the trial commissioner's conclusion that the respondents failed to provide proper notice of intent to transfer where a voluntary agreement was not provided to the Fund in a reasonable amount of time. Moreover, as the respondents filed their re-notification on October 2, 1995, their request to transfer would fail under § 31-349(e), which requires re-notification prior to October 1, 1995.

Karutz v. Feinstein & Herman, 3698 CRB-7-97-8 (December 18, 1998), **rev'd**, 59 Conn. App. 565 (2000), **cert. denied**, 254 Conn. 949 (2000).
CRB affirmed trial commissioner's finding that notice to Fund was timely. The trier found that the claimant's disability period did not begin on the date of injury, even though she was suffering from persistent pain and was treating with a physician, as she was able to perform her regular job duties, was paid her regular salary, and lost no time from work. Board explained that "disability" refers to medical impairment pursuant to Innocent v. St. Joseph's Medical Center, 243 Conn. 513 (1998), but the commissioner did not err in gauging the existence of disability on the medical opinions concerning the claimant's ability to work. Absence of medical restrictions is material to determination that impairment did not exist within meaning of § 31-349. Issue was one of credibility, as it depended on interpretation of medical reports. Reversed and remanded by Appellate Court, which held that board improperly accepted the trier's conclusion that the claimant's disability did not commence until she became unable to work. The court stated that "a person can be disabled for the purposes of § 31-349 even though he or she can carry on all the facets of his or her employment. The test is whether a claimant is physically impaired, not whether there exists a de facto inability to earn a wage." The court held that the trier incorrectly applied the law by basing his finding of periods of disability on the claimant's ability to perform her job duties rather than on the date of "medical impairment."

Zisk v. New Britain, 3705 CRB-6-97-10 (December 11, 1998).
CRB affirmed commissioner's ruling that the employer was not entitled to reimbursement from the Second Injury Fund for any sums paid to the claimant under § 31-284b after July 1, 1995, the effective date of P.A. 95-277 § 3. See, Badolato v. New Britain, infra.

Bass v. Chesebrough-Ponds, USA, 3709 CRB-3-97-10 (November 27, 1998).
CRB affirmed trial commissioner's application of three-year filing deadline for notice to Second Injury Fund to case where injury occurred in 1991, and requirement of P.A. 95-277 was impossible for insurer to satisfy. Legislative decision was made to terminate the viability of certain unperfected claims for transfer, and CRB cannot overturn that policy decision. See also, **Bass**, § 31-278.

Badolato v. New Britain, 3704 CRB-6-97-10 (November 24, 1998), **aff'd**, 250 Conn. 753 (1999).
CRB affirmed commissioner's ruling that P.A. 95-277 § 3 [repealing § 31-349(e)] could be applied retroactively and thus, the legislature repealed § 31-284b(d) by implication. See also, **Badolato,** § 31-284b.

Grimme v. Railroad Stores, Inc., 3722 CRB-5-97-11 (November 17, 1998).
CRB reversed trier's conclusion that notice was due to Fund before three years had elapsed from date of injury, as no subordinate findings had been made regarding benefits paid, and the evidence was not clear on that issue. CRB then ruled that "accounting of all benefits paid" did not have to be a separate document from the "employer's or insurer's estimate of the reserve amount to ultimate value," and that the document filed in the instant case contained sufficient information about benefits paid to satisfy § 31-349. See also, **Grimme**, § 31-301. Factual findings and Appeal procedure.

Goubourn v. United Illuminating, 3594 CRB-3-97-4 (November 17, 1998).
CRB reversed trial commissioner's finding that respondent provided timely notice to Second Injury Fund under § 31-349(e). Injury occurred more than three years prior to filing of notice, and there is no implied exception in the statutory language. Also, although re-notification may have been timely provided under P.A. 95-277 § 3(b), the initial notice was not perfected in a timely manner prior to July 1, 1995 because a copy of the agreement or award was not given to the custodian of the Fund. Timely re-notification cannot resurrect late notice. See also, **Goubourn**, § 31-301-9. Additional evidence.

Canfield v. Johnson Controls, 3161 CRB-2-95-5 (June 17, 1998).
The trial commissioner did not have jurisdiction to decide whether a preexisting impairment contributed materially and substantially to the claimant's resulting permanent disability, as P.A. 95-277 § 4(a) made that question the province of the medical panel. See, Hall v. Gilbert & Bennett Mfg. Co., 241 Conn. 282 (1997). Facts found by the trier also failed to support conclusion that notice was timely filed. CRB remanded case for determination as to whether claimant had medical restrictions during entire period between injury and Fund's receipt of notice, as per Innocent v. St. Joseph's Medical Center, 243 Conn. 513 (1998).

Cassidy v. Hertz Corporation, 3583 CRB-3-97-4 (June 5, 1998).
CRB affirmed the trial commissioner's determination that the respondents had failed to file proper notice of intent to transfer pursuant to § 31-349 where respondents had failed to include a copy of an approved voluntary agreement. The respondents did not allege that obtaining a voluntary agreement was in any way impossible.

Borden v. New Britain Anesthesia, 3408 CRB-6-96-8 (June 4, 1998).
CRB reversed trial commissioner's decision denying Fund's request to apportion liability for § 31-308(a) benefits where claimant suffered four separate injuries, the last resulting in a Fund transfer. Appellate Court decision in Fimiani v. Star Gallo Distributors, Inc., 48 Conn. App. 474 (1998), requires Fund to be allowed apportionment of liability where prior compensable injury contributes to disability and factual findings support apportionment. Remanded.

Colella v. Carmody & Torrance, 3498 CRB-5-96-12 (May 15, 1998).
The CRB affirmed the trial commissioner's decision regarding the calculation of 104 weeks of disability payments for two separate shoulder injuries which occurred from a single accident. Where temporary total disability was caused by *both injuries*, those payments were properly added to the calculation of the 104 weeks for both injuries. However, the permanent partial disability payments attributable to each injury applied only to that injury alone.

Sanders v. GAE Services, 3481 CRB-5-96-11 (April 29, 1998).
Trial commissioner dismissed claim for transfer, as respondents' re-notification of intent to pursue transfer was not received by Second Injury Fund until October 2, 1995, one day late under § 31-349(e). CRB affirmed. Notice provisions must be strictly construed. Practice Book § 4010 inapplicable. *(Metro, C.,* **dissenting**) Respondents mailed notice to Fund on September 26, 1995, and should not be penalized for the vagaries of U.S. Postal delivery.

Cece v. Felix Industries, 3505 CRB-7-96-12 (April 24, 1998), **aff'd**, 248 Conn. 457 (1999).
Section 31-349(e) clearly required a respondent who had notified the Second Injury Fund of intent to transfer a claim prior to July 1, 1995, to re-notify the Fund of its intent to transfer the claim by October 1, 1995. No other reading of the statute is possible, especially in light of Hall v. Gilbert & Bennett Mfg., Inc., 241 Conn. 282 (1997), and Audi v. Blakeslee Arpaia Chapman, 3418 CRB-3-96-9 (August 4, 1997). Trial commissioner's decision reversed.

Couture v. Ridges Manufacturers Outlet, 3467 CRB-2-96-10 (March 9, 1998).
CRB reversed the trial commissioner's determination that the respondents had filed a timely notice of intent to transfer pursuant to § 31-349. Specifically, the time period during which the claimant had returned to light duty work at full pay should have been included in the calculation of the 104-week notice period.

Weich v. Goss & Deleeuw Machine Co., 2040 CRB-6-94-5 (March 5, 1998).
In light of Supreme Court decision in Innocent v. St. Joseph's Medical Center, CRB affirmed trial commissioner's dismissal of request for transfer to Second Injury Fund. One hundred and four week calculation under § 31-349 includes time period when claimant was medically disabled, but not necessarily entitled to benefits. Evidence supports commissioner's finding that claimant was disabled at relevant time.

Digrazio v. CBL Trucking, 3479 CRB-8-96-11 (February 18, 1998).
Trial commissioner denied Form 36 on grounds that respondents were unable to prove that previous voluntary agreements established prior permanent partial disability or that compensation had been made for 1977 and 1981 injuries. CRB reversed. Approved voluntary agreement in record assigned claimant 27.5% permanent partial disability of back for 1981 injury, with maximum improvement in 1983. 1994 voluntary agreement for 27.5% permanent partial disability of back on account of 1992 injury would be compensating claimant for the same percentage of permanent partial disability a second time, even if the claimant had experienced an improvement in his physical condition during the intervening 11-year period between injuries. As long as compensation is paid *or payable* on account of a prior disability that materially worsens the disability caused by a second injury, it should be deducted from the benefits payable for the second disability.

Olsen v. Dubois Chemicals, Inc., 3385 CRB-7-96-7 (December 29, 1997).
CRB affirmed trier's decision to refer case to Chairman for assignment to medical panel. Hall v. Gilbert & Bennett Mfg. Co., Inc., 241 Conn. 282 (1997), held that P.A. 95-277 § 4(a) applies to all pending cases as of July 1, 1995, which includes this one. Insurer argued that key issue was not existence of previous disability, but date of injury and timeliness of notice. CRB disagreed, as the issue of whether a second injury was a new injury or the recurrence of a prior injury was, in reality, a question regarding previous disability properly referable to medical panel.

Thompson v. Roach, 3382 CRB-7-96-7 (December 29, 1997), **aff'd**, 52 Conn. App. 819 (1999).
Respondent notified Fund of intent to transfer claim prior to expiration of notice period, but informed the Fund that no voluntary agreement had been signed and that it wanted to avoid jeopardizing the potential transfer of this case. Some time later, the voluntary agreement was executed and quickly forwarded to the Fund. Commissioner found insurer had acted reasonably under the circumstances, and allowed transfer of claim. CRB affirmed, citing Marano v. Timex Corporation, 14 Conn. Workers' Comp. Rev. Op. 207, 1774 CRB-5-93-7 (July 27, 1995), and Jaworski v. A.B. Chance Co., 3006 CRB-3-95-2 (January 6, 1997). Although lack of prejudice to Fund is irrelevant if notice could have been timely filed, it is relevant to a determination of whether a late submission should be allowed where the facts of the case prevented timely notice. Trier made appropriate findings here. Appellate Court affirmed CRB decision, noting that the "strict compliance" requirement with respect to § 31-349 presumes the possibility of compliance.

Muldoon v. New England Installation, 3345A and 3345B CRB-4-96-7 (November 3, 1997).
CRB affirmed the trial commissioner's decision that the respondents failed to provide timely notice pursuant to § 31-349. The respondents contend that it was impossible to provide timely notice under § 31-349 because they had contested the underlying claim for approximately nine years. The respondents' contention that notice to the Fund could not be filed until a Finding and Award was issued is without merit, as timely notice

could have been filed which would have preserved the respondents' request to transfer until an award was issued or a voluntary agreement was reached. See also, **Muldoon,** § 31-301. Factual findings. See also, Muldoon, 10 Conn. Workers' Comp. Rev. Op. 255, 1226 CRD-4-91-5 (January 13, 1993), rev'd, 33 Conn. App. 695 (1994), rev'd, 231 Conn. 469 (1994), aff'd on remand, 37 Conn. App. 266 (1995). Muldoon, 3415 CRB-4-96-8 (November 3, 1997). Subsequent decision at Muldoon, 3552 CRB-4-97-3 (August 24, 1998).

Palumberi v. University of Bridgeport, 3319 CRB-4-96-4 (September 16, 1997).
Trier held that Second Injury Fund should assume liability for the claim of a claimant who was totally disabled because of the joint effect of a compensable shoulder injury and a previous knee replacement that resulted from a congenital problem. CRB reversed. Left shoulder condition was not made worse by previous knee disability; in fact, shoulder condition would be 45% with or without the knee condition. No legal relationship between those two injuries within the meaning of § 31-349; Lopez v. Diversified Concrete, 15 Conn. Workers' Comp. Rev. Op. 216, 2142 CRB-6-94-9 (April 29, 1996), distinguished.

Rulewicz v. New Britain General Hospital, 3302 CRB-6-96-3 (September 16, 1997).
CRB affirmed trial commissioner's determination that claim did not qualify for transfer under § 31-349. The record supports the trial commissioner's determination that the claimant did not have a preexisting impairment of his left knee which caused his injury to result in a disability which was materially and substantially greater. Whether or not a particular condition constitutes a physical impairment is a factual decision for the trial commissioner. ***VACATED*:** (December 5, 1997) CRB *vacated* the September 16, 1997 decision because jurisdiction over the issue of whether the claim medically qualified for transfer belonged with the medical panel rather than with the trial commissioner pursuant to § 31-349 C.G.S. as amended by P.A. 95-277, § 4(a). See also, **Rulewicz**, § 31-300.

Huber v. General Dynamics Corporation/Electric Boat Division, 3471 CRB-8-96-11 (August 27, 1997).
The Fund appealed the trial commissioner's decision regarding transfer pursuant to § 31-349. The CRB held that the issue of transfer pursuant to § 31-349 was under the jurisdiction of the medical panel created by P.A. 95-277, § 4(a) effective July 1, 1995. Specifically, where a final decision regarding transfer has not been issued as of July 1, 1995, the issue is deemed "pending" and must be referred to the medical panel. The CRB remanded the matter to the trial commissioner for a finding regarding the date of injury and a determination of whether the notice was timely pursuant to § 31-349.

Ridente v. MMR Wallace, 3303 CRB-6-96-3 (August 21, 1997).
Follows Soto v. Swank Crestline, Inc., in making § 4(a) of P.A. 95-277 applicable to a transfer case that had been heard, but not decided by July 1, 1995. See also, **Ridente**, § 31-300.

Kronenberger v. Aetna Life & Casualty, 3249 CRB-8-96-1 (August 20, 1997).
CRB affirmed the trial commissioner's determination that the respondent failed to provide timely notice to the Fund of its request to transfer liability pursuant to § 31-349. The respondent argued that because the claimant signed a stipulation which stated that the claimant was not entitled to receive benefits during a certain period, therefore said period should not be counted in the 104-week calculation under § 31-349. The CRB held that the trial commissioner was not required to omit said period in calculating the 104-week period merely because the claimant had signed a stipulation which stated that she was not disabled during that period. Rather, the trial commissioner was entitled to review the record and determine whether the claimant was actually disabled.

Audi v. Blakeslee Arpaia Chapman, 3418 CRB-3-96-9 (August 4, 1997).
Respondent filed initial untimely notice to Fund under the version of § 31-349 in effect before the 1995 legislative amendment. Upon the passage of P.A. 95-277, § 3, the respondent filed both re-notice under § 3(e) and notice under § 3(b) of the P.A.. Held: the filing of otherwise timely re-notice does not cure the previous late filing of notice, as § 3(e) concerns the need to reaffirm one's intent to seek transfer of claims that were already properly notified to the Fund. However, § 3(b) pertains to initial notice to the Fund, and is completely separate from the previous version of § 31-349. By its terms, the statute potentially may apply to any claim. As the claimant had not received 104 weeks of disability benefits, the three-calendar-year provision in § 3(b) applied to this case. Notice was timely filed under that statute. Case remanded for further proceedings. See subsequent decision Audi, 4234 CRB-3-00-5 , 4151 CRB-3-99-11 (June 26, 2001), § 31-301-9 Motion to Submit. Also see Audi, 4311 CRB-3-00-10, 4624 CRB-3-03-2 (February 10, 2004), § 31-278, § 31-284(b), § 31-288, § 31-300.

Soto v. Swank Crestline, Inc., 3255 CRB-7-96-1 (July 24, 1997).
Supreme Court ruling in Hall v. Gilbert & Bennett Mfg. Co., Inc., 241 Conn. 282 (1997), makes P.A. 95-277, § 4(a) retroactively applicable to all pending transfer claims. "Pending" means any case that has not yet reached final judgment, according to law. Even thought the last formal hearing here was held before July 1, 1995, the trier's decision was pending after that date, and is still not a final judgment. Thus, the trier's decision on transfer was vacated. Transfer issue must be presented to medical panel. See also, **Soto,** § 31-300.

McQuiller v. The Miller Company, 3219 CRB-6-95-11 (April 10, 1997).
Doctor's testimony that claimant had a latent predisposition to rheumatoid arthritis did not require transfer to the Fund. Appellate Court decision in Rowe v. Plastic Design, 37 Conn. App. 131 (1995), explains that a claimant must suffer from a quantifiable preexisting permanent physical impairment rather than a latent condition that has not yet manifested itself. CRB also cited Staton v. Automotive Controls, 3035 CRB-3-95-3 (October 30, 1996), where it ruled that a predisposition to diabetes was not a preexisting physical impairment. This case is the same, as claimant was asymptomatic prior to injury. See also, **McQuiller**, § 31-301. Factual findings.

Santora v. A.C.E.S., 2299 CRB-3-95-11 (February 26, 1997).
See, **Santora**, § 31-298.

Lefevre v. Marty Gilman, Inc., 3175 CRB-8-95-9 (February 19, 1997).
See, **Lefevre**, § 31-299b.

Goodridge v. American Felt & Filter, 3151 CRB-2-95-8 (January 24, 1997).
Respondents paid only 75 weeks of benefits prior to issuing notice to Fund, but claimant was at least partially disabled during period of time they were not paying. Irrespective of type of benefits claimant was receiving during post-injury period, notice period continued to run. Only possible conclusion from findings was that notice was untimely by almost one year. Dismissal of transfer request affirmed. See also, **Goodridge**, § 31-301. Appeal procedure.

Innocent v. St. Joseph's Medical Center, 3114 CRB-7-95-7 (January 10, 1997), **rev'd**, 243 Conn. 513 (1998), **motion for reargument and reconsideration denied** (March 17, 1998).
The Fund contended that the employer's notice was untimely because the claimant's period of light duty employment should be counted in determining the 104-week period under § 31-349. CRB found sufficient evidence in the record to support the trial commissioner's determination that the claimant was not disabled during said period. Specifically, the trial commissioner found that the claimant was returned to work at her former position at her regular rate of pay and thus concluded that she was not entitled to any benefits. CRB distinguished Lillo v. Dichello Distributors, 14 Conn. Workers' Comp. Rev. Op. 1, 1843 CRB-3-93-9 (April 28, 1995), where the claimant was unable to perform his old job and therefore returned to a totally different position as a janitor at a much reduced rate of pay. Reversed by Supreme Court, which held that the period the claimant returned to work with a medical restriction had to be included in the determination of the 104 weeks, because "disability" refers to medical impairment rather than loss of earning capacity.

Jaworski v. A.B. Chance Co., 3006 CRB-3-95-2 (January 6, 1997).
Respondents were not apprised of workers' compensation claim until after claimant had been disabled for almost full 104 weeks, and never had opportunity to file timely notice with the Fund. Trial commissioner's dismissal of transfer request reversed and remanded to district for determination of whether respondents notified Fund within a reasonable time. (*Wilson, C.,* **dissenting**) (right to transfer liability to Fund is purely statutory, and notice here was not provided within the prescribed period. Creation of exception to line of cases strictly interpreting notice requirement would be inconsistent with doctrine of stare decisis and unfounded in our law). See also, **Jaworski**, § 31-294d and § 31-301. Factual findings.

Fimiani v. Star Gallo Distributors, 16 Conn. Workers' Comp. Rev. Op. 123, 3017 CRB-3-95-2 (November 26, 1996), **rev'd**, 48 Conn. App. 474 (1998), **rev'd,** 248 Conn. 635 (1999).
CRB reversed trial commissioner, and held that § 31-349 does not contain any provision for the apportionment of the liability for a second injury when it is transferred to the Second Injury Fund. Rather, § 31-349 specifically provides that when the statutory criteria for transfer have been met, "(t)hereafter all responsibility for compensation and medical treatment shall be with the... fund." Accordingly, Lundquist, infra this section,

reversed. (*Wilson, C.,* **dissenting**) (the Fund should be allowed to benefit from an agreement to apportion a claim made by two insurance companies during the 104 weeks prior to transfer. Lundquist should be upheld). Reversed by Appellate Court which held that "in cases where an employee has suffered two separate compensable injuries that have contributed to cause a disability, and liability for that disability can be apportioned between the two injuries by the trial commissioner, the apportionment may also be extended to the liability imposed on the fund by § 31-349." Reversed by Supreme Court which held that § 31-349 requires the employer at the time of the second injury to accept liability for *all* of the compensation for a period of 104 weeks, and thereafter the Fund is required to accept liability for *all of the benefits owed the claimant for the combined injuries.*

Rodriguez v. Remington Products, 16 Conn. Workers' Comp. Rev. Op. 115, 3069 CRB-4-95-5 (November 25, 1996).
Claimant stipulated right shoulder/right upper extremity injury claim in 1983, with 25-30% permanent partial disability of shoulder. Claimant also injured right elbow in 1984, which was accepted. Claimant then had cervical disc problems in late 1980s, requiring surgery. Respondents refused to pay for operation. Trial commissioner held that herniated disc was result of compensable injury, and ordered respondents to pay for reasonable medical expenses. Respondents argued to CRB that combination of 1983 stipulation and subsequent injury overpaid claimant, thus entitling them to a credit. Trial commissioner affirmed; although double recovery is prohibited, respondents failed to prove to trial commissioner that claimant had been compensated for same disability. See also, **Rodriguez**, § 31-308a.

Staton v. Automotive Controls, 16 Conn. Workers' Comp. Rev. Op. 79, 3035 CRB-3-95-3 (October 30, 1996).
Commissioner ordered transfer of liability to Second Injury Fund based on effect of pre-existing diabetes on disability caused by left arm injury. Reversed. Statute cannot apply without a preexisting permanent physical condition. A review of the medical testimony showed that neither the treating physician nor the internal medicine physician opined that the claimant had clinical diabetes prior to the date of injury that amounted to a permanent partial impairment. Thus, the order to transfer was without evidence.

Hall v. Gilbert & Bennett Mfg. Co., 15 Conn. Workers' Comp. Rev. Op. 459, 3139 CRB-7-95-8 (September 9, 1996), **rev'd**, 241 Conn. 282 (1997).
At a formal hearing the trial commissioner ruled that he did not have jurisdiction to decide whether a claim was transferable to the Fund pursuant to § 31-349 because P.A. 95-277 requires that issue to be decided by a medical panel. On appeal, the respondents contend that the provision of a medical panel in P.A. 95-277 is a substantive change which should be applied prospectively, and thus does not apply to the claim at hand. CRB held that P.A. 95-277, § 4 properly applies only to those injured after the adoption of the legislation and not those previously injured. (*Wilson, C.,* **dissenting**) The state Supreme Court reversed and held that P.A. 95-277, § 4 is procedural rather than substantive and thus should be applied retroactively. See also, **Hall**, § 31-301.

Hall v. Bilow Builders, 15 Conn. Workers' Comp. Rev. Op. 391, 2287 CRB-1-95-2 (August 14, 1996), **aff'd**, 46 Conn. App. 346 (1997).
Uninsured employer cannot transfer liability to Second Injury Fund. See, Champlain v. Parnes, 14 Conn. Workers' Comp. Rev. Op. 113 (June 2, 1995). Purpose of § 31-349 discussed. Employer's allegation that it did not receive a statement of assessment under § 31-354 unpersuasive.

Rogers v. Laidlaw Transit, 15 Conn. Workers' Comp. Rev. Op. 318, 2154 CRB-3-94-9 (June 24, 1996), **rev'd,** 45 Conn. App. 204 (1997).
Issue of evidentiary sufficiency. See, **Rogers**, § 31-301. Factual findings.

Lopez v. Diversified Concrete, 15 Conn. Workers' Comp. Rev. Op. 216, 2142 CRB-6-94-9 (April 29, 1996).
Commissioner denied transfer to Second Injury Fund where claimant had been permanently blind since childhood in right eye, and compensable injury left him totally blind in left eye. CRB reversed decision: pre-existing visual impairment in right eye combined with second injury to make overall disability much worse. Purpose of § 31-349 is to compensate total incapacity. Claim transferable to Second Injury Fund.

Kelley v. New England Railroad, 15 Conn. Workers' Comp. Rev. Op. 206, 2274 CRB-2-95-1 (April 23, 1996), **rev'd**, 45 Conn. App. 448 (1997).
Form 36 retroactively approved effective February 7, 1991; voluntary agreement later set maximum medical improvement date at May 7, 1991. Held, trial commissioner did not err in concluding that 104-week notice period to Second Injury Fund did not include that three-month period. As the fact-finder, she could have determined that claimant was not disabled during that time. Importance of deference to findings reemphasized in Supreme Court's decision in Six v. Thomas O'Connor & Co., 235 Conn. 790 (1996). Appellate Court reversed on ground that, under Six, period of actual disability controls date notice is due, and the undisputed medical evidence indicated that the claimant was continuously disabled. See also, **Kelley**, § 31-296.

Rogulski v. UTC/Pratt & Whitney Aircraft, 15 Conn. Workers' Comp. Rev. Op. 182, 2113 CRB-2-94-7 (April 1, 1996).
Trial commissioner reversed; CRB ruled that payments for scarring award pursuant to § 31-308(c) are not part of calculation for 104-week disability period under § 31-349. Disfigurement and incapacity are separate concepts under Workers' Compensation Act.

Gilbert v. Iron Workers' Local Union #15, 15 Conn. Workers' Comp. Rev. Op. 162, 2191 CRB-1-94-10 (February 1, 1996).
Trial commissioner found dyslexia to be preexisting permanent partial impairment. Fund disagreed. Held, this is a factual issue, and medical reports discussing dyslexia could imply that it was a physical impairment, even though its nature was not specifically discussed. Respondents introduced no evidence to dispute that finding, either. (*Tracy, C.,* **dissenting**) (not enough evidence in record to establish dyslexia as permanent partial impairment; fact that first injury worsens second injury does not *a fortiori* make it a permanent partial impairment).

Lawrence v. Dichello Distributors, 15 Conn. Workers' Comp. Rev. Op. 16, 2038 CRB-4-94-5 (November 7, 1995).
See, **Lawrence**, discussion at § 31-299b.

Lundquist v. Parkway Pavilion, 15 Conn. Workers' Comp. Rev. Op. 7, 2044 CRB-1-94-5 (November 1, 1995), **dismissed for lack of final judgment**, A.C. 15412, 15415 (February 22, 1996).
Where claimant suffered two compensable injuries, and 70 percent of the resulting disability was due to the first injury, Second Injury Fund is not required to assume full liability for both injuries. Trial commissioner may apportion liability among two employers under Mund v. Farmers' Cooperative, Inc., 139 Conn. 338 (1952), and such apportionment may extend to Fund. (*Miles, C.,* **dissenting**) (no provision for apportionment of liability is present in § 31-349; statutory language clear). See also, **Lundquist**, § 31-299b (not applicable because there are two separate, identifiable injuries). But see, Fimiani, supra., this section.

Casagrande v. Mal Tool & Engineering, 14 Conn. Workers' Comp. Rev. Op. 274, 1990 CRB-1-94-3 (September 6, 1995).
Claimant injured both elbows in one accident, which were separate and distinct injuries both related to a pre-existing condition. Commissioner ordered transfer to Second Injury Fund after 208 weeks. Affirmed; Abbott, 14 Conn. Workers' Comp. Rev. Op. 259, 1923 CRB-2-93-12 (August 31, 1995), controls. **(Note: Abbott reversed by Appellate Court at 43 Conn. App. 737 (1996)).**

Abbott v. General Dynamics Corporation/Electric Boat Division, 14 Conn. Workers' Comp. Rev. Op. 259, 1923 CRB-2-93-12 (August 31, 1995), **rev'd**, 43 Conn. App. 737 (1996).
Decedent suffered compensable back and neck injuries; commissioner ordered claim transferred to Second Injury Fund after 208 weeks. Held, claimant had suffered distinct and unrelated injuries from the same accident, both related to a pre-existing condition. Lovett v. Atlas Truck Leasing, 171 Conn. 577 (1976), is directly on point; in this case, "disability" as used in statute refers to each individual injury for purpose of calculating 104-week period. Appellate Court reversed CRB holding neither Lovett nor Hernandez v. Gerber Group, 222 Conn. 78 (1992) are dispositive of the issue here presented. Appellate Court held "awarding separate 104 week periods for each disabled body part that had a preexisting injury is contrary to the policy behind the fund."

Marano v. Timex Corp., 14 Conn. Workers' Comp. Rev. Op. 207, 1774 CRB-5-93-7 (July 27, 1995).
Where employer was not presented with a formal claim for benefits until after 104 weeks of disability had passed, and claimant's retirement was predicated on other medical conditions, employer had no way of knowing that claimant ascribed disability to compensable injury. Thus, compliance with § 31-349 was impossible, and an extension of time is warranted. (*Santos, C.,* **dissenting**) (no authority to relax notice requirements based on nonfiling of claim).

Fresta v. Connecticut Mason Contractors, 14 Conn. Workers' Comp. Rev. Op. 151, 1758 CRB-1-93-6 (June 27, 1995), **aff'd**, 43 Conn. App. 732 (1996).
Claimant failed to sign voluntary agreements, so copy of agreement was not sent to Second Injury Fund until after notice period expired. Held, precedent requires denial of transfer; respondents' argument that law should not require performance of impossible acts unavailing in light of existing case law. (*Brouillet, C.,* **concurring**) (Majority opinion need not discuss Reising, 13 Conn. Workers' Comp. Rev. Op. 40 (December 6, 1994); respondents did not demonstrate that compliance with § 31-349 was impossible in this case).

Champlain v. Eric Parnes d/b/a Physical Therapy Clinic, 14 Conn. Workers' Comp. Rev. Op. 113, 1860 CRB-2-93-9 (June 2, 1995).
Claimant sustained a second injury which qualified for transfer under § 31-349, however, at time of second injury the employer was uninsured. CRB held that employer could not transfer claim to Fund due to lack of insurance. CRB reversed § 31-349 transfer, and held that commissioner should have applied § 31-355 (which provides that Fund will pay claim where employer unable to pay). (*Santos, C.,* **dissenting**) (there is no requirement in § 31-349 that the employer be insured. Majority is adding a penalty for non-insurance, namely disallowing transfers under § 31-349, which is not contained in the statutes). See also, **Champlain**, § 31-355(b).

Mann v. Morrison-Knudsen/White Oak, 14 Conn. Workers' Comp. Rev. Op. 79, 1918 CRB-1-93-12 (May 12, 1995).
Commissioner determined that employer was not entitled to credit for percentage of disability attributable to 1989 injury that was the subject of a workers' compensation claim made in Missouri and settled. Held, definition of "compensation" amended in light of Weinberg v. ARA Vending Co., 223 Conn. 336 (1992), to include any compensation paid for prior disability regardless of its source. That amendment was intended as a clarification, and thus applies to previous injuries. Remanded to determine compensation received for Missouri injury.

Jolicoeur v. L. H. Duncklee Refrigeration, Inc., 14 Conn. Workers' Comp. Rev. Op. 24, 1842 CRB-2-93-9 (May 3, 1995).
Claimant suffered two compensable injuries that equally contributed to his disability. Held, general rule in workers' compensation law is that employer is liable to fully compensate claimant for full extent of disability regardless of preexisting condition. Levanti v. Dow Chemical Co., 218 Conn. 9, 18 (1991). Hardships caused by that rule have led to enactment of apportionment statutes such as § 31-349 and § 31-299b (held inapplicable here). CRB found that statute did not prevent commissioner from finding that both accidents contributed to cause injury. See, Mund v. Farmers' Cooperative, Inc., 139 Conn. 338 (1952), and held that fifty-fifty apportionment of liability between two insurers was appropriate under the common-law theory in Mund. See also, **Jolicoeur**, § 31-299b.

Pereira v. Taylor & Fenn Co., 14 Conn. Workers' Comp. Rev. Op. 16, 1816 CRB-1-93-8 (April 28, 1995).
Claimant was disabled within meaning of Vaillancourt v. New Britain Machine/Litton, 224 Conn. 382 (1993), during period he did not collect benefits because he failed to search for light duty employment; notice to Fund timely because a finding of no disability for a later period was left unchallenged by Fund in its Motion to Correct. See also, **Pereira**, § 31-298, and § 31-301(f).

Creamer v. General Dynamics Corporation/Electric Boat Division, 14 Conn. Workers' Comp. Rev. Op. 12, 1715 CRB-2-93-5 (April 28, 1995).
CRB held commissioner's transfer of back injury to the Fund was in error because there was insufficient evidence to support trier's determination that claimant suffered from a preexisting condition. Treater testified that claimant's back injury was made "materially and substantially greater" due to preexisting arthritis caused by an inflammatory bowel disease. Discussion of causation and expert opinions. Treater's opinion was not reasonable as it was not based upon reasonable probabilities. Remanded for further hearing and new determination on transfer issue.

Lillo v. Dichello Distributors, 14 Conn. Workers' Comp. Rev. Op. 1, 1843 CRB-3-93-9 (April 28, 1995).
CRB reversed commissioner's transfer of second injury to Fund pursuant to § 31-349. Issue was whether employer provided timely notice to Fund of intent to transfer. CRB held that period after second injury, when claimant returned to light duty at lower pay but was medically unable to perform his original job duties, must be included in the 104 week time limit. During that period of light duty, claimant was disabled within meaning of Vaillancourt v. New Britain Machine/Litton, 224 Conn. 382, 391 (1993).

Bowman v. Jack's Auto Sales, 13 Conn. Workers' Comp. Rev. Op. 192, 1721 CRB-1-93-5 (March 22, 1995).
Insurer argued that 138 weeks of paid benefits for disability to both hands should be split in half for purpose of calculating timely notice. Held, Vaillancourt v. New Britain Machine/Litton, 224 Conn. 382 (1993), controls; first one hundred four weeks of disability matter, and both hands disabled for entire time claimant received benefits. Lovett v. Atlas Truck Leasing, 171 Conn. 577 (1976), is inapposite. See subsequent decision Bowman, 16 Conn. Workers' Comp. Rev. Op. 223, 3384 CRB-1-96-7 (June 18, 1997) and Bowman, 3622 CRB-8-97-6 (August 26, 1998), § 31-301. Appeal procedure, § 31-315.

Soares v. Max Services, 13 Conn. Workers' Comp. Rev. Op. 185, 1718 CRB-1-93-5 (March 21, 1995), **aff'd**, 42 Conn. App. 147 (1996), **cert. denied**, 239 Conn. 915 (1996).
Trial commissioner ruled that insurer had failed to perfect notice to Fund by providing a timely copy of the voluntary agreement. Insurer argued that time limit applies only to notice of pending case, not voluntary agreement. Held, Kramer v. General Electric Co., 37 Conn. Sup. 742 (1981) and progeny decided correctly; statute is at best ambiguous for purpose of insurer's argument, and legislative intent behind statute supports application of time limit to Fund. Also, conduct of Fund in originally accepting claim

did not amount to waiver of notice requirement; as Fund is creature of statute, it cannot waive jurisdictional requirements of those statutes. Fund is a government agency for purpose of estoppel; here, respondents could not show that they detrimentally relied on a Fund representative who had authority to accept claim.

Knoblaugh v. Greenwood Health Center, 13 Conn. Workers' Comp. Rev. Op. 150, 1608 CRB-1-92-12 (February 6, 1995).
No finding that new injury was related to prior injury, so apportionment not required. See also, **Knoblaugh**, § 31-301. Factual findings, § 31-315, and § 31-349.

Izzo v. Meriden-Wallingford Hospital, 13 Conn. Workers' Comp. Rev. Op. 90, 1567 CRB-8-92-11 (January 25, 1995), **rev'd,** 237 Conn. 259 (1996).
See, **Izzo**, § 31-325.

Six v. Thomas O'Connor & Co., 13 Conn. Workers' Comp. Rev. Op. 60, 1621 CRB-1-93-1 (December 27, 1994), **rev'd**, 235 Conn. 790 (1996), **motion for reargument denied** (May 2, 1996).
Where claimant acknowledged that he was not entitled to certain benefits, weeks of non-entitlement should be subtracted from calculation of weeks of disability for purpose of § 31-349 notice period. Period of actual disability, not receipt of payment, controls notice requirement. CRB remanded to order transfer of claim to Fund. The Supreme Court reversed the CRB's opinion and held that notice to the Fund was untimely. The Court referred to the trial commissioner's finding that the claimant received temporary partial benefits from 1/5/88 and an agreement between the parties that '''there would seem to be no entitlement to any disability benefits from 1-5-88 until 9-25-88'" as supportive of its conclusion that notice to the Fund on April 24, 1990 was untimely. The court opined that notice to the Fund was due either January 5, 1988 or May, 1989, but under either circumstance notice to the Fund in April 1990 was untimely.

Reising v. General Dynamics Corporation/Electric Boat Division, 13 Conn. Workers' Comp. Rev. Op. 40, 1609 CRB-2-92-12 (December 6, 1994), **motion for review of CRB's denial of motion for articulation denied**, 38 Conn. App. 637 (1995).
Where employer contested compensability of injury, Second Injury Fund was not sent notice of pending claim until long after 104th week of disability. Held, although statutory requirement to submit copy of nonexistent voluntary agreement might be waived in a case like this, there is no reason why the other requirements of § 31-349(b) could not be complied with, including notice of the claim itself. Claim held not transferable to Fund.

Koehler v. UTC/Pratt & Whitney, 12 Conn. Workers' Comp. Rev. Op. 407, 1399 CRB-1-92-3 (September 16, 1994), **rev'd,** in light of Luis dos Santos v. F.D. Rich Construction, A.C. 14067 (December 8, 1995), **corrected order issued** (January 11, 1996), **cert. denied**, 236 Conn. 919 (1996).
Transfer denied where respondent fails to timely file a fully executed and approved voluntary agreement. But see, Dos Santos v. F.D. Rich Construction, Inc., 233 Conn. 14 (1995).

Benoit v. UNC Naval Products, 12 Conn. Workers' Comp. Rev. Op. 315, 1606 CRB-2-92-12 (June 24, 1994).
Statute does not require prior impairment involve the same body part later injured in order to qualify for transfer to the Fund. Medical evidence supports trier's finding that claimant sustained a permanent injury to her right arm due to carpal tunnel syndrome which was materially and substantially exacerbated by a pre-existing congenital absence of the left hand.

Williams v. Best Cleaners, 12 Conn. Workers' Comp. Rev. Op. 307, 1460 CRB-1-92-7 (June 17, 1994), **rev'd**, 235 Conn. 778 (1996), **motion for reargument granted**, **aff'd**, 237 Conn. 490 (1996).
CRB previously decided issue presented on appeal and determined claim qualifies medically for a § 31-349 transfer. See, Williams v. Best Cleaners, 8 Conn. Workers' Comp. Rev. Op. 168, 843 CRD-1-89-3 (October 26, 1990). As there has been no intervening judicial decision, relief sought by the Fund can only be obtained by appealing to the Appellate Court.

Davis v. Norwich, 12 Conn. Workers' Comp. Rev. Op. 272, 1563 CRB-2-92-11 (June 2, 1994), **aff'd**, 232 Conn. 311 (1995).
CRB reversed trier's order directing transfer of dependent widow's claim for death benefits to the Fund where respondent failed to present a timely notice for transfer of decedent's claim. CRB held although a dependent's claim is a separate and distinct claim from the injured worker, § 31-349 contemplates only a single 104 week waiting period for death and disability benefits. See also, **Davis**, § 31-306.

Loehn v. Vallerie Transportation Service, 12 Conn. Workers' Comp. Rev. Op. 267, 1544 CRB-7-92-10 (June 2, 1994).
Reversed and remanded. The Fund is a proper party of interest on appeal where trier's ruling granting respondents' motion to modify the voluntary agreement adversely affected the Fund. Respondents sought to modify the voluntary agreement in order to make timely an untimely notice for transfer. Trier erred in granting motion to modify, changing the date of maximum medical improvement and ordering transfer of liability to the Fund. See also, **Loehn**, § 31-315.

Tomkus v. Upjohn Company, 12 Conn. Workers' Comp. Rev. Op. 182, 1533 CRB-3-92-10 (May 2, 1994).
Second injury fund is liable for payment of scar award where surgical scar was incurred prior to transfer but the award was made after the 104th week of disability or date of transfer. See also, **Tomkus**, § 31-308(c).

Prioleau v. Larosa Construction, 12 Conn. Workers' Comp. Rev. Op. 140, 1432 CRB-8-92-6 (April 7, 1994).
See, **Prioleau**, § 31-308(b), § 31-299b and § 31-307.

Civardi v. Norwich, 12 Conn. Workers' Comp. Rev. Op. 100, 1376 CRB-2-92-1 (February 28, 1994), **aff'd**, 231 Conn. 287 (1994).
Section 31-284b benefits for government employee do not transfer at the same time indemnity and medical benefits transfer to the Fund. Transfer of § 31-284b benefits may only occur after 104 weeks of total incapacity. See, **Civardi**, § 31-284b and § 31-308a.

Santos v. F.D. Rich Construction Company, 12 Conn. Workers' Comp. Rev. Op. 64, 1358 CRD-7-91-12 (February 2, 1994), **rev'd**, 233 Conn. 14 (1995).
Transfer of liability denied where respondent failed to file both the notice and an approved voluntary agreement within statutorily prescribed time. Second Injury Fund's letter of acknowledgment and receipt of unsigned and unapproved voluntary agreement fails to satisfy elements of estoppel. Supreme Court reversed CRB and held where employer/insurer unilaterally agree to pay compensation, compensation is paid, and the employee accepts those payments, there is a binding agreement within the meaning of § 31-349 without the employee's signature or the commissioner's approval of a voluntary agreement. By filing a copy of the actual voluntary agreement within the time prescribed by statute, the employer's notice was timely, and transfer should have been granted.

Rowe v. Plastic Design, Inc., 11 Conn. Workers' Comp. Rev. Op. 213, 1354 CRD-8-91-12 (October 5, 1993), **rev'd**, 37 Conn. App. 131 (1995).
Where first work related injury results in no permanent partial disability and no permanency rating is given and subsequent second injury was found to be materially and substantially worse as a result of the earlier injury, statutory requirement is satisfied and liability can be transferred to the Second Injury Fund. Reversed on appeal. Appellate Court determined a preexisting physical impairment is a condition precedent to fund liability.

Levasseur v. General Dynamics Corporation/Electric Boat Division, 11 Conn. Workers' Comp. Rev. Op. 34, 1244 CRD-2-91-6 (February 26, 1993).
Remanded where trier based his decision on transfer of liability on stipulated facts at an informal hearing absent the Second Injury Fund's consent to the stipulated facts of the other parties. See also, **Levasseur**, § 31-301. Appeal procedure.

Codding v. Colchester Egg Farms, Inc., 11 Conn. Workers' Comp. Rev. Op. 4, 1232 CRD-2-91-5 (February 4, 1993).
Remanded as factual findings must be reexamined. Trier found compensability for occupational disease contracted over a 17 year period of employment was a second injury which resulted in a permanent disability materially and substantially greater than that which would have resulted from the second injury alone and apportioned liability for that 17 year period. However, trier also found claimant was self employed prior to that period in the same occupation which sensitized him so that his reaction to the offending producers during the period employed by Colchester Egg Farms in effect was a response to accumulated trauma. CRB held theory of liability inconsistent with conclusion. See also, **Codding**, § 31-299b and § 31-307.

Houseknecht v. Century Brass Products, 10 Conn. Workers' Comp. Rev. Op. 80, 1129 CRD-5-90-11 (April 10, 1992).
Reversed. Second Injury Fund is not liable for § 31-284b health insurance premiums prior to the date the Fund receives notice.

Luis v. Frito-Lay, Inc., 10 Conn. Workers' Comp. Rev. Op. 50, 1089 CRD-2-90-8 (February 6, 1992), **rev'd**, S.C. 14536 (April 27, 1993).
CRB affirmed trier's decision that transfer of benefits pursuant to § 31-349(a) does not include § 31-284b benefits as § 31-349(a) only includes transfer of compensation and medical expenses. Potential liability of the Second Injury Fund for § 31-284b benefits is addressed in § 31-284b(d) and § 31-349(b) and (c). Connecticut Supreme Court reversed CRB holding § 31-284b was preempted by ERISA. See note at § 31-284b.

Almeida v. Frito-Lay, Inc., 10 Conn. Workers' Comp. Rev. Op. 50, 1090 CRD-2-90-8 (February 6, 1992), **rev'd**, S.C. 14536 (April 27, 1993).
See, Luis, supra.

Turcotte v. Frito-Lay, Inc., 10 Conn. Workers' Comp. Rev. Op. 50, 1091 CRD-2-90-8 (February 6, 1992), **rev'd**, S.C. 14536 (April 27, 1993).
See, Luis, supra.

Keating v. Allegheny Ludlum Steel Corp., 10 Conn. Workers' Comp. Rev. Op. 28, 1102 CRD-3-90-8 (January 13, 1992).
Remanded as Fund cannot be ordered to pay benefits for period before liability is transferred. See, Haluschak v. J.F. Barrett & Sons, Inc., 9 Conn. Workers' Comp. Rev. Op. 93, 925 CRD-3-89-10 (March 1, 1991). See also, **Keating**, § 31-294d and § 31-315.

Vaillancourt v. New Britain Machine, 9 Conn. Workers' Comp. Rev. Op. 285, 1092 CRD-6-90-8 (December 16, 1991), **aff'd**, 224 Conn. 382 (1993).
Notice ninety (90) days prior to the expiration of one hundred and four (104) week period by statute refers to weeks of disability. That period shall not be extended to respondents so as to allow the calculation of the net number of weeks of benefits paid to include credit from a third party recovery.

Alger v. Rossi Corporation, 9 Conn. Workers' Comp. Rev. Op. 261, 1065 CRD-1-90-6 (December 5, 1991).
CRD affirmed trier's factual finding that claimant's brain disability was not made materially and substantially greater by claimant's preexisting condition of alcoholism thereby denying transfer of liability of the S.I.F. See also, **Alger**, § 31-308(c).

Weinberg v. ARA Vending Company, 9 Conn. Workers' Comp. Rev. Op. 184, 785 CRD-4-88-11 (August 23, 1991), **rev'd**, 223 Conn. 336 (1992).
CRD reversed trier's finding granting claimant 30% permanent partial disability of the back where 20% of that disability was attributed to a pre-existing service related disability for which claimant is receiving compensation from the Veterans Administration. (*Arcudi, C.*, **dissenting**) Federal criteria for rating disabilities is based on the reduction in the whole person's earning capacity that results from an injury and is paid for life unlike Connecticut's Workers' Compensation Law § 31-308(b) which

provides a limited number of weeks for a loss or loss of use of a specific body part. Discussion of terms "disability" and "impairment," the doctors' evaluation of impairment is the evidence the commissioner uses in reaching a decision on disability. Discussion of origin and legislative intent of § 31-349 and analysis that a V.A. service connected disability pension is not any compensation benefits payable or paid with respect to the previous disability under our law. Application of other jurisdictions ruling on same issue and findings that V.A. service connected partial disability pensions are not deductible. Supreme Court reversed CRB. Legislative history of § 31-349(a) does not reveal an intent to give the term compensation any meaning other than compensation under the Connecticut Workers' Compensation Act.

Hernandez v. Gerber Group, 9 Conn. Workers' Comp. Rev. Op. 143, 913 CRD-4-89-9 (May 24, 1991), **rev'd**, 222 Conn. 78 (1992).
CRD reversed trier's order transferring liability to the S.I.F. for claimant's right leg disability resulting from cardiac catheterization as Lovett v. Atlas Truck Leasing, 171 Conn. 577 (1976) mandates each disability be considered a separate injury. Discussion of personal injury and disability concept. Supreme Court reversed CRB. Supreme Court held CRB's interpretation of Lovett misplaced. Here the requisite causal linkage between the preexisting heart condition and leg injury was established. Therefore, liability for the leg should have been transferred.

Haluschak v. J.F. Barrett & Sons, Inc., 9 Conn. Workers' Comp. Rev. Op. 93, 925 CRD-3-89-10 (March 1, 1991).
Where Second Injury Fund enters into an agreement pursuant to § 31-296 without participation of employer and insurer that agreement is binding only upon Second Injury Fund and claimant.

Colas v. Marriott Food Services, 9 Conn. Rev. Op. 86, 939 CRD-7-89-11 (February 26, 1991).
CRD remanded for further proceedings where question of legal causation and medical causation as separate concepts remained unanswered by trier; therefore liability of employer or employers for claimants' injury or injuries requires determination. See also, **Colas**, § 31-294c, § 31-298 and § 31-307b.

Cappellino v. Cheshire, 9 Conn. Workers' Comp. Rev. Op. 49, 919 CRD-5-89-9 (February 4, 1991), **aff'd**, 27 Conn. App. 699 (1992), **aff'd**, 226 Conn. 569 (1993).
Second Injury Fund ordered to pay dependent spouse unmatured award for vested specific benefits where voluntary agreement was approved prior to decedent's death even though specific benefits were interrupted and decedent was collecting temporary total at time of death.

Williams v. Best Cleaners, 8 Conn. Workers' Comp. Rev. Op. 168, 843 CRD-1-89-3 (October 26, 1990).
There was a sufficient evidentiary basis for the commissioner to conclude claimant had a preexisting permanent physical impairment from smoking and that impairment caused the resulting lung disability to be materially and substantially worse. Remanded to

substantiate and make precise orders against the Second Injury Fund including exact date for transfer of liability. See also, **Williams**, § 31-308(c).

Lathrop v. Kimberly Clark Corp., 8 Conn. Workers' Comp. Rev. Op. 156, 852 CRD-7-89-4 (September 21, 1990), **aff'd**, 24 Conn. App. 837 (1991).
Second Injury Fund to accept liability where trial commissioner's factual finding satisfies requirements of § 31-325 and § 31-349. See, Hehl v. Kimberly Clark Corp., 774 CRD-7-88-10 (February 21, 1990). See also, **Lathrop**, § 31-301. Factual findings and § 31-325.

Levanti v. Dow Chemical Co., 8 Conn. Workers' Comp. Rev. Op. 93, 815 CRD-2-89-1 (May 15, 1990), **aff'd**, 218 Conn. 9 (1991).
Apportionment of liability not applicable. Insurer liable for first 104 weeks of disability even if previous impairments partially contributed to disability. Also an additional 5% permanent partial back disability imposed on a 10% pre-existing permanent partial back disability constitutes a disability which is materially and substantially greater than that which would have resulted from the second injury alone.

Glynn v. Terry Corporation, 8 Conn. Workers' Comp. Rev. Op. 87, 806 CRD-2-89-1 (May 14, 1990).
Insurer on risk at time of second injury liable for increase in permanent partial disability. See also, **Glynn**, § 31-307b.

Hehl v. Kimberly Clark Corp., 8 Conn. Workers' Comp. Rev. Op. 38, 774 CRD-7-88-10 (February 21, 1990).
Second Injury Fund ordered to pay additional permanency award pursuant to § 31-349(a) for an injury previously acknowledged pursuant to § 31-325 where new injuries and additional disability would not have occurred but for repetitive trauma in the workplace.

Rossomondo v. Ridgewood Nurseries, 7 Conn. Workers' Comp. Rev. Op. 89, 846 CRD-3-89-4 (October 3, 1989).
Section 31-306(b) spousal benefits calculated from date of injury not date of death. See, Funaro v. Hamden, 7 Conn. Workers' Comp. Rev. Op. 40, 649 CRD-3-87 (July 26, 1989).

Vieta v. Consolidated Cigar, 7 Conn. Workers' Comp. Rev. Op. 48, 677 CRD-6-87 (August 3, 1989).
Employer liable for separate 104 week benefit period for each injury scheduled or unscheduled that may have arisen from same accident before transferring liability to the Fund. See also, **Vieta**, § 31-308(b)(c).

Funaro v. Hamden, 7 Conn. Workers' Comp. Rev. Op. 40, 649 CRD-3-87 (July 26, 1989).
Sec 31-349 contemplates only a single 104 week waiting period for disability and death subsequent to the disability and not two distinct and separate periods.

Heyward v. The Joseph Kelly Co., Inc., 7 Conn. Workers' Comp. Rev. Op. 30, 635 CRD-3-87 (July 24, 1989).
Employer liable when compensable injury aggravates a pre-existing condition. Remanded for determination of potential Second Injury Fund involvement due to pre-existing condition. See also, **Heyward**, § 31-307.

Franzese v. Lombard Brothers, 6 Conn. Workers' Comp. Rev. Op. 109, 585 CRD-5-87 (February 23, 1989).
Remanded for articulation of factual findings to determine on what basis § 31-349 requirements were not met.

Gacso v. Valleries Transportation Service, 6 Conn. Workers' Comp. Rev. Op. 35, 529 CRD-7-86 (September 30, 1988).
Affirmed the trial commissioner's conclusion that diabetes which worsened after claimant's hand injury did not result in additional permanent partial disability of claimant's hand which could be transferred to Second Injury Fund.

Carpentino v. Perkins Trucking Co., 5 Conn. Workers' Comp. Rev. Op. 40, 488 CRD-3-86 (April 6, 1988).
Trial commissioner's decision that liability should not be transferred to Second Injury Fund because claimant's disability was due to head trauma injury and not carbon monoxide poisoning affirmed.

D'Abbraccio v. Southern Conn. Gas Co., 4 Conn. Workers' Comp. Rev. Op. 75, 441 CRD-3-86 (May 21, 1987).
Previous existing injury will not result in apportionment.

Kennawi v. Revere Textile Prints, 4 Conn. Workers' Comp. Rev. Op. 27, 214 CRD-2-83 (March 10, 1987).
Substantiality concept does not apply to the resulting disability. Also 104 week period is to be calculated for each separate injury.

Buikus v. Dunham-Bush, Inc., 3 Conn. Workers' Comp. Rev. Op. 83, 149 CRD-1-82 (November 10, 1986).
Liability for a physical defect acknowledged under § 31-325 will not be shifted to the Fund for a condition not plainly described.

Kiernan v. Roadway Express, Inc., 3 Conn. Workers' Comp. Rev. Op. 129, 270 CRD-5-83 (December 23, 1986), **no error**, 15 Conn. App. 625 (1988), **cert. denied**, 210 Conn. 801 (1988).
Strict compliance with notice deadline and all procedural requirements of § 31-349 before liability will be transferred to Second Injury Fund.

Fusco v. TRW Geometric Tool, 4 Conn. Workers' Comp. Rev. Op. 132, 472 CRD-3-86 (December 16, 1987).
Total resultant permanent disability need not be causally related only to the second injury.

Day v. Ross & Roberts, Inc., 4 Conn. Workers' Comp. Rev. Op. 148, 188 CRD-4-82 (January 27, 1988).
Where claimant had a prior preexisting injury leaving him with a 20% loss of use of his back and sustained second injury leaving him with an additional 10% loss of use of his back, claimant was only entitled to the additional 10%.

Sibley v. New Canaan, 2 Conn. Workers' Comp. Rev. Op. 118, 209 CRD-7-83 (February 5, 1985).
Claimant must present evidence of impaired earning capacity in order to receive such benefits.

Aurora v. Miami Plumbing & Heating, Inc., 2 Conn. Workers' Comp. Rev. Op. 113, 238 CRD-7-83 (December 10, 1984), **no error**, 6 Conn. App. 45 (1986).
Where expert witness testified injury was likely to have resulted in exacerbation of pre-existing condition, testimony was sufficient so as to prove pre-existing condition.

Tusman v. Spiegel & Zemicnik, Inc., 1 Conn. Workers' Comp. Rev. Op. 153, 63 CRD-3-81 (August 3, 1982), **no error**, 38 Conn. Sup. 607 (1982).
Disability must exist 104 weeks before transfer of liability to Fund. Also, Fund must be a party to proceedings.

Baez v. Norwalk Housing Authority, 1 Conn. Workers' Comp. Rev. Op. 36, 16 CRD-7-80 (June 1, 1981).
Calculation of 90 days prior to 104 week period is calculable on a weekly rather than daily basis.

Kramer v. General Electric Co., 1 Conn. Workers' Comp. Rev. Op. 12, 17 CRD-4-80 (November 13, 1980), **aff'd**, 37 Conn. Sup. 742 (1981).
Failure to file notice with Second Injury Fund 90 days prior to 104 week period results in non-acceptance of liability.

Sec. 31-352. Enforcement of liability of third person.

Petraroia v. City News & Tobacco, 15 Conn. Workers' Comp. Rev. Op. 268, 2211 CRB-5-94-11 (June 14, 1996).
Claimant settled third party claim; she, her attorney, and the respondent employer split the $75,000 stipulated judgment evenly three ways, with the employer receiving $25,000 in full satisfaction of its $43,500 workers' compensation lien. At the time of the stipulation, the case was not ripe for transfer to the Second Injury Fund, which was not made party to the third party action or the stipulated judgment. The case was later transferred to the Fund. The trial commissioner held that the stipulation was not binding on the Fund, and that it should be construed as a voluntary agreement requiring a commissioner's approval before credit could be waived. He concluded that the Fund was entitled to a $25,000 credit against future compensation due the claimant. Held, although § 31-293 should not be read to require notice of an action to be sent to the Fund before its liability has begun to accrue, the rights granted to the Fund by § 31-352 must be

protected to remain meaningful. The trial commissioner is the person best situated to do so. A stipulation constitutes a voluntary agreement under § 31-296, and must be approved by a commissioner to be effective against a nonparty. It can also be modified under § 31-315. Here, it was appropriate to refuse to enforce the stipulation against the Fund, as they had not assented to it. However, the $25,000 setoff ordered by the commissioner would only affect the claimant. As the employer is the party who benefits most from Fund involvement, it should not be allowed to retain the full benefit of the settlement. Remanded for consideration of a modification of the settlement agreement pursuant to § 31-315. See also, **Petraroia**, § 31-293.

Sec. 31-355(a). Hearings; Notices to Treasurer Re: Fund Liability.

Matey v. Dember, 3153 CRB-5-95-8 (January 10, 1997), **aff'd in part and rev'd in part**, 256 Conn. 456 (2001).
Commissioner did not have authority to order payment from Fund until award was first made against employer, and not paid. Case remanded to trial commissioner for entry of such an order. Supreme Court, in n.11 of its opinion, stated that there was no clear basis for CRB's finding that an award had not been entered against employer, though such an order is generally necessary before Fund may be ordered to pay. See also, **Matey**, § 31-301. Appeal procedure and § 31-315. Prior decision at Matey, 5 Conn. Workers' Comp. Rev. Op. 104, 516 CRD-5-86 (June 14, 1988), appeal dismissed**,** 210 Conn. 626 (1989)(per curiam), § 31-278, § 31-310, Matey, 1189 CRD-5-91-3 (April 5, 1991), 31-301. Appeal procedure. Subsequent decision at Matey, 3848 CRB-7-98-6 (July 7, 1999), aff'd in part and rev'd in part, 256 Conn. 456 (2001), § 31-355(b), Matey, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), appeal dismissed for failure to comply with Supreme Court's directive, 85 Conn. App. 198 (2004).

Powers v. Savage, 8 Conn. Workers' Comp. Rev. Op. 178, 892 CRD-4-89-7 (November 30, 1990).
See, Kluttz v. Howard, infra.

Kluttz v. Howard, 8 Conn. Workers' Comp. Rev. Op. 51, 664 CRD-4-87 (March 8, 1990).
Reversed where trial commissioner erred in not allowing the Second Injury Fund, the real party in interest, to participate in proceedings below involving jurisdictional issues.

Cordero v. Ramon Sanchez, 8 Conn. Workers' Comp. Rev. Op. 9, 760 CRD-6-88-8 (December 28, 1989).
Notice is a necessary prerequisite for jurisdiction. Sec. 31-351 mandates that the Second Injury Fund be notified of hearings on matters for which it may be liable.

Sorbello v. Gagnon, 6 Conn. Workers' Comp. Rev. Op. 3, 567 CRD-6-87 (August 12, 1988).
Trial commissioner should not issue order against Second Injury Fund for the liability of a dissolved corporation where the Fund did not receive notice of hearing.

Sec. 31-355(b). Employer's failure to comply with award. Second Injury Fund liability.

Degnan v. Employee Staffing of America, Inc., a/k/a Labor Force of America, 4580 CRB-3-02-10 (October 27, 2003).
CRB remanded case for additional proceedings where trier had granted motion to correct findings to eliminate all subordinate findings concerning agreement between parties that employer was uninsured, yet left in place legal conclusion that employer had no insurance. Commission records as maintained by NCCI indicated that insurance policy was in effect on date of injury, and most efficient resolution of case will be obtained by expedited hearing to resolve insurance issue, along with entry of revised findings. See also, **Degnan**, § 31-275(9), § 31-292, § 31-348.

Williams v. Merestone Construction, 4436 CRB-4-01-9 (July 3, 2002), **appeal dismissed**, A.C 23281 (October 24 2002), A.C. 24164 (March 25, 2004), **cert. denied**, 269 Conn. 905 (2004).
See, **Williams**, § 31-301. Appeal procedure, and § 31-293.

Taylor v. Ron Fournier Builders, 4257 CRB-5-00-6 (July 30, 2001).
Claimant was found to be employee of uninsured respondent employer, but underlying claim was dismissed. Employer was subsequently ordered to pay for cost of commissioner's exam. When employer failed to pay, trier entered § 31-355 order against Fund for $557 cost of exam. CRB held that Fund was required to cover this amount, as § 31-294f directs that employer shall be responsible for cost of exam, and uninsured respondent was found to be claimant's employer. Award had been entered against employer, which was not appealed. Board declined to interpret the term "award" as used in § 31-355(b) to exclude dismissal orders. See also, **Taylor**, § 31-301. Appeal procedure, and § 31-294f.

Matey v. Dember, 3848 CRB-7-98-6 (July 7, 1999), **aff'd in part and rev'd in part**, 256 Conn. 456 (2001).
CRB affirmed trial commissioner's decision, which denied the Fund's Form 43 contesting an order to pay pursuant to § 31-355. Fund argued that an order of payment against it pursuant to § 31-355 was improper because no order has ever been entered against a living person or against the executors of the employer's estate. CRB declined to relitigate these issues as they had already been decided in previous board decisions. In addition, the board did not agree with the Fund's argument that it has a right to a *de novo* hearing pursuant to § 31-355(b) where, as here, the Fund participated in the hearings below. Supreme Court agreed that Fund had no right to de novo hearing where it had opportunity to participate in prior proceedings concerning liability, but disagreed in n.11 of its opinion with CRB's assessment that no award had been entered against the employer. Prior decisions at Matey, 5 Conn. Workers' Comp. Rev. Op. 104, 516 CRD-5-86 (June 14, 1988), appeal dismissed**,** 210 Conn. 626 (1989)(per curiam), § 31-278, § 31-310, Matey, 1189 CRD-5-91-3 (April 5, 1991), § 31-301. Appeal procedure, Matey, 3153 CRB-5-95-8 (January 10, 1997), aff'd in part and rev'd in part, 256 Conn. 456 (2001), § 31-301. Appeal procedure, § 31-315, § 31-355(a). Subsequent decision,

Matey, 4488 CRB-7-02-2, 4532 CRB-5-02-5 (May 14, 2003), appeal dismissed for failure to comply with Supreme Court's directive, 85 Conn. App. 198 (2004).

Park v. New York State Insurance Fund, 16 Conn. Workers' Comp. Rev. Op. 8, 2216 CRB-1-94-11 (October 3, 1996), **rev'd**, 46 Conn. App. 596 (1997).
See, **Park**, § 31-288 and § 31-343**.**

Champlain v. Eric Parnes d/b/a Physical Therapy Clinic, 14 Conn. Workers' Comp. Rev. Op. 113, 1860 CRB-2-93-9 (June 2, 1995).
CRB reversed § 31-349 transfer, and held that commissioner should have applied § 31-355 (which provides that Fund will pay claim where employer unable to pay). Claimant sustained a second injury which qualified for transfer under § 31-349, however, at time of second injury the employer was uninsured. CRB held that employer could not transfer claim to Fund due to lack of insurance. (*Santos, C.,* **dissenting**) (there is no requirement in § 31-349 that the employer be insured. Majority is adding a penalty for non-insurance, namely disallowing transfers under § 31-349, which is not contained in the statutes). See also, **Champlain**, § 31-349.

Walton v. Hector Trucking, 13 Conn. Workers' Comp. Rev. Op. 239, 1835 CRB-1-93-9 (April 13, 1995).
Second Injury Fund claimed that Chapter 7 discharge of employer in bankruptcy rendered workers' compensation award null and void, thus precluding § 31-355 claim against Fund. Held, because neither bankruptcy petition nor discharge order specifically addressed claim for workers' compensation benefits, CRB could not determine whether debt was discharged. Moreover, relationship between individual debtor and employer unclear, as presence of separate legal entity could affect status of claim. Also, CRB noted that Fund had not yet paid benefits despite presence of order to pay award; Fund ordered to comply with order. See also, **Walton**, § 31-290c.

Hebert v. RWA Roofing & Sheet Metal, 13 Conn. Workers' Comp. Rev. Op. 43, 1759 CRB-2-93-6, 1899 CRB-2-93-11, 2129 CRB-2-94-8 (December 6, 1994).
Where remand was ordered on separate issue regarding principal employer, but finding of compensability against uninsured immediate employer was not appealed, § 31-355 order against Second Injury Fund remains in effect. See also, **Hebert,** § 31-291 and § 31-301. Appeal procedure.

Phelan v. Soda Construction Co., 13 Conn. Workers' Comp. Rev. Op. 53, 1583 CRB-3-92-12 (December 20, 1994).
Purpose of § 31-355 is for the Fund to pay compensation when the employer fails or is unable to pay. The Fund is not liable to pay compensation to injured employee of uninsured subcontractor where trial commissioner finds principal employer liability. See also, **Phelan**, § 31-291. See later Phelan, § 31-310.

Aubertin v. Pacelli Bros., 12 Conn. Workers' Comp. Rev. Op. 69, 1381 CRB-1-92-2 (February 3, 1994).
Where employer's insurance policy is canceled, and employer remains uninsured and fails to pay benefits, statute does not authorize trial commissioner to require the second injury fund to repay insurer who mistakenly paid benefits.

Kluttz v. Howard, 10 Conn. Workers' Comp. Rev. Op. 195, 1188 CRD-4-91-3 (November 5, 1992), **aff'd**, 228 Conn. 401 (1994).
CRB affirmed trier's factual finding that Connecticut has jurisdiction over out of state truck driver's claim under principles outlined in Supreme Court's decision in Cleveland v. U.S. Printing Ink, Inc., 218 Conn. 181 (1991). Second Injury Fund requested CRB apply interest analysis rule regarding actual working time spent in Connecticut as decided by our appellate court in Cleveland, 21 Conn. App. 610 (1990). Additionally, Second Injury Fund argued inequitability of Supreme Court's ruling in Cleveland, 218 Conn. 181 (1991) in that, here, the Fund is forced to assume liability for an uninsured out of state employer. CRB while sympathetic to the Fund's claim, held that the only available method of change is through legislation.

Altieri v. B.K.S. Excavating, Inc., 10 Conn. Workers' Comp. Rev. Op. 83, 1146 CRD-3-90-12 (April 10, 1992).
Reversed. Trier failed to allow Second Injury Fund the opportunity to litigate whether a potential principal employer liability claim existed pursuant to § 31-291. The fact that the trial commissioner found B.K.S. Excavating the uninsured employer does not eliminate the need to fully litigate and hear evidence regarding a possible § 31-291 principal employer claim. See also, **Altieri**, § 31-275(10), § 31-291 and § 31-301, Factual findings.

Bethune v. A & A Seafood, 9 Conn. Workers' Comp. Rev. Op. 79, 927 CRD-3-89-10 (February 20, 1991).
CRD vacated order against S.I.F. and remanded matter as statute clearly requires award be made against liable employer first.

McGloin v. Gateway Industries, 5 Conn. Workers' Comp. Rev. Op. 148, 618 CRD-1-87 (July 26, 1988).
Second Injury Fund not liable for awards of interest entered against an employer due to undue delay.

Sec. 31-355(e). Insolvent insurers and Connecticut Insurance Guaranty Association liability.

Simmons v. UTC/Sikorsky Aircraft Div., 3904 CRB-4-98-9 (September 17, 1999).
See, **Simmons**, § 31-299b.

Pantanella v. Enfield Ford, 3377 CRB-1-96-7 (January 28, 1998), **aff'd**, 65 Conn. App. 46 (2001), **cert. denied**, 258 Conn. 930 (2001)(along with Case No. 3937).
CIGA could not prevail on arguments that trier did not have jurisdiction to rule on a CIGA Act matter, that the alleged injury was not a "covered claim," and that the claimant failed to exhaust his rights under other insurance policies before seeking payment from CIGA. However, the trier did not make a finding regarding satisfaction of the § 38a-841 two-year statute of limitations, so the case was remanded on that ground. See also, **Pantanella**, § 31-298, § 31-299b, § 31-301. Factual findings. Subsequent decisions in Pantanella, 4220 CRB-1-00-4 (December 19, 2000), § 31-298, § 31-300; Pantanella, 3937 CRB-1-98-11 (January 7, 2000), § 31-299b, § 31-300, § 31-301. Factual findings. See also, **Pantanella**, § 31-298, § 31-315.

Hunnihan v. Mattatuck Mfg. Co., 16 Conn. Workers' Comp. Rev. Op. 72, 2297 CRB-5-95-2 (October 30, 1996), **rev'd**, 243 Conn. 438 (1997).
See discussion in § 31-299b notes.

Sec. 5-142(a). Disability compensation state employees (full pay).

Hudson v. State/Dept. of Correction, 4582 CRB-3-02-11 (October 31, 2003).
CRB affirmed commissioner's finding claimant was entitled to full pay under § 5-142(a) when injury occurred while claimant was responding to an inmate's attempted suicide. See also, **Hudson,** § 31-300, § 31-301. Appeal procedure.

Johnson v. State/Dept. of Correction, 4162 CRB-1-99-12 (January 25, 2001), **aff'd**, 67 Conn. App. 330 (2001), **cert. granted**, 259 Conn. 924 (2002).
CRB reversed trier's award of full salary benefits to prison guard who was injured when he caught inmate as inmate slipped exiting shower. Claimant was not "restraining" inmate within meaning of statute, as he acted instinctively, and without the impression that inmate was attempting to behave in hostile manner that required the sort of "restraint" that is an especially hazardous component of prison guard's duties.

Bouchard v. State/Dept. of Mental Health and Addiction, 4120 CRB-8-99-9 (July 28, 2000).
CRB reversed trial commissioner's conclusion that claimant's injuries were a direct result of the special hazards inherent in his duties. Claimant, a supervisor at Whiting Forensic Institute, injured his ankle when he fell to the ground while playing volleyball with inmates and other staffers. Though it was reasonable to find that injury occurred during the course of the claimant's "attending" duties, there was no evidence to show that the particular situation in which the claimant was injured was especially hazardous. History of P.A. 91-339 and circumstances of amendment's adoption indicate that claimant must demonstrate a direct connection between the unusual threat posed by patients at the institute and the injury actually suffered.

Herbert v. State/Dept. of Mental Health & Addiction Services/Cedarcrest, 3766 CRB-6-98-2 (May 13, 1999).
CRB affirmed trier's decision that claimant, who contracted tuberculosis in 1957 while she was working at Cedarcrest as part of her nursing school training and also earning wages for working hospital shifts, was entitled to COLAs under § 31-307a. The claimant did not specifically elect to be compensated under § 5-142(b) instead of the total disability section of the Workers' Compensation Act. The respondent's written acceptance of her condition as compensable, followed by its payment of $12 per week to her (the statutory minimum under the Act at the time of her injury) for the next several decades, is evidence that the case was accepted under the predecessor to § 31-307 instead of the predecessor to § 5-142. See also, **Herbert**, § 31-307a.

Courtright v. State/Connecticut Valley Hospital, 3573 CRB-6-97-4 (June 5, 1998).
Cost of living adjustments pursuant to § 31-307a are not applicable to § 5-142(a) benefits. See also, **Courtright**, § 31-301-4, § 31-315.

Lessard v. State, 13 Conn. Workers' Comp. Rev. Op. 212, 1753 CRB-5-93-6 (March 30, 1995).
"Full salary" under statute does not include everything included in "wages" and "earnings," as discussed in Vecca v. State, 29 Conn. App. 559 (1992). Commissioner properly excluded daily meal allowance, police dog maintenance stipend, and clothing stipend under Vecca. Also, nothing prevented commissioner from inferring from stipulation that state police officer's dog handler and resident trooper pay were not salary adjustments within statute.

Gray v. State/Fairfield Hills Hospital, 12 Conn. Workers' Comp. Rev. Op. 279, 1476 CRB-4-92-8 (June 7, 1994).
Trier found claimant, a rehabilitation therapist, sustained an injury which occurred while "restraining" a mentally retarded patient. Claimant's injury was a direct result of the special hazards inherent in such duties and therefore claimant was entitled to full pay provisions under the Act. See, Lucarelli v. State, 16 Conn. App. 65 (1988).

Masi v. State/Dept. of Revenue Services, 11 Conn. Workers' Comp. Rev. Op. 231, 1342 CRD-6-91-11 (November 8, 1993).
Claimant, a special police officer, denied § 5-142(a) benefits as his injury was sustained in a motor vehicle accident while driving to perform an inspection. Injury did not occur while in the actual performance of the inspection. See, Stuart v. Dept. of Correction, 221 Conn. 41 (1992).

Gillette v. State/J.B. Gates Correctional Unit, 10 Conn. Workers' Comp. Rev. Op. 69, 1145 CRD-2-90-11 (March 26, 1992), **vacated and reissued** (July 8, 1992).
Trier found claimant, who was on his way to lunch when he slipped and fell sustaining a compensable injury was not entitled to § 5-142(a) full pay benefits as claimant was not in the actual performance of his guard duties at the time of his injury. See, Stuart v. Dept. of Correction, 221 Conn. 41 (1992). See also, **Gillette**, § 31-315, and § 31-296.

Vecca v. State/Whiting Forensic Institute, 9 Conn. Workers' Comp. Rev. Op. 280, 1123 CRD-8-90-10 (December 16, 1991), **aff'd**, 29 Conn. App. 559 (1992).
CRD reversed trier's finding which awarded claimant overtime pay, shift differential and maintenance allowance sums in computing full salary under provisions of § 5-142(a). See, Supreme Court's decision in Jones v. State/Mansfield Training School, 220 Conn. 721 (1992) and Trinkley v. State/Ella Grasso Regional Center, 220 Conn. 739 (1992) where court held state employees have a choice whether to collect benefits under § 5-142(a) or Chapter 568.

Stuart v. State/Dept. of Correction, 9 Conn. Workers' Comp. Rev. Op. 81, 932 CRD-2-89-10 (February 26, 1991), **rev'd**, 221 Conn. 41 (1992).
CRD relied on Lucarelli v. State, 4 Conn. Workers' Comp. Rev. Op. 58, 262 CRD-4-83 (April 27, 1987), aff'd, 16 Conn. App. 65 (1988), finding claimant, a food service supervisor, was entitled to full pay. Supreme Court held claimant was not in the actual performance of guard duties at the time of injury.

Trinkley v. State/Ella Grasso Regional Center, 9 Conn. Workers' Comp. Rev. Op. 58, 924 CRD-5-89-10 (February 6, 1991), **rev'd**, 220 Conn. 739 (1992).
CRD reversed trial commissioner and held that state employee eligible for benefits pursuant to § 5-142(a) was not entitled to concurrent employment benefits pursuant to § 31-310. Supreme Court reversed CRD and held a claimant who is eligible to receive benefits pursuant to § 5-142(a) may elect to have benefits calculated under § 31-310 which allows for concurrent employment. See also, **Trinkley**, § 31-301, Appeal procedure. See, Benoit v. State/Norwich State Hospital, 9 Conn. Workers' Comp. Rev. Op. 58, 920 CRD-2-89-9 (February 6, 1991), infra.

Benoit v. State/Norwich State Hospital, 9 Conn. Workers' Comp. Rev. Op. 58, 920 CRD-2-89-9 (February 6, 1991).
State employee receiving full salary benefits under § 5-142(a) is not entitled to concurrent employment benefits pursuant to § 31-310. See also, **Benoit**, § 31-310. N.B. See, Trinkley, supra.

Jones v. State/Mansfield Training School, 9 Conn. Workers' Comp. Rev. Op. 53, 986 CRD-2-90-2 (February 4, 1991), **rev'd**, 220 Conn. 721 (1992).
CRD reversed trial commissioner's conclusion claimant could choose to elect benefits pursuant to § 31-307 rather than § 5-142(a). Supreme Court reversed CRB holding that § 5-142(a) is designed to enhance benefits. Section 5-142(a) is not an exclusive remedy. Employee can pursue benefits under an alternate statute to allow a greater recovery. Also the word "shall" as used in § 5-142(a) is directory rather than mandatory. Dissenting opinion argue that language in § 5-142(a) is clear, "shall" is "shall." But see, Palmer v. State, 9 Conn. Workers' Comp. Rev. Op. 53, 900 CRD-4-89-7 (February 4, 1991), infra.

Palmer v. State/Fairfield Hills, 9 Conn. Workers' Comp. Rev. Op. 53, 900 CRD-4-89-7 (February 4, 1991).
Overtime earnings by state employees are not part of the full salary provisions in § 5-142(a), therefore overtime should not be considered when calculating benefits. See also, **Palmer**, § 31-307.

DiBenedetto v. State/University of Connecticut Health Center, 9 Conn. Workers' Comp. Rev. Op. 1, 862 CRD-6-89-5 (January 3, 1991).
In order to receive full pay for first five years, compensability needs to be established by proof that the injury arose out of the performance of duties. See also, **DiBenedetto**, § 5-145a.

Minotti v. State, 6 Conn. Workers' Comp. Rev. Op. 165, 611 CRD-2-87 (June 2, 1989). See, **Minotti**, § 31-296.

Harper v. State, 4 Conn. Workers' Comp. Rev. Op. 113, 319 CRD-1-84 (October 15, 1987).
Claimant not entitled to full pay where injuries sustained did not occur while attending or restraining an inmate.

Lucarelli v. State, 4 Conn. Workers' Comp. Rev. Op. 58, 262 CRD-4-83 (April 27, 1987), **no error**, 16 Conn. App. 65 (1988).
To secure benefit of full pay under statute claimant needs only to show injury was sustained in the performance of guard duties.

Estabrook v. State, 3 Conn. Workers' Comp. Rev. Op. 79, 310 CRD-2-84 (November 5, 1986).
Claimant entitled to full pay benefits where employment status changed to full time.

Lamke v. State, 3 Conn. Workers' Comp. Rev. Op. 41, 193 CRD-2-83 (1986).
Claimant who works for state agency which treats persons afflicted with mental defects entitled to full pay even though agency is not in the Department of Mental Health.

Heckman v. State, 1 Conn. Workers' Comp. Rev. Op. 79, 57 CRD-6-81 (December 8, 1981).
Employee of alcoholic treatment center entitled to full pay.

Lockwood v. State, 1 Conn. Workers' Comp. Rev. Op. 57, 32 CRD-4-80 (September 17, 1981).
Nurse entitled to full pay when injured while attending a mentally ill patient.

Sec. 5-145a. Hypertension or heart disease in certain university, aeronautics, capitol security, correction, mental health, criminal justice or hazardous duty personnel.

Bergin v. State/Dept. of Correction, 4200 CRB-8-00-3 (August 23, 2001), **aff'd**, 75 Conn. App. 591 (2003), **cert. denied**, 264 Conn. 903 (2003).
Claimant (dependent widow) filed a Motion to Reopen in which she argued that the trier decided only her § 5-145a claim but failed to decide her Chapter 568 claim. Board explained standard for a hypertension/heart attack claim under Chapter 568 as opposed to a § 5-145a claim, and held that trier properly dismissed both claims. Here, heart attack occurred after the decedent retired, and although there was evidence that hypertension caused heart attack, there was no medical evidence that hypertension was caused by employment. See also, **Bergin**, § 31-301. Appeal procedure, and § 31-315.

Horn v. State/Dept. of Correction, 4177 CRB-3-00-1 (February 22, 2001).
CRB confirmed that statutory presumption of compensability is rebuttable, though doctrine of law of case would have permitted panel to simply rely on earlier Horn CRB opinion. Instead, panel clarified that evidence must be deemed credible in order to rebut statutory presumption, and explained its reasoning regarding constitutional invalidity of irrebuttable presumptions. See also, **Horn**, § 31-301. Factual findings. Prior decision at Horn, 3727 CRB-3-97-11 (December 16, 1998), infra, and § 31-294c.

Salmeri v. State/Dept. of Public Safety, 4066 CRB-5-99-6 (August 9, 2000), **aff'd**, 70 Conn. App. 321 (2002).
CRB affirmed trier's decision that claimant's workplace attack of atrial fibrillation established heart disease within § 5-145a, though no organic damage to heart was visible. Abnormality of heart rhythm can also be a disease. Trier was entitled to rely on doctor's testimony that the compensable arrhythmic attack made the claimant more susceptible to further attacks in the future, thus permanently aggravating the pre-existing condition and entitling the claimant to 10% permanent partial impairment award.

Capra v. State/Dept. of Correction, 3791 CRB-4-98-4 (April 27, 1999).
Trier found that claimant was diagnosed with mild hypertension, but removed self from employment without medical reports establishing that ailment as the basis of his decision to leave work. Allegation of total disability dismissed, as claimant did not meet burden of proof that workplace incidents caused increased stress, and trier rejected medical opinions connecting hypertension with claimant's post-traumatic stress disorder. CRB affirmed. Doctor's testimony offered by respondent constituted competent evidence, and statutory presumption of compensability was overridden. Presumption must be rebuttable in order to remain constitutional. See also, **Capra**, § 31-298, § 31-301. Appeal procedure.

Horn v. State/Dept. of Correction, 3727 CRB-3-97-11 (December 16, 1998).
Statute grants rebuttable presumption of compensability. Trier cited in findings doctor's report that attributed causation to factors outside workplace, but did not mention it in his conclusions. Meanwhile, trier also found claimant's description of workplace stress not credible. CRB remanded case for further findings, as rebuttable presumption was not

sufficiently addressed. See also, **Horn**, § 31-294c. Subsequent decision at Horn, 4177 CRB-3-00-1 (February 22, 2001), supra, § 31-301. Factual findings.

Grant v. State/Dept. of Correction, 11 Conn. Workers' Comp. Rev. Op. 93, 1265 CRD-5-91-8 (May 14, 1993).
Claim for benefits due to hypertension and a cerebrovascular accident (stroke) denied where evidence clearly rebutted presumption provided in § 5-142a. Claimant sought to introduce into evidence results of a preemployment physical exam as the results of this exam were not available for introduction in the proceedings below. CRB held even if claimant had the opportunity to present said evidence the issue is moot as evidence and findings clearly indicate respondents overcame statute's rebuttable presumption. See, DiBenedetto v. State, 9 Conn. Workers' Comp. Rev. Op. 1, 862 CRD-6-89-5 (January 3, 1991), infra.

DiBenedetto v. State/University of Connecticut Health Center, 9 Conn. Workers' Comp. Rev. Op. 1, 862 CRD-6-89-5 (January 3, 1991).
Compensability is established on a prima facie case basis if the employer offers no evidence to contest. Employee receives full pay for first three months, after that all provisions of Chapter 568 apply.

Sec. 7-314a. Volunteer firemen.

Hardt v. Town of Watertown, 4743 CRB-5-03-10 (November 30, 2004).
CRB reversed trial commissioner's determination claimant was in training under § 7-314a while injured during a town sponsored basketball game. Panel found claimant was not in training for or engaged in volunteer fire duties.

Peabody v. Shelton, 16 Conn. Workers' Comp. Rev. Op. 25, 3024 CRB-4-95-3 (October 8, 1996), **aff'd**, 45 Conn. App. 913 (1997)(per curiam), **cert. denied**, 242 Conn. 906 (1997).
Claimant was a member of a volunteer fire company. Claimant's status as a member had been changed to "life active member." Claimant was assigned the task of updating certain computer records. While waiting for a computer room to complete his assigned task, the claimant suffered a heart attack. The trial commissioner found claimant's heart attack did not occur while claimant was an active member of the fire company as not only had the claimant's status been changed, but there was evidence that claimant was unable to physically perform the duties expected of an active member. CRB affirmed trier's denial of benefits pursuant to § 7-314 and § 7-314a.

Wannagot v. Shelton, 12 Conn. Workers' Comp. Rev. Op. 256, 1512 CRB-4-92-9 (June 2, 1994), **aff'd**, 38 Conn. App. 754 (1995), **cert. denied**, 235 Conn. 919, 920 (1995).
Trier properly determined that claimant widow had been overpaid compensation benefits where benefits were paid at the maximum weekly compensation rate. Section 7-314a sets the average weekly earnings of the decedent as the average weekly earnings of production workers. Claimant widow was entitled to sixty-six and two-thirds percent of

the average production wage in effect on the date of her husband's heart attack which caused his death.

Wislocki v. Prospect, 9 Conn. Workers' Comp. Rev. Op. 222, 1010 CRD-5-90-5 (October 21, 1991), **aff'd**, 27 Conn. App. 919 (1992)(per curiam), **aff'd**, 224 Conn. 479 (1993).
Volunteer fireman who sustains a compensable injury while performing fire duties and was also regularly employed full time by a local manufacturer is not entitled to § 31-310 concurrent employment benefits. See also, **Wislocki**, § 31-310.

Thomas v. Lisbon, 4 Conn. Workers' Comp. Rev. Op. 136, 364 CRD-2-84, 365 CRD-2-84 (December 24, 1987), **error**, **judgment directed**, 209 Conn. 268 (1988).
See, **Thomas**, § 7-322a.

Sec. 7-322a. Volunteer firemen serving another fire company.

Thomas v. Lisbon, 4 Conn. Workers' Comp. Rev. Op. 136, 364 CRD-2-84, 365 CRD-2-84 (December 24, 1987), **error**, **judgment directed**, 209 Conn. 268 (1988).
CRD held municipality which had mutual aid agreement with other municipality held liable for volunteer fireman's injuries while fighting fire for benefit of other municipality.

Collins v. Milford, 3 Conn. Workers' Comp. Rev. Op. 103, 181 CRD-3-82 (December 1, 1986), **error**, **remanded in part**, 15 Conn. App. 84 (1988).
Returning an antique fire engine to headquarters after a parade where claimant offered his services to a person in charge of another fire company was found to constitute an activity engaged in as part of fire duties.

Secs. 7-433a, 7-433b & 7-433c. Heart and Hypertension Act.

Peck v. Town of Somers, 4640 CRB-1-03-2 (March 5, 2004).
CRB upheld trial commissioner's dismissal of § 7-433c claim as untimely. Claimant had knowledge of his hypertension and failed to file notice of claim within a year. See also, **Peck**, § 31-301. Factual findings, § 31-301-4. Correction of Finding.

Mayer v. Town of East Haven, 4620 CRB-3-03-2 (March 3, 2004).
CRB found § 7-433c claim timely, claimant's hypertension and heart disease were separate maladies. Section 7-433c does not bar claimant from collecting benefits for heart disease when he was previously diagnosed with hypertension.

Hunt v. Borough of Naugatuck, 4607 CRB-5-02-12 (February 9, 2004), **appeal dismissed for lack of final judgment**, A.C. 25129 (April 21, 2004), **cert. granted**, 269 Conn. 916 (2004).
CRB found claim for § 7-433c benefits timely. Claimant filed first Form 30C after high blood pressure reading, which could have led to a claim for benefits. Any incorrect date

of injury was a defect, rather than a bar to the claim. Respondents had constructive notice of the claim within one year of the date of injury via attendance at informal hearings. Whether pre-employment physical examination revealed any evidence of hypertension or heart disease is a factual issue the trial commissioner reasonably decided. See also, **Hunt**, § 31-294c.

Genesky v. East Lyme, 4600 CRB-8-02-12 (December 8, 2003).
CRB affirmed trier's conclusion that a constable for the municipality was not eligible for benefits as he was not a "regular member of a municipal police department" as that term was construed in Zimmer v. Essex, 38 Conn. Sup. 419 (1982).

Ruffino v. Middletown, 4508 CRB-8-02-3 (March 12, 2003).
CRB affirmed trial commissioner's ruling that the claimant was not entitled to a late payment penalty pursuant to § 31-295 and § 31-303 for permanent partial disability benefits where claimant was paid pension benefits during period following approval of a Voluntary Agreement. A period of some four months during which claimant received actual dollar payments although arguably mischaracterized as pension benefits does not constitute a late payment under the Workers' Compensation Act. See also, **Ruffino**, § 31-303.

Bergeson v. New London/Police Dept., 4489 CRB-2-02-2 (February 21, 2003), **aff'd**, 269 Conn. 763 (2004).
Reversal of trier's order that Second Injury Fund assume liability for COLAs being paid by city to dependent widow as per § 31-306(a)(2)(A). Claim arose under § 7-433c, which takes it outside Workers' Compensation Act as per McNulty v. Stamford, 37 Conn. App. 835 (1995). See also, **Bergeson**, § 31-306.

Rinaldi v. Enfield, 4459 CRB-1-01-11(December 27, 2002), **aff'd**, 82 Conn. App. 505 (2004).
No error where trier allowed respondent to provide claimant with full medical coverage for heart-related care by either paying bills directly, or by instructing claimant to process bills through employer-provided group insurance policy, and reimbursing claimant for co-pay costs. As § 7-433c benefits are not technically workers' compensation that self-insured employer was obligated to insure under § 31-284, alternate means of paying benefits could be devised by town. However, trier erred by finding that § 7-433b(b) cap did not apply to combination of claimant's retirement pension and § 31-308a benefit entitlement. See also, **Rinaldi**, § 31-278, and § 31-308a.

Durso v. New Haven, 4393 CRB-3-01-5 (June 5, 2002).
CRB affirmed trier's conclusion that claimant did *not* suffer from hypertension, and thus denied claim for hypertension benefits under § 7-433c. Factual issue for trier whether several high blood pressure readings and receipt of prescription for blood pressure medication constitutes high blood pressure.

Pearce v. New Haven, 4385 CRB-3-01-5 (March 28, 2002), **aff'd**, 76 Conn. App. 441 (2003), **cert. denied**, 264 Conn. 913 (2003).
CRB affirmed trier's finding that claimant's consistently high blood pressure readings from 1988-1990 constituted symptoms of hypertension under the circumstances of the case, rendering 1998 notice of claim untimely.

Demarest v. Stamford, 4370 CRB-7-01-3 (March 14, 2002).
CRB discussed proper means of calculating § 7-433b(b) cap on compensation, and held that retired Stamford patrol officer's cap should be based upon salaries of patrol officers at same pay step claimant was at when he retired. See also, **Demarest**, § 31-278.

Zalot v. Bristol, 4256 CRB-6-00-6 (March 16, 2001).
CRB affirmed ruling that claimant's prior high blood pressure readings were due to transitory symptoms rather than pathological hypertension; thus, 1997 notice was timely. Case controlled by Elumba v. Stamford, 4084 CRB-7-99-7 (August 10, 2000), infra.

Cefaratti v. Wethersfield, 4179 CRB-6-00-1 (February 27, 2001).
CRB affirmed trial commissioner's ruling that claimant's pre-employment physical revealed no evidence of hypertension, and that respondents had failed to rebut presumption of compensability. Burden is on claimant to establish necessary criteria to qualify for benefits; however, once pre-employment physical has been offered into evidence, trier is not required to construe "borderline" blood pressure readings as hypertensive, as if respondents had benefit of the doubt. Instead, parties stand on equal footing in trying to persuade trier to draw inferences from the readings in evidence. No per se legal hypertension line in Connecticut. Trier entitled to reject opinion of sole doctor who testified that moderately high blood pressure readings were indicative of hypertension. Other doctors found claimant fit for employment and attributed abnormal pressure readings to nerves.

Hyatt v. Milford, 4127 CRB-3-99-9 (November 7, 2000).
CRB affirmed the trial commissioner's dismissal of the claimant's § 7-433c claim where the claimant's pre-employment physical examination revealed moderate hypertension. In support of his appeal, the claimant argued that the medical community's 1976 standard (when the pre-employment physical was performed) did not presume that a 140/86 blood pressure reading indicated hypertension. The trial commissioner fully addressed this issue in his decision, specifically finding that an expert medical witness opined that it was medically reasonable for the claimant's 140/86 reading to be considered hypertensive in 1976. Moreover, the physician who performed the pre-employment physical indicated on the pre-employment report that the claimant had "mod. hypertension." Prior decision at Hyatt, 3646 CRB-3-97-7 (August 28, 1998), aff'd, 57 Conn. App. 472 (2000), infra.

Elumba v. Stamford, 4084 CRB-7-99-7 (August 10, 2000).
Medical evidence supported trial commissioner's finding that claimant's 1984 high blood pressure reading was a transitory symptom related to illness, and fact that medication was provided to treat that condition did not trigger the claimant's obligation to file a claim for hypertension benefits.

Obier v. North Haven, 4020 CRB-3-99-4 (August 4, 2000).
Trier awarded claimant (dependent widow) benefits under § 7-433c, but held that employer was entitled to a credit for payments made to her under its pension plan. In support of her appeal, claimant contended that she is entitled to receive *both* workers' compensation benefits and pension benefits without any offset, and also contended that trial commissioner did not have jurisdiction to interpret the town's pension plan contract. Board reaffirmed its holding in Sbona v. Middletown, 3449 CRB-8-96-10 (April 23, 1998), aff'd, 55 Conn. App. 906 (1999)(per curiam) as follows: "Whether a municipal employees's pension plan may be reduced due to receipt of workers' compensation benefits is an issue for a superior court to determine." Discussion regarding legislative history and proposed (but rejected) legislation which would have allowed reduction of heart and hypertension benefits due to receipt of pension benefits.

Auger v. Stratford, 3944 CRB-4-98-12 (January 14, 2000), **rev'd**, 64 Conn. App. 75 (2001).
See, **Auger**, § 31-284b, § 31-300, § 31-296 Voluntary agreements (discontinuance of payments).

Pernacchio v. New Haven, 3911 CRB-3-98-10 (September 27, 1999), **aff'd**, 63 Conn. App. 570 (2001).
CRB affirmed conclusion that claimant provided timely notice of hypertension claim pursuant to § 31-294c. See also **Pernacchio**, § 31-294c.

Krevis v. Bridgeport, 3857 CRB-4-98-7 (August 18, 1999), **aff'd**, 63 Conn. App. 328 (2001).
Relying primarily on the interpretation of Marone v. Waterbury, 244 Conn. 1 (1998), in Czujak v. Bridgeport, 3535 CRB-4-97-2 (June 10, 1998), CRB affirmed trier's ruling that claimant was not entitled to a retroactive or prospective adjustment to his § 7-433b(b) cap. That issue had been settled in 1989, and was not appealed. See also, **Krevis**, § 31-301. Appeal procedure, § 31-301. Factual findings, and § 31-307.

Anzidei v. Cheshire, 3782 CRB-8-98-3 (April 23, 1999).
CRB affirmed trier's dismissal of claim. Two "mildly elevated" blood pressure readings at time of physical examination were evidence of hypertension, as was Acknowledgment of Physical Defect form listing "mild elevation of blood pressure" as defect.

Kelly v. Bridgeport, 3761 CRB-4-98-1 (March 11, 1999), **rev'd**, 61 Conn. App. 9 (2000), **cert. denied**, 255 Conn. 933 (2001).
See, **Kelly**, § 31-284b, and § 31-275(4).

Graves v. Manchester, 3741 CRB-8-97-12 (February 18, 1999).
See, **Graves**, § 31-296 Voluntary agreements (approval of).

King v. New Britain, 3703 CRB-6-97-10 (January 12, 1999).
No error in finding that claimant did not receive medical treatment for hypertension before his January 4, 1996 heart attack. Doctor attributed mildly high blood pressure readings to momentary stress, and trier was not required to interpret a 140/90 reading as hypertensive. Evidence supported finding that claimant was not informed of

hypertension or treated for such a condition in past. Also, even assuming that doctor placed claimant on low-salt diet, that would not necessarily be medical treatment under § 31-294c. See also, **King**, § 31-284(a), § 31-294c.

Hyatt v. Milford, 3646 CRB-3-97-7 (August 28, 1998), **aff'd**, 57 Conn. App. 472 (2000), **cert. denied**, 254 Conn. 901 (2000).
Claimant filed a Form 30C that, on its face, would have been satisfactory for either a § 7-433 claim or a Chapter 568 claim. He then agreed to an award of § 7-433c benefits. Due to the effects of the § 7-433b(b) cap, the claimant received far less for his specific indemnity award than he would have under Chapter 568. He filed a lawsuit against his employer, which the courts dismissed on the ground that the claimant had failed to exhaust his administrative remedies. See, Hyatt v. City of Milford, 26 Conn. App. 194 (1991), aff'd, 224 Conn. 441 (1993). The claimant then filed with this Commission a motion to reopen the original award, which the trial commissioner denied, stating that the claimant had elected to receive benefits under § 7-433c. CRB affirmed that decision. The principle of election applies here, as a contrary result would leave otherwise settled claims open indefinitely. The claimant did not have the right to proceed under Chapter 568 without first reopening the claim under § 31-315. As for the denial of the motion to reopen, the claimant did not allege a valid ground for reopening the award, and the commissioner did not abuse his discretion. See also, **Hyatt**, § 31-315.

Demello v. Cheshire, 3633 CRB-8-97-6 (August 26, 1998).
See, **Demello**, § 31-294c.

Gillette v. Monroe, 3500 CRB-4-97-1 (July 13, 1998), **rev'd**, 56 Conn. App. 235 (1999), **cert. denied**, 252 Conn. 932 (2000).
Claimant had surgery at age eight for coarcted descending aorta. Eighteen years later, he joined the Monroe police force. The police surgeon who examined him had also been the claimant's personal physician since childhood. He stated in a letter that the claimant was in good condition, without elaborating in any way on the claimant's examination results. In 1994, the claimant developed a heart problem as a result of the aortic valve problem. He also developed hypertension. The trier found that the doctor and claimant both knew of his pre-existing heart disease when he was hired as a police officer, and dismissed the claim for § 7-433c benefits. CRB affirmed trier's decision. Section 7-433c was not in effect on date of examination, and trier had reason to believe that the claimant's doctor would have noted a congenital heart defect in his examination had he known it was necessary to provide a thorough description of the claimant's physical condition. Trier was not limited to language of two-sentence "yes or no" letter under circumstances of this case. (*Metro, C.*, **dissenting**) Trier can not look beyond pre-employment examination itself in deciding whether claimant had heart disease at the time he was hired. His successful passage of the examination should be determinative. Reversed and remanded by Appellate Court, which ruled that the trial commissioner should not have considered information beyond that in the plaintiff's pre-employment physical examination report. Although § 7-433c was not in effect at time of examination, a similar predecessor was, and the town was on notice that the existence of symptoms of heart disease or hypertension had possible future ramifications.

Czujak v. Bridgeport, 3535 CRB-4-97-2 (June 10, 1998), **aff'd**, 55 Conn. App. 789 (1999), **cert. denied**, 252 Conn. 920 (2000).
Claimant's award was issued in 1984. The trial commissioner ruled that the claimant should have his § 7-433b(b) cap adjusted retroactive to date of Supreme Court's decision in Szudora v. Fairfield, 214 Conn. 552 (1990), thus including overtime pay in that cap. Commissioner also awarded attorney's fee and interest for undue delay. CRB reversed. Supreme Court decision in Marone v. Waterbury, 244 Conn. 1 (1998), holds that an award may not be modified under § 31-315 because of a mistake of law once a final judgment has been rendered. Commissioner's decision to adjust cap from date of Szudora decision forward must be reversed, along with award of fees and interest. CRB also noted, however, that claimant was entitled to COLAs under § 31-307a since his disability commenced. Case remanded. See also, **Czujak**, § 31-300, § 31-301. Appeal procedure, § 31-307a, § 31-315. Subsequent decision at Czujak, 4371 CRB-4-01-3 (April 8, 2002), § 31-297, § 31-301(g).

Sbona v. Middletown, 3449 CRB-8-96-10 (April 23, 1998), **aff'd**, 55 Conn. App. 906 (1999)(per curiam).
Whether a municipal employee's pension plan may be reduced due to receipt of workers' compensation benefits is an issue for a trial court to determine. The employer is obligated to pay the claimant the full workers' compensation benefits, and the employer may pursue the reduction of the pension benefits in another forum.

O'Neill v. Danbury, 3510 CRB-7-97-1 (March 31, 1998).
See, **O'Neill**, § 31-284b.

Tarzia v. Stamford, 3409 CRB-7-96-8 (March 18, 1998).
Trier did not err by finding that claimant suffered from hypertension. No requirement exists that the claimant be treated with medication for symptoms of hypertension in order for a compensable injury to have occurred. Doctor's reports detailing high readings of diastolic blood pressure supported the trier's conclusions.

Liano v. Bridgeport, 3447 CRB-4-96-10 (January 6, 1998), **aff'd**, 51 Conn. App. 905 (1999)(per curiam), **cert. denied**, 248 Conn. 907 (1999).
The CRB affirmed the trial commissioner's determination that the claimant was no longer temporarily totally disabled and that the respondents were entitled to a credit for said payments. The CRB dismissed the claimant's contention that because his claim was made under § 7-433c that therefore the Workers' Compensation Act (including the procedure for filing a Form 36 and the burden of proof regarding temporary total disability benefits) did not apply to his claim. Claims made under § 7-433c are indeed governed by the procedures contained in the Workers' Compensation Act. Subsequent decision at Liano, 3561 CRB-4-97-3 (June 3, 1998), rev'd in part, 55 Conn. App. 75 (1999), cert. denied, 252 Conn. 909 (1999), § 31-300. Prior decisions at Liano, 3299 CRB-4-95-10 (March 25, 1997), § 31-294c, § 31-297, § 31-301. Factual findings; Liano, 3199 CRB-4-95-10 (March 25, 1997), § 31-279-3, § 31-298, § 31-307; Liano, 14 Conn. Workers' Comp. Rev. Op. 201, 2033 CRB-4-94-5 (July 25, 1995), appeal and cross appeal dismissed, lack of final judgment, A.C. 15082 (June 6, 1996), cert. denied, 238 Conn. 906 (1996), infra and at § 31-300, § 31-310.

Leary v. Stamford, 3280 CRB-7-96-3 (September 17, 1997).
No error in commissioner's finding that claimant timely notified respondent of hypertension claim. No uncontradicted diagnosis of hypertension was made prior to 1993. Blood pressure reading of 140/85 or 140/90 is not a bright hypertension line under Connecticut law, even if some doctors consider it mildly hypertensive. Claimants who are close to the borderline must be evaluated by a doctor based on all factors. See also, **Leary**, § 31-298.

Tanner v. Wilton, 3197 CRB-7-95-11 (February 5, 1997).
Commissioner erred in dismissing claims for heart attack and stroke. Claim submitted in 1973 for claimant's first heart attack was not shown to be somehow limited to Chapter 568 claim rather than § 7-433c claim; pursuant to Collins v. West Haven, 210 Conn. 423 (1989), a claimant is not specifically required to refer to heart and hypertension statute in notice of claim for benefits. Commissioner must presume notice legally sufficient; case remanded.

Marone v. Waterbury, 3117 CRB-5-95-7 (January 10, 1997), **aff'd**, 244 Conn. 1 (1998).
Claimant retired because of hypertension in 1982, and was awarded benefits in 1983. Overtime earnings were not included in claimant's benefit rate. In 1990, the Supreme Court decided Szudora v. Fairfield, 214 Conn. 552, ruling that overtime pay should be included in "weekly compensation." Respondent adjusted claimant's benefit cap in September 1993 to include overtime, and paid him overtime retroactive to April 17, 1990, the date of the Supreme Court decision. Claimant now seeks overtime not paid between 1982 and 1990. CRB affirmed trial commissioner's rejection of that claim. Commissioner properly applied test in Chevron Oil v. Huson, 404 U.S. 97 (1971), to determine that retrospective application of Szudora was inadvisable; key factor was burdensome financial impact on towns and state taxpayers. Moreover, claimant did not appeal 1983 decision on benefit rate, so case had become final; our legal system does not contemplate resurrection of long-settled cases as a corollary to principle that judicial decisions generally apply retroactively. Supreme Court affirmance not based on financial impact factor. Instead, Court held that, as case was not pending when Szudora was decided, the award was final and recalculation was inappropriate. Modification unavailable under § 31-315 for subsequent changes of law, such as the Szudora decision. See also, **Marone**, § 31-315.

McNerney v. New Haven, 15 Conn. Workers' Comp. Rev. Op. 330, 2098 CRB-3-94-7 (June 25, 1996).
CRB affirmed the trial commissioner's determination that the claimant's notice of claim was timely. Although the claimant had previously been suffering from hypertension, it was "cured" and his subsequent hypertension constituted a new injury in March of 1991.

Riccio v. Windsor, 15 Conn. Workers' Comp. Rev. Op. 279, 2232 CRB-1-94-12 (June 20, 1996).
The commissioner found that the claimant, a police officer, failed to give notice of his claim for heart and hypertension benefits as required by § 31-294c C.G.S., and therefore dismissed the claim. CRB noted that the Appellate Court recently held that a § 7-433c

hypertension claim is not presumed to be an occupational disease. Zaleta v. Fairfield, 38 Conn. App. 1, 7 (1995), cert. denied, 234 Conn. 917 (1995). The commissioner specifically found that the employer-provided routine medical examination, along with a referral for an echocardiogram, did not constitute the furnishing of medical treatment so as to obviate the need for filing a proper notice of claim. See also, **Riccio**, § 31-294c.

Riccitelli v. New Haven, 15 Conn. Workers' Comp. Rev. Op. 138, 2090 CRB-3-94-7 (January 18, 1996), **aff'd**, 44 Conn. App. 903 (1997)(per curiam).
Claimant was a firefighter for the respondent town, who alleged that he suffered hypertension pursuant to § 7-433c. CRB affirmed the trial commissioner's determination that the notice of claim was late, as the statute of limitation began running as of the date claimant was taking prescription medication under his physician's direction for the treatment of hypertension. The Appellate Court held that a § 7-433c hypertension claim is not presumed to be an occupational disease. Zaleta v. Fairfield, 38 Conn. App. 1, 7 (1995), cert. denied, 234 Conn. 917 (1995). As there was no evidence presented that the claimant's hypertension constituted an occupational disease, nor even any evidence that it was causally related to his employment, the one-year limit applied.

Liano v. Bridgeport, 14 Conn. Workers' Comp. Rev. Op. 201, 2033 CRB-4-94-5 (July 25, 1995), **appeal and cross appeal dismissed, lack of final judgment**, A.C. 15082 (June 6, 1996), **cert. denied**, 238 Conn. 906 (1996).
Fitzgerald, infra, followed regarding inclusion of "outside overtime" in § 7-433b(b) cap. Also, CRB held that Mulligan, 231 Conn. 529 (1994), applies to § 7-433c cases. The CRB affirmed the trial commissioner's determination that the claimant's benefit rate should include both 'inside' and 'outside' overtime pursuant to Szudora v. Fairfield, 214 Conn. 552 (1990) for 1990 onward, but was not entitled to an adjustment in his benefit rate from 1983 to 1990 because he failed to present sufficient evidence regarding overtime for that time period.

These issues were addressed by the Appellate Court in Liano v. Bridgeport, 3561 CRB-4-97-3 (June 3, 1998), rev'd in part, 55 Conn. App. 75 (1999), cert. denied, 252 Conn. 909 (1999). The Appellate Court found Marone v. Waterbury, 244 Conn. 1 (1998) to be controlling. The Appellate Court explained that the issue to be decided was whether the claimant (Liano's) case was pending at the time that Szudora was decided by the Supreme Court, and that if it was not pending, then the only way to modify it would be via § 31-315. The Appellate Court held that Liano's case was *not* pending when Szudora was issued, because none of the parties had appealed from the trial commissioners' decisions issued in 1983, 1986, and 1988.

Next, the Appellate Court concluded that the trial commissioner's decision, which had become final due to lack of an appeal, was not subject to modification based upon a change in legal interpretation (in this case, the Szudora decision) pursuant to § 31-315, citing Marone, supra. The court explained the limits of § 31-315. The court thus reversed the CRB's decision which allowed the claimant to include overtime wages in the computation of the § 7-433b(b) cap for 1990 onward. See also, **Liano**, § 31-300, § 31-310. Subsequent decisions at Liano, 3561 CRB-4-97-3 (June 3, 1998), rev'd in part, 55 Conn. App. 75 (1999), cert. denied, 252 Conn. 909 (1999), § 31-300; Liano, 3447 CRB-

4-96-10 (January 6, 1998), aff'd, 51 Conn. App. 905 (per curiam), cert. denied, 248 Conn. 907 (1999), § 7-433c; Liano, 3299 CRB-4-95-10 (March 25, 1997), § 31-294c, § 31-297, § 31-301. Factual findings; Liano, 3199 CRB-4-95-10 (March 25, 1997), § 31-279-3, § 31-298, § 31-307.

Fitzgerald v. Bridgeport, 14 Conn. Workers' Comp. Rev. Op. 198, 2121 CRB-4-94-8 (July 21, 1995).
Claimant correctly argued that city owed him additional benefits based on failure to include "outside overtime" earned by active police officers in § 7-433b(b) cap on weekly payments. Szudora v. Fairfield, 214 Conn. 552 (1990), controls; commissioner affirmed.

Carriero v. Naugatuck, 14 Conn. Workers' Comp. Rev. Op. 98, 1690 CRB-5-93-4 (May 26, 1995), **aff'd**, 43 Conn. App. 773 (1996), **rev'd**, 243 Conn. 747 (1998).
CRB held that cap under § 7-433b(b) inapplicable to claimant's retirement pension based solely on length of service. Claimant was not receiving retirement pension under § 7-433c as a result of death or disability, and was not receiving pension from the city or state. Purpose of cap discussed. Reversed by Supreme Court, which held that the § 7-433b(b) cap provision applies to cumulative payments of disability and retirement benefits where, as here, any portion of those payments has been awarded under § 7-433c.

Fortin v. Naugatuck, 14 Conn. Workers' Comp. Rev. Op. 48, 1898 CRB-5-93-11 (May 4, 1995).
Commissioner properly awarded benefits under § 7-433c where police officer suffered from hypertension after having successfully passed a physical exam when hired. The only issue which the employer raises on appeal is the contention that the claimant's hypertension did not constitute a disability because it was controlled by medications and did not cause him to miss any time from work. CRB affirmed award, noting that claimant's hypertension required medical care and prescription drugs.

Zaleta v. Fairfield, 12 Conn. Workers' Comp. Rev. Op. 125, 1453 CRB-4-92-7 (February 28, 1994), **rev'd**, 38 Conn. App. 1 (1995), **cert. denied**, 234 Conn. 917 (1995).
CRB held hypertension is an occupational disease governed by a three-year limitation period for filing a claim. Court reversed CRB's conclusion that hypertension was presumptively an occupational disease based upon language of § 7-433c. Court held claimant failed to produce evidence that hypertension was an occupational disease, therefore three-year statute of limitation did not apply. See also, **Zaleta**, § 31-294c.

McNulty v. Stamford, 12 Conn. Workers' Comp. Rev. Op. 32, 1332 CRD-7-91-10 (January 26, 1994), **rev'd**, 37 Conn. App. 835 (1995).
Claim for benefits pursuant to § 7-433c entitles claimant to receive compensation and medical care in the same amount and same manner as provided in Chapter 568. Therefore, dependent widow was entitled to cost of living adjustments and the second injury fund was liable for reimbursement to the employer pursuant to § 31-354. Appellate Court reversed CRB and held § 7-433c is separate and distinct from the Workers' Compensation Act (Chapter 568). Section 7-433c does not reference the Fund,

and clearly limits the source of benefits to be paid by only the municipal employer. Therefore, the Fund cannot be liable for COLAs or any other payments made pursuant to § 7-433c. See also, **McNulty**, § 31-301. Appeal procedure, § 31-301-9. Additional evidence, § 31-306. Dependents compensation.

Cooper v. Seymour, 11 Conn. Workers' Comp. Rev. Op. 274, 1336 CRD-5-91-11 (November 19, 1993).
Dependent widow's claim for § 7-433c benefits denied where pre-employment physical exam revealed an elevated systolic pressure. Trier concluded there was disqualifying evidence of hypertension even though physician who performed the exam concluded the elevated blood pressure reading was not significant in light of other blood pressure readings. CRB affirmed trier's finding as medical evidence provided a sufficient basis to conclude there was some evidence of hypertension in the pre-employment physical examination. See also, **Cooper**, § 31-301-9. Additional evidence.

Romanski v. West Hartford, 10 Conn. Workers' Comp. Rev. Op. 253, 1222 CRD-1-91-4 (January 13, 1993), **aff'd**, 34 Conn. App. 307 (1994).
Once claimant is eligible for § 7-433c benefits, he is entitled to benefits identical to those available under Chapter 568, including any under § 31-308(d). See also, **Romanski**, § 31-308(d) Now § 31-308(c).

Paccadolmi v. Newtown, 10 Conn. Workers' Comp. Rev. Op. 116, 1270 CRD-4-91-8 (May 13, 1992).
CRB affirmed trier's finding claimant knew or should have known he had heart disease as early as 1985 when medical treatment was rendered. Claim filed in 1989 does not meet § 31-294's statutory limitations.

Murach v. New Britain, 10 Conn. Workers' Comp. Rev. Op. 89, 1172 CRD-6-91-2 (April 20, 1992).
CRB reversed trier's finding awarding claimant § 7-433c benefits. Trier found 1988 notice of claim timely as hypertension was controlled by medication from 1978 through claimant's first manifestation of a symptom, an aortic aneurysm in 1988. CRB found first manifestation was in 1978 as claimant's condition was then disabling as claimant required medication to continue to work. Therefore, notice in 1988 was untimely filed. See also, **Murach**, § 31-294c and § 31-301-9. Additional evidence.

Suprenant v. New Britain, 9 Conn. Workers' Comp. Rev. Op. 250, 1014 CRD-6-90-4 (November 19, 1991), **aff'd**, 28 Conn. App. 754 (1992).
CRD reversed trier's finding granting claimant § 7-433c benefits as factual findings revealed there was evidence that claimant had hypertension at the time of his pre-employment physical. A condition precedent to eligibility for § 7-433c benefits is no evidence of hypertension or heart disease at the pre-employment stage. See, Gatewood v. Hartford, 9 Conn. Workers' Comp. Rev. Op. 220, 1006 CRD-1-90-4 (October 21, 1991) and Horkheimer v. Stratford, 4 Conn. Workers' Comp. Rev. Op. 139, 163 CRD-4-82 (December 31, 1987).

Gatewood v. Hartford, 9 Conn. Workers' Comp. Rev. Op. 220, 1006 CRD-1-90-4 (October 21, 1991).
Trier's finding that fireman's pre-employment physical revealed evidence of hypertension thereby denying claim for § 7-433c benefits based on evidence. See, Horkheimer v. Stratford, 4 Conn. Workers' Comp. Rev. Op. 139, 163 CRD-4-82 (December 31, 1987). See also, **Gatewood**, § 31-301. Appeal procedure.

Crossway v. Newington, 9 Conn. Workers' Comp. Rev. Op. 167, 978 CRD-6-90-2 (June 28, 1991).
CRD affirmed trier's finding claimant, a senior canine patrol officer, was not a regular member of the municipality's police force as the findings are based on sufficient evidence. See also, **Crossway**, § 31-301. Appeal procedure.

Traylor v. Poquonnock Bridge Fire District, 8 Conn. Workers' Comp. Rev. Op. 59, 788 CRD-2-88-11 (March 23, 1990).
See, **Traylor**, § 31-307, § 31-308a.

Deck v. Groton, 8 Conn. Workers' Comp. Rev. Op. 1, 745 CRD-2-88-6 (December 12, 1989).
See, **Deck**, § 31-294c.

Bellagamba v. Ridgefield, 7 Conn. Workers' Comp. Rev. Op. 113, 708 CRD-7-88-3 (November 30, 1989).
Evidence insufficient to support a claim under § 7-433c where claimant suffered no health impairment, disability or economic loss due to claimed hypertension.

Cousins v. Hartford, 7 Conn. Workers' Comp. Rev. Op. 101, 676 CRD-1-87 (November 8, 1989).
See, **Cousins**, § 31-294c.

Felia v. Westport, 7 Conn. Workers' Comp. Rev. Op. 84, 703 CRD-4-88-3 (September 25, 1989), **aff'd**, 214 Conn. 181 (1990).
Section 7-433c benefits include specific indemnity benefits pursuant to § 31-308(d). Section 7-433c benefits are Chapter 568 benefits for the purpose of calculating benefits due.

Deschnow v. Stamford, 7 Conn. Workers' Comp. Rev. Op. 86, 706 CRD-7-88-3 (September 25, 1989), **aff'd**, 214 Conn. 394 (1990).
See, Felia v. Westport, 214 Conn. 181 (1990), 7 Conn. Workers' Comp. Rev. Op. 84, 703 CRD-4-88-3 (September 25, 1989) and Griffin v. Groton, 5 Conn. Workers' Comp. Rev. Op. 5, 425 CRD-2-85 (March 23, 1988).

Szudora v. Fairfield, 7 Conn. Workers' Comp. Rev. Op. 72, 681 CRD-8-88-1 (August 28, 1989), **aff'd**, 214 Conn. 552 (1990).
Remanded. Method of determining cap pursuant to § 7-433b(b) on compensation benefits allowed under heart/hypertension act is to calculate the average weekly earnings, including overtime, of police officers in similar positions during the compensation period.

Costello v. Fairfield, 7 Conn. Workers' Comp. Rev. Op. 21, 629 CRD-4-87 (June 30, 1989), **aff'd**, 214 Conn. 189 (1990).
Section 7-433b salary cap does not apply to specific indemnity benefits paid to an active working police officer receiving full pay.

Antonucci v. Hartford, 5 Conn. Workers' Comp. Rev. Op. 151, 511 CRD-1-86 (July 29, 1988).
Temporary total benefits may be awarded for period during which claimant was to receive permanent partial benefits pursuant to a voluntary agreement where there was a change in claimant's physical condition, § 31-315.

Macsata v. Stamford, 5 Conn. Workers' Comp. Rev. Op. 144, 377 CRD-7-85 (July 22, 1988).
An award for § 7-433c benefits does not require an award for total disability as opposed to permanent partial disability benefits. Matter remanded for finding as to whether disease which preexisted statute's enactment was worsened after law was in effect.

Connors v. West Haven, 5 Conn. Workers' Comp. Rev. Op. 89, 477 CRD-3-86 (May 20, 1988).
As claimant's date of disability clearly preceded the effective date of the Act, the commissioner was without jurisdiction to award benefits. CRD remanded to determine if claim was compensable under law in existence at time of myocardial infarction.

Foley v. New Britain, 5 Conn. Workers' Comp. Rev. Op. 68, 404 CRD-7-85, Gavin v. New Britain, 5 Conn. Workers' Comp. Rev. Op. 68, 405 CRD-7-85 (April 28, 1988), **no error**, 17 Conn. App. 834 (1989)(per curiam).
Trial commissioner found heart attacks suffered by claimants were not causally connected and, therefore, benefits did not lie.

Charland v. Hartford, 5 Conn. Workers' Comp. Rev. Op. 56, 417 CRD-1-85 (April 8, 1988).
Found claimant's aneurysm was not caused by heart disease or hypertension.

Leppert v. Hartford, 5 Conn. Workers' Comp. Rev. Op. 58, 408 CRD-1-85 (April 8, 1988), **no error**, 17 Conn. App. 633 (1989).
Heart and Hypertension Act is substantive and therefore will not be given retroactive application.

Collins v. West Haven, 5 Conn. Workers' Comp. Rev. Op. 44 (1988), **no error**, 210 Conn. 423 (April 7, 1988).
Ruling on a Motion to Reopen is a matter within the trial commissioner's discretion. Also claimant's use of Notice of Claim form with language containing term "arising out of and in the course of employment" did not constitute an election of remedies under Chapter 568 when injury was described as "acute myocardial infarction hypertension, heart disease."

Griffin v. Groton, 5 Conn. Workers' Comp. Rev. Op. 5, 425 CRD-2-85 (March 23, 1988).
Specific award for 25% loss of use of cardiovascular system permitted under Heart and Hypertension Act.

Horkheimer v. Stratford, 4 Conn. Workers' Comp. Rev. Op. 139, 163 CRD-4-82 (December 31, 1987).
Trial commissioner erred in awarding benefits where preinduction physical examination showed labile hypertension.

Gimler v. Orange, 4 Conn. Workers' Comp. Rev. Op. 96, 381 CRD-3-85 (June 12, 1987).
A physical examination given to claimant nine months prior to entry on municipal police force by an unrelated private employer did not satisfy statute's elements.

Marino v. West Haven, 4 Conn. Workers' Comp. Rev. Op. 34, 240 CRD-3-83 (March 16, 1987).
Claimant permitted benefits for cardiac surgery scar.

Bucko v. New London, 3 Conn. Workers' Comp. Rev. Op. 112, 140 CRD-2-82 (December 5, 1986), **no error**, 13 Conn. App. 566 (1988).
Claimant was appointed a full-time temporary patrolman during World War II and considered a regular member of paid municipal police department. Employment status was full time and claimant was only subject to release if a returning serviceman reclaimed his position and displaced claimant.

Raucci v. West Haven, 3 Conn. Workers' Comp. Rev. Op. 94, 233 CRD-3-83 (November 17, 1986).
Trial commissioner properly dismissed municipality's appeal that no Chapter 568 ruling will be made where claimant has elected to pursue his claim under § 7- 433c.

Murphy v. West Haven, 3 Conn. Workers' Comp. Rev. Op. 88, 126 CRD-3-82 (November 13, 1986).
CRD will not permit multiple reviews in disputes which are ultimately centered on the burden of liability as between municipalities and insurance companies.

Zimmer v. Meriden, 3 Conn. Workers' Comp. Rev. Op. 32, 253 CRD-6-83 (February 5, 1986).
Claimant who held position as Director of Traffic Signals in municipal fire department but was hired as a fireman and wore a fire uniform when required, was entitled to benefits under § 7-433c.

Spragg v. West Haven, 2 Conn. Workers' Comp. Rev. Op. 89, 125 CRD-3-82 (July 27, 1984), **no error**, 6 Conn. App. 265 (1986), **cert. denied**, 199 Conn. 805 (1986).
See, Cuccuro, infra.

Cuccuro v. West Haven, 2 Conn. Workers' Comp. Rev. Op. 87, 103 CRD-3-81 (July 27, 1984), **no error**, 6 Conn. App. 265 (1986), **cert. denied**, 199 Conn. 804 (1986).
Election of remedies under § 7-433c or Chapter 568 is up to the claimant, not the municipal employer. See, Spragg v. West Haven, 2 Conn. Workers' Comp. Rev. Op. 89, no error, 6 Conn. App. 265 (1986), cert. denied, 199 Conn. 805 (1986).

Gallucci v. Waterbury, 2 Conn. Workers' Comp. Rev. Op. 76, 313 CRD-5-84 (July 24, 1984).
Section 7-433c benefits apply to regular members of municipal police departments which were created by Special Act legislation preceding enactment of Home Rule Act.

Watson v. Bristol, 2 Conn. Workers' Comp. Rev. Op. 76, 315 CRD-6-84 (July 24, 1984).
See, Gallucci, supra.

Piantedosi v. Bridgeport, 2 Conn. Workers' Comp. Rev. Op. 45, 254 CRD-4-83 (May 16, 1984).
Section 7-433b(b) maximum ceiling not applicable to disfigurement award after claimant returns to work.

Kelley v. Waterbury, 2 Conn. Workers' Comp. Rev. Op. 40, 40 CRD-5-80 (November 23, 1983).
While Heart and Hypertension Act cannot be applied retroactively due to substantive nature; where claimant may have been disabled after effective date, case must be remanded for additional fact finding.

Gorman v. Waterbury, 2 Conn. Workers' Comp. Rev. Op. 17, 39 CRD-5-80 (May 20, 1983), **no error**, 4 Conn. App. 226 (1985).
Heart and Hypertension Act cannot be applied retroactively due to its substantive nature.

Meaney v. Waterbury, 2 Conn. Workers' Comp. Rev. Op. 14, 30 CRD-5-80 (May 20, 1983).
See, Gorman, supra.

Janco v. Fairfield, 1 Conn. Workers' Comp. Rev. Op. 189, 102 CRD-4-81 (September 13, 1982), **rev'd and remanded**, 39 Conn. Sup. 403 (1983).
Section 31-294 applicable to § 7-433c claims, thus, furnishing of medical care through group health plan was sufficient notice. Appellate court reversed and remanded.

Foley v. New Britain, 1 Conn. Workers' Comp. Rev. Op. 147, 47 CRD-6-81 (August 3, 1982).
Where trial commissioner died prior to ruling on claimant's Motion to Correct, claimant was entitled to hearing de novo.

Gavin v. New Britain, 1 Conn. Workers' Comp. Rev. Op. 151, 46 CRD-6-81 (August 3, 1982).
See, Foley, supra.

Adams v. New Haven, 1 Conn. Workers' Comp. Rev. Op. 121, 49 CRD-3-81 (March 19, 1982), **no error**, 39 Conn. Sup. 321 (1983).
Statute cannot be applied retroactively and commission has no jurisdiction to construe benefits under municipal charter.

Moore v. West Haven, 1 Conn. Workers' Comp. Rev. Op. 103, 31 CRD-3-80 (January 25, 1982).
See, Bakelaar, infra.

Cerniglia v. Bristol, 1 Conn. Workers' Comp. Rev. Op. 86, 60 CRD-6-81 (December 29, 1981).
See, Bakelaar, infra.

Zimmer v. Essex, 1 Conn. Workers' Comp. Rev. Op. 71, 42 CRD-2-80 (November 2, 1981), **aff'd**, 38 Conn. Sup. 419 (1982).
To secure benefits claimant must be a regular member of a police force organized under § 7-274.

LaBoda v. Watertown, 1 Conn. Workers' Comp. Rev. Op. 63, 51 CRD-5-81 (October 26, 1981).
Commissioner has no power to reduce statutory benefits because of other pension or social security benefits, and is not limited to awarding benefits only under § 31-308 C.G.S.

Stachelczyk v. Norwalk, 1 Conn. Workers' Comp. Rev. Op. 51, 19 CRD-7-80 (August 20, 1981).
Evidence of disability required.

Bakelaar v. West Haven, 1 Conn. Workers' Comp. Rev. Op. 27, 8 CRD-3-80 (April 9, 1981), **appeal remanded with direction to render judgment**, 38 Conn. Sup. 359 (1982), **no error on remand**, 193 Conn. 59 (1984).
Commissioner has jurisdiction to hear claims brought under § 7-433c and Chapter 568 in the same hearing.

Sec. 19a-165. Hospital fees.

Tanner v. Walgren Tree Experts, 8 Conn. Workers' Comp. Rev. Op. 16, 748 CRD-8-88-7 (January 17, 1990).
See, **Tanner**, § 31-294d.

Sec. 29-4a. Death and disability compensation for certain state employees.

Fuessenich v. State/Dept. of Public Safety/State Police, 4416 CRB-1-01-7 (June 21, 2002).
Claimant passed pre-employment physical without any mention of hypertension in report, and trier was unpersuaded by doctor's opinion that 135/90 blood pressure

reading, high cholesterol level and height-weight ratio indicated that there was then evidence of hypertension. CRB affirmed finding that rebuttable presumption of compensability remained intact, as a doctor's report cannot rebut said presumption unless trier affords it some credence. CRB also expressed doubt that current notions of acceptable blood pressure and cholesterol reading should be used to second-guess opinion of doctor who performed a pre-employment examination 20 years earlier. See also, **Fuessenich**, § 31-307, § 31-308(b).

Sec. 38a-470. Insurance liens.

Pokorny v. Getta's Garage, 6 Conn. Workers' Comp. Rev. Op. 161, 716 CRD-7-88-3 (June 2, 1989), **rev'd**, 22 Conn. App. 539 (1990), **rev'd**, 219 Conn. 439 (1991).
Lien of workers' compensation awards for insurers. Claimant is barred by prohibitions against double recovery from collecting for expenses paid by his private health carrier when the injury is found to be compensable. The health carrier may establish a lien under § 38-174n for reimbursement of expenses paid for a compensable injury. Supreme Court then reversed Appellate Court ruling. See also, **Pokorny**, § 31-293, § 31-300.

Sec. 52-174. Admissibility of records.

Walker v. Hartford, 4605 CRB-1-03-1 (December 30, 2003).
CRB upheld trier's reliance on letter from claimant's treating physician under § 52-174(b) C.G.S. exception to hearsay rule. Opposing party retains right to cross examine the physician via a deposition or call the physician as a witness at a subsequent hearing. See also, **Walker**, § 31-275(16). Personal Injury.

Ruh v. Della Construction Co., 9 Conn. Workers' Comp. Rev. Op. 269, 1034 CRD-7-90-6 (December 5, 1991).
Remanded as trier concluded evidentiary hearings without giving claimant the opportunity to cross-examine as provided by § 52-174(c). See also, **Ruh**, § 31-298, § 31-307, § 52-174.

Lupulio v. General Data Communications, 4 Conn. Workers' Comp. Rev. Op. 29, 554 CRD-7-87 (March 11, 1987).
After commissioner has taken documentary evidence party may have a right to call physician for testimony. See also, **Lupulio**, § 31-294d.

Diogostine v. Somers Thin Strip, 3 Conn. Workers' Comp. Rev. Op. 139, 282 CRD-5-83 (January 22, 1987).
An unsigned doctor's report which is a photostat of a signed original arguably in claimant's possession is admissible. See also, **Diogostine**, § 31-298.

Sec. 52-572r. Product liability claims against third parties.

Sellew v. Northeast Utilities, 12 Conn. Workers' Comp. Rev. Op. 135, 1422 CRB-8-92-5 (April 7, 1994), **dismissed for lack of final judgment**, A.C. 13541, 13542 (June 14, 1994).
Employer has no right to an offset or credit against any third party product liability action where date of injury occurred when § 52-572r(c) was in effect i.e., between October 1, 1979 and July 1, 1993. See also, **Sellew**, § 31-275(15), § 31-294c and § 31-310.

Kramptez v. Uniroyal Chemical, 11 Conn. Workers' Comp. Rev. Op. 293, 1367 CRD-5-92-1 (December 8, 1993).
CRB affirmed trier's finding that decedent's date of injury of December 7, 1981 controls whether § 52-572r applies. (Note § 52-572r(c) was in effect from October 1, 1979 through July 1, 1993). As § 52-572r applies and § 31-293 does not, respondent employer had no right to an offset against any third party product liability recovery. See also, **Kramptez**, § 31-293.

Rules of Professional Conduct.

Evans v. Shelton, 16 Conn. Workers' Comp. Rev. Op. 155, 3108 CRB-4-95-6 (May 2, 1997), **dismissed for lack of a final judgment**, A.C. 17196 (January 14, 1998).
See, **Evans**, § 31-301. Appeal procedure (denial of request to recuse); See also § 31-275(16), and § 31-301. Factual findings.

Costa v. United Nuclear Corp., 16 Conn. Workers' Comp. Rev. Op. 101, 2296 CRB-2-95-1 (November 20, 1996).
Claimant's attorney filed motion to recuse trial commissioner on ground that she had filed a grievance against his partner, thus compromising her impartiality. Trial commissioner denied motion, concluding that recusal is warranted only when antipathy is alleged toward a client, not an attorney. Affirmed. Cases interpreting Canons 2 and 3(C)(1)(a) of Code of Judicial Conduct do not mandate disqualification by commissioner in these circumstances. See also, **Costa**, § 31-315, and § 31-297a.

Cummings v. Twin Tool Manufacturing, 13 Conn. Workers' Comp. Rev. Op. 225, 2008 CRB-1-94-4 (April 12, 1995), **appeal dismissed**, A.C. 14747 (June 29, 1995).
See, **Cummings**, § 31-298 (ex parte communication).

Knoblaugh v. Greenwood Health Center, 13 Conn. Workers' Comp. Rev. Op. 150, 1608 CRB-1-92-12 (February 6, 1995).
Respondents should not have communicated ex parte with claimant's surgeon without notifying claimant or her counsel; CRB frowns on behavior calculated to produce favorable medical reports by withholding relevant information from treating physician, as such conduct is tantamount to promulgation of false evidence. See R.P.C. § 3.3, § 3.4. See also, **Knoblaugh**, § 31-301. Factual findings, § 31-315, and § 31-349.