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JAMES A. BASSETT *v.* TOWN OF EAST HAVEN ET AL.
(AC 45106)

Bright, C. J., and Alvord and Cradle, Js.

Syllabus

The plaintiff, a former employee of the defendant town, appealed to this court from the decision of the Compensation Review Board, which affirmed the decision of the Workers' Compensation Commissioner dismissing his claim for workers' compensation benefits relating to an injury that he sustained in the course of his employment. The plaintiff was working as a supervisor in a youth program run by the defendant that employed local teenagers to clean areas of the town, including by picking up garbage, when he discovered a smallish brown sphere with a wick. Using his own lighter, the plaintiff lit the sphere's wick; the sphere instantly exploded, resulting in catastrophic injuries to the plaintiff's left hand. The plaintiff initially denied lighting the wick to various authorities but later admitted that he did light it, allegedly because he thought that the sphere was a smoke bomb that would be safer to detonate than to bring as a live item around the teenage employees of the program. He testified before the commissioner that he was never trained by the defendant on how to handle fireworks in the course of his employment. The plaintiff claimed that the board improperly affirmed the commissioner's decision that his lighting of the sphere's wick was not within the scope of his job duties, and, thus, his injuries did not arise out of his employment with the defendant. *Held* that the board correctly affirmed the commissioner's decision: the commissioner found that the act of cleaning up debris was within the scope of the plaintiff's job duties but that lighting the wick of the sphere was not, and there was no evidence presented to the commissioner that program workers ever set fire to debris in order to dispose of it; moreover, the commissioner expressly stated that she did not find the plaintiff's testimony that he lit the wick of the sphere to protect the teenage employees to be credible, and this court does not disturb the commissioner's credibility determinations on appeal; furthermore, the commissioner's finding that, at the moment the plaintiff lit the sphere, the chain of causation was broken, and that the lighting of the sphere was the proximate cause of the plaintiff's injuries was reasonable and conclusive; accordingly, the plaintiff's injuries did not arise out of his employment with the defendant and were not compensable.

Argued April 11—officially released June 13, 2023

Procedural History

Appeal from the decision of the Workers' Compensation Commissioner for the Third District dismissing the plaintiff's claim for benefits, brought to the Compensation Review Board, which affirmed the commissioner's decision, and the plaintiff appealed to this court. *Affirmed.*

Leonard A. Fasano, for the appellant (plaintiff).

Michael J. Finn, for the appellees (defendants).

Opinion

ALVORD, J. The plaintiff, James A. Bassett, appeals from the decision of the Compensation Review Board (board) affirming the dismissal of his claim for benefits by the Workers' Compensation Commissioner for the Third District (commissioner).[1] On appeal, the plaintiff claims that the board erred in upholding the commissioner's decision that the plaintiff's claimed injuries did not arise out of his employment with the defendant town of East Haven (town).[2] We disagree and, accordingly, affirm the decision of the board.

The following facts, as found by the commissioner, and procedural history are relevant to our resolution of this appeal. On July 30, 2018, the plaintiff was employed by the defendant as one of three supervisors for the East Haven Youth Program (program). At that time, the plaintiff was twenty-nine years old, had graduated from high school, and had completed almost two years at a community college. The plaintiff had worked in the program for four to six weeks each previous summer for approximately four to five years. When the plaintiff first began working for the program, another supervisor, Michael Streeto, had trained him.

The program, which employed teenagers, "was charged with cleaning up areas in town to improve quality of life." The program was tasked with picking up "garbage on the beach, on Main Street, at the senior center, around overgrown bridges and wherever else sprucing up was needed." The program supervisors would be notified by a town public works' employee, Robert Parente, "when there were special requests to clean up a certain area." Each program supervisor was provided with a van to transport the teenage employees.

On the morning of July 30, 2018, the plaintiff and his crew of workers cleaned up garbage at the beach and along Main Street. They then ate lunch at a fast-food restaurant, and while they were there, Parente called and "said he wanted work done at either the new high school . . . or at D.C. Moore Elementary School [D.C. Moore] . . . ." Because the plaintiff and his crew "only had a little over an hour before the end of the workday, the [plaintiff] decided to go to D.C. Moore because it was closer" in proximity to their current location. The plaintiff and Streeto traveled in vans with their respective crews to D.C. Moore "to remove some giant weeds growing out of the sewer grates."

D.C. Moore was an elementary school that, at the time, had been closed for a few years. On arriving at D.C. Moore, Streeto remained in his van because it was a hot day and he was not feeling well. From the van, Streeto supervised the workers as they weeded. Once the plaintiff confirmed that Streeto was supervising the workers, he began to look for trees growing out of a sewer on the property. As he walked through the prop-

erty, he picked up garbage using a five gallon bucket and grabber, which were provided to him by the defendant. The plaintiff, who was a smoker, had cigarettes and a lighter with him.

While picking up garbage, the plaintiff found and picked up "a smallish brown sphere with paper wrapped around it and foil stuck on it."[3] The plaintiff held the sphere in his left hand, held his lighter in his right hand, and "intentionally lit the wick" on the sphere. The sphere "[i]nstantaneously . . . exploded while he was holding it." The plaintiff, who was alone at the time, ran back toward the workers and Streeto and yelled that he was injured and needed medical attention. Several calls were made to 911, and police, ambulance, and fire personnel arrived on the scene. The explosion resulted in "catastrophic, life altering left hand amputation injuries."

When questioned on the scene by the emergency responders, the plaintiff initially denied lighting the wick of the sphere. The plaintiff reported to the program workers, ambulance personnel, and police officers that he had picked up the sphere and it exploded in his hand. The following day, while being questioned by various authorities about the incident, the plaintiff continued to deny that he lit the wick of the sphere. After being told that remnants of a lighter had been located at the scene of the accident, the plaintiff initially denied that the lighter was his. Eventually, the plaintiff admitted that he had "lit the wick of the sphere with his lighter before it exploded."

During their investigation, the police were informed that the third supervisor of the program, John Longley, and his crew had previously been to D.C. Moore on the morning of July 30, 2018, to clean up trash. While at D.C. Moore, Longley's crew "picked up already lit fireworks in the parking lot and thew them into the dumpster at the school." There were no injuries reported. The plaintiff and his workers were unaware that Longley's crew had been to D.C. Moore that morning and did not know that the crew had found fireworks on the property. The police investigation "concluded that the [plaintiff] intentionally lit the explosive, but the explosion and subsequent injuries to [the plaintiff] were accidental."

The plaintiff sought workers' compensation benefits for his injuries. The defendant disputed the claim. Although the defendant acknowledged that the plaintiff's injuries had occurred within the course of his employment, it argued, inter alia, that the plaintiff's injuries did not arise out of his employment. The commissioner held evidentiary hearings on October 17, 2019, and January 20 and March 5, 2020. During the hearings, the commissioner heard testimony from the plaintiff and received several exhibits. Additionally, on the final day of the hearing, both parties agreed to

submit Streeto's deposition transcript as an exhibit.

The plaintiff testified that he thought it was his duty to pick up the sphere and that he did not know that it was a mortar. Additionally, he testified that he believed the sphere was a smoke bomb and thought that he would light it and "throw it across the road and a little smoke would come out." Moreover, the plaintiff testified that he "didn't want to bring [the sphere] in the bag, in the van, as a live smoke bomb. [Because] being a sphere, bags rip, there's holes in the bags, it can roll out and I know all the kids have lighters on them." The plaintiff further testified that, by lighting the sphere, he "thought [he] was taking care of it, as opposed to creating a dangerous situation for the kids in the van." The plaintiff testified that, prior to July 30, 2018, he had never come across fireworks while supervising the program and that he "had not been instructed what to do if he did come across any," although he had been instructed to call the fire department if he found needles or syringes.

Streeto testified during his deposition that the plaintiff should have called him when he found the sphere, so that they could have called the fire department or the police department. Streeto testified that, on the basis of his knowledge of the plaintiff from working together, he found the plaintiff to be "for a young guy . . . very adult and very serious." He testified that the "job was important to [the plaintiff] . . . he enjoyed doing it. And he was a good supervisor and he was a real good worker." Additionally, Streeto testified that, at the time of the incident, he "really believe[d] . . . that [the plaintiff] touched something, and something blew up, never thinking there was fireworks, or that he purposely, 'Oh, I found it, I'll light it,' you know, whatever." Moreover, when asked by the defendant's counsel whether "it would be fair to say [the plaintiff] should have known that this thing could blow up if he lit it," Streeto stated that he "would think so, yeah." Following the hearings, both parties submitted posttrial proposed findings of fact and memoranda of law.

On December 16, 2020, the commissioner issued her findings and a ruling dismissing the plaintiff's claim. The commissioner concluded that, although the injuries sustained by the plaintiff occurred while he was in the course of his employment with the defendant, "the lighting of the wick of the sphere was not within the scope of the [plaintiff's] job duties with the [defendant], and the injuries the [plaintiff] sustained on July 30, 2018, did not arise out of his employment." Central to the commissioner's conclusion were her findings that "[c]leaning up the debris off the ground was within the scope of the [plaintiff's] job duties. . . . After picking up the sphere, [the plaintiff] held his personal lighter in his right hand and lit the wick on the sphere, which then exploded, thus causing catastrophic, life altering

left hand amputation injuries. . . . At the moment the [plaintiff] lit the sphere, the chain of causation was broken."

In support of her findings, the commissioner credited Streeto's deposition testimony, the conclusions of the state police that "the lighting of the wick of the sphere was intentional, but the resulting injuries were accidental," and the plaintiff's testimony "confirming [that] he intentionally lit the wick of the sphere with his personal lighter." The commissioner noted, however, that she did "not find the [plaintiff's] testimony that he lit the wick of the sphere to protect the summer youth crew to be fully credible or persuasive."

On January 4, 2021, the plaintiff filed a motion to correct, in which he requested that the commissioner amend and/or delete several of her findings and conclude that, "while the lighting of the wick of the sphere was intentional, the action was within the [plaintiff's] scope of job duties. [Therefore], the injuries sustained on July 30, 2018, by the [plaintiff] arose from his employment and are compensable." On February 11, 2021, the commissioner denied, in a written decision, the plaintiff's motion to correct as submitted and proposed by him.

In her decision on the plaintiff's motion to correct, the commissioner clarified and elaborated on her credibility determinations. Specifically, the commissioner clarified that she did "not find the [plaintiff's] testimony that he lit the wick of the sphere to protect the summer youth crew and/or prevent injury to those he supervised to be credible." The commissioner additionally stated that she found "no credible testimony or evidence in the record that the [plaintiff's] concern about the safety of his crew resulted in his decision to light the wick of the sphere. While [she did] find some portions of the [plaintiff's] testimony credible, overall, given the [plaintiff's] initial and continued lack of candor, [she found] the [plaintiff's] testimony unreliable and lacking credibility."

The plaintiff appealed to the board, claiming that the commissioner improperly determined that his injuries did not arise out of the course of his employment with the defendant. The plaintiff argued, inter alia, that the commissioner misapplied the law when she reached the conclusion that his "intentional act of lighting the wick broke the chain of proximate cause between the employment and the injury." He asserted that "[p]icking up the firework as garbage is within the scope of his employment because the [defendant] knew [the plaintiff] would be encountering fireworks on the property." Additionally, the plaintiff argued that lighting the wick was not outside the scope of his employment because he determined that "lighting the harmless smoke bomb and then gathering the remnants and throwing it in the garbage was the best way to disarm a smoke bomb."

Finally, the plaintiff argued that the commissioner's conclusion that he knew the sphere could be dangerous "is not supported anywhere in the record" and was instrumental in her decision to deny him coverage.

On October 22, 2021, the board affirmed the commissioner's decision. The board disagreed with the plaintiff's argument that the commissioner misapplied the law in concluding that his "intentional act of lighting the wick broke the chain of proximate cause between the employment and the injury." The board stated that "[t]he determination of whether the [plaintiff's] intentional conduct rises to the level of disqualification is a question of fact that won't be overturned unless it is clearly erroneous." On reviewing the record before the commissioner, the board stated that "it could . . . be inferred that the [plaintiff] participated in highly unreasonable conduct in a situation where danger was apparent. . . . Furthermore, the [plaintiff] was not truthful with the police or emergency personnel that treated him regarding the precipitating factors to the explosion. The inference could easily have been made, therefore, that the [plaintiff] was aware of his malfeasance." Accordingly, the board concluded, inter alia, that "it was well within the [commissioner's] authority to find that the [plaintiff's] actions rose to a level that would disqualify him from receiving benefits pursuant to the Workers' Compensation Act." See General Statutes § 31-275 et seq. This appeal followed.

The plaintiff's sole claim on appeal is that the board erred in affirming the commissioner's decision that his lighting of the wick of the sphere did not arise out of his employment with the defendant. The plaintiff argues, inter alia, that the commissioner "erred on several fronts when [she] concluded that [the plaintiff's] action in lighting the wick broke the chain [of] causal connection and, therefore, erred . . . [in finding he] was not entitled to workers' compensation benefits." Specifically, the plaintiff takes issue with the commissioner's conclusion that "the moment the [plaintiff] lit the sphere, the chain of causation was broken" and argues that "the conclusion . . . is not based upon facts or reasonable inferences." Additionally, he argues that his "intention to disarm a firework before placing it in a bag full of garbage was incidental to . . . fulfilling his employment obligations," and, accordingly, his "injury should be covered by workers' compensation insurance." We are not persuaded.

"It is well settled that, because the purpose of the [Workers' Compensation Act (act)] is to compensate employees for injuries without fault by imposing a form of strict liability on employers, to recover for an injury under the act a plaintiff must prove that the injury is causally connected to the employment. To establish a causal connection, a plaintiff must demonstrate that the claimed injury (1) arose out of the employment,

and (2) in the course of the employment. . . . Proof that [an] injury arose out of the employment relates to the time, place and circumstances of the injury. . . . Proof that [an] injury occurred in the course of the employment means that the injury must occur (a) within the period of the employment; (b) at a place the employee may reasonably be; and (c) while the employee is reasonably fulfilling the duties of the employment or doing something incidental to it." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Daubert* v. *Naugatuck*, 267 Conn. 583, 588–89, 840 A.2d 1152 (2004). "The question of whether a plaintiff's injuries resulted from an incident that occurred in the course of his employment is a separate and distinct question from whether his alleged injuries arose out of his employment." Id., 591.

Because the defendant does not dispute that the plaintiff's injury occurred in the course of his employment, we confine our analysis to whether the injury also arose out of his employment. Accordingly, "we must determine whether there is a sufficient causal connection between the plaintiff's injury and [his] employment so as to bring [his] claim within the purview of the act. See General Statutes § 31-275 (1) (B) ('[a] personal injury shall not be deemed to arise out of the employment unless causally traceable to the employment')." *Clements* v. *Aramark Corp.*, 339 Conn. 402, 413–14, 261 A.3d 665 (2021).

"The standard of review of a commissioner's decision on whether an injury arose out of a claimant's employment is well settled." (Internal quotation marks omitted.) *Ryker* v. *Bethany*, 97 Conn. App. 304, 308, 904 A.2d 1227, cert. denied, 280 Conn. 932, 909 A.2d 958 (2006). "As with the determination that an injury occurred in the course of employment, the question of whether an injury arose out of employment is one of fact." *Kolomiets* v. *Syncor International Corp.*, 252 Conn. 261, 272–73, 746 A.2d 743 (2000). "[I]n determining whether a particular injury arose out of and in the course of employment, the [commissioner] must necessarily draw an inference from what [she] has found to be the basic facts. The propriety of that inference, of course, is vital to the validity of the order subsequently entered. But the scope of judicial review of that inference is sharply limited . . . . If supported by evidence and not inconsistent with the law, the [commissioner's] inference that an injury did or did not arise out of and in the course of employment is conclusive. No reviewing court can then set aside that inference because the opposite one is thought to be more reasonable; nor can the opposite inference be substituted by the court because of a belief that the one chosen by the [commissioner] is factually questionable." (Internal quotation marks omitted.) *Ryker* v. *Bethany*, supra, 308–309. Additionally, "[t]he power and duty of determining the facts rests on the commissioner, who

is the trier of fact. . . . This authority to find the facts entitles the commissioner to determine the weight of the evidence presented and the credibility of the testimony offered by lay and expert witnesses. . . . We will not, on appeal, disturb the commissioner's credibility determinations." (Citation omitted; internal quotation marks omitted.) *Britto* v. *Bimbo Foods, Inc.*, 217 Conn. App. 134, 147, 287 A.3d 1140 (2022), cert. denied, 346 Conn. 921, 291 A.3d 1040 (2023).

The standard for determining whether the injury arose out of the employment is also well established. "The personal injury must be the result of the employment and flow from it as the inducing proximate cause. The rational mind must be able to trace resultant personal injury to a proximate cause set in motion by the employment and not by some other agency, or there can be no recovery." (Internal quotation marks omitted.) *Ryker* v. *Bethany*, supra, 97 Conn. App. 309. "[A]lthough we often state that traditional concepts of proximate cause govern the analysis of causation in workers' compensation cases, our case law makes clear that, with respect to primary injuries, the concept of proximate cause is imbued with its own meaning. In such cases, [t]he employment may be considered as causal in the sense that it is a necessary condition out of which, necessarily or incidentally due to the employment, arise the facts creating liability, and that is the extent to which the employment must be necessarily connected in a causal sense with the injury. If we run over the cases in which compensation has been awarded, it will be found to be rarely true—although it may be true—that the employment itself was, in any hitherto recognized use of the words in law, either the cause or the proximate cause; and yet the decisions are right, because, to the rational mind, the injury did arise out of the employment. The real truth appears to be that . . . [t]he causative danger need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that as a rational consequence. . . .

"Thus, [a]n injury arises out of an employment when it . . . is the result of a risk involved in the employment or incident to it, or to the conditions under which it is required to be performed. . . . Sometimes the employment will be found to directly cause the injury . . . but more often it arises out of the conditions incident to the employment. But in every case there must be apparent some causal connection between the injury and the employment, or the conditions under which it is required to be performed, before the injury can be found to arise out of the employment." (Citation omitted; internal quotation marks omitted.) *Clements* v. *Aramark Corp.*, supra, 339 Conn. 414–15.

Here, the findings of the commissioner, as affirmed by

the board, reasonably support the factual determination that the plaintiff's injuries did not arise out of his employment. The commissioner found that the act of "cleaning up the debris off the ground was within the scope of the [plaintiff's] job duties," however, the act of "lighting the wick of the sphere was not within the scope of the [plaintiff's] job duties." There was no evidence presented to the commissioner that the program workers ever set debris on fire in order to dispose of it. See *Clements* v. *Aramark Corp.*, supra, 339 Conn. 415 ("[a]n activity is incidental to the employment [and therefore compensable] . . . [i]f the activity is regularly engaged in on the employer's premises within the period of the employment, with the employer's approval or acquiescence" (internal quotation marks omitted)). Rather, Streeto's testimony, which the commissioner credited; see *Britto* v. *Bimbo Foods, Inc.*, supra, 217 Conn. App. 147; revealed that, when employees of the program encountered items such as needles or syringes, the supervisors would have called the fire department or the police department to dispose of the items. The plaintiff's argument that the act of lighting the wick was within the scope of his employment duties because it was his "intention to disarm a firework before placing it in a bag full of garbage,"[4] and thereby protect the program workers is unavailing. The commissioner expressly stated that she did "not find the [plaintiff's] testimony that he lit the wick of the sphere to protect the summer youth crew and/or prevent injury to those he supervised to be credible," and "[w]e will not, on appeal, disturb the commissioner's credibility determinations." *Britto* v. *Bimbo Foods, Inc.*, supra, 147. Accordingly, the commissioner's factual finding that the injury that resulted from the plaintiff's act of lighting the sphere was not "the result of a risk involved in the employment or incident to it, or to the conditions under which it is required to be performed" is supported by the evidence and not inconsistent with the law.[5] (Internal quotation marks omitted.) *Clements* v. *Aramark Corp.*, supra, 339 Conn. 414.

Moreover, "our Supreme Court regularly has distinguished between injuries that arise out of employment and injuries that are proximately caused by an employee's action that is unrelated to employment. . . . If an employee temporarily deviates from the line of conduct established by his employment and subjects himself 'to an extraordinary peril quite outside of any risk connected with his employment,' injuries suffered during such conduct can no longer be considered to arise out of employment." (Citation omitted.) *Ryker* v. *Bethany*, supra, 97 Conn. App. 309–10; see also *Kolomiets* v. *Syncor International Corp.*, supra, 252 Conn. 272 ("[t]he rational mind must be able to trace resultant personal injury to a proximate cause set in motion by the employment and not by some other agency, or there can be no recovery" (internal quotation marks omit-

ted)). Here, the commissioner expressly found that, "at the moment the [plaintiff] lit the sphere, the chain of causation was broken," and that "the lighting of the wick of the sphere . . . was the proximate cause of the [plaintiff's] injuries." The commissioner's finding in this regard was reasonable and is conclusive. See *Ryker* v. *Bethany*, supra, 311 ("[i]f the commissioner, as in this case, reasonably finds an alternative action to be the proximate cause of the employee's injuries, we cannot say that [her] finding that the employment was not the proximate cause of the employee's injuries was unsupported by the evidence or inconsistent with the law"). Bearing in mind our customary deference to the commissioner's factual findings;[6] see *Kolomiets* v. *Syncor International Corp.*, supra, 252 Conn. 273; we conclude that the commissioner's finding that the plaintiff's injuries did not arise out of his employment with the defendant is legally and logically correct. The plaintiff's injuries therefore are not compensable. See General Statutes § 31-275 (1) (B).

The decision of the Compensation Review Board is affirmed.

In this opinion the other judges concurred.

[1] We note that, in 2021, the legislature enacted Public Acts 2021, No. 21-18, § 1 (P.A. 21-18), codified at General Statutes § 31-275d, which substituted the term "administrative law judge" for "workers' compensation commissioner" and "commissioner" in several enumerated sections of the General Statutes, including sections contained in the Workers' Compensation Act, General Statutes § 31-275 et seq. Because the events at issue in this appeal occurred prior to October 1, 2021, the effective date of P.A. 21-18, in this opinion we use the terms workers' compensation commissioner and commissioner.

[2] PMA Management Corporation of New England, the workers' compensation insurer for the town, also was named as a defendant. For ease of reference, we refer to the town as the defendant in this opinion.

[3] In her written decision, the commissioner stated that "[t]his 'sphere' was referred to during the trial and in the exhibits as 'firework,' 'smoke bomb,' 'mortar,' and 'sphere.' For consistency's sake the item the [plaintiff] picked up will hereinafter be referred to most often as 'sphere.' Regardless of the term used, it should be noted that this item was an explosive." For consistency's sake, we also refer to the item as a "sphere" throughout this opinion.

[4] The plaintiff also argues that he "didn't have the necessary background to know the difference between a harmless smoke bomb and a mortar. This is very similar to a medically 'idiopathic' individual who is placed in a dangerous location at work and gets injured." In support of his argument, the plaintiff relies on our Supreme Court's analysis in *Clements* v. *Aramark Corp.*, supra, 339 Conn. 402, wherein the court noted that "the employer takes the employee as it finds that employee." (Internal quotation marks omitted.) Id., 441.

In *Clements*, our Supreme Court stated that "[a]n idiopathic fall is one that is brought on by a purely personal condition unrelated to the employment, such as [a] heart attack or seizure. . . . Idiopathic [falls] are generally noncompensable absent evidence the workplace contributed to the severity of the injury." (Internal quotation marks omitted.) Id., 420. We disagree with the plaintiff's contention that his "lack of knowledge and experience in fireworks" is similar to a health condition underlying an idiopathic fall or that his workplace contributed to his injury, such that the analysis of *Clements* would be applicable to this case. In particular, regardless of whether the plaintiff knew that the sphere was dangerous, it simply was not a part of his job to light it.

[5] The plaintiff argues that "[t]he town had knowledge of the dangerous condition of [the] property and, therefore, the associated risk incidental to employment needs to be analyzed for a determination if [the plaintiff's]

action, which caused his injuries, arose out of the fulfilling [of] his employment duties." He asserts that, "[i]n performing his duty, [he] came across a firework, known to the town to be at that location, and, therefore, in the scope of his duties to clean up the area, he picked up the firework just like every other piece of garbage. This is the same method used by another crew a few hours before on the very same property." In support of his argument, he cites to *Gonier* v. *Chase Cos.*, 97 Conn. 46, 115 A. 677 (1921) for the proposition that, "[i]f the conditions of his employment . . . exposes him at the time . . . of the accident to the injury . . . then, although the accident is not consequent on and has no causal relation to the work on which the workman is employed, such accident arises out of his employment, as incident, not to the . . . work, but to the . . . risks of the . . . position in which by the conditions of his employment he is obliged to work." (Internal quotation marks omitted.) Id., 53. We disagree.

First, we emphasize that it was the commissioner's finding that "the lighting of the wick of the sphere was not within the scope of the [plaintiff's] job duties," which is determinative. Accordingly, the harm that followed his act of lighting garbage on fire was not a risk of his employment position. See *Gonier* v. *Chase Cos.*, supra, 97 Conn. 53. Second, we reject the plaintiff's contention that his act of lighting the wick of the sphere was the "*same method* used by another crew" because the evidence before the commissioner revealed that the other program crew "*found used fireworks and disposed of them* in a dumpster" without lighting them. (Emphasis added.)

[6] In his brief, the plaintiff argues that the board "constructed [a] circuitous argument to justify the [commissioner's] conclusion that [the plaintiff] testified the sphere was dangerous" by stating that the plaintiff's testimony "was inconsistent because first [he] testified, he believed the sphere was a harmless smoke bomb, but then [he] testified he lit the wick because he was worried that the teenagers in the work crew could have lit [the] sphere and that would have caused a dangerous situation." As previously set forth, it is axiomatic that both this court and the board must give deference to the commissioner's factual findings. See *Ryker* v. *Bethany*, supra, 97 Conn. App. 311 ("it bears remembering that a commissioner's inference that an injury did not arise out of employment is a finding of fact [and] [a]s such, it may be reversed only if it is not supported by the evidence or is inconsistent with the law"). Accordingly, and for the reasons as expressed in this opinion, we are unpersuaded that any allegedly "circuitous" analysis by the board undermines the commissioner's factual finding that the injury did not arise out of the plaintiff's employment.