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RUVIM IZIKSON *v.* PROTEIN SCIENCE CORPORATION ET AL.
(AC 36325)

Lavine, Sheldon and Keller, Js.

Argued December 5, 2014—officially released April 21, 2015

(Appeal from the Workers' Compensation Review Board.)

Brian J. Mongelluzzo, with whom, on the brief, was *Nicholas R. Mancini*, for the appellant (plaintiff).

Elycia D. Solimene, with whom, on the brief, was *Robert L. O'Brien*, for the appellees (defendants).

Opinion

KELLER, J. The plaintiff, Ruvim Izikson, appeals from the decision of the Workers' Compensation Review Board (board) affirming the decision of the Workers' Compensation Commissioner for the Eighth District (commissioner) dismissing his workers' compensation claim for lack of subject matter jurisdiction. He claims that the board erred in affirming the commissioner's dismissal of his claim as untimely on the basis of its erroneous conclusions that (1) he had failed to satisfy the notice of claim requirement set forth in General Statutes § 31-294c (a), and (2) the filing of a form 43[1] by one of the defendants did not constitute an exception to the notice of claim requirement of § 31-294c (a). We affirm the decision of the board.

The following facts, as determined by the commissioner and the board to have been stipulated to by the parties or as apparent in the record, and procedural history are relevant here. On July 12, 2010, in the course of his employment for the defendant Protein Science Corporation (Protein Science), the plaintiff injured his back and one of his legs while lifting a box. He notified David Turrill, Protein Science's controller, of his injuries on or about July 14, 2010.[2] Turrill prepared a first report of injury form[3] on July 14, 2010, and transmitted the form to Protein Science's insurance provider, the defendant Chubb Indemnity Insurance Company (Chubb).[4]

In an e-mail dated July 14, 2010, Turrill informed the plaintiff that Protein Science's insurance adjuster wanted to speak with him and the plaintiff regarding the plaintiff's injuries. In an e-mail dated July 22, 2010, Turrill informed the plaintiff that he had contacted Chubb to learn more about the process for pursuing a workers' compensation claim. In an e-mail dated July 23, 2010, Turrill advised the plaintiff to contact Chubb directly to discuss his injuries and to learn how to proceed with the matter. In an e-mail dated August 24, 2010, Turrill informed the plaintiff that he had been "playing phone tag" with an investigator at Chubb and that Turrill would "call [the investigator] now to see where he is at in the case." On the basis of the e-mails, the plaintiff believed that Chubb was investigating the matter.

On or before July 21, 2010, Chubb mailed a prescription card to the plaintiff. A letter accompanying the card contained a disclaimer indicating that any payment issued by Chubb for prescriptions did not indicate that it had accepted any claim. The plaintiff did not make any purchases with the card. On August 25, 2010, Chubb filed a form 43 contesting the plaintiff's assertion that he had injured his back in the course of his employment.

The plaintiff did not file a form 30C[5] or request a hearing within one year of the injuries he sustained on

July 12, 2010, as required by General Statutes § 31-294c.[6] Furthermore, at no point did the defendants furnish any medical treatment, surgical care or indemnity payments to the plaintiff in connection with his injuries. In addition, although not stipulated by the parties, the record contains no evidence that the parties reached a voluntary agreement concerning a workers' compensation claim. Instead, the plaintiff underwent surgery at an unspecified time and sought benefits to pay for the surgery through his group health insurance carrier.

More than one year after he incurred his injuries, the plaintiff commenced pursuit of a workers' compensation claim. In October, 2012, the commissioner held a hearing to determine whether the Workers' Compensation Commission (commission) had subject matter jurisdiction over his claim.[7] The parties submitted exhibits and stipulated to facts during the hearing. In December, 2012, the commissioner issued a decision dismissing the claim. The commissioner concluded that the commission lacked subject matter jurisdiction over the claim because the plaintiff had failed to file a form 30C within one year of July 12, 2010, the date on which he sustained his injuries, and the defendants did not provide any medical care or pay any indemnity benefits in connection with those injuries.[8] Therefore, the commissioner determined that the commission could not entertain his untimely claim.

On appeal, the board affirmed the commissioner's dismissal of the claim in November, 2013, concluding that the plaintiff had failed to meet the notice of claim requirement set forth in § 31-294c (a). The board determined that the commissioner reasonably concluded that he did not meet any of the express statutory exceptions, under § 31-294c (c), to the notice of claim requirement prescribed by § 31-294c (a). Furthermore, the board concluded that the commissioner reasonably determined that the plaintiff failed to prove, under the totality of the circumstances, that he had provided the defendants with adequate notice of his pursuit of a workers' compensation claim. The board emphasized that the plaintiff had failed to file a form 30C or any equivalent form indicating that he was pursuing benefits, and that neither defendant had furnished any medical care to the plaintiff for the injuries he had suffered.

In addition, the board rejected the plaintiff's assertion that Chubb's preemptive filing of a form 43 indicated that the defendants had received sufficient notice that he was seeking workers' compensation benefits to give the commission jurisdiction over his claim. The board cited its prior decision in *Gaffney* v. *Stamford*, 15 Conn. Workers' Comp. Rev. Op. 257, 260 (1996), in which it had determined, as a matter of law, that the filing of a form 43 does not create an automatic exception to the notice of claim requirement prescribed by § 31-294c (a). Furthermore, the board concluded that requiring the

plaintiff to take further action upon receipt of Chubb's preemptive form 43 was not inequitable because the plaintiff had failed to prove, under the totality of the circumstances, that he had provided the defendants with adequate notice of his intention to pursue a claim for workers' compensation benefits.

For the foregoing reasons, the board affirmed the commissioner's dismissal of the plaintiff's workers' compensation claim on the basis of the commission's lack of subject matter jurisdiction. This appeal followed.

The plaintiff asserts that the board erred in affirming the commissioner's dismissal of his claim. Specifically, the plaintiff maintains that, despite his failure to file a form 30C, the totality of the circumstances indicate that the defendants had sufficient notice, under § 31-294c (a), that he was pursuing a workers' compensation claim. Alternatively, he argues that the filing of a form 43 by Chubb should qualify as an additional exception to the notice of claim requirement set forth in § 31-294c (a). As a result, he contends that the commission had subject matter jurisdiction over his claim. We disagree and address each claim in turn.[9]

We begin by setting forth the relevant standard of review. "The conclusions drawn by [the commissioner] from the facts found must stand unless they result from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them. . . . Neither the . . . board nor this court has the power to retry facts. It is well established that [a]lthough not dispositive, we accord great weight to the construction given to the workers' compensation statutes by the commissioner and [the] board. . . . The commissioner has the power and duty, as the trier of fact, to determine the facts. . . . Our scope of review of the actions of the board is similarly limited. . . . The role of this court is to determine whether the review [board's] decision results from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them." (Citation omitted; internal quotation marks omitted.) *Dubrosky* v. *Boehringer Ingelheim Corp.*, 145 Conn. App. 261, 268, 76 A.3d 657, cert. denied, 310 Conn. 935, 78 A.3d 859 (2013).

"Cases that present pure questions of law, however, invoke a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . Because the filing of a notice of claim implicates the [commission's] subject matter jurisdiction . . . we review this determination applying a plenary standard of review." (Citations omitted; internal quotation marks omitted.) *Estate of Haburey* v. *Winchester*, 150 Conn. App. 699, 706, 92 A.3d 265, cert. denied, 312 Conn. 922, 94 A.3d 1201 (2014).

I

First, the plaintiff asserts that the defendants had sufficient notice, under § 31-294c (a), that he was pursuing or intended to pursue a workers' compensation claim. Although the plaintiff concedes that he did not file a form 30C or meet one of the express exceptions in § 31-294c (c) to the notice of claim requirement set forth in § 31-294c (a), he asserts that, on the basis of the totality of the circumstances, the defendants had notice that he was pursuing or intended to pursue workers' compensation benefits and, therefore, the commission had subject matter jurisdiction over his claim. We conclude that the plaintiff failed to satisfy the notice of claim requirement set forth in § 31-294c (a).

"Administrative agencies [such as the commission] are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the validity of the statutes vesting them with power and they cannot confer jurisdiction upon themselves. . . . The plain language of the Workers' Compensation Act . . . General Statutes § 31-275 et seq., requires one of four possible prerequisites to establish the [commission's] subject matter jurisdiction over a claim: (1) a timely written notice of claim; General Statutes § 31-294c (a); (2) a timely hearing or a written request for a hearing or an assignment for a hearing; General Statutes § 31-294c (c); (3) the timely submission of a voluntary agreement; General Statutes § 31-294c (c); or (4) the furnishing of appropriate medical care by the employer to the employee for the respective work-related injury." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Gary* v. *Dept. of Correction*, 68 Conn. App. 590, 594–95, 792 A.2d 874 (2002).

Although a form 30C is the standard form used to provide notice of an employee's intent to pursue a workers' compensation claim, § 31-294c (a) does not require a plaintiff to draft his or her written notice of claim with "absolute precision." *Black* v. *London & Egazarian Associates, Inc.*, 30 Conn. App. 295, 303, 620 A.2d 176, cert. denied, 225 Conn. 916, 623 A.2d 1024 (1993). "The legislature designed the Workers' Compensation Act to further a remedial purpose. . . . The act's provisions, therefore, should be broadly construed to accomplish its humanitarian purpose. . . . The purpose of [§ 31-294c], in particular, is to alert the employer to the fact that a person has sustained an injury that may be compensable . . . and that such person is claiming or proposes to claim compensation under the Act." (Citations omitted; emphasis omitted; internal quotation marks omitted.) Id., 302–303. "Furthermore, the statute's requirement that the plaintiffs use 'simple language' when issuing a notice of claim indicates that the legislature intended to facilitate lay persons who pursue their claims without the advice of counsel." Id., 303.

In light of the foregoing principles, our case law has recognized that an employee satisfies the notice of claim requirement of § 31-294c (a) if, under the " 'totality of the circumstances,' " he or she provides written notice that is in ' "substantial compliance" with the notice content requirements of [§ 31-294c (a)].' " *Pernacchio* v. *New Haven*, 63 Conn. App. 570, 576, 776 A.2d 1190 (2001); see also *Funaioli* v. *New London*, 52 Conn. App. 194, 198, 726 A.2d 626 (1999); *Black* v. *London & Egazarian Associates, Inc.*, supra, 30 Conn. App. 303–304.

Here, the plaintiff concedes that (1) he did not file a form 30C within one year of the date of his injuries, (2) he neither filed a written request for a hearing nor received a hearing or assignment for a hearing within one year of the date of his injuries, (3) no voluntary agreement to consider his claim was executed between him and the defendants within one year of the date of his injuries, and (4) the defendants did not furnish him with any medical care for his injuries within one year of the date on which he sustained them. Instead, he asserts that, under the totality of the circumstances, he provided the defendants with sufficient notice of his intent to pursue workers' compensation benefits to achieve substantial compliance with the notice of claim requirement of § 31-294c (a). The plaintiff claims that "the combination of the First Report of Injury, the e-mails between [him and Turrill], the July 21, 2010 correspondence from Chubb to the [plaintiff] enclosing a prescription card, the schedule of weekly earnings prepared by . . . Turrill, and the August 25, 2010 [f]orm 43, prove that the [defendants] had notice of the [plaintiff's] injury and notice of the [plaintiff's] intent to pursue a workers' compensation claim in connection with those injuries."

In making this argument, the plaintiff misconstrues the law and ignores the burden placed upon him by § 31-294c (a). The proper inquiry is not whether the defendant had notice of the plaintiff's injuries and intent to pursue a claim, but, rather, whether the plaintiff met the statutory requirements to give the commission jurisdiction over his claim. In order to satisfy the notice of claim requirement set forth in § 31-294c (a), an employee must affirmatively provide some form of *written* notice that informs his or her employer of his or her actual intent to pursue a workers' compensation claim. See *Funaioli* v. *New Haven*, supra, 52 Conn. App. 198–99 (notice of claim requirement met where employee's attorney filed first report of injury form and mailed letter to district commissioner and commission stating that employee was not seeking hearing at present time); *Black* v. *London & Egazarian Associates, Inc.*, supra, 30 Conn. App. 297, 303–304 (notice of claim requirement met where employee's widow mailed letter to employer expressly stating intent to file claim);

Hodges v. *Federal Express Corp.*, No. 5717, CRB 7-12-1 (January 4, 2013) (notice of claim requirement met where employer completed first report of injury form and employee's attorney mailed letters to employer and commission containing details of employee's injury, requesting documents, and referring all future correspondences to attorney's office); *Hayden-Leblanc* v. *New London Broadcasting*, 12 Conn. Workers' Comp. Rev. Op. 3, 5 (1995) (notice of claim requirement met where employee submitted medical bill and form containing nature of injury, and employer's insurance carrier submitted written denial of coverage for injury); cf. *Pernacchio* v. *New Haven*, supra, 63 Conn. App. 576 (agreeing with board that notice of claim requirement met where employee filed first report of injury form and employer completed accident investigation form);[10] but see *Henry* v. *Ansonia*, No. 5832, CRB 4-13-4 (notice of claim requirement not met where employee did not submit any written documentation of intent to file claim within one year of diagnosis of injury); *Miller* v. *State*, No. 5584, CRB 7-10-8 (November 28, 2011) (notice of claim requirement not met where employee submitted first report of injury form and other documents that merely informed employer of date, location, and nature of injury); *Devito* v. *Stamford*, No. 04062, CRB 7-96-6 (July 27, 2000) (notice of claim requirement not met where employee filed deficient form 30C, notified supervisor of injury and submitted incident report stating no immediate medical treatment needed for injury); *Allingham* v. *Burns International Security*, No. 3347, CRB 1-96-5 (November 4, 1997) (notice of claim requirement not met where attorney representing employee's widow mailed letter to employer asking for appropriate forms to file claim and other information, and referring to "possible" claim); *Bennings* v. *State*, 14 Conn. Workers' Comp. Rev. Op. 350, 351–52 (1995) (notice of claim requirement not met where employee submitted first report of injury form, form from physician, and other unknown form).

Here, the plaintiff failed to provide any sort of written notice informing the defendants that he was pursuing or intended to pursue a workers' compensation claim. Turrill, rather than the plaintiff, filed the first report of injury form. The plaintiff did not send any e-mails or correspondences mentioning any intent to file a claim. The plaintiff did not challenge the form 43 filed by Chubb, but instead pursued benefits through his group health care provider. The plaintiff did not submit any medical bills to the defendants, and he did not use the prescription card Chubb provided to him. The plaintiff never contacted Chubb, as Turrill had suggested. Consistent with the cases previously cited in this opinion, this failure on the part of the plaintiff supports the commissioner's determination that the plaintiff failed to comply with the notice of claim requirement mandated by § 31-294c (a). We therefore conclude that the

board properly affirmed the commissioner's determination that the commission did not have subject matter jurisdiction over the plaintiff's claim on that ground.

II

Alternatively, the plaintiff asserts that Chubb's preemptive filing of a form 43 should be categorized as an additional exception to the notice of claim requirement set forth in § 31-294c (a). In essence, the plaintiff presents a policy argument that his proposed exception would further the remedial purpose of § 31-294c, which is to "alert the employer to the fact that a person has sustained an injury that may be compensable . . . and that such person is claiming or proposes to claim compensation under the [Workers' Compensation Act]." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Black* v. *London & Egazarian Associates, Inc.*, supra, 30 Conn. App. 303. According to the plaintiff, the filing of a form 43 implies that an employer has notice of an employee's intent to pursue a workers' compensation claim. Therefore, pursuant to the plaintiff's logic, an employee should be relieved of his or her burden of proving that an employer is on notice of the employee's pursuit or intended pursuit of a workers' compensation claim when a form 43 is submitted.

We decline the plaintiff's invitation to carve out another exception to the notice of claim requirement of § 31-294c (a) because we believe that the legislature, rather than this court, is the proper forum through which to create any additional exceptions to § 31-294c (a). In subsection (c) of § 31-294c, the legislature provided precise exceptions to the notice of claim requirement of § 31-294c (a). "[A] court must construe a statute as written. . . . Courts may not by construction . . . add exceptions merely because it appears that good reasons exist for adding them. . . . The intent of the legislature, as [our Supreme Court] has repeatedly observed, is to be found not in what the legislature meant to say, but in the meaning of what it did say. . . . It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is a function of the legislature." (Internal quotation marks omitted.) *LaPlante* v. *Vazquez*, 136 Conn. App. 805, 814, 47 A.3d 897 (2012). Therefore, we reject the plaintiff's request to add another exception to the notice of claim requirement of § 31-294c (a).[11]

The decision of the Workers' Compensation Review Board is affirmed.

In this opinion the other judges concurred.

[1] "A form 43 is a disclaimer that notifies a claimant who seeks workers' compensation benefits that the employer intends to contest liability to pay compensation. If an employer fails timely to file a form 43, a claimant may file a motion to preclude the employer from contesting the compensability of his claim." (Internal quotation marks omitted.) *Dubrosky* v. *Boehringer Ingelheim Corp.*, 145 Conn. App. 261, 265 n.6, 76 A.3d 657, cert. denied, 310 Conn. 935, 78 A.3d 859 (2013).

[2] The record does not indicate whether the plaintiff informed Turrill of

his injuries orally or in writing.

[3] Pursuant to General Statutes § 31-316, an employer must send to the Workers' Compensation Commission a report of all injuries sustained by employees that result in incapacity for one or more days. The commission provides a standard first report of injury form, entitled "Employer's First Report of Occupational Injury or Illness," for employers to complete and submit to the commission.

The first report of injury form, as prepared by Turrill, named Izikson as the claimant, Protein Science as the employer, and Chubb as the insurance carrier. Turrill also listed the name and mailing address of the plaintiff's physician, as well as the nature, date, and time of the plaintiff's injuries.

[4] Protein Science and Chubb are both named appellees in this appeal. We will refer to them collectively as the defendants.

[5] "A form 30C is the document prescribed by the . . . commission to be used when filing a notice of claim pursuant to the [Workers' Compensation Act]." (Internal quotation marks omitted.) *Dubrosky* v. *Boehringer Ingelheim Corp.*, 145 Conn. App. 261, 265 n.5, 76 A.3d 657, cert. denied, 310 Conn. 935, 78 A.3d 859 (2013).

[6] General Statutes § 31-294c provides, in relevant part: "(a) No proceedings for compensation . . . shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident . . . . Notice of a claim for compensation may be given to the employer or any commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting from the accident . . . and the name and address of the employee and of the person in whose interest compensation is claimed. . . .

"(c) Failure to provide a notice of claim under subsection (a) of this section shall not bar maintenance of the proceedings if there has been a hearing or a written request for a hearing or an assignment for a hearing within a one-year period from the date of the accident . . . or if a voluntary agreement has been submitted within the applicable period, or if within the applicable period an employee has been furnished, for the injury with respect to which compensation is claimed, with medical or surgical care as provided in section 31-294d. No defect or inaccuracy of notice of claim shall bar maintenance of 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. Upon satisfactory showing of ignorance and prejudice, the employer shall receive allowance to the extent of the prejudice. . . ."

[7] It is unclear, on the record before us, what steps the parties took to appear before the commission. There is no indication in the record that the plaintiff ever filed a form 30C or otherwise requested a hearing concerning his workers' compensation claim.

[8] Following the commissioner's decision, the plaintiff filed a motion to correct a number of the commissioner's findings. The commissioner granted one correction, striking a finding that the form 43 did not contain the date of the plaintiff's injuries, but denied the remaining requests for correction.

In his appellate brief, the plaintiff broadly claims that the commissioner erred in failing to grant all of his requested corrections and requests that this court institute or recognize all of the factual corrections he sought in his motion to correct. The plaintiff presents no analysis to support this claim, other than asserting that the commissioner's findings were unsupported by the evidence and generally deficient. Consequently, to the extent the plaintiff asserts that the underlying facts of this case, as found by the commissioner, are erroneous, we decline to review that claim because he failed to brief it adequately. See *Clelford* v. *Bristol*, 150 Conn. App. 229, 233, 90 A.3d 998 (2014) ("[w]e consistently have held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly" [internal quotation marks omitted]).

[9] In his appellate brief, the plaintiff represents that there are fifteen issues on appeal before this court. The first seven issues concern alleged errors in the commissioner's factual findings, which we decline to review due to his failure to brief adequately those claims. See footnote 8 of this opinion. We have consolidated the remaining eight issues into the two claims described herein.

[10] In *Pernacchio*, this court affirmed the board's decision awarding the plaintiff workers' compensation benefits on the basis of its conclusion that the employer had furnished medical and hospital care to the employee immediately after the incident and, therefore, he met the medical exception prescribed under § 31-294c (c). *Pernacchio* v. *New Haven*, supra, 63 Conn.

App. 577–78. This court also discussed, and agreed with, the board's conclusion that the plaintiff had met the notice of claim requirement set forth in § 31-294c (a). Id., 576. Although this court, in affirming the board, did not rely on the board's conclusion concerning the plaintiff's compliance with § 31-294c (a), we cite it for the purpose of providing further guidance and clarity on the issue before us in the present appeal.

[11] Furthermore, we acknowledge that the board has concluded that, as a matter of law, an employer's decision to file a form 43 does not constitute an additional exception to the notice of claim requirement of § 31-294c (a). See *Gaffney* v. *Stamford*, supra, 15 Conn. Workers' Comp. Rev. Op. 260.

To provide context to Chubb's preemptive filing of the form 43, we provide the following exchange that occurred before the board, in relevant part:

"[Board]: So why did you file a [form] 43?

"[The Defendants' Counsel]: I think the carrier filed a [form] 43 to be on the safe side because a claim was potentially being brought. . . .

"[Board]: So you file [form] 43s on potential claims?

"[The Defendants' Counsel]: In this day and age, we file [form] 43s on just about everything.

* * *

"[Board]: . . . [W]hy would you have filed the [form] 43?

"[The Defendants' Counsel]: I think the [form] 43 was filed by Chubb because a first report of injury [form] was filed and there's lots of our carriers now who are filing [form] 43s when they get a first report of injury. . . . I think that all the carriers are paranoid about preclusion.

* * *

"[Board]: But there's no need to file a [form] 43 . . . when there's no form 30C? . . .

"[The Defendants' Counsel]: You're right, I don't believe there is an obligation to file a form 43. But I don't think that by being proactive in doing it, you've made the claimant's case for them."