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ROBINSON, J., dissenting. Because I believe that the record in the present case supports the conclusion of the Workers' Compensation Commissioner (commissioner) and the Workers' Compensation Review Board (board), that the plaintiff suffered from disabilities to his hands and arms caused by two independent and concurrently developing disease processes and, thus, that apportionment in accordance with the holding in *Deschenes v. Transco, Inc.*, 288 Conn. 303, 306, 953 A.2d 13 (2008), was appropriate, I would affirm the decision of the board. Accordingly, I respectfully dissent from the majority's decision to reverse the decision of the board.

The majority opinion adequately sets forth the relevant facts, procedural history, and standard of review. At the heart of the majority's decision to reverse the board is a determination that, because the plaintiff's diabetic neuropathy and resulting impairment to his hands and arms began to develop five years before his occupational injury to those same extremities, the neuropathy legally can be viewed only as a "previous disability" as that term is used in General Statutes § 31-149, and that the two conditions could not properly be found to be "concurrently developing" as is required in order to bring the claimant's disability under the *Deschenes* holding. I disagree.

As set forth in the majority opinion, our Supreme Court stated in *Deschenes* that "apportionment or reduction of permanent partial disability benefits is appropriate only in those cases wherein different diseases, one of which is occupational in nature, have combined to cause, in effect, two different disabilities, even if they ultimately affect the same bodily part or function." *Id.*, 322–23. The court concluded that an employer that sought apportionment or proportional reduction of permanent partial disability benefits therefore had the burden to prove that "(1) a disability has resulted from the combination of two concurrently developing disease processes, one that is nonoccupational, and the other that is occupational in nature; and (2) the conditions of the claimant's occupation have no influence on the development of the nonoccupational disease." *Id.*, 321.

As noted by the board, the commissioner made factual findings on the basis of Dr. Richard Linburg's testimony that the plaintiff's disability resulted from a combination of two separate and distinct yet concurrent disease processes affecting his arms and hands—diabetic neuropathy and occupational carpal and cubital tunnel injuries—and that the occupational injuries did not affect the development of or worsen the effects of the diabetic neuropathy. Those facts would appear to

be all that is necessary to bring this matter within the rule established in *Deschenes*. There was no finding made that the diabetic neuropathy was a “previous disability” or that the diabetic neuropathy had stopped progressing at any time prior to the development of the occupational injuries. I can discern nothing from the *Deschenes* opinion suggesting that, as a matter of law, disease processes that begin their development at different times cannot be found to be “concurrently developing disease processes” when disease development overlaps. On the basis of the record before us, I believe that the conclusions drawn by the commissioner from the facts found did not result either from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them. The decision of the board, therefore, should be affirmed.

Accordingly, I respectfully dissent.