****

The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the latest version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

****

LOUIS MARTINOLI *v.* STAMFORD POLICE DEPARTMENT ET AL.
(AC 45229)

Alvord, Moll and Cradle, Js.

Syllabus

The defendant appealed to this court from the decision of the Compensation Review Board, which affirmed the decision of the Workers' Compensation Commissioner awarding the plaintiff temporary total disability benefits pursuant to statute (§ 31-307 (a)), to commence retroactively. In January, 1999, the plaintiff, a former member of the defendant police department, established a compensable claim for coronary artery disease, hypertension, and congestive heart failure pursuant to statute (§ 7-433c). Thereafter, in October, 1999, the plaintiff retired from the defendant with no intention of ever returning to the workforce. In 2015, when he was eighty years old, the plaintiff developed atrial fibrillation and sustained a stroke, which the commissioner concluded was compensable. The commissioner subsequently determined that the plaintiff was entitled to temporary total disability benefits commencing July 15, 2015. *Held* that, on the basis of this court's reasoning in *Cochran* v. *Dept. of Transportation* (220 Conn. App. 855), which held that, where a claimant retires without any intention of returning to the workforce and does not return to the workforce, he or she is not entitled to temporary total disability benefits pursuant to § 31-307 (a) because it cannot be said that the claimant's injury resulted in total incapacity to work, the board improperly affirmed the commissioner's award of § 31-307 (a) benefits to the plaintiff beginning retroactively on July 15, 2015, the plaintiff having previously elected to retire from his employment with the defendant with no intention to return to the workforce after retirement.

Argued May 16—officially released August 8, 2023

Procedural History

Appeal from the decision of the Workers' Compensation Commissioner for the Seventh District awarding the plaintiff certain disability benefits, brought to the Compensation Review Board, which affirmed the commissioner's decision, and the defendants appealed to this court. *Reversed*; *judgment directed*.

Scott W. Williams, for the appellants (defendants).

Andrew J. Morrissey, for the appellee (plaintiff).

Opinion

ALVORD, J. The named defendant,[1] the Stamford Police Department (department), appeals from the decision of the Compensation Review Board (board) affirming the award of benefits under General Statutes § 31-307 (a), by the Workers' Compensation Commissioner for the Seventh District (commissioner)[2] to the plaintiff, Louis Martinoli, to commence retroactively on July 15, 2015. On appeal, the defendant claims, inter alia, that the board erred in affirming the commissioner's decision to award temporary total disability benefits because the plaintiff, pursuant to the language of § 31-307 (a), was not entitled to those benefits.[3] We agree with the defendant and, accordingly, reverse the decision of the board.

The following facts, as found by the commissioner or as undisputed in the record, and procedural history are relevant to our resolution of this appeal. On November 26, 1975, the plaintiff became a "regular member" of the department. On January 19, 1999, the plaintiff established a compensable claim for coronary artery disease, hypertension, and congestive heart failure pursuant to General Statutes § 7-433c.[4] On March 3, 1999, the plaintiff underwent quadruple bypass surgery performed by Daniel M. Rose, a surgeon.

On October 15, 1999, at age sixty-four, the plaintiff retired from the department. Following his retirement, the plaintiff never intended to return to the workforce, and he has not worked for any employer since that date.

On July 15, 2015, when he was eighty years old, the plaintiff "was admitted to the hospital with mid-abdominal pain after eating a heavy meal of fatty foods, developed atrial fibrillation, and proceeded to sustain a stroke" (July, 2015 events). The defendant contested compensability of the July, 2015 events "based on the fact that the atrial fibrillation and subsequent stroke manifested after retirement." On May 4, 2018, following a formal hearing, the commissioner concluded that the plaintiff's "claim for compensability and benefits for his atrial fibrillation and stroke is compensable as it flowed from the underlying accepted claims of hypertension, coronary artery disease, and congestive heart failure."[5]

At some point thereafter, the plaintiff sought benefits, pursuant to § 31-307, from the defendant. On September 1 and November 10, 2020, the commissioner held hearings to determine whether the plaintiff was entitled "to temporary total disability benefits in light of the fact that his total disability status commenced at a time when he was retired." The parties stipulated that the plaintiff "has been temporary totally disabled since July 15, 2015," but disagreed as to whether the plaintiff was entitled to § 31-307 benefits. During the hearings, the commissioner heard testimony from the plaintiff and

the plaintiff's daughter. Additionally, the plaintiff introduced into evidence six exhibits consisting of reports from various medical providers.

On March 11, 2021, the commissioner issued her findings and decision.[6] The commissioner concluded that "§ 31-307 is clear. If a claimant becomes totally disabled, they 'shall' receive weekly benefits. . . . Pursuant to . . . § 31-307, it is irrelevant whether or not the claimant was working at the time he becomes totally disabled. . . . The [plaintiff] has been totally disabled since July 15, 2015." Accordingly, the commissioner determined that "[t]he [defendant] shall provide the [plaintiff] with temporary total disability benefits commencing July 15, 2015 . . . ."[7]

On March 24, 2021, the defendant appealed to the board, claiming, inter alia, that the commissioner "erred in determining that the [plaintiff] was entitled to temporary total disability benefits after retiring and having no intention to ever reenter the workforce." Oral argument before the board was held on July 30, 2021.

On January 11, 2022, the board affirmed the commissioner's decision. The board reiterated the defendant's argument "that the phrase in [§ 31-307] 'total incapacity to work' implies that the claimant, at the time of their injury and/or disability, was either working or seeking work, and to compensate someone not seeking employment in the same manner as those who were creates an absurd or bizarre result." The board disagreed, stating that "binding precedent interpreting this statute has eliminated the necessity to be available for work in order to be eligible for temporary total disability benefits."

In support of its conclusion, the board found controlling our Supreme Court's decision in *Laliberte* v. *United Security, Inc.*, 261 Conn. 181, 801 A.2d 783 (2002). Specifically, the board pointed to language in which the court stated, "It is evident that § 31-307 (a) contains no provision permitting the discontinuance of the total disability benefits of an injured employee based on his incarceration. . . . The statute does not address inability to work because of incarceration. As a result, no intent concerning discontinuance of benefits because of incarceration can be inferred from the statute itself." Id., 186. Additionally, the board declined the defendant's invitation to adopt the law from other states because it found Connecticut precedent on point. The board concluded by stating, "We believe a reasonable interpretation of the precedent governing eligibility for § 31-307 benefits is that once the claimant proves that he is medically incapable of performing work, his willingness to obtain employment is irrelevant." This appeal followed.

The defendant claims, inter alia, that the board erred in affirming the commissioner's decision awarding the

plaintiff temporary total disability benefits, pursuant to § 31-307 (a), commencing on July 15, 2015. The defendant argues that to construe the statutory language of § 31-307 (a), such that a "retiree" with "no intent to return to the workforce" is eligible for temporary total disability benefits, "leads to an unreasonable or bizarre result." The defendant directs this court to case law from other jurisdictions in which courts have "determined that when a claimant is injured, subsequently voluntarily leaves the labor market through retirement, and thereafter has a recurrence or aggravation of their injury that causes total disability, they are not entitled to temporary total disability benefits unless they had re-entered the labor force at the time of the new period of total disability." See *Cutright* v. *Weyerhaeuser Co.*, 299 Or. 290, 302, 702 P.2d 403 (1985); see also *McCoy* v. *Dedicated Transport, Inc.*, 97 Ohio St. 3d 25, 35, 776 N.E.2d 51 (2002). In sum, the defendant argues that, "[f]or the [plaintiff] to be paid, at age eighty, temporary total disability benefits . . . for a loss of earnings from employment when he never planned nor intended to be employed again . . . leads to a bizarre and unreasonable result."

In response, the plaintiff argues that § 31-307 (a) "is clear and unambiguous" and points to language in § 31-307 (a) that states "the injured worker *shall* be paid a weekly compensation." (Emphasis added.) Additionally, he argues that "[our] Supreme Court and Compensation Review Board have consistently held that, once a claimant proves he is medically incapable of performing work, he *shall* receive this benefit, and willingness or ability to obtain work are irrelevant." (Emphasis added.) We agree with the defendant.

We addressed the plain and unambiguous language of § 31-307 (a) in *Cochran* v. *Dept. of Transportation*, 220 Conn. App. 855, A.3d (2023), also released today,[8] in which the parties raised similar claims and arguments. Applying the principles of statutory interpretation in that case, we concluded that "the plain and unambiguous language of § 31-307 (a) requires that, in order to be eligible for temporary total disability benefits, a claimant's 'injury . . . result[s] in total incapacity to work.' " Id., 867. We held that where a claimant retires without any intention of returning to the workforce and does not return to the workforce, he or she is not entitled to temporary total disability benefits pursuant to § 31-307 (a) because it cannot be said that the claimant's " 'injury . . . results in total incapacity to work.' " Id., 867–68. Accordingly, we reversed the decision of the board affirming the commissioner's award of temporary total disability benefits. Id., 873. Like the plaintiff in *Cochran*, the plaintiff here elected to retire from his employment with the defendant. Moreover, the plaintiff testified in September, 2020, that he never intended to return to the workforce after retirement, his intention was to "stay retired" and "enjoy retire-

ment," and he has not worked for any employer since he retired in October, 1999. We see no reason to repeat the analysis set forth in *Cochran* v. *Dept. of Transportation*, supra, 855. For the reasons stated therein, we conclude that the board improperly affirmed the commissioner's award of § 31-307 (a) benefits to the plaintiff beginning retroactively on July 15, 2015.

The decision of the Compensation Review Board is reversed and the case is remanded to the board with direction to reverse the decision of the commissioner.

In this opinion the other judges concurred.

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

[2] We note that, in 2021, the legislature enacted No. 21-18, §1, of the 2021 Public Acts (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.

[3] On appeal, the defendant also raises, in the alternative, two other claims. First, the defendant claims that the board erred in determining that temporary total disability benefits shall be paid pursuant to a minimum compensation rate as of July 15, 2015, the date of total incapacity, as opposed to January 19, 1999, the date of injury. Second, the defendant claims that the board failed to find that any temporary total disability benefits paid to the claimant after the May 10, 2016 date of maximum medical improvement would be a credit against the increase in the permanent partial impairment award. In light of our conclusion that the plaintiff was not entitled to temporary total disability benefits commencing on July 15, 2015, we need not address the defendant's alternative claims.

[4] General Statutes § 7-433c (a) provides, in relevant part, that, "in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment . . . ."

[5] The defendant appealed from the commissioner's decision to the board, which affirmed the commissioner's determination. See *Martinoli* v. *Stamford Police Dept.*, 6271 CRB 7-18-5 (April 24, 2019). The defendant appealed from the board's affirmance to this court but subsequently withdrew its appeal following the release of our Supreme Court's decision in *Dickerson* v. *Stamford*, 334 Conn. 870, 224 A.3d 1156 (2020), which allowed for flow-through causation in § 7-433c cases.

[6] Therein, the commissioner found that, "[p]ursuant to a stipulated finding and award approved on September 7, 2018, the [plaintiff] was paid an increased 19.25 [percent] permanent partial impairment to the heart, for a then total impairment of 63 [percent], utilizing a May 10, 2016 date of maximum medical improvement."

[7] On March 22, 2021, the defendant filed a motion to correct, in which it requested that the commissioner include an additional finding and amend her conclusions. On March 23, 2021, the commissioner issued an amended decision in which she corrected a scrivener's error and included an additional conclusion calling for future hearings to discuss the applicability of a statutory cap pertaining to the award of § 31-307 benefits.

[8] On October 17, 2022, this court ordered that this case and *Cochran* v.

Dept. of Transportation, supra, 220 Conn. App. 855, "be heard on the same day before the same panel." The two cases were heard before the same panel on May 16, 2023.