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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. In no event will any such motions be accepted before the ''officially released'' date.

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 electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

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FLYNN, J., dissenting. I respectfully dissent.

The principal issue before the commissioner was whether the plaintiff was totally disabled from employment arising out of and in the course of his employment as a correction officer. His work-related injury resulted from an attack by a prisoner. The commissioner, in an earlier proceeding, had found that the plaintiff suffered from posttraumatic stress syndrome.

In his findings of subordinate facts, the trial commissioner found, as a fact, that Dr. Swords, the plaintiff's physician, determined that the plaintiff was employable.[1] This was simply not the case. Dr. Swords, instead, had opined the opposite. Swords stated that the plaintiff was *unemployable*. The commissioner's finding about Dr. Swords' opinion was, therefore, clearly erroneous and found without evidence.

Such a finding would, nonetheless, stand unless the plaintiff moved to correct it in accordance with § 31-301-4 of the Regulations of Connecticut State Agencies.[2] See *Vanzant* v. *Hall*, 219 Conn. 674, 679, 594 A.2d 967 (1991); *Mack* v. *Blake Drug Co.*, 152 Conn. 523, 525, 209 A.2d 173 (1965). Here, however, the plaintiff did request the commissioner to correct what all parties to this case agree was an erroneous finding concerning the opinion of Dr. Swords. However, the commissioner refused to do so. Once the commissioner so refused, he became wedded to the error. The plaintiff properly preserved this error for review by the compensation review board.

In its written decision, the board attempted to dismiss this appellate issue in a footnote, stating that Dr. Swords' finding was an obvious typographical error. This perfunctory dismissal, however, does not correct the commissioner's finding, which was clearly erroneous. Although the board recognized, as did all of the parties in this case, that Swords was of the opinion that his patient was *unemployable*, it would be logically impossible for the board or this court to conclude that the commissioner also recognized this error, especially in light of the fact that he denied the plaintiff's motion to correct. If, as the board implicitly assumed, the commissioner recognized his error, why would he not correct it once moved to do so?

A mistaken belief in the existence of a fact that does not truly exist is an error. Such an error is not grounded in reality but is contrary to the actual fact. Mistakes of another kind can occur where one accurately apprehends the reality of a situation but in recording that apprehension unintentionally either hits the wrong key or misspeaks using a word opposite to that intended. This latter kind of error is often called a typographical

error. See American Heritage Dictionary of the English Language (4th Ed. 2000). The commissioner's use of the word employable to describe Dr. Swords' report about the plaintiff's condition lost any claim to being an unintentional typographical error when he refused to correct this erroneous finding in response to a motion to correct, which brought to his attention that Dr. Swords had said the opposite of what the commissioner had recorded in his finding. Since there was no dispute about what Dr. Swords had said in his report, as an undisputed material fact, it should have been correctly found.

This court has no way of knowing, nor did the board, what weight the commissioner gave his erroneous finding or whether his decision rose or fell based upon it. Because there is no way for us to make this determination, I would reverse the decision of the board and remand the case to the workers' compensation commissioner for rehearing.

Our workers' compensation law is remedial and intended to confer benefits the law provides for those suffering injuries arising out of and in the course of their employment, whether these sequelae are physical or mental. See *Gartrell* v. *Dept. of Correction*, 259 Conn. 29, 40–43, 787 A.2d 541 (2002) (act must be liberally construed, and mental injury that arises from compensable work-related physical injury is covered).

A decision denying these benefits must rest on facts that reasonably could be found or inferred from the evidence. Clearly erroneous findings of fact cannot support a denial of those benefits.

Accordingly, I dissent.

[1] Section 31-301-3 of the Regulations of Connecticut State Agencies provides: "The finding of the commissioner should contain only the ultimate relevant and material facts essential to the case in hand and found by him, together with a statement of his conclusions and the claims of law made by the parties. It should not contain excerpts from evidence or merely evidential facts, nor the reasons for his conclusions. The opinions, beliefs, reasons and argument of the commissioner should be expressed in the memorandum of decision, if any be filed, so far as they may be helpful in the decision of the case."

[2] Section 31-301-4 of the Regulations of Connecticut State Agencies provides: "If the appellant desires to have the finding of the commissioner corrected he must, within two weeks after such finding has been filed, unless the time is extended for cause by the commissioner, file with the commissioner his motion for the correction of the finding and with it such portions of the evidence as he deems relevant and material to the corrections asked for, certified by the stenographer who took it, but if the appellant claims that substantially all the evidence is relevant and material to the corrections sought, he may file all of it so certified, indicating in his motion so far as possible the portion applicable to each correction sought. The commissioner shall forthwith, upon the filing of the motion and of the transcript of the evidence, give notice to the adverse party or parties."