

**DISTRICT OF COLUMBIA COURT OF APPEALS**

No. 15-AA-926

RUI ZHEN CHEN, PETITIONER,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

and

HOTEL MONACO-DC and GALLAGHER BASSETT SERVICES, INC., INTERVENORS.

On Petition for Review of a Decision of the Compensation Review Board of the  
District of Columbia Department of Employment Services  
(CRB-045-15)

(Submitted May 19, 2016)

Decided August 19, 2016)

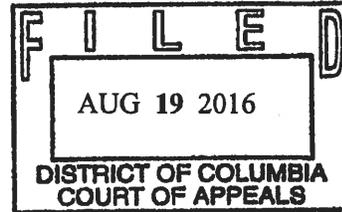
**MEMORANDUM OPINION AND JUDGMENT**

Before BLACKBURNE-RIGSBY and MCLEESE, *Associate Judges*, and REID,  
*Senior Judge*.

PER CURIAM: Petitioner Rui Zhen Chen petitions for review of a decision of the Compensation Review Board (“CRB”) denying disability benefits based on the finding that a medical condition requiring surgery on her left foot was not casually related to a workplace injury during her employment with intervenor Hotel Monaco-DC (“employer”).<sup>1</sup> Petitioner argues that (1) the decision by the administrative law judge (“ALJ”) to credit employer’s physician over her treating physicians did not comport with the preference for treating physicians and (2) the ALJ misapplied the “aggravation rule,” which entitles an employee to full disability benefits, even for aggravation of an existing condition, so long as a workplace injury caused substantially greater disability. *See, e.g., Georgetown*

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<sup>1</sup> Employer’s insurer, Gallagher Bassett Services, Inc., has also intervened in this case.



*Univ. v. District of Columbia Dep't of Emp't Servs.*, 830 A.2d 865, 873 (D.C. 2003). We discern no error and deny the petition for review.

### I.

In 2014, petitioner worked as a housekeeper for Hotel Monaco in Northwest Washington, D.C. The parties stipulated that an accidental injury occurred during the course of petitioner's employment on April 12, 2014, when a heavy door closed on her left foot, twisting the foot and causing petitioner to fall. Hotel Monaco subsequently made voluntary compensation payments until September 2014. The parties contest whether the injury caused, or substantially aggravated, petitioner's degenerative arthritis in her left foot that required surgery in August 2014, resulting in several months of medical recovery, and that still causes petitioner persistent pain and difficulty walking.

Several doctors rendered opinions regarding the causation of petitioner's degenerative left foot injury. Dr. Mark Miller began treating petitioner in May 2014, once she had been referred for surgical consultation. He stated in July 2014 that, "Even though degenerative changes at [the talonavicular] joint were present prior to injury, [the] injury exacerbated symptoms and now more definitive [treatment is] needed." However, Dr. Ryan Ahalt, a colleague of Dr. Miller, also reviewed petitioner's chart in July 2014 and concluded that petitioner's "prior injuries to the foot [with] unclear specifi[c] diagnoses" had only a "questionable relationship to [her] current pain." Finally, Dr. Ian Weiner, retained by employer, examined petitioner in June 2014 and reviewed subsequent CT scans before concluding that petitioner's need for talonavicular surgery was unrelated to the April 2014 workplace accident. He opined that petitioner had pre-existing talonavicular arthritis and that the workplace accident was a mere sprain that did not contribute at all to the long-term degeneration of her left foot.

In the proceedings before the ALJ, petitioner introduced the diagnoses of Dr. Miller and Dr. Ahalt as exhibits, and employer relied on the report and deposition testimony of Dr. Weiner. Ms. Chen testified, via an interpreter (her native tongue is Mandarin), that the April 12, 2014, workplace injury caused swelling in the middle of her left foot, was initially so painful that she could not stand, and remained swollen and painful at the time of the hearing (in January 2015). Nevertheless, on cross examination, she admitted that she had recurring left foot pain and multiple prior injuries. In the compensation order, the ALJ acknowledged that a presumption of compensability applied to petitioner's left foot injury as a potential aggravation of a preexisting condition. The ALJ concluded that the

employer had rebutted the presumption of compensability, however, “by impeaching Ms. Chen’s testimony about her prior pain and submitting the persuasive opinion of Dr. Weiner.”

Petitioner then bore the burden of proof without the benefit of the presumption. The ALJ acknowledged the deference owed to Ms. Chen’s treating physicians, Dr. Miller and Dr. Ahalt. However, the ALJ credited Dr. Weiner’s medical opinion that the April 2014 workplace injury did not contribute to petitioner’s need for surgery at all. The ALJ found Dr. Weiner more credible because his testimony went into “great detail” and was consistent with petitioner’s admission that she had multiple left foot injuries and pain prior to the April 2014 workplace injury. The ALJ concluded that Dr. Weiner’s opinion was more persuasive than the treating physicians’ because it “tackle[d] the medical-causal issue with greater detail” and there was “no persuasive evidence that [Dr. Weiner’s] opinion was unduly influenced or biased.” Therefore, the ALJ denied petitioner’s claim, finding lack of causation.

Petitioner appealed to the CRB, arguing that (1) the ALJ’s finding that the employer had rebutted the presumption of compensability was not supported by substantial evidence and (2) the ALJ did not properly apply the treating physician preference. The CRB concluded that the ALJ had “record-based justifications” for its decision crediting Dr. Weiner, which satisfied the employer’s burden to rebut the presumption of compensability. It also concluded that the ALJ correctly applied the treating physician preference and “gave specific reasons” for “rejecting the opinions of Dr. Miller and Dr. Ahalt.” The CRB affirmed the denial of relief, and this petition for review followed.

## II.

“Our review of a final order of the CRB is limited to determining whether the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. We will affirm if (1) the agency made findings of fact on each contested material factual issue, (2) substantial evidence supports each finding, and (3) the agency’s conclusions of law flow rationally from its findings of fact.” *M.C. Dean, Inc. v. District of Columbia Dep’t of Emp’t Servs.*, \_\_\_ A.3d \_\_\_, No. 14-AA-1141, slip op. at 11 (D.C. July 7, 2016) (internal citations and quotations marks omitted). Petitioner argues that the CRB erred by affirming the denial of benefits because (1) the ALJ improperly credited Dr. Weiner over the treating physicians and (2) the ALJ misapplied the “aggravation rule.”

“Under our jurisprudence, there is a preference for . . . the treating physician’s evaluation” over other physicians retained for purposes of litigation. *Jackson v. District of Columbia Dep’t of Emp’t Servs.*, 979 A.2d 43, 49 (D.C. 2009). If rejecting the treating physician’s opinion in favor of another, the ALJ must provide “specific and legitimate reasons” for doing so. *Olson v. District of Columbia Dep’t of Emp’t Servs.*, 736 A.2d 1032, 1041 (D.C. 1999).

In this case, the ALJ recognized the treating physician preference but articulated specific reasons for discounting the treating physicians’ opinions. Specifically, the ALJ found Dr. Miller’s conclusion — that the April 2014 workplace injury “exacerbated” petitioner’s prior symptoms such that “more definitive” treatment was necessary — to be “of limited probative value” because it predated a subsequent CT scan. The CT scan was important, in the ALJ’s view, because it showed fragmentation of the navicular bone, not just joint deterioration, which “indicated old trauma.” The ALJ therefore reasoned that Dr. Miller’s opinion was “based on an incomplete picture of Ms. Chen’s condition” relative to the credited opinion of Dr. Weiner, who was able to review the CT scan reflecting old trauma.<sup>2</sup>

Additionally, the ALJ found Dr. Ahalt’s opinion to be ambiguous, which limited its value. Specifically, Dr. Ahalt could not separate out the contributions of petitioner’s recent workplace injuries and her prior injuries, which had a “questionable relationship to current pain.” Moreover, Dr. Ahalt concluded that her joint deterioration was “secondary to prior trauma to her left foot.” Therefore, in the ALJ’s view, Dr. Ahalt’s opinion did not “conclusively link the pain with [petitioner’s] workplace accident” and reflected uncertainty as to “whether Ms. Chen’s degenerative joint disease was aggravated by her workplace injury.”

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<sup>2</sup> Petitioner criticizes the ALJ’s reliance on the CT scan when discrediting Dr. Miller. We acknowledge that the record might have supported a finding the Dr. Miller was more credible than Dr. Weiner despite Dr. Miller’s pre-CT scan diagnosis, but this court (like the CRB) does not reweigh the evidence. So long as the record contains substantial evidence supporting the ALJ’s reasoning for discrediting the treating physician when making findings of fact, “the existence of substantial evidence to the contrary does not permit the CRB [or this court] to substitute its judgment for that of the [ALJ].” *Wash. Metro. Area Transit Auth. v. District of Columbia Dep’t of Emp’t Servs.*, 926 A.2d 140, 147 (D.C. 2007) (internal quotation and alterations omitted).

The ALJ's findings based on Dr. Weiner's opinion, which was contrary to the treating physicians' opinions, were supported by substantial evidence. *See, e.g., District of Columbia v. District of Columbia Dep't of Emp't Servs.*, 734 A.2d 1112, 1115 (D.C. 1999) (Substantial evidence is "such evidence as a reasonable mind might accept as adequate to support a conclusion." (quotation marks omitted)). Dr. Weiner stated that petitioner's April 2014 injury was merely a midfoot sprain, which would heal and return her to a pre-injury "baseline" of pain caused by preexisting arthritis within about three months. In his medical opinion, the CT scan, and an earlier MRI from May 2014, showed only osteoarthritis without accumulation of fluid, unlike degeneration caused by a traumatic injury. Thus, Dr. Weiner viewed the April 2014 sprain as an injury that would fully heal, with the underlying arthritis causing independent degeneration requiring surgery.<sup>3</sup> The ALJ credited Dr. Weiner's opinion in full because his "deposition testimony helpfully describe[d] the distinction between Ms. Chen's sprain and her arthritic preexisting condition." When doing so, the ALJ acknowledged the potential for bias — Dr. Weiner had been retained for this workers' compensation litigation — but was not persuaded "that his opinion was unduly influenced or biased" because he gave frank and non-evasive answers in his deposition. We therefore conclude that the ALJ did not err because the compensation order specifically addressed the treating physicians' opinions, offered sufficient reasons for discounting them, and made contrary factual findings that were supported by substantial evidence. *See Jackson, supra*, 979 A.2d at 49; *Olson, supra*, 736 A.2d at 1041.

Finally, the denial of benefits in this case comported with the aggravation rule. "The aggravation rule stems from the principle that the employer must take the employee as it finds him or her. Employers must accept with their employees the frailties that predispose them to bodily hurt[,] and if petitioner's disability arose *even in part* out of and in the course of her employment, compensation is appropriate." *McCamey v. District of Columbia Dep't of Emp't Servs.*, 947 A.2d 1191, 1197 (D.C. 2008) (en banc) (internal quotation and alterations omitted; emphasis in original). Petitioner argues that the ALJ failed to apply the "aggravation rule" and, in effect, precluded any compensation just because she had

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<sup>3</sup> Even as an independent disability, the April 2014 sprain was compensable, and the employer voluntarily paid temporary total disability benefits through September 2014. At issue is petitioner's disabling arthritis requiring fusion surgery on her left foot, and Dr. Weiner's credited medical opinion explains that the need for the fusion surgery was caused by preexisting arthritis that was not exacerbated by the April 2014 workplace injury.

some preexisting arthritis, even though the April 2014 injury exacerbated her condition.<sup>4</sup> We disagree.

The ALJ's findings based on Dr. Weiner's opinion support the complete denial of disability benefits after September 2014, even in light of the aggravation rule. The aggravation rule allows for compensation when a workplace injury "aggravated, accelerated, or combined with the disease or infirmity to produce the . . . disability for which compensation is sought." *McCamey, supra*, 947 A.2d at 1198 (quotation marks omitted). As the ALJ explained when crediting Dr. Weiner's opinion, Dr. Weiner concluded that the April 2014 injury was a midfoot sprain; that "Ms. Chen's talonavicular arthritis was not medically caused or altered by her midfoot sprain;" and, ultimately, that "the accident on April 2014 did not cause the need for the talonavicular surgery" for which petitioner was seeking temporary total disability benefits. In short, the ALJ credited Dr. Weiner's assessment that petitioner would fully return to her "baseline" pain and arthritis after the April 2014 workplace injury, and that the preexisting arthritis was the sole cause of petitioner's subsequent left foot surgery. Thus, the aggravation rule does not assist petitioner because, based on the facts credited by the ALJ, the April 2014 workplace injury did not aggravate her preexisting arthritis at all or contribute in any way to her need for fusion surgery.

Accordingly, we deny the petition for review.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO  
Clerk of the Court

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<sup>4</sup> Though petitioner appears not to have specifically asserted the aggravation rule to the CRB, we review this argument as a subset of the presumption-of-compensability argument that petitioner raised at the agency level.