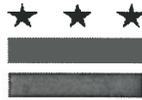


GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-045

RUI ZHEN CHEN,
Claimant-Petitioner,

v.

HOTEL MONACO-DC and GALLAGHER BASSETT SERVICES, INC.,
Employer/Third-Party Administrator-Respondent.

Appeal from a February 27, 2015 Compensation Order By
Administrative Law Judge Gregory P. Lambert
AHD No. 14-564, OWC No. 715225

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 JUL 28 AM 9 54

(Decided July 28, 2015)

Douglas K. Allston, Jr. for Claimant
Zachary L. Erwin for Employer

Before MELISSA LIN JONES, LINDA F. JORY, and HEATHER C. LESLIE, *Administrative Appeals Judges.*

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

In 2014, Ms. Rui Zhen Chen worked as a housekeeper for Hotel Monaco-DC. On April 12, 2014, a heavy door closed on her foot; she fell to the floor, twisted her left foot, and hit her head against a wall.

After receiving treatment at George Washington University Hospital's emergency room, Ms. Chen began treating with Dr. Angelo Pace. Dr. Pace referred Ms. Chen to Drs. Mark L. Miller and Ryan G. Ahalt at Kaiser Permanente for a surgical consultation. Ms. Chen underwent left foot surgery in August 2014.

The parties proceeded to a formal hearing before an administrative law judge ("ALJ") to assess Ms. Chen's entitlement to temporary total disability benefits from September 1, 2014 to the date of the formal hearing and continuing. In a Compensation Order dated February 27, 2015, the

ALJ denied Ms. Chen's claim for relief. *Chen v. Hotel Monaco-DC*, AHD No. 14-564, OWC No. 715225 (February 27, 2015).

On appeal, Ms. Chen argues the presumption of compensability was not properly rebutted because the ALJ failed to address Ms. Chen's evidence that prior to her April 12, 2014 injury, she was not having any significant problems with her left foot. Ms. Chen also argues the ALJ failed to provide an appropriate justification for rejecting her treating physicians' opinions regarding causation. Ms. Chen requests the CRB reverse the Compensation Order.

ISSUES ON APPEAL

1. Is the ALJ's ruling that Hotel Monaco-DC rebutted the presumption of compensability supported by substantial evidence and in accordance with the law?
2. Did the ALJ properly apply the treating physician preference?

PRELIMINARY MATTER

Pursuant to 7 DCMR § 258.8, "Any response in opposition must be filed with the Clerk of the Board within fifteen (15) calendar days from the date of filing of the Application for Review." Ms. Chen's application for review was filed on March 27, 2015. In order to be timely, Hotel Monaco-DC's opposition must have been filed no later than April 13, 2015. Hotel Monaco-DC's opposition was filed late on April 14, 2015 and has not been considered in the resolution of this appeal.

ANALYSIS¹

Pursuant to § 32-1521(1) of the Act, a claimant may be entitled to a presumption of compensability ("Presumption"). In order to benefit from the Presumption, the claimant initially must show some evidence of a disability and the existence of a work-related event, activity, or requirement which has the potential to cause or to contribute to the disability. *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987). "[O]nce an employee offers evidence demonstrating that an injury was potentially caused or aggravated by work-related activity, a presumption arises that the injury is work-related and therefore compensable under the Act." *Washington Hospital Center v. DOES*, 744 A.2d 992, 996 (D.C. 2000). There is no dispute the Presumption was invoked.

Once the Presumption was invoked, it was Hotel Monaco-DC's burden to come forth with substantial evidence "specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event." *Waugh v. DOES*, 786 A.2d 595, 600 (D.C. 2001) (Citations omitted). Only upon a successful showing by Hotel Monaco-DC would the

¹ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act, as amended, D.C. Code § 32-1501 to 32-1545 ("Act"). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

burden return to Ms. Chen to prove by a preponderance of the evidence, without the benefit of the Presumption, her left foot condition is causally related to her employment. *See Washington Hospital Center v. DOES*, 821 A.2d 898 (D.C. 2003).

In this case, the ALJ relied upon both Ms. Chen's impeached testimony about her prior pain and Dr. Ian M. Weiner's opinion to rebut the Presumption. Regarding Ms. Chen's testimony, the ALJ determined

[a]lthough there is no question in my mind that Ms. Chen's current pain and talonavicular joint disease are real, I do not accept that she did not experience some degree of foot pain prior to the April 2014 injury. Ms. Chen's left foot had objective signs of an older fracture. EE 4 (corticated bony fragments); EE 5 ("bony deformity ... secondary to prior trauma and/or fracture"). She presented conflicting testimony about pain. *Compare* HT at 39-40 (she has experienced pain [sic] her foot, but kept working; her left foot has hurt her prior to April 2014); *with* HT at 27 ("There was no pain" prior to the April 12, 2014 injury.). X-ray images indicated "moderate or greater degenerative change at the talonavicular joint." CE 2 at 14. Coupled with her inconsistent testimony, the objective evidence supports a finding, which I make, that Ms. Chen felt pain in her foot prior to the April 2014 injury. This is relevant because it circumstantially supports Hotel Monaco's argument that Ms. Chen's degenerative talonavicular joint disease caused pain and would require treatment that was independent of the treatment she received for her foot sprain.

Chen, supra, at p. 4. The foundation of the ALJ's ruling on this issue is credibility, and given the record-based justifications for this credibility ruling, the CRB is constrained to accept it. *See Dell v. DOES*, 499 A.2d 102, 106 (D.C. 1985).

Furthermore, the Presumption is rebutted when the record demonstrates a physician (even a physician retained for purposes of litigation) has performed a personal examination of the claimant, has reviewed the relevant medical records, and has stated an unambiguous opinion contrary to the causal relationship presumption. *Washington Post v. DOES*, 852 A.2d 909 (D.C. 2004). The ALJ accepted Dr. Weiner's opinion that

describes the distinction between Ms. Chen's sprain and her arthritic preexisting condition. EE 1 at 11 *et seq.* "[T]he fusion [to treat the talonavicular arthritis] is certainly separate from the midfoot sprain." EE 1 at 13; *see also* EE 2. He lucidly and thoroughly explains his conclusion that Ms. Chen's talonavicular arthritis was not medically caused or altered by her midfoot sprain. EE 1 at 15-17 Asked if the midfoot sprain presented or caused any alteration to the pre-existing talonavicular condition, he answers "[i]t did not." EE 1 at 17 (citing the MRI, CAT scan, and x-rays in support); *but see* EE 4 (MRI report includes "posttraumatic" as one of several potential etiologies). He further adds that the accident on April 2014 did not cause the need for the talonavicular surgery. EE 1 at 17-18 ("No, that was related to her underlying osteoarthritis."). The corticated bony fragments seen in the CT scan were degenerative changes unrelated to the April 2014 injury. EE 1 at 18. Dr. Weiner's opinion was that, with reasonable treatment, Ms. Chen's sprain would return to "baseline" after about three months, but that she would "absolutely" still have arthritis. EE 1 at 18; *see also* EE 2.

Chen, supra, at p. 5. Dr. Weiner's opinion is sufficient to rebut the Presumption.

While Ms. Chen argues Dr. Weiner's opinion is not entitled to any weight because his addendum was "directed by another party," Claimant's Brief in Support of Application for Review of Compensation Order, unnumbered p. 7 nt. 1, Ms. Chen's argument is speculative. Moreover, Ms. Chen's argument requests the CRB reweigh the evidence in her favor, but such a request exceeds the CRB's authority. *Marriott, supra*.

Finally, in District of Columbia workers' compensation cases there is a preference for the opinions of a treating physician, *Stewart v. DOES*, 606 A.2d 1350, 1353 (D.C. 1992); however, the treating physician preference is not absolute. When there are specific reasons for rejecting the opinion of a treating physician, the opinion of another physician may be given greater weight. *See Olsen v DOES*, 736 A.2d 1032 (D.C. 1999).

In this case, the ALJ accurately recited the treating physician preference:

I address the treating physician preference first. Treating physicians are preferred by the Act, and evidence from a treating physician may be rejected only after an explanation is provided addressing why it is rejected. *See generally Lincoln Hockey LLC v. District of Columbia Dep't of Employment Servs.*, 831 A.2d 913,919 (D.C. 2003). The latitude to discredit the treating physician's opinion is greatest when the non-treating physician examined the claimant. *Marriott Int'l v. District of Columbia Dep't of Employment Servs.*, 834 A.2d 882, 886 (D.C. 2003). Dr. Weiner examined Ms. Chen, which increases the reliability of his IME opinion. Layered atop his IME report is his deposition transcript, which sets forth in great detail the bases for his well-reasoned findings. In comparison, and for reasons discussed in detail below, the evidence from her treating physicians is less reliable on the issue of medical causation. Dr. Wiener's opinion is more persuasive because it is tackles the medical-causal issue with greater detail than the opinions of Ms. Chen's treating physicians.

Chen, supra, at p. 4. More importantly, when rejecting the opinions of Dr. Miller and Dr. Ahalt, the ALJ gave specific reasons for doing so.

Regarding Dr. Miller, the ALJ wrote

Dr. Miller, a treating physician and podiatrist, made a direct connection between the pain from Ms. Chen's degenerative joint disease and the workplace injury. Specifically, he recommended surgery because, "[e]ven though degenerative changes ... were present prior to injury, [the] injury exacerbated symptoms and now more definitive [treatment is] needed." CE 2 at 10. But that conclusion was made prior to the CT scan, which was read by a radiologist who found that there was "[m]arked degenerative change at the talonavicular joint" and a "fragmentation of the lateral aspect of the navicular itself," which "indicated old trauma." CE 2 at 13. The CT scan was ordered specifically to rule out an occult fracture, which might not have appeared on the x-rays. CE 2 at 12. No new fracture was identified. CE 2 at 12. Only after the CT scan was Ms. Chen to follow-up with Dr. Ahalt to discuss whether surgery was appropriate. CE 2 at

10. Because his opinion predated the CT scan, Dr. Miller's medical causation opinion is based on an incomplete picture of Ms. Chen's condition and, therefore, of limited probative value.

Id. at pp. 4-5. Ms. Chen asserts

At the time Dr. Miller provided his causation opinion that the need for surgery was caused by the work injury, he had reviewed the x-rays and the MRI and examined the Claimant. The MRI revealed the degenerative changes that all the parties agree existed at the time. These degenerative changes were later simply confirmed on the CT scan. Dr. Miller subsequently reviewed the CT scan and gave absolutely no indication that the findings of the CT scan changed his opinion. In fact, the IME doctor, Dr. Weiner conceded that the CT scan in question wasn't important at all.

“Q Does that report showing the CT of the left foot give any additional information or change your initial assessment as to Ms. Chen's condition?

A No.” (EE 1, pg 14)

Claimant's Brief in Support of Application for Review of Compensation Order, unnumbered p. 6. Ms. Chen, however, provides no citation to the record to substantiate that Dr. Miller “subsequently reviewed the CT scan and gave absolutely no indication that the findings of the CT scan changed his opinion,” *Id.*, and the CRB finds no such record evidence. Furthermore, that Dr. Weiner “conceded that the CT scan in question wasn't important at all,” *Id.*, is of no relevance to Dr. Miller's opinion or to any inferences the ALJ has drawn from Dr. Miller's failure to review the CT scan (or to document that he reviewed the CT scan). The CRB finds no legal justification for disturbing the ALJ's decision to reject Dr. Miller's opinion.

Regarding Dr. Ahalt, the ALJ also gave specific reasons for rejecting his opinions:

Dr. Ahalt had the opportunity to review the CT scans. His notes make clear that Ms. Chen had “prior injuries to the foot w[ith] unclear specifi[c] diagnoses and of questionable relationship to current pain.” CE 2 at 16. Although he adds that Ms. Chen “was functioning well without pain prior to this most recent injury,” he does not conclusively link the pain with her workplace accident. CE 2 at 16. Dr. Ahalt also wrote that her degenerative joint disease was “secondary to prior trauma to her left foot,” but he does not specify which trauma. CE 5 at 51; *see also* EE 4 (indications of prior injury). Dr. Ahalt's language suggests that he was unsure of whether Ms. Chen's degenerative joint disease was aggravated by her workplace injury.

Chen, supra, at p. 5. The CRB finds no legal justification for disturbing the ALJ's decision to reject Dr. Ahalt's opinion.

CONCLUSION AND ORDER

The ALJ's ruling that Hotel Monaco-DC rebutted the presumption of compensability is supported by substantial evidence and is in accordance with the law, and the ALJ properly applied the treating physician preference. The Compensation Order is AFFIRMED.

So ordered.