GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

F. THOMAS LUPARELLO
INTERIM DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-078

ROSHELL M. WRIGHT,
Claimant–Petitioner,

v.

SPECIALTY HOSPITALS OF WASHINGTON AND CHARTIS INSURANCE COMPANY,

Employer/Carrier–Respondents.

Appeal from a May 31, 2013 Compensation Order By
Administrative Law Judge Nata K. Brown
AHD No.12-242, OWC No. 689285

Ryan J. Foran, for the Petitioner
Joel E. Ogden, for the Respondent

Before HEATHER C. LESLIE, MELISSA LIN JONES and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

HEATHER C. LESLIE, for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Claimant - Petitioner (Claimant) of the May 31, 2013, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Section of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ denied the Claimant's request for disability benefits, finding the Claimant did not suffer a work related injury. We AFFIRM.

BACKGROUND AND FACTS OF RECORD

The Claimant is a patient care technician for the Employer. The Claimant suffers from other health conditions unrelated to her employment, namely diabetes. Dr. Benjjenki S. Chary has

treated the Claimant for her diabetes for several years, noting on several occasions her non-compliance with treatment recommendations.

The Claimant testified that she had experienced pain and tingling in her wrists as early as 2010 which became so severe on January 6, 2012 that she sought treatment at the Fort Washington Medical Center Emergency Room. The Claimant followed up with Dr. Samir Azer and Dr. Chary. Dr. Azer recommended an EMG which was performed on February 7, 2012. The EMG revealed evidence of moderate carpal tunnel syndrome (CTS) on the right side, and borderline CTS on the left side.

After the EMG, Dr. Chary recommended therapy. After therapy, Dr. Chary recommended surgery to both wrists. Right wrist surgery occurred on May 3, 2012 and left wrist surgery occurred on June 7, 2012. The Claimant did not return to work after February 7, 2012.

The Claimant, at the request of the Employer, underwent an independent medical evaluation (IME) with Dr. Robert Gordon on February 2, 2012. At that IME, Dr. Gordon took a history of the Claimant's present illness, performed a physical examination, and reviewed medical records. Dr. Gordon diagnosed the Claimant with bilateral hand symptoms. At that IME, and in a subsequent addendum, Dr. Gordon opined that the cause of her CTS was her diabetes.

On October 9, 2012 a full evidentiary hearing was held. The Claimant sought an award of temporary total disability from February 7, 2012 to the present and continuing and causally related medical expenses. The issues presented for resolution were whether or not the Claimant suffered a work related injury, whether the Claimant's disability is medically casually related to the accident that arose in the course of her employment, and the nature and extent of the Claimant's disability, if any. A CO issued on May 31, 2013 which denied the Claimant's claim for relief. The CO concluded the Claimant did not suffer a work related injury. The CO also concluded the Claimant's testimony was not credible.[1]

The Claimant timely appealed. The Claimant argues the ALJ erred in discounting the opinion of the treating physician, Dr. Chary, and instead relying upon the opinion of Dr. Gordon when concluding the Claimant did not suffer a work related injury. Employer opposes the application for review arguing the CO is supported by the substantial evidence in the record and is in accordance with the law.

STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, is generally limited to making a determination as to whether the factual findings of the 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. *See*, D.C. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq*., (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB must affirm a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to

[1] This finding was not appealed by the Claimant.

support a contrary conclusion, and even where this panel might have reached a contrary conclusion. *Id.*, at 885.

DISCUSSION AND ANALYSIS

The Claimant first argues that the ALJ erred in finding the opinion of Dr. Gordon sufficient to rebut the presumption of compensability.[2] The Claimant argues that Dr. Gordon's opinion was ambiguous, that his opinion that diabetes was the cause of her CTS was in error, and that Dr. Gordon's unfamiliarity with the Claimant's occupation rendered his opinion insufficient to rebut the presumption. We disagree. Dr. Gordon opines that the Claimant's CTS is "clearly related" to the Claimant's longstanding diabetic condition and that the Claimant's job as a patient care technician did not cause or aggravate her condition. Dr. Gordon specifically stated that her job was "not one of the occupations that I have ever seen considered related to carpal tunnel syndrome." We reject the Claimant's interpretation of Dr. Gordon's statement as standing for the proposition that he was unfamiliar with her job. Instead, we read Dr. Gordon's opinion as stating that the Claimant's occupation is not one which normally would cause CTS. Dr. Gordon's opinion is unambiguous and the ALJ's finding that his opinion is enough to rebut the presumption is affirmed.

The Claimant next argues that the opinion of Dr. Chary, as the treating physician, should be given more weight and it was in error for the ALJ to give more credence to the opinion of Dr. Gordon.. While it is well settled that in situations where there are conflicting medical opinions, the opinion of the treating physician is preferred over those of physicians retained simply to examine the claimant for the purposes of litigation. *Stewart v. District of Columbia Dept. of Employment Services,* 606 A.2d 1350 (D.C. 1992). It is equally acknowledged that the even with this preference, an ALJ may choose to credit the testimony of a non-treating physician over a treating physician. *Short v. District of Columbia Department of Employment Services*, 723 A.2d 845 (D.C. 1998). Among the reasons that have resulted in such a rejection are sketchiness, vagueness and imprecision in the reports of the treating physician. *Erickson v. Washington Metropolitan Area Transit Authority*, H&AS No. 92-63, OWC No. 181489 (October 28, 1993), aff'd. Dir. Dkt. No. 93-82 (June 5 1997). Additional reasons that have been found to be relevant to this determination are the fact that the IME physician had examined the claimant personally, had reviewed all the available medical reports and diagnostic studies, and had superior relevant professional experience and specialization. *Canlas v. District of Columbia Department of Employment Services*, 723 A.2d 1210 (D.C. 1999). Certainly, an ALJ can reject the opinion of a treating physician when it is contradictory to that same physician's own records and previous opinions.

The CO states,

> Dr. Chary, in his reports from June 16, 2004 through January 17, 2012, consistently states that Claimant is a diabetic who has neuropathy, and has trouble keeping her condition under control. He does not mention that Claimant has work-related carpal tunnel syndrome until February 13, 2012 -- after Claimant

[2] We note that the Claimant, in argument at page 4, refers to ALJ Linda Jory and a physician by the name of Dr. Segalman. A review of the record reveals that the quote attributed to Dr. Segalman is actually that of Dr. Gordon. We will treat the reference to ALJ Jory and Dr. Segalman as typographical errors.

> decided against returning to work. That handwritten note is inconsistent with the eight years of office visit records. For that reason, the February 13, 2012 note is not given any weight.
>
> The examination records of Dr. Gordon provide the most thorough explanation regarding the cause of Claimant's condition. Therefore, his opinion is given the greater weight. Claimant's carpal tunnel condition was caused by her long-standing and uncontrolled diabetes. Claimant did not suffer a work-related accidental injury.

CO at 7.

Thus, the ALJ rejected the opinion of the treating physician based upon the fact that the opinion linking the CTS with the work injury occurred after years of treatment and after the Claimant decided against going back to work. Coupled with her incredible testimony, this serves as a viable reason to reject the treating physician's opinion. In light of this, the ALJ choose to credit the opinion of Dr. Gordon. What the Claimant is essentially asking us to do is to reweigh the evidence in the Claimant's favor, a task we cannot do. The ALJ found the Claimant had failed in her burden, that of a preponderance of the evidence, based upon the incredible testimony of the Claimant and the evidence presented. The CO is supported by the substantial evidence in the record.

We recognize that it is not necessary that there be a distinct or identifiable incident in order for a claimant to be found to have sustained a compensable work injury. The ALJ also recognized this. A review of the CO reveals that after noting the presumption of compensability, the ALJ began her analysis by correctly noting the District of Columbia Court of Appeals holding in *King v. DOES*. Specifically, the ALJ stated,

> Claimant, through her testimony, presents what could be characterized as a cumulative traumatic injury. In *King v. DOES*, 742 A.2d 460 (D.C. 1999), the Court of Appeals discussed "discrete" versus "cumulative" traumatic injuries. The difference between the typical case of a discrete accident causing an injury (including an aggravating injury) and a cumulative trauma case is merely that in the latter case it is not possible to identify a discrete event occurring at a particular date and time that causes (or aggravates) the injury. Instead, the cumulative traumatic injury becomes manifest only after the body's repeated exposure to individually minor injuries, insults, or harmful employment-related conditions. As with aggravating injury, it is settled that injury resulting from cumulative trauma in the workplace is compensable. *King, supra*, at 469.
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> In *Van Hoose v. Respicare Home Respiratory Care*, CRB No. 07-022, AHD No. 06-342, OWC No. 626066 (Decision and Remand Order, July 23, 2007), the CRB, citing to *Franklin v. Blake Realty Co.*, H&AS No. 84-26, OWC No. 258856 (Director's Decision, August 18, 1985), other prior decisions by the agency, and CRB decisions since *King*, adopted the manifestation rule first articulated in *Franklin v. Blake Realty*, that the date the employee first seeks medical treatment for his/her symptoms, or the date the employee stops working due to his/her

> symptoms, shall be used for the purpose of determining "date of injury" in cumulative traumatic injury cases. *Van Hoose, supra* at 7.

CO at 4.

Finally, the ALJ also stated,

> Claimant has a long history of diabetes, and has registered complaints of wrist pain to physicians as early as 2002. She claims that she suffered an accidental injury on February 7, 2012, the day that she had the EMG and that her condition was diagnosed as moderate carpal tunnel syndrome on the right, and borderline on the left. There, however, is no objective evidence that Claimant suffered a work-related accident.
>
> She testified that she used her hands for the majority of her work day, performing the varied tasks required of her as a patient care technician, and that those repetitive movements caused her to develop carpal tunnel syndrome. There is no objective evidence to support this argument. Claimant, in fact, had several different tasks to perform on a daily basis wherein the movements were varied -- such as pushing, pulling, wiping, turning, etc. Though Dr. Davalos stated in his April 30, 2012 report that Claimant did a lot of typing at work, there is no testimony or objective evidence indicating that typing was a major part of her job. Dr. Azer makes no mention of a repetitive motion injury, but he does mention that Claimant has diabetes and a history of diabetic neuropathy.

CO at 6-7.

Thus, not only did the ALJ find, based upon the IME of Dr. Gordon, that diabetes was the cause of her CTS, but she also determined that the duties of the Claimant's job did not legally cause the Claimant's CTS. Stated another way, the Claimant's CTS did not arise out of an in the course of the Claimant's employment. Together with the opinion of Dr. Gordon opining the Claimant's CTS is caused by her diabetes as well as her incredible testimony (a finding not appealed by the Claimant), the CO is supported by the substantial evidence in the record and is in accordance with the law. We affirm.

CONCLUSION AND ORDER

The May 31, 2013 Compensation Order is supported by the substantial evidence in the record and is in accordance with the law. It is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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HEATHER C. LESLIE
Administrative Appeals Judge

January 22, 2014
DATE