CRB No. 16-132

OLGA SANCHEZ,
Claimant-Petitioner,

v.

MARRIOTT INTERNATIONAL, INC.,
Self-Insured Employer-Respondent.

Appeal from a September 8, 2016 Compensation Order
by Administrative Law Judge Gerald D. Roberson
AHD No. 16-301 OWC No. 741234

(Decided January 31, 2017)

Rebekah A. Miller for Claimant
Joel E. Ogden for Employer

Before: GENNET PURCELL, HEATHER C. LESLIE, and LINDA F. JORY, *Administrative Appeals Judges.*

GENNET PURCELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Olga Sanchez "Claimant" worked in the hotel industry for Marriott International, Inc., ("Employer") in varying capacities from 1989 to 2012. Sometime in 1994, Claimant was working as a housekeeper. Her duties included the cleaning of Employer's hotel rooms with various cleaning chemicals on a daily basis which she claimed caused her to suffer from nasal congestion and red, watery eyes.

The Claimant initially sought medical treatment for her allergy-type symptoms in 2004. On March 13, 2006, Claimant was seen by her primary care physician, Dr. Ego-Osuala and complained of a stuffy and runny nose, itching on her nose, intermittent sneezing, lower back pain and an inability to breathe well at night which she attributed to her work conditions. Claimant was assessed as having cerumen impaction, rhinitis and low back pain and prescribed medications to treat her symptoms.

On May 19, 2006, Claimant sought a referral to an allergist due to the ineffectiveness of her prescribed medications. On May 20, 2006 Dr. Ego-Osuala referred Claimant to Dr. Mark Scarupa, a specialist in allergy and immunology who upon examination and testing diagnosed Claimant with rhinitis noting it was "likely mixed, certainly a nonallergic component", and hyposmia. On June 14, 2006, Dr. Scarupa provided follow-up treatment to Claimant and reiterated that her symptoms were particularly irritant induced and drafted a letter requesting Employer minimize Claimant's exposure to some of the chemicals that caused irritation her allergic condition.

Claimant next treated with Dr. David Jeong, asthma and allergy specialist. Dr. Jeong noted in a letter dated May 17, 2012 that Claimant presented with a longstanding year round rhinitis and conjunctivitis. Environmental allergy testing was positive during her treatment with Dr. Jeong several times from 2010 through 2012. Dr. Jeong diagnosed Claimant with an aggravation of an existing condition caused by the cleaning chemicals she used at work.

On July 8, 2016, Dr. Hung Cheung performed an independent medical examination for Employer. Dr. Cheung described Claimant's allergies as atopic and stated further that Claimant's employment did not cause her to develop allergies or to become atopic and also that atopic individuals were more susceptible to the development of transient upper respiratory and eye symptoms, reactions to chemicals, irritants and allergens. Dr. Cheung opined that Claimant was manifesting typical reactions to chemicals at work as an atopic individual and could work full duty as a housekeeper with practical accommodations such as a ventilated area to reduce her exposure to the chemical/irritants or using low emission cleaning products.

Claimant was terminated from her employment with Employer in September of 2012 and sought temporary total disability benefits from September 17, 2012 to the present and continuing.

A full evidentiary hearing was held before an Administrative Law Judge ("ALJ") in the Administrative Hearings Division ("AHD") of the Department of Employment Services ("DOES"). Claimant testified on her own behalf. Employer witnesses Loretta Fisher and Hope Boyd testified on behalf of Employer. The issues decided at the hearing were:

1. Did Claimant sustain an accidental injury on June 14, 2006 or May 17, 2012?
2. Did Claimant's injury arise of and in the course of the employment?
3. What is Claimant's average weekly wage?
4. Did Claimant provide timely notice of injury?
5. Did Claimant timely file claim?
6. What is the nature and extent of Claimant's disability, if any?

CO at 2.

A Compensation Order ("CO") issued on September 8, 2016, concluded Claimant sustained an accidental injury which arose out of and in the course of her employment on June 14, 2006. The CO also concluded that Claimant had an average weekly wage of $420.23 for the date of injury

of June 14, 2006 and concluded that Claimant failed to provide timely notice of her injury pursuant to D.C. Code § 32-1513(a), and failed to timely file a claim pursuant to § 32-1514(a). Claimant's claim for temporary total disability ("TTD") benefits from September 25, 2012 to the present and continuing was denied. *Sanchez v. Marriott International, Inc.,* AHD No. 16-301 (September 8, 2016).

Claimant timely appealed the CO to the Compensation Review Board ("CRB") by filing Claimant's Application for Review and Memorandum of Points and Authorities in Support of Application for Review ("Claimant's Brief"). In her appeal Claimant sought review of the CO's conclusions that Claimant did not experience an aggravation of her condition in May of 2012, failed to provide notice of her work injury to Employer, and failed to timely file a claim for benefits. Claimant's Brief at 1-2.

Employer opposed the appeal by filing Employer/Insurer's Memorandum of Points and Authorities in Opposition to Claimant's Application for Review ("Employer's Brief"). In its opposition, Employer asserts the CO is consistent with the Act and should be affirmed. Employer's Brief at 11.

ANALYSIS

Claimant first argues that the ALJ failed to give proper weight to the May 17, 2012 letter from Dr. Jeong asserting that Claimant's continued exposure to the cleaning products at work aggravated Claimant's condition in May of 2012. Claimant asserts:

> While [Claimant] did suffer a work-related injury in 2006, the May 18, 2012 letter from Dr. Jeong established that [Claimant] suffered an aggravation of her pre-existing condition due to continued exposure to the cleaning chemicals at work. It is well established that an aggravation of a pre-existing condition is an "injury" under the Act. Work conditions which aggravate a pre-existing condition and result in an injury are compensable. *Jenner v. Premium Distribs.*, H&AS No. 84-114 (January 22, 1985).

Claimant's Brief at 4.

Claimant's argument on this issue appears to be based on a misreading of the CO. While the CO makes no express finding regarding the weight of Dr. Jeong's opinion, upon concluding that Claimant's testimony and the medical evidence was sufficient to invoke the presumption of compensability the ALJ concluded that Employer's reliance on the medical evidence from Dr. Cheung was sufficient to rebut the presumption of compensability regarding causal relationship. In weighing the totality of the evidence without the benefit of the presumption, and citing to the District of Columbia rule according a preference to the treating physician's opinion, the ALJ credited Dr. Jeong's opinion and testimony asserting that Claimant symptoms were linked to the chemicals used at work and found that Claimant's "exposure to the cleaners was leading to irritation and the nasal symptoms that Claimant was experiencing." CO at 9.

In further summarizing Dr. Cheung's IME report, the ALJ noted that although Dr. Cheung noted that Claimant suffered from nonallergic rhinitis--a condition not causally related to her employment and which, via avoidance measures and accommodations at on the job, can be

controlled--the medical evidence established that Claimant's exposure to chemicals at work aggravated her underlying condition.

Thus, a careful reading of the CO indicates that the ALJ findings that employment factors and exposure to chemicals aggravated Claimant's condition are supported by medical evidence from Claimant's treating physicians and from the IME report. Claimant indeed established that her condition arose out of and in the course of her employment. The CO concluded:

> Given Claimant's testimony and the medical evidence, the record establishes the existence of a work-related event, activity, or requirement which has the potential to cause or to contribute to the disability. Therefore, Claimant has established her allergic reaction or condition arose out of and in the course of the employment.

CO at 10.

Claimant also argues that the ALJ erred in finding that she did not provide timely notice of her injury to Employer and erred in determining she failed to file a timely claim. In support of her arguments, Claimant asserts that Dr. Jeong wrote a note stating that the chemicals Claimant used at work triggered her condition and that she testified that she presented her supervisor with the note on the day it was issued to her but "neither [Employer] nor any other Employer supervisor took any action on the note." Claimant's Brief at 5.

In the CO the ALJ found that while the record did not contradict Claimant's testimony that she provided the medical note to her supervisor as claimed, the record as a whole raised questions as to whether Claimant provided written or oral notice to Employer regarding her work injury. Further, that Employer contended it did not receive notice with respect to any accident and as such, no first report form was filed. The ALJ concluded that Claimant's credibility with regard to inconsistent statements made regarding other issues in this case "draws into question whether she provided the documentation to Mr. Abbus as alleged." CO at 12.

The ALJ then concluded that most persuasive however, was the testimony from Loretta Fisher, the Director of Human Resources and Hope Boyd, a second Employer witness. The ALJ explained:

> The testimony from Ms. Fisher and Ms. Boyd appear more credible than the testimony of Claimant.
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> * * *
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> The evidence of record does not support Claimant's contentions that she provided written or oral notice to Employer regarding her medical treatment for work exposure. While record [sic] does not contradicts Claimant's testimony that she provided notice to Mr. Abbus, Claimant's inconsistent statements regard other matters draws into question whether she provided the documentation to Mr. Abbus as alleged.

CO at 12.

D.C. Code § 32-1513(a) provides that an employee is required to give notice of an injury within 30 days of either the date of injury, or the date when the employee was aware, or should reasonably be aware, of a relationship between the injury and the employment. The ALJ concluded that Claimant's date of injury was June 14, 2006. The CO made findings that Claimant testified her condition started in 2004, that Dr. Jeong linked the chemicals to Claimant's aggravated symptoms in either 2010 or 2012, and that she provided Employer with a letter dated May 18, 2012 diagnosing her condition.

Claimant does not allege and did not establish that she gave timely notice to employer of the June 14, 2006 injury date. Based upon the CO's conclusion that no timely notice was given to Employer, and considering the ALJ's conclusion regarding the injury date the evidence supports that notice was provided nearly ten (10) years later when the claim in this appeal was first filed.

In reaching this conclusion, the ALJ appropriately cites to § 32-1513 (a) notice requirements mandating that "notice of any injury or death of which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death, or 30 days after the employee or beneficiary is aware . . . of a relationship between the injury or death and the employment." *Id.* In concluding that Claimant did not provide timely written notice within 30 days of the alleged incident the ALJ summarized:

> Claimant contends she was timely telling her supervisor about her symptoms and the need to seek medical care for her symptoms. Claimant maintains she gave them actual written notice from her doctors in a timely manner, and she filed a claim in a timely manner. HT at 16. The record includes three different Employee's Notice of Accidental Injury or Occupational Disease forms dated October 15, 2015 and two dated February 22, 2016, which offer a date of injury as 2001, June 14, 2006 and May 17, 2012. EE 2, pp.28, 31 and 34. Based on these forms, Claimant did not provide timely written notice within 30 days of the alleged incident.

CO at 10.

As such, we affirm the CO's conclusion on this issue as it based on substantial evidence in the record.

With regard to Claimant's failure to timely file her claim, D.C. Code § 32-1514(a) mandates the one year statute of limitation for filing a claim for injury. The ALJ summarized:

> At the hearing, Claimant argues she filed a claim in a timely manner. HT p. 16. As a preliminary matter, Employer contends it never received notice with respect to any accident which is consistent the findings above, and therefore, no first report was filed. Employer stated Claimant did not file a claim within two years of her exposure. HT pp. 20-21. The record includes several different Employees' Claim Application forms. Claimant filed Employee's Claim Application on

> October 26, 2015 identifying the dated and time of injury as "on or about 2006." EE 2, p. 29. Claimant described the injury as exposure to chemical causing breathing difficulties, and attributed her disability to the chemicals. With the assistance of an attorney, Claimant filed two other claim applications on February 22, 2016. The Employee's Claim Application, dated February 22, 2016, identified the dated [sic] and time of injury as May 17, 2012, and provided the description of injury as "respiratory, nasal and eye irritation and pain". EE 2, p. 30. Claimant again attributed her disability to exposure to chemicals and irritants. A review of all of the Employee's Claim Application establishes Claimant did not provide any of the claim applications in a timely manner, as required by §32-1514 (a). At the hearing, Claimant did not offer any explanation why she failed to file her claim application in a timely manner, but merely maintained her claim applications were timely. As noted above, Employer did not receive notice of the alleged injury in a timely manner, and therefore, Employer's failure to file a First Report does not relieve Claimant of her responsibility to file Employee's Claim Application in a timely manner.
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> * * *

CO at 12-13.

Claimant relies on *Hedgepath v. Sodexho Marriott Services*, CRB No. 09-017, (January 29, 2009) for the proposition that "[a]lthough §32-1514(a) requires a claim for compensation must be filed within one (1) year from the date of injury or death, it is §32-1532 that initially controls the issue of timely filing."

D.C. Code §32-1532 (f) states:

> Where the employer or the carrier has been given notice, or the employer . . . or carrier has knowledge of any injury or death of an employee and fails, neglects, or refuses to file report thereof as required by the provisions of subsection (a) of this section, the limitations in §32-1514(a) shall not begin to run against the claim of the injured employee . . . or in favor of either the employer or the carrier, until report shall have been furnished as required by the provisions of subsection (a) of this section.

D.C. Code §32-1532 (f).

Claimant argues that pursuant to §32-1532 (a), Employer's failure to file the Form 8 with DOES or comply with the provisions of the Act resulted in a tolling of the one year statute of limitations for filing the Employee's Claim Application.

Employer persuasively argues:

> The Claimant's argument must fail as the statute controlling this matter is clear and unambiguous. The report is not required to be filed until the Employer has notice. When looking to [the ALJ's] determination of the injury date of June 14,

> 2006, notice was provided nearly a decade later when the claim was filed. As articulated supra, even if you take the Claimant's alleged aggravation of injury date of May 2012, there was no notice until the untimely claim was filed more than three years later.

Employer's Brief at 10.

We agree. In the case at bar, the ALJ found that Employer was unaware of Claimant's injury until the Claimant filed her claim application in October of 2015, not earlier as Claimant argues. Thus, the case at bar is dissimilar to *Hedgepath* as Employer was not given notice of the injury.

In *Hedgepath*, the parties agreed an injury occurred and payments of temporary total disability benefits commenced soon after the injury. In the present case, Employer was unaware an injury had occurred and was only notified of Claimant's alleged injury by virtue of Claimant's October 2015 claim application. Employer was first notified of the alleged injury by the actual filing of Claimant's claim, 7 DCMR § 203.3 and § 205.1 do not apply. Moreover, the ALJ determined that Claimant's date of injury was in June of 2006. Thus, Employer, having not received notice of the injury and as such, having no opportunity to file an Employer's First Report of Injury as mandated by §32-1532 (f) factually distinguishes this case, from the facts set forth in *Hedgepath.*

Having found that Claimant did not provide Employer with notice of her June 14, 2006 injury, Claimant's claim for benefits was not timely filed. We affirm the CO's conclusions regarding timely claim.

In finding that the date of injury at issue in this case was June 14, 2006, the ALJ properly concluded that Claimant failed to timely notify Employer of her injury and failed to timely file a claim. The CO's conclusion that Claimant claim for compensation benefits was not filed timely is supported by substantial evidence in the record and is in accordance with the law.

CONCLUSION AND ORDER

The September 8, 2016 Compensation Order is AFFIRMED.

So ordered.