GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

ODIE DONALD, II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-150

TRACY NEAL,
Claimant-Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Employer-Respondent.

Appeal from an October 19, 2016 Compensation Order
by Administrative Law Judge Lilian Shepherd
AHD No. 13-147C, OWC No. 694617

(Decided March 2, 2017)

Justin M. Beall for Claimant
Mark H. Dho for Employer

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

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Tracy Neal ("Claimant") worked as a bus operator for Washington Metropolitan Area Transit Authority ("Employer"). On July 2, 2013, the Administrative Hearings Division ("AHD") issued a Compensation Order ("CO"), wherein an Administrative Law Judge ("ALJ") concluded that Claimant sustained an accidental injury on April 14, 2012, that arose out of and in the course of her employment and that Claimant established her injury, Achilles tendinitis is medically causally related to the work incident of April 14, 2012.

On May 6, 2014, Claimant sought treatment from Easton Manderson, MD, an orthopedist. Claimant's chief complaint was right heel pain and she reported to Dr. Manderson that the pain

has forced her to take rests from driving the bus because it becomes intense and sharp. Claimant was diagnosed with planter fasciitis in her right foot.

On August 7, 2014 Dr. Manderson noted that the clinical impressions of her examination were bilateral Achilles tendinitis, right foot greater than left foot and that her conditions were work-related.

At the request of Employer, Claimant was examined by William Sadlack, MD, who requested Claimant have an EMG. Following the EMG, Claimant returned to Dr. Sadlack on September 17, 2014. Dr. Sadlack reported Claimant has problems in the tarsal tunnel area of that right ankle. His diagnosis was a combination of posterior tibial tendinitis and entrapment of posterior tibial nerve, tarsal tunnel syndrome. On November 6, 2014, Dr. Sadlack recommended arch supports, support type shoes and stretching out the heel and plantar fascia. On November 24, 2014, Dr. Sadlack reported the shot of cortisone negated all of the symptoms of the tarsal tunnel syndrome. Dr. Sadlack recommended Claimant return to work.

Claimant returned to Dr. Manderson on September 22, 2015. Dr. Manderson noted Claimant continued to work but had significant pain and swelling from the prolonged standing required by work. Dr. Manderson's working diagnosis was posterior tibial tendonitis, probably of the torn posterior tendon.

On June 16, 2016, Claimant underwent an MRI of the right foot that was negative. Dr. Manderson also noted on July 6, 2016 that the MRI did not show the posterior tibial tendon had any pathology.

At the request of Employer, on July 22, 2016, Dr. Ian Weiner, an orthopedic surgeon performed an independent medical evaluation ("IME"). On August 1, 2016, Dr. Weiner reviewed five reports of Dr. Manderson and opined there was no clinical evidence of tarsal tunnel and no clinical evidence of post-tib dysfunction.

At a subsequent formal hearing on September 14, 2016, Claimant sought an award under the Act of temporary total disability ("TTD") benefits from April 20, 2016 to the present and continuing and payment of causally related medical benefits related to the treatment of her tarsal tunnel syndrome. The disputed issues listed by the second Compensation Order ("CO2") were:

> Is Claimant's current condition, tarsal tunnel syndrome, for which she seeks medical treatment causally related to her April 14, 2012 work injury?
>
> What is the nature and extent of Claimant's disability if any?

CO 2 at 2.

CO 2 denied Claimant's claim for relief, concluding that Claimant did not establish by a preponderance of the evidence that her current condition is medically causally to the workplace incident on April 14, 2012.

Claimant timely appealed CO 2 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 asserts that the CO's

rejection of Dr. Manderson's opinion in favor of the IME physician's opinion is not supported by substantial evidence and must be reversed.

Employer opposed the appeal by filing Employer's Opposition to Claimant's Application for Review ("Employer's Brief"). In its opposition, Employer requests an affirmation of the CO 2 and asserts that CO 2 is in accordance with prevailing law and is supported by substantial evidence.

Claimant filed Claimant's Reply to Employer's Opposition to Claimant's Application for Review ("Claimant's Reply Brief") on December 14, 2016.

ANALYSIS

The scope of review by the CRB as established by the District of Columbia Workers' Compensation Act ("Act") and as contained in the governing regulations is limited to making a determination as to whether the factual findings of a Compensation Order on appeal are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts flow rationally from those facts and are otherwise in accordance with applicable law. D.C. Code §32-1521.01(d)(2)(A). "Substantial evidence" as defined by the District of Columbia Court of Appeals ("DCCA"), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES*, 834 A.2d 882 (D.C. 2003) ("*Marriott*"). Consistent with this scope of review, the CRB is also bound to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the members of the CRB review panel considering the appeal might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

As Employer was contesting the medical causal relationship of Claimant's request for additional treatment of her right foot, the ALJ properly provided Claimant the presumption of compensability afforded her pursuant to § 32-1521 of the Act. Claimant does not assert the ALJ erred in finding Employer rebutted the presumption. Claimant asserts the ALJ erred in weighing the evidence by failing to give adequate weight to the medical opinion of Claimant's treating physician, Dr. Easton Manderson, whom we note is the physician requesting authorization for the decompression of the tarsal tunnel surgery. Claimant asserts:

> In the October 19, 2016 Compensation Order, the ALJ lacked an adequate basis for deviating from the general treating physician preference rule. In explaining her decision to discount the opinion of Claimant's treating orthopedist, Dr. Manderson, the ALJ wrote:
>
> > Dr. Weiner's July 11, 2016 examination of Claimant found no medical evidence of tarsal tunnel syndrome. In contrast, Dr. Manderson was convinced that Claimant and a tear until the MRI showed otherwise. Dr. Manderson then reverted to Dr. Sadlack's year and a half diagnosis of tarsal tunnel syndrome.
>
> The ALJ is correct that Dr. Weiner concluded in his July 11, 2016 report that there was no clinical evidence of tarsal tunnel syndrome. But Dr. Weiner's

> opinion is clearly outweighed by the opinions of three other doctors – Dr. Peterson (a neurologist), Dr. Sadlack (an othopedist to whom the Employer sent Claimant), and Dr. Manderson (Claimant's treating physician) – who reviewed the EMG report and noted that it provided a clinical basis for the diagnosis of tarsal tunnel syndrome. Dr. Sadlack was unequivocal in his opinion, noting that "[Claimant] definitely has a positive EMG for this tarsal tunnel area."
>
> Dr. Weiner apparently rendered his IME opinion without even reviewing Dr. Peterson's EMG report. However Dr. Weiner does give lip service to Dr. Peterson's EMG report in one sentence of his July 11, 2016 report, noting that Dr. Peterson diagnosed Claimant with tarsal tunnel syndrome. The fact that Dr. Weiner was aware the EMG had been performed – and that the neurologist interpreting the EMG had determined the results were consistent with tarsal tunnel syndrome—makes it difficult to understand how Dr. Weiner could then opine in his August 1, 2016 report that there was "no clinical evidence" of tarsal tunnel syndrome. Dr. Weiner's IME reports are internally inconsistent and thus clearly inadequate to overcome the opinion of Claimant's treating orthopedist, particularly given the fact that two other doctors agree with the treating physician.

Claimant's Brief at 14, 15. (citations omitted).

Employer argues:

> On review, claimant alleges that the preponderance of the evidence supports the conclusion that claimant suffers from tarsal tunnel syndrome. Claimant's allegations relate to the weight of the evidence assigned by the trier of fact which should [not] be disturbed on review unless it is arbitrary, capricious, or an abuse of discretion. The ALJ['s] findings of fact and analysis are reasonable and related to specific medical evidence. Claimant argues that Dr. Sadlack's opinion should be given greater weight but the ALJ correctly noted that he did not offer a medical causal relationship finding. Even if there is objective evidence of possible tarsal tunnel syndrome, there is insufficient evidence to establish that the condition was caused by the work injury. There is a clear clinical distinction between Achilles Tendinitis and Tarsal Tunnel Syndrome. The law of the case has established claimant's original work injury was Achilles Tendinitis. After the work injury and subsequent medical treatment, claimant returned back to work. Claimant later changed her position to now work as a station manager. Claimant['s] complaints now relate to to the top of her feet and the diagnosis offered by Dr. Manderson is different from the original work injury. The ALJ correctly noted that Dr. Manderson's medical opinion was varied and changing. The ALJ noted that Dr. Manderson was now relying on Dr. Sadlack's opinion from 2014 without his own independent diagnosis through updated testing. Additionally, the MRI with contrast performed on June 16, 2016 was normal.

Employer's Brief at 6.

Claimant responds:

> Dr. Manderson's opinion is not less reliable because he changed his initial diagnosis once he discovered there was no objective evidence of a tear. Dr. Manderson's approach of ruling out causes is standard practice.
>
> Moreover, it is Dr. Weiner's approach that should be the most concerning here. Dr. Manderson did not ignore objective medical evidence that was inconsistent with his opinion—instead he updated his diagnosis in light of the negative MRI. This approach stands in stark contrast to the approach of Dr. Weiner. Dr. Weiner completely ignored the results of Claimant's EMG (i.e., objective diagnostic evidence) simply because it was at odds with his initial diagnosis.
>
> Dr. Weiner apparently rendered his IME opinion without even reviewing Dr. Peterson's EMG report. And even if Dr. Weiner had in fact reviewed the EMG results (which the record indicates he did not), his opinion still should not carry the weight that Dr. Manderson does given that Dr. Dr. Manderson based his opinion on Dr. Peterson's interpretation of the EMG report.

Claimant's Reply Brief at 2.

Claimant's appeal centers on the results of an EMG performed by a "Dr. Peterson". However neither the EMG report nor a report of "Dr. Peterson" were made part of the record before the ALJ. Review of Dr. Weiner's report reveals he listed the records he reviewed. They include seven "evaluations" most of which pre-date the current claim for relief, a job description, his own report from a prior IME, Dr. Manderson's September 22, 2015 evaluation and the MRI report. It not clear Dr. Weiner was ever provided with the EMG results or Dr. Peterson's report, thus, we cannot agree with Claimant that Dr. Weiner completely ignored the results of Claimant's EMG (i.e., objective diagnostic evidence) simply because it was at odds with his initial diagnosis. We further reject Claimant's assertion that the ALJ found Dr. Manderson's opinion is less reliable because he changed his initial diagnosis once he discovered there was no objective evidence of a tear.

While we note the ALJ did state "The opinion of Dr. Weiner is given greater weight over Dr. Sadlack and Dr. Manderson", the ALJ concluded:

> None of the reports, by any of the treating physicians, provide a definitive opinion as to medical causal relationship between Claimant's current condition and her work related injury of April 14, 2012. Without more in the form of an actual causal relation opinion from her treating physicians, the undersigned cannot conclude that Claimant has met her burden of establishing without the benefit of the presumption that her current condition is related to the work injury by a preponderance of the evidence.

CO at 9.

This panel finds the ALJ's determination that Claimant did not meet her burden by a preponderance of the evidence that her tarsal tunnel syndrome is causally related to the work injury supported by substantial evidence and in accordance with the law. Further the ALJ did not err in rejecting the treating physician's opinion as the record contains no opinion from the treating physician that Claimant's tarsal tunnel syndrome is causally related to the April 14, 2012 work injury of Achilles tendinitis.

CONCLUSION AND ORDER

The ALJ's conclusion that Claimant has not established by a preponderance of the evidence that her current condition is medically causally related to the work injury of April 14, 2012 is supported by substantial evidence and in accordance with the law and is therefore AFFIRMED.

So ordered.