

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 15, 2020

CLAIM NO. 201890837

HAIER APPLIANCE SOLUTIONS

PETITIONER

VS. **APPEAL FROM HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE**

KATHALEEN CHRAPPA AND
HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING & REMANDING**

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and BORDERS, Members.

BORDERS, Member. Haier Appliance Solutions (“Haier”) appeals from an Opinion on Remand dated January 10, 2020, and the Order on Reconsideration dated January 20, 2020 rendered by the Hon. Stephanie Kinney, Administrative Law Judge (“ALJ”). In an Opinion, Award, and Order rendered July 12, 2018, the ALJ awarded Kathleen Chrappa (“Chrappa”) temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits, and medical benefits for a work-

related right wrist injury. The ALJ declined to attribute any portion of the 8% impairment rating assessed by Dr. Jules Barefoot to a pre-existing active condition.

Haier thereafter appealed to the Workers' Compensation Board ("Board"). The Board, in an Opinion dated November 8, 2019, affirmed the ALJ's Opinion awarding PPD benefits, enhanced by the 3.2 multiplier, but vacated in part, and remanded for additional determinations regarding the award of medical benefits.

In that Opinion, the Board held the ALJ performed the appropriate analysis regarding the award of PPD benefits enhanced by the 3.2 multiplier, based on the evidence. We held the evidence supported the ALJ's determination and accordingly affirmed her decision. However, we vacated that portion of the ALJ's Opinion awarding medical treatment, stating in pertinent part:

Although Chrappa sustained a work injury on February 28, 2018 resulting in compensable medical treatment, she had clearly previously sustained a separate injury to her right wrist in 2017 necessitating surgery, and the implementation of a plate and screw. ... Chrappa clearly sustained distinct injuries to separate bones in her right wrist/arm in 2017 and 2018. The 2017 unrelated injury resulted in the implantation of a plate and screws. A review of the medical evidence does not clearly establish Chrappa sustained an aggravation of her prior injury when she fell at work, but rather fractured a different bone.

As a result, we vacated the ALJ's award of medical benefits and remanded this claim directing the ALJ to review and point to the medical evidence supporting her determination.

As the medical evidence in this claim has been reviewed and summarized previously by both the ALJ and this Board and is not in dispute, another recitation of that evidence is therefore not necessary in this Opinion.

In response to the directives of the Board, the ALJ issued an Opinion on Remand as follows:

Findings of Fact & Conclusions of Law

The WCB vacated this ALJ's previous award of medical benefits and noted Defendant is only responsible for treatment related to the work injury. The WCB held:

If the evidence does not support the ALJ's determination regarding compensability of Chrappa's previous right wrist injury for which surgery was performed, then Haier cannot be found liable for additional treatment related to that condition.

Plaintiff sustained a right wrist injury on February 28, 2018 as a result of a fall. This injury resulted in a fractured scaphoid bone in Plaintiff's right wrist. However, Plaintiff previously fractured a separate bone in her right wrist in March 2017 after a non-work-related fall at home. Plaintiff sustained a right distal radius fracture as a result of the non-work-related fall. She sought treatment with Dr. Blackburn and underwent surgery with hardware placement. However, Plaintiff was released to return to full duty work in September 2017, and continued to work through the work injury on February 28, 2018. The non-work-related fall did not result in any permanent restrictions or significant ongoing limitations or symptoms.

From the outset, this ALJ notes Plaintiff's distal radius fracture and scaphoid fracture occurred within close proximity to each other. Clearly, Plaintiff sustained an acute right wrist scaphoid fracture as a result of the February 28, 2018 work injury. However, after reviewing the evidence, this ALJ concluded Plaintiff

suffered from traumatically induced right wrist arthritis, as opined by Dr. Barefoot. This ALJ determined treatment records supported Dr. Barefoot's opinion that Plaintiff's right wrist condition and arthritis was aggravated by the traumatic February 28, 2018, work injury.

First, this ALJ notes the treatment records evidence an individual with more right wrist symptoms following the work injury. Simply put, and as enunciated previously in this ALJ's opinion and orders on petition, this ALJ felt the medical records indicated Plaintiff's right wrist symptoms never returned to her pre-injury baseline level. This finding is supported by the implementation of permanent work restrictions following the work injury, whereas previously there were none.

Dr. Gabriel clearly was of the opinion that Plaintiff's current symptoms, at least to some degree, emanate from the prior distal radius fracture and hardware placement. However, Dr. Gabriel was adamant that any symptoms related to Plaintiff's prior distal radius fracture were not work-related. However, this ALJ did not find Dr. Gabriel's opinion on this issue to be persuasive.

As set forth above, Plaintiff returned to full duty work with no permanent work restrictions following the March 2017 non-work-related fall. Immediately following the work-related fall, Plaintiff presented to GE medical with complaints of right wrist pain. Personnel noted Plaintiff had tenderness to palpation at the radial aspect. Thus, this record indicates, immediately after the work injury, Plaintiff experienced right wrist symptoms, including the area wherein she previously fractured the distal radius. This supports Dr. Barefoot's opinion that Plaintiff suffers from traumatically induced arthritis as a result of the work injury. Plaintiff also went to US Health Works on that same day and reported right wrist distal forearm pain. Thereafter, Plaintiff came under the care of Dr. Gabriel.

Dr. Gabriel's treatment records also note tenderness to palpation over the area of Plaintiff's prior

distal radius fracture. Again, Plaintiff reported symptoms in this same area to GE medical personnel immediately following the injury. On June 18, 2018, Dr. Gabriel felt Plaintiff may need hardware removal due to ongoing symptoms. Thus, Plaintiff had distal radius symptoms immediately after the work injury and during her treatment with Dr. Gabriel. On July 18, 2018, Dr. Gabriel felt Plaintiff's wrist stiffness and pain was work-related. However, he felt any surgery to remove Plaintiff's hardware was not work-related. Dr. Gabriel ordered a right wrist CT that showed residual post-traumatic arthritic changes in Plaintiff's right wrist. However, there was no evidence of arthritic changes prior to Plaintiff's work injury or significant debilitating symptoms that warranted permanent work restrictions. After reviewing the evidence again, at length, this ALJ continues to find Dr. Barefoot's opinion that Plaintiff suffers from traumatically induced arthritis as a result of the work injury makes the most sense. This ALJ finds the work-related injury-induced Plaintiff's right wrist degenerative symptoms and Plaintiff is entitled to medical benefits under Derr Construction Co. v. Bennett, 873 S.W.2d 824 (Ky. 1994).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED AND ADJUDGED:**

Plaintiff, Kathaleen Chrappa, shall recover from the Defendant, Haier Appliance Solutions, and/or its insurance such medical expenses including but not limited to provider's fees, hospital treatment, surgical care, nursing supplies, and appliances as may be reasonably required for the care and relief from the effects of Plaintiff's work-related injuries to her right wrist. Defendant's obligation shall be commensurate with the limits set by the Kentucky Medical Fee Schedule."

Haier filed a petition for reconsideration arguing the ALJ's Opinion on Remand is not supported by substantial evidence and her determination that Haier

should be responsible for medical treatment for Chrappa's right wrist condition was in error. Haier argued the medical evidence clearly indicated Chrappa only suffered a non-displaced scaphoid fracture as a result of the work injury and the ALJ's finding on remand that Chrappa suffered an aggravation of her prior distal radius fracture at the time of the work injury was erroneous and is not supported by the evidence. Haier argued it should be responsible for medical expenses to treat the scaphoid fracture only and should not be responsible for treatment for the pre-existing distal radius fracture.

In an Order dated January 24, 2020, the ALJ found as follows:

This matter comes before this Administrative Law Judge ("ALJ") upon Defendant's petition for reconsideration. This ALJ issued a remand opinion January 10, 2020 in accordance with the Workers' Compensation Board's ("WCB") directive on remand.

To be clear, the WCB indicated "[a] review of the evidence does not appear to establish that Chrappa sustained an aggravation of her prior injury." Thus, there was no conclusive finding that the record did not contain substantial evidence to support this ALJ's prior findings and conclusions. Rather, the WCB directed this ALJ to review the medical evidence and point to the evidence that supported her determination.

On February 28, 2018, Plaintiff sustained an acute work injury as the result of a fall. The fall was traumatic and sufficient to cause a right wrist scaphoid fracture. In 2017, Plaintiff fractured a separate bone in her right wrist as a result of a non-work-related fall. However, the evidence indicated the 2017 fracture healed fairly well as Plaintiff returned to full-duty work and was not undergoing to pursuing any active treatment for the prior fracture on February 28, 2018.

This ALJ previously found Plaintiff suffers from traumatically induced right wrist arthritis. This finding

was based on Dr. Barefoot's opinion. Dr. Barefoot specifically opined Plaintiff developed posttraumatic right wrist arthritis secondary to the February 28, 2018 work injury. Dr. Barfoot also noted Plaintiff regain full range of motion based upon a KORT record for the 2017 fracture. On March 5, 2018, just one week after the work accident, Plaintiff presented to GE medical and reported radial aspect pain and tenderness to palpation on the radial aspect. This treatment note supports Dr. Barefoot's opinion that Plaintiff developed post-traumatic right wrist arthritis as a result of the February 28, 2018 work injury. Plaintiff clearly had symptoms at or near the prior radial fracture in the week following the work injury.

This ALJ thoughtfully considered Defendant's arguments in tandem with the WCB's directive. From the outset, this ALJ acknowledges Defendant is only responsible for medical treatment for conditions related to the work injury. This ALJ reviewed and analyzed each piece of evidence and distilled findings and conclusions she felt were warranted and supported by the evidence.

After reviewing the evidence, and this ALJ being in all ways sufficiently advised, it is hereby ordered as follows:

Defendant's petition for reconsideration is over-ruled.

On appeal, Haier argues the ALJ's Opinion on Remand awarding medical benefits for the right wrist condition based on a finding the work injury aggravated Chrappa's pre-existing right wrist posttraumatic arthritic condition is not supported by substantial evidence, and therefore should be reversed.

As the claimant in a workers' compensation proceeding, Chrappa had the burden of proving each of the essential elements of her claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because she was successful in proving entitlement to medical benefits for her right wrist injury, including treatment of post-traumatic

arthritis to the right radial distal fracture, the question on appeal is whether substantial evidence supports the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). If the ALJ's rulings are reasonable under the evidence, they may not be disturbed on appeal.

The only remaining issue in this claim concerns whether the ALJ's Opinion on Remand finding the work accident of February 28, 2018 caused Chrappa to develop post traumatic arthritis in the right radial distal fracture site is supported by substantial evidence.

In the Opinion on Remand, the ALJ once again reviewed the evidence and determined Dr. Barefoot was more persuasive. Dr. Barefoot opined Chrappa suffered a fracture of her right scaphoid bone, and developed post-traumatic arthritis to the right distal radius, both the result of the traumatic injury to the wrist suffered by Chrappa when she fell and landed on her outstretched right upper extremity with sufficient force to cause a fracture of the right wrist. The ALJ cited the medical evidence from GE medical which, one week after the injury, indicated radial aspect pain and tenderness to palpation of the radial aspect of the right wrist. Dr. Thomas Gabriel, Chrappa's treating orthopedic surgeon, likewise diagnosed Chrappa as suffering from post-traumatic arthritis of the right distal radius that was causing her pain, and for which he opined surgery to remove the implanted hardware may be needed in the future. Dr. Gabriel also assessed permanent restrictions that were not needed prior to the February 28, 2018 injury.

In addition, Chrappa testified that after her 2017 non-work-related fracture and subsequent surgery, she returned to work for Haier without restrictions and very little residuals. After her work injury on February 28, 2018, pain in her right wrist greatly increased to the point she retained a permanent impairment rating, permanent restrictions, and was unable to return to her prior work.

However, when presented with these facts, Dr. Gabriel opined that the residual pain Chrappa was suffering was, at least in part, the result of her prior right distal radius fracture and the subsequent implantation of hardware, and was not due to the work injury of February 28, 2018. Dr. Gabriel's records indicate he found the fact Chrappa was basically pain free in her right wrist, prior to her injury, and thereafter began to suffer from severe pain in the right wrist after the work accident in the area of the previously operated on for the right distal radius fracture, was a mere coincidence, and was not causally related to the fall at work.

The ALJ chose to reject Dr. Gabriel's opinion and instead relied upon the testimony of Dr. Barefoot who opined that as a result of the work injury, Chrappa suffered a non-displaced scaphoid fracture and developed post-traumatic arthritis of the distal radius fracture, both resulting from the work injury of February 28, 2018. The ALJ determined Chrappa clearly had symptoms at or near the prior radial fracture in the week following the injury, which she felt was consistent with the opinions of Dr. Barefoot.

On remand, the ALJ was directed to once again review the medical evidence in this claim and to supply the evidence she relied on in formulating her opinion. We believe the ALJ complied with this directive and properly set forth the evidence she relied upon in making her determination. The medical evidence in this claim from GE medical, Dr. Gabriel, diagnosing the existence of post-traumatic arthritis in the right wrist at the site of the radial bone, as well as the opinion of Dr. Barefoot, opining the work injury caused Chrappa to develop post-traumatic arthritis at the site of the previous radial bone fracture, constitutes substantial evidence upon

which the ALJ could reasonably rely. However, we remand for the ALJ to clarify that the award of medical benefits is not unlimited, and shall be limited to medical benefits necessary to treat any residuals from the aggravation of the radial bone fracture caused by the 2018 fall at work. Haier shall not be responsible for any additional medical treatment attributable solely to the 2017 radial bone fracture.

Accordingly, the January 20, 2020 Opinion on Remand and the January 24, 2020 Order on petition for reconsideration, rendered by the Hon. Stephanie Kinney, Administrative Law Judge, are hereby **AFFIRMED IN PART, AND REMANDED** for an opinion in conformity with this opinion.

ALL CONCUR.

DISTRIBUTION:

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