State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: May 30, 2024 535778

In the Matter of the Claim of LORI HILL-HOLLEY,
Appellant,
v
MEMORANDUM AND ORDER
KINGS COUNTY HOSPITAL et al.,
Respondents.

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: April 22, 2024

Before: Garry, P.J., Clark, Ceresia, Fisher and Powers, JJ.

Joel M. Gluck, New York City, for appellant.

Sylvia O. Hinds-Radix, Corporation Counsel, Brooklyn (*Emma L. Semerad* of counsel), for Kings County Hospital and another, respondents.

Powers, J.

Appeal from a decision of the Workers' Compensation Board, filed November 25, 2020, which ruled that claimant did not sustain a causally-related occupational disease and disallowed her claim for workers' compensation benefits.

In July 2019, claimant, a medical billing and coding specialist, filed a claim for workers' compensation benefits alleging that, as a result of her repetitive job duties for

approximately 29 years, she sustained an occupational disease involving bilateral hands/carpal tunnel syndrome. The employer and its workers' compensation carrier (hereinafter collectively referred to as the carrier) controverted the claim on various grounds. In January 2020, a Workers' Compensation Law Judge (hereinafter WCLJ) found that there was prima facie medical evidence of bilateral carpel tunnel syndrome based upon a December 2019 medical report from Michael Hearns, a physician who oversaw a functional capacity evaluation of claimant and found that she was 100% temporarily impaired due to the pain in both of her hands. Following a hearing at which claimant testified, a WCLJ disallowed the claim, finding that the opinions from claimant's treating physicians were incredible with respect to causation. Upon administrative review, the Workers' Compensation Board affirmed the disallowance of the claim in its entirety, finding that the medical opinions on causation were incredible because they failed to identify with sufficient detail a distinctive feature of claimant's employment and mechanism of injury that caused her condition and because the treating physicians did not address claimant's relevant treatment history. The Board also found "that . . . claimant was incredible in her testimony that in 2012 she was not told that her carpal tunnel syndrome was related to her diabetes [condition]" and that claimant failed to testify that her condition occurred while engaging in the repetitive activities at work. Claimant appeals.

We affirm. An occupational disease is "a disease resulting from the nature of [the] employment and contracted therein" (Workers' Compensation Law § 2 [15]), and "does not derive from a specific condition peculiar to an employee's place of work, nor from an environmental condition specific to the place of work" (*Matter of Patalan v PAL Envtl.*, 202 AD3d 1252, 1252-1253 [3d Dept 2022] [internal quotation marks and citations omitted]; *accord Matter of Brancato v New York City Tr. Auth.*, 206 AD3d 1418, 1418 [3d Dept 2022]). "To establish an occupational disease, the claimant must demonstrate a recognizable link between his or her condition and a distinctive feature of his or her employment . . . , [and] the Board's decision as to whether to classify a certain medical condition as an occupational disease is a factual determination that will not be disturbed if supported by substantial evidence" (*Matter of Urdiales v Durite Concepts Inc./Durite USA*, 199 AD3d 1214, 1214 [3d Dept 2021] [internal quotation marks and citations omitted], *lv denied* 38 NY3d 907 [2022]; *accord Matter of Brancato v New York City Tr. Auth.*, 206 AD3d at 1418-1419), "notwithstanding other evidence in the record that could support a contrary conclusion" (*Matter of Yolinsky v Village of Scarsdale*, 202 AD3d 1262, 1264 [3d Dept 2022]).

A review of the record supports the Board's determination that neither claimant's testimony nor the medical reports established a sufficient link between claimant's various injuries and a distinctive feature of her work duties (*see Matter of Barker v New York City Police Dept.*, 176 AD3d 1271, 1273 [3d Dept 2019], *lv denied* 35 NY3d 902 [2020]). Claimant testified that, in 2015 and 2018, she saw physicians for carpel tunnel syndrome. Claimant conceded that she also saw Yaacov Anziska, a physician, in 2012 for complaints about numbness and pain in her hands, at which time she was diagnosed with carpel tunnel syndrome; claimant denied, however, that she was informed at that time that her carpel tunnel syndrome was likely caused by her diabetes. Contrary to claimant's testimony, however, the June 2012 neuromuscular evaluation and NCS-EMG medical report from Anziska states that "[t]here is no other obvious cause of [claimant's] neuropathy besides her diabetes, which would benefit from tighter control." Given the foregoing, the Board acted well within its discretion as the arbiter of fact to reject claimant's testimony that "she was not told [in 2012] that her carpal tunnel syndrome was related to her diabetes." Further, since the record reflects that claimant's physicians – each of whom did not provide any testimony – failed to show adequate knowledge and/or consideration of claimant's prior 2012 diagnosis of carpel tunnel syndrome, which was at that time attributed to her diabetes condition, the Board was also free to reject the less-than-compelling opinions rendered by claimant's medical providers (*see id.* at 1272; *Matter of Yanas v Bimbo Bakeries*, 134 AD3d 1321, 1321 [3d Dept 2015]). Furthermore, the record substantiates the Board's finding that the opinions on causation from the treating physicians are undermined given that the July 2019 claim was filed nearly two years after claimant retired from her employment in December 2017. We have examined claimant's remaining arguments and find that none has merit. Accordingly, inasmuch as the Board's finding that claimant did not meet the requirements of an occupational disease is supported by substantial evidence, it will not be disturbed (*see Matter of Yearwood v Long Is. Univ.*, 210 AD3d 1256, 1258 [3d Dept 2022]; *Matter of Patalan v PAL Envtl.*, 202 AD3d at 1253; *Matter of Barker v New York City Police Dept.*, 176 AD3d at 1272; *see also Matter of Gandurski v Abatech Indus., Inc.*, 194 AD3d 1329, 1331 [3d Dept 2021]).

Garry, P.J., Clark, Ceresia and Fisher, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

Robert D. Mayberger
Clerk of the Court