

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
Administrative Hearings Division



(202) 671-2233-Voice
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In the Matter of)
)
MANDY O'NEIL)
)
Claimant,)
)
v.)
)
PARK HYATT,)
)
and)
)
GALLAGHER BASSETT SERVICES, INC.,)
)
Employer/Carrier.)

AHD No. 08-176
OWC No. 641437

Appearances:

JOSEPH H. KOONZ, JR., ESQUIRE
For the Claimant

JOHN P. RUFE, ESQUIRE
For the Employer/Carrier

Before: JOAN E. KNIGHT
ADMINISTRATIVE LAW JUDGE

COMPENSATION ORDER

STATEMENT OF THE CASE

This proceeding arises out of a claim for workers' compensation benefits filed pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §§32-1501 *et seq.*, (hereinafter, the Act).

After timely notice, a full evidentiary hearing was held on June 19, 2008, before Joan E. Knight, Administrative Law Judge. Mandy

O'Neil (hereinafter, Claimant) appeared in person and by counsel. Park Hyatt/Gallagher Bassett Services, Inc., (hereinafter, employer) appeared by counsel. Claimant testified on her own behalf. The Employer did not present any witnesses. Claimant Exhibit (hereinafter, CE), Nos. 1 - 3, and Employer Exhibit (hereinafter, EE), Nos. 1 - 2, described in the Hearing Transcript (hereinafter, HT), were admitted into evidence. The record closed on July 25, 2008, upon receipt of HT.

BACKGROUND

Claimant, worked for Employer as a banquet and events manager. On May 9, 2006, Claimant was struck by a 6' x 8' portable riser injuring her left leg. Claimant received conservative medical treatment. She alleges she has sustained a permanent impairment related to her work injury.

CLAIM FOR RELIEF

Claimant seeks an award under the Act of 32% percent permanent partial disability to her left leg.

ISSUE

The nature and extent of Claimant's disability, if any.

FINDINGS OF FACT

The parties have stipulated jurisdiction over this case is vested in the District of Columbia; at the time of the injury claimed herein, an employer/employee relationship existed as defined in the Act; the injury arose out of and in the course of Claimant's employment; Claimant provided Employer with timely notice of the injury; Claimant filed a timely claim for the benefits sought herein, and Claimant's average weekly wage was \$1116.00.

Claimant's testimony regarding her physical condition is consistent with the evidence of record. Claimant was found to be a credible witness based upon her testimony, appearance and demeanor at the hearing.

Claimant began working for Employer in April of 2006 as a Manager of banquet's and events. On May 9, 2006, Claimant was attending an orientation session. Claimant saw a portable riser tilting over in a back hallway. She approached the riser to push it forward and straighten it when the riser fell against her left leg, grazing her left thigh and knee. Claimant fell to the ground. She got up and tried to find help because there was no one present in the back hallway in which she was injured. Claimant's leg began bleeding and swelled up around her left knee and thigh area almost immediately after the accident.

Claimant was taken to the Emergency Room at the George Washington University Hospital where an x-ray of her left leg was taken. Claimant's left leg was swollen and black from her thigh to her feet. She scheduled a visit with Dr. Anthony Debs, orthopedic surgeon. Dr. Debs saw Claimant on May 17, 2008. The x-rays Claimant took previously at George Washington University Hospital were negative. Claimant still complained of pain, swelling and discomfort in her left ankle and calf. Dr. Debs diagnosed her with a severe left thigh contusion and subcutaneous hematoma of the left distal thigh medially. Dr. Debs prescribed a course of physical therapy for Claimant and recommended that she wear a compression stocking on her left leg. He released her for light duty at work limited to a four hour work day because standing on her feet too long would cause edema.

Claimant continued to see Dr. Debs through February 2007. On February 28, 2007, she visited Dr. Debs for her final evaluation. Dr. Debs deemed Claimant had reached Maximum Medical Improvement (hereinafter, MMI). He did suggest that she may need

some measure of cosmetic surgery to correct the disfiguring of the skin caused by the work accident.

After Claimant concluded treatment with Dr. Debs, she visited Dr. Raymond Drapkin, orthopedic surgeon, for an Independent Medical Evaluation on October 16, 2007. Dr. Drapkin noted that Claimant had obvious swelling on her left leg from the mid thigh all the way down to her kneecap. Dr. Drapkin opined that Claimant sustained a crush injury to her left leg as a result of the work related injury on May 9, 2006 with a posttraumatic hematoma to the left thigh. He assigned Claimant with a 32% permanent impairment to her left lower extremity.

On December 4, 2007, Employer had Claimant visit Dr. Robert Gordon, orthopedic surgeon, for an IME. Dr. Gordon opined that Claimant has sustained a fairly significant contusion to her left thigh and developed some hematoma and fat necrosis; he did not feel that the aforementioned symptoms had left Claimant with any significant functional problems. Dr. Gordon assigned Claimant with a 5% permanent physical impairment to the left lower extremity.

Claimant's job duties require her to perform some measure of squatting; however, she is unable to bend her left knee to carry out those duties.

DISCUSSION

Nature and Extent of Injury

In the matter at bar, it is undisputed claimant's injury arose out of and in the course of her employment. The sole issue to be resolved is the nature and extent of claimant's disability,

if any, as a result of the injury claimed.

Under the Act, there is no presumption of nature and extent subsequent to a claimant sustaining a work-related injury. Therefore, a claimant has the affirmative duty to present substantial credible evidence of the level of benefits sought. *Otis Dunston v. District of Columbia Dep't of Employment Servs.*, 509 A.2d 109 (D.C. 1986). See also *Perry v. D.C. Dept. of Child and Family Services*, CRB No. 07-074, AHD PBL No. 06-038, DCP/ODC No.761010-8-2003-3 (May 29, 2001). Therefore, Claimant has the burden of providing that she is entitled to the relief requested.¹

Recovery of PPD benefits requires evidence to support a finding that the claimant's condition has (1) reached MMI, (2) the schedule member in question has sustained a scheduled ratable physical impairment and; (3) the permanent physical impairment has impacted Claimant's ability to earn wages. *Michael R. Cather v. U.S. Elevator*, AHD No. 96-395C, OWC No. 253603 (November 21, 2005). Determining the appropriate level of disability requires the application of the relevant AMA Guides and the Five Factors.²

¹ See *Jeremiah Brumfield v. Greyhound Lines, Inc.*, CRB No. 07-073, AHD No. 03-442A, OWC No. 585744, wherein it is stated: "... "substantial evidence" is not the standard to be employed in considering whether a claimant is entitled to an award, once an injury has been found to be causally related to employment and the injury to be related to a claimed disability. While it is true that a claimant's burden in that regard is to produce **substantial evidence** of the nature and extent of the disability, ultimately all the evidence on the question is to be considered, and a judgment rendered as to whether a claimant's **substantial evidence** is superior to the opposing evidence, by a preponderance standard.

² The Guides to the Evaluation of Permanent

Claimant claims her work injury caused her to suffer permanent disability to her left knee. Claimant seeks approval of a 32% permanent partial disability rating for her left leg.

Upon review of the evidence, Claimant has presented reliable, relevant and substantial medical evidence to support a finding of permanent partial disability in her left leg. Claimant testified that she has difficulty performing job duties because of loss of feeling and her inability to bend her left knee.

She also stated that she is apprehensive about things bumping into her leg because she has lost feeling in the injured leg and is wary of being hurt again. (HT 23).

In his February 28, 2007 treatment report, Dr. Debs deemed Claimant to have reached MMI from her work related accident. He stated that Claimant was still complaining of pain in her left thigh and that due to the redundancy of the skin that was cosmetically disfiguring as well as the symptoms of pain, he felt Claimant should be seen by a plastic surgeon (CE 2).

Claimant also submits the October 17, 2007 IME of Dr. Drapkin. Dr. Drapkin noted obvious swelling in Claimant's left thigh as well as diminished sensation in her left leg above the kneecap. Dr. Drapkin assigned Claimant with a 32% permanent disability rating to her lower left extremity.

In rebuttal, Employer relies on the December 17, 2007 IME of Dr. Gordon. Dr. Gordon opined that while Claimant had suffered a significant contusion to her left leg, it left her

with no significant functional problems (EE 2). He assigned Claimant with a 5% permanent physical impairment to the left lower extremity as related to the May 9, 2006 work injury (EE 2).

Generally, the opinions of a treating physician are accorded great weight, and are generally to be preferred over a conflicting opinion by an IME physician issued at the request of the employer. *Short v. District of Columbia Dep't of Employment Servs.*, 723 A.2d 845, 851 (D.C. 1998); *Stewart v. District of Columbia Dep't of Employment Servs.*, 606 A.2d 1350, 1353 (D.C. 1992). The D.C. Court of Appeals has held that a doctor retained solely for litigation purposes, was (1) less apt to be consciously or subconsciously biased by the litigation, and (2) more likely to be familiar with the patient's condition because he or she has typically spent a greater amount of time with the patient. See *Lincoln Hockey v. District of Columbia Dep't of Employment Servs.*, 831 A.2d at 919 (D.C. 2003).

In the matter at bar, Drs. Gordon and Drapkin respectively, were issued for the sole purpose of providing impairment ratings at the request of parties' counsel. As such both impairment ratings will be accorded equal weight as independent medical examiners.

The assessment of a claimant's disability requires more than a medical determination, but involves a vocational one as well. More than merely adopting medical evaluations, the role of the undersigned is to weigh competing opinions of the evaluating physicians, along with other relevant evidence. The District of Columbia Court of Appeals has ruled that ALJs have discretion in determining disability percentage ratings because "disability" is an

Impairment, (4th Ed.) as published by the American Medical Association lists the relevant five factors to determining permanent impairment as pain, weakness, atrophy, endurance and function.

economic and legal concept that should not be confounded with a medical condition. *Solomon Negussie v. D.C. Department of Employment Services*, 915 A.2d 391 (D.C. 2007). The Court of Appeals further explained, from a disability standpoint, as used in the AMA Guides, "'impairment' means an alteration of an individual's health status that is assessed by medical means; 'disability,' which is assessed by non-medical means, means an alteration of an individual's capacity to meet personal, social, or occupational demands." [thus . . . the fact finder must assess the extent of the loss of use by considering how the injury has affected the employee's ability to do his or her job. *Negussie*, 915 A.2d at 397, quoting *Getson v. WM Bancorp*, 694 A.2d 961, 962 (Md. 1997). Cf. *Carol Corrigan v. Georgetown University*, CRB No. 06-094, AHD No. 06-256 (September 14, 2007).

In cases of conflicting medical opinions, the fact-finder can draw any reasonable inference from the evidence presented. *George Hyman Construction Company v. Department of Employment Services*, 498 A.2d 563, 566 (D.C. 1985). The record medical evidence was considered in its entirety and the undersigned has given both rating reports equal consideration.

On the question of whether any medical impairment to Claimant's lower left extremity has impacted her ability to perform her job, Claimant relies on her testimony and medical evidence presented. Claimant testifies to not being able to perform certain duties of her job because of her inability to bend her left knee (HT 23). The Claimant's uncontroverted testimony has demonstrated that she has difficulty performing job duties that require her to bend down because of her inability to

fully bend her left knee because of the work injury.

In rendering a disability rating, Dr. Drapkin's October 16 2007 report indicates his evaluation of Claimant and assessment was performed within the AMA guides. As a result of Claimant's weakness and loss of sensation in her left quad, he assigned a 12% impairment rating. As a result of Claimant's dysesthesias, Dr. Drapkin assigned a 5% impairment rating. Taking into consideration pain, atrophy, loss of endurance, and loss of function, Dr. Drapkin assigned an additional 15% impairment rating for a total of 32% permanent impairment to Claimant's lower left extremity (CE 3). He also noted discoloration in the area below Claimant's right knee all the way down her leg as well as anatomical changes of the skin around the area of the injury to the left leg (CE 3).

Dr Gordon's December 4, 2007 report and subsequent December 17, 2007 addendum, state that Claimant has full range of motion in her left leg and while Claimant does exhibit the symptoms noted by Dr. Drapkin, they present no functional problems for Claimant's left leg. Guided by the aforementioned five factors³, Dr. Gordon assigned a 5% rating to Claimant's lower left extremity (EE 1,2).

Taking into consideration both IME ratings and Claimant's testimony, there is sound basis for adopting Dr. Drapkin's 12% rating for loss of sensation and 5% rating for dysesthesias. However, Dr. Gordon's opinion that Claimant's maintains full range of motion in her left leg mitigates Dr. Drapkin's 15% impairment rating based on the five factors to

³ See footnote 2.


the 5% rating assigned by Dr. Gordon. Therefore, based on an assessment of Claimant's non-medical as well as medical status, it is concluded that Claimant is assigned a total rating of 22% permanent impairment.

CONCLUSION OF LAW

Based upon a review of the record evidence as a whole, it is concluded the Claimant has sustained a permanent partial disability to her left lower extremity as a result of the May 9, 2006 work-related injury to her left leg. The nature of said disability is permanent and the extent thereof is 22 percent permanent partial impairment thereof.

ORDER

It is **ORDERED** Claimant's claim for relief be, and hereby is **GRANTED**.



JOANE E. KNIGHT
ADMINISTRATIVE LAW JUDGE

October 31, 2008
DATE

RE: *Mandy O'Neil v. Park Hyatt and Gallagher Bassett Services, Inc., Insurer,*
OWC No. 641437, AHD No. 08-176.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent this 31 day of October, 2008 to the following:

Mohammad R. Sheikh, Assistant Director
Labor Standards
Department of Employment Services
64 New York Ave., N.E., Suite 3923
Washington, D.C. 20002

Hand Delivery

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Certified

John Rufe, Esquire
1101 Opal Court, Hub Plaza, Second Floor
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Certified

Mandy O'Neil
4201 Lee Highway, Apt. 407
Arlington, Virginia 22207

Certified



**LINDA JORY, CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE HEARING DIVISION**

RE: *Mandy O'Neil v. Park Hyatt and Gallagher Bassett Services, Inc., Insurer*
OWC No.641437, AHD No. 08-176.

APPEAL RIGHTS

This order is effective upon filing with the Mayor pursuant to Section 21 of the D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code § 32-1520. See D.C. Official Code § 32-1522(a). Any party aggrieved by this Order may file an Application for Review with the Chief Administrative Appeals Judge, Compensation Review Board, Labor Standards Bureau, Department of Employment Services.

Send Application for Review to:

**Compensation Review Board
Attn: Chief Administrative Appeals Judge
Department of Employment Services
64 New York Avenue, N.E., Third Floor
Washington, D.C. 20002**

The Application for Review must be filed with the Compensation Review Board (CRB) within 30 calendar days of the date of the filing of this Order with the Mayor as provided in §23a(a) of the Act, D.C. Official Code § 32-1522(b)(2A)(A). Pursuant to 7 DCMR §§ 258.2, 258.3, 258.4 and 258.6, an Application for Review is perfected by filing with the CRB the following:

1. An original and three (3) copies of an Application for Review;
2. An original and three (3) copies of a Memorandum of Points and Authorities in support of the Application for Review;
3. An original and three (3) copies of the Compensation Order or final decision appealed; and
4. Certification that copies of the Application and Memorandum have been served by mail or delivery upon the opposing party(ies) and the Administrative Hearings Division (AHD).

For a copy of the CRB Rules of Practice and Procedure, go to the DOES website at www.does.dc.gov/does.

Once at the website, click on the link "**Worker Protection**", then link "**Compensation Review Board**", then link "**Notice of Final Rulemaking**".