

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-086

SHERITA SINGLETON,  
Claimant–Petitioner,

v.

COMCAST CABLE COMMUNICATIONS and  
LIBERTY MUTUAL INSURANCE CO.,  
Employer/Insurer-Respondent.

Appeal from a June 6, 2016 Compensation Order  
by Administrative Law Judge Gennet Purcell  
AHD No. 14-244A, OWC No. 707997

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(Decided November 8, 2016)

David J. Kapson for Claimant  
Jose L. Estrada for Employer<sup>1</sup>

Before JEFFREY P. RUSSELL, LINDA F. JORY, and HEATHER C. LESLIE, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND ORDER

BACKGROUND

Sherita Singleton (“Claimant”) was injured on August 16, 2013 when the vehicle she was operating in the course of her employment as a Communications Technician for Comcast Cable Communications (“Employer”) was struck from the rear by another vehicle. Claimant was paid temporary total disability and Employer provided medical care which Claimant received primarily from Dr. Joel Fechter.

After undergoing a period of conservative care and a number of diagnostic studies, Dr. Fechter released Claimant to return to her pre-injury occupation without restrictions. Dr. Fechter also

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<sup>1</sup> Employer was represented by Tony D. Villareal at the formal hearing. Mr. Estrada represents Employer in this appeal.

authored a report in which he opined that Claimant had sustained 16% permanent partial impairment to her left leg as a result of the injury.

Employer had Claimant evaluated by two independent medical examiners (IMEs), Dr. Samuel Matz and Dr. Thomas Raley. Both doctors issued reports opining that Claimant sustained no permanent partial impairment from the injury.

Claimant sought an award of 16% permanent partial disability (“PPD”) to her left leg at a formal hearing conducted March 15, 2016 before an administrative law judge (“ALJ”) in the Administrative Hearings Division (“AHD”) of the Office of Hearings and Adjudication (“OHA”) within the District of Columbia Department of Employment Services (“DOES”).

Following the hearing, on June 6, 2016, the ALJ issued a Compensation Order (“CO”) in which the claim was denied based upon the ALJ’s determination that Claimant had failed to establish entitlement to a PPD award.

Claimant appealed the CO to the Compensation Review Board (“CRB”) by filing Claimant’s Application for Review and a memorandum of points and authorities in support thereof (“Claimant’s Brief”).

Employer opposed the appeal by filing a Memorandum of Points and Authorities in Opposition to Claimant’s Application for Review (“Employer’s Brief”).

Because the ALJ’s factual findings are supported by substantial evidence and the legal conclusion that Claimant has sustained no PPD as a result of the work injury flows rationally from those facts, we affirm the CO.

#### DISCUSSION AND ANALYSIS

Although stating on several occasions that the CO is “unsupported by substantial evidence”, Claimant raises two arguments in this appeal, neither of which addresses the evidence considered and relied upon by the ALJ in reaching the conclusion that Claimant has sustained no schedule PPD to her left leg. We note that Claimant does not argue that Employer failed to adduce sufficient evidence which, if believed, could convince a reasonable person that Claimant had sustained no PPD, which is the definition of “substantial evidence”. *See Marriott Int’l v. DOES*, 834 A.2d 882 (D.C. 2003). The ALJ referenced and ultimately accepted the opinion of Dr. Matz that no permanent medical impairment such had been sustained, and concluded based upon that fact (and others) that Claimant had failed to demonstrate a permanent partial disability. CO at 7.

The first argument Claimant does raise is that in finding that Claimant has not sustained any permanent partial disability to her left leg, the ALJ and the CO “fail[...] to take into account any of [Claimant’s] credible testimony and how it affects her ability to perform her work duties and activities of daily living”. Claimant’s Brief at 5.

We disagree with the implication that the ALJ was obligated to make direct reference in the CO to testimony from the Claimant that Claimant feels should be considered, assuming that the CO is supported by substantial evidence.

Further, the CO contains specific references to the fact that Claimant has returned to her regular, pre-injury job, has done so with Dr. Fechter's approval and without his imposing any restrictions upon her ability to perform the job. CO at 7. Claimant does not dispute these facts. While the CO makes no specific reference to Claimant's testimony in that regard, the ALJ explicitly states that she considered "the written and diagnostic medical reports, Claimant's testimony at the formal hearing and related evidence" in determining "that Claimant has not established, by a preponderance of the evidence, that she sustained a 16% permanent partial impairment to the left lower extremity." CO at 7 – 8. The ALJ adequately considered the evidence regarding Claimant's current work capacity, about which there appears to be little or no dispute.

With regard to any testimony or other evidence concerning Claimant's "activities of daily living", the District of Columbia Court of Appeals ("DCCA") has recently made clear that, in most instances, such considerations are irrelevant and improper when assessing the degree of a PPD under the schedule. Claimant makes no argument concerning a "nexus" between any limitations on personal activities and her wage earning capacity, which the DCCA has held is a requirement in order for an ALJ to consider them in the PPD context. *See M.C. Dean, Inc., v. DOES and Anthony Lawson, Intervenor*, No. 14-AA-1141 (D.C. July 7, 2016).

Claimant's second argument is that, given the treating physician preference normally applied when evaluating conflicting medical opinions, the ALJ had insufficient reasons for rejecting the opinion of Dr. Fechter and accepting that of Dr. Matz.

We disagree.

It is worth noting first that Claimant concedes that none of the doctors in this case, including Dr. Fechter, found Claimant to have sustained any anatomic impairment. *See* Claimant's Brief at 3. Dr. Fechter's entire 16% impairment rating was for the subjective factors of pain, weakness, lost endurance and loss of function, with Dr. Fechter opining that each of these factors warranted a 4% impairment rating.

Second, it is also worth considering that the anatomic situs of the injury was Claimant's back, and not her leg. While this fact is not dispositive, it is relevant that the absence of any anatomic impairment to the back militates in favor of a finding of no impairment to a different body part, in this case, the left leg. This is particularly true where, as noted by the ALJ, there were no positive diagnostic studies, and that the nerve conduction studies in the leg were normal. CO at 3.

The ALJ expressed dissatisfaction with Dr. Fechter's explanation as to how, in the absence of any objective findings to explain Claimant's continuing subjective complaints, Claimant nonetheless had a medical impairment, describing his opinion as being "not clear", "not fully supported by the current medical records" and being inconsistent with a "full time, restriction-free" release to work. CO at 6. We also note that, although the history section of his impairment

report describes complaints of radiating pain to the left leg, the physical examination as described by Dr. Fechter on that date was completely normal, and described no findings during that examination of pain or limitations in any part of Claimant's body. CO at 6; CE 2 at 2.

In contrast, the ALJ expressed satisfaction with the consistency of Dr. Matz's views with the essentially negative findings on examination and in the numerous diagnostic studies. In summary, the ALJ rejected Dr. Fechter's opinion because it doesn't flow from any objective medical findings, and accepted Dr. Matz's, because it is consistent with the medical records and diagnostic studies.

This is a rational and reasonable approach to assessing what is in part a medical issue and in part an economic issue: there is no evidence of any effect upon Claimant's earnings, and no objective medical evidence of a medical impairment. The conclusion that Claimant has sustained no PPD flows rationally from these facts, which are well supported in the record.

#### CONCLUSION AND ORDER

The ALJ's factual findings are supported by substantial evidence and the legal conclusion that Claimant has sustained no permanent partial disability to the left leg as a result of the work injury flows rationally from those facts, and the Compensation Order of June 6, 2016 is accordingly AFFIRMED.

*So ordered.*