

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
INTERIM DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 10-019 (R)**

**CAROLYN JONES**  
**Claimant,**  
**v.**

**DISTRICT OF COLUMBIA SPORTS AND ENTERTAINMENT,**  
**Employer.**

Upon Remand from the District of Columbia Court of Appeals,  
DCCA No. 10-AA-628 AHD No. PBL 09-012, DCP No. 76100200012003-0001

Kirk Williams, Esq., for Claimant-Petitioner  
Charles T. Tucker, Esq., for Employer-Respondent

Before: Lawrence D. Tarr, Henry M. McCoy, and Heather C. Leslie<sup>1</sup>, *Administrative Appeals Judges*

Lawrence D. Tarr, Administrative Law Judge for the Review Panel:

**DECISION AND REMAND ORDER**

INTRODUCTION

This case is before the Compensation Review Board (CRB) on the April 26, 2012, decision by the District of Columbia Court of Appeals (DCCA), *Jones v. DOES*, No. 10-AA-628 (D.C. April 26, 2012), reversing and remanding the Compensation Review Board's Decision and Order, *Jones v. District of Columbia Sports and Entertainment*, CRB 09-132, AHD No. PBL 09-012, OWC/DCP No. 76100200012003-0001 (April 28, 2010).

BACKGROUND FACTS AND PROCEDURAL HISTORY

The claimant, Carolyn Jones, worked for the self-insured employer, District of Columbia Sports and Entertainment as a part-time usher. On April 19, 2003, she injured her left knee when she fell down some steps while working at the D.C. Armory. Her claim for workers' compensation benefits was accepted and the claimant received continuation of pay and then temporary total disability benefits until June 24, 2006.

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<sup>1</sup> Judge Leslie is appointed by the Director of DOES as a member of the Compensation Review Board pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

On November 12, 2008, the employer's Office of Risk Management Disability Compensation Program issued a Notice of Determination that notified the claimant that her claim for permanent partial disability benefits for her left leg injury had been accepted. The employer determined the claimant had a 13% permanent partial loss pursuant to the schedule stated in D.C. Code §1-623.07. The claimant timely filed an Application for Hearing seeking, at least, a 20% award.

After an evidentiary hearing, an Administrative Law Judge (ALJ) issued a Compensation Order (CO) on October 6, 2009. In the CO, the ALJ noted that the claimant's treating physician had opined that the claimant had a 20% impairment, but that this physician's rating was based only on a review of the medical record, that this physician had not conducted a recent examination before issuing the rating, and that this physician had not used the American Medical Association's Guide, in calculating his rating.

The ALJ also noted that a physician who examined the claimant at the employer's request had stated the claimant had a 6% permanent impairment. The ALJ further noted that this IME doctor had examined the claimant more recently than the treating physician, had used the American Medical Association's Guide, and had issued a detailed report explaining his rating.

The ALJ held

In consideration of the evidence in the record as detailed above, and setting aside any consideration of wage loss but presuming an effect on Claimant's earning capacity, Claimant qualifies for a 7% permanent partial disability award for her left leg disability.

The CRB affirmed the ALJ's award on April 28, 2010, finding that the ALJ's decision was supported by substantial evidence. The DCCA reversed.

The DCCA held

In this case, we know that the ALJ resolved the conflict between the two doctors and found that petitioner had suffered a physical impairment to her left leg of 6%. We also know that the ALJ was properly aware that the disability determination was not the same as physical impairment, and required a determination of economic wage loss...The ALJ stated in conclusory terms, with apparent contradiction, that, "In consideration of the evidence in the record as detailed above, and *setting aside any consideration of wage loss but presuming an effect on [c]laimant's earning capacity*, [c]laimant qualifies for a 7% permanent partial disability award for her left leg disability." (emphasis added). How the ALJ determined that the disability award should be 7% — and not, for example, 1%, 10% or 30% — is a complete mystery, however.

On this record, therefore, we are unable to affirm the CRB's conclusions that the ALJ's determination flowed rationally from the factual findings, and that the ALJ in fact applied the law taking into account the entirety of the record.

The DCCA concluded its decision with these remand instructions:

We remand the case so that the agency can, in further proceedings, make such additional findings of fact and reasoned conclusions of law, as will support the determination of the disability award.

Although the DCCA remanded this case so the ALJ could make the appropriate factual findings and legal conclusions that support her 7% award, we are unable to fully carry out the DCCA's remand. A few months after the CO was issued, the ALJ who issued the CO was reassigned within the agency to the position of an administrative appeals judge on the CRB, a position that cannot make findings of fact with respect to formal hearings. See, 7 DCMR §§ 7-266.1 and 266.2.

Therefore, a different ALJ than the ALJ who conducted the evidentiary hearing must decide this case on remand. Consistent with the CRB's decision in *Swanson v. D.C. Department of Corrections*, CRB No. 12-011 (2), AHD No. PBL 11-024, DCP No. 761032-0001-20000-005 (May 3, 2012), we must remand this case so that the parties are given the chance to make an election between holding a new hearing or having a different hearing examiner to be determined by the Chief Administrative Law Judge decide the case.

ORDER

This case is remanded to the Chief Administrative Law Judge in the Office of Hearings for such further proceedings that are consistent with this decision and the decision of the DCCA.

FOR THE COMPENSATION REVIEW BOARD:

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LAWRENCE D. TARR  
*Administrative Appeals Judge*

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DATE