

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 14-AA-526

ZACHARIAH D. PETERS, PETITIONER,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

and

NEXTGEN CORP. AND RENOVATIONS, INC., INTERVENOR.

On Petition for Review of a Decision of the District of Columbia
Compensation Review Board
(CRB-8-14)

(Submitted May 14, 2015)

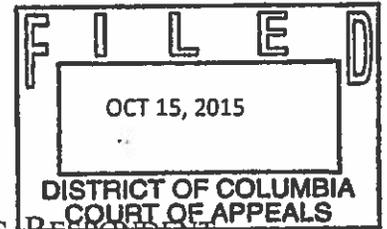
Decided October 15, 2015)

Before FISHER and EASTERLY, *Associate Judges*, and FARRELL, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

Following an evidentiary hearing, an Administrative Law Judge (ALJ) issued a compensation order accepting in part and rejecting in part petitioner's claim for scheduled loss awards of permanent partial disability stemming from a July 2004 work-related injury. Specifically, the ALJ awarded petitioner "payment of permanent partial disability benefits based on the schedule representing a 10% permanent partial impairment of the right foot and 17% permanent partial impairment of the right upper extremity." At the same time, the ALJ declined to award benefits otherwise related to petitioner's lower extremities – his spine and legs, in particular – or "additional percentages" beyond those reflected in "the generous ratings" (*i.e.*, 10% and 17%) of two IME physicians, Doctors Fechter and Fish.

On petitioner's appeal, the Department of Employment Services (DOES) Compensation Review Board (CRB) upheld "the award of 17% permanent partial disabilities for [petitioner's] right arm," as well as the ALJ's refusal to award benefits for spine and leg injuries stemming from the accident. However, the CRB *sua sponte* vacated the ALJ's award of benefits for petitioner's foot, stating: "A review of the Joint Hearing Statement and the hearing transcript reveals Mr. Peters did not request permanent partial disability benefits for his foot."



In this court, petitioner challenges the denial of additional benefits, contending, for example, that the CRB “failed to require a full analysis of the nature and extent of the claimant’s back injury and resulting leg complaints” (Br. for Petitioner at 6), and improperly took into account his present wage earnings (in Washington State) as relevant to defining his future wage earning capacity (*id.* at 7-8). He also disputes the striking of the award for his right foot (*id.* at 6-7). For the reasons stated by the CRB and by respondent DOES in its brief, however, we reject all of petitioner’s arguments except the third one, which we discuss in the following.

With respect to the ALJ’s award for permanent partial right-foot disability, DOES in its brief acknowledges the possibility of our agreeing with petitioner’s challenge to “the validity of the CRB’s procedural ruling,” and so, as a fall-back position, would “voluntarily accept a remand on this point” for the CRB to “provide further explanation of or, alternatively, reconsider its decision to rule that the claim was not properly presented without first remanding to the ALJ” (Brief for DOES at 17 n.2). We choose instead to remand to the CRB for it to review on the merits the ALJ’s disability award related to the right foot.

First, the hearing transcript does not support the CRB’s conclusion that petitioner “did not request . . . benefits for his foot.” In opening statement petitioner’s counsel cited “the fractures that [petitioner] sustained in his right foot” and the “pain and swelling” that “he continued to have . . . in his right foot” as a result. In his testimony, petitioner referred to “the pain and swelling [that] still persists in my foot,” which was “constantly swollen” and “hard to keep . . . weight on,” such that “I can’t walk . . . for a continuous amount of time without . . . having to sit down.” And, in his written closing argument, petitioner’s counsel cited this testimony and a medical report (from Dr. Fechter) recommending an impairment rating based partly “on the crush fracture . . . sustained to the right foot as well as the continuing limitations” petitioner had testified to, specifically the swelling in the right foot and pain from standing and walking that “limited his ability to do either task.”

On this record, the ALJ could readily resolve ambiguities in the Joint Pre-Hearing Statement as to what disability ratings petitioner was seeking to include a claim for right-foot injury, among others. Although the Pre-Hearing Statement defined petitioner’s claim as “seek[ing] permanent partial disability of the right arm and right & left legs,” it did so immediately after describing the injuries he

suffered to “the ribs, forehead, rig[ht] arm, back, right foot, right shoulder, [and] neck” The ALJ herself perceived a close relationship between petitioner’s claimed “right extremity” and “right foot” disabilities:

. . . Dr. Fechter has rated claimant’s right extremity as opposed to his right foot and has not converted his 26% rating of the entire extremity to permanent partial impairment of the right foot. Similarly Dr. Tozzi did not provide a converted rating to the right foot The only rating to the right foot is provided by Dr. Fish

The CRB’s determination of the extent of petitioner’s claim for compensation must be upheld if it is supported by substantial evidence in the record. *See* D.C. Code § 2-510 (a)(3)(A), (E) (2012 Repl.). At the same time, too strict a reading of the record to preclude consideration of a claim on the merits may frustrate “the principle that ‘workers’ compensation statutes should be liberally construed to achieve their humanitarian purpose.” *McCamey v. District of Columbia Dep’t of Emp’t Servs.*, 947 A.2d 1191, 1197 (D.C. 2008) (en banc) (citations omitted). That is particularly true when the trier of fact, whose compensation order “we cannot ignore,” *Georgetown Univ. Hosp. v. District of Columbia Dep’t of Emp’t Servs.*, 916 A.2d 149, 151 (D.C. 2007), has implicitly found a claim of right-foot injury to be presented and contested, requiring a determination on the merits.¹

Accordingly, we will affirm the decision of the CRB, except that we remand the case for it to review the merits of the ALJ’s permanent partial disability award related to the foot.

So ordered.

¹ On petitioner’s appeal to the CRB, the employer did not question the award for the foot injury, instead defending “the discretionary balance” reached by the ALJ.

(No. 14-AA-526)

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

Copies to:

Todd S. Kim, Esq.
Solicitor General

Michael J. Kitzman, Esq.
7852 Walker Drive, #300
Greenbelt, MD 20770

John P. Rufe, Esq.
Humphreys, McLaughlin & McAleer LLC
1 North Charles Street, Suite 2000
Baltimore, MD 21201