

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 15-AA-891

DEWAYNE JACKSON, PETITIONER,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

and

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, *et al.*, INTERVENORS.

Petition for Review of a Decision and Order of the Compensation Review Board
of the District of Columbia Department of Employment Services
(CRB-31-15)

(Submitted July 15, 2016

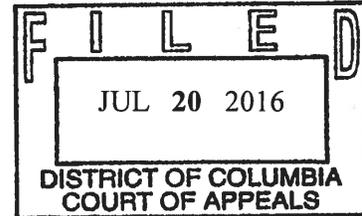
Decided July 20, 2016)

Before FISHER, *Associate Judge*, and NEWMAN and NEBEKER, *Senior Judges*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: On October 10, 2012, claimant Dewayne Jackson was injured in a motor vehicle accident while driving a bus for the Washington Metropolitan Area Transit Authority (“WMATA”). He had sustained injuries in four prior work-related accidents. After the October 2012 accident, Jackson received temporary total disability benefits from October 11, 2012, to January 17, 2013. This petition for review follows the denial of his claim seeking a schedule award for a 10% permanent partial disability of his left upper extremity and a 20% permanent partial disability of his right lower extremity.

In rejecting appellant’s claim, the administrative law judge (“ALJ”) did “not address the nature and extent” of Jackson’s impairment. The ALJ did conclude, and the Compensation Review Board (“CRB”) affirmed, that WMATA had rebutted the presumption of compensability and Jackson had failed to show, by a preponderance of the evidence, a causal link between his current condition and the October 2012 accident. In doing so, the ALJ relied heavily on the independent medical examination (“IME”) of Dr. Rothschild. However, in a crucial passage of



his report, Dr. Rothschild noted that Jackson's problems were "not necessarily related to any single one" of Jackson's accidents. This equivocal language arguably leaves open the possibility that the problems (1) *could* be related to the latest accident, or (2) could be attributed to the cumulative effect of the accidents.

As Jackson argues, Dr. Rothschild's remark appears to overlook our well settled case law that "aggravation of a preexisting condition may constitute a compensable accidental injury under the Act." *Ferreira v. District of Columbia Dep't of Emp't Servs.*, 531 A.2d 651, 660 (D.C. 1987) (citation omitted). Neither the ALJ nor the CRB commented on this aspect of Jackson's claim, and this gap in the analysis potentially affects both parts of the opinion – whether the IME was "specific and comprehensive enough" to rebut "the presumed causal connection between the event at work and the employee's subsequent disability" and, if so, whether Jackson carried his burden of proving causation. See *Washington Post v. District of Columbia Dep't of Emp't Servs.*, 852 A.2d 909, 911 (D.C. 2004) (citation omitted); *McNeal v. District of Columbia Dep't of Emp't Servs.*, 917 A.2d 652, 657-58 (D.C. 2007) (citation omitted).

We therefore remand for further proceedings consistent with this opinion.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

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