

**DISTRICT OF COLUMBIA COURT OF APPEALS**

No. 15-AA-0970

MARIA RODRIGUEZ, PETITIONER,

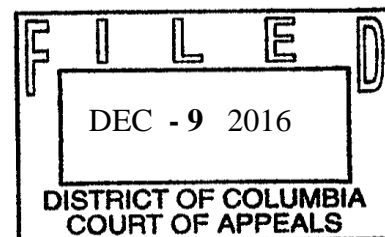
v.

DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

and

GRAND HYATT HOTEL and  
GALLAGHER BASSETT SERVICES, INC., INTERVENORS.

On Petition for Review of an Order of the District of  
Columbia Department of Employment Services  
Compensation Review Board  
(CRB-068-15)



(Submitted September 13, 2016

Decided December 9, 2016 )

Before THOMPSON and MCLEESE, *Associate Judges*, and RUIZ, Senior Judge.

**MEMORANDUM OPINION AND JUDGMENT**

PER CURIAM: Petitioner Maria Rodriguez challenges the denial of her worker's compensation claim. The Compensation Review Board (CRB) concluded that substantial evidence supported the determination that Ms. Rodriguez had no permanent partial disability. We affirm.

**I.**

In proceedings before the Department of Employment Services, Ms. Rodriguez presented the following evidence: In early November 2010, she slipped and fell while working as a food-service employee in a Grand Hyatt hotel kitchen. She fell with her legs spread, "all the way down to the extent that [her] legs could spread." She did not fall to her knees, but she did hear "a crunch" in her leg. A fruit cart also fell on her, with the full weight of it falling on her left side. After the

fall, Ms. Rodriguez had pain in her right hip joint, pain from her neck that extended all the way down her right side, numbness in her legs, and pain in her back. She left work and went directly to a clinic, where she did not receive any treatment. About a week later, she saw Dr. Salter at Phillips & Green. At that time her symptoms were pain in the back of her neck and the back of her right leg and her right knee.

Dr. Salter ordered MRIs for Ms. Rodriguez's left hip, right knee, cervical spine, and lumbar spine. The MRI of Ms. Rodriguez's left hip showed "mild edema near the greater tuberosity of the left hip" but was otherwise unremarkable. The MRI of her right knee found no tears, but did find "slight subchondral edema . . . particularly at the lateral and patellofemoral compartments." The lumbar spine MRI found "a mild bilateral facet joint arthrosis and a disc bulge with superimposed minimal left paracentral extrusion-type disc herniation." The cervical spine MRI showed "no evidence for compression injury."

Dr. Salter concluded that Ms. Rodriguez "sustained an acute dorsal and lumbosacral strain with patellofemoral compression injuries to the knees," and recommended "[c]onservative treatment . . . with physical therapy."

Grand Hyatt voluntarily paid Ms. Rodriguez temporary total disability from the time of her injury through December 28, 2010. Ms. Rodriguez then returned to work at the Grand Hyatt in the same position, after her treating physician advised her that she could return to full duty with no restrictions. She was still employed in that position as of the date of the hearings before the Department of Employment Services. Ms. Rodriguez reported that she could not perform all of the tasks required of her employment, and other employees helped her do things like lift boxes.

Ms. Rodriguez testified that after working on her feet for eight hours a day, she would limp home, and once she got home and sat down, she would not be able to get back up. She would wake up three to four times during the night from back pain. While walking, she would have a tingling that went from her neck down her back, and her right leg would go numb. She had pain in her spinal column and numbness over her entire left side. Ms. Rodriguez had not had any new accidents or injuries between the date of the fall and the dates of the hearings before the Department of Employment Services.

Grand Hyatt introduced testimony from Gerard Spezio, executive sous chef at Grand Hyatt. Mr. Spezio testified that he oversaw Ms. Rodriguez, that he had

personally witnessed her bending, lifting, and stooping, and that she had never complained of an inability to do her work.

Ms. Rodriguez acknowledged that she had been in a car accident in 2001 in which she injured her right knee, but she was largely unresponsive to questions about the accident. She did state, however, that she had had a full recovery after seven months of treatment, noting that before the 2010 fall, she could walk fast and play soccer.

Both Ms. Rodriguez and Grand Hyatt submitted independent medical evaluations: Ms. Rodriguez's from Dr. Joel D. Fechter, who examined her on June 12, 2013, and Grand Hyatt's from Dr. Louis E. Levitt, who examined her in March 2011 and on December 16, 2013. Dr. Fechter, taking into account subjective factors of weakness, loss of endurance, and loss of function, found that Ms. Rodriguez had 18% impairment to her right lower extremity and 14% to her left lower extremity. He recommended restriction of activities such as standing, walking, and lifting.

Dr. Levitt, in contrast, reported that "[a]t best, the simple slip and fall event produced soft tissue strains" that had been resolved by March 2011. He noted that his 2013 examination of Ms. Rodriguez was "most noteworthy for the absence of any measurable pathology but the emergence of flagrant illness behaviors."

Before the Administrative Law Judge (ALJ), the only dispute was over the nature and extent of Ms. Rodriguez's permanent disability caused by the November 2010 fall. The ALJ discredited Ms. Rodriguez's testimony about the location and extent of her pain and her physical capabilities at the time of the hearing, noting her demeanor, the inconsistencies in her testimony, and her evasive responses to direct questions.

The ALJ noted that because Dr. Fechter was not Ms. Rodriguez's treating physician, his opinion was not entitled to any preference. Because of Ms. Rodriguez's lack of credibility, the ALJ also did not give any weight to Dr. Fechter's opinions that were based on subjective information provided by Ms. Rodriguez. The ALJ adopted Dr. Levitt's opinion about Ms. Rodriguez's right-knee MRI because that opinion was the only one that took into account her pre-existing knee injury from the 2001 car accident. The ALJ ultimately ruled that Ms. Rodriguez had not met her burden of establishing that she had sustained any permanent partial disability in either leg. The CRB affirmed.

## II.

Ms. Rodriguez argues that the CRB erred in affirming the ALJ's decision because (1) there was not substantial evidence for the ALJ's conclusion that Ms. Rodriguez had no permanent partial disability; (2) the ALJ impermissibly determined, in spite of the evidence and the stipulation by the parties, that Ms. Rodriguez did not injure her knees; and (3) there was not substantial evidence to support the ALJ's finding that Ms. Rodriguez was not credible.

“In a worker's compensation case, we review the decision of the [CRB], not that of the ALJ . . . In doing so, however, we cannot ignore the compensation order which is the subject of the Board's review.” *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp't Servs.*, 926 A.2d 140, 147 (D.C. 2007) (internal quotation marks omitted). “The CRB must affirm a compensation order if the ALJ's factual findings are supported by substantial evidence and the ALJ's legal conclusions flow rationally from those facts,” *Reyes v. District of Columbia Dep't of Emp't Servs.*, 48 A.3d 159, 164 (D.C. 2012), even if contrary evidence also exists, *Hensley v. District of Columbia Dep't of Emp't Servs.*, 49 A.3d 1195, 1199 (D.C. 2012). When the CRB has conducted a proper inquiry, “this court will affirm the [CRB]'s ruling unless it is arbitrary, capricious, or otherwise an abuse of discretion and not in accordance with the law.” *McCamey v. District of Columbia Dep't of Emp't Servs.*, 947 A.2d 1191, 1196 (D.C. 2008) (en banc).

### A.

There was substantial evidence to support a finding that Ms. Rodriguez had no permanent partial disability in either leg. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Washington Times v. District of Columbia Dep't of Emp't Servs.*, 724 A.2d 1212, 1216 (D.C. 1999) (internal quotation marks omitted). Although Dr. Fechter found that Ms. Rodriguez had permanent partial disability in both lower extremities due to the 2010 fall, the ALJ was free to give equal or greater weight to the report of Dr. Levitt, which found that she had no permanent partial disability. Furthermore, the ALJ noted that many of Dr. Fechter's findings rested on Ms. Rodriguez's subjective reports, and the ALJ gave those findings no weight because of the ALJ's determination that Ms. Rodriguez's testimony was not credible. The ALJ also pointed out that Dr. Fechter, unlike Dr. Levitt, did not consider or explain how Ms. Rodriguez's knee surgery might have contributed to any disability in her right leg. The ALJ articulated a reasonable rationale for relying on Dr. Levitt's evaluation,

and that evaluation provided substantial evidence that Ms. Rodriguez had not sustained any permanent partial disability to either leg.

Ms. Rodriguez raises two challenges to the ALJ's reliance on Dr. Levitt's evaluation. First, she argues that Dr. Levitt did not perform a physical examination of her right knee. Although Dr. Levitt did not explicitly state that he examined Ms. Rodriguez's right knee, the report did state that he tested "[i]ndividual motors . . . to the right lower extremity" and compared musculature tone and evidence of disuse atrophy between the right and left legs. On this record, we see no basis to overturn the ALJ's decision to rely on Dr. Levitt's evaluation. Second, Ms. Rodriguez argues that Dr. Levitt's review of her lumbar spine MRI acknowledged a small disk protrusion, but his evaluation stated that diagnostic testing failed to reveal any significant structural injury to the spine. The CRB found that this seeming discrepancy was explained by Dr. Levitt's conclusion that the protrusion had "little impact on the spinal cord or nerve roots," as well as by the fact that Dr. Levitt did not base his opinion solely on the MRI, but rather incorporated his physical exam of Ms. Rodriguez and his review of her medical records. We conclude that the CRB adequately explained its decision to uphold the ALJ's reliance on Dr. Levitt's evaluation.

Ms. Rodriguez additionally emphasizes evidence before the ALJ that would have supported a finding of permanent partial disability. Such evidence does not, however, merit reversal of the CRB: "[I]f substantial evidence exists to support the ALJ's findings, the existence of substantial evidence to the contrary does not permit the CRB to substitute its judgment for that of the ALJ[,] even if there was also substantial evidence to support a contrary conclusion." *Hensley*, 49 A.3d at 1199 (ellipses, brackets, and internal quotation marks omitted); *see also Marriott Int'l v. District of Columbia Dep't of Emp't Servs.*, 834 A.2d 882, 885 (D.C. 2003) ("[O]ur standard of review mirrors that which the [CRB] is bound to apply.").

## B.

Ms. Rodriguez also argues that the ALJ erred in determining that Ms. Rodriguez did not injure her knees in the November 2010 fall, given that the only matter in dispute was the nature and extent of her injuries. We do not see any such determination in the compensation order, however. The ALJ found that Ms. Rodriguez "did not strike her knees or fall on her knees," but there is no indication that the ALJ was finding that Ms. Rodriguez did not injure her knees. Rather, the ALJ noted the evidence that Ms. Rodriguez sustained injury but ultimately found

that by the time of the proceeding before the Department of Employment Services, Ms. Rodriguez had no permanent partial disability.

### C.

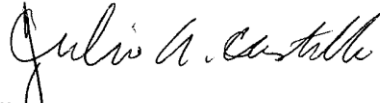
Finally, Ms. Rodriguez challenges the ALJ's credibility finding. "Where credibility questions are involved, the factfinding of [ALJs] is entitled to great weight, since the [ALJ] is in the best position to observe the demeanor of witnesses." *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp't Servs.*, 683 A.2d 470, 477 (D.C. 1996) (citation and internal quotation marks omitted). Ms. Rodriguez acknowledges the deference owed to the ALJ on this question, but argues that the ALJ erred in determining that Ms. Rodriguez lacked credibility without finding that her testimony conflicted with any of the record evidence.

The ALJ based the credibility determination on Ms. Rodriguez's demeanor, her evasive responses to direct questions, and inconsistencies in her testimony. The CRB explained that, although it did not read Ms. Rodriguez's testimony to be as inconsistent as the ALJ did, there was still substantial evidence to support an adverse credibility finding. For example, although Ms. Rodriguez testified that she was unable to bend, stoop, or lift items at work, Mr. Spezio testified that he had seen her do all of these things after her fall and had not heard her make any complaints.

Ms. Rodriguez also argues that the ALJ's determination that she was "evasive" was improper given that she testified through an interpreter. The CRB rejected this argument, noting the deference due to the ALJ's credibility determination and finding that the record supported the ALJ's determination. We see no basis to overturn the CRB's ruling. The record does not reflect that the evasiveness the ALJ described was related to the use of an interpreter. For example, when questioned about the 2001 car accident, Ms. Rodriguez repeatedly refused to answer basic factual questions, testifying instead, "[T]hat was in the past and I don't want to recall the past, because I'm in the present." The CRB therefore permissibly concluded that the ALJ's credibility determination was supported by substantial evidence.

The order of the CRB is therefore

*Affirmed.*

**ENTERED BY DIRECTION OF THE COURT:**  
JULIO A. CASTILLO  
Clerk of the Court

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