

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
INTERIM DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-156

ANDREW QUINN,
Claimant–Petitioner,

v.

DC UNITED C/O MAJOR LEAGUE SOCCER, LLC¹ and
GREAT DIVIDE INSURANCE CO. C/O BERKLEY SPECIALTY UNDERWRITING,
Employer/Carrier-Respondent.

Appeal from a November 8, 2013 Errata Compensation Order by
Administrative Law Judge Leslie A. Meek
AHD No. 13-252, OWC No. 671600

Benjamin T. Boscolo for the Petitioner
David O. Godwin, Jr. for the Respondent

Before MELISSA LIN JONES and HEATHER C. LESLIE, *Administrative Appeals Judges*, and LAWRENCE
D. TARR, *Chief Administrative Appeals Judge*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On April 7, 2010, Mr. Andrew Quinn was a professional soccer player for D.C. United. On that day, he injured his right knee, and the next day, he underwent arthroscopic lateral meniscus repair by Dr. Christopher Annunziata. In October 2010, Mr. Quinn underwent a second surgery, a partial meniscectomy. Mr. Quinn attained maximum medical improvement and requested right leg permanent partial disability benefits stemming from his knee injury.

At a formal hearing, Mr. Quinn did not submit a permanency rating from his treating physician; instead, Mr. Quinn relied upon a permanency rating from Dr. Michael Franchetti. Mr. Quinn's

¹ Although the caption of the Errata Compensation Order styles the employer as "Major League Soccer c/o Major League Soccer LLC," Employer/Insurer's Opposition to Claimant's Application for Review indicates the employer is "DC United c/o Major League Soccer".

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employer relied upon an independent medical evaluation by Dr. Robert Riederman. An administrative law judge (“ALJ”) awarded Mr. Quinn a 20% schedule award for his right knee.²

On appeal, Mr. Boscolo argues the Errata Compensation Order contains several errors:

First the Compensation Order failed to address each issue raised by Mr. Quinn in controversion of the District of Columbia Court of Appeals precedent in *Clark v. DOES*, 772 A.2d 198 (D.C. 2001) citing *Hill v. DOES*, 717 A.2d 909, 912 (D.C. 1998). Second the Compensation Order failed to address the permanent partial disability benefits to which Mr. Quinn was entitled under the American Medical Association Guides to the Evaluation of Permanent Impairment. Third, the Compensation Order failed to address the permanent partial disability benefits to which Mr. Quinn was entitled for arthritis of the right knee in violation of the District of Columbia Court of Appeals decision in *Daniel*. [sic] Fourth, the Compensation Order failed to address the permanent partial disability benefits, if any to which Mr. Quinn is entitled for the industrial loss of use of the knee. Fifth, the Compensation Order failed [sic] to comply with the Administrative Procedure Act’s requirements for making factual findings adequate to allow a reviewing body to determine whether substantial evidence supports each findings of fact and whether the conclusions of law flow rationally there from [sic]. These actions are clearly erroneous and inconsistent with the plain language of the statute that they must be vacated and reversed. [*ipsissima verba*]³

In response, Mr. Godwin contends “the Compensation Order was well-reasoned, based upon substantial evidence, and in accordance with the law in the District of Columbia.”⁴ Mr. Godwin asserts the ALJ is not required to articulate with specificity any breakdown of a scheduled loss award; therefore, because the ALJ considered medical impairment, the five factors, and the effect of the injury on Mr. Quinn’s industrial capacity, Mr. Quinn requests the CRB affirm the Errata Compensation Order.

ISSUE ON APPEAL

1. Is the November 8, 2013 Errata Compensation Order supported by substantial evidence and in accordance with the law?

² For purposes of assessing permanent partial disability, “the knee is part of the leg, and . . . permanent partial disability of the knee is therefore compensable as a disability of a scheduled member.” *Walden v. DOES*, 759 A.2d 186, 191 (D.C. 2000).

³ Memorandum of Points and Authorities in Support of Application for Review, p. 6.

⁴ Employer/Insurer’s Opposition to Claimant’s Application for Review, unnumbered p. 3.

ANALYSIS⁵

Mr. Boscolo's argument that the Errata Compensation Order fails to comply with the Administrative Appeals Act is dispositive; therefore, it is addressed first. Mr. Boscolo argues that pursuant to the District of Columbia Administrative Procedures Act ("APA")⁶ and *Jones*,⁷

The Compensation Order cites a series of decision [*sic*] which it seems to interpret as suggesting that when an Administrative Law Judge assigns an amount of permanent partial disability benefits from which an injured worker suffers as a result of an injury to a scheduled member they are not constrained by the Administrative Procedure Act's requirement. Mr. Quinn contends that, even in a scheduled member case, the Compensation Order shall show the ruling on each finding and shall include a statement of the reasons or basis therefore. The Administrative Law Judges' [*sic*] failure to rule on each finding is clearly erroneous and is the final reason for which the Compensation Order must be vacated and remanded.^[8]

The CRB agrees.

A review of the Discussion section of the Errata Compensation Order includes a summary of portions of the Act regarding permanent partial disability as a result of a leg impairment, caselaw regarding assessing a schedule award, and the following three paragraphs:

Claimant testified although he is able to return to work in a soccer coaching position, he still experiences right knee pain that results from performing his work duties or general sports activities. Claimant offered testimony regarding the loss of function in his right knee in that he can no longer perform lateral moves, that walking causes pain and his right knee joint feels uneasy. Claimant testified that he has lost endurance regarding his right knee as long sitting causes him pain and popping, and long periods of walking or activity causes him pain in his right knee.

Based upon the evidence of record, the pain, loss of endurance and loss of function warrant a schedule award of 20% to Claimant's right leg.

⁵ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Errata Compensation Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. Section 32-1521.01(d)(2)(A) of the Act. Consistent with this standard of review, the CRB is constrained to uphold an Errata Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

⁶ D.C. Code §2-501 *et seq.* as amended.

⁷ *Jones v. DOES*, 41 A.3d 1219 (D.C. 2012).

⁸ Memorandum of Points and Authorities in Support of Application for Review, p. 11-12. (Emphasis in original.)

Seven percent of this schedule award is attributed to Claimant's pain, five percent to Claimant's loss of endurance and eight percent is attributed to Claimant's loss of function.^{9]}

Despite *Negussie*'s recognition of the predictive and subjective nature of an award of permanent partial disability¹⁰ and despite the subjective nature of the five factors, the D.C. Court of Appeals demands precision when an ALJ explains the "reasoning in arriving at a disability award"¹¹ in order to determine if there is substantial evidence in the record that supports the ALJ's ruling as to the actual percentage of permanent partial disability.

Furthermore, in order to conform to the requirements of the APA, (1) the agency's decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow rationally from the findings.¹² Thus, when an ALJ fails to make factual findings on each materially contested issue, an appellate court is not permitted to make its own finding on the issue; it must remand the case for the proper factual findings.¹³

The CRB is no less constrained in its review of Compensation Orders.¹⁴ Moreover, whether an ALJ's decision complies with the APA requirements is a determination limited in scope to the four corners of the Compensation Order under review. Thus, when, as here, an ALJ fails to make express findings on all contested issues of material fact, the CRB can no more "fill the gap" by making its own findings from the record than can the Court of Appeals but must remand the case to permit the ALJ to make the necessary findings.¹⁵

The ALJ did not explain her evaluation of the medical opinions or other evidence of record when reaching the conclusion that Mr. Quinn is entitled to "a schedule award of 20% to Claimant's right leg."¹⁶ Lacking this analysis the CRB is "unable to review the agency's order on the record

⁹ *Quinn v. Major League Soccer, c/o Major League Soccer, LLC*, AHD No. 13-252, OWC No. 671600 (November 8, 2013), p. 6.

¹⁰ *Negussie v. DOES*, 915 A.2d 391 (D.C. 2007).

¹¹ *Jones, supra*, at 1225.

¹² *Perkins v. DOES*, 482 A.2d 401, 402 (D.C. 1984).

¹³ *King v. DOES*, 742 A.2d. 460, 465 (Basic findings of fact on all material issues are required; only then can the appellate court "determine upon review whether the agency's findings are supported by substantial evidence and whether those findings lead rationally to its conclusions of law.")

¹⁴ See *Washington Metropolitan Area Transit Authority v. DOES*, 926 A.2d 140 (D.C. 2007).

¹⁵ See *Mack v. DOES*, 651 A.2d 804, 806 (D.C. 1994).

¹⁶ *Quinn, supra*, at p. 6.

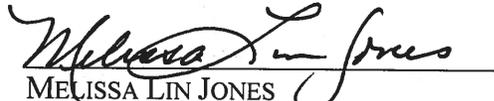
presented;”¹⁷ therefore, we are unable to perform an appellate review and are constrained to remand this matter.¹⁸

Based upon this result, Mr. Boscolo’s other arguments are premature. The CRB will not address them in the first instance but instead relies upon the ALJ to issue a well-reasoned Compensation Order on Remand.

CONCLUSION AND ORDER

The November 8, 2013 Errata Compensation Order is not supported by substantial evidence and is not in accordance with the law because it lacks sufficient analysis for the CRB to conduct an appellate review. The Errata Compensation Order is VACATED, and this matter is REMANDED for further consideration consistent with this Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:



MELISSA LIN JONES
Administrative Appeals Judge

April 28, 2014

DATE

¹⁷ *Jones*, supra at 1221

¹⁸ *Id.*