

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-147

ANTHONY L. WEAVER,
Claimant-Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Self-Insured Employer-Respondent.

Appeal from an October 25, 2016 Compensation Order
by Administrative Law Judge Douglas A. Seymour
AHD No. 16-264, OWC No. 727622

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2017 MAR 8 AM 9 36

(Decided March 8, 2017)

David G. Rios for Claimant
Cheryl D. Hale for Employer

Before HEATHER C. LESLIE, LINDA F. JORY, and GENNET PURCELL, *Administrative Appeals Judges.*

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On March 8, 2015, Claimant was working as a Metro Transit Police Sergeant. Claimant injured his left knee while participating in a training exercise. Claimant immediately sought treatment at George Washington University Hospital emergency room. Subsequently, Claimant came under the care of Dr. Leah M. Schulte at the same facility. After objective testing, Dr. Schulte diagnosed Claimant with a medial collateral ligament ("MCL") sprain and recommended conservative care, including physical therapy. Dr. Schulte prescribed a knee brace and recommended Claimant to be restricted to light duty. On July 16, 2015, Claimant was released to full duty work.

Prior to the March 8, 2015 injury, Claimant suffered a left knee injury while at work in 2002. Claimant underwent surgery and physical therapy. Because of that injury in 2002, Claimant and Employer stipulated Claimant suffered from a 27.5% permanent partial disability to his left leg. Claimant returned to work and did not experience any difficulties with his left knee between 2002 and 2015.

Claimant underwent an independent medical evaluation (“IME”) with Dr. Joel D. Fechter at his own request. Dr. Fechter took a history of Claimant’s injury, treatment, and performed a physical examination. Based on his examination, Dr. Fechter opined Claimant suffered from a 46% permanent partial impairment to his left lower extremity, 11% attributable to the March 8, 2015 work injury and 35% to Claimant’s pre-existing condition. Dr. Fechter also opined Claimant did not need any further medical treatment.

Claimant also underwent an IME at the request of Employer with Dr. Robert D. Keehn. Dr. Keehn took a history of Claimant’s injury, treatment, and performed a physical examination. Dr. Keehn opined Claimant did not suffer from any permanent impairment to his left lower extremity related to the March 8, 2015 work injury and was at maximum medical improvement.

A full evidentiary hearing was held on September 8, 2016. At the hearing, the Claimant sought an award of 46% permanent partial disability benefits to his left lower extremity. Employer contested the nature and extent of the Claimant’s disability and further sought a credit against any award pursuant to the earlier stipulated 27.5% permanent partial disability to his left leg. In a Compensation Order (“CO”) issued October 25, 2016, the Administrative Law Judge (“ALJ”) concluded Claimant did not suffer from any permanent partial disability to his left leg and denied Claimant’s claim.

The Claimant timely appealed. Claimant argues the CO improperly rejected the opinion of Dr. Fechter. Employer opposes, arguing that the CO is supported by the substantial evidence in the record and is in accordance with the law.

ANALYSIS¹

Claimant’s sole argument is that the ALJ improperly rejected the opinion of Dr. Fechter. Specifically, Claimant argues that the ALJ’s rejection of Dr. Fechter’s opinion is in error because:

¹ The scope of review by the CRB is generally limited to making a determination as to whether the factual findings of the 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. *See* D.C. Workers’ Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (“the Act”) at § 32-1521.01(d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where this panel might have reached a contrary conclusion. *Id.*, at 885.

- The ALJ erroneously rejected Dr. Fechter's opinion because he did not indicate if Claimant was at maximum medical improvement ("MMI") when opining whether Claimant was permanently impaired.
- The ALJ was in error when rejecting Dr. Fechter's opinion regarding the weakness (or lack thereof) in Claimant's leg.
- The CO failed to explain why Dr. Fechter's opinion was rejected.

We agree with Claimant that the ALJ's characterization of the opinion of Dr. Fechter as having not reached MMI is in error. As Dr. Fechter stated in his opinion, he did not "anticipate the need for further medical treatment" to Claimant's knee and assigned a permanent partial impairment rating to his left lower extremity. Thus, while the term "maximum medical improvement" was not explicitly used by Dr. Fechter, taking his opinion as a whole it is clear Dr. Fechter believed Claimant's condition was permanent and would not improve.²

However, we find any such error harmless as the ALJ gave several other reasons why he rejected the opinion of Dr. Fechter. Specifically,

First, with respect to Dr. Fechter's impairment ratings based on weakness, when Dr. Keehn examined Claimant on March 15, 2016, he found Claimant's thighs were of equal circumference. Second, with respect to Dr. Fechter's impairment ratings for loss of endurance, pain, and loss of function, Claimant contradicted Dr. Fechter's findings when he candidly testified that: he can run and walk long distances as part of his job; he has returned to regular duty and regular hours (with overtime); he "very rarely" has pain in his left knee; does not take medication for his knee; he seldom has problems kneeling or stooping; he works out three times a week, which includes stair steps, running on a treadmill, and balancing himself on a Bosu ball; and, up to a month before the Formal Hearing, was working a second job as a security guard at a movie theatre. EE 1, CE 2 at 4, CE 4 at 12, 28, HT at 22-24, 31, 33, 34.

CO at 6.

Notably, part of the reason the ALJ rejected the opinion of Dr. Fechter is how his opinion is different not only from Dr. Keehn's, but also inconsistent from the testimony of the Claimant. Moreover, what Claimant fails to acknowledge is that neither Dr. Fechter nor Dr. Keehn are the

² In *Logan v. DOES*, 805 A.2d 237 (D.C. 2002), the District of Columbia Court of Appeals explained:

Thus, we have said that "[a] disability is *permanent* if it 'has continued for a lengthy period, and it appears to be of lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period.'" *Smith v. District of Columbia Dep't of Employment Servs.*, 548 A.2d 95, 98 n.7 (D.C. 1988) (emphasis added) (citing *Crum v. General Adjustment Bureau*, 238 U.S. App. D.C. 80, 86, 738 F.2d 474, 480 (1984)); *see also* 4 ARTHUR LARSON, LARSON'S WORKERS' COMPENSATION LAW § 80.04, at 80-13 (Matthew Bender ed. 2002) ("Permanent means lasting the rest of claimant's life. A condition that, according to available medical opinion, will not improve during the claimant's lifetime is deemed to be a permanent one.").

treating physician. It is only with respect to treating physicians that reasons for rejecting a physician's opinion must be explained. *Washington Hospital Center v. Department of Employment Services and Paul A. Thielke*, 821 A.2d 898 (D.C. 2003).

Significantly, what is ultimately fatal to Claimant's claim is that between the two IME physicians, the ALJ found more persuasive the opinion of Dr. Keehn. Notably,

Upon a thorough review of the medical evidence, I give more weight to, and find persuasive, Dr. Keehn's conclusion, based on his well-substantiated and well-documented findings, that claimant has a 0% permanent partial impairment to his left lower extremity as a result of his March 8, 2015 work accident.

Dr. Keehn, after examining Claimant and reviewing his history, found that Claimant had sustained a sprain and strain to his left knee on March 8, 2015. Dr. Keehn found that Claimant's left knee does not lock nor does it become swollen, but did find that Claimant has crepitus in his left knee. However, Claimant told Dr. Keehn that the crepitus in his left knee had been present since his 2003 surgery. Dr. Keehn found no effusion, a full range of motion, and that the knee was stable. Dr. Keehn found no objective findings upon performing varus and valgus stressing, drawer test and Lachman maneuver. He also found that Claimant's thighs were of equal circumference and that his sensory and motor examination was intact and that his strength was 5/5. EE 1, ECWA at 2, 3.

Dr. Keehn reviewed Claimant's x-rays and noted no fracture, dislocation or destructive lesion but did find slight spur formation over the distal femur medially. Dr. Keehn also found that the x-rays were consistent with very mild degenerative disease of the left knee. Dr. Keehn concluded that Claimant had reached maximum medical improvement and has a 0% permanent partial impairment to his left lower extremity as a result of his March 8, 2015 accident. EE 1.

CO at 5.

Claimant in argument does not point this panel to an error in the ALJ's reliance on Dr. Keehn's opinion. The ALJ found Dr. Keehn's opinion to be more consistent with the testimony of Claimant as well as "well-substantiated and well-documented." CO at 6. A review of the record supports this conclusion.

The ALJ's reliance on Dr. Keehn's medical opinion, that Claimant did not suffer any permanent partial impairment to his left leg, is supported by the substantial evidence in the record and in accordance with the law.

CONCLUSION AND ORDER

The October 25, 2016 Compensation Order is AFFIRMED.

So ordered.