GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-064

ERNESTO RODRIGUEZ,
Claimant-Petitioner,

v.

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

Appeal from an April 14, 2016 Compensation Order
by Administrative Law Judge Gerald D. Roberson
AHD No. 15-348 OWC Nos. 704378 and 709293

(Decided October 20, 2016)

Eric S. Poplonski for Claimant
Mark H. Dho for Employer

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

GENNET PURCELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Ernesto Rodriguez ("Claimant") works as a transit police officer for the Washington Metropolitan Area Transit Authority ("Employer"). His duties include patrolling within the metro rail system, conducting of inspections, stops and arrests, and interacting with customers on the rail system. In the course of his employment with Employer Claimant has sustained several work-related injuries. On April 18, 2013, while attempting to restrain a belligerent suspect, Claimant fell to the ground injuring his right knee. Claimant was transported to George Washington University Hospital where he was treated for a knee sprain. Claimant was diagnosed with a minor contusion of the knee and prescribed ibuprofen for his sprain-related symptoms. Claimant came under the follow-up care of Dr. Phillip Ragland who treated him with continued pain medication and referred him to physical therapy.

A June 19, 2013 Magnetic Resonance Imaging ("MRI") of Claimant's right knee revealed a small knee joint effusion, but was otherwise unremarkable. Over time, Claimant's right knee

improved with physical therapy. On August 27, 2013, a follow-up examination of the right knee revealed full range of motion, both actively and passively. Dr. Ragland diagnosed Claimant with stabilized posttraumatic right knee strain, and discharged Claimant from care.

On October 6, 2013, Claimant was injured when he again fell to the ground while arresting a suspect. As a result of the fall Claimant injured his shoulder, hand, back and right knee. Claimant returned to George Washington University Hospital on October 6, 2013, where he was diagnosed with a shoulder sprain. The hospital physician also noted Claimant complained of right wrist pain and had a hand abrasion. Claimant was discharged with care instructions for the shoulder sprain and released to return to work on October 7, 2013, with no restrictions.

On October 8, 2013, Claimant returned to Dr. Ragland for follow-up treatment of the injuries he sustained from his second fall. Dr. Ragland diagnosed Claimant with posttraumatic thoracolumbar strain, posttraumatic exacerbation of right knee sprain with worsening, posttraumatic right wrist pain, posttraumatic left hand sprain, and posttraumatic sleep disturbance. Dr. Ragland referred Claimant to orthopedic surgeon Dr. Mark Peterson and recommended physical therapy and chiropractic adjustments three times a week for three weeks.

Claimant had continued complaints of back spasm exacerbated with strenuous activities, bending and sitting upright for long periods of time, finger tenderness and ongoing trouble picking things up. An October 14, 2013 exam report by Dr. Peterson noted swelling and discomfort in Claimant's right knee, and a previous surgical scar over his left acromioclavicular joint, full motion of his left shoulder with minimal pain. Dr. Peterson also noted full range of motion and minimal swelling and pain in Claimant's right wrist and elbow, and tenderness over the left proximal interphalangeal ("PIP") joint of the middle finger without any swelling. Dr. Peterson diagnosed Claimant with contusion of the right knee, right wrist sprain, sprain to the left PIP joint of the middle finger, and left shoulder contusion.

A November 14, 2013 MRI of Claimant's right knee demonstrated a complex tear of the lateral meniscus with a small effusion. A follow-up December 17, 2013 MRI showed the prior tear along with a tear of the anterior horn and a possible superimposed meniscal fragment.

On November 21, 2013, Dr. Ragland diagnosed Claimant with posttraumatic thoracolumbar radiculitis, posttraumatic left shoulder strain, and posttraumatic exacerbation of a right knee sprain and referred Claimant to pain management for treatment of the thoracolumbar radiculitis.

On December 3, 2013, Dr. Marc Danziger performed an independent medical examination ("IME") on behalf of Employer and noted a torn lateral meniscus and pain along the superior edge of the patella, and recommended arthroscopy. On January 2, 2014, Dr. Peterson performed a right arthroscopic lateral meniscectomy and excision of lateral plica. A follow-up exam on February 11, 2014 revealed no swelling of the knee and excellent motion. Claimant completed physical therapy and was released to full duty without restrictions as of February 24, 2014. Dr. Ragland indicated Claimant was cleared to sit, stand, walk and drive for 12 hours continuously, and to stoop, kneel, crouch, climb, reach, twist and carry 100 pounds frequently.

On March 27, 2014, Dr. Ragland diagnosed Claimant with stabilized posttraumatic thoracolumbar radiculitis, stabilized posttraumatic right knee strain with internal derangement, status post arthroscopic repair, and discharged Claimant from care.

On October 2, 2015, Dr. Michael Franchetti performed an IME of Claimant placing him at maximum medical improvement and providing impairment ratings for the back, left arm and right leg. Dr. Danziger performed a second IME on behalf of Employer and provided an impairment rating for the right leg.

On April 7, 2016, a formal hearing was held at the Administrative Hearings Division ("AHD") of the Department of Employment Services ("DOES"). Claimant requested permanent partial disability benefits in the amount of 39% for the right lower extremity and 71% for the left upper extremity/arm and 56% for the back.[1] . Claimant also requested payment of causally related medical expenses. The issue presented for determination was the nature and extent of the Claimant's disability.

On April 14, 2016, an Administrative Law Judge ("ALJ") issued a Compensation Order ("CO") denying Claimant's claim for permanent partial disability for the left upper extremity/arm and back, and granting Claimant 5% permanent partial disability to the right leg as a result of the April 18, 2013 and October 6, 2013 work injuries. *Rodriguez v. Washington Metropolitan Area Transit Authority*, AHD No. 15-348, OWC No. 704378 and 709293 (April 14, 2016).

Claimant timely appealed the CO to the Compensation Review Board ("CRB") by filing Claimant's Application for Review and Memorandum of Points and Authorities in Support of Application for Review ("Claimant's Brief"). In his appeal Claimant asserted that "seemingly no weight was applied to the Claimant's subjective complaints" by the ALJ, and "the proper weight was not given to the five factors in determining the right lower extremity rating." Claimant's Brief at unnumbered page 3.

Employer opposed the appeal by filing Employer's Opposition to Claimant's Application for Review ("Employer's Brief"). In its opposition, Employer requested an affirmation of the CO and asserted that the ALJ's award and conclusion of law is supported by substantial evidence and in accordance with the prevailing law. We affirm.

[1] Claimant's claim for a back-related disability was unclear and appeared to be unrelated to his case brought before the AHD. The "back" is not a scheduled member recognized under the District of Columbia Workers' Compensation Act. Claimant failed to clearly state any claim for disability with regard to his back, or establish any entitlement to disability benefits related to his back pursuant to § 32-1508 (V)(i) of the Act.

ISSUE ON APPEAL

Is the April 14, 2016 CO supported by substantial evidence and in accordance with the law?

ANALYSIS[2]

Claimant principal argument is that in rendering the CO, the ALJ failed to consider certain substantial facts in evidence offered via Claimant's testimony and Claimant's treating physician; evidence supporting Claimant's entitlement to permanency benefits for his right leg, left shoulder and back condition.

Claimant's asserts:

> ...The [ALJ's] holding fails to account for substantial elements of fact in the determination of permanency with respect to the treating physician as well as Claimant's testimony... The Claimant goes on to extensively detail the permanent nature of his right knee injury for which his last treatment was two years prior to this hearing. [...] [T]he [ALJ] acknowledges that the Claimant underwent a right arthroscopic lateral meniscectomy and continues to experience popping and stiffness in his right knee in addition to ongoing low of range of motion and swelling twice a week. [...] [W]hen taking the five factors into consideration, seemingly no weight was applied to the Claimant's subjective complaints by the [ALJ]. After a careful review of the Claimant's subjective testimony, as indicated in the record, it is clear that the proper weight was not given to the five factors in determining the right lower extremity rating.

Claimant's Brief at unnumbered page 3.

Claimant argued that the ALJ dismissed the upper extremity impairment claims related to his left shoulder injury based solely on the medical record, namely, Dr. Franchetti's October 2, 2015 report, notwithstanding Claimant's corroboration of the symptoms cited as the basis for that report. Claimant maintained sufficient testimonial support regarding his left knee symptoms, back, as well as loss of strength, stiffness and decreased range of motion to the left shoulder was presented via Claimant testimony; support that was not referenced in the evaluation section of the CO.

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[2] The scope of review by the CRB as established by the District of Columbia Workers' Compensation Act ("Act") and as contained in the governing regulations is limited to making a determination as to whether the factual findings of a Compensation Order on appeal are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts flow rationally from those facts and are otherwise in accordance with applicable law. D.C. Code §32-1521.01(d) (2) (A). "Substantial evidence" as defined by the District of Columbia Court of Appeals ("DCCA"), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES*, 834 A.2d 882 (D.C. 2003) ("*Marriott*"). Consistent with this scope of review, the CRB is also bound to uphold 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 the members of the CRB review panel considering the appeal might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Citing, as support, *Negussie v. DOES*, 915 A.2d 391, (DC 2007), Claimant argued further that when determining the extent of a permanent impairment, the law states that the most recent edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment may be used, *along with* the Maryland five factors of pain, weakness, atrophy, loss of endurance and loss of function. *Id.*

As Employer correctly asserted however:

> In support of the conclusion of law, the ALJ provided a long and detailed recitation of the claimant's complete treatment history. The ALH also provided a detailed review of the impairment opinions of Dr. Franchetti and Dr. Danziger. As a matter of law, the ALJ rejected the opinion of Dr. Franchetti because they were vague and conclusory. Dr. Franchetti's opinion lacked any detailed findings or supporting medical rationale. Dr. Franchetti failed to provide a medical background history or offer any opinion on the causal relationship of the nature and extent of claimant's condition. Dr. Franchetti failed to note claimant's prior injuries to the left shoulder.

Employer's Brief at 5.

In the discussion section of the CO, the ALJ provided a detailed recitation of Claimant's testimony offered during the hearing including Claimant's symptom triggers and Claimant's history of injury, as testified to by Claimant. The ALJ noted Claimant relied on the impairment ratings from Dr. Franchetti to support his claim for relief and in the course of his analysis, also took into consideration the additional Five Factor impairment rating offered by Dr. Franchetti.

The CO's discussion with respect to Dr. Franchetti's examination reports contained the following:

> In this case, Claimant has established entitlement to a medical impairment due to the surgical procedure. On January 2, 2014, Dr. Peterson performed right arthroscopic lateral meniscectomy. CE 7, p. 52. Given the fact that Claimant underwent a partial lateral meniscectomy, Dr. Franchetti assigned an impairment rating of 2% to the lower extremity/right leg impairment. CE 1, p. 3. Dr. Danziger provided a rating of 2% for the right knee because of the meniscus surgery for the partial meniscectomy when utilizing the AMA Guides 6th edition with the knee regional grid on page 509. EE 1, p. 3. As such, the record establishes entitlement to a 2% impairment for the right leg due to the arthroscopic lateral meniscectomy. Claimant however failed to provide sufficient medical rationale to establish a 7% impairment to the right leg based on Dr. Franchetti's statement of "due to his radiographically determined cartilage interval due to his injury. CE 1, p. 3. Dr. Franchetti did not refer to any specific diagnostic testing to support his rating and the undersigned is unable to ascertain the nature of any damage to the cartilage based on the April 18, 2013 or October 6, 2013 work incident, as Dr. Franchetti failed to offer any specific findings.

CO at 11.

The ALJ concluded that Dr. Franchetti's 2% impairment rating to the right knee was established in the record and mirrored the 2% impairment finding based on the AMA Guides, and as opined to by Dr. Danziger. The ALJ's award of 2% impairment to Claimant's right knee was reasonable and was supported by substantial evidence. The ALJ rejected the additional 30% impairment rating added for the five factors and stated his specific reasons for doing so.

As the ALJ concluded, Dr. Franchetti's correspondences and reports failed to provide any reasonable or credible support for Claimant's claim for disability. And as the District of Columbia Court of Appeals established in *Bowles v. DOES,* 121 A.3d 1264 (D.C. 2015), the trier of fact must be able to clearly point to the record evidence in support of an award of disability. Moreover, the ALJ's decision in an award for permanent partial disability cannot be arbitrary. *Jones v. DOES*, 41 A.3d 1219 (D.C. 2012). We agree with the ALJ's conclusions on impairment regarding Claimant's right knee claim. The ALJ concluded the opinions of Dr. Franchetti as to the nature and extent of Claimant's permanent impairment appeared to be arbitrary and without any support in the objective medical records or treatment history.

With regard to Claimant's claim for an 11% impairment to his left shoulder,[3] Claimant argued that he offered sufficient testimony pertaining to the loss of strength, stiffness and decreased range of motion in his left shoulder that is not considered in the CO and referenced this testimony as 'substantial external evidence" to support Dr. Franchetti's 11% impairment rating. The ALJ's discussion regarding Claimant's left arm claim is reasonable, comprehensive and supported by the medical evidence. In particular, the ALJ credited Dr. Danziger's examination report which referenced full motion, no tenderness, no AC joint crepitus or pain and no instability. The CO concluded that Claimant failed to establish any entitlement to permanent partial disability benefits of 11% for the left arm. We agree.

In reliance on the clear and specific findings and opinions of Dr. Danziger, and citing to the supporting findings of Drs. Ragland and Peterson, the ALJ also found that Claimant had 0% impairment to his left finger and left hand and right hand respectively. Again, reciting the long and detailed recitation of Claimant's complete treatment history, and in weighing the medical opinions of Drs. Franchetti and Danziger, as a matter of law, the ALJ rejected the opinions of Dr. Franchetti because they were comprehensively vague and conclusory, lacking in detailed findings, relevant medical history and supportive medical rationale. *Negussie, supra. See, Wormack v. Fischbach & Moore Electric, Inc.*, CRB No. 03-159 (July 22, 2005). We agree and determine the ALJ's conclusions are supported by substantial evidence and are in accordance with the prevailing law.

Claimant's remaining ancillary arguments on appeal question the weight the ALJ assigned to various findings made in the CO, and are ostensibly requests for us to reweigh the facts in evidence; a task we are not at liberty to undertake. *Marriott, supra.* We affirm the CO.

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[3] The "shoulder" is not a scheduled member recognized under the District of Columbia Workers' Compensation Act. Notwithstanding this error, the ALJ appropriately considered Claimant's claim for "left shoulder" impairment as a "left arm" claim pursuant to the Act.

CONCLUSION AND ORDER

The April 14, 2016 Compensation Order is AFFIRMED.

So ordered.