

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-074

**LANISHA MCCOY,
Claimant-Respondent,**

v.

**WMATA and AS&G ADMINISTRATION, INC.,
Employer/Insurer-Petitioner.**

Appeal from a April 30, 2014 Compensation Order by
Administrative Law Judge Nata K. Brown
AHD No. 14-106, OWC No. 699432

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 DEC 12 AM 10 22

Mark H. Dho for the Petitioner
Andrew S. Kasmer for the Respondent

Before MELISSA LIN JONES, HEATHER C. LESLIE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On December 7, 2012, Ms. Lanisha McCoy was working as a police officer for WMATA. On that day, Ms. McCoy injured her right knee when she subdued an assault suspect at the Southern Avenue Metro station.

Ms. McCoy was seen at a hospital and thereafter began treating with Dr. Joel Fechter. She complained of swelling, clicking, cracking, and buckling of her right knee. Dr. Fechter took Ms. McCoy off of work and prescribed medication, physical therapy, and a brace.

Dr. Fechter released Ms. McCoy to light duty on January 18, 2013. In February 2013, Ms. McCoy complained of pain in her right knee which was precipitated by multiple factors, but Ms. McCoy has returned to full duty work for WMATA.

Dr. Fechter opined Ms. McCoy has sustained a 16% permanent partial impairment to her right leg; Dr. Marc Danziger, WMATA's independent medical examination physician, opined Ms. McCoy has sustained a 2% permanent partial impairment to her right leg. Following a formal hearing, an administrative law judge ("ALJ") awarded Ms. McCoy 16% permanent partial disability to her right leg.¹

On appeal, WMATA contends the evidence does not support Ms. McCoy's claim for benefits. WMATA argues Ms. McCoy's testimony "failed to establish any evidence of potential future economic loss related to the claimed permanent partial disability" because her "work injury has had no impact on claimant's potential or future earnings"² in that Ms. McCoy has returned to full duty and works overtime. WMATA also argues the ALJ's award is arbitrary. Consequently, WMATA requests the Compensation Review Board ("CRB") reverse the Compensation Order.

Ms. McCoy filed no response to WMATA's appeal.

ISSUES ON APPEAL

1. Did the ALJ properly assess the nature and extent of Ms. McCoy's permanent partial disability even though Ms. McCoy has returned to full duty and works overtime?
2. Is the April 30, 2014 Compensation Order supported by substantial evidence and sufficiently specific so as to be in accordance with the law?

ANALYSIS³

In reaching the conclusion that Ms. McCoy sustained a 16% permanent partial disability to her right leg, the ALJ considered the medical evidence as well as Ms. McCoy's testimony:

Dr. Fechter and Dr. Danziger each considered Claimant's subjective and objective medical conditions that she reported experiencing, as well as the AMA Guides. Both physicians also referenced the Maryland Five Factors in arriving at a permanent partial rating; however, overall, the opinion of Dr. Danziger falls short.

¹ *McCoy v. WMATA* AHD No. 14-106, OWC No. 699432 (April 30, 2014).

² Memorandum of Points and Authorities in Support of Employer's Application for Review, p. 1.

³ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed 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 District of Columbia Workers' Compensation Act, as amended, D.C. Code §32-1501 to 32-1545. Consistent with this standard of review, the CRB is constrained to uphold a 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).

Although Dr. Danziger opined that Claimant has a 2% loss of endurance and a loss of function, that rating does not reflect the breadth of her diminished capacity caused by the work-related injury. There are other factors that may be considered in determining an impairment rating. *Negussie v. DOES*, 915 A.2d 391 (D.C. 2007)] and *Corrigan v. Georgetown University*, CRB No. 06-094, AHD No. 06-256, OWC No. 604612 (September 14, 2007)]. Because of the pain and the loss of function in her right knee, Claimant was detrimentally affected in her activities of daily life. Claimant testified that she can no longer run on a treadmill or just jog, she can no longer use weight machines for the legs, and she is not able to kneel in order to perform chores around the house. In addition, Claimant she [*sic*] doesn't know when her leg will give out or lock. She has discomfort in her right knee every day. Thus, the opinion of Dr. Danziger is not credited. (HT 16-18, 29-30)

As attending physicians are ordinarily preferred as witnesses rather than those doctors who have been retained to examine injured workers solely for purposes of litigation, the 16% PPD rating of Dr. Phillips [*sic*] is credited, as he treated Claimant for eight months, and had more knowledge regarding Claimant's injury and the progress of her recovery.^[4]

To begin, in private sector workers' compensation cases in the District of Columbia, as the ALJ noted, there is a preference for the opinion of a treating physician.⁵ It is only with respect to treating physicians that an ALJ must give reasons for rejecting that medical testimony;⁶ therefore, there is no error in the ALJ's favoring Dr. Fechter's opinion over that of Dr. Danziger.

Furthermore, as set forth in *Smith*, there is a conclusive presumption that "actual wage loss would sooner or later result;"⁷ therefore, "schedule benefits for permanent partial disability are payable regardless of actual wage loss."⁸ WMATA's argument that Ms. McCoy's injury has no impact on her potential or future earnings is not persuasive.

Next, WMATA argues the ALJ provided no correlation between Ms. McCoy's limitations on exercising and performing household chores and her work duties; however, Ms. McCoy's inability to run on a treadmill, jog, use weight machines for her legs, or kneel apply not only to her inability to perform household chores but are directly transferrable to her job duties as a

⁴ *McCoy, supra*, p. 5.

⁵ *Stewart v. DOES*, 606 A.2d 1350, 1353 (D.C. 1992).

⁶ *Washington Hospital Center v. DOES*, 821 A.2d 898 (D.C. 2003) (Citation omitted.)

⁷ *Smith v. DOES*, 548 A.2d 95, 101 (D.C. 1988).

⁸ *Id.*

police officer. There is no error in the ALJ's consideration of these limitations when assessing the nature and extent of Ms. McCoy's permanent partial disability.

Finally, the bulk of WMATA's argument centers on its disagreement with the weight the ALJ afforded the medical opinions in the record:

Dr. Fechter's impairment rating report and opinion is speculative and contrary to the objective findings. Dr. Fechter assigned 16% total impairment broken down to 12% according to the 5th Edition of the AMA Guides and 4% under the subjective factors. Dr. Fechter's report fails to cite to any table, page, or evaluation method using the AMA Guidelines. The report fails [to] describe or explain the rationale and medical basis for the initial 12% impairment. Dr. Fechter assigns an additional 2% for the "subjective factor of pain" and an additional 1% for "subjective factors of loss of endurance and loss of function." The 12% assignment based on the AMA Guides is entirely speculative without a detailed explanation regarding the diagnostic method utilized. The impairment finding is contrary [to] the nature of the injury and physical exam findings. Even Dr. Fechter's July 5, 2013 impairment report concedes that the MRI of the right knee revealed no evidence of meniscal or ligamentous tear. There was no evidence of bone bruise or osteochondral lesion. Beyond the noted subjective factors of pain, Dr. Fechter's impairment examination findings were essentially normal. Dr. Fechter noted there was no swelling, no radicular pain, and no numbness or tingling. There was no effusion, no inflammation or gross instability. Distal neurocirculatory examination was normal including motor and sensory testing. The same physical examination findings are echoed in the prior examinations on March 20, 2013 and January 18, 2013. There is no reasonable connection between the examination findings and his final impairment rating.

Dr. Danziger's September 17, 2013 impairment report offers the most credible and rational view of claimant's work related impairment. Dr. Danziger reviewed the entirety of claimant's limited treatment history including Dr. Fechter's July 5, 2013 impairment report. Dr. Danziger noted claimant's diagnosis as a right knee contusion/strain. Throughout Dr. Fechter's medical reports, claimant's condition is referred to as an "injury" to the right knee without any specific diagnosis. Dr. Fechter's December 7, 2012 disability note states "right knee contusion." Thus the preponderance of the medical evidence clearly establishes the nature of the disability as a contusion to the right knee. This undisputed diagnosis further adds to the speculative nature of Dr. Fechter's reference to the AMA Guide apportioned 12% permanent impairment. It seems questionable whether the Guides have any methodology or evaluation criteria which rates a simple strain/contusion with a 12% permanent impairment. Dr. Danziger opines there is no ratable permanent impairment based on the AMA Guidelines. Dr. Danziger does assign a 2% impairment based on the subject factor

for loss of endurance and loss of function. Both physicians concur that the claimant can continue to work full duty with no restrictions.^{9]}

The CRB, however, lacks authority to reweigh the evidence in WMATA's favor.¹⁰

CONCLUSION AND ORDER

Even though Ms. McCoy has returned to full duty and works overtime, the ALJ properly assessed the nature and extent of Ms. McCoy's permanent partial disability by relying on Ms. McCoy's treating physician's opinion and Ms. McCoy's testimony including her testimony about her inability to perform personal activities which directly correlate to her job duties. The April 30, 2014 Compensation Order is supported by substantial evidence and sufficiently specific so as to be in accordance with the law; therefore, the April 30, 2014 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



MELISSA LIN JONES
Administrative Appeals Judge

December 12, 2014
DATE

⁹ Memorandum of Points and Authorities in Support of Employer's Application for Review, pp. 3-5.

¹⁰ *Marriott, supra.*