

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 16-126**

**LASHARN EASLEY,  
Claimant–Petitioner,**

v.

**ALLIED BARTON SECURITY  
and ESIS,  
Employer/Third-Party Administrator–Respondent.**

Appeal from an August 30, 2016 Compensation Order on Remand  
by Administrative Law Judge Amelia G. Govan  
AHD No. 12-138A, OWC No. 681987

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 DEC 9 PM 12 51

(Decided December 9, 2016)

Matthew J. Peffer for Claimant  
John P. Rufe for Employer

Before HEATHER C. LESLIE, LINDA F. JORY, *Administrative Appeals Judges* and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*

HEATHER C. LESLIE for the Compensation Review Board.

**DECISION AND REMAND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

In a prior Decision and Order, the Compensation Review Board (“CRB”) outlined Claimant’s injury, treatment, and the procedural history of Claimant’s claim as such:

LaSharn Easley (Claimant) was employed as a Special Police Officer for Allied Barton Security (Employer). On July 7, 2011, Claimant slipped and fell, injuring her neck and back. A cervical MRI ordered by treating physician, Joel D. Fechter, revealed herniated discs at four levels of Claimant’s cervical spinal column, all of which were pressing on her spinal cord/thecal sac. Employer scheduled Claimant for an independent medical evaluation (IME) with Dr. Mark Rosenthal on October 6, 2011. Claimant’s condition was found to have reached maximum medical improvement by July 31, 2013 by Dr. Joel Fechter, who provided

schedule permanent partial disability (PPD) ratings of 19% of the right leg, 18% of the left leg and 16% of the left arm. This is mentioned after next sentence.

Claimant injured her chest and right knee in a motor vehicle accident on October 17, 2013. Claimant has worked on a regular basis, with another security company since March of 2014.

A full evidentiary hearing occurred on April 22, 2015.

Claimant sought PPD awards of 19% of the right leg, 18% of the left leg and 16% of the left arm extremity. A Compensation Order (CO) issued on May 29, 2015 which award Claimant's claim for relief.

Employer timely appealed. Employer asserts that the Administrative Law Judge (ALJ) did not consider substantial evidence relevant to the determination of the issue of PPD and did not address any of the arguments set forth by Employer.

Claimant responded asserting the CO is in accordance with the applicable law and should be affirmed. Alternatively, Claimant's asserts that Employer has improperly asked the CRB to consider the medical causal relationship issue which was not before the ALJ.

*Easley v. Allied Barton Security*, CRB 15-105 (November 4, 2015) ("DRO").

After addressing the parties' arguments, the CRB determined a remand was necessary as the Compensation Order was not supported by the substantial evidence in the record. The CRB concluded some of the conclusions made regarding the nature and extent of Claimants disability did not flow rationally from the evidence, specifically Dr. Fechter's opinion of Claimant's bilateral lower leg impairments and the ALJ's conclusion that Claimant only injured her chest and right knee in the intervening motor vehicle accident ("MVA"). The DRO remanded the case for further fact finding and analysis of Dr. Fechter's opinion and the MVA.

A Compensation Order on Remand ("COR") was issued on August 30, 2016. In that COR, the ALJ awarded 16% permanent partial disability to the left arm, with interest, and denied the rest of Claimant's claim. The ALJ denied the Claimant's request for permanent partial disability to the lower legs based upon the DRO.

Claimant appealed. Claimant argues the DRO made impermissible findings of fact, beyond the scope of the CRB's authority and that the prior Compensation Order should be reinstated. Employer opposes, arguing the COR is supported by the substantial evidence in the record and should be affirmed.

Employer did not appeal the 16% permanent partial award to the left arm. The rest of this opinion will apply to the appeal of the denial of permanent partial awards to the left and right leg.

## ANALYSIS<sup>1</sup>

Claimant argues:

The Compensation Order on Remand, by its own admission, contends that its conclusions of law do not flow rationally from the substantial evidence it found. COR at 6. The Compensation order on Remand credited the medical report of Dr. Fechter despite an MRI report from two years prior describing Ms. Easley's lumbar spine as "unremarkable." The Compensation Order on Remand noted that Dr. Fechter's report was far more recent, and consistent with Ms. Easley's credible testimony that 1) prior to the work injury of July 2011, she did not suffer from pain in her legs and arms that caused her to feel as if her legs were about to give out and 2) after the work injury of July 2011, she suffered from constant pain, tingling, and numbness in her legs that caused Ms. Easley to feel as if her legs would give way while she was walking.

Claimant's brief at 7-8.

A review of the COR reveals the following discussion:

However, the CRB decision mandated rejection of Dr. Fechter's opinion regarding a permanency rating of Claimant's lower extremities. Because the December 2011 MRI in evidence was "unremarkable" the Board's reweighing of the evidence determined there was not substantial evidence to support the medical ratings provided by Dr. Fechter. This negates the treating physician preference and mandates rejection of his opinion regarding the permanency ratings for Claimant's lower extremities. DRO p. 4.

Further, the Board's decision, in its Analysis, notes that the in the CO which was vacated, the undersigned "relied on Claimant's testimony of her current symptoms ... without specifying the etiology of those symptoms, in awarding the claim." DRO p.3. The described omission appears to relate to medical causation (which was not a disputed issue) rather than the nature and extent of Claimant's permanent symptoms, which she credibly described at the Formal Hearing before the undersigned.

The record, including the testimony of Claimant and medical and physical therapy notes, and reports from her treating medical providers, reflected findings of

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<sup>1</sup> The scope of review by the Compensation Review Board (CRB) is generally limited to making a determination whether the factual findings of the Compensation Order are based on substantial evidence in the record, and whether the legal conclusions drawn from those facts are 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, 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. App. 2003). Consistent with this scope of review, the CRB and this panel are 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 reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885

persistent pain, numbness and tingling in the affected extremities. Her testimony further indicated there is a loss of function, and weakness, such that her legs "give out" unexpectedly at any time. HT 42. Claimant's testimony, which was deemed credible with regard to her symptoms, indicated she also has daily issues with her right arm and bilateral leg symptoms. However, the CRB has determined that the record lacks substantial evidence to support an award of permanent partial schedule benefits for the lower extremities.

COR at 6.

We disagree with the ALJ's interpretation of the DRO. The CRB did not raise medical causation as an issue, but in fact found the recitation of facts to be in error as the evidence did in fact show Claimant injured more than what was outlined in the Compensation Order. The findings of fact in the original order stated that the Claimant only injured her chest and right knee in the subsequent MVA. This was not true as outlined in our prior DRO which noted that Claimant injured both her right and left knee in the MVA.<sup>2</sup> Thus, the Compensation Order's conclusions of law could not flow rationally from the facts as they were not correct.

As there is no presumption of the nature and extent of a Claimant's disability, at the very minimum the Compensation Order must correctly identify what body parts were injured in a subsequent injury and address what, if any, impact that may have on the nature and extent of Claimant's alleged disability.

On remand, the ALJ did correctly outline the injuries suffered in the DRO. However, in the discussion section, quoted in part above, it is clear that the ALJ felt constrained by our prior DRO to reject the opinion of Dr. Fechter. We clear up any confusion caused by our DRO now.

Our prior DRO wasn't meant to constrain the ALJ or mandate a rejection of Dr. Fechter's opinion. As we stated:

As the ALJ's findings of fact are not supported by substantial evidence we cannot make a determination that the ALJ's conclusions have followed rationally from the findings of facts. In so concluding, we are mindful that we are 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 reviewing authority might have reached a contrary conclusion. *Marriott, supra* at 885. However, given the mischaracterization of the evidence by the ALJ we cannot conclude the CO is supported by substantial evidence and must reverse the ALJ's PPD award.

On remand, the ALJ is reminded that the DCCA issued a decision that while not limiting the ALJ's discretion in determining the amount of PPD awards, has cautioned that in making a legal determination of disability, the ALJ should not

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<sup>2</sup> Claimant injured several other body parts, but as the appeal only relates to the right and left legs, we focus on those body parts.

arrive at an arbitrary amount but should come to a conclusion based on a complex of factors, taking into account physical impairment and potential for wage loss. See *Jones v. DOES*, 41 A.3d 1219 (D.C. 2012) (*Jones*) *Negussie v. DOES*, 915 A.2d 391 (D.C. 2007) (*Negussie*); *Bowles v. DOES*, No. 14-561 (D.C. August 6, 2015).

DRO at 4-5.

We also note that assessment of a physician's medical impairment rating doesn't necessarily end the analysis of the nature and extent of Claimant's disability. As we recently explained in *Sellers v. WMATA*, CRB No. 16-062 (September 14, 2016):

[T]he DCCA has recently signaled its view that determining the degree of medical impairment in a schedule loss claim is a necessary first step in assessing schedule disability.

Under the recent case of *M.C. Dean, Inc., v. DOES and Anthony Lawson, Intervenor*, No. 14-AA-1141 (D.C. July 7, 2016) ("*Lawson*") the court held:

We agree that determining "occupational capacity is precisely what an ALJ is tasked to do," but it is not clear that occupational capacity should be an independent factor in a vacuum. Limitations of occupational activities are assessed under the statutory structure (with the Maryland factors of pain, weakness, atrophy, loss of endurance, and loss of function), and our recent decisions have emphasized that *variance from the physical impairment rating to the economic disability rating should be specifically explained*. See *Bowles [v. DOES]*, 121 A.3d 1264 (D.C. 2015) *supra*, at 1269–70 (remanding where disability award could not be derived from summation of the possible evidence: "No combination of 7%, 8%, and 5% add[s] up to just 10%"); *Jones, [v. DOES]*, 41 A.3d 1219 (D.C. 2012) *supra*, 41 A.3d at 1226 (remanding for further findings where the basis of a 7% disability award "and not, for example, 1%, 10% or 30% -- is a complete mystery.")

*Lawson*, at 24, 25 (emphasis added).

And the CRB has an established line of cases which highlight the singular importance of arriving at a determination of medical impairment as part of the process of considering schedule claims, as reviewed in *Mann v. Knight Networking*, CRB No. 16-001 (July 26, 2016), where the CRB wrote:

The usage "variance from the physical impairment" suggests that the court views medical impairment as a baseline from which disability is to be assessed, and is consistent with a framework for analysis that has been applied in CRB decisions since *Jones v. DOES*, 41 A.3d 1219 (D.C. 2012)].

*Id.*, at 5, 6. See also: *Ulloa v. Hotel Harrington*, CRB No. 12-006 (August 7, 2012); *Green v. DOES*, CRB No. 12-156 (November 15, 2012); *Nickens v. Fort Myer Construction*, CRB No. 13-057 (August 6, 2013) (*Nickens I*); *Prescott v. Friendship Public Charter School*, CRB No. 13-072 (August 22, 2013); *Hawkins v. Washington Hospital Center*, CRB No. 13-063 (August 27, 2013); *Nickens v. Fort Myer Construction*, CRB No. 14-045 (August 19, 2014), (*Nickens II*); and, *Allen v. Corrections Corporation of America*, CRB No. 15-090 (October 5, 2015).

We disagree that the CRB's previous DRO impermissibly made findings of fact or negated the treating physician's preference. The deference given to a treating physician's opinion is not absolute and when a party raises a concern regarding the basis of a treating physician's opinion, as the Employer did in the instant case when noting the unremarkable MRI, at the very least the ALJ must address Employer's argument. The CRB did not remand this matter because we wanted a specific outcome. We remanded the case so that the ALJ could do what she didn't do in the CO -- explain why Dr. Fechter's opinion was entitled to the treating physician preference in light of the MRI, which seemed inconsistent with that doctor's opinion. Our remand was for the ALJ to give a fuller and clearer discussion of the rationale for her decision.

Thus, we remand the case with instructions for the ALJ to re-evaluate Claimant's request for an award of permanent partial disability benefits to the left and right leg, taking into consideration all the evidence in the record, including the medical impairment ratings of Dr. Fechter and Dr. Rosenthal consistent with the above discussion.

#### CONCLUSION AND ORDER

The ALJ's award denial of permanent partial impairment of 19% of the right leg and 18% of the left leg and is not supported by substantial evidence and is accordingly VACATED. The matter is **REMANDED** for further fact finding and analysis consistent with this decision.

*So ordered.*