

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

COMPENSATION REVIEW BOARD

**CRB No. 16-078**

**SHURON TURNER,  
Claimant–Petitioner,**

v.

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

Appeal from a May 17, 2016 Second Compensation Order on Remand<sup>1</sup>  
by Administrative Law Judge Nata K. Brown  
AHD No. 11-124, OWC No. 667761

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 OCT 19 PM 1 48

(Decided October 19, 2016)

David J. Kapson for Claimant  
Mark H. Dho for Employer

Before, LINDA F. JORY, GENNET PURCELL, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

LINDA F. JORY, for the Compensation Review Board:

**DECISION AND ORDER TO VACATE**

FACTS OF RECORD AND PROCEDURAL HISTORY

The parties do not dispute the following facts of record as outlined in *Shuron Turner v. Washington Metropolitan Area Transit Authority*, CRB No. 15-020, (May 19, 2015) (“DRO 3”).

On February 15, 2010, Claimant injured her right knee, right ankle and right leg after slipping and falling on ice in Employer’s parking lot. Claimant came under the care and treatment of Dr. Richard Meyers and Dr. Frederic Salter of the medical practice, Phillips and Green, Limited Partnership. After conservative treatment, Claimant was ultimately released back to full duty. Dr. Jeffrey

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<sup>1</sup> The order is entitled “Second Compensation Order on Remand” however as the history demonstrates, the May 17, 2016 is the third Compensation on Remand.

Phillips, of the same practice, examined Claimant on November 23, 2010, for a final evaluation and opined Claimant suffered from a 16% permanent partial disability to her right lower extremity as a result of the work injury.

Employer sent Claimant to be examined for an Independent Medical Evaluation (“IME”) with Dr. Louis Levitt on two occasions, April 20, 2010 and February 1, 2011. Dr. Levitt opined that Claimant did not suffer from any permanent impairment attributable to her work injury.

A full evidentiary hearing was held on July 13, 2011 with the sole issue presented being the nature and extent of the Claimant’s right lower extremity. A CO was issued on September 20, 2011, denying Claimant’s claim for relief. In that CO, the ALJ found that Dr. Phillips was not a treating physician and not entitled to the treating physician preference. The ALJ found the opinion of Dr. Levitt more persuasive and that Claimant did not sustain a permanent partial impairment to the right lower extremity as claimed.

The Claimant appealed on October 27, 2011. In a Decision and Remand Order (“DRO”) dated January 26, 2012, the CRB remanded the case back to the ALJ, first to apply the proper legal burden when determining permanent partial disability, being the preponderance of the evidence. Second, the ALJ was directed to reconcile internally inconsistent statements. Finally, the ALJ was tasked to clarify, in light of the ALJ’s discussion regarding the Claimant’s physical complaints, whether or not the Claimant’s work capacity had been impacted.

A Compensation Order on Remand (“COR 1”) was issued on February 10, 2012. In that COR, the ALJ utilized the preponderance of the evidence standard when analyzing the nature and extent of the disability and reconciled the two internally inconsistent statements pointed out by the CRB. The ALJ again denied the Claimant’s request for an award of permanent partial disability benefits. The Claimant timely appealed. In a Decision and Remand Order (“DRO-2”) dated September 10, 2012, the CRB remanded the case to the ALJ to clarify whether or not Claimant was entitled to a permanent partial disability award based upon the impact on Claimant’s work capacity.

As the ALJ who originally decided the matter had retired, the remand was re-assigned to another ALJ. A second COR (“COR 2”) was issued on January 16, 2015 which granted Claimant’s claim for relief of 16% permanent partial impairment to the right lower extremity. Employer timely appealed.

DRO 3 at 1-2.

A third Decision and Remand Order (“DRO 3”) issued on May 19, 2015 which found the COR 2’s award of 16% permanent partial disability to the lower extremity was not supported by substantial evidence, was not in accordance with the law and accordingly was vacated. A third COR (COR 3) was issued on May 17, 2016 which denied Claimant’s claim for relief of 16% permanent partial impairment to the right lower extremity. Claimant timely appealed.

## ISSUE ON APPEAL

Is the May 17, 2016 COR 3 supported by substantial evidence and in accordance with the law?

### ANALYSIS

Claimant asserts that the May 17, 2016 COR 3's analysis is compelled by the findings of the previous Decision and Remand Orders of the CRB. Claimant asserts that she disagrees with those findings, and must now exhaust her administrative remedies so that an appeal of those CRB Orders to the District of Columbia Court of Appeals can be made.

We understand Claimant's legal strategy as the DRO 3 is somewhat confusing. The DRO 3 is entitled Decision and Remand Order yet the Conclusion and Order states only:

The ALJ's conclusion that Claimant is entitled to an award of 16% permanent partial disability to the lower extremity is not supported by substantial evidence is not in accordance with the law and accordingly is VACATED.

DRO 3 at 5.

Preceding the Conclusion and Order is the following language from the Panel:

Review of COR 2 and the lack of specific evidence upon which to base a prediction that her presently unimpaired leg is likely to deteriorate in the future due to her work injuries lead us to conclude that an award at this time is unsupported by substantial evidence. If at some point in the future these activities lead to an injury that results in a permanent medical impairment, a new claim for a new injury is not foreclosed, and would be the proper manner in which to address the issue.

DRO 3 at 5.

The DRO 3 does not contain any language that suggests the AHD should revisit the issue of permanent partial disability (PPD). Notwithstanding the title "Remand", we conclude the ALJ lacked authority to issue another COR.

### CONCLUSION AND ORDER

The ALJ lacked authority to re-visit Claimant's request for PPD benefits and the COR 3 is accordingly VACATED.

*So ordered.*