

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Employment Services  
Labor Standards Bureau

Office of Hearings and Adjudication  
Administrative Hearings Division



(202) 671-2233-Voice  
(202) 673-6938-Fax

IN THE MATTER OF, )  
 )  
HERMAN COCHRANE, )  
 )  
Claimant, )  
 )  
v. )  
 )  
PEPCO )  
 )  
And )  
 )  
COLONIAL HEALTHCARE, INC. )  
 )  
Employer/Carrier. )

AHD No. 08-198  
OWC No. 639778

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Appearances

GEORGE SWEGMAN, ESQUIRE  
For the Claimant

KEVIN J. O'CONNELL, ESQUIRE  
For the Employer

Before:

BELVA D. NEWSOME  
Administrative Law Judge

**COMPENSATION ORDER**

**STATEMENT OF THE CASE**

This matter arises out of a claim for disability compensation benefits filed pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, D.C. Code Ann. §§32-1501 *et seq.* (2001) (hereinafter, the Act).

After timely notice, a full evidentiary hearing was held on June 17, 008, before Belva D. Newsome, Administrative Law Judge. Herman Cochrane (hereinafter, Claimant) appeared in person and with counsel. PEPCO and Colonial Healthcare, Inc. (hereinafter collectively, Employer) appeared by counsel. Claimant testified on his own behalf. Claimant Exhibit (hereinafter, CE) Nos. 1-7 and Employer Exhibit (hereinafter, EE) Nos. 1-6, described in the Hearing Transcript (hereinafter, HT), were admitted into evidence. The record closed on July 9, 2008.

**BACKGROUND**

Claimant has worked for PEPCO for 21-plus years, working his way from general shop mechanic A to cable splicer C mechanic to his current position of cable splicer B mechanic. As a cable splicer, Claimant pulls different sized cable off reels and installs the cable and hardware in manholes for various electrical purposes, utilizing his hands for his entire eight (8) hour shift. Claimant has suffered several work-related injuries including a neck injury as a result of an automobile accident in 2002. In August of 2002, the doctors who were treating him for severe whiplash conducted neurodiagnostic testing on him and stated that he had carpal tunnel syndrome. Claimant did not have any symptoms, did not receive any treatment, did not miss any work, and did not know what carpal tunnel syndrome was.

In early 2006, Claimant sought treatment from his family physician for a cyst on his right wrist. The family physician referred him to an orthopaedist for treatment of the cyst. Claimant was again diagnosed with carpal tunnel syndrome, and again did not miss any work due to the diagnosis.

**CLAIM FOR RELIEF**

Claimant seeks reasonable and necessary surgery for bilateral carpal tunnel syndrome and temporary total disability for the period of his recovery and rehabilitation from the surgery, and, related medical benefits.

**ISSUE**

1. Did Claimant suffer an accidental injury on December 4, 2006?
2. Was timely notice of injury given to Employer?

**FINDINGS OF FACT**

The parties have stipulated, and I accordingly find, there is an employer-employee relationship; jurisdiction is vested in the District of Columbia; causal relationship/arising out of and in the course of employment; medical causal relationship; nature and extent of disability; and timely claim.

Based upon the record evidence, I make the following findings of fact:

I find Claimant to be a credible witness, and his testimony is consistent with and supported by the evidence in the record.

Claimant works for PEPCO as a cable splicer B mechanic, and has held this position for more than three (3) years. The position requires a high degree of manual dexterity; the ability to push/pull a maximum of 75 pounds, use both hands and arms simultaneously, and operate hand tools, power tools, hydraulic presses, cable pulling machines and other machines, tools, test equipment and truck mounted cranes during an eight-hour shift.

Prior to his current position with PEPCO, Claimant worked as cable splicer C mechanic and a general shop mechanic A. Claimant has worked for PEPCO for 21-plus years.

In 2002, Claimant was injured in a work-related automobile accident, and suffered severe whiplash. The doctors treating him sent him for neurodiagnostic testing that revealed carpal tunnel syndrome. The doctors did not tell Claimant what the syndrome was or that the syndrome was causally related to his work. Claimant was not suffering from any symptoms, did not know what the syndrome was, and when he was released to return to work from the automobile accident, he did not miss any work due to carpal tunnel syndrome.

In early 2006, Claimant saw his family physician, Dr. Brophy, for a cyst on his right wrist. She sent him to Dr. Thomas Dennis who treated Claimant with vitamins and to wear splints. On September 25, 2006, Dr. Dennis had X-rays taken of the Claimant that demonstrated subluxation of the CMC joint<sup>1</sup>, carpal tunnel syndrome, and osteoarthritis of the basilar joint<sup>2</sup> of the thumb. The cyst was a secondary volar wrist ganglion from Claimant's wrist CMC joint arthritis.

Claimant returned for a follow-up visit with Dr. Dennis on November 29, 2006. The conservative treatment had not worked for Claimant's carpal tunnel syndrome. Dr. Dennis recommended Neurometric tests be done on both of Claimant's hands, and based upon the results would determine whether or not Claimant would need to be treated surgically.

On December 4, 2006 Claimant filed a Personal Injury Report, Employee Statement/Signature Form, in which he stated that "When I do different task, such as installing, removing, taping cables, and when my hands are in a griping position, they start tingling and go numb. It was spurratic at first, now its got to be an ongoing issue."

A Personal Injury Report was created by Employer stating that the earliest Claimant could recall having pain was March 2006 while taping bus. Claimant had informed co-

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<sup>1</sup> "Subluxation of the CMC joint" means partial dislocation (as of one of the bones in a joint) of the thumb joint. <http://www.scoi.com/thumba.htm>

<sup>2</sup> "Basilar joint" means of, relating to, or situated at the base of the thumb joint.

worker as he was working performing manhole inspections. The report stated Claimant suffered a cumulative trauma to his hand.

On March 8, 2007, Claimant saw Dr. David Dorin for injections of synthetic steroids in both the right and left thumb basal joint. Dr. Dorin's medical report of that visit is the first medical report to suggest that Claimant's clinical carpal tunnel as well as the synovitic<sup>3</sup> process at the basal joint of the thumb is work-related.

Claimant did not miss any work after filing the Personal Injury Report due to carpal tunnel syndrome or CMC arthritis.

On November 27, 2007, Employer had Claimant undergo an Independent Medical Evaluation (hereinafter, IME) with Dr. Louis E. Levitt. Dr. Levitt's assessment was that the arthritis to Claimant's hands and his carpal tunnel syndrome were causally connected to his work activities with symptoms beginning in December 2006. Dr. Levitt opined that the conservative treatment had been appropriate, and agreed with Claimant's treating physician that surgery was indicated. Dr. Levitt stated that Claimant should have decompression of the carpal tunnel, arthroplasty for treatment of his CMC arthritis, and the removal of the small volar ganglion cyst. Dr. Levitt opined that the surgery be performed by a hand specialist. Claimant could work until the surgery, but would need time to recover and rehabilitate to come back to continue his employment as a cable splicer.

On March 13, 2008, Dr. Dorin diagnosed Claimant as having progressive aggravated carpal tunnel syndrome in both hands, and recommended surgical release.

## ANALYSIS

### A. DATE OF INJURY

In cases where a condition is the result of cumulative trauma, the date of injury is either the date a claimant is disabled from her usual employment as a result thereof, the date on which said injury becomes manifest, or the date on which the claimant seeks medical treatment for that condition. See *King v. District of Columbia Department of Employment Services*, 742 A.2d 460 (D.C. 1999); *Railco Multi-Construction Co. v. Gardner*, 564 A.2d 1167 (D.C. 1989).

In some cases, it is not possible to "identify a discrete event occurring at a particular date and time that causes (or aggravates) the injury." See *King, supra*. A cumulative injury may become manifest only after repeated exposure to individual traumas or harmful employment-related conditions. *Id.* Until a cumulative trauma injury has manifested, either by requiring an employee to seek medical care, or causing an employee to lose time from work, there has been no "injury", and thus, there is no triggering event for the

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<sup>3</sup>"Synovitic" means inflammation of a synovial membrane usually with pain and swelling of the joint.

giving of notice to an employer of such an injury. *Franklin v. Blake Realty Company*, H&AS No. 84026, OWC NO. 25856 (Director's Decision, August 18, 1985).

In the matter under consideration, Claimant did not seek medical treatment for his carpal tunnel syndrome, but for the secondary volar wrist ganglion from his wrist CMC joint arthritis. On September 25, 2006, Dr. Dennis took X-rays to determine the cause of the cyst that confirmed the 2002 diagnosis of bilateral carpal tunnel syndrome, and added the diagnoses of subluxation of the CMC joint and osteoarthritis of the basilar joint. (CE 4). Dr. Dennis does not make any causality findings and does not make any recommendations with respect to surgery for Claimant's carpal tunnel syndrome. On November 29, 2006, Dr. Dennis prescribes Neurometrics to determine the severity of Claimant's carpal tunnel syndrome to recommend surgery or not. In late November early December, Claimant began to experience increasingly worse pain as he did his daily work tasks. (HT, p.26). He filed a workers' compensation claim on December 4, 2006. (CE 1) Until Dr. Dorin stated in his March 8, 2007 report that the synovitic process in Claimant's thumb and the clinical carpal tunnel syndrome were work-related, Claimant did not have any medical documentation that his carpal tunnel syndrome was work-related.

Claimant does not meet the first test of the manifestation rule since he has not become disabled from the carpal tunnel syndrome having not missed any work due to this condition. Employer argues that the syndrome became manifest when Claimant's thumb locked in March 2006, but Claimant has two other disorders in his thumb that could have caused his thumb to lock, subluxation of the CMC joint and osteoarthritis of the basilar joint. In the alternative, Employer argues that when Dr. Dennis gave Claimant wrist splints in September 2006 is either when the syndrome first became manifest or the Claimant first sought treatment. The Claimant was referred to Dr. Dennis for the cyst on his wrist, and as a doctor, it was Dr. Dennis duty to treat all of the symptoms within his specialty suffered by Claimant. When Claimant knew that he would miss work due to his carpal tunnel syndrome, he notified Employer. This is as close to a "triggering event" in the development of carpal development syndrome in Claimant as the facts support.

The Employer's IME conducted by Dr. Louis Levitt agreed that the work-related injury was causally connected to Claimant's work activities with symptoms beginning in December 2006. Based upon this opinion, Claimant's date of injury would be December 2006.

#### **B. Timely Notice**

D.C. Code § 32-1513(a) provides:

Notice of any injury or death in respect of which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death, or 30 days after the employee or beneficiary is aware or in the exercise of reasonable diligence should have been aware of a relationship between the injury or death and the employment. Such notice shall be given to the Mayor and to the employer.

In *Jimenez v. District of Columbia Department of Employment Services*, 701 A.2d 837, 839 (D.C. 1997), the Court:

The agency found that Jimenez was aware of the relationship between his injuries and his employment on July 6, 1994. Jimenez testified that he visited the doctor on July 6, 1994, for treatment of the pain in his knees and shoulder. He further admitted on cross-examination that he knew that his work activities were aggravating the pain. Thus, Jimenez's own testimony provides substantial evidence supporting the agency's finding.

The agency found that Jimenez had not notified employer within thirty (30) days of his first seeking medical treatment and knowing that his work activities aggravated his pain. In the matter under consideration, no such findings can be made with respect to Claimant, his uncontroverted testimony is that he did not know what carpal tunnel syndrome was; that no medical doctor told him that the syndrome was work-related; and, that the conservative treatment of wearing splints did not help at work. (HT, pp.20, 22)

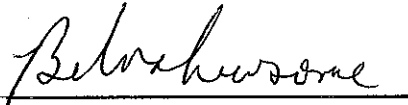
The determinative factor in this case, is not whether Claimant knew of the medical diagnosis and when he knew of it, but whether at that time, Claimant was aware of the relationship between his work and the carpal tunnel syndrome. The record does not contain any evidence that he was affirmatively told his work duties as a cable splicer B mechanic was the possible cause of his carpal tunnel syndrome or that he understood the possible connection independently. Claimant timely notified Employer of his injury.

#### **CONCLUSION OF LAW**

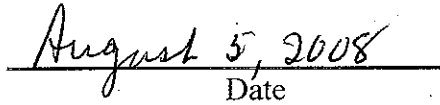
I hereby conclude that Claimant is entitled to reasonable and necessary surgery for bilateral carpal tunnel syndrome and temporary total disability for the period of his recovery and rehabilitation from the surgery, and, related medical benefits.

**ORDER**

It is hereby **ORDERED** claimant's claim for relief be, and hereby is, **GRANTED**.



BELVA D. NEWSOME  
ADMINISTRATIVE LAW JUDGE

  
Date

RE: *Herman Cochrane v. PEPCO and Colonial Healthcare, Inc.*,  
OWC No. 639778, AHD No. 08-198.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent this 5 day of August,  
2008 to the following:

Mohammad R. Sheikh, Acting Assistant Director  
Labor Standards  
Department of Employment Services  
64 New York Ave., N.E., Suite 3923  
Washington, D.C. 20002

**Hand Delivery**

Charles Green, Associate Director  
Department of Employment Services  
64 New York Ave., N.E., Second Floor  
Washington, D.C. 20002

**Hand Delivery**

George E. Swegman, Esquire  
2000 L Street, NW, Suite 400  
Washington, DC 20036

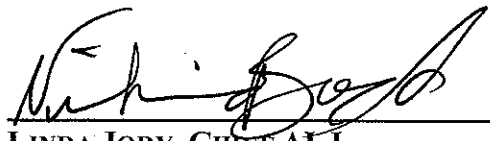
**Certified**

Kevin J. O'Connell, Esquire  
401 East Jefferson Street, Suite 204  
Rockville, MD 20724

**Certified**

Herman Cochrane  
6 South Bruce Street  
Laurel, MD 20724

**Certified**

  
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LINDA JORY, CHIEF ALJ  
ADMINISTRATIVE HEARING DIVISION

RE: *Herman Cochrane v. PEPCO and Colonial Healthcare, Inc.*,  
OWC No. 639778, AHD No. 08-198.

### **APPEAL RIGHTS**

This order is effective upon filing with the Mayor pursuant to §21 of the Act, D.C. Code, as amended, §32-1520. 7 DCMR §230.12; §23a of the Act, D.C. Code, as amended, 2001, §32-1522a. Any party aggrieved by this Order may file an application for review with the Chief Judge Compensation Order Review Board<sup>1</sup>, Labor Standards Bureau, Department of Employment Services.

**Send Application for Review to:**

**Compensation Review Board/Chief Judge  
Department of Employment Services  
Labor Standards Bureau  
64 New York Ave., N.E.  
Third Floor  
Washington, D.C. 20002**

The Application for Review must be filed within 30 days of the date of the filing of this Order with the Mayor as provided in §23a(a) of the Act, D.C. Code, as amended, §32-1522a(a). An Application for Review is perfected by filing with the Chief Judge, Compensation Review Board, Labor Standards Bureau,

1. one (1) original and three (3) copies of an Application for Review,
2. one (1) original and three (3) copies of a Memorandum of Points and Authorities in support of the Application, and
3. certification that copies of the Application and Memorandum have been served by mail or delivery

7 DCMR §§230.1, 230.2; §23a of the Act, D.C. Code, 2001, §32-1522a.

A complete copy of the fore going documents should be filed with the Office of Hearings and Adjudication Administrative Hearings Division at 64 New York Avenue, N.E., Second Floor, Washington, D.C. 20002.

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<sup>1</sup>D.C. Code Ann. § 32-1521.01 (2001) and Title 7 of the District of Columbia Municipal Regulations, Chapter 1, section 118, and Chapter 2, sections 250 *et seq.*, established a Compensation Order Review Board and set forth the authority and responsibilities thereof. The letterhead used for decisions and orders refer to the entity as the "Compensation Review Board", which is the shorter-form designation the Director of the Department of Employment Services used in Administrative Policy Issuance No. 05-01 (February 5, 2005).