

**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  
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In the Matter of,	)	
	)	
TERRY F. COOK, SR.,	)	
	)	
Claimant,	)	
	)	
v.	)	AHD No. 07-330
	)	OWC No. 601834
SCHINDLER ELEVATOR CORPORATION,	)	
	)	
and	)	
	)	
CRAWFORD & COMPANY,	)	
	)	
Employer/Carrier.	)	

Appearances:

RYAN J. FORAN, ESQUIRE  
For the Claimant

CLINTON R. SHAW, JR., ESQUIRE  
For the Employer/Carrier

Before:

ANAND K. VERMA  
Administrative Law Judge

**COMPENSATION ORDER ON REMAND**

**STATEMENT OF THE CASE**

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

After timely notice, a formal hearing was held on September 20, 2007, before Anand K. Verma, Administrative Law Judge. Terry F. Cook, Sr., appeared in person and through counsel (hereinafter, claimant). Schindler Elevator Corporation/Crawford & Company (hereinafter, employer) appeared by counsel. Claimant testified on his own behalf. No testimony was adduced by employer. Claimant Exhibit

(hereinafter, CE) No.1-20 and Employer Exhibit (hereinafter, EE) No.1- 34, described in the Hearing Transcript, (hereinafter, HT) were admitted into evidence. The record closed on October 12, 2007.

**BACKGROUND**

Claimant, an elevator mechanic for employer, injured his lower back on December 3, 2001, while he was putting the tool box in his truck. After initially treating at the Annapolis Primary Care, claimant sought medical care at the Physical Medicine and Pain Management Associates. Claimant underwent left-sided hemilaminoforaminotomy, nerve root decompression, and diskectomy on March 31, 2004. Later, on September 20, 2005, claimant also underwent a lumbar revision laminectomy at L4 to S1. On referral from his counsel, claimant submitted to Raymond D. Drapkin, M.D., an orthopaedic surgeon on February 23, 2007 for an independent medical evaluation (IME).

**PROCEDURAL HISTORY**

Following a compensation Order issued on December 31, 2007, denying claim for relief, claimant filed an Application for Review with the Compensation Review Board (CRB) on January 30, 2008. The CRB remanded the case to the Administrative Hearings Division (AHD) on April 30, 2008 to make a determination whether the adduced evidence on behalf of claimant warrants an award of 36% permanent impairment to each of his lower extremities.

**CLAIM FOR RELIEF**

Claimant seeks an award under the Act of 36% permanent partial disability to each of his lower

extremities along with causally related medical expenses.

**ISSUE**

Nature and extent of claimant's disability, if any.

**FINDINGS OF FACT**

The parties have stipulated, and I accordingly so find, an employer/employee relationship is present under the Act; jurisdiction is vested in the District of Columbia; claimant sustained an accidental injury on December 3, 2001 that arose out of and in the course of employment; claimant provided timely notice of the injury; the claim was timely filed; claimant's average weekly wage is \$730.80; and employer has voluntarily paid temporary total disability benefits from December 29, 2003 to April 19, 2004.

Based on the review of the record as a whole, I make the following findings:

As an initial matter, I adopt and incorporate by reference the findings of fact made in the March 21, 2005 Compensation Order.

Claimant worked for employer as an elevator mechanic. His duties required him to unload the tractor trailers upon arrival by lifting and moving the materials on board. Claimant also utilized ladders to build a platform. On December 3, 2001, while lifting a tool box and placing it in the pick up truck, claimant injured his low back. Claimant sought initial treatment at the Annapolis Primary Care on December 3, 2001 where he was diagnosed with an acute lumbar strain. With prescription for Motrin 800 mg in conjunction with ice massage/heat therapy, claimant was restricted to any lifting, pushing or pulling over 20 lbs. for the next two weeks. In a follow up on December 7, 2001, claimant was

started on physical therapy three times a week for two weeks. On December 14, 2001, claimant's acute lumbar strain notably improved and he was released to return to work on December 17, 2001.

Claimant sought no treatment for the next six (6) months until he returned to Annapolis Primary Care on June 17, 2002 with complaint of numbness in leg, hip, left arm and shoulder. Patricia A. Czapp, M.D., who examined claimant noted normal reflexes and strength along with mild sensation in the left thigh. Claimant again sought no medical treatment for approximately five (5) months until he followed up with Annapolis Primary Care on November 6, 2002 when the attending nurse practitioner, Tracy Adams noted he had chronic rhinitis and resolving ankle sprain.

The record again demonstrates no treatment for the almost nine (9) months until July 29, 2003 when claimant returned to Dr. Czapp with the complaint of lower back pain. Dr. Czapp diagnosed him with acute lumbar radiculitis, ordered a lumbar spine MRI scan and prescribed Medrol Dose pack and Percocet 7.5 mg. In her opinion he suffered from pain, which radiated in both thighs, left greater than right.

Once again, claimant sought no treatment for the next six (6) months until January 29, 2004, when he appeared at Annapolis Primary Care with the complaint of lower back pain, shooting pain down the left leg, as well as pain in both elbows. Claimant's low back examination revealed full range of motion and strength and he was diagnosed with tendinitis of the elbows. With recommendation for another lumbar spine MRI scan, he was provided with an orthopaedic referral for cortisone injection in the elbows.

Later, a lumbar spine MRI scan taken on February 10, 2004 disclosed a large central left paracentral disk extrusion at L4-5 resulting in moderate central canal stenosis, left greater than right, as well as degenerative changes at L5-S1 without neural impingement. Further, as referred by his primary care physician, claimant underwent a neurosurgical evaluation on March 8, 2004 by Brian J. Sullivan, M.D., a neurosurgeon. Dr. Sullivan's evaluation was consistent with the pertinent findings of normal reflexes and sensory examination, albeit with some discomfort on the left side on straight leg raising. Dr. Sullivan recommended an aggressive, non-surgical treatment with a physiatrist in the Annapolis, Glen Burnie area.

Accordingly, on March 19, 2004, claimant was examined by Manisha A. Saraf, M.D., a specialist in physical medicine and pain management. With the diagnosis of herniated disc at L4-5 with spinal stenosis, Dr. Saraf recommended that claimant receive an intralaminar epidural steroid injection at L2-3 since the L4-5 was stenotic. Dr. Saraf provided a follow up care on July 19, September 13, October 11, November 3, December 8, 2004, January 5, February 10 and August 9, 2005.

Claimant also underwent a neurological consultation on March 23, 2004 by Clifford T. Solomon, M.D., a neurosurgeon, who recommended limited laminectomy bilaterally. Thereafter, claimant returned to Dr. Czapp for follow up on March 30 and 31, 2004 with complaints of back and leg pains, left greater than right. Reading his lumbar MRI, Dr. Czapp opined he had an L4-5 disc disease, which was the causative factor in his left radiculopathy symptoms.

On March 31, 2004, Dr. Solomon performed a bilateral laminectomy. Noting positive prognosis

in his post-operation follow ups on April 8 and 29, 2004, Solomon recommended claimant's continued walking and physical therapy. Later, upon referral from his primary care physician, claimant received a left L5 transforaminal epidural steroid injection on October 20, 2004 by Thomas Sang Wook Lee, M.D.

At the behest of employer, claimant underwent an independent medical evaluation (IME) on November 2, 2004 by Steven S. Hughes, M.D., an orthopaedic surgeon, who opined claimant's lumbar stenosis, congenital in nature, and sciatica which had been resolved, were unrelated to the December 3, 2001 injury.

On December 21, 2004, claimant submitted to Chesapeake Medical Imaging for an MRI scan of the lumbar spine, which disclosed a small residual left lateral recess disc protrusion, as well as left lateral recess epidural granulation tissue at L4-5. Also disclosed was a small broad posterior disc protrusion at L5-S1 not impinging the nerve roots bilaterally.

On January 27, 2005, again, claimant received a left L5-S1 interlaminar epidural steroid injection from Dr. Lee. Claimant's August 9, 2005 examination by William Tham, M.D., physiatrist, noted a cocked over left sided lean, as well as tenderness across the lower back on palpation and positive straight leg raise test on both sides. As recommended by Dr. Tham, claimant underwent another MRI scan of the lumbar spine on August 15, 2005, which revealed a significant enlargement of once small L5-S1 disc bulge, mildly displacing the right and causing spinal stenosis without any evidence of nerve root impingement. In a letter dated August 25, 2005 to claimant, Dr. Solomon suggested decompression of the spinal canal in order to ameliorate the low back pain in the event conservative pain

management did not succeed. Later, in a letter dated September 6, 2005 addressed to Drs. Czapp and Tham, Dr. Solomon recommended a revision laminectomy at L4 to S1 because claimant's buttock pain was worsening without any sign of improvement.

Accordingly, claimant underwent a revision laminectomy at L4 to S1 by Dr. Solomon on September 20, 2005 at Johns Hopkins Bayview Medical Center. A week later on September 28, 2005, claimant's incision looked good and pain in one leg had remitted. In a follow up on October 5, 2005, after packing the little seroma with an iodoform gauge at the bottom of the wound, Dr. Solomon felt the superficial seroma would spontaneously resolve.

On February 23, 2007, as advised by his counsel, claimant submitted to Raymond D. Drapkin, M.D., an orthopaedic surgeon, for an IME. Merely predicated on that singular examination, Dr. Drapkin opined that as a result of the lumbar radiculopathy at L4-5 and L5-S1 with sensory and motor findings, claimant had sustained a total of 36% permanent impairment of the right lower extremity and 36% of the left lower extremity.

On August 21, 2007, claimant submitted to Robert E. Collins, M.D. an orthopaedic surgeon, for another IME. Dr. Collins who had already seen claimant earlier on July 23, 2007. Finding no rateable impairment with respect to the leg and low back injuries from December 3, 2001 work incident, Dr. Collins assigned 3% permanent partial impairment of the right and 6% impairment of the left lower extremity as a result of the golfing injury.

## **DISCUSSION**

I have reviewed the arguments of counsel with respect to the issue presented herein. To the

extent an argument is consistent with the findings and conclusions, it is accepted; to the extent an argument is inconsistent therewith, it is rejected.

On remand, the CRB notes that inasmuch as the causal connection between the July 2003 golfing injury and claimant's ongoing symptoms had already been decided in the March 21, 2005 Compensation Order, no finding of causal connection insofar as the July 2003 golfing injury was necessary. Thus, in the remand decision, the ALJ must decide if claimant has met his burden of proving his entitlement to the claimed permanent partial disability benefits.

Claimant is not entitled to a presumption regarding the nature and extent of disability. See *Dunston v. District of Columbia Department of Employment Services*, 509 A.2d 109 (D.C. 1096). Rather, claimant must present substantial credible evidence that he or she has the disability entitling him to the requested level of benefits. *Dunston, supra*.

Claimant asserts he is entitled to an award of 36% permanent partial disability to each of his lower extremities. In support thereof, he relies exclusively on the impairment rating assigned by his IME physician, Dr. Drapkin, whose February 23, 2007 physical examination disclosed, among other things, his restricted range of motions in all planes. His forward flexion was 40 degrees, extension 15 degrees, and lateral flexion 15 degrees to the left and 15 degrees to the right. In addition, claimant had positive straight leg raising test on both sides. Neurologically, Dr. Drapkin's observations included numbness in both legs and feet coupled with diffuse weakness on both sides. Predicated on that examination, Dr. Drapkin opined claimant had sustained a 36%

permanent partial impairment to the right lower extremity and 36% impairment to the left lower extremity as a result of the lumbar radiculopathy at L4-5 and L5-S1.

It is interesting that the physicians who provided palliative treatment to claimant since the date of his injury on December 3, 2001 rendered no opinion regarding the extent of his permanent impairment resulting from the original trauma. In his post September 20, 2005 revision laminectomy examination, Dr. Solomon noted in a letter addressed to Dr. Czapp on September 8, 2005 that claimant looked good with remission of leg pain in one leg. In another follow up on October 5, 2005, although claimant manifested a superficial seroma at the bottom of the wound, Dr. Solomon felt it would spontaneously resolve. Neither of claimant's treating physicians, Dr. Czapp or Dr. Solomon noted any permanency to his impairments.

Against claimant's IME opinion of Dr. Drapkin, employer offers the IME opinions of Dr. Hughes and Dr. Collins dated November 2, 2004 and August 21, 2007, respectively. Pertinently, in his evaluation of claimant's right and left lower extremities, Dr. Hughes noted full active and passive range of motion with no palpatory tenderness or malalignment and without any atrophy or fasciculations. The only positive finding noted therein involved sciatic notch tenderness and lumbar extension test. (EE 33).

Employer also relies upon the most recent IMEs of Dr. Collins who examined claimant on July 23 and August 21, 2007. Assigning 3% permanent partial impairment of the right and 6% permanent partial impairment of the left lower extremity, exclusively attributable to claimant's golfing injury of July 26, 2003, Dr. Collins apportioned no rateable impairment as a result of the December 3, 2001 work injury. (EE 34).

Inasmuch as there is no rateable impairment in the record from claimant's treating physician, the undersigned would focus on the competing IME opinions. The record contains an IME by claimant's own examining physician, Dr. Drapkin who performed his evaluation solely at referral from his counsel. Although, Dr. Drapkin appeared to have reviewed claimant's prior medical records, his description of the records as reviewed is marred by lack of specifics. Moreover, his blanket notation included in the impression section of the IME that as a result of the December 3, 2001 injury, he is status post three operations including laminectomies at L4-5 and L5-S1 is flawed as being internally inconsistent with the evidence proffered by claimant himself. In fact, a subsequent February 10, 2004 MRI scan of his lumbar spine disclosed marked degenerative changes and central disc herniation at L4-5 level and to a slightly degree at the L5-S1 level. This pathology precipitated claimant's left sided hemilaminoforaminotomy, nerve root decompression, and discectomy at L4-5 on March 31, 2004.

Also evident in the record is Dr. Solomon's follow up note of April 29, 2004 wherein he noted claimant was moving around much better as far as his gait was concerned and his lower back, upper buttock area, although occasionally uncomfortable were not tender to palpation. However, despite undergoing two epidural blocks thereafter, claimant complained of lower back pain radiating down into the mid thigh, which eventually necessitated a revision surgery.

Therefore, absent a rateable impairment by claimant's treating physician, a comparative determination of two competing IME opinions is in order. Employer's IME physicians, Dr. Hughes and Dr. Collins, who examined

claimant on more than one occasion after thoroughly reviewing his previous medical history, apportioned no rateable impairment attributable to the December 3, 2001 work injury. Following the November 2, 2004 examination of claimant, Dr. Hughes opined his lumbar stenosis, congenital in nature, was unrelated to the December 3, 2001 work injury. In his IMEs of July 23 and August 21, 2007, Dr. Collins likewise maintained claimant's alleged symptoms were not the natural sequelae of the December 3, 2001 work incident.

The only rateable impairment of claimant's left and right lower extremities results from a solitary one time examination of Dr. Drapkin seems inherently inconsistent because he made no reference in the February 23, 2007 IME of claimant's February 10, 2004 lumbar MRI scan disclosing marked degenerative changes at L5-S1 disks. Moreover, in aggregating the total rating of 36% permanent impairment to the right lower extremity, Dr. Drapkin apportioned no individual percentages attributable to the five factors of pain, atrophy, weakness, loss of endurance and loss of function.

Moreover, the undersigned also finds significant gaps in claimant's treatment as follows:

No treatment for six (6) months from December 14, 2001 to June 17, 2002.

No treatment for five (5) months after June 17, 2002 until November 6, 2002.

No treatment for nine (9) months November 6, 2002 to July 29, 2003.

No treatment from for nine (9)

months from July 29, 2003 to  
January 29, 2004.

No treatment for six (6) months  
from January 27, 2005 to  
August 9, 2005.

It is well settled in this jurisdiction that preference is accorded to the testimony of the treating physician, although the administrative law judge is free to reject it with proper explanation for doing so. See *Mexicano v. District of Columbia Department of Employment Services*, 806 A. 2d 198, 205 (D.C. 2002). On this record, therefore, the undersigned is not persuaded that claimant has incurred any permanent impairment stemming from the December 3, 2001 work incident.

#### **CONCLUSION OF LAW**

Based upon a review of the record evidence as a whole, I find and conclude claimant has not sustained his burden by substantial credible evidence that he has suffered 36% permanent partial impairment to each of his lower extremities.

TERRY F. COOK, SR.

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**ORDER**

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



ANAND K. VERMA  
Administrative Law Judge

May 16, 2008

Date

RE: **TERRY F. COOK, SR. V. SCHINDLER ELEVATOR CORPORATION AND CRAWFORD & COMPANY, AHD No. 07-330, OWC No. 601834.**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent this 16<sup>th</sup> day of May 2008 to the following:

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

**Hand Delivery**

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Brandywine, MD 20613

**Certified**

  
LINDA F. JORY, ACTING CHIEF ALJ  
ADMINISTRATIVE HEARINGS DIVISION

RE: **TERRY F. COOK, SR. V. SCHINDLER ELEVATOR CORPORATION AND CRAWFORD & COMPANY, AHD No. 07-330, OWC No. 601834.**

### **APPEAL RIGHTS**

This order is effective upon filing with the Mayor pursuant to Section 21 of the D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code § 32-1520. See D.C. Official Code § 32-1522(a). Any party aggrieved by this Order may file an Application for Review with the Chief Administrative Appeals Judge, Compensation Review Board, Labor Standards Bureau, Department of Employment Services.

**Send Application for Review to:**

**Compensation Review Board  
Attn: Chief Administrative Appeals Judge  
Department of Employment Services  
64 New York Avenue, N.E., Third Floor  
Washington, D.C. 20002**

The Application for Review must be filed with the Compensation Review Board (CRB) within 30 calendar days of the date of the filing of this Order with the Mayor as provided in §23a(a) of the Act, D.C. Official Code § 32-1522(b)(2A)(A). Pursuant to 7 DCMR §§ 258.2, 258.3, 258.4 and 258.6, an Application for Review is perfected by filing with the CRB the following:

1. An original and three (3) copies of an Application for Review;
2. An original and three (3) copies of a Memorandum of Points and Authorities in support of the Application for Review;
3. An original and three (3) copies of the Compensation Order or final decision appealed; and
4. Certification that copies of the Application and Memorandum have been served by mail or delivery upon the opposing party(ies) and the Administrative Hearings Division (AHD).

For a copy of the CRB Rules of Practice and Procedure, go to the DOES website at

**[www.does.dc.gov/does](http://www.does.dc.gov/does)**,

Once at the website, click on the link "**Worker Protection**", then link "**Compensation Review Board**", then link "**Notice of Final Rulemaking**".