

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

VINCENT C. GRAY  
MAYOR



F. THOMAS LUPARELLO  
ACTING DIRECTOR

**CRB 14-078**

**ERIC H. HAMMOND,  
Claimant-Petitioner,**

v.

**WASHINGTON GAS LIGHT COMPANY,  
Self-Insured Employer Respondent.**

Appeal from a May 19, 2014 Compensation Order by  
Administrative Law Judge Karen Calmeise  
AHD No. 11-346A, OWC No. 623835

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2014 OCT 30 AM 8 47

Michael J. Kitzman for the Claimant  
Ed Funk for the Self-Insured Employer

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

HEATHER C. LESLIE, for the Compensation Review Board.

**DECISION AND ORDER**

This case is before the Compensation Review Board on the request for review filed by the Claimant of the May 19, 2014 Compensation Order issued by an Administrative Law Judge in the Administrative Hearings Division (AHD) of the District of Columbia’s Department of Employment Services (DOES). In that CO, the ALJ denied Claimant’s request for disability benefits, payment of casually related medical benefits, and interest. We VACATE.

**BACKGROUND FACTS OF RECORD AND PROCEDURAL HISTORY**

Claimant worked 19 years for this Employer as a “senior operations technician”, a position that required him to use heavy machinery and hand tools. On January 10, 2006, the Claimant experienced numbness, stiffening and cramping in his left hand while using a pipe wrench. He was diagnosed with a sprained left thumb and taken off work.

The Claimant was referred to an orthopedic hand surgeon, Dr. Emily Hattwick, on January 18, 2006. Dr. Hattwick thought the Claimant had tendonitis and acute carpal tunnel syndrome caused by repetitive movements that were exacerbated after working on January 10, 2006.

The Claimant next was treated by Dr. Ivica Ducic, a plastic and reconstructive surgeon, who reported the Claimant had bilateral radial and ulnar nerve neuropathies and left-sided carpal tunnel syndrome. Dr. Ducic performed surgery (ulnar and radial sensory neurolysis and carpal tunnel release) in August 2006. In early 2007, Dr. Ducic referred the Claimant to neurosurgeon Dr. Christopher Kalhorn, who ruled out cervical spine damage and diagnosed ulnar neuropathy. In August 2007, a functional capacity evaluation of the Claimant concluded the Claimant had no physical restrictions and could do all but overhead activities.

From October, 2007 to July 2011, Dr. Steven Lo, a neurologist, treated the Claimant for his tremor disorder. Three times Dr. Lo reported he does not know the etiology of the Claimant's conditions: on January 4, 2010 ("the etiology of his symptoms are unclear"); February 2, 2011 ("tremor disorder of the left hand is of unclear cause"); and July 12, 2011 ("The etiology of his tremor disorder, as well as, posturing of his fingers, is unclear").

The Employer had the Claimant examined by two orthopedic surgeons and one neurologist. Dr. David Johnson, an orthopedic surgeon, examined the Claimant twice in 2007, and reported the Claimant was asymptomatic, and able to do full duty. Dr. Richard Barth, also an orthopedic surgeon, examined the Claimant in 2011, and reported the Claimant's neurological disorder was of unclear etiology. He recommended a neurological IME, which was done by Dr. Kenneth Eckmann on December 19, 2011. Dr. Eckmann reported the Claimant's tremor disorder was "of uncertain etiology."

After a full evidentiary hearing, a Compensation Order (CO1) issued on April 6, 2012. The CO1 noted that an issue to be adjudicated was whether Claimant's tremor disorder causally related to his employment. The ALJ determined that the Claimant's neurological disorder was not proven to be causally related to his employment and denied his request for permanent and total disability benefits.

The Claimant timely appealed to the CRB. A Decision and Order (DO) was issued on June 12, 2012, The DO affirmed the CO, finding that it was supported by the substantial evidence in the record. In addressing Claimant's appeal, the CRB did note Claimant argued CO1 erred "by not determining what, if any other conditions are related to the work injury and if any of these conditions have resulted in an inability of Mr. Hammond to perform his work duties." DO at 3. The CRB stated:

We find no merit to this assertion. When asked at the formal hearing why he chose August 15, 2011, as the date of maximum medical improvement, Claimant's counsel responded: "That was the effective date from Dr. Lo that Dr. Lo said there would be no, palliative care would continue but that there was not likely to be any improvement from the tremor conditions."

*Id.*

Claimant appealed the DRO to the District of Columbia Court of Appeals (DCCA). That appeal is still pending.

Subsequent to the appeal to the DCCA, Claimant filed for a Formal Hearing, arguing that he is entitled to temporary total disability benefits because of Claimant's orthopedic injuries to his upper extremities. The issues presented were the following:

1. Is Claimant's claim for a schedule award barred by res judicata or otherwise estopped?
2. Whether the Claimant's upper extremity condition is medically causally related to the work related injury, and if so,
3. What is the nature and extent of Claimant's permanent partial work related impairment, if any?

CO at 2.

A Compensation Order (CO2) was issued on May 19, 2014, finding that Claimant's claim was not barred by res judicata or collateral estoppel. The CO2 further found that Claimant's orthopedic injuries were not medically causally related to the work accident.<sup>1</sup> The CO2 denied Claimant's claim for relief in its entirety.

Claimant timely appealed. Claimant argues the CO2 erred in properly applying the treating physician preference and erred in its findings on causal relationship. Employer opposes Claimant's appeal, stating the CO2 is supported by the substantial evidence in the record and is in accord with the law.

#### THE STANDARD OF REVIEW

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed CO are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. "Substantial evidence" is relevant evidence a reasonable person might accept to support a conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003) and §32-1521.01(d) (2) (A) of Act.

Consistent with this standard of review, the CRB is constrained to uphold a CO 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, supra*.

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<sup>1</sup>The Conclusion of Law section referenced an upper respiratory condition. CO at 8. The Claimant never put forth or testified to an upper respiratory condition. We will treat this as an administrative error and assume the ALJ meant to state "Claimant's current upper extremity condition is not casually related to his employment."

## DISCUSSION

Prior to reaching Claimant's arguments, we must first address whether or not the claim for temporary total disability benefits because of the orthopedic injuries is severable from the issues pending in front of the DCCA. If the issues are not severable, AHD does not have jurisdiction to hear the case pending an outcome from the DCCA on Claimant's appeal.

A review of the administrative file reveals that at the first hearing, when Claimant was seeking permanent total disability benefits, Claimant was pursuing these benefits based on both his orthopedic and neurological injuries. In Claimant's opening statement at the first Formal Hearing, his counsel stated,

Your Honor, further, you'll hear testimony from Mr. Hammond about the ongoing problems that he continues to have with both arms including the tremors that he continues to suffer from in his left hand.

Hearing transcript at 14.

At the second Formal Hearing, in response to the ALJ's inquiry about the AHD's jurisdiction in that proceeding, Claimant's counsel stated in his opening statement

The first your honor, is the finding by Judge Knight dealt solely with the issue of a neurologic tremor condition that Mr. Hammond presently has. Didn't address the underlying orthopedic condition, specifically the restrictions that were put in place by his treating doctor, Dr. Ducic, as well as by Dr. Johnson, the IME and the restrictions on his ability to return to work based on an FCE that was done. This is Employer's exhibit, your honor, in 2007.

Hearing transcript at 14.

Claimant and Employer relied heavily on many of the same documents admitted into evidence and relied upon by the ALJ in the CO1 at the Formal Hearing in the case before us, specifically the opinions of Drs. Lo and Ducic. On appeal from the first CO1, Claimant argued that the CO1 erred by not determining whether any other conditions, other than the tremor disorder, were medically causally related to the work injury.

In *Georgetown University Hospital v. DOES*, 658 A.2d 832, 833 (D.C. 1995), the DCCA concluded that the Administrative Hearings Division did not have jurisdiction to consider issues and matters while a case is on appeal, unless the issues are completely severable from the issues on appeal. The Court noted the problem and concern that inconsistent rulings could result for the Administrative Hearings Division, if the issues were not completely severable and stressed, "... 'judicial' economy is best served by allowing the Director to resolve a pending Application for Review before the Hearing Examiner proceeds on an application for modification." *Jones v. George Hyman Construction Company*, Dir. Dkt. No. 87-17 (September 18, 1987) at 8-9, cited in *Georgetown University Hospital* at 836.

In the instant matter, this Panel concludes that the issues before the ALJ were not completely

severable from the issues pending on appeal before the DCCA. At the second hearing, Claimant proceeded to argue he was disabled because of the underlying orthopedic conditions. However, these conditions were presented at the first hearing. The outcome of the decision in front of the DCCA, including whether the ALJ at the first hearing erred in not determining whether the orthopedic medical conditions (an issue presented for the second time at the second hearing) are medically casually related to the work injury, could result in inconsistent rulings if the CO2 presently on appeal stands. We conclude the issues are not severable. In order to avoid inconsistent orders, we are forced to vacate the CO2.

CONCLUSION AND ORDER

The findings of fact and conclusions of law contained in the May 19, 2014 Compensation Order is VACATED.

FOR THE COMPENSATION REVIEW BOARD:

  
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HEATHER C. LESLIE  
*Administrative Appeals Judge*

October 30, 2014

DATE