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ATTORNEY GENERAL  
DISTRICT OF COLUMBIA  
2015 JAN 26 P 3:30  
APPELLATE DIVISION

**DISTRICT OF COLUMBIA COURT OF APPEALS**

No. 12-AA-972

ERIC H. HAMMOND, PETITIONER,

v.

DISTRICT OF COLUMBIA  
DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

and

WASHINGTON GAS LIGHT COMPANY, INTERVENOR.

On Petition for Review of an Order  
of the Compensation Review Board  
(CRB-070-12)

(Submitted March 13, 2014

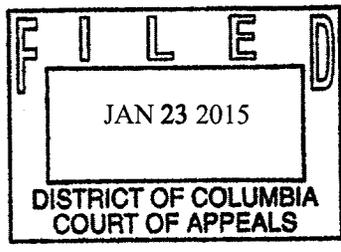
Decided January 23, 2015)

Before BECKWITH, *Associate Judge*, and PRYOR and STEADMAN, *Senior Judges*.

**MEMORANDUM OPINION AND JUDGMENT**

PER CURIAM: Appellant Eric Hammond worked at Washington Gas Light Company as a senior operations technician for more than nineteen years. His job involved a variety of maintenance work and manual labor, including operating drills and driving trucks. An evidentiary hearing held on January 12, 2012, in front of an administrative law judge (ALJ) produced a record from which the following facts are drawn.

On January 10, 2006, Mr. Hammond's left hand began cramping and folding up while he was tightening a plug at work. He was referred to a clinic by his employer, where he was told he had a sprained thumb. Shortly thereafter, both of Mr. Hammond's hands began cramping and he experienced numbness and a tingling sensation. Mr. Hammond then sought treatment from Dr. Emily Hattwick, an orthopedic hand surgeon, who injected cortisone shots in both hands. Dr. Hattwick's initial opinion was that Mr. Hammond had "possible carpal tunnel syndrome and proximal nerve injury [to his] left arm." She opined that Mr.



Hammond's "[t]wisting maneuver with left hand may have caused inflammation that worsened nerve compression at carpal tunnel."

Mr. Hammond then began seeing Dr. Mustafa Haque, who diagnosed Mr. Hammond with bilateral carpal tunnel and referred him to Dr. Ivica Ducic for surgery on his upper left extremity, which took place in August 2006. Dr. Ducic diagnosed Mr. Hammond with ulnar nerve neuropathy, radial nerve neuropathy, and carpal tunnel syndrome. Mr. Hammond testified that after the surgery, he still had the same issues. Dr. Ducic recommended that he not undergo surgery on the right side. Shortly after the surgery, Mr. Hammond also developed tremors in his left thumb. Mr. Hammond testified as to how his injuries affected his life:

The cramping, the folding of the hand when I'm performing tasks, [the] tremors. Loud noises excite me and my arm will jump, my leg will jump. A lot of things that I used to do I can't do anymore. I used [to] like to run. I used to like to dance. Can't do any of those things. . . . A lot of things I used to enjoy doing with my kids . . . I can't do anymore. . . . [E]ver since I had the injuries I lost all the coordination. . . . My mobility is nothing like it used to be.

After concluding that Mr. Hammond had attained maximal medical improvement based on the type of surgery performed, Dr. Ducic referred Mr. Hammond to Dr. Christopher Kalhorn, a neurosurgeon, to evaluate the tremor condition he had developed. Dr. Kalhorn ruled out cervical spine damage and diagnosed Mr. Hammond with an ulnar neuropathy.

At the behest of Washington Gas, Mr. Hammond submitted to an independent medical evaluation by Dr. David Johnson in May and September of 2007. Dr. Johnson opined that Mr. Hammond had reached "maximum medical improvement from the injury occurring on 01/10/2006." He further opined that the January 10, 2006, work injury was "now resolved" and that he warranted a "0% impairment rating to the left upper extremity." Washington Gas concluded from this report that Mr. Hammond could return to work. When Mr. Hammond did not return, he was terminated.<sup>1</sup> Only after he was terminated did the company realize

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<sup>1</sup> According to Mr. Hammond, he applied for various lower paying jobs in the company that he could perform despite his disability, but "nobody[ got] in contact with him and let[ him] know" to return. When he contacted his union  
(continued...)

that it “might not be safe” for Mr. Hammond to return to his previous position.<sup>2</sup> Washington Gas did not have any position available that would have accommodated Mr. Hammond’s disability.

As long as the prevailing medical opinion was that the cause of Mr. Hammond’s injuries was uncertain, Washington Gas voluntarily paid temporary total disability benefits.<sup>3</sup> Mr. Hammond filed a claim for permanent total disability benefits in September 2011 after neurologist Dr. Steven Lo concluded that Mr. Hammond reached maximum medical improvement with regard to his tremors.

In preparation for the ALJ hearing, Mr. Hammond was evaluated by two more independent medical examiners. In November 2011, Dr. Richard Barth characterized Mr. Hammond’s January 2006 work injury as a “right thumb strain” that was “resolved,” and concluded that his neurological disorder, of unclear etiology, was “unlikely to be work related.” He recommended that Mr. Hammond be evaluated by a neurologist to determine whether his present symptoms were causally related to his work injury or stemmed from an underlying neurological condition. Dr. Eckmann examined Mr. Hammond in December 2011. He agreed that Mr. Hammond’s tremor disorder was of unknown etiology and concluded, “I do not believe under any circumstances that the current status is causally related to the incident of January 10, 2006. . . . Since the diagnosis is not causally related, I would not regard Mr. Hammond is [sic] being permanently totally disabled from any type of employment on the basis of DOI 01/10/06.”

The ALJ denied Mr. Hammond’s request for permanent total disability benefits and for payment of causally related medical expenses and bills, concluding that his tremor disorder was not causally related to his employment. The Compensation Review Board (CRB) affirmed that determination, concluding that the findings of fact and conclusions of law contained in the compensation

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(...continued)

representative he was told Washington Gas “didn’t want [him] back.” Washington Gas recalled, however, that Mr. Hammond wanted to “go back to the job that he had before[,] which is a crew leader.”

<sup>2</sup> Mr. Hammond testified that he could not operate heavy machinery, use tools, or drive a truck while having problems with his hands.

<sup>3</sup> Payments continued until the ALJ issued a compensation order.

order were supported by substantial evidence in the record.

Mr. Hammond appeals, arguing that the ALJ erred in determining that he was not permanently and totally disabled as a result of his work injury. Specifically, Mr. Hammond contends that the ALJ erred by addressing only his tremors and failing to analyze whether his other conditions—injuries to his median, ulnar, and radial nerves in his left arm—were causally related to his work incident.

Pursuant to the Administrative Procedure Act, we uphold a decision of the CRB unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. D.C. Code § 2-510 (a)(3) (2012 Repl.). “We will affirm the CRB’s decision if (1) the agency made findings of fact on each contested material factual issue, (2) substantial evidence supports each finding, and (3) the agency’s conclusions of law flow rationally from its findings of fact.” *Reyes v. District of Columbia Dep’t of Emp’t Servs.*, 48 A.3d 159, 164 (D.C. 2012) (citation and quotation marks omitted). “Although our review in a workers’ compensation case is of the decision of the CRB, not that of the ALJ, we cannot ignore the compensation order which is the subject of the CRB’s review.” *Id.* (citation and quotation marks and brackets omitted).

In this case, the ALJ correctly acknowledged the statutory presumption that a claim for compensation comes within the workers’ compensation framework. D.C. Code § 35-1521 (2012 Repl.). This presumption “operates to establish a causal connection between the disability and the work-related event.” *Baker v. District of Columbia Dep’t of Emp’t Servs.*, 611 A.2d 548, 550 (D.C. 1992). Once the presumption is triggered by a claimant’s showing that a work-related event had the potential of resulting in the disability, the burden of production shifts to the employer to present “specific and comprehensive enough [evidence] to sever the potential connection between a particular injury and a job-related event.” *Ferreira v. District of Columbia Dep’t of Emp’t Servs.*, 531 A.2d 651, 655 (D.C. 1987) (citations omitted).

After holding an evidentiary hearing, the ALJ concluded that Washington Gas rebutted the presumption that Mr. Hammond’s tremors were causally connected to his work injury, a finding that Mr. Hammond does not appear to

challenge on appeal.<sup>4</sup> Mr. Hammond instead argues that the ALJ committed legal error by failing to determine which if any of Mr. Hammond's other conditions were related to the work injury. Mr. Hammond is correct that the ALJ's order does not address any of Mr. Hammond's reported nerve injuries that were potentially work-related and developed before the tremors began: Dr. Hattwick's diagnosis of nerve injury, Dr. Ducic's diagnosis of ulnar and radial nerve neuropathy, or Dr. Kalhorn's opinion that Mr. Hammond suffered from ulnar nerve neuropathy. Instead, the ALJ's order only analyzes the neurologists' opinions regarding Mr. Hammond's tremor disorder: Dr. Lo opined that "his tremors began after the work incident. No clear causal relationship that I can tell" and Dr. Eckmann wrote that "I do not believe under any circumstances that the [neurological movement disorder] is causally related to the incident of January 10, 2006."<sup>5</sup>

Mr. Hammond raised this same argument on appeal to the CRB, but the CRB rejected it. The CRB noted that Mr. Hammond's counsel indicated at the ALJ hearing that the relevant date of maximal medical improvement was the date that Dr. Lo determined that Mr. Hammond's tremor condition was unlikely to improve. The CRB reasoned that by pointing to this date, Mr. Hammond was only claiming disability benefits based on his tremors, not based on any other injuries. Yet Mr. Hammond testified that he experienced cramping, numbness, and a tingling sensation in both hands shortly after the work incident, and these injuries started before—and continued to exist after—he developed a tremor. During closing argument before the ALJ, counsel for Mr. Hammond reiterated that these symptoms led to diagnoses of "carpal tunnel syndrome and proximal nerve injury. He doesn't have a thumb sprain, he has nerve related damages and injury." Counsel then argued that Mr. Hammond's tremors—that is, a "neurologic condition of unknown etiology"—were an *additional* basis to find disability. Mr. Hammond clearly sought disability benefits based on both his physical and

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<sup>4</sup> Mr. Hammond argues that he presented substantial evidence that his work injury resulted in a tremor disorder, but he never claims that the ALJ's finding regarding the tremor disorder was unsupported by substantial evidence.

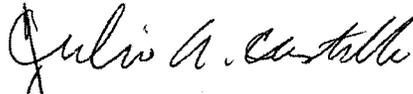
<sup>5</sup> While the compensation order notes in passing that Dr. Barth opined that Mr. Hammond's sprained thumb had reached maximal medical improvement and that Mr. Hammond sustained no permanent disability as a result, the ALJ did not consider this injury as part of its ruling and did not address the contested nature of Dr. Barth's "sprained thumb" diagnosis. The ALJ only ruled as to Mr. Hammond's neurological condition and disorder—that is, his tremors.

neurological injuries, and the CRB erred in concluding that Mr. Hammond was seeking benefits solely based on his tremors simply because he did not file a claim until after his tremor condition reached maximum medical improvement.<sup>6</sup>

As we explained in *McNeal v. District of Columbia Department of Employment Services*, 917 A.2d 652 (D.C. 2007), the employer must present sufficient evidence to rebut the presumed causal connection between the work injury and the claimant's condition even when one theory of causation has been successfully rebutted. *Id.* at 658; *Ferreira*, 531 A.2d at 657-58 (holding that the ALJ erred in failing to consider alternative work-related causes of disability after rejecting a specific theory of causation). We therefore conclude that the ALJ erred by failing to address whether Washington Gas produced sufficient evidence to rebut the presumption of causation in relation to his nerve injuries—his hand cramping, tingling, and numbness.

“If the agency fails to make a finding on a material, contested issue of fact, this court cannot fill the gap by making its own determination from the record, but must remand the case for findings on that issue.” *Brown v. Corr. Corp. of Am.*, 942 A.2d 1122, 1125 (D.C. 2008) (quoting *Colton v. District of Columbia Dep't of Emp't Servs.*, 484 A.2d 550, 552 (D.C. 1984)). We remand this case for further proceedings consistent with this opinion.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO  
Clerk of the Court

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<sup>6</sup> Again, Washington Gas was paying partial disability benefits to Mr. Hammond this entire time.

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