

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-177

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

v.

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

Appeal from a Compensation Order by
Administrative Law Judge Joan E. Knight
AHD No. 11-346, OWC No. 623835

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 APR 20 PM 2 47

David M. Snyder for the Claimant¹
Paul H. Teague for the Self-Insured Employer²

(Decided April 20, 2016)

Before HEATHER C. LESLIE, LINDA F. JORY, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

HEATHER C. LESLIE, for the Compensation Review Board:

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

The underlying facts of the injury and treatment are described by the Compensation Review Board (CRB) in a prior Decision and Remand Order:

The 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

¹ Michael Kitzman represented Claimant in prior proceedings before the Compensation Review Board and the Administrative Hearings Division.

² Edward Funk represented Employer in prior proceedings before the Compensation Review Board and the Administrative Hearings Division.

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 was 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.

The claimant presently suffers from occasional left hand tremors associated with numbness, tingling and loss of strength in both arms, and clubbing of his left hand. 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 has 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 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. "

In the April 6, 2012 Compensation Order, 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.

Hammond v. Washington Gas Light Company, CRB No. 12-070 at 1, 2 (June 12, 2012) (DRO).

The CRB, after considering the parties arguments, determined the April 6, 2012 Compensation Order was supported by the substantial evidence in the record and in accordance with the law. Notably, the CRB rejected Claimant's argument that the ALJ failed to consider medical conditions other than Claimant's tremors, stating:

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."

When we consider that Dr. Lo treated the claimant for the tremor condition and that the claim before the ALJ was for permanent and total disability benefits based on Dr. Lo's determination of the date of maximum medical improvement for the claimant's tremor condition, we find no error in the ALJ analyzing the evidence with respect to the tremor condition.

DRO at 3.

Claimant appealed the CRB's decision to the District of Columbia Court of Appeals (DCCA). The DCCA, after considering Claimant's argument 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," held:

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 [Hammond's] nerve injuries – his hand cramping, tingling and numbness.

Hammond v. DOES, No 12-AA-972, Mem. Op. & J. (D.C. January 23, 2015).

The DCCA vacated and remanded the case, which in a February 3, 2015 Remand Order the CRB returned to the Administrative Law Judge (ALJ).

On October 19, 2015, a Compensation Order on Remand (COR) was issued. After invoking the presumption of compensability and determining it had been rebutted, the ALJ concluded the Claimant failed to prove his nerve injuries were medically causally related, finding Claimant's evidence "speculative, at best." (COR at 7.) The ALJ denied Claimant's claim for relief.

Claimant appealed. Claimant argues the ALJ did not consider all the evidence when concluding Claimant's neurological conditions were not related to his work-related injury. Claimant asserts this is reversible error. Claimant also argues "the COR erred in its determination that the neurological and orthopedic conditions were not related to the work injury." Claimant's argument at 7. Employer opposes, arguing the COR should be affirmed.

ANALYSIS³

Claimant first asserts the ALJ erred by not considering Claimant's other orthopedic conditions when determining the presumption of compensability had been rebutted by the Employer. Claimant does not argue the ALJ erred in determining the medical reports, specifically the IME opinions of Drs. Johnson, Barth and Eckman, rebutted the presumption that Claimant's nerve injuries were medically causally related. Instead, Claimant argues the ALJ erred by not determining whether the Employer rebutted the presumption of compensability regarding Claimant's orthopedic injuries.

We disagree. As our February 2, 2015 Remand Order indicated, the mandate from the DCCA was for the ALJ to reconsider the nerve injuries – his hand cramping, tingling and numbness. The ALJ concluded Employer's evidence did rebut the presumption. We affirm this conclusion.

Thereafter, the ALJ addressed whether Claimant's evidence, without benefit of the presumption, proved by a preponderance of the evidence that his nerve injuries were medically causally related to the work-injury. The ALJ noted that neither Dr. Lo or Dr. Ducic medically causally related the nerve problems with the work injury of January 10, 2006. As the ALJ notes, after reviewing the medical records submitted by Claimant,

It is simply unclear from the facts that Claimant's upper extremity neurological condition and neurological disorder are causally related to his employment injury.

COR at 3.

To conclude that Claimant's nerve conditions were medically causally related to the work injury "would be speculative at best." *Id.* We agree.

After reviewing the evidence submitted, as well as the DCCA remand instructions, we conclude the COR is supported by the substantial evidence in the record and in accordance with the law. What Claimant is asking us to do is to reweigh the record in his favor, a task we cannot do.

CONCLUSION AND ORDER

The October 23, 2015 Compensation Order on Remand is supported by the substantial evidence in the record and is in accordance with the law. It is **AFFIRMED**.

So ordered.

³ The scope of review by the CRB is generally limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01(d) (2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where this panel might have reached a contrary conclusion. *Id.*, at 885.