

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB 12-070

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
2012 JUN 12 AM 9 03

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

Before Lawrence D. Tarr, Jeffery P. Russell,¹ and Heather C. Leslie,² *Administrative Appeals Judges*

Lawrence D. Tarr, *Administrative Law Judge* 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, Eric H. Hammond, of the April 6, 2012, 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 held that the claimant's neurological condition, tremor disorder, was not causally related to his employment. We AFFIRM.

BACKGROUND FACTS OF RECORD AND PROCEDURAL HISTORY

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

¹ Judge Russell has been appointed by the Director of DOES as a CRB member pursuant to DOES Policy Issuance No. 11-03 (October 5, 2011).

² Judge Leslie has been appointed by the Director of DOES as a CRB member pursuant to DOES Policy Issuance No. 11-04 (October 5, 2011).

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 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.

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*.

DISCUSSION³

In reaching her decision, the ALJ first held that the claimant was entitled to the presumption of compensability regarding his neurological condition and that the employer's evidence was sufficient to rebut the presumption. These findings are not appealed.

The ALJ then weighed the evidence without the presumption and concluded that the claimant's neurological condition was not proven to be caused by his employment.

The ALJ noted that none of the medical specialists who have treated the claimant or examined him for an IME has stated there is a causal connection between the claimant's employment and his neurological condition. Dr. Lo the claimant's treating neurologist, reported that three times that he does not know the etiology of the claimant's condition. All of the IME doctors have stated they do not know the etiology of the disorder.

The claimant concedes there is no evidence which proves his tremors are caused by his work. He acknowledges in his written statement that "To date, the cause of the tremors remains unclear." (Claimant's Memorandum at what would be page 3 if the pages were numbered). Despite this, the claimant argues the ALJ "must adopt the opinion of Dr. Lo, which is that (the claimant) has a condition of unknown etiology, which may be related to the work injury he sustained."

We disagree. Because the presumption was rebutted, the claimant had the burden of proof. Proof must go beyond surmise, conjecture, or speculation. *Murphy v. Howard University Hospital*, CRB No. 11-153, AHD No. 11-162, OWC No. 654533 (March 20, 2012), *Matthews v. D.C. Dep't of Child and Family Services*, CRB No. 09-078, AHD PBL No. 06-075; DCP No. 761010-0008-2003-0002 (June 23, 2009), *Jones v. D.C. Dep't. of Corrections*, Dir. Dkt. No 22-00, OHA PBL 00-18, OBA No. 002171 (April 20, 2001). As the ALJ correctly noted, to conclude that the claimant's condition is causally related would be speculative.

The claimant asserts the ALJ 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."

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."

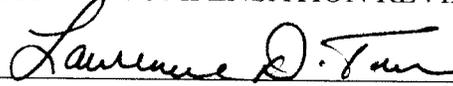
When we consider that Dr. Lo treated the claimant for the tremor condition and that the claim before the ALJ was for permanent and total disability benefits based on Dr. Lo's determination of the date of maximum medical improvement for the claimant's tremor condition, we find no error in the ALJ analyzing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

³ Initially, we must note that the first paragraph of the Discussion section of the CO does not relate to the present case, However, this is a harmless typographical error and does not affect the findings of fact and conclusion of law of the CO.

CONCLUSION AND ORDER

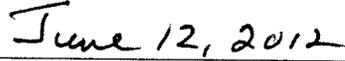
The findings of fact and conclusions of law contained in the April 6, 2012 Compensation Order are supported by substantial evidence in the record. The Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



LAWRENCE D. TARR

Administrative Appeals Judge



DATE

APPEAL RIGHTS

Any party aggrieved by this Decision and Order may petition the District of Columbia Court of Appeals for its review. D.C. Court of Appeals Rule 15 (a) requires that the Petition for Review be filed within thirty (30) calendar days of the mailing date shown on the Certificate of Service.

The Court of Appeals is located at 430 E Street, N.W. Washington, D.C. 20001. The Court is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.

In addition to filing a Petition for Review with the Court of Appeals, you must send a copy of the Petition and any motions, briefs, or other documents that you submit to the court, to the opposing party in this case, and also to:

Todd S. Kim, Solicitor General
Office of the Attorney General
441 4th Street NW
Washington, DC 20001

and

Compensation Review Board
Labor Standards Bureau
Department of Employment Services
4058 Minnesota Avenue, NE, Suite 4005
Washington, DC 20019

CERTIFICATE OF SERVICE

I hereby certify that the attached document was mailed, U.S. postage pre-paid, or hand-delivered, as noted, this 12TH day of June, 2012 to the persons or organizations listed below:

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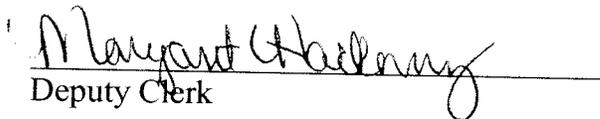
CERTIFIED MAIL

Chief Administrative Law Judge
Hearings And Adjudication
D.C. Department of Employment Services
Washington, D.C.

HAND DELIVERY

Deputy Associate Director
Office of Workers' Compensation
D.C. Department of Employment Services
Washington, D.C.

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Deputy Clerk