

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
DIRECTOR

COMPENSATION REVIEW BOARD

Dir. Dkt. No. 96-26

TERRY HAMMER,  
Claimant,

v.

SCHINDLER ELEVATOR AND BROADSPIRE SERVICES,  
Employer and Insurer.

Appeal from a Compensation Order  
by Chief Hearing Examiner Sharman J. Monroe  
H & AS NO. 93-426, OWC No. 251601

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2012 DEC 28 PM 1 15

David Schloss, Esquire for the Claimant.  
Mary G. Widener, Esquire for the Employer and Insurer

LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, for the Compensation Review Board.

**ORDER DISMISSING APPLICATION FOR REVIEW**

This case is before the Compensation Review Board (CRB) on the Employer's Application for Review (AFR) of a Compensation Order issued on January 22, 1996, and the Claimant's June 14, 1996, Motion for Limited Remand.

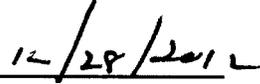
On December 26, 2012, the parties advised the CRB that they have reached an amicable settlement of all disputed issues and requested the CRB stay the appeal and motion pending approval of a proposed settlement agreement.

Therefore, the Employer's AFR and the Claimant's Motion for Limited Remand are dismissed without prejudice to the right of the parties to request that the CRB reinstate the AFR and the Motion for Limited Remand. Any request for reinstatement must be filed within 20 days of an order issued by the Office of Workers' Compensation denying the proposed settlement.

**SO ORDERED:**

FOR THE COMPENSATION REVIEW BOARD:

  
\_\_\_\_\_  
LAWRENCE D. TARR  
*Chief Administrative Appeals Judge*

  
\_\_\_\_\_  
Date

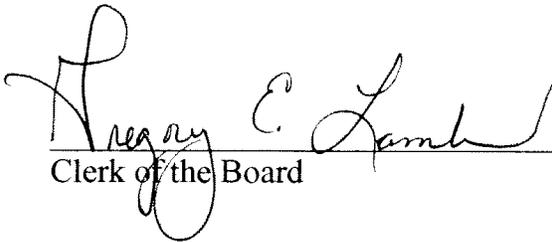
**Hammer v. Schindler Elevator**  
**Dir. Dkt. No. 96-26**

**CERTIFICATE OF SERVICE**

I hereby certify that the attached document was mailed, U.S. postage pre-paid, or hand-delivered, as noted, this 28<sup>th</sup> day of December, 2012 to the persons or organizations listed below:

David Schloss, Esq.  
Koonz, McKenney, Johnson,  
DePaolis & Lightfoot, LLP  
Washington, DC 20006

Mary G. Weidner, Esq.  
Humphreys, McLaughlin & McAleer, LLC  
1 North Charles Street, Suite 2000  
Baltimore, MD 21201

  
Clerk of the Board

DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES  
OFFICE OF WORKERS' COMPENSATION  
P. O. Box 56098, Washington, D.C. 20011  
(202) 671-1000

Terry Hammer  
Claimant

\*  
\*

- Dir. Dkt. No.: 96-26
- H&AS No.: 93-426
- OWC No.: 251601

Schindler Elevator.

\* CRB No.: Unknown

Employer

\*

and

\*

Broadspire Services

\*

Carrier/Administrator

\*

\* \* \* \* \*

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2012 DEC 29 PM 1:23

**STIPULATION TO WITHDRAW APPLICATION FOR REVIEW AND RESPONDENT'S  
MOTION FOR LIMITED REMAND WITHOUT PREJUDICE SO THAT THIS MATTER IS  
REMANDED TO OWC FOR SUBMISSION AND APPROVAL OF A SETTLEMENT  
AGREEMENT**

Come now the Claimant, Terry Hammer and Employer, Schindler Elevator and Insurer/Administrator, Broadspire and enter into this stipulation in the above referenced matter and state as follows:

1. The Claimant, Terry Hammer, alleges he injured his bi-lateral hands and wrists while in the course and scope of his employment on April 26, 1993.
2. At the time of his alleged injury, the Claimant was employed by Schindler Elevator. The Employer is insured by or has its claims adjusted through Broadspire, Inc.
3. The claim was initially contested and proceeded to a Formal Hearing on or about January 3, 1994. Chief Hearing Examiner Sharman J. Monroe issued a decision on or about January 22, 1996. ( See Exhibit A).
4. The Employer filed a timely Application for Review of the decision of the Chief

Hearing Examiner with the Office of the Director. ( See Exhibit B). The Application was assigned Dir. Dkt. No.: 96-26.

5. On or about June 14, 1996, Claimant filed a Motion for Limited Remand. (See Exhibit C).

6. The Compensation Review Board was subsequently established as the administrative body to review the decisions of the Hearing Examiners. It is also notable that, due to a subsequent change in the law, Administrative Law Judges now preside over Formal Hearings.

7. Neither the Office of the Director nor its successor, The Compensation Review Board, ever issued a decision on the Application for Review or the Motion for Limited Remand.

8. The parties now wish to enter into a full and final settlement to resolve and settle any and all issues and claims in this matter and therefore respectfully request that Application for Review and Motion for Limited Remand be withdrawn without prejudice so that the the matter might be remanded to OWC for submission and Approval of a settlement agreement.

Wherefore, for the foregoing reasons, Claimant and Employer and Insurer respectfully request that:

- A. an Order be issued Dismissing the Application for Review, WITHOUT PREJUDICE;
- B. An Order be issued Dismissing the Motion for Remand, WITHOUT PREJUDICE; and
- C. For such other and further relief as the nature of their cause may require.

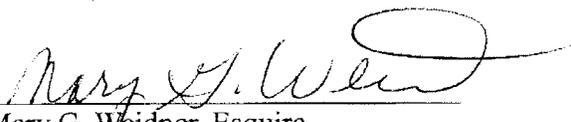
Respectfully Submitted,



---

David Schloss, Esquire  
Koonz, McKenney, Johnson,  
DePaolis & Lightfoot, LLP  
2001 Pennsylvania Ave., NW, STE 450  
Washington, DC 20006  
(202) 659-5500

Attorney for Claimant



---

Mary G. Weidner, Esquire  
Humphreys, McLaughlin, & McAleer, LLC  
1 North Charles Street, Suite 2000  
Baltimore, MD 21201  
(410)539-0906

Attorney for Employer and Insurer

EXHIBIT A



In the Matter of )  
 )  
 Terry Hammer )  
 )  
 Claimant )  
 )  
 v. )  
 )  
 Schindler Elevator )  
 )  
 and )  
 )  
 Zurich Insurance Company )  
 )  
 Employer/Carrier )

H&AS No. 93-426  
 OWC No. 251601

Appearances:

David M. Schloss, Esquire  
 For the Claimant  
 Robert C. Baker, Jr., Esquire  
 For the Employer/Carrier

Before:

Sharman J. Monroe, Esquire  
 Chief Hearing Examiner

COMPENSATION ORDER

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 1981, as amended, Section 36-301 et seq. (hereinafter, the Act).

After timely notice, a full evidentiary hearing was held on January 3, 1994 before Deborah D. Boddie, Esquire, Hearings and Appeals Examiner.<sup>1</sup> Claimant's Exhibit (CX) Nos. 1-4 and Employer's Exhibit

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<sup>1</sup>Hearing Examiner Boddie has been on indefinite sick leave effective January 26, 1995, prior to issuing a Compensation Order in this case. The parties were subsequently ordered to show cause why another examiner could not render a decision based upon the record made. Neither parties raised any objections.

Statement of the Case Continued:

(RX) Nos. 1-5 (described in the transcript) were admitted into evidence. The official record in this case closed on January 3, 1994.

Issues

1. Whether claimant's injury arose out of and in the course of employment.
2. Whether claimant provided timely notice of his injury pursuant to D.C. Code §36-313.
3. Whether claimant timely filed his claim pursuant to D.C. Code §36-314.
4. Whether claimant's current disability is causally related to his April 26, 1993 injury.

Claim for Relief

Claimant requests an award under the Act for temporary total disability benefits from April 26, 1993 to June 27, 1993, for the payment of reasonably related medical expenses, and for interest on accrued benefits.

Preliminary Matter

On January 14, 1994, employer, through counsel, filed a Motion to Re-Open the Record to submit an addendum medical report from Dr. Ramon Jenkins dated December 23, 1993. On February 4, 1994, claimant, through counsel, filed an Opposition arguing therein that employer had not shown good cause as to why the report was not submitted prior to the close of the record.

Upon review of the record and the parties' respective arguments, employer's motion is denied. In his latest report, which was generated after receiving additional medical reports, Dr. Jenkins reiterated, albeit more emphatically, his opinions as stated in his December 9, 1993 report. Thus, the latest report did not contain a material change of opinion concerning the nature and extent of claimant's disability mandating communication to the examiner and admission into the record. See Marable v. Ceco Corporation, Dir.Dkt.No. 87-8, H&AS No. 86-103, OWC No. 0078520 (February 12, 1988).

Background

Claimant, who has worked as a mechanic's helper for employer since 1989, began experiencing pain in his hands and arms and numbness of his fingers sometime in 1992. On April 26, 1993, he sought medical treatment for these complaints from Dr. Benjamin Maldonado who determined that claimant suffered from bilateral carpal tunnel syndrome. Claimant underwent surgery for carpal tunnel release on both hands in May of 1993. He alleges that the carpal tunnel syndrome is directly related to this job as a mechanic's helper.

Findings of Fact

The parties have stipulated, and I accordingly so find, that the employer-employee relationship is present under the Act, that the claim falls within the jurisdiction of the Act, that claimant's employment is principally localized within the District of Columbia, that an injury occurred on April 26, 1993, and that if there is a finding of medical causation and timely notice and timely claim, the parties agree that claimant was temporarily totally disabled from April 26, 1993 to June 28, 1993.

I find that claimant was employed as a mechanic's helper for employer since May 9, 1989. As a mechanic's helper, claimant's duties entailed servicing escalators which involved removing escalator steps with a T-bar, replacing hand rails and installing parts to the escalator. Claimant lifted parts weighing between 200-300 lbs. with the assistance of a co-worker. I find that in his work, claimant regularly used hand tools and performed a "ratcheting procedure" - a series of short twisting motions of the hand using a wrench - to remove, affix and tighten bolts and fasteners.

I find that prior to April 26, 1993, claimant was involved in two car accidents. The first occurred on May 17, 1989. I find that claimant received treatment from Dr. Daniel Robinson, chiropractor, for his ensuing pain in his right hand and arm, as well as his neck and back from March 26, 1990 to November 8, 1990 when his pain subsided. The second accident occurred on November 11, 1990. I find that claimant received treatment for wrist, hand,<sup>2</sup> neck and back pain from Dr. James Wagner also a chiropractor and associate of Dr. Robinson, until October 2, 1991 when his pain again ceased. I find that prior to April 26, 1993, claimant did not miss any work due to any hand problems.

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<sup>2</sup>The specific hand and wrist, i.e. right or left, was not stated in the record.

Findings of Fact Continued:

I find that on April 26, 1993, claimant sought treatment from Dr. Benjamin Maldonado, orthopedic surgeon, for numbness, pain, tingling and weakness in his fingers and hands. I find that claimant suffered bilateral carpal tunnel syndrome which, I further find, was related to his work as a mechanic's helper. I also find that claimant became aware of the relationship between his condition and his work on April 26, 1993. Claimant, I find, filed his notice of injury and his claim on May 4, 1993.

I find that claimant underwent carpal tunnel release to his right hand on May 5, 1993 and on his left hand on May 13, 1993. Claimant returned to work on June 27, 1993, performing his regular job duties at which time, I find, his disability related to his work condition resolved.

Discussion

I have carefully reviewed the arguments of counsel on the stated issues and I have reviewed the evidence submitted by counsel. to the extent an argument is consistent with the findings and conclusions herein, it is accepted; to the extent an argument is inconsistent therewith, it is rejected.

As an initial matter, an injured employee is afforded a presumption that his injury comes within the provisions of the Act. D.C. Code §36-321. In order to invoke the presumption, a claimant must provide some credible evidence of the existence of two basic facts: "[1] a death or [injury]." Ferreira v. District of Columbia Department of Employment Services, 531 A.2d 651, 655 (D.C. 1987); Howard v. National Children's Center, H&AS No. 85-29, OWC No. 0058553 (Final Compensation Order, September 4, 1985); Naylor v. Grove Construction Company, H&AS No. 83-163, OWC No. 20378 (August 1, 1984). Where a claimant has sustained his burden of production, the burden then shifts to employer to produce evidence specific and comprehensive enough to sever the now presumed causal relationship. Where said evidence is produced, the evidence of record, and the question of causal relationship, will be decided without reference to the presumption of the Act. Absent this production, there will be presumed a relationship between claimant's injury and his employment. See also Spartin v. District of Columbia Department of Employment Services, 584 A.2d 564 (D.C. 1990) and Parodi v. District of Columbia Department of Employment Services, 560 A.2d 524, 526 (D.C. 1989) citing Ferreira, supra, 531 A.2d 561.

In the instant case, claimant presented evidence, via his testimony and medical reports, that he suffered from bilateral carpal tunnel syndrome and that the condition was work-related. He, therefore, gained the benefit of the presumption and the burden shifted to employer to produce substantial evidence of non work-relatedness in rebuttal.

Discussion Continued:

Employer proffered the medical opinion of Dr. Ramon Jenkins, neurologist. Dr. Jenkins examined claimant at employer's behest on December 9, 1993. He recognized that there were occupational causes for carpal tunnel syndrome, but stated that it was "difficult to say" if such was the case with claimant. While Dr. Jenkins pointed to idiopathic factors, i.e., thick hands and wrist, overweightness and a previous bout with carpal tunnel syndrome, as the causes of claimant's condition, he conceded that if claimant's work entailed "a large of amount of twisting", then it was possible that his work played a causative role.

Dr. Jenkins' opinion on the cause of claimant's condition was ambiguous at best. Therefore, it was not specific and comprehensive enough to rebut the presumption. Moreover, that claimant had suffered from carpal tunnel syndrome in the past, specifically after his car accidents, was insufficient to rebut the presumption. It is well settled in this jurisdiction that the work-related aggravation of a pre-existing condition is compensable. See Jenner v. Premium Distributors, H&AS No. 84-114, OWC No. 0035540 (January 22, 1985). Consequently, I found that claimant's bilateral carpal tunnel syndrome arose out of and in the course of his employment.

Under the Act, an injured employee must present written notice of his injury to his employer within 30 days after he becomes aware of the relationship between his injury and his work. D.C. Code §36-313(a). The employee must file a claim for benefits within one (1) year after he becomes aware of the relationship between his injury and his work. D.C. Code §36-314(a). Claimant herein testified that he was not aware the relationship between his bilateral carpal tunnel syndrome and his work until he was so informed by Dr. Maldonado on April 26, 1993. Employer presented no controverting evidence. Indeed, both Dr. Robinson and Dr. Wagner attributed claimant's earlier bouts with carpal tunnel syndrome to the May 1989 and November 1990 car accidents. Following those accidents claimant never ceased working because of his symptoms and his symptoms resolved after treatment. After being informed that his bilateral carpal tunnel syndrome was work-related, claimant filed his notice of injury and his claim on May 4, 1993, well within the requisite statutory timeframes.

As the parties stipulated that if findings of medical causation, timely notice and timely claim were made, claimant was temporarily totally disabled from April 26, 1993 to June 28, 1993, I need not address the nature and extent of claimant's disability.

Terry Hammer

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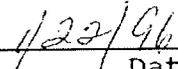
Conclusions of Law

Based upon the record evidence, I conclude that claimant's bilateral carpal tunnel syndrome arose out of and in the course of his employment and that his resulting disability was causally related thereto. I also conclude that he timely filed his notice of injury and his claim.

ORDER

It is hereby ordered that the employer pay to claimant temporary total disability benefits from April 26, 1993 through June 27, 1993 as well as payment of all reasonably related medical expenses and interest on accrued benefits.

  
\_\_\_\_\_  
Sharman J. Monroe, Esquire  
Chief Hearing Examiner

  
\_\_\_\_\_  
Date

Re: Terry Hammer v. Schindler Elevator and Zurich Insurance Company, H&AS No. 93-426, OWC No. 251601

APPEAL RIGHTS

This order is effective upon issuance. 7 D.C.M.R. 230.12; Section 23 (b) of the Act, D.C. Code 1981, Section 36-322 (b) (2). Any party aggrieved by this order may file an application for review with the Director, Department of Employment Services.

Send Application for Review to:

Original to: Director, Department of Employment Services  
Attention: General Counsel  
500 C Street, N.W.  
Washington, D.C. 20001

and

Copy to: Chief, Hearings and Adjudication Staff  
1200 Upshur Street, N.W.  
First Floor  
Washington, D.C. 20011

The Application for review must be filed within 30 days of the date of this order. An Application for Review is perfected by filing with the Director two (2) copies of an Application for Review, two (2) copies of a memorandum of points and authorities in support of the Application and certification, that copies of mail or delivery, upon the opposing party (ies) and the Chief, Hearings and Adjudication Staff. 7 D.C.M.R. 230.1, 230.2; Section 23 (b) (2) of the Act, D.C. Code 1981, Section 36-322(b) (2).

Re: Terry Hammer v. Schindler Elevator and Zurich Insurance Company, H&AS No. 93-426, OWC No. 251601

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent this  
22nd day of January, 1996 to the following:

Frances P. Berry  
Acting Deputy Director  
Labor Standards  
1200 Upshur Street, N.W.  
Washington, D.C. 20011

Hand Delivery

Michael Milwee  
General Counsel  
Department of Employment Services  
500 C Street, N.W., Room 601  
Washington, D.C. 20001

Hand Delivery

Charles L. Green  
Associate Director  
Office of Workers' Compensation  
1200 Upshur Street, N.W.  
Washington, D.C. 20011

Hand Delivery

David M. Schloss, Esquire  
Koonz, McKenney, Johnson & Regan  
2020 K Street, N.W.  
Suite 840  
Washington, D.C. 20006

Certified

Robert C. Baker, Esquire  
Mell, Brownell & Baker  
2031 Florida Avenue, N.W.  
Washington, D.C. 20009

Certified

Kim Jordan, for  
Sharman J. Monroe  
Chief, Hearings and Adjudication  
Staff

EXHIBIT B

DISTRICT OF COLUMBIA GOVERNMENT  
DEPARTMENT OF EMPLOYMENT SERVICES  
OFFICE OF THE DIRECTOR

TERRY HAMMER, )  
 )  
 Claimant, ) H&AS No.: 93-426  
 ) OWC No.: 251601  
v. )  
 )  
 SCHINDLER ELEVATOR, )  
 )  
 Employer, )  
 )  
and )  
 )  
 ZURICH INSURANCE COMPANY, )  
 )  
 Insurer. )

EMPLOYER/INSURER'S APPLICATION FOR REVIEW

COMES NOW, the Employer, Schindler Elevator Corporation, and its workers' compensation insurer, Zurich Insurance Company, by and through its undersigned counsel, Robert C. Baker, Jr., Esquire, and MELL, BROWNELL & BAKER, pursuant to Section 23(b)(2) of the Act, D.C. Code Section 36-322(b)(2) and hereby request a review of the January 22, 1996, Compensation Order issued by Chief Hearing Examiner Sharman J. Monroe, Esquire, in this matter. Specifically, the Employer/Insurer contends the Decision is unsupported by substantial evidence and not in accordance with the law and, therefore, should be reversed.

The Employer/Insurer also request leave in this matter to file its Memorandum of Points and Authorities in support of its Application for Review thirty (30) days from the filing date of the Application for Review.

WHEREFORE, for the foregoing reasons, the Employer/Insurer respectfully requests this Application for Review be granted and Chief Hearing Examiner Monroe's Compensation Order issued on January 22, 1996, be reversed.

Respectfully submitted,

MELL, BROWNELL & BAKER

By:

  
Robert C. Baker, Jr., Esquire  
2031 Florida Avenue, N.W.  
First floor  
Washington, D.C. 20009  
(202) 265-7007  
Counsel for Employer/Insurer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Application for Review was sent on this 21<sup>st</sup> day of Feb, 1996, via first class mail, postage pre-paid, to:

David M. Schloss, Esquire  
Koonz, McKenney, Johnson and Regan  
2020 K Street, N.W.  
Suite 840  
Washington, D.C. 20006



Robert C. Baker, Jr., Esquire

EXHIBIT C

DEPARTMENT OF EMPLOYMENT SERVICES  
LABOR STANDARDS  
OFFICE OF THE DIRECTOR

SCHINDLER ELEVATOR and  
ZURICH INSURANCE COMPANY

Petitioners

v.

TERRY HAMMER

Respondent

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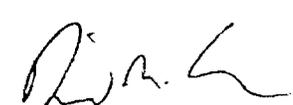
Dir. Dkt. No.: 96-26  
OWC No.: 251601  
H&AS No.: 93-426

RESPONDENT'S MOTION FOR LIMITED REMAND

Respondent, through undersigned counsel, hereby requests that this file be remanded to the Hearings and Adjudication Section for the sole purpose of determining whether claimant is entitled to permanent partial disability benefits and if so in what amount.

Respectfully submitted,

KOONZ, MCKENNEY, JOHNSON &  
REGAN, P.C.

By: 

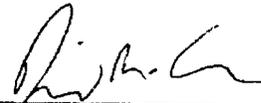
David M. Schloss  
Suite 500  
2020 K Street, N.W.  
Washington, D.C. 20006  
(202) 659-5500  
Attorney for Respondent

#416523

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing  
Respondent's Motion for Limited Remand was mailed, postage  
prepaid, this 14<sup>th</sup> day of June, 1996, to:

Robert Baker, Esquire  
Mell, Brownell & Baker  
2031 Florida Avenue, N.W.  
Washington, D.C. 20009



\_\_\_\_\_  
David M. Schloss

LAW OFFICES  
OONZ, MCKENNEY, JOHNSON,  
DEPAOLIS & LIGHTFOOT  
JAMES MONROE BUILDING  
2001 PENNSYLVANIA AVENUE, N.W., SUITE 450  
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LAW OFFICES  
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DEPAOLIS & LIGHTFOOT  
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WASHINGTON, D. C. 20006

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**To:**  
Compensation Review Board  
4058 Minnesota Avenue, N.E.  
Fourth Floor  
Washington, D.C. 20019

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