

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-000130-WC

JAMES RIVER CORPORATION

APPELLANT

v.

PETITION FOR REVIEW  
OF A DECISION OF  
THE WORKERS' COMPENSATION BOARD  
WC-96-007854

HELEN LOUISE McINTOSH;  
SPECIAL FUND;  
HON. ROGER D. RIGGS,  
ADMINISTRATIVE LAW JUDGE; and  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

\* \* \* \* \*

BEFORE: COMBS, EMBERTON and GUIDUGLI, Judges.

GUIDUGLI, JUDGE: James River Corporation (James River)

petitions for review of an opinion of the Workers' Compensation Board (Board) affirming an opinion rendered by the Administrative Law Judge (ALJ) awarding Helen Louise McIntosh (McIntosh) medical expenses, but dismissing her claim for disability benefits for repetitive trauma to her hands. We affirm.

McIntosh has worked for James River for over 36 years. For the past 20 to 26 years, she has been a Dixie Cup machine operator. The machine produces paper cups and she is required to keep the machine threaded with large rolls of paper. This task

requires repetitive hand movement. McIntosh first began experiencing problems with her right hand in 1992. She has been seen by Dr. Vuskovich, the company physician; Dr. Einbecker, an orthopedic surgeon; Dr. Zerga, a neurologist; and Dr. Gaul, her family physician.

Dr. Vuskovich first saw McIntosh for complaints of weak grip and pain at night in her hands in 1992. He recommended temporary restrictions and avoidance of repetitive arm motion. He saw her again on March 10, 1993, and June 29, 1993, with the same complaints and made the same recommendations. Dr. Vuskovich last saw McIntosh on November 6, 1995, and recommended that she see Dr. Einbecker, an orthopedic surgeon. Dr. Vuskovich returned her to regular duties. Dr. Vuskovich testified that her symptoms and his recommendations had remained basically the same since 1992. He would not state whether or not she had any functional hand impairment but he diagnosed osteoarthritis.

Dr. Einbecker first saw McIntosh on November 21, 1995, when she gave him her history of bilateral hand pain. Dr. Einbecker testified she had positive signs of carpal tunnel syndrome on clinical testing and arthritic type changes of the CMC joint in her right hand which he believed to be work related. He last saw McIntosh on July 25, 1996. Although Dr. Einbecker could not assign a functional impairment, he diagnosed overuse syndrome, trigger finger, and CMC joint disease and recommended she avoid repetitive labor.

Dr. Zerga saw McIntosh three times between 1992 and 1997. He testified she had evidence of degenerative changes of her CMC joint bilaterally. He stated her condition was much the same in 1992 as it was in 1997 and that he would defer to Dr. Einbecker regarding the necessity for surgery.

The ALJ reviewed the testimony and concluded that McIntosh did not sustain her burden of proving a permanent impairment resulting in a reduction of future earning capacity and dismissed her claim for PPD. The ALJ did award McIntosh medical expenses, finding them compensable under KRS 342.020 because her work conditions caused her symptoms to become aggravated.

James River appealed to the Board claiming error in the award of medical benefits without a finding of disability and that the ALJ erred in not dismissing McIntosh's claim as barred by the statute of limitations. The Board rejected these arguments and affirmed. James River now raises the same two issues in this Court.

Pursuant to KRS 342.020, there must be an occupational disease or injury to award medical benefits. "Injury" is defined as "any work-related harmful change in the human organism, arising out of and in the course of employment." KRS 342.0011(1). "Disability" is the inability as a result of work-related injury to perform or obtain work suitable to a claimant's qualifications and training. KRS 342.0011(11). Osborne v. Johnson, Ky., 432 S.W.2d 800 (1968). An award of medical

expenses is not dependent on a finding of compensable occupational disability. Cavin v. Lake Construction Co., Ky., 451 S.W.2d 159 (1970); Derr Construction Co. v. Bennett, Ky., 873 S.W.2d 824 (1994).

We agree with the Board that James River is confusing the concept of "injury" with that of "disability." While it is undisputed that McIntosh has shown a work-related injury, it is also undisputed that at the present time, she suffers no occupational "disability" from her condition. That is not to say that no disability will ever manifest itself, only that she failed in meeting her burden of proving one existed before the ALJ at the present time.

James River next argues that the ALJ erred in failing to dismiss McIntosh's claim as barred by the statute of limitations. KRS 342.185 requires an application for adjustment of claim be made within two years of the injury. In cases such as this, where the injury is the result of mini-traumas over a long period of time, the date for giving notice and the date when the statute of limitations begins to run, is when the disabling reality of the injury becomes manifest. Randall Co. v. Pendland, Ky. App., 770 S.W.2d 687 (1989).

The ALJ found, in essence, that McIntosh's injury had not yet manifested itself in the form of disability, and thus her claim was, if anything, premature rather than out of time. We agree with the Board that because her injury has not yet manifested itself in occupational disability, the claim cannot be

time barred as argued by James River. The law was correctly applied to the substantial evidence in the record by the ALJ in awarding medical benefits without a finding of occupational disability. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986). Therefore, we affirm the opinion of the Board under Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685 (1992).

ALL CONCUR.

BRIEF FOR APPELLANT:

Ronald J. Pohl  
Lexington, KY

BRIEF FOR APPELLEE, HELEN  
McINTOSH:

John W. Hardin  
Versailles, KY

BRIEF FOR APPELLEE, SPECIAL  
FUND:

David W. Barr  
Labor Cabinet  
Louisville, KY