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RE: Rose Wright v. United Medical & Home Health, Inc.
C.A. No. 01A-07-003

Date Submitted: December 3, 2001

Dear Counsel:

Rose Wright (“Claimant”) filed this appeal from an Industrial Accident Board (“Board”) decision denying her Petition to Determine Compensation Due (“Petition”). Claimant sought compensation after being diagnosed with carpal tunnel syndrome in both wrists. She alleged that her work activities at United Medical & Home Health, Inc. (“United Medical”) caused her condition. The Board dismissed Claimant’s petition, holding that the two year statute of limitations barred it. 19 *Del. C.* § 2361(a). After reviewing the parties’ briefs and the record, this Court remands the case for further proceedings consistent with this opinion.

I. FACTS

Claimant worked for United Medical for several years in the early to mid-1990s. While working for United Medical, Claimant consulted Dr. Quinn about a knee injury. During the examination, Dr. Quinn questioned Claimant about her work environment. After performing a series of tests, Dr. Quinn diagnosed Claimant with carpal tunnel syndrome in her right wrist. Dr. Quinn told Claimant to use a cock up splint while she worked.

Claimant left United Medical in July 1996, taking a similar position with Educare Home Health (“Educare”). Claimant testified that during her time with Educare, she stopped using the cock up splint and that she did not experience any pain associated with the carpal tunnel syndrome. She returned to United Medical in November 1998.

Claimant’s position with United Medical was the same as before, but the volume of work was higher. In February 2000, Claimant began developing pain in her right wrist that progressively increased over the next few months. She also experienced pain in her left wrist and right elbow. Claimant testified that the pain would subside on the weekends or when she was not using the keyboard. In June 2000, Claimant visited Dr. Francis Drury for treatment. After conducting a series of tests, Dr. Drury diagnosed Claimant with bilateral carpal tunnel syndrome. The pain in Claimant’s right elbow was diagnosed as cubital tunnel syndrome. In July 2000, Claimant underwent surgery to her right wrist and was out of work for approximately three weeks. Her symptoms improved after surgery.

Claimant notified United Medical of her condition on June 9, 2000, and requested compensation for her injuries and medical treatment. Unable to reach a settlement, Claimant filed a petition with the Board on January 30, 2001. A hearing was held on June 12, 2001, at which

Claimant testified about her condition. Additionally, Claimant introduced Dr. Drury's deposition to substantiate her claim.

At the close of the evidence, the Board found that the statute of limitations barred Claimant's petition. Citing the fact that Claimant's doctor initially diagnosed her with carpal tunnel in 1991, the Board found that "Claimant, as a reasonable person should have known that her condition was caused by her work activities in the early 1990s, and therefore, her claim is [barred] by the statute of limitations." (Bd. Dec. at 5).

II. DISCUSSION

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the reviewing Court is to determine whether the agency's decision is supported by substantial evidence. *Johnson v. Chrysler Corporation*, 213 A.2d 64, 66-67 (Del. 1965); *General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. disp.*, 515 A.2d 397 (Del. 1986). The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings. *Johnson v. Chrysler*, 213 A.2d at 66. It merely determines if the evidence is legally adequate to support the agency's factual findings. 29 Del. C. §10142(d).

The Board cited *Geroski v. Playtex Family Products*, 676 A.2d 903 (Del. 1996) to support its decision to bar Claimant's petition. In *Geroski*, the Delaware Supreme Court was confronted with a carpal tunnel syndrome claim filed after the two year statute of limitations had expired. The

claimant in that case was diagnosed with carpal tunnel syndrome in 1983. The symptoms grew progressively worse until 1992, when the claimant underwent surgery to alleviate the pain. The claimant filed a petition for compensation with the Board requesting a period of temporary total disability for the four weeks of work missed due to his carpal tunnel surgery. The Board held that the statute of limitations barred his claim. This Court affirmed the Board's decision.

On appeal, the Supreme Court was confronted with two issues: i) whether the Board applied the correct legal standard, and ii) whether the Superior Court was correct in concluding that substantial evidence supported the Board's factual findings. The Court noted that the statute of limitations does not begin to run "until the claimant, as a reasonable person, should recognize the nature, seriousness and probable compensable nature of the injury or disease." *Geroski* at 903. It found that the record clearly supported the Board's decision and affirmed this Court's decision.

Claimant attempts to distinguish *Geroski* from the present case. Claimant asserts that her present affliction is unrelated to the prior diagnosis of carpal tunnel syndrome in the early 1990s and that there was no evidence in the record to support the Board's determination that she had a continuing problem with carpal tunnel syndrome. Claimant points out that she neither suffered pain nor had to resort to using her splint during her time with Educare, a period of two years. This evidence, Claimant submits, indicates a clear-cut separation of the earlier diagnosis from her current carpal tunnel condition. Under the Claimant's argument, the two-year statute of limitations would apply to each case of carpal tunnel affliction separately. Therefore, Claimant's present claim would have started running on June 7, 2000, the date of her initial visit to Dr. Drury. Although interesting, Claimant's argument misses the Board's real error: its application of an incorrect test. The Board cited the *Geroski* test, but failed to apply it in its decision. The conjunctive language of the *Geroski*

test clearly indicates a three component requirement. The Board must determine when a claimant recognized the 1) nature, 2) severity, and 3) probable compensable nature of the injury or disease. These determinations are highly fact sensitive, requiring a careful consideration of the testimony and evidence presented to the Board. Most importantly, each component must be present to determine a triggering date. The statute of limitations “clock” is not triggered until a claimant recognizes all three components.

The Board found that Claimant’s petition was barred solely because she “should have known that her condition was caused by her work activities in the early 1990s.” (Bd. Dec. at 5). Yet, a claimant’s knowledge that his work activities caused the condition is relevant only in determining the third prong of the *Geroski* test - the claimant’s recognition of the probable compensable nature of the injury or disease. Such knowledge has no bearing on a claimant’s recognition of a condition’s nature or its severity. The Board erred because its decision did not consider all three *Geroski* test components.

Furthermore, the Board’s decision incorrectly assumed that the statute of limitations triggering date was the day that Claimant’s condition was diagnosed. A diagnosis date, while an important consideration, does not automatically trigger the statute of limitations. Being made aware of a condition does not necessarily equate to a recognition of its severity or compensability. Because carpal tunnel is a progressive condition, a person may be diagnosed early in its development, when it has a minimal impact on the person’s daily activities. At that early stage, the condition may not be so severe as to require compensation. A reasonable person, under those circumstances, would not necessarily recognize the compensable nature of the condition. The statute of limitations would begin to run only after the condition worsened to the point that a reasonable person recognized its

nature, severity, and probable compensable nature.

In this case, there was no real consideration of when Claimant recognized the *Geroski* factors. Instead, the Board assumed that when the Claimant initially learned of her condition, it was so severe that a reasonable person would have recognized its nature, severity, and compensability. However, there is no substantial evidence to support this conclusion. Claimant's treatment consisted solely of a wrist brace she wore while working. She did not miss any days of work due to the condition and there is no evidence that it substantially affected her performance. Under those circumstances, had Claimant sought compensation at that time, she would have likely been denied.

II. CONCLUSION

The Board erred when it failed to apply the *Geroski* test. Substantial evidence does not support its determination that the statute of limitations was triggered when the Claimant was diagnosed. Because the Board erred in its determination, this case is remanded for proceedings consistent with this opinion.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary
Industrial Accident Board