

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002094-WC

CARHARTT, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-96-71084

BRENDA MOORE; SPECIAL FUND;
THOMAS A. NANNEY,
ADMINISTRATIVE LAW JUDGE
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: EMBERTON, GARDNER AND MILLER, JUDGES.

GARDNER, JUDGE: Carhartt, Inc. (Carhartt) appeals from an opinion of the Workers' Compensation Board (the board) which reversed and remanded an opinion and order of the Administrative Law Judge (ALJ). The ALJ found that the cumulative trauma claim of Brenda J. Moore (Moore) was barred by application of the statute of limitations, and because Moore failed to establish greater impairment for recurrent carpal tunnel syndrome (CTS). We affirm the opinion of the board.

Moore was employed as a seamstress with Carhartt from 1988 to 1996. She testified that her job required repetitious manual manipulation of heavy fabric. In approximately 1990, Moore began experiencing numbness in both hands and arms. She was referred to Dr. Bruce MacDougal (MacDougal), who diagnosed CTS. In 1990 and 1991, MacDougal performed surgical procedures on each of Moore's hands. MacDougal released Moore to return to work with no restrictions.

Moore's employment with Carhartt continued. In 1996, she began to experience a recurrence of the symptoms in her hands and arms. In June 1996, MacDougal again performed surgical procedures on Moore's wrists and elbows in an attempt to alleviate the symptoms. Moore testified that MacDougal informed her that she would need to quit her job following these procedures. After the surgery, Moore resigned and applied for unemployment benefits. On March 17, 1997, she filed the instant claim for benefits, alleging the effective date of disability as April 1996.

The matter proceeded before an arbitrator and subsequently before the ALJ. Upon considering the matter, the ALJ rendered a decision on February 26, 1998, holding that it was barred by operation of the statute of limitations and dismissing the claim. He also held that Moore had failed to show that additional impairment had developed within two years of her last date of employment. Moore's subsequent petition for reconsideration was overruled.

Moore appealed to the board. The board concluded that the ALJ improperly applied Brockway v. Rockwell International, Ky. App., 907 S.W.2d 166 (1995), to the facts at bar, and accordingly found that the ALJ erroneously concluded that the claim was time-barred. This appeal followed.

Carhartt argues that the board applied the wrong standard in reversing the ALJ's decision. It further maintains that the board substituted its judgment for that of the ALJ on questions of fact, that the Brockway decision relied upon by the ALJ is applicable to the instant facts, and that the board erred in directing the ALJ to reconsider whether Moore's occupational disability developed within two years of her last date of employment.

In reversing the opinion and order of the ALJ, the board concluded that the ALJ erred in applying Brockway to the facts at bar. As the parties are well aware, in Brockway the petitioner was found to have CTS, the symptoms of which manifested no later than 1989. In 1993, the petitioner experienced a recurrence of the symptoms and filed a claim for benefits. On appeal, this Court concluded that the claim was time-barred since the symptoms first arose in 1989 but the claim was not filed until subsequent to the latter occurrence in 1993.

The board opined that Brockway was fact-specific and distinguishable from the claim presented by Moore. Specifically, it noted that while the petitioner in Brockway was found to have occupational disability arising in 1989; Moore did not experience occupational disability in 1991. Thus, the board found that

Brockway could not be cited in the matter at bar for the proposition that Moore's claim arose in 1991 and thus was time barred.

We have closely examined the board's consideration of this issue, and find no error. While the ALJ correctly noted that Moore underwent surgery in 1991, lost time from work, and received temporary total disability benefits, it cannot reasonably be argued that she suffered permanent occupational disability at that time since her treating physician allowed her to return to work and since she did in fact work for an additional four years prior to the 1996 occurrence. Furthermore, the ALJ found that "[t]he evidence indicates that the plaintiff had elbow problems which arose between 1992 and 1996. . . ." which arguably supports the board's conclusion that no occupational disability had manifested in 1991. Ultimately, we do not have a sufficient basis for finding that the board erred in its conclusion that Brockway is fact-specific and not applicable to the matter at bar.

As to Carhartt's assertion that the board improperly re-weighed the evidence presented to the ALJ and in so doing failed to apply the proper standard of review, we also find no error. It is the duty of the board to determine whether the ALJ's decision was rendered in conformity with Kentucky law. See generally Kentucky Revised Statute (KRS) 342.285; Mill Street Church of Christ v. Hogan, Ky. App., 785 S.W.2d 263 (1990). In determining that Brockway is not applicable to the matter at bar,

it acted in accordance with this duty. It did not, as Carhartt asserts, improperly revisit the ALJ's findings of fact.

Finally, Carhartt argues that the "[B]oard cannot instruct the ALJ to reconsider whether Moore experienced the onset of occupational disability within two years prior to filing her claim. We do not find this argument persuasive. Rather than instructing the ALJ to "reconsider" whether occupational disability occurred within two years prior to filing the claim, the board instructed the ALJ to address this question for the first time. The matter had not previously been addressed because the ALJ's reliance on Brockway had rendered the question moot. We find no error.

For the foregoing reasons, we affirm the opinion of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

John C. Morton
Henderson, Kentucky

BRIEF FOR APPELLEE BRENDA J.
MOORE:

Richard M. Joiner
Madisonville, Kentucky

BRIEF FOR APPELLEE SPECIAL
FUND:

David Barr
Louisville, Kentucky