

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002005-WC

VELOCITY MARKET #5 (AS AN INSURED OF KESA -
THE WORKERS' COMPENSATION FUND)

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-98-61873

DEBORAH HOPKINS;
VELOCITY MARKET #5 (AS AN INSURED
OF CENTURY WORKERS' COMPENSATION);
E. MAHLIAN GRINSTEAD, ARBITRATOR;
DONALD G. SMITH, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE, GUIDUGLI, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is a petition for review from a decision of the Workers' Compensation Board (the "Board") reversing and remanding a determination by the Administrative Law Judge (the "ALJ") that the claimant's disability manifestation date for carpal tunnel syndrome did not occur until the diagnosis was confirmed through nerve conduction studies. We agree with the Board that diagnosis through nerve conduction studies is not a

prerequisite for manifestation of a disability. Hence, we affirm.

Claimant, Deborah Hopkins, worked for Velocity Market #5 ("Velocity Market") from 1995 to September 15, 1998. In 1997, she began to experience numbness and tingling in her hands. In August 1997, she saw her family practitioner, Dr. James Coleman who, without conducting any specialized testing, examined Hopkins and diagnosed her as suffering from carpal tunnel syndrome. Hopkins advised her supervisor of the diagnosis but continued to work until September 14, 1998. On July 22, 1998, Hopkins saw Dr. Rao Vempaty, an internist, who performed nerve conduction studies on July 31, 1998 which revealed that she had carpal tunnel syndrome. The issue before this Court is whether the date of injury was in August of 1997, when Velocity Market was insured by KESA, or in July of 1998, when Velocity Market was insured by Century Workers' Compensation ("Century").

The ALJ found that the cumulative trauma injury manifested into disabling reality under Randall Co. v. Pendland, Ky. App., 770 S.W.2d 687 (1989) in July of 1998 because, although the claimant's symptoms began in 1997, she "had not undergone diagnostic testing to confirm a diagnosis of carpal tunnel syndrome until July 1998." The Board ruled that pursuant to Alcan Foil Products v. Huff, Ky., 2 S.W.3d 96 (1999) and Special Fund v. Clark, Ky., 998 S.W.2d 487 (1999), by requiring that specialized testing confirm a diagnosis of carpal tunnel syndrome, the ALJ improperly found that the date of manifestation of disability was the date of occupational disability rather than

the date the claimant first became aware she was suffering from a work-related injury. We agree with the Board's determination that a confirmation of a diagnosis of carpal tunnel syndrome through specialized testing is not required before the injury can be considered manifest. Here, there was evidence that Hopkins first became aware she was suffering from carpal tunnel syndrome in 1997. Accordingly, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

W. Barry Lewis
Hazard, Kentucky

BRIEF FOR APPELLEE, VELOCITY
MARKET #5 (AS INSURED BY
CENTURY WORKERS' COMPENSATION:

Ronald J. Pohl
Lexington, Kentucky