

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2003-CA-000875-WC

LEXMARK

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-00669

OREDA BURNAM,
HON. J. KEVIN KING, ALJ, AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: BAKER, COMBS, AND SCHRODER, JUDGES.

BAKER, JUDGE. Lexmark seeks review of a November 18, 2002, order of the Workers' Compensation Board (Board), affirming the Administrative Law Judge's (ALJ) decision of March 26, 2003, awarding workers' compensation benefits to the appellee, Oreda Burnam. We affirm.

The standard of review where the party with the burden of proof was successful before the ALJ is whether substantial evidence supported the ALJ's conclusion. Whittaker v. Rowland,

Ky., 998 S.W.2d 479, 481 (1999). We further note that the fact-finder, not the reviewing court, has sole discretion to determine the quality, character, and substance of the evidence. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418, 419 (1985).

Burnam filed her workers' compensation claim on May 13, 2002, based on a repetitive injury sustained while working for Lexmark. Kentucky Revised Statute (KRS) 342.185 states that a claimant must file her claim within two years of the date of injury. The ALJ concluded that the statute of limitations began to run on Burnam's injury in June 2000. Lexmark contends that the Board erred by affirming the ALJ's conclusion.

Burnam, who was hired at Lexmark in 1994, suffered from 1995 to the present from various problems with her right shoulder, right elbow, right forearm, right hand, right wrist and left wrist. The ALJ determined that her injury did not manifest until a Dr. Gregory Snider diagnosed her with carpal tunnel syndrome in June of 2000 and restricted the use of her right hand. Lexmark, however, maintains that the date of the manifestation occurred on or prior to June 1999, when Dr. Snider advised Burnam to avoid assembly work.

We are persuaded by the Board's reasoning that the statute of limitations on Burnam's injury did not begin to run until June 2000. The Board stated:

The date for the clocking of the statute of limitations begins when the disabling injury becomes manifest. Randall Co. v. Penland, Ky. App., 770 S.W.2d 687 (1989). In Alcan Foil [Products v. Huff, Ky., 2 S.W.3d 96 (1999)] . . . , the Kentucky Supreme Court held the meaning of the phrase 'manifestation of disability' refers to the physical symptoms that lead a worker to discover that a work related 'injury' has been sustained.

Board Opinion at 13.

Further, we agree with the Board and the ALJ concerning Burnam's understanding of Dr. Snider's admonition in 1999 to quit assembly work. The evidence suggests that Burnam thought Dr. Snider told her to quit assembly work because of her obesity, not because of some work-related injury. While Burnam's testimony does evidence that she suspected her pain, at least in part, was a result of her work at Lexmark, a worker is not expected to self-diagnose. Hill v. Sextet Mining Corp., Ky., 65 S.W.3d 908 (2001). There was substantial evidence to support the ALJ's conclusion that Burnam did not know her injury was caused by work until she was diagnosed with carpal tunnel syndrome in June 2000.

Finally, Lexmark contends that the ALJ erred by not making a determination as to whether Burnam's condition had worsened since May 13, 2000, the date she filed her claim. Lexmark argues that if Burnam was aware that she had sustained a work-related gradual injury prior to May 13, 2000, her claim is

limited to any demonstrable worsening of the condition from May 14, 2000 until May 13, 2002. See Special Fund v. Clark, Ky., 998 S.W.2d 487 (1999). Since we hold that Burnam was not aware of her injury until after May 13, 2000, this issue is moot.

For the foregoing reasons, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jo Alice Van Nagell
Clark & Ward
Lexington, Kentucky

BRIEF FOR APPELLEE:

L. Davis Bussey
Lexington, Kentucky