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Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001656-WC

AMERICAN PRINTING HOUSE FOR THE BLIND,
AS INSURED BY MUTUAL INSURANCE
CORPORATION OF AMERICA — APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-01-00791

JANET BROWN; AMERICAN PRINTING HOUSE
FOR THE BLIND, AS INSURED BY KESA;
HON. J. KEVIN KING, ADMINISTRATIVE LAW
JUDGE; AND WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: GUIDUGLI, JOHNSON AND KNOPF, JUDGES.

JOHNSON, JUDGE: Mutual Insurance Corporation of America (MICOA) has petitioned for review of an opinion entered by the Workers' Compensation Board on July 3, 2002, which affirmed the Administrative Law Judge's determination that Janet Brown suffered a work-related cumulative trauma injury while employed by American Printing House for the Blind and that her disability

became manifest on June 5, 2000. Having concluded that the Board has not overlooked or misconstrued controlling statutes or precedent or committed an error in assessing the evidence so flagrant as to cause gross injustice,[1] we affirm.

Brown has a long work history involving repetitive use of her upper extremities. She began working for American Printing in 1990; and during her 11-year tenure, she performed various tasks, including working as an educational aide, a shipping assistant, a graphic artist, and a slate technician. On June 5, 2000, when Brown began to experience pain in her wrists, she immediately informed American Printing's safety coordinator, Marilyn Cheatham. Brown testified at her hearing that after explaining to Cheatham that she believed her injuries were work-related, she began using wrist bands in an attempt to ease her pain. Unfortunately, Brown's pain did not subside, but instead her condition began to deteriorate. On June 28, 2000, Brown informed Cheatham that she was also experiencing pain in her shoulders, hands, forearms, and elbows; and that she believed her injuries were work-related.[2]

On November 4, 2000, Brown contacted Cheatham and informed her that her family physician had recently told her

[1] Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992).

[2] Brown's employee health record contains an entry dated June 28, 2000, in which Cheatham confirms that Brown informed her that she believed her injuries were a result of the repetitive tasks she was required to perform at work.

that she was suffering from carpal tunnel syndrome and that he had advised her to start wearing gloves at work. Cheatham provided Brown with a pair of gloves, and on January 4, 2001, Brown contacted Cheatham again and asked for a second pair of gloves to wear at home. Brown also explained to Cheatham that she was experiencing pain in her forearms. On January 8, 2001, Cheatham advised Brown that she needed to file a workers' compensation claim.

On January 11, 2001, Brown sought treatment from Dr. Craig Roberts. Brown informed Dr. Roberts that she had a history of carpal tunnel syndrome dating back 15 years and that she also had a history of hand, wrist, arm and shoulder pain dating back seven months. Dr. Roberts's first impression was that Brown suffered from bilateral carpal tunnel syndrome and bilateral epicondylitis. Dr. Roberts informed Brown that he believed her condition was work-related and he restricted Brown to light duty with no repetitive wrist motions.

Shortly thereafter, Brown returned to work and her job position was changed by American Printing in an effort to accommodate her physical condition. On March 19, 2001, American Printing was no longer able to accommodate Brown's restrictions and she was laid off. Dr. Roberts continued to treat Brown and in a letter dated May 29, 2001, he opined that Brown's carpal tunnel syndrome symptoms were work-related. On June 20, 2001,

Brown filed an application for resolution of injury claim with the Department of Workers' Claims. Brown listed June 5, 2000, as her date of injury. On June 22, 2001, American Printing filed its first report of injury or illness.

On September 13, 2001, Dr. Roberts released Brown to return to work with no restrictions. Brown returned to work at American Printing in September 2001; however, she continued to experience problems with her hands, wrists, elbows, and shoulders. On October 19, 2001, Brown bid for and received a position in the shipping department, where she continued to work at the time her claim was litigated.

On February 15, 2002, a hearing was held on Brown's claim. On March 21, 2002, the ALJ entered the following findings of fact and conclusions of law, which are particularly relevant for purposes of our review:

> Brown's injury is a repetitive trauma injury. As such, finding the "injury date" is often a difficult task. The Supreme Court has stated that the date of injury in repetitive trauma claims is the date disability becomes manifest. Disability becomes manifest on the date a claimant experiences physical disability or symptoms sufficient to cause the claimant to discover that she has sustained an injury. Alcan Foil Products v. Huff, Ky., 2 S.W.3d 96 [1999]. See also [Special Fund v. Clark, Ky., 998 S.W.2d 487 (1999)].
>
> Brown testified that she began to experience symptoms in her wrist in June of 2000 and that she knew at that time those

> symptoms were work related. During the next several months, Brown began to experience symptoms in her other wrist, her elbows, and her shoulders. Based upon Alcan and Brown's testimony, the Administrative Law Judge finds that Brown's injury occurred and her disability became manifest on June 5, 2000. The carrier on the risk on June 5, 2000 is liable for Brown's benefits.

On April 22, 2002, MICOA filed a petition for appeal with the Board. MICOA claimed that the issue before the Board was a question of law, not a question of fact; and that the ALJ's legal conclusion that Brown's disability became manifest on June 5, 2000, was erroneous as matter of law. MICOA argued that pursuant to Randall Co. v. Pendland,[3] and its progeny, namely Hill v. Sextet Mining Corp.,[4] Brown's disability did not become manifest until she was advised by a medical expert that her condition was work-related. Since Brown was first informed by Dr. Roberts that her condition was work-related on January 11, 2001, MICOA claimed Brown's disability did not become manifest until that date. Consequently, MICOA argued that it was not liable for the payment of benefits for Brown's repetitive trauma injury since KESA was American Printing's insurance carrier on January 11, 2001.[5]

[3] Ky.App., 770 S.W.2d 687 (1989).

[4] Ky., 65 S.W.3d 503 (2001). See also Holbrook v. Lexmark International Group, Inc., Ky., 65 S.W.3d 908 (2001); Clark, supra; and Alcan Foil, supra.

[5] MICOA was American Printing's insurance carrier until October 1, 2000, at which time KESA assumed coverage.

The Board disagreed with MICOA's framing of the issue and stated that the issue was "whether the ALJ's decision that MICOA was the responsible carrier is supported by substantial evidence in the record." Board Member Gardner, writing for a split Board, stated in relevant part as follows:

> We state at the outset that MICOA's recitation of the law, as it pertains to the giving of notice and statute of limitations concerning repetitive trauma injuries, is correct. Beginning with Haycraft v. Corhart Refractories Co., Ky., 544 S.W.2d 222 (1976) through the most recent cases of Hill v. Sextet Mining, Ky., 65 S.W.3d 503 (2001) and Holbrook v. Lexmark International Group, Ky., 65 S.W.3d 908 (2001), the issue has continued to be a vexatious one. Be that as it may, the issue presented before us is not one of notice or the clocking of statute of limitations. There is no question but that Brown gave due and timely notice of her work-related injury and filed a timely claim. Therefore, while we agree with MICOA's recitation of the law, we do not believe it is applicable in this factual instance. Rather, we perceive the issue to be a relatively simple one of whether the ALJ's decision that MICOA was the responsible carrier is supported by substantial evidence in the record. See Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).
>
> The facts are undisputed. Brown knew that her condition was work-related on June 5, 2000 and gave notice on that date. It was not until January 11, 2001, that Brown was informed by a doctor of her diagnosis and that it was work-related.
>
> Here, Brown gave notice at the earliest possible date, when she in fact self diagnosed her condition as work-related.

> Self-diagnosis is not required, but it also is not prohibited. See Hill v. Sextet Mining, supra. While Brown had a larger window of opportunity to give notice, up until the time a doctor diagnosed her condition and informed her it was work-related; the fact remains that her earlier June 2000 notice informed the employer of her condition.
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> . . .
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> In conclusion, while Brown had until January 11, 2001 in which to give notice, the fact is her self-diagnosis in June 2000 proved to be true and since she gave notice on that date, MICOA's obligations under the notice statute were triggered. Accordingly, the ALJ's decision finding MICOA liable for payment of benefits for Brown's repetitive trauma injury is supported by substantial evidence in the record and we are without authority to find otherwise. KRS 342.285; Special Fund v. Francis, supra.[6]

This petition for review followed.

We begin our analysis by addressing the appropriate standard of review. The Board defined the issue on appeal as "whether the ALJ's decision that MICOA was the responsible carrier is supported by substantial evidence in the record." In KESA's response to the petition for review, it framed the issue before this Court as whether the ALJ's factual finding that Brown's disability became manifest on June 5, 2000, is supported by substantial evidence. MICOA continues to contend that since

[6] Board Member Stanley dissented, arguing that pursuant to Hill, supra, Brown's disability did not become manifest until she was advised by a medical expert that her condition was work-related.

the facts are substantially undisputed, the issue before us is whether the Board correctly concluded as a matter of law that Brown's disability became manifest on June 5, 2000. We essentially agree with MICOA's framing of the issue; however, we believe the issue before us to be a mixed question of law and fact.

In Schuck v. John Morrell & Co.,[7] the Supreme Court of South Dakota affirmed the circuit court's reversal of the Department of Labor's decision that William C. Schuck had failed to give the required statutory notice of his injury to his employer. The Court concluded that since it was reviewing the agency's interpretation of the legal effect of the evidence, it was presented with a mixed question of law and fact which was subject to de novo review.[8] The Court stated that "[m]ixed questions of law and fact [arise when] the historical facts are admitted or established, the rule of law [is] undisputed, and the issue is whether the facts satisfy the statutory standard."[9]

In the case sub judice, there was substantial evidence to support the ALJ's factual finding that Brown became aware of what she believed to be a work-related injury on June 5, 2000,

[7] 529 N.W.2d 894, 897 (S.D. 1995).

[8] Id. (citing Fiegen v. North Star, Ltd., 467 N.W.2d 748, 750 (S.D. 1991)).

[9] Id. (citing Permann v. Department of Labor, Unemp. Ins. D., 411 N.W.2d 113, 118 (S.D. 1987) (quoting Pullman-Standard v. Swint, 456 U.S. 273, 289 n.19, 102 S.Ct. 1781, 1790, n.19, 72 L.Ed.2d 66, 80 n.19 (1982))).

and that she gave her employer notice of the injury on that date. Thus, since the historical facts are established and the rule of law undisputed, the issue is whether the facts satisfy the statutory standard.

In Pendland, supra, this Court held that "in cases where the injury is the result of many mini-traumas, the date for giving notice and the date for clocking a statute of limitations begins when the disabling reality of the injuries becomes manifest."[10] More recently, in Alcan Foil, supra, the Supreme Court concluded that the phrase "manifestation of disability" refers to the "worker's discovery that an injury had been sustained."[11] The Court went on to note that "the entitlement to workers' compensation benefits begins when a work-related injury is sustained, regardless of whether the injury is occupationally disabling."[12] Shortly thereafter, the Supreme Court revisited the issue in Clark, supra, wherein the Court pointed out that once a worker becomes aware of the existence of a work-related gradual injury and its cause, the period of limitations begins to run for whatever occupational disability attributable to trauma incurred before that date.[13]

[10] Pendland, 770 S.W.2d at 688.

[11] Alcan Foil, 2 S.W.3d at 101.

[12] Id.

[13] Clark, 998 S.W.2d at 490.

Most recently, in Hill, supra, the Supreme Court went a step further and held that an injured worker suffering from a work-related cumulative trauma condition is not required to give notice that he has sustained a work-related gradual injury until he is informed of that fact by a medical expert.[14] In particular, the Court stated:

> Medical causation is a matter for the medical experts and, therefore, [a] claimant cannot be expected to [ ] self-diagnose[ ] the cause of [a] harmful change [in the human organism] as being a gradual injury versus a specific traumatic event. [An injured worker is] not required to give notice that he [has] sustained a work-related gradual injury . . . until he [is] informed of that fact [citations omitted].[15]

In the case sub judice, the Board is correct that the courts of this Commonwealth have never prohibited a claimant from self-diagnosing his or her condition. The courts have simply held that a cumulative trauma injury becomes manifest when a worker first acquires knowledge of the injury and knows that it is caused by work. As previously discussed, on June 5, 2000, Brown informed American Printing's safety coordinator that she had suffered a physically disabling work-related injury, which Dr. Roberts later diagnosed as carpal tunnel syndrome. The fact that Brown gave American Printing notice of her injury earlier than required by law does not alter the fact that her

[14] Hill, 65 S.W.3d at 507.

[15] Id.

disability became manifest on June 5, 2000. Moreover, if Brown had not given notice of her injury on June 5, 2000, under Hill, supra, her obligation to provide notice would not have arisen until she was informed by a medical expert that she had sustained a disabling work-related injury. In summary, we conclude that the ALJ (1) made appropriate factual findings concerning the historical facts of Brown's notice to American Printing and the medical evidence; (2) correctly applied the established law related to the date of injury in a cumulative trauma injury case; and (3) correctly concluded that the facts of this case satisfied the legal requirement for a determination that Brown's disability manifested on June 5, 2000.

Furthermore, under MICOA's contractual and statutory obligations to American Printing, this act of notice by Brown was sufficient to trigger MICOA's obligation to pay any workers' compensation benefits due to Brown as a result of her work-related cumulative trauma injury. KRS[16] 342.185 requires an employee to provide his or her employer with notice of a work-related accident "as soon as practicable after the happening thereof[.]" As the Supreme Court noted in Alcan, supra:

> One of the purposes of the notice requirement is to give the employer an opportunity to take measures to minimize the extent of the worker's impairment and, hence, the employer's liability. To

[16] Kentucky Revised Statutes (KRS).

> accomplish that purpose, notice must be given when the worker discovers that a gradual work-related injury has been sustained [citation omitted].[17]

It necessarily follows that once an employee provides his or her employer with notice that a work-related injury has been sustained, the employer's obligation to pay workers' compensation benefits arising out of that injury is triggered. Thus, the insurance carrier of record on the date American Printing first received notice that Brown had suffered a work-related injury is liable for the payment of benefits for Brown's cumulative trauma injury. Any concern that MICOA may have had about being erroneously notified by Brown that a work-related injury had occurred on June 5, 2000, is moot since the ALJ relied upon substantial evidence in finding support for Brown's belief that June 5, 2000, was the date her disability became manifest.[18]

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[17] Alcan Foil, 2 S.W.3d at 101 n.2.

[18] We further note that if an employee were to erroneously notify an employer of an alleged work-related injury, the insurance carrier would not be obligated to pay any benefits to the employee; however, it would be obligated to provide the employer with the required defense of the claim. Under KRS 342.038(3) "[e]very employer subject to this chapter shall report to his workers' compensation insurance carrier or the party responsible for the payment of workers' compensation benefits any work-related injury or disease or alleged work-related injury or disease within three (3) working days of receiving notification of the incident or alleged incident." This notification then triggers reporting requirements on the insurance carrier. See KRS 342.038.

Based upon the foregoing reasons, the opinion of the Workers' Compensation Board entered on July 3, 2002, is affirmed.

ALL CONCUR.

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