

RENDERED: NOVEMBER 5, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001092-WC

SOUTHEASTERN KENTUCKY REHABILITATION
INDUSTRIES, INC. (as Insured by AIK)

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-80697

SOUTHEASTERN KENTUCKY REHABILITATION
INDUSTRIES, INC., (as Insured by
Evergreen National Insurance
Company), MAUDY ISON GREENE,
HON. JAMES L. KERR, AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: BUCKINGHAM, MINTON, AND TAYLOR, JUDGES.

BUCKINGHAM, JUDGE: Southeastern Kentucky Rehabilitation
Industries, Inc. (SKRI), as insured by AIK, petitions for review
of an opinion by the Workers' Compensation Board reversing and
remanding a determination by an administrative law judge (ALJ).

The issue is whether SKRI, as insured by AIK, or SKRI, as insured by Evergreen National Insurance Company, is liable for income and medical benefits to Maudy Ison Greene as a result of her cumulative trauma injury. We conclude that the ALJ correctly resolved the issue in favor of AIK. Thus, we reverse and remand.

Greene was a sewing machine operator for SKRI. On March 28, 2002, she sprained her left wrist while lifting bundles of materials. She saw Dr. Bari five days later and missed work for the rest of the week. When she returned to her work on the following Monday, her left wrist was wrapped in a Ace bandage.

Greene testified that she first began to notice numbness and tingling in both hands in April 2002. She stated that the pain from her left wrist sprain had gone by that time. Greene further testified that the pain was different from the wrist sprain pain and that it was worse on the left. Greene initially ignored the pain and worked through it, but the pain continued to the point where she sought further medical treatment.

On May 14, 2002, Greene returned to Dr. Bari's office and saw Dr. Dye. She testified that she told her supervisor two or three days prior to seeing Dr. Dye that her hands were bothering her. Dr. Dye advised Greene that she had carpal

tunnel syndrome, and Greene informed SKRI's personnel office of her condition on the following day. Although her job duties were subsequently altered, Greene returned to work for only one or two days because the job was too difficult.

Dr. James Templin evaluated Greene on October 10, 2002. He diagnosed early bilateral upper extremity overuse syndrome, probable bilateral carpal tunnel syndrome, and chronic hand, wrist, and forearm syndrome bilaterally. Dr. Templin indicated that Greene's complaints were the result of a work-related injury that occurred on March 28, 2002. He opined that her condition was dormant until that date, when she became symptomatic. He assessed a 12% impairment for Greene's bilateral upper extremity conditions. Dr. Templin also stated that Greene does not retain the physical capacity to return to the type of work performed at the time of the injury.

Although Greene had claimed an injury for left wrist sprain on March 28, 2002, and a separate cumulative trauma injury on May 14, 2002, the ALJ determined that there was no work-related injury on May 14, 2002. Rather, the ALJ determined that Greene had become aware of her injury and its work-relatedness prior to May 1, 2002, and that the March 28, 2002, injury caused her to alter the manner in which she performed her work and caused both hands to become symptomatic. Evergreen was the insurance carrier for SKRI until May 1, 2002, and AIK was

the carrier after that date. Therefore, the ALJ determined that Evergreen was responsible for all income and medical benefits owed to Greene.

Evergreen appealed to the Board. In an opinion rendered on May 5, 2004, the Board reversed the ALJ's decision, concluding that there was not "substantial evidence to support the proposition that manifestation of disability occurred any time prior to the May 14, 2002 diagnosis of the work-related nature of her carpal tunnel syndrome." Therefore, it remanded the case to the ALJ so that liability for the injury could be imposed upon AIK. This petition for review by AIK followed.

AIK argues that there was substantial evidence to support the ALJ's decision that Greene's condition resulted from the March 28, 2002, injury. AIK states that the evidence from Dr. Templin on causation constitutes such evidence. AIK argues that the ALJ did not decide this case as a typical cumulative trauma claim and that the Board improperly substituted its judgment for the judgment of the ALJ in violation of KRS¹ 342.285(2).

The Board began its analysis by noting that Greene testified that the pain she experienced in April was considerably different from the wrist sprain pain and that the wrist sprain pain had ceased when she began experiencing this

¹ Kentucky Revised Statutes.

pain. The Board also noted that Greene testified that the pain she began experiencing in April was now in both hands and that, therefore, the pain could not have been from the sprain to her left wrist. The Board concluded that there was no evidence in the record which might support an inference that Greene knew she had sustained a gradual injury caused by her work prior to May 1, 2002.

The Board also noted that Greene did not inform her employer of her pain until after May 1 and did not give notice of the work-related injury until May 15, the day after her physician informed her that her cumulative trauma injury was work-related. The Board stated that "[e]ven if it could be reasonably inferred that Greene suspected or assumed her pain was attributable to her work, we believe such a finding does not rise to the level of knowledge contemplated by case law to establish the date of manifestation of disability." The Board stated that "the operative date is when the worker first acquires knowledge of work-relatedness."

As has been noted herein, Greene claimed separate injuries for left wrist sprain and for cumulative trauma. Since the ALJ determined that Greene suffered an injury on March 28, 2002, and further determined that no injury occurred on May 14, 2002, a question has arisen concerning whether the ALJ found that Greene suffered a cumulative trauma injury. We believe

that he clearly did. First, the ALJ relied on the findings of Dr. Templin who concluded that Greene suffered from bilateral upper extremity overuse syndrome, probable bilateral carpal tunnel syndrome, and chronic hand, wrist, and forearm pain syndrome bilaterally. Further, when the ALJ concluded that Greene's injury manifested itself prior to May 1, 2002, because she had knowledge of her injury and its work-relatedness prior to that date, he relied on the principle that a cumulative trauma injury becomes manifest when a worker first acquires knowledge of the injury and knows that it is work-related. Furthermore, the Board addressed this case in terms of cumulative trauma injury.

Since the ALJ and the Board rendered their decisions in this case, the Kentucky Supreme Court rendered an opinion in American Printing House for the Blind v. Brown, 142 S.W.3d 145 (2004), a case in which the facts are similar to those in this case. In that case there was likewise a dispute concerning which insurance company was liable for the claimant's cumulative trauma injury. The claimant therein testified that on June 5, 2000, she experienced pain in her wrists and immediately informed her employer that she thought her symptoms were caused by her repetitive work. However, she was not diagnosed with carpal tunnel syndrome until later, and on January 11, 2001, she

was informed by her treating physician that he thought her condition was work-related.

Because her employer changed insurance carriers on October 1, 2000, a dispute arose concerning whether the claimant's injury became manifest on June 5, 2000, or on January 11, 2001, the date her physician informed her that her carpal tunnel syndrome condition was work-related. Our supreme court in the Brown case discussed its prior decisions in Alcan Foil Products v. Huff, Ky., 2 S.W.3d 96 (1999), and Hill v. Sextet Mining Corp., Ky., 65 S.W.3d 503 (2001). The court in Brown stated that it had determined in the Hill case that a worker was not required to self-diagnose the cause of a harmful change as being a work-related gradual injury for the purpose of giving notice. However, referring to the Alcan case, the Brown court stated that there was nothing in that case that indicated liability for an injury begins when the notice and limitation requirements are triggered. Therefore, the court reasoned that the claimant had sustained an injury as defined by KRS 342.0011(1) on June 5, 2000, even though the notice and limitation provisions were not triggered until she received a medical diagnosis in January 2001. Therefore, the court held that the company providing coverage on June 5, 2000, must provide the claimant benefits rather than the company providing

coverage when the claimant was informed by her physician that her condition was work-related.

Greene testified that both hands started bothering her in April 2002 and that she attributed the problem to overworking. The Board held that "it is our belief that Greene's testimony does not constitute substantial evidence to support the proposition that manifestation of disability occurred anytime prior to the May 14, 2002 diagnosis of the work-related nature of her carpal tunnel syndrome. That date triggered the requirement of timely notice, statute of limitations, and employment liability." The Board reasoned that "there is no other evidence in the record which might support an inference that Greene knew she sustained a gradual injury caused by her work."

The Board also noted that Greene did not inform her employer of her pain until after May 1, 2002, and did not give notice of the injury until May 15, 2002, the day after her physician informed her that her cumulative trauma injury was work-related. The Board reasoned that "[e]ven if it could be reasonably inferred that Greene suspected or assumed her pain was attributable to her work, we believe such a finding does not rise to the level of knowledge contemplated by case law to establish the date of manifestation of disability."

We conclude that the Board erred in its analysis, as it did not have the benefit of our supreme court's opinion in the Brown case when it rendered its decision. Relying on the Hill and the Alcan cases, the Board concluded that the "operative date" for determining the manifestation of the injury was when the worker first acquired knowledge of its work-relatedness. See also Special Fund v. Clark, Ky., 998 S.W.2d 487, 490 (1999). However, the court in the Hill case was concerned with when the worker must give notice of a work-related injury to the employer, and the court in the Alcan case was concerned with when the statute of limitation begins to run on an injured worker's claim.

The court in the Brown case noted that "[n]othing in Alcan indicated that liability for an injury begins when the notice and limitations requirements are triggered." Further, the court determined in that case that the injury occurred on June 5, 2000, even though the notice and limitations provisions of the statutes were not triggered until the worker received a medical diagnosis on January 11, 2001. In short, we believe the Brown case clarifies the fact that the "operative date" for determining when an injury occurs for purposes of assigning liability to insurance carriers differs from determinations that must be made in cases where notice and limitations issues exist.

The question on appeal is whether there was substantial evidence of probative value to support the ALJ's conclusion that Greene's injury became manifest before May 1, 2002. See Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735, 736 (1984). Substantial evidence is defined as evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable people. Smyzer v. B.F. Goodrich Chem. Co., Ky., 474 S.W.2d 367 (1971). In this case the testimony of Greene and Dr. Templin was substantial evidence to support the finding of the ALJ that Greene's cumulative trauma injury became manifest prior to May 1, 2000. Therefore, the Board erred in reversing the ALJ's decision.

The opinion of the Board is reversed, and the ALJ's decision is reinstated.

ALL CONCUR.

BRIEF FOR APPELLANT:

James B. Cooper
Guillermo A. Carlos
Lexington, Kentucky

BRIEF FOR APPELLEE, MAUDY ISON
GREENE:

Sherry Brashear
Harlan, Kentucky

BRIEF FOR APPELLEE,
SOUTHEASTERN KENTUCKY
REHABILITATION INDUSTRIES:

Ronald J. Pohl
Crystal L. Moore
Lexington, Kentucky