IMPORTANT NOTICE

NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

RENDERED: August 26, 2004
NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

2003-SC-0461-WC

DATE 9-16-04 Ella Gravitt, D.C.

CUMBERLAND GAP PROVISIONS APPELLANT

V.

APPEAL FROM COURT OF APPEALS
2003-CA-0152-WC
WORKERS' COMPENSATION BOARD NO. 01-0554

EDITH PARSONS; HON. JAMES KERR,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

An Administrative Law Judge (ALJ) determined that the claimant was aware of her work-related gradual injury when reporting an incident that occurred in May, 1996, and that her symptoms never resolved; therefore, the period of limitations began to run at that time. The Workers' Compensation Board (Board) affirmed. The Court of Appeals reversed, however, on the ground that there was no evidence a physician disclosed to the claimant the true nature of her injury or its cause until September, 1999. We affirm.

On April 24, 2001, the claimant filed a Form 101 in which she alleged a number of injuries. Presently at issue is a cumulative trauma injury in the form of bilateral carpal tunnel syndrome. The employer raised a limitations defense, asserting that the claimant knew of her work-related injury as early as May 28, 1996. The claimant asserted,

however, that Dr. Valencia first diagnosed work-related carpal tunnel syndrome and informed her of the diagnosis in September, 1999.

When her application was considered, the claimant was working full time at the defendant-employer's pork processing plant. She had worked there since 1979, except for a short period during which she operated a tanning salon. The jobs she performed over the 19-year period included trimming, boning, clipping casings, packing, and inspecting. All were described as high-volume work that involved lifting and manipulating hams and the repetitive use of knives. Over the years, the claimant prepared a number of accident reports concerning incidents that occurred while she was working. The employer introduced several SF-1 (First Report of Injury) forms, although a letter from the Department of Workers' Claims indicated that none had been filed. Two incidents are of particular interest with respect to this appeal.

On December 17, 1993, the claimant's left hand began to hurt while she was using a trimming knife. Later, she showed her foreman that it had a knot on it. She saw Dr. Matheny but missed no work.

A May 29, 1996, accident report concerns a wrist and hand injury that occurred on May 28, 1996. It indicates that the claimant's wrist and hand began to hurt while she was using a trimming knife to trim hams. The activity that directly produced the injury was described as "pulling hams." The SF-1 indicates that Dr. Mappala examined the claimant, took x-rays, and gave her two injections and a prescription. She missed no work.

At the hearing, the claimant testified that at the time of the 1993 incident, the hands of all workers who performed trimming would hurt. When asked whether she knew at the time that the pain was due to the trimming and moving her hands, she

replied, "I didn't think about it, really, to tell you the truth." When asked whether she knew at the time of the 1996 incident that the pain was caused by her work, her response was the same. She testified that the pain was very severe, that the treatment she obtained did not correct her problems completely, and that they did not resolve. She acknowledged that she saw Dr. Carlson in 1998 but testified that he did not conduct any tests, impose any restrictions, or tell her that her condition was caused by her work. Nor did he tell her exactly what carpal tunnel syndrome was. She testified that, in September, 1999, Dr. Valencia conducted electro-diagnostic tests, diagnosed bilateral carpal tunnel syndrome, and informed her that the condition was caused by her work.

Dr. Carlson examined the claimant on April 9, 1998, and noted a six-month history of bilateral hand pain that extended into the neck and across the shoulders. It was getting worse and accompanied by stiffness. He diagnosed chronic cervical strain and chronic shoulder pain. Although noting that the Phalen's and Tinel's signs were equivocal, he also diagnosed intermittent carpal tunnel syndrome. Dr. Carlson indicated that the claimant was "doing quite well . . . given her job requirements." He recommended Tylenol for pain and noted that she would continue her job as a meat trimmer.

Dr. Valencia first saw the claimant for wrist problems on September 2, 1999. EMG studies that were performed at the time were consistent with bilateral tibial neuropathy, but later EMG's indicated bilateral carpal tunnel syndrome. Dr. Valencia informed the claimant that the condition was caused by her work and referred her to Dr. Tyler, who recommended surgery.

The ALJ found it significant that the claimant developed symptoms in both of her wrists on May 28, 1996, while trimming hams. Furthermore, she testified that they remained symptomatic thereafter. Relying on the May, 1996, First Report of Injury, the ALJ determined that the claimant was aware of her work-related injury at the time from "both from a lay and medical standpoint" but did not file a claim until 2001. Therefore, concluding that only 2/19 of the claimant's impairment was due to trauma incurred in the two-year period before the claim was filed, the ALJ awarded income benefits based on that portion of the impairment. Special Fund v. Clark, Ky., 988 S.W.2d 487 (1999). When denying the claimant's petition for reconsideration, the ALJ stated that the May, 1996, First Report of Injury was sufficient evidence that the claimant "understood her symptoms were related to her work."

We have determined that the period of limitations for a gradual injury begins to run when a worker knows she has sustained a work-related injury, regardless of whether she continues working. Alcan Foil Products v. Huff, Ky., 2 S.W.3d 96 (1999). Furthermore, notice and limitations are triggered when the worker becomes aware of the existence of the condition and its cause, even if the symptoms later subside. Holbrook v. Lexmark International Group, Inc., Ky., 65 S.W.3d 908 (2001). We explained in Hill v. Sextet Mining Corp., Ky., 65 S.W.3d 503, 507 (2001), that medical causation is a matter for the medical experts. Therefore, a worker who has reported a specific work-related incident is not required to self-diagnose the cause of a harmful change that is associated with the incident as being a gradual injury rather than the specific traumatic event. Id. Nor is she required to give notice of a gradual, work-related injury until she is informed by a physician that such an injury is present. Id. The same rationale applies to limitations.

Although the claimant reported a specific incident of wrist and hand pain that occurred while she was working on May 28, 1996, there was no medical evidence of bilateral carpal tunnel syndrome or any other gradual, work-related wrist or hand injury at that time. As noted by the Court of Appeals, Dr. Carlson diagnosed intermittent carpal tunnel syndrome in April, 1998, based upon a hand exam that revealed good range of motion with mild osteoarthritis and Phalen's and Tinel's signs that he characterized as "equivocal." Nothing in his report attributes the condition to the claimant's work. Under the circumstances, there was no substantial evidence that the claimant was both diagnosed with carpal tunnel syndrome and informed that the condition was caused by her work until Dr. Valenzia did so in September, 1999. Therefore, the evidence compelled findings that the period of limitations began to run in September, 1999, and that the entire claim was timely.

The decision of the Court of Appeals is affirmed.

All concur.

COUNSEL FOR APPELLANT:

Kamp T. Purdy
Ferreri & Fogle
300 E. Main Street, Ste. 500
Lexington, KY 40507

COUNSEL FOR APPELLEE:

John E. Anderson
Cole, Cole, Anderson & Nagle, PSC
P.O. Box 250
104 Knox Street
Barbourville, KY 40906