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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.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: September 23, 2004
NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

2003-SC-1030-WC

DATE 10-14-04 Elva Crawford, D.C.

MRS. SMITH'S BAKERIES — APPELLANT

V.

APPEAL FROM COURT OF APPEALS
2002-CA-2050-WC
WORKERS' COMPENSATION BOARD NO. 01-1106

DAVID ROBINSON; HON. LLOYD R. EDENS,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD — APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

In a decision that was affirmed by the Workers' Compensation Board (Board), an Administrative Law Judge (ALJ) determined that the claimant failed to give timely notice of his gradual injury and that his claim must be dismissed. The Court of Appeals reversed, however, holding that testimony indicating the claimant was told the condition "could be" due to his work was insufficient to trigger the notice requirement. See Hill v. Sextet Mining Corp., Ky., 65 S.W.3d 503, 507 (2001). Noting that the claimant did not receive an unambiguous medical opinion regarding causation until after he had informed his employer of the condition, the Court determined that he gave timely notice as a matter of law and remanded the claim for further proceedings. We affirm.

The claimant began working on the defendant-employer's assembly line in 1987. From 1988 to 1995, he worked in the shipping department, loading delivery trucks. Then, in 1995, he went back to the assembly line, performing tasks that required

continuous repetitive arm motions. He testified that well before November, 1999, he began to experience pain and numbness in his left hand while working.

On November 9, 1999, the claimant was injured in a motor vehicle accident. Upon admission to the hospital, he complained of pain in his left hand as well as in his shoulders and right knee. He was treated for a fractured patella and missed approximately five months of work.

On January 18, 2000, the claimant saw Dr. Durham, his family doctor, concerning continued pain and numbness in his left hand and pain in his right kneecap. Dr. Durham referred him to Dr. Anderson, a neurologist, who performed various diagnostic studies with respect to the hand complaints on February 4, 2000. Dr. Anderson's report noted a several-month history of numbness in the left thumb and of pain in back of the left hand that had increased since the November, 1999, accident. He attributed the claimant's symptoms to mild median neuropathy at the wrist or carpal tunnel syndrome. Although the report did not state a cause of the condition, the claimant testified that Dr. Anderson informed him the condition "could be" work-related.

Having recovered from the automobile accident, the claimant returned to work on April 1, 2000. He testified that in the following months his condition deteriorated and became increasingly disabling. On October 19, 2000, he informed the company nurse that he had been diagnosed with carpal tunnel syndrome and was referred to Dr. Lester, a physiatrist. On October 25, 2000, Dr. Lester diagnosed bilateral carpal tunnel syndrome, greater on the left side. Noting that the claimant did not report his symptoms to a physician until after the November, 1999, accident, he viewed them as being an active preexisting condition that "may have been exacerbated by the repetitive motion of [the claimant's] work." He noted that the claimant wore a brace at night and suggested

that he use less restrictive braces at work and continue using them at night. Dr. Lester provided bilateral braces, and he prescribed a home exercise program and anti-inflammatory medication.

The claimant last worked on October 28, 2000, when his employment was terminated for reasons unrelated to the resolution of this claim. On March 28, 2001, Dr. Templin examined the claimant, diagnosed carpal tunnel syndrome, and assigned a 10% impairment. In Dr. Templin's opinion, the condition was caused by the claimant's work. On August 21, 2001, the claimant filed an application for workers' compensation benefits, listing the date of injury as January 2, 1999, (the date of his initial symptoms). On December 31, 2001, he moved to amend the application to list either February 4, 2000, (the date of Dr. Anderson's diagnostic studies) or October 28, 2000, (the last day of work) as the date of injury. The ALJ granted the motion.

When the claim was heard, work-relatedness, notice, and limitations were among the contested issues. Beginning with the question of notice, the ALJ noted that Dr. Anderson informed the claimant in February, 2000, that the condition could be due to his work. Yet, he failed to notify his employer of the condition until October, 2000, because he was able to continue performing his job without difficulty until then. Relying upon Alcan Foil Products v. Huff, 2 S.W.3d 96 (1999), the ALJ determined that the claimant discovered his injury and knew it was work-related in February, 2000, and that his ability to continue performing his work until October, 2000, was not a reasonable excuse for failing to give notice until then. The ALJ concluded, therefore, that the remaining issues were moot and dismissed the claim.

It is undisputed that the claimant gave notice of his gradual injury in October, 2000. At issue is whether notice given on that date was timely as a matter of law.

KRS 342.185(1) requires that notice of an "accident" be given to an employer "as soon as practicable after the happening thereof." KRS 342.190 indicates that the notice requirement includes, among other things, a description of the "nature and cause of the accident" as well as the "nature and extent of the injury sustained." KRS 342.200 provides that an inaccuracy in complying with the requirements of KRS 342.190 will not render notice "invalid or insufficient . . . unless it is shown that the employer was in fact misled to his injury thereby." KRS 342.200 also provides that a delay in giving notice is excused if the employer "had knowledge of the injury" or the delay was due to mistake or other reasonable cause.

Attempting to apply these provisions to injuries caused by repetitive trauma rather than a single "accident," the Court has determined that a worker is required to give notice of a gradual injury when he knows that he has sustained such an injury and knows that it is due to his work. Alcan Foil Products v. Huff, supra. As we explained subsequently, in Hill v. Sextet Mining Corp., supra at 507, questions of medical causation are matters for the medical experts. For that reason, workers are not required to self-diagnose the cause of their injuries or to draw inferences of causation from an ambiguous diagnosis. As the Court of Appeals emphasized, the correct standard for triggering the notice requirement is not whether the worker reasonably should know that his condition is work-related. Hill v. Sextet stands for the principle that the notice requirement is triggered when a physician informs the worker that he has sustained a gradual injury and that it is caused by his work.

Dr. Anderson was not deposed, and his report does not express an opinion with respect to the cause of the claimant's condition. The only evidence that he considered the matter was the claimant's testimony that Dr. Anderson told him his condition "could

be" caused by his work. Under Hill v. Sextet, supra, such evidence was insufficient to support the finding that notice became due in February, 2000.

The claimant gave notice of what he suspected to be work-related symptoms in October, 2000, at a time when no medical evidence of record supported that suspicion. Within days of reporting his symptoms, he complied with his employer's referral to Dr. Lester and was informed that his condition was "preexisting" and "may have been exacerbated" by the repetitive work he performed after the motor vehicle accident. It was not until March, 2001, when Dr. Templin determined that the condition was work-related and informed the claimant, that the notice requirement was triggered. Under the circumstances, notice was timely as a matter of law, and the claimant was entitled to have the remaining issues considered.

The decision of the Court of Appeals is affirmed.

All concur.

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