IMPORTANT NOTICE

NOT TO BE PUBLISHED OPINION

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RENDERED: NOVEMBER 22, 2006
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2006-SC-000199-WC

CHARLEY'S HEADQUARTERS — APPELLANT

V.

APPEAL FROM COURT OF APPEALS
2005-CA-001150-WC
WORKERS' COMPENSATION NO. 03-WC-67407

AGNES WILLIAMS;
HONORABLE HOWARD E. FRASIER, JR.,
ADMINISTRATIVE LAW JUDGE
AND WORKERS' COMPENSATION BOARD — APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

The Workers' Compensation Board (Board) and the Court of Appeals have affirmed an Administrative Law Judge's (ALJ's) decision to award benefits for the claimant's work-related cumulative trauma injury. Appealing, Charley's Headquarters asserts that the claim is barred by the statute of limitations and that the award is not supported by substantial evidence. Convinced that the claim was timely filed and that the finding of causation was supported by substantial evidence, we affirm.

The claimant is a licensed cosmetologist. She was the owner and sole proprietor of Charley's Headquarters from 1983 to 2003 and was covered by the business's workers' compensation insurance policy. On February 3, 2004, she filed an application for benefits in which she alleged a work-related neck injury and bilateral carpal tunnel

syndrome. Only the latter condition is presently at issue.

When deposed and at the hearing, the claimant testified that her work as a hairdresser required the repetitive use of her hands. She stated that she first began to notice symptoms in 2000, but they did not affect her work until 2003. She now has pain, numbness, and weakened grip strength and is unable to perform the work. As early as 1999 or 2000, she had attributed her symptoms to her work and submitted her medical bills to the workers' compensation carrier, which paid them. However, not until October or November of 2003 did a physician (Dr. Premji) inform her that her condition was caused by her work.

The claimant submitted reports from her treating physicians, Drs. Ahhmad, Ghory, and Premji, all of whom were associated with Appalachian Regional Healthcare. She also submitted an independent medical evaluation (IME) from Dr. Muckenhausen. Charley's Headquarters submitted IME reports from Drs. Graulich and DuBou. All agreed that the claimant suffered from bilateral carpal tunnel syndrome.

The medical reports indicated that Dr. Ahhmad first diagnosed bilateral carpal tunnel syndrome on August 11, 1999. On June 14, 2001, Dr. Ghory noted that the condition "started insidiously for one year, it gets worse with certain activities." Subsequent EMG studies confirmed the diagnosis, and surgery was discussed but not performed. There is no record of any treatment between November 1, 2001, and November 12, 2003, when the claimant returned to Dr. Premji, again complaining of bilateral wrist and hand pain. Dr. Premji noted that she had sustained no recent trauma but "does use her wrists quite a bit with her current job as a hair dresser. She has been doing this for 19 years." Convinced that she suffered from carpal tunnel syndrome, Dr. Premji prescribed conservative treatment. On December 15, 2003, he referred her to a

neurologist.

Dr. Muckenhausen examined the claimant and reviewed her medical records on March 15, 2004. She diagnosed bilateral carpal tunnel syndrome secondary to repetitive mini-trauma sustained in the claimant's work as a beautician, and she assigned a 13% impairment. In a July 8, 2004, report, she stated again that the claimant's work for nearly 20 years as a hairdresser caused her condition. She also stated that the condition could develop without forceful flexion of the extremities and attached to her report articles from the American Journal of Industrial Medicine that, in her opinion, supported her view. She stated that the claimant's work was sufficiently repetitive to cause the condition.

Dr. Graulich evaluated the claimant on May 12, 2004. Although he assigned a 19% impairment, he was not convinced that the carpal tunnel syndrome was work-related. His view of the current medical literature was that only the most forceful and severely repetitive types of work (e.g., jackhammering, dynamite shooting, meat packing, and carpentry before the advent of the nail gun) would cause the condition.

Dr. DuBou reviewed the medical records but did not examine the claimant. He noted that her symptoms worsened rather than improved after she quit working. In his opinion, the opposite would have occurred if work had been the cause of the condition. He also stated that most cases of carpal tunnel syndrome are not caused by work or repetitive motion but by factors such as obesity, cigarette smoking, diabetes, or a thyroid or amyloid condition. Where work is the cause, there is repetitive work requiring flexion of the wrist, such as the use of vibratory tools, impact hammers, or air guns or repetitive lifting requiring flexion and extension of the wrist. Referring to a text entitled Occupational Medicine Practice Guidelines, he noted that causative activities involve

more than 2000 manipulations per hour at the intensity of 10 newtons for finger force or 15 newtons for frequent hand forces. In his opinion, hairdressing did not come within those criteria and certainly would not account for similar findings in both hands. An addendum to his report noted that the claimant was 5'5" tall and weighed 165 pounds.

Among the matters at issue before the ALJ were whether the claimant's condition was work-related and whether her claim was barred by the statute of limitations. The ALJ relied on Dr. Muckenhausen's report and the studies that she cited as the basis for finding that the claimant suffered from bilateral carpal tunnel syndrome and that the condition was caused by repetitive hand and wrist movements performed in her work. The ALJ noted that Dr. Graulich made no attempt to analyze the type of repetitive hand movements that the claimant's work required and that Dr. DuBou based his opinions solely on a medical records review. Although Dr. DuBou stated that the claimant's condition had worsened since she quit working, medical records indicated that it had worsened during her last two years of work. She quit working when Dr. Premji informed her that the condition was caused by her work and testified subsequently that her symptoms seemed somewhat better. Moreover, the claimant was not overweight and was relatively slim for her height which was actually 5'9".

Turning to the issue of limitations, the ALJ noted that although there was evidence the claimant sought and obtained workers' compensation medical benefits more than two years before filing her claim, no physician informed her that the condition was work-related until November 13, 2003. Because she filed her claim within two years thereafter, it was timely under Hill v. Sextet Mining Corp., 65 S.W.3d 503 (Ky. 2001). The ALJ determined that the claimant was partially disabled and that her permanent impairment rating was 19%, as assigned by Dr. Graulich. After the relevant

portions of its petition for reconsideration were overruled, Charley's Headquarters appealed.

It is a claimant's burden to prove every element of a claim, including that it was timely and that the alleged injury was work-related. KRS 342.285 provides that the ALJ's decision is "conclusive and binding as to all questions of fact" and that the Board "shall not substitute its judgment for that of the [ALJ] as to the weight of evidence on questions of fact." KRS 342.290 limits the scope of review by the Court of Appeals to that of the Board and also to errors of law arising before the Board. The courts have determined under KRS 342.285 that the ALJ has the sole discretion to determine the quality, character, and substance of evidence (Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985)); that an ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof (Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977)); and that where the party with the burden of proof is successful before the ALJ, the issue on appeal is whether the decision was reasonable because it was supported by substantial evidence (Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986)).

Under the version of KRS 342.0011(1) that pertains to this claim, an injury is a work-related traumatic event (or series of such events) that causes a harmful change in the human organism. KRS 342.185 provides a period of limitations for a work-related injury that runs for two years after the date of the accident that causes it. In Alcan Foil Products v. Huff, 2 S.W.3d 96, 99, 101 (Ky. 1999), we noted that "the entitlement to workers' compensation benefits stems from the fact that an occupational injury has been sustained" and "begins when a work-related injury is sustained, regardless of

whether it is occupationally disabling." Nonetheless, because gradual injuries often occur imperceptibly, we reaffirmed the principle that a rule of discovery governs the notice and limitations requirements for such injuries. We determined that the obligation to give notice and the period of limitations for a gradual injury are triggered by a worker's knowledge of the harmful change and its cause, regardless of whether the individual continues to work.

The principles that Alcan addressed were refined in a number of subsequent cases. In Alcan, the workers knew of their hearing loss and knew that it was work-related more than two years before they filed their claims. Although they continued to work and to be exposed to harmful noise thereafter, there was no evidence that part of their disability was attributable to trauma incurred within two years before their claims were filed. We concluded, therefore, that the claims were entirely barred by limitations. The worker's injury in Special Fund v. Clark, 998 S.W.2d 487 (Ky. 1999), became manifest more than two years before a claim was filed, but there was evidence that some harmful changes were due to trauma incurred within the two-year period before the claim was filed. We determined that those changes remained compensable.

In Hill v. Sextet Mining Corp., supra, we explained that because causation is a matter to be proved by expert medical testimony, a worker is not required to self-diagnose the cause of a harmful change as being a work-related gradual injury for the purpose of KRS 342.185. Although Hill concerned whether a worker who gave timely notice of specific incidents of trauma gave timely notice of the gradual injury that resulted, the principle for which it stands is not confined to those facts. A diagnosis, by itself, does not trigger the notice and limitations requirements nor does the date when the worker reasonably should have known the cause of his symptoms. Under Hill, a

work-related gradual injury becomes manifest for the purpose of KRS 342.185 when a physician informs the worker of the diagnosis and its cause. Holbrook v. Lexmark International Group, Inc., 65 S.W.3d 908 (Ky. 2001), explained subsequently that notice and limitations are triggered by the requisite knowledge even if the worker's symptoms later subside.

Regardless of what the claimant might have suspected was the cause of her wrist and hand symptoms, she was not a medical expert. Although she submitted bills for related medical treatment to her workers' compensation carrier as early as 1999 or 2000 and although the carrier paid them, the record contains no medical evidence indicating that her carpal tunnel condition or any other wrist or hand condition was caused by her work until Dr. Premji's note on November 12, 2003. Therefore, it was not unreasonable for the ALJ to conclude that the claimant learned the cause of her condition on that date and also to conclude that her claim was timely.

In a second argument, Charley's Headquarters complains the ALJ chose to rely on one physician's opinion regarding causation but another physician's opinion regarding the claimant's permanent impairment rating. Although it asserts that the ALJ erred by "cherry picking" bits and pieces of evidence to support a desired result, Caudill v. Maloney's Discount Stores, supra, establishes that it was clearly within the ALJ's discretion to rely on different experts regarding different issues. The evidence regarding both issues was controverted, and the evidence regarding neither of them was so overwhelming that it compelled particular finding. Because the ALJ's findings were supported by substantial evidence, they were properly affirmed on appeal.

The decision of the Court of Appeals is affirmed.

All concur.

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