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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: JUNE 19, 2014
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2013-SC-000102-WC

KENAMERICAN RESOURCES, INC. — APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
CASE NO. 2012-CA-001045-WC
WORKERS' COMPENSATION NO. 11-00609

BILLY G. WARREN;
HONORABLE JEANIE OWEN MLLER,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD — APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, KenAmerican Resources, Inc., appeals from a Court of Appeals decision which held that Appellee, Billy G. Warren, provided timely notice of his cumulative work-related injury. KenAmerican argues that the holdings in *Hill v. Sextet Mining Corp.*, 65 S.W.3d 503 (Ky. 2001) and *American Printing House for the Blind Ex Rel. Mutual Ins. Corp. of America v. Brown*, 142 S.W.3d 145 (Ky. 2004) support its contention that Warren did not provide timely notice of his work-related injury because several years before he filed his workers' compensation claim he was told by a doctor that the discomfort in his neck was caused by his job. For the reasons set forth below, we affirm the Court of Appeals.

Warren was employed for approximately twenty years as a coal miner before accepting a job with KenAmerican in 1997. At KenAmerican he was a "supply" man and worked between forty-five and fifty-four hours a week. Warren's job required him to operate a diesel scoop. To use the diesel scoop, Warren had to keep his head lowered at an angle to prevent from touching the mine ceiling. Evidence indicated that on a daily basis Warren hit his head on the mine ceiling. Warren's job also required repetitive bending, stooping and heavy lifting.

Warren gradually began to experience neck pain and in June 2007, he sought medical treatment with a family practitioner. Warren underwent an MRI and was prescribed pain medication. According to Warren's deposition testimony, the doctor told him that his neck pain was caused by repeatedly hitting his head on the mine ceiling. However, the doctor did not suggest or recommend that Warren stop working at the mine. Warren continued to work full time while taking pain medication occasionally.

Eventually Warren's pain became so great that he decided he could no longer work. He experienced not only neck pain, but also pain and numbness in his lower back, legs, elbow, and hands. His last day of employment with KenAmerican was April 26, 2009, and he provided written notice of a potential workers' compensation claim by letter dated July 8, 2009. However, Warren apparently did hope to return to work at the mine someday.

Warren sought medical treatment with Dr. Steven R. Mills. Dr. Mills ordered a cervical and lumbar MRI. Based on the MRI results, Dr. Mills

referred Warren to Dr. William Schwank, a neurosurgeon. Warren also was treated by Dr. Darby Cole, a family practitioner.

Dr. Schwank diagnosed Warren with spondylosis of the cervical and lumbar spine, secondary to degenerative disease. The doctor testified that the repetitive hitting of Warren's head on the mine ceiling was a substantial contributing factor to the neck injury. He also found that Warren had left ulnar nerve entrapment in the elbow and bilateral carpal tunnel syndrome. Dr. Schwank assigned Warren a five percent whole body impairment from the cervical neck injuries and a four percent whole body impairment from the lumbar back injuries. As a result of this diagnosis, Dr. Schwank believed that Warren could only bend, stoop, squat, crawl, climb, and stand with lifting on a very limited basis. He also recommended surgery for the carpel tunnel and ulnar nerve damage.

Dr. Cole, Warren's primary care physician since 2009, stated that Warren frequently complained of neck and lower back pain along with bilateral arm pain and numbness. Dr. Cole believed that the repeated striking of Warren's head on the mine ceiling and his repetitive bending, stooping, and lifting were substantial contributing factors in his cervical neck and lumbar back injuries. He also blamed Warren's job for his development of carpel tunnel syndrome. Dr. Cole found that Warren was not capable of performing manual labor and that he was not suitable for gainful employment.

As a result of the evaluations, Warren believed he was permanently and totally disabled and filed a workers' compensation claim against KenAmerican

on April 21, 2011. KenAmerican contested the claim, arguing that Warren did not give timely notice, did not establish that his physical complaints were related to his work history, and did not prove he was permanently and totally disabled. The ALJ rejected KenAmerican's arguments and found that Warren was permanently and totally disabled and awarded him benefits. A petition for reconsideration was denied. The Workers' Compensation Board and Court of Appeals affirmed. KenAmerican now files this appeal.

KenAmerican's sole argument is that Warren failed to provide timely notice of his alleged work-related injury. KenAmerican contends that Warren did not provide timely notice because he was aware that his neck pain was caused by hitting his head against the mine roof in June 2007, and pursuant to KRS 342.185, he should have then informed it of a potential claim. KenAmerican points to Warren's following deposition testimony to support its argument:

Q:	And you were working all those hours until the end of April [2009] and you just decided you couldn't do it anymore?
Warren:	Yes, sir. I got where I couldn't go.
Q:	Tell me why you couldn't go.
Warren:	Well, I was just in a lot of pain and both arms were going numb, neck was hurting all the time, kept hitting the top all the time, right leg would go numb, just a lot of pain.
. . .	
Q:	Somewhere in these medical records they refer to a MRI of your neck that was done in 2009 but they compared it to one done in June of 2007. Why did they do that one back in 2007, same thing, neck pain, that kind of stuff?
Warren:	Yes, yeah.
. . .	

Q: So when he started writing, whoever it was, either Dr. Tuttle or Dr. Mills, started writing this prescription [for pain medication], did he tell you you are getting beat up from hitting the mine roof over and over?
Warren: Yes, sir.
Q: You knew that's what it was?
Warren: Yes, sir.
Q: But he confirmed that?
Warren: Yes, sir.
. . .
Q: So you probably had some conversation with either Dr. Tuttle or Dr. Mills and described to him how you were banging your head against [the mine roof]?
Warren: Yes, sir.
Q: And he told you well, that's what's causing your neck pain. Does that sound right?
Warren: That sounds right.
. . .
Q: Okay. And that would have been a year or two before you stopped working in April of 2009?
Warren: Sounds right.

KRS 342.185 states that, ". . . no proceeding under this chapter for compensation for an injury or death shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable after the happening thereof." However, in the case of cumulative trauma, the point at which a worker is obliged to provide notice is more difficult to determine because the injury can occur over a long period of time. In *Hill*, 65 S.W.3d 503, we held that a worker was not required to self-diagnose a harmful change to his body as a work-related gradual injury for the purpose of giving notice. Instead, a worker is obliged to provide notice when he develops "knowledge of the harmful change and its cause rather than the specific incidents of trauma that caused it." *Brown*, 142 S.W.3d at 148. This generally happens when a

"physician informs the worker that the cause of the condition is work-related." *General Elec. Co. v. Turpen*, 245 S.W.3d 781, 784 (Ky. App. 2006).

There is insufficient evidence in the record to support KenAmerican's argument that Warren should have provided notice in 2007. While Warren admitted in his deposition that his doctor told him that hitting the mine roof was the cause of his neck pain and he underwent a MRI at that time, there is nothing in the record to indicate that the doctor diagnosed Warren with a work-related injury or disability. Instead, the doctor treated Warren's pain with medication and did not tell him to stop working at the mine. Warren actually believed he was free to return to work and only truly learned of his severe cumulative injuries after he quit in 2009. After he was told his injuries were work-related, he timely provided notice to KenAmerican by letter dated July 8, 2009.

For the reasons set forth above, we affirm the decision of the Court of Appeals.

All sitting. Minton, C.J.; Abramson, Cunningham, Noble, Scott, and Venters, JJ., concur. Keller, J., concurs in result only.

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