

RENDERED: SEPTEMBER 5, 2003; 10:00 A.M.
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2003-CA-000150-WC

WILMA LEE COMBS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-01-00740

MID-SOUTH ELECTRONICS, INC.;
HON. ROGER D. RIGGS, ADMINISTRATIVE
LAW JUDGE; AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION

REVERSING AND REMANDING

** **

BEFORE: BAKER, GUIDUGLI AND PAISLEY, JUDGES.

PAISLEY, JUDGE. This is an appeal from a decision of the
Workers' Compensation Board which reversed an administrative law
judge's finding that appellant's disability became manifest in
2000. The board instead found that the disability manifested in

1998, with the result that appellant's claim was substantially time-barred. For the following reasons, we reverse and remand.

In 1993, appellant began working for appellee as an assembly line worker, which required that she perform various repetitive tasks on a daily basis. That same year, appellant sustained an injury to her right wrist that both she and appellee's company doctor attributed to her work. Thereafter, appellant began experiencing chronic problems associated with her right wrist, arm, and shoulder, for which she continued to see the company doctor on a regular basis. Though appellant's pain and discomfort continued, she experienced no significant changes in her condition until June 1998, when she felt as though her shoulder was "going out" while using a paint gun at work. In October 1998, appellant began seeing Dr. Walter Downey, who diagnosed her with bursitis of the right shoulder and advised her to engage in only light duty activities at work. Although appellant was in constant pain, she continued to work until June 2000, when she developed severe headaches and neck pain in addition to her other symptoms. Based upon the advice of yet another doctor, appellant took a period of leave from work. She returned in October 2000, but because of her increasing bouts with pain, she permanently ceased working for appellee on October 11, 2000.

Appellant continued to see various physicians including Dr. John Gilbert, a neurosurgeon, who examined her in August 2000. Based on this examination and the results of a prior MRI, Gilbert diagnosed appellant as having cervical strain, aggravation of cervical kyphosis, cervical nerve root injury syndrome, cervical muscle spasms, numbness, tingling and neck pain. Gilbert also concluded that appellant's condition resulted from her employment with appellee, and he assigned her a 22% impairment rating.

Appellant filed her application for resolution of injury claim on June 6, 2001. Although the ALJ initially awarded appellant temporary total benefits upon finding that she "suffers from permanent impairment as a result of her repetitive work activities," the board partially vacated and remanded that decision with directions that the ALJ determine the date of appellant's manifestation of disability. The ALJ subsequently found that appellant's disability manifested itself in June 2000. Once again, however, the board reversed the ALJ, finding instead that appellant's disability manifested itself in 1998, with the result that it was substantially time-barred. This appeal followed.

There is no dispute that appellant's injuries amount to a compensable work-related disability if her claim was filed within the applicable two-year statute of limitations provided

by KRS 342.185. In dealing with a work-related disability that has arisen as a result of cumulative trauma, a determination of the manifestation of disability date is critical. Manifestation of disability is defined as the "manifestation of physically and/or occupationally disabling symptoms that lead a worker to learn that she has sustained a work-related injury." Holbrook v. Lexmark International Group, Inc., Ky., 65 S.W.3d 908, 911 (2001) (citing Alcan Foil Products v. Huff, Ky., 2 S.W.3d 96 (1999)). See also Special Fund v. Clark, Ky., 998 S.W.2d 487, 490 (1999). "Thus, the notice and limitations provisions for a gradual injury are triggered when the worker becomes aware of a gradual injury and knows that it was caused by work." Holbrook, 65 S.W.3d at 911.

Appellant admits that any claim pertaining to her right wrist, arm, and shoulder is barred by the statute of limitations, as it has been more than two years since her injuries to those extremities became apparent and were acknowledged by her as being work related. However, appellant argues that the statute of limitations does not bar her claim relating to her cervical injuries, because she was unaware of any injury to her cervical area until June of 2000, when she began experiencing new symptoms which included intense headaches and severe neck pain.

We first note that on review, an ALJ's findings will not be disturbed unless the board determines that they were clearly erroneous after concluding that the evidence was so overwhelming that it compelled a different result. Eck Miller Transportation Corporation v. Wagers, Ky. App., 833 S.W.2d 854, 858 (1992). KRS 342.285(2) mandates that the "board shall not substitute its judgment for that of the administrative law judge as to the weight of evidence on questions of fact."

Here, the board reversed the ALJ's opinion and order because it concluded that the ALJ utilized the wrong standard to determine the manifestation of disability date. Based on its own application of the correct standard as set forth in Alcan, supra, the board found that appellant's disability became manifest no later than 1998 because at that time she was fully aware that the injuries to her right upper extremities were work-related. We disagree.

It is clear from the ALJ's opinion and order dated August 2, 2002, that the ALJ was fully aware of the correct standard. The ALJ cited Alcan, as well as Holbrook, which recently added further clarification to the method for determining the date upon which a gradual disability becomes manifest. The ALJ specifically stated that

[t]he Supreme Court refined the definition of "manifestation" in [Holbrook] wherein it stated that with a "gradual" injury notice

and limitations are triggered when (1) the worker becomes aware of a gradual injury and (2) the worker knows that it was caused by work.

Using this standard, the ALJ based his findings upon substantial evidence which was presented by appellant to prove the timeliness of her claim for compensation of her cervical injuries. More specifically, the record reflects that appellant did not complain to her doctors about neck pain until 2000, and she was not diagnosed with a gradual work-related cervical injury until August 2000. Prior to that time, appellant's only diagnosis was chronic bursitis, which was benign in comparison to the later cervical injury. Simply stated, the record reflects that appellant believed that she suffered from chronic bursitis of her arm, wrist and shoulder caused by work. There is, however, no evidence that either she or her many doctors had any earlier indication that she was suffering from a progressive work-related cervical injury. Certainly, appellant was not required to engage in self-diagnosis. Hill v. Sextet Mining Corporation, Ky., 65 S.W.3d 503, 507 (2001). Therefore, substantial evidence supported the ALJ's conclusion that although appellant knew of the injuries to her right upper extremities, she had no reason to know that she had suffered a cervical injury until she began experiencing new and different symptoms in June 2000.

As we believe that the ALJ used the correct standard in reaching his findings, and that those findings were supported by substantial evidence, the board's decision is reversed and this matter is remanded with directions that the board reinstate the opinion and order of the ALJ.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE, Mid-South
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