

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000152-WC

EDITH PARSONS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-01-00554

CUMBERLAND GAP PROVISIONS;
HONORABLE JAMES L. KERR,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

REVERSING AND REMANDING

** ** *

BEFORE: JOHNSON, SCHRODER, AND TACKETT, JUDGES.

SCHRODER, JUDGE. This is a petition for review from a decision of the Workers' Compensation Board (the Board) affirming a ruling of the Administrative Law Judge (ALJ) that the statute of limitations had run on a portion of the employee's injury claim. We reverse and remand.

Claimant Edith Parsons (Parsons) began working for Cumberland Gap Provisions (Cumberland Gap), a pork-processing

plant, in 1979. She has been continuously employed by Cumberland Gap, except for a short time when she was a self-employed tanning salon operator. All of Parsons' jobs for Cumberland Gap involved high volume work that included lifting and manipulating hams and repetitive use of knives.

Parsons filed a workers' compensation claim on April 24, 2001, alleging injuries to her back, right leg/knee, neck, both shoulders, arms, and bilateral carpal tunnel syndrome due to cumulative trauma. On June 14, 2002, the ALJ entered an opinion, finding that Parsons had a 14% impairment attributable to the carpal tunnel syndrome. The ALJ attributed all of Parsons' cumulative trauma condition to her employment with Cumberland Gap. However, the ALJ found that Parsons was aware that she had sustained a work-related injury on May 28, 1996, which was not tolled by her continued employment. Therefore, the ALJ determined that Parsons could only be compensated for the occupational disability attributed to repetitive trauma to her hands and wrist for the two-year period beginning April 24, 1999, forward. Parsons was awarded the sum of \$12.06 per week.

Parsons and Cumberland Gap filed cross petitions for reconsideration. The ALJ denied Parsons' petition but granted Cumberland Gap's petition, and recalculated the award based on the fact that Parsons was still employed by Cumberland Gap. The ALJ awarded Parsons \$3.01 per week.

Parsons appealed to the Board. The Board affirmed the opinion and award in an opinion rendered on December 21, 2002. The Board believed there was substantial evidence to support the ALJ's finding that Parsons discovered an injury in 1996, which was work related.

The evidence relied upon by the ALJ is as follows:

The Administrative Law Judge finds it significant that plaintiff first developed symptoms in both wrists and hands around May 28, 1996 while trimming hams and she testified in her deposition that her symptoms have never gone away since that time. Proof of plaintiff's continued symptoms comes from the April 9, 1998 medical record of Dr. Carlson who noted plaintiff's complaints of bilateral hand pain. It is further noted that a first report of injury was completed on May 30, 1996 alleging a date of an occurrence of May 28, 1996.

The ALJ concluded:

It is apparent to the undersigned and the undersigned so finds that the plaintiff was aware that she had sustained a work-related injury at that date both from a lay and medical standpoint.

In denying the petition for reconsideration, the ALJ stated:

The simple fact is that plaintiff filed a first report of injury for her symptoms in May of 1996 which is sufficient to the undersigned to be convinced that plaintiff understood her symptoms were related to her work.

On review, the Board cited the following evidence in support of the ALJ's findings:

Parson's own testimony indicates her condition did not improve but worsened following the 1996 injury. The history received by Dr. Carlson also notes a worsening in her condition. Dr. Carlson diagnosed carpal tunnel syndrome and told Parsons of his diagnosis. Parsons had sufficient knowledge of a work-related injury as reflected by her reporting of the injury in 1996.

The Board concluded as follows:

We believe the report from Dr. Carlson, which formed part of the basis for the ALJ's conclusion, is substantial evidence to establish Parsons was aware of a work-related injury. In her testimony, Parsons attempted to discredit Dr. Carlson's opinion since he had not performed EMG/NCV studies, but she acknowledged Dr. Carlson had conveyed the diagnosis of carpal tunnel syndrome to her. Dr. Carlson based his opinion on the physical examination which revealed equivocal Tinnel's and Phalen's signs that he apparently felt sufficient to arrive at a diagnosis.

Parsons argues that, while she did have left hand and wrist pain in 1996, no EMG studies were performed until September 1999 and she was not advised until then that carpal tunnel syndrome was a repetitive motion injury and was caused by her employment. Parsons did admit that Dr. Carlson told her of the carpal tunnel syndrome but stated that he did not explain what it was or that it was work related. Parsons cites Hill v. Sextet Mining Corp., Ky., 65 S.W.3d 503 (2001), for the proposition that she was not required to self-diagnose. We have reviewed the record, especially the April 9, 1998, report of Dr. Carlson to which the ALJ and Board referred. We agree with

Parsons that, based on the holding in Hill, she did not have knowledge of a work-related injury until September 1999.

In Hill the Kentucky Supreme Court addressed the issue of when a claimant has knowledge of a work-related injury sufficient to trigger the running of the statute of limitations in a cumulative injury claim. In Hill, the claimant was aware of symptoms and even associated the symptoms with his work long before he was evaluated by a doctor. The claimant even sought medical treatment after specific incidents of cervical trauma. The claimant in Hill was even treated by physicians over the years who encouraged him to quit working in the coal mines and told him that the work was too stressful. However, the determinative factor for the Court in Hill was that there was no evidence that any of the doctors ever informed the claimant that he had a work-related gradual injury and that his work was gradually causing harmful changes to his spine that were permanent. Id. at 507. Hill holds that, in a cumulative trauma case, “[m]edical causation is a matter for the medical experts” and, therefore, a claimant is not required to self-diagnose the cause of his symptoms. Id.

We believe the facts in the case sub judice are indistinguishable from the facts in Hill. Parsons suffered pain in her hands over a period of years. The evidence establishes that she discussed the pain in her hands with Dr. Carlson on April 9, 1998. We believe it is significant that Dr. Carlson

stated in his report that, "Her hand exam reveals good ROM with mild osteoarthritis. Phalen's and Tinel's signs are equivocal." Equivocal means, "Having a double or several meanings or senses. Synonymous with "ambiguous"." BLACK'S LAW DICTIONARY 542 (6th ed. 1990).

In his report, Dr. Carlson states that his "IMPRESSION" is (1) Cervical strain, chronic; (2) Shoulder pain, chronic; (3) Intermittent carpal tunnel syndrome. The "DISPOSITION" then states:

Tylenol for pain. She can continue to work. She is unable to take NSAIDS because of gastric distress. She will continue her job as a meat trimmer at Cumberland Gap Provisions in Middlesboro [sic]. I will be happy to see her back in the future if her symptoms do not improve. We will be more aggressive with our work-up and possible care in the future, but at this time I think she is doing quite well given her age and job requirements.

The function of our review "is to correct the Board only where the Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice." Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685, 687-688 (1992). We believe the ALJ and the Board committed an error in assessing the evidence so flagrant as to cause gross injustice, in light of the holding in Hill. First, this Court is not convinced that Dr. Carlson actually made a diagnosis of carpal tunnel syndrome, in that the signs were ambiguous at

best. However, it is within the sole discretion of the ALJ to draw all reasonable inferences from the evidence. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). We cannot substitute our judgment in that regard. Nevertheless, there is simply no evidence that Dr. Carlson told Parsons that she had a work-related injury that was gradually causing her permanent injury. In fact, the "disposition" seems to contraindicate that conclusion, in that Parsons was told to continue her work at Cumberland Gap and that "she was doing quite well . . . given her job requirements." It is undisputed that Parsons was not informed by a physician of the true nature of her injury or that it was work related, until September 1999. Both the Board and the ALJ relied upon the first report of injury to conclude that Parsons had knowledge of the causation of her symptoms. To make that conclusion ignores the holding in Hill. Parsons was not required to self-diagnose that her work was causing her injury.

Based on Hill, the Court is of the opinion that Parsons' claim was timely filed and it was error for the ALJ to determine otherwise. As such, we reverse and remand to the ALJ for a decision on the merits.

ALL CONCUR.

BRIEF FOR APPELLANT:

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