

RENDERED: AUGUST 19, 2005; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2005-CA-000225-WC

AK STEEL CORPORATION

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
CLAIM NO. WC-04-00277

WILLIAM HANDLEY; HON. JAMES L. KERR,  
ADMINISTRATIVE LAW JUDGE; AND WORKERS'  
COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: TACKETT AND TAYLOR, JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>1</sup>

HUDDLESTON, SENIOR JUDGE: On February 20, 2002, William Handley retired from AK Steel Corporation. For some thirty-eight years, while working for AK Steel and its predecessors, Handley was constantly exposed to industrial noise. On January 22, 2004, Handley was examined by Dr. Charles Hieronymus, who opined that Handley's hearing loss was caused by exposure to noise while at

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<sup>1</sup> Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

work. On February 5, 2004, Handley filed a cumulative trauma claim for occupational hearing loss.

At final hearing, Handley testified that he was aware in 1995 that he was suffering from hearing loss, and he admitted that in that same year a company nurse told him, "[Y]ou're going to be deaf the way you're going." Handley also acknowledged that, on September 25, 1995, his former attorney sent a letter to AK Steel that contained the following paragraph:

Mr. Handley has also learned that he has developed the occupational disease of hearing loss as a result of his exposure to various noises while he was in your employ. Please let this letter serve as his further notice to you following the development of this lung disease and hearing loss.

Based on the September 25<sup>th</sup> letter, the Administrative Law Judge found that Handley knew by September 25, 1995, that his hearing loss was work-related and that the letter constituted notice to AK Steel. Thus, the two-year statute of limitations, Kentucky Revised Statutes (KRS) 342.185, began to run as of that date. The ALJ dismissed Handley's claim concluding it was filed too late.

Handley appealed to the Workers' Compensation Board. The Board vacated the ALJ's decision and remanded the matter for the ALJ to reconsider when Handley was first informed by a physician or expert in medical causation that his hearing loss was work-related. Contending that the Board misconstrued the

law, AK Steel has petitioned this Court seeking review of the Board's decision.

AK Steel argues that the Board erred because the ALJ had correctly applied the two-year statute of limitations, KRS 342.185, and his decision is supported by substantial evidence. AK Steel maintains that not only did Handley admit that he had been diagnosed by a company nurse with work-related hearing loss in 1995, but also, in the September 25<sup>th</sup> letter, Handley's former attorney stated that Handley had "learned that he has developed the occupational disease of hearing loss[.]" This proves, AK Steel argues, that Handley actually knew in 1995 that his hearing loss was work-related, and that knowledge triggered the statute of limitations. Thus, AK Steel reasons Handley's claim was properly dismissed by the ALJ as barred by the statute of limitations.

When reviewing the Board's decisions, we only reverse if the Board has overlooked or misconstrued controlling law or has so flagrantly erred in evaluating the evidence that its decision has resulted in a gross injustice.<sup>2</sup>

Since a work-related cumulative trauma often occurs gradually and unnoticeably, an employee is not required to give notice to his employer, which triggers the running of the statute of limitations, until he has learned that he has

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<sup>2</sup> Daniel v. Armco Steel Co., 913 S.W.2d 797, 798 (Ky. App. 1995).

suffered harm and learned the cause.<sup>3</sup> An employee has actual knowledge regarding causation only after he has received a diagnosis from a physician that the trauma is work-related.<sup>4</sup>

AK Steel asserts that the September 25<sup>th</sup> letter from Handley's attorney is substantial evidence that Handley had actual knowledge that his hearing loss was work-related. But, as the Board stated in its opinion,

[w]e are aware of no authority that written notice from an attorney is more legally significant than actual notice by the injured worker. An attorney is not a physician or an expert on medical causation. Absent a medical diagnosis of work-related causation, neither the subjective beliefs of a worker [nor] his attorney trigger the obligation to give notice. While earlier notice under some circumstances might be prudent, the law does not require notice until suspicions of work-relatedness are confirmed by a physician. In any event, the statute of limitations does not necessarily begin to run on the date notice is given. The date a worker becomes aware his injury is work-related is the event that triggers both notice and the statute of limitations.

Absent proof of a contemporaneous medical diagnosis, the September 25<sup>th</sup> letter is nothing more than evidence of Handley's suspicion that his hearing loss was work-related. And, as the record demonstrates, Handley first learned that his hearing loss

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<sup>3</sup> American Printing House For The Blind v. Brown, 142 S.W.3d 145, 148 (Ky. 2004). See also Hill v. Sextet Mining Corporation, 65 S.W.3d 503, 507 (Ky. 2001).

<sup>4</sup> American Printing House For The Blind, supra, note 3, at 148.

was work-related when he was so informed by Dr. Hieronymus on January 22, 2004.

Inasmuch as the Workers' Compensation Board neither misconstrued controlling law nor erred in its evaluation of the evidence, its decision is affirmed.

ALL CONCUR.

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