OPINION ENTERED: May 24, 2012

CLAIM NO. 200698576

CENTRAL SERVICE, INC. PETITIONER

VS. **APPEAL FROM HON. JEANIE OWEN MILLER, ADMINISTRATIVE LAW JUDGE**

MARY ANN YARBROUGH
and HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART, AND
VACATING AND REMANDING
* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and SMITH, Members.

STIVERS, Member. Central Service, Inc. ("Central Service") seeks review of the December 2, 2011, opinion, order, and award rendered by Hon. Jeanie Owen Miller, Administrative Law Judge ("ALJ") finding Mary Ann Yarbrough ("Yarbrough") sustained work-related injuries to her wrists and hands and awarding temporary total disability ("TTD") benefits,

permanent partial disability ("PPD") benefits enhanced by the three multiplier pursuant to KRS 342.730(1)(c)1, and medical benefits. Central Service also appeals from the December 29, 2011, order overruling its petition for reconsideration.

Yarbrough's Form 101 filed December 7, 2009, alleges on October 3, 2005, she sustained injuries to her wrists and hands while working for Central Service due to the "repetitive use of wrists and hands." The Form 101 indicates Yarbrough gave notice of the injury to her employer on October 13, 2005.

During the pendency of the claim, Central Service maintained Yarbrough was aware in 1999 or 2000, when seen by Dr. John E. Grubbs, she had carpal tunnel syndrome which was work-related. Therefore, Central Service argued she was required to provide notice of her injury in 1999 or 2000. There is no dispute notice was not given during that time period. Before the ALJ, Central Service argued when Yarbrough was advised by Dr. Grubbs she had carpal tunnel syndrome and she knew then her condition was work-related, she had an obligation to provide notice to her employer of

that cumulative trauma injury and file a workers' compensation claim within two years.[1]

In the December 2, 2011, opinion, order, and award, the ALJ concluded, in relevant part, as follows:

> 2. **Notice/statute of limitations.**
>
> In a workers' compensation claim alleging a cumulative trauma injury, notice is required and the statute of limitations begins to run when a worker 'discovers that a physical disabling injury has been sustained and knows that it is caused by work.' Alcan Foil Products vs. Huff, 2 SW3d 96 (Ky. 1999); Special Fund vs. Clark, 998 SW2d 487 (Ky. 1999). The manifestation date is not necessarily controlled by the date of last employment.
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> In Special Fund vs. Clark, *supra*, the Supreme Court modified Alcan to a degree, holding that an employee is entitled to recover benefits for that portion of disability which occurred in the two years preceding the filing of the claim. In the case of Bruit vs. Southeastern Kentucky Rehabilitation Industries 156 SW3d 276 (Ky. 2005) the Kentucky Supreme Court noted:
>
>> [T]his manifestation of disability date is a fact intensive determination by the fact finder based upon the particular circumstances in each case… [A]n ALJ is authorized to conclude, if supported by the evidence of

[1] Yarbrough testified Dr. Grubbs told her she had carpal tunnel syndrome. She did not testify he told her the condition was work-related. However, Yarbrough testified when Dr. Grubbs told her she had carpal tunnel syndrome she knew then the condition was work-related.

> record, that a disability could manifest on the date the claimant seeks treatment and is informed on that occasion that her condition is related to her work.

However, the Brummitt, *supra*, case, as well as the subsequent case of Johnson vs. Bluegrass Cooperage, 2006-SC-0340-WC (Ky. 2007), requires the ALJ to apply the holding in Special Fund vs. Clark, 998 SW2d 487 (Ky. 1999) and 'consider the effect of work performed within the two-year period before each claim was filed.' This ALJ is charged thereby with determining: (1)whether the claimant sustained repetitive or cumulative trauma from work performed within the two-year period before the application was filed; (2) and whether it caused a harmful change in her wrists and hands and (3) whether such a change entitled her to any benefits.

The Defendant/employer argues that the statute of limitations had expired because Plaintiff knew she suffered from carpal tunnel as early as 1999 when Dr. Grubbs conducted a NVC and EMG and informed her of the diagnosis. He also prescribed night splits for her use. However, the Plaintiff stated Dr. Grubbs was treating her for migraine headaches and that the carpal tunnel diagnosis was inconsequential to her treatment by Dr. Grubbs. Dr. Grubbs' records seem to corroborate Plaintiff's version of events. The Plaintiff apparently missed no work for carpal tunnel and received no medical treatment for that condition until she began treating with Dr. Stodghill in October 2005.

The Plaintiff's treatment for bilateral carpal tunnel and trigger

> fingers/thumb was aggressive and involved a series of six surgeries. This surgical and medical treatment lasted from 2005 until 2008. Indeed, when Dr. Stodghill last saw Plaintiff in August of 2008, she was still suffering from 'locking' of her middle left finger for which he suggested another surgery. Plaintiff and her 'second opinion' doctor, Dr. Patel, together determined she had had enough surgeries and declined additional surgery. Plaintiff last worked in November of 2007 (at the time of her last surgery) and then was laid off by the Defendant/employer in January 2008. Almost ten months after her last surgery, her treating surgeon wanted to perform yet another surgery on her.
>
> After considering all of the evidence, I find that: (1) the Plaintiff sustained repetitive or cumulative trauma from work performed within the two-year period before the cessation of voluntary payments of temporary total disability for this condition – that being stipulated as January 2, 2008 – (with her application being filed on December 7, 2009); (2) that it caused a harmful change in her bilateral wrists and hand, including her fingers and thumbs; and (3) that the harmful change entitles her to benefits. For these findings I rely upon the stipulations, the testimony of the Plaintiff, the medical evidence including the opinion of Dr. Stodghill.

Relying upon Dr. Stodghill's opinion that Yarbrough's cumulative trauma injury was work-related and the impairment rating assessed by Dr. Richard DuBou, the ALJ found Yarbrough had a 1% impairment. The ALJ also

determined Yarbrough lacked the capacity to return to the work she performed on the date of the injury and enhanced her benefits pursuant to KRS 342.730(1)(c)1. The ALJ awarded previously paid TTD benefits, PPD benefits for 425 weeks, medical benefits, and directed Yarbrough to undergo a vocational rehabilitation evaluation.

Central Service filed a petition for reconsideration asserting the ALJ did not sufficiently address the statute of limitations defense and made no finding as to date of manifestation of the injury. It noted the ALJ found Yarbrough had sustained a repetitive cumulative trauma within the two-year period before the cessation of the voluntary payment of TTD benefits. Central Service sought a "more definite pronouncement of the date of 'manifestation of disability.'" Further, Central Service asserted Yarbrough filed her claim on December 7, 2009, and her last day of work was in November, 2007, more than two years prior to the filing of the claim. It asserted the filing of the claim begins the analysis of whether the claimant suffered additional repetitive trauma within two years of the filing date. Since Yarbrough stopped working for Central Service in November 2007, her claim should have been filed by November 1, 2009, in order for her to be entitled to benefits. Since Yarbrough failed

to file her claim within that period, Central Service argued her claim should be dismissed.

On December 29, 2011, the ALJ overruled Central Service's petition for reconsideration reasoning as follows:

> . . .
>
> The Defendant/Employer avers an error regarding the analysis of the issues of the statute of limitations and notice in this claim. The defendant's inquiry regarding the timeliness of notice to the defendant is adequately considered and decided in the Opinion and Award, incorporating the dictates of Special Fund vs. Clark, 998 SW2d487 (Ky. 1999).
>
> Perhaps what is not clearly set out in the Opinion and Award is the undersigned's reliance and incorporation of the **stipulations** of the parties in the Findings of Fact. Attention is directed to the first finding of fact: **'The facts as stipulated by the parties.'** (Page 9 of the Opinion and Award). The pertinent stipulation of the parties is restated in the Opinion and Award as follows:
>
>> 5. Temporary total disability benefits were paid at the rate of 190.56 per week from December 15, 2005 through April 9, 2006; and again from February 14 through February 17 of 2007; and again from November 21, 2007 through December 21, 2007; and again from December 22, 2007 through January 2, 2008; for a total of $4,330.54.

> The period of payment(s) of voluntary TTD income benefits commenced on December 15, 2005 and continued with interim periods of payment(s) through January 2, 2008. There was never a two year period between those successive payments. Therefore, Plaintiffs [sic] window in which she was required to file her Application for Adjustment of Claim had not expired when she filed her claim on December 7, 209. See KRS 342.185(1).
>
> I find no error in the remainder of the findings within the Opinion and Award, therefore, the Defendant/Employer's Petition for Reconsideration is **DENIED**.

On appeal, Central Service cites Special Fund v. Clark, 998 S.W.2d 487, 490 (Ky. 1999), for the proposition that the manifestation of a cumulative trauma condition must be determined by the date of the communication of a work-related condition from a physician. In this case, Central Service asserts the evidence regarding when Yarbrough discovered she had a work-related cumulative trauma injury to her hands was in 1999 following an EMG study ordered by Dr. Grubbs. Central Service cites to Yarbrough's testimony indicating the first time she realized her hands hurt because of work activities, and not arthritis, was when Dr. Grubbs diagnosed carpal tunnel syndrome. Since Yarbrough testified she knew what caused her carpal tunnel syndrome, Central Service submits the

date of manifestation of Yarbrough's occupational disability is November 1999. Central Service maintains it requested a specific finding from the ALJ regarding this issue which the ALJ failed to do. It posits without a finding as to the date of manifestation of disability, "there seems to be little way to address the remaining issues relative to cumulative claim." Central Service argues the fact Dr. Grubbs was primarily treating Yarbrough for migraines and Yarbrough missed no work after receiving Dr. Grubbs' diagnosis is inconsequential. Central Service posits Yarbrough could give no reason for the six year delay in providing notice to her employer, and the failure to provide notice for six years is not practicable.

Central Service cites Johnson v. Bluegrass Cooperage, 2006-SC-0340-WC, Designated Not To Be Published, for the proposition the ALJ must determine whether the claimant sustained repetitive or cumulative trauma from work performed within the two-year period before the Form 101 was filed. In addition, the ALJ must also determine whether the cumulative trauma caused a harmful change and whether such a change entitles the claimant to any benefits.

Central Service also maintains in Special Fund v. Clark, supra, the Supreme Court held when a claim is not

filed within two years after a gradual injury manifests, KRS 342.185 bars compensation for harmful changes due to trauma incurred more than two years before a claim is filed. Thus, only harmful changes which are due to trauma incurred within the two year period prior to filing of the claim are compensable. In this case, Yarbrough filed her claim on December 7, 2009; therefore, only harmful changes due to trauma which were incurred between December 7, 2007, and December 7, 2009, are potentially compensable. It asserts Yarbrough was taken off work following a trigger release surgery performed on November 21, 2007, and was released to return to work on January 2, 2008. When Yarbrough attempted to return to work on January 2, 2008, she was laid off. Accordingly, Yarbrough did not work for Central Service between December 7, 2007, and December 7, 2009, and therefore could not have suffered cumulative trauma. Accordingly, the ALJ's determination Yarbrough's claim was filed within two years of the cessation of voluntarily paid TTD benefits is error.

Again, citing Johnson v. Bluegrass Cooperage, supra, Central Service posits the payment of voluntarily paid TTD benefits "will not revive an expired period of limitations." Since Yarbrough was diagnosed with carpal tunnel syndrome in 1999 and testified she knew it was work-

related, the statute of limitations had run by the time she informed her employer of the diagnosis in October 2005. Thus, the voluntarily payments of TTD benefits after that date do not revive the claim. The fact Yarbrough continued to work does not change the fact she was diagnosed by Dr. Grubbs with bilateral carpal tunnel syndrome in 1999, which Yarbrough knew was work-related.

Concerning the issue on appeal, during her February 16, 2010, deposition regarding her treatment and conversation with Dr. Grubbs, Yarbrough testified as follows:

> Q: Had you seen any doctor for anything with your hands prior to – prior to October of 2005?
>
> A: No and yes. I had a neurologist, Dr. Grubbs.
>
> He – and why he did this – he did a test on me, and I didn't know what it was for. And he said you've got carpal tunnel. And I didn't act ugly. I felt like acting ugly. Because I was there at the man for migraines. And, you know, he did a test without explaining to me why he even did that. (Indicating.) (Shaking head in the negative.)
>
> Q: And when – when was that?
>
> A: I don't know. I'd have to get you that information. (Nodding head in the positive.) It was years.
>
> Q: Years?

> A: Couple of years. Two or three years.
>
> Q: Did you – did – did you ask him anything more about that; about the test that he did, why he did it?
>
> A: (Shaking head in the negative.) No. He's – he wasn't somebody —- I fired him, basically.
>
> Q: You chose not to seek his services any longer?
>
> A: He's an idiot. (Nodding head in the positive.)

Yarbrough testified after performing the test, Dr. Grubbs told her she had carpal tunnel syndrome in both hands. Yarbrough stated she then purchased "the neutral" which is a glove-like device with a metal shank designed to hold the wrist in a neutral position. She testified she wore this glove when she slept. Yarbrough stated she did not remember asking Dr. Grubbs why she had carpal tunnel syndrome or why he ran the test for carpal tunnel syndrome. She stated the sole purpose for seeking treatment with Dr. Grubbs was for migraine headaches. With respect to whether she attempted to determine the cause of the carpal tunnel syndrome, Yarbrough testified as follows:

> Q: But you didn't follow up with them as to what the cause was or if you needed to do anything because of that?
>
> A: Well, I knew what caused carpal tunnel. I just . . . (Shaking head in

> the negative.) Several people, you know, at work that had left work eventually had it. But I didn't know – I guess put two and two together with it. (Shaking head in the negative.) Like I said, if you do something and your hands hurt, oh, I did this to make my hands hurt.
>
> Q: So you knew that the type of work that you were doing could contribute to carpal tunnel?
>
> A: After.
>
> Q: You – you didn't know at the time?
>
> A: I didn't – like I said, I didn't – I didn't think of it like that. (Shaking head in the negative.) I just assumed it was arthritis, like my parents and my grandparents and everything. (Nodding head in the positive.) And I guess that's the first time it really dawned on me that I had – when he said that.
>
> Q: When it dawned on you? When—
>
> A: That it was carpal tunnel and not arthritis.
>
> Q: When you were told by Dr. Grubbs' office –
>
> A: Yes.
>
> Q: --in '99?
>
> A: Yeah.

Yarbrough testified that in October 2005 she saw Dr. Burton Stodghill, and at that time he told her she had carpal tunnel syndrome. Yarbrough acknowledged she

explained to Dr. Stodghill the type of telephone repair work she performed. She also acknowledged that since 1998 she had problems with numbness and tingling in her thumb, index, middle, and ring fingers in both hands. She also admitted she told Dr. Stodghill her problems were related to her activities at work. In fact, she took a "pay phone handle" to Dr. Stodghill as "an example of [her] work." Yarbrough's October 14, 2011, hearing testimony mirrors her deposition testimony.

Significantly, during her deposition and at the hearing, Yarbrough did not testify Dr. Grubbs ever advised her that her carpal tunnel condition was work-related. Further, Dr. Grubbs' records do not reflect he advised Yarbrough the bilateral carpal tunnel was work-related. His record contains the neurophysiology report regarding NCV and EMG tests performed on November 16, 1999. The words "carpal tunnel" do not appear in the report. Dr. Grubbs' notes reflect he first saw Yarbrough on February 8, 2000. At that time, he indicated Yarbrough was doing well with her migraines experiencing only two in the previous month but six in December. Dr. Grubbs indicated Yarbrough had taken "a month's worth of Vioxx and her carpal tunnel situation is stable." His impression was as follows: "Carpal tunnel plus common migraines, stable at this time."

Dr. Grubbs' March 1, 2000, April 4, 2000, October 10, 2000, and November 15 and 16, 2000, notes do not mention carpal tunnel syndrome.

Dr. Stodghill's records reflect he initially saw Yarbrough on October 12, 2005, for complaints of "bilateral hand numbness and tingling." He noted Yarbrough provided a history of doing "very fine" telephone repair work which included feeding very small wires into very small metal casings for pay phone handsets. Yarbrough was having problems with numbness and tingling in her thumb, index, middle, and ring fingers bilaterally. Yarbrough had taken multiple non-steroidal anti-inflammatory medication with minimal relief in her symptoms, and her symptoms have gradually worsened. She wore splints for quite some time which did not help her symptoms. Yarbrough complained she keeps getting worse. She wakes up at night and has to shake her hands to make them feel better. Dr. Stodghill's assessment was bilateral carpal tunnel syndrome currently left greater than right. He noted Yarbrough failed appropriate conservative management and wished to proceed with carpal tunnel release.

The December 15, 2005, "surgicare report" reflects a diagnosis of carpal tunnel syndrome and a left open carpal tunnel release procedure was performed. When

Yarbrough was seen on December 29, 2005, Dr. Stodghill indicated she also had right carpal tunnel syndrome and wanted to schedule a right carpal tunnel release. The January 19, 2006, surgicare report reflects a diagnosis of right carpal tunnel syndrome and right trigger thumb. On that date, Dr. Stodghill performed right open carpal tunnel release and injected the right trigger thumb. On February 2, 2006, Dr. Stodghill noted Yarbrough was not having any problems in either hand after undergoing carpal tunnel release of both hands. He noted the right thumb was still triggering but not nearly as much. The left trigger thumb was still a problem. At that time, the assessment was status post bilateral carpal tunnel release and bilateral trigger thumb status post injection on the right thumb with left trigger thumb. At Yarbrough's request, Dr. Stodghill injected the left trigger finger.

On March 2, 2006, Dr. Stodghill noted the carpal tunnel syndrome has resolved completely and Yarbrough was not having any more problems with numbness and tingling in her hands. On March 30, 2006, Dr. Stodghill noted Yarbrough was still experiencing trigger thumb and her carpal tunnel syndrome has resolved. On December 13, 2006, Dr. Stodghill noted Yarbrough was still having problems with her trigger thumbs and her carpal tunnel release has

resolved completely. At that time, Yarbrough indicated she wanted to proceed with trigger thumb release. The surgicare report dated January 17, 2007, reflects right trigger thumb release was performed.

Dr. Stodghill's January 31, 2007, note reflects Yarbrough's right trigger thumb resolved completely, but she is still having problems with the left trigger thumb. The February 14, 2007, surgicare report reflects left trigger thumb release was performed.

Dr. Stodghill's October 24, 2007, report reflects he saw Yarbrough for left middle, right middle, and index finger triggering. On that date, Dr. Stodghill assessed left middle trigger finger, right middle trigger finger, and right index trigger finger. Dr. Stodghill stated Yarbrough has a well-documented history of injections not helping, so he scheduled her for trigger finger release. Dr. Stodghill made the observation that "obviously with the fine repetitive work that she does she is going to have problems with swelling of her tendons that is causing her trigger fingers." The November 21, 2007, surgicare report reflects "left middle trigger finger A1 pulley release" was performed. The November 28, 2007, surgicare report reflects right middle and index trigger fingers release was performed.

Dr. Stodghill's May 22, 2008, note reflects Yarbrough was having "increasing problems with bilateral thumbs, bilateral fingers to include development of early Dupuytren's contracture of the middle fingers." She was having no problems with carpal tunnel syndrome.

Dr. Stodghill's July 3, 2008, note reflects he saw Yarbrough for locking of the trigger finger on the middle which has become an increasing problem. He performed an injection in the middle trigger finger on that date. Dr. Stodghill's August 14, 2008, note reflects Yarbrough had no relief from the locking with the injection, and the middle finger on the left is visibly triggering. He recommended middle trigger finger release and indicated Yarbrough was going to think about that and let him know. None of his office notes filed in the record reflect Dr. Stodghill informed Yarbrough the carpal tunnel syndrome and trigger finger problems were work-related.

The only medical record in which Dr. Stodghill provided a diagnosis that Yarbrough's carpal tunnel syndrome and trigger finger problems are work-related is contained in the April 21, 2010, letter. In that letter, after providing a history of Yarbrough's surgical procedures, Dr. Stodghill stated as follows:

> As a result, she has no whole body impairment rating since her symptoms have evidently resolved. Specifically, according to page 495, under the section entitled Carpal Tunnel Syndrome, #3, it states normal sensibility, 2-point discrimination, Semmes-Weinstein monofilament testing, opposition, strength, and nerve conduction studies, there is no objective basis for an impairment rating. Her triggering seems to have resolved. Given the fact that she does fine motor work assembling small parts repetitively, I would think that her work relatedness would be 100% in this case. She would have no restrictions, limitations, and there would obviously be no pre-existing condition.

In summary, Yarbrough's testimony and the records of Drs. Grubbs and Stodghill do not establish Yarbrough was ever advised her carpal tunnel condition is work-related. As pointed out in Hill v. Sextet Mining Corp., 65 S.W.3d 503 (Ky. 2001), Yarbrough was not required to self-diagnose the cause of her pain and recurrent symptoms in her hands, thumbs, and fingers. Since Dr. Grubbs informed Yarbrough of her carpal tunnel syndrome but did not tell her the condition was work-related, the obligation to notify Central Service of a gradual work-related injury and file a claim was not triggered. In American Printing House for the Blind ex rel. Mutual Ins. Corp. of America v. Brown, 142 S.W.3d 145 (Ky. 2004), the Supreme Court stated as follows:

> It is undisputed that the claimant sustained work-related trauma and that harmful changes from the trauma were symptomatic on June 5, 2000. Therefore, she sustained an injury as defined by KRS 342.0011(1) although Chapter 342's notice and limitations provisions were not triggered until she received a medical diagnosis in January, 2001. *See Hill v. Sextet Mining Corp.*, supra. As the Court of Appeals noted, nothing prohibits a worker who thinks she has sustained a work-related gradual injury from reporting it to her employer before the law requires her to do so, and nothing prevents her from reporting an injury that she thinks is work-related before a physician confirms her suspicion.

Id. at 148-149.

Although, Yarbrough was told by two physicians she had carpal tunnel syndrome, the medical records do not reflect she was ever told by a physician that it was work-related. *Until Yarbrough was provided with a medical diagnosis that her carpal tunnel syndrome was work-related, she had no obligation to provide notice to Central Service of a work-related injury.* The opinion of the Court of Appeals in Clintwood Elkhorn Mining Company v. Anderson, 2008-CA-000880-WC, rendered October 3, 2008, Designated Not To Be Published, is directly on point. In that case, Anderson testified a physician previously advised him he had hearing loss, and he knew for years his hearing loss was work-related. However, Anderson never testified a

physician told him his hearing loss was work-related. The ALJ dismissed for failure to give notice but this Board reversed. The Court of Appeals affirmed, holding as follows:

> It is clear from the facts that Anderson knew that he had a work-related hearing loss for a number of years before he reported it to Clintwood. Although Clintwood has argued that Dr. Trivette told Anderson that his hearing loss was work-related, the evidence does not support that position. Anderson testified that Dr. Trivette confirmed that he had a hearing loss; however, he specifically stated that Dr. Trivette did not tell him that his hearing loss was work-related. Therefore, the question on appeal is whether an injured worker's knowledge that he has suffered work-related hearing loss, absent affirmation by a physician, is sufficient to trigger his obligation to notify his employer of that condition.
>
> As noted by the Board,
>
> [m]edical causation is a matter for the medical experts and, therefore, the claimant cannot be expected to have self-diagnosed the cause of the harmful change ... as being a gradual injury versus a specific traumatic event. He was not required to give notice that he had sustained a work-related gradual injury ... until he was informed of that fact. *See Alcan Foil Products v. Huff, 2 S.W.3d 96 (Ky. 1999)*; *Special Fund v. Clark*, Ky., 998 S.W.2d 487 (Ky. 1999).
>
> *Hill v. Sextet Mining Corp., 65 S.W.3d 503, 507 (Ky. 2001).*

Clintwood and Board Member Stivers argue that this case is distinguishable from *Hill v. Sextet Mining* because Anderson testified that he knew his hearing loss was work-related. We disagree. As the Supreme Court of Kentucky noted, Hill "was aware of symptoms in his cervical spine and associated the periodic flare-up of symptoms with his work long before" he was advised that he had suffered cumulative trauma injuries. Furthermore, Hill "sought medical treatment after some specific incidents of cervical trauma," and was advised by his physicians "to quit working in the mines" and "that the work was too stressful." *Id.* at 507. Based on these facts, Hill had at least as much knowledge as Anderson that his condition was related to work. Therefore, rather than being distinguishable, *Hill* is on point with this claim.

Additionally, we note the Supreme Court's Opinion in *American Printing House for the Blind v. Brown*, 142 S.W.3d 145 (Ky. 2004). While working for American Printing House for the Blind, Brown began to experience symptoms of carpal tunnel syndrome. Because she had previously suffered from that condition, she recognized the significance of her symptoms and reported her injury to her employer prior to receiving a definitive diagnosis from a physician. With regard to the duty to give notice, the Supreme Court held that nothing in the law prohibits a claimant from reporting an injury before she receives a definitive diagnosis. However, she is not required to do so until she receives that diagnosis. *Id*. at 148-49.

> Anderson, like Brown, could have notified his employer of his hearing loss claim prior to receiving Dr. Hieronymus's report. However, like Brown, he was not required to do so.
>
> CONCLUSION
>
> Based on the above, we hold that Anderson's belief that his hearing loss was work-related was not sufficient to trigger the notice requirement of KRS 342.185. Pursuant to *Hill v. Sextet and American Printing House for the Blind v. Brown,* Anderson's obligation to provide notice under KRS 342.185 did not arise until he received a diagnosis consistent with his belief from Dr. Hieronymus. Therefore, we affirm the Board.

Slip Op. at 10-12.

Based on the above-language, we hold Yarbrough was not required to give notice of a gradual work-related injury in 2000.

That said, because the ALJ did not make a specific finding as to the manifestation date of the gradual injury and discuss the issue of notice of a gradual work-related injury in the opinion, order, and award or the petition for reconsideration, we remand to the ALJ for a specific finding as to the date of manifestation of the gradual injury and whether notice was timely provided. On remand, the following facts are relevant: 1)Yarbrough first saw Dr. Stodghill on October 12, 2005; 2) Yarbrough alleges

in her Form 101 she gave notice to Central Service on October 13, 2005, which it appears Central Service does not dispute; 3) the first medical record establishing a diagnosis of a work-injury contained in the record is dated April 10, 2010; and 4) as pointed out in in Clint Elkhorn Mining Company, supra, nothing prohibits the claimant from providing notice prior to receiving a definitive diagnosis of a work-related injury from a physician.

We affirm the ALJ's decision regarding the statute of limitations defense. In this case, the earliest the gradual injury became manifest was when Yarbrough was first seen by Dr. Stodghill. However, Yarbrough never testified Dr. Stodghill informed her any of her hand problems were work-related. Likewise, Dr. Stodghill's records do not reflect he ever told Yarbrough her injuries were work-related. Dr. Stodghill's records establish April 21, 2010, as the earliest date of manifestation.

Assuming, *arguendo*, Dr. Stodghill informed Yarbrough on October 12, 2005, the date he first treated her, that her bilateral hand problems were due to work-related carpal tunnel, the gradual injury would become manifest on that date. Thus, absent the payment of TTD benefits, the statute of limitations would begin to run on October 12, 2005. Since the parties' stipulated TTD

benefits were paid from December 15, 2005, through April 9, 2006, February 14, 2007, through February 17, 2007, November 21, 2007, through December 21, 2007, and December 22, 2007, through January 2, 2008, the filing of Yarbrough's claim on December 16, 2009, is timely. The date Yarbrough filed her Form 101 is clearly within two years from January 2, 2008. Although barely touching on the statute of limitations issue in her order ruling on the petition for reconsideration, we conclude the ALJ did not err in refusing to dismiss Yarbrough's claim because it was barred by the statute of limitations. Further, should the ALJ determine the manifestation date is April 21, 2010, the statute of limitations issue is moot.

We believe the ALJ erroneously concluded Special Fund v. Clark, supra, Brummitt v. Southeastern Kentucky Rehabilitation Industries, 156 S.W.3d 276 (Ky. 2005), and Johnson v. Bluegrass Cooperage, supra, are applicable in the case *sub judice*. Those cases have no bearing on the ALJ's determination in this case. Clark, supra, dealt with the aggravation of a previous non-compensable work-related injury. Clark had been injured in 1985 but filed no claim regarding the injury. He continued to work for another seven years; thus, aggravating the previous non-compensable work injury. He then filed a claim alleging injury to the

same body part. Since Clark had not filed a worker's compensation claim regarding the initial injury, only the disability, if any, attributable to the two year period prior to filing the claim was compensable.

In Brummitt, supra, Brummitt alleged two injuries occurring between October 1999 and December 2000. On both dates, Brummitt received a diagnosis of a work-related injury due to repetitive work. KEMI provided coverage for the first injury and Century Insurance provided coverage for the second injury. Brummitt settled with KEMI, agreeing to dismiss her claim for a lump sum. She proceeded with her claim for the second injury. The ALJ dismissed the claim for the second injury finding the injury became manifest on the date of the first alleged injury and thus occurred during KEMI's coverage period. Ultimately, the Supreme Court reversed holding where the individual continues to perform the same repetitive activity after a gradual injury manifests, the individual may sustain subsequent gradual injuries. The case was remanded to the ALJ to determine whether the additional workplace trauma that occurred after the first injury caused a harmful change and, if it did, Brummitt sustained a second injury for which Century Insurance was liable.

Johnson v. Bluegrass Cooperage, supra, involves a factual scenario similar to Clark, and the case was remanded for a correct application of Clark.

The case *sub judice* involves a cumulative trauma injury. There is no previous compensable or non-compensable injury. Likewise, there is no allegation of an aggravation of a previous compensable or non-compensable injury. *Thus, the ALJ is not limited to determining the extent of the impairment and resulting occupational disability attributable to the two years immediately prior to the filing of the claim.* Where there is a cumulative trauma injury, the employer bears the liability for the total effects of the cumulative trauma regardless of its duration. In this case, the ALJ erroneously limited her analysis regarding the effects of the gradual work-related injury to the two years prior to the filing of the claim or two years prior to the date of manifestation.

Accordingly, on remand, the ALJ must determine the date upon which Yarbrough's impairment and disability arose without regard to the date of manifestation of the injury. As stated, a gradual injury becomes manifest when a physician diagnoses a harmful change and informs the individual that work caused the condition. However, the date upon which the impairment and disability arose may be

different than the date of manifestation. The award must begin on the date the ALJ determines that impairment or disability arose. *See* Sweasy v. Wal-Mart Stores, Inc., 295 S.W.3d 840, 841 (Ky. 2009).

In this case, the ALJ began the award of PPD benefits on January 3, 2008, which is the day after the payment of TTD benefits ceased. Since Yarbrough underwent numerous surgical procedures prior to January 3, 2008, the impairment and disability arose well before January 3, 2008. We believe Yarbrough's disability and impairment arose prior to the initial surgery performed on January 19, 2006. Therefore, the ALJ must review the evidence and determine the date upon which the impairment and disability arose and commence the award of PPD benefits on that date. Further, the 425 weeks award shall be suspended during any period TTD benefits are paid.

In addition, the ALJ must award specific medical benefits. We note on page eleven of the opinion, order, and award the ALJ stated Yarbrough's injuries "caused a harmful change in her bilateral wrists and hands including her fingers and thumbs." However, we are unable to locate anywhere in ALJ's opinion, order, and award where she specifically defines the injured body part or parts which are subject to the award. Dr. DuBou assessed a 1%

impairment rating for hypesthesia on both sides of Yarbrough's middle finger. Unfortunately, Dr. DuBou did not delineate to which middle finger he was referring. Clearly, surgical procedures were performed by Dr. Stodghill on both middle fingers. It appears from Dr. Stodghill's 2008 reports and his April 21, 2010, report that the left middle finger continued to give Yarbrough problems. That said, the ALJ must determine the specific middle finger for which Dr. DuBou assessed an impairment. We also point out Drs. DuBou and Stodghill specifically declined to assess an impairment rating for Yarbrough's bilateral carpal tunnel syndrome and multiple trigger fingers. Therefore, the ALJ must determine if Yarbrough is entitled to future medical benefits for the bilateral carpal tunnel syndrome, left and right trigger thumb, right index trigger finger, and the other middle trigger finger.

Accordingly, the decision of the ALJ determining Yarbrough's claim is not barred by the statute of limitations is **AFFIRMED**. The decision of the ALJ regarding the issue of notice and the award of income and medical benefits is **VACATED**. This matter is **REMANDED** to the ALJ for additional findings of fact and a determination of the manifestation date of Yarbrough's work-related injury, and whether Yarbrough gave timely notice in light of the

manifestation date of her injury. Should the ALJ resolve the issue of notice in Yarbrough's favor, she shall also determine the date upon which the impairment and disability arose. The award of PPD benefits shall commence on that date. The ALJ shall also specifically determine the work-related injuries for which Yarbrough is entitled to future medical benefits.

ALL CONCUR.

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