

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 16, 2018

CLAIM NO. 201390836

FORD MOTOR COMPANY

PETITIONER

VS.

**APPEAL FROM HON. JOHN H. McCracken,
ADMINISTRATIVE LAW JUDGE**

DEBORAH DUCKWORTH
And HON. JOHN H. McCracken,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

RECHTER, Member. Ford Motor Company appeals from the June 11, 2018 Opinion, Award and Order and the July 13, 2018 Order on Reconsideration rendered by Hon. John H. McCracken, Administrative Law Judge (“ALJ”). The ALJ determined Deborah Duckworth suffered cumulative trauma injuries to her neck and back which manifested on March 22, 2010 and October 10, 2011,

respectively. Ford argues Duckworth's injuries manifested on November 8, 2007 and therefore, are time barred. We disagree and affirm.

Ford's arguments on appeal are narrowly confined to the ALJ's authority to determine a manifestation date for Duckworth's cumulative trauma injuries. It does not challenge the sufficiency of the evidence underlying the ALJ's decision, and for this reason a detailed recitation of the proof is unnecessary.

Duckworth worked on the assembly line at Ford since 1998. In 2007, she was placed on the wireloom job. She began experiencing neck symptoms in 2007 and first visited Ford Medical on November 8, 2007 to report neck pain. During 2008 and 2009, Duckworth periodically visited Ford Medical for treatment of upper back and neck pain and was treated primarily by Dr. Gregory Ornella. In 2010, she experienced worsening lower back pain and again visited Ford Medical several times for treatment. She was eventually referred to Dr. Rodney Chou.

Duckworth continued to work the wireloom job until February, 2011, when she was moved to a position that would cause less neck pain. However, a few weeks later she was returned to a different wireloom job. Her neck and back pain continued, and she treated at Ford Medical repeatedly from 2011 to 2012.

On April 12, 2012, Duckworth was struck on top of the head by a piece of handheld equipment. Her neck symptoms worsened following this incident. On October 2, 2012, she fell at work, which she stated worsened her neck symptoms. On January 7, 2013, a complete spine MRI was taken at Dr. Chou's request. Cervical spine surgery was recommended and performed on April 9, 2013. Lumbar spine surgery was performed on November 29, 2013.

Duckworth filed a Form 101 on May 21, 2013. She stated she, “suffered work-related cumulative trauma injury to her back and neck in the course of working the wireloom job which manifest 11/8/07. Plaintiff continued to work and perform the wireloom job and suffer cumulative trauma to her neck and back. Thereafter Plaintiff worked multiple jobs that caused hastened cumulative trauma to her neck and culminating with worsened MRI findings on 1/17/13 and the recommendation for cervical surgery February 2013.” Later in the Form 101, she noted the body part injured as “Back and Neck (11/8/07; 1/7/13)”. Ford filed a special answer, alleging Duckworth’s claims of cumulative trauma injuries manifesting on November 8, 2007 were barred by the statute of limitations.

At the Benefit Review Conference (“BRC”) held on January 8, 2018, stipulations and contested issues were identified. The BRC Order identifies the dates of injuries as: “11/8/07; 8/12/12; 10/2/12; 1/7/13; 9/3/13.” Next to the dates of injuries, the parties checked a box that indicates “at issue.” It also identifies “date of injury” as a contested issue.

In the June 11, 2018 Opinion, the ALJ provided the following analysis regarding the manifestation date of Duckworth’s cumulative trauma injuries:

In Consol of Kentucky, Inc. v. Goodgame, 479 S.W. 3d 78 (Ky. 2015), the Court held that for cumulative trauma injuries, the date of accident is the date a claimant is advised by a physician that he has a work related condition. Therefore, the obligation to provide notice and the statute of limitations (and statute of repose) begins to run at that time. A worker is not required to self-diagnose the cause of a harmful change as being a work-related gradual injury for the purpose of giving notice. American Printing House for the Blind v. Brown, 142 S.W. 2d 145 (Ky. 2005).

Defendant argues in this case that it is documented that Ms. Duckworth and Dr. Ornella discussed, and she had an understanding, that her work caused her neck and back condition. The ALJ does not agree with this statement. The Ford Medical records are very clear that Ms. Duckworth consistently told the nurses, and apparently Dr. Ornella, that she believed her job was causing her neck and back problems. However, these records are equally clear that Ford repeatedly listed her neck condition as an “illness”, not an injury, or repetitive injury, until March 27, 2013. On that date, Ford listed her neck as an “injury”. On October 10, 2011, Ford listed her condition as an “injury” for the first time. The Ford Motor records establish that she was told that her low back was work related on October 10, 2011, and on March 27, 2013 that her neck condition was work related.

On March 22, 2010, Dr. Chou states in his records that her low back condition was due to repetitive injury. This does not appear as a history taken from Ms. Duckworth, but, more of a statement as to the cause of her condition.

The law does not require Ms. Duckworth to self-diagnose her condition. It is clear from the records that she told every doctor she encountered that she believed her neck and low back problems were caused by her repetitive work. However, current law holds that does not trigger her notice of manifestation date. On November 8, 2007, the records are clear that she did not report an acute injury. She told the nurses at Ford that she thought her neck and back problems were caused by the wireloom job. The ALJ relies on the Ford Medical records to find that manifestation did not occur on November 8, 2007,

The ALJ relies on the records of Dr. Chou to find that her date of discovery, for purposes of notice and manifestation of her cumulative trauma neck injuries, occurred on March 22, 2010 as indicated in his office record. The ALJ relies on the Ford Motor records to find that her date of discovery of her cumulative trauma low back injuries, for purposes of notice and

manifestation occurred on October 10, 2011. Ms. Duckworth was required to file her claim for benefits within two years of each respective date, unless TTD was paid.

The parties stipulated that Defendant began paying TTD on August 6, 2010. The last TTD payment was on August 5, 2011. Ms. Duckworth filed her Application for Benefits Form 101 on June 10, 2013. The ALJ finds that she filed her claim within two years of the date of the last TTD payment. “If payments of income benefits have been made, the filing of an application for adjustment of claim with the department within the period shall not be required, but shall become requisite within two (2) years following the suspension of payments or within (2) years of the date of the accident, whichever is later.” KRS 342.185(1).

Ford petitioned for reconsideration, emphasizing the fact Duckworth was being treated at Ford Medical for work-related neck and back pain since 2007. In the Order on Reconsideration, the ALJ explained that no physician informed Duckworth her neck and back pain were work-related in 2007. He acknowledged Duckworth told Ford Medical personnel her belief the pain was work-related; however, she was not so informed by a physician in 2007. The petition was denied.

On appeal, Ford argues the ALJ exceeded the scope of his authority when he *sua sponte* determined Duckworth’s cumulative trauma injuries manifested on March 22, 2010. Ford argues Duckworth stipulated the manifestation date of her injuries as November 8, 2007, and the ALJ was bound to accept that stipulation. According to Ford, the claim is therefore time barred. Alternatively, Ford argues it was denied due process of law when the ALJ selected a date of manifestation which was not offered by the parties in the BRC Order.

We disagree that Duckworth stipulated a cumulative trauma manifestation date of November 8, 2007. In her Form 101 and subsequent pleadings, Duckworth stated her neck and back injuries “manifested” on November 8, 2007. This date corresponds to her first visit to Ford Medical. In cumulative trauma injury claims, the term “manifestation” can have dual meanings. The date an injury manifests might refer to the day when symptoms or disability arise, and may constitute the starting date for liability. American Printing House for the Blind v. Brown, 142 S.W.3d 145 (Ky. 2005). This meaning differs from the manifestation date for purposes of notice and statute of limitations. As the ALJ correctly noted, the date for triggering the running of the limitations period and for giving notice in a cumulative trauma claim is when the worker has knowledge that a harmful change has occurred and is informed by a physician that it is work-related. Hill v. Sextet Mining, 65 S.W.3d 503 (Ky. 2001).

For this reason, we cannot read the statements contained in Duckworth’s Form 101 and brief to the ALJ as a stipulation that her cumulative trauma injuries manifested, for purposes of notice and statute of limitations, on November 8, 2007. This conclusion is particularly supported by the wording of the BRC Order. The parties twice identified the “dates of injury” as “at issue”. Nowhere on the BRC Order do the parties stipulate dates of injury, or do the parties stipulate a date of manifestation for notice and statute of limitations purposes.

Furthermore, we disagree with Ford that the ALJ was bound to select one of the identified injury dates in determining manifestation for purposes of notice and statute of limitations. A cumulative trauma injury was alleged in this claim.

Implicit in the adjudication of any cumulative trauma injury claim is the necessary determination of the manifestation date. The parties identified dates of injury, but listed them as “at issue.” The ALJ is vested with the discretion to weigh the proof and adjudicate the claim. He is not bound to determine whether a claim has been timely filed based upon dates of injury which were not stipulated by the parties.

Finally, we reject Ford’s assertion it has been denied due process of law by the ALJ’s determination of the manifestation date. Procedural due process requires a party to enjoy the opportunity to be heard at a reasonable time and in a reasonable manner. Matthews v. Eldridge, 424 U.S. 319 (1976). At the commencement of litigation, Ford filed a special answer arguing Duckworth’s claim was time-barred. It can not now argue it was deprived the opportunity to be timely heard on the issue of when Duckworth’s cumulative trauma injuries manifested, when it specifically raised this precise argument in its special answer.

For the foregoing reasons, June 11, 2018 Opinion, Award and Order and the July 13, 2018 Order on Reconsideration rendered by Hon. John H. McCracken, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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