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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

MARIA ARCIGA,

Petitioner,

v.

WORKERS' COMPENSATION
APPEALS BOARD and KENDALL
JACKSON WINE ESTATES LTD., et al.,

Respondents.

2d Civil No. B185622
(W.C.A.B. No. GRO 30905)



Proceeding to review a decision of the Workers' Compensation Appeals Board. We annul and remand.

Wheeler & Beaton and Gifford G. Beaton for Petitioner.

William A. Herreras for California Applicants' Attorneys Association as Amicus Curiae on behalf of Petitioner.

California Rural Legal Assistance, Inc., Kristina Harrell, Georgina Mendoza and Corrie L. Arellano as Amicus Curiae for the Watsonville Law Center on behalf of Petitioner.

No appearance for Respondent Workers' Compensation Appeals Board.

Law Offices of Kenneth L. Peterson, Kenneth L. Peterson and Kal Attar for Respondents Kendall Jackson Wine Estates and GAB Robins North America, Inc.

Maria Arciga petitioned this court for writ of review after the Workers' Compensation Appeals Board (Board) denied her claim for workers' compensation (WC) benefits. We denied her petition. Our Supreme Court transferred the matter back to this court with directions to vacate our order and issue a writ of review.

We have done so. For the reasons we shall explain, we remand the matter to the Board to reconsider whether, under Labor Code section 5402,¹ Kendall Jackson Wine Estates, Ltd. (KJ) had inquiry notice of possible industrial injury to Arciga's hands while she was pruning vines for it. The Board shall also determine whether Arciga knew she had sustained cumulative trauma (CT) before KJ terminated her from work under section 5412. The Board in its discretion may send the matter back to the WCJ to take additional evidence if it deems it necessary to do so.

Facts and Procedural History

KJ repeatedly hired Arciga as a seasonal farm worker between May 1999 and January 12, 2004. Before January 2004, her tasks included tying and "training" vines, removing buds, and picking grapes. She had never pruned vines before. In January 2004, KJ permitted Arciga and some other women to prune vines for the first time.

On January 5, 2004, Arciga and about 120 other farm workers began pruning KJ's vines six days per week, under supervision. After two days of training, the workers were required to meet daily production quotas. The quotas required workers to make roughly 14,000 pruning cuts per day. They were told that if they failed to meet the quotas, they would be laid off.

On the third day of pruning, Arciga's hands began to hurt. The next day, Arciga complained to the foreman, Celestino Torres, that her hands were blistered and hurt. Torres provided Arciga with tape to wrap her hands. She also told the vineyard

¹ All statutory references are to the Labor Code unless otherwise stated.

manager, Monica Thompson, she could not sleep because of pain in her hands. Thompson told Arciga it was her decision whether or not to continue working.

Arciga did not quit. Instead, KJ terminated her for cause on January 12, 2004, several days after she complained of injuries, for failing to meet its production quotas. Of the 120 workers, only about a third met the production quotas. Of those, KJ considered only about 20 workers sufficiently productive not to be terminated. As in the past, KJ gave Arciga a layoff notice which she signed but did not read. Arciga is poorly educated, and believed the notice was just a prerequisite for obtaining unemployment insurance. Above her signature, however, the layoff notice declared that Arciga had suffered no work-related injuries.

Two days later, on January 14, 2004, Arciga saw her family physician, Dr. Zuckerbraun, and complained of pain in both her hands and forearms. After examining her, Dr. Zuckerbraun reported that she may have "early carpal tunnel syndrome from working with grapes," and "strained wrists." He prescribed medication for her injuries.

On January 21, 2004, Arciga went to California Rural Legal Assistance (CRLA). They gave her a WC application which she provided to Arthur Montelongo, the human resources manager at KJ. Montelongo filled out an accident report and referred her to the Industrial Medical Group (IMG). Arciga saw Doctors Paul Christensen and Simon Boughey at IMG. They diagnosed and treated her for bilateral hand tendonitis. Doctor Christensen released Arciga for limited work, but precluded pruning. Her own orthopedist, Doctor Richard D. Scheinberg, recommended similar work restrictions, precluding work involving gripping and grasping.

Arciga filed this WC claim on April 21, 2004, after the 30-day limit set forth in section 5400. The WCJ found her claim was barred because she filed it after she was terminated. (§ 3600, subd. (a)(10).) The WCJ explained that Arciga knew she had to report industrial injuries immediately and failed to do so.

In her petition for reconsideration, Arciga asserted she did not know she had suffered from a cumulative trauma (CT) injury at work, but KJ was on notice of her work injuries. She argued that KJ should be equitably estopped to assert the post-

termination rule because she had complained that her hands hurt and she could not sleep while she was still working for KJ.

In recommending denial of her petition for reconsideration, the WCJ said he could not accept "the leap" that complaints about aches and pains from "hard and heavy work" constitute actual, suggested or implied knowledge (notice) of industrial injury to KJ, which would trigger the duty to provide WC. The Board adopted the WCJ's recommendation and denied reconsideration.

Discussion

Thirty-Day Notice

In general, a written claim for WC must be served upon the employer within 30 days after an industrial injury occurs and before one is terminated. (§ 5400; *Honeywell v. Workers' Comp. Appeals Bd.* (2005) 35 Cal.4th 24, 32.) Section 5402 provides, however, that "[k]nowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, . . . foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400." Such inquiry notice supersedes the 30-day limitation to file claims which is set forth in section 5400.

Section 3600, subdivision (a)(10)(A), also provides an exception to the 30-day post-termination rule. When a claim for WC is filed after notice of termination or layoff, and it is for injury occurring prior to the termination notice, no compensation shall be paid "unless the employee demonstrates by a preponderance of the evidence that one or more of the following conditions apply: [¶] (A) The employer has notice of the injury, . . . prior to the notice of termination or layoff." (*Ibid.*)

Arciga testified at the WC hearing that on the third and fourth days she pruned the vines, she informed both Torres and Thompson that her hands hurt. She told Thompson she could not sleep because of the pain in her hands. She contends that these complaints are tantamount to notice of industrial injury; therefore, her complaints triggered KJ's duty to provide WC. Torres testified that she might have complained at

that time, and he remembered giving tape to one of the workers to cover her blisters. When Montelongo filled out the accident report, he listed the date of injury as January 7, 2004, sent her to a doctor, but concluded the claim was untimely.

The short, 30-day limitations provision should be narrowly construed so as to favor the employee and provide WC coverage. (*Bland v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 324, 329; and see *City of Fresno v. Workers' Comp. Appeals Bd.* (1985) 163 Cal.App.3d 467, 473 [statute of limitations should not begin to run until employee receives medical advice].) Indeed, rigid formalism about such procedural matters has been deemed an "ironic anachronism." (*Bland, supra*, at p. 334.) Furthermore, although the employee bears the burden of timely notifying the employer of an injury, express notice that one has sustained a "work-related injury" is unnecessary if the employer is already aware of the injury or finds out about it from other sources. (*Honeywell v. Workers' Comp. Appeals Bd., supra*, 35 Cal.4th at p. 33.) The facts suggest that by January 7, 2004, KJ was on inquiry notice that Arciga had sustained an industrial injury.

The WCJ and Board concluded that this claim was foreclosed because it was filed after Arciga was terminated, and concerned aches and pains that are a normal part of hard work that do not constitute industrial injury. Therefore they dismissed Arciga's complaints, concluding that she must have known that work caused her injury. The WCJ and Board found that Arciga's complaints "about hard and heavy work" is not the equivalent of actual, suggested or implied knowledge of an injury. But, Arciga told supervisors that her hands were so painful and blistered she could not sleep. It thus appears she reported her injuries while working, even though she did not articulate her injury as "work-related" or "disabling."

Despite these painful injuries, Arciga continued to work. As Thompson testified, Arciga was "a loyal . . . employee" who had "a good work ethic." Indeed, KJ had hired her each season for the past five years. Arciga had never filed a WC claim before against KJ, despite being laid off several times. It is clear that Arciga did not want to create trouble.

Arciga's reports of pain in her hands, and her supervisor's reactions to her comments, appear to establish that KJ was on inquiry notice that she was injured and would be entitled to WC. Nonetheless, they did not provide her with immediate medical care or give her appropriate WC forms to file a claim.

Our Supreme Court has said that "[t]he law does not award compensation for mere pain or physical impairment, unless it is of such character as to raise a presumption of incapacity to earn." (*Marsh v. Industrial Acc. Com.* (1933) 217 Cal. 338, 344.) When work causes pain so severe that one cannot sleep, it should be deemed disabling for purposes of WC.

All of the foregoing suggest the Board may have taken too narrow a view of WC coverage in this case.

Cumulative Trauma

Section 3208.1 defines the "cumulative injury" exception to the 30-day rule. It states that "cumulative injury" occurs from "repetitive . . . physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment." (*Ibid.*) The date of such injury "is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment." (§ 5412.)

"Disability" for this purpose means an impairment of some bodily function that results in incapacity to perform some tasks usually encountered at work, and a concomitant loss of earning capacity. (See *Chavira v. Workers' Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463, 474; *Permanente Medical Group v. Workers' Comp. Appeals Bd.* (1985) 171 Cal.App.3d 1171, 1179-1180; *J.T. Thorp, Inc. v. Workers' Comp. Appeals Bd.* (1984) 153 Cal.App.3d 327, 336; § 5412.) Thus, CT concerns work injuries that develop over time due to repetitive trauma, and cause earning capacity to be impaired. One may still be able to work while suffering from such an injury.

In general, workers are not deemed to know that cumulative trauma injuries are work related. In assessing the worker's knowledge, courts should consider the

intelligence, training and qualifications of the worker as well as the nature of the disability. (*City of Fresno v. Workers' Comp. Appeals Bd.*, *supra*, 163 Cal.App.3d at p. 473.) Any doubts as to compensability of injuries, for purposes of WC, must be resolved in favor of the worker. (*E & J Gallo Winery v. Workers' Comp. Appeals Bd.* (2005) 134 Cal.App.4th 1536, 1552-1553; *Fresno*, *supra*, at p. 474; § 3202.)

That Arciga's hands hurt over the course of several days of pruning does not necessarily lead to the conclusion that she was aware of or should have known she was suffering from CT. Usually employees are not aware they are suffering from CT because the injury or disease takes time to become apparent. Here, there was no sudden, specific injury, and Arciga could work despite her pain. Furthermore, CT concerns not only incremental injury but disability, or the loss of earning capacity. Because Arciga did not quit, she did not suffer loss of income at the time. It is likely she did not know she would suffer the loss of earning capacity. Both of her supervisors, Thompson and Torres, testified they did not know what cumulative trauma was. It would be unreasonable to expect a farm worker like Arciga, with limited education, to understand the concept of cumulative trauma.

When an employer is on inquiry notice that a worker may have sustained CT on the job, it is estopped to assert the 30-day limitations period. (See *Pacific Employers Ins. Co. v. Industrial Accident Commission* (1949) 92 Cal.App.2d 124, 126 [employer on inquiry notice when worker tells supervisor his shoulder hurt from lifting boxes of peaches]; also see *Buena Ventura Gardens v. Workers' Comp. Appeals Bd.* (1975) 49 Cal.App.3d 410, 416.) In this case, Arciga told her field foreman that her hands hurt and he brought tape to wrap her hands. She then told Thompson, the vineyard manager, that her hands hurt so badly she could not sleep.

Arciga's ability to understand and articulate her condition and circumstances, before she was provided medical and legal assistance, appears quite limited. (See *Fruehauf Corp. v. Workmen's Compensation Appeals Bd.* (1968) 68 Cal.2d 569, 577 [unreasonable to hold that employee suffering several minor traumas should be deemed injured for purposes of statute of limitations until injury ripens into disability and

worker knows its etiology was work]; see also *Chambers v. Workmen's Compensation Appeals Bd.* (1968) 69 Cal.2d 556, 559; *Paula Insurance Co. v. Workers' Comp. Appeals Board* (1998) 63 Cal.Comp.Cases 1300 (writ denied) [Spanish speaking farm laborer should not be charged with responsibility for knowledge of medical/legal causation].)

The conclusions reached by the Board do not appear to comport with case law concerning cumulative injuries and the solicitude to be accorded workers like Arciga. Where there is doubt about whether a worker has sustained industrial injury, the determination whether a worker is entitled to WC must favor the worker. (§ 3202.)

It appears that the Board has construed the post-termination rules concerning employer knowledge and CT too narrowly. Accordingly, we remand this matter with directions that the Board annul its decision and conduct further proceedings to determine whether Arciga sustained CT and whether KJ was on inquiry notice while she was working that she was suffering from work-related injuries.

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We concur:

COFFEE, J.

PERREN, J.

GILBERT, P.J.