IN THE IOWA DISTRICT COURT FOR GRUNDY COUNTY

KAREN TOVAR,	)	
Petitioner,	)	Case No. **CVCV059979**
	)	
v.	)	
	)	**RULING RE: BRIEFED ISSUE**
JOHN DEERE WATERLOO WORKS,	)	**OF DATE OF INJURY**
Respondent.	)	

The above-captioned matter came before the Court for hearing on October 4, 2021, for consideration of the petition for judicial review of the Iowa Worker's Compensation Commissioner. The Court took the matter under advisement and a written ruling was submitted November 8, 2021. Upon review, the Court determined substantial evidence supported the Iowa Worker's Compensation Commission's factual findings and the petition for judicial review was denied.

The date of injury was raised in the initial briefs and touched on by counsel at the hearing. Discussions were had whether the district court was required to rule upon the issue pertaining to date of injury pled by the petitioner. From the hearing the parties concluded a ruling was necessary and the Court ordered the parties to submit to the undersigned additional briefing and/or argument and the parties' requested relief limited solely to this claim. Perhaps the undersigned was unclear as counsel filed the briefs as ordered with the clerk of court; however, neither brief was provided directly to the undersigned. Upon prompting of the clerk of court on today's date, the matter comes again before the undersigned.

The Court has had an opportunity to review both Petitioner's supplemental brief and Respondent's supplemental brief and the authorities cited therein. Petitioner asserts it was error of law for the agency to treat the date of injury pled as an independent basis to bar Tovar's claim.

The Court concurs with the respondent to the extent that Tovar mistakenly asserts the Deputy treated the date of injury pled by Claimant as an independent basis to bar her claim.

The opinions of Drs. Pardubsky, Manshadi, and Bansal regarding causation are all found not convincing. No agency or case law appears to support claimant's date of injury that occurred over three months after claimant left her employment with Deere. Based on this, claimant has failed to carry her burden of proof she sustained an injury that arose out of and in the course of her employment with Deere.

The Court concurs with Respondent to the extent that the lack of causation alone is enough to deny Claimant's claim. Absent causation, the date of injury is irrelevant. Further, the Court concurs with the respondent that the deputy was alleging referring to the causation issue and the fact Claimant was alleging a date of injury over three months

after her employment with Deere. The deputy correctly outlines the 90-day limit for notice and when the date begins to run the deputy correctly outlines and addresses the case law relative to when an injury develops and the application of the cumulative injury rule. Similar to the arguments of the petitioner, the deputy outlines the definition as to the date upon which a disability manifests itself and its relation to the application of the cumulative injury rule. The deputy again correctly outlines the fact that as a fact finder he is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. The undersigned believes Tovar unduly emphasizes the date of injury and the last day of work for Tovar. The deputy notes the last day of employment has been found to be an appropriate manifestation date, *for some cases*, because whatever impact the injury and disability will have on the employee's employability manifests itself when the employee leaves the employer's workforce. (Emphasis added.)

Claimant contends her date of injury, the manifest date of injury, is June 19, 2018. As noted above, Claimant left her employment with Deere on March 12, 2018. The alleged manifest date of injury is over three months after Claimant left Deere. As noted, there is case law indicating that the last day of work can be used as the date of injury in cumulative injury cases. The undersigned was unable to find any agency or case law finding a manifest date of injury months after an employee has left the employment of an employer. In short, Claimant requests this agency to make new law and find that Claimant's manifest date of injury occurred months after her last date of employment. The undersigned lacks the authority to make new law finding that Claimant's date of injury actually manifested three months after she last left her employment with Deere. As a result, I cannot find in favor of claimant given the alleged date of injury…

The deputy concludes the decision with the following:

As Claimant failed to carry her burden of proof she sustained an injury that arose out of an in the course of her employment with Deere, all other issues are moot.

The undersigned concludes the deputy did not commit error of law as the deputy clearly states and outlines the date of injury is irrelevant as the claimant failed to establish causation. Alternatively, considering all of the factors that the fact finder may consider when establishing the manifestation date of injury, the deputy concluded date of injury was March 12, 2018. As Claimant contends her date of injury by way of the manifestation date was June 19, 2018, and Claimant failed to provide timely notice to respondent and Tovar's case was time barred.

IT IS THEREFORE ORDERED Claimant has failed to meet her burden and the Court once again finds substantial evidence and the law supports the findings of the deputy. Petition for judicial review is denied.

Costs, if any, are assessed to the petitioner/claimant.

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Dated March 31, 2022.

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Joel A. Dalrymple
Judge, First Judicial District

State of Iowa Courts

Case Number   **Case Title**
CVCV059979   KAREN TOVAR VS JOHN DEERE WATERLOO WORKS
Type: ORDER OF DISPOSITION

So Ordered

Joel Dalrymple, District Court Judge,
First Judicial District of Iowa

Electronically signed on 2022-03-31 16:08:05