

rail cars, for CP Rail from 1968 until 1996. (P's Stmt. of Material Facts, Dkt. Entry 43 at ¶ 5; Stillittano's Br. in Response to CP Rail's Mot'n, Dkt. Entry 43, at 2.) "He is presently retired from active employment with the railroad, having reached customary retirement age." (D's Stmt. of Material Facts, Dkt. Entry 40, ¶ 4.)¹ Stillittano began experiencing numbness and tingling sensations in his hands sometime in the late 1980's or early 1990's. (P's Stmt. Of Material Facts at ¶ 5.) Stillittano "attended a lawyer-sponsored screening for carpal tunnel syndrome on June 6, 1994." (D's Stmt. of Material Facts at ¶ 7.) Stillittano was diagnosed with CTS at this screening. (Stillittano's Br. in Response to CP Rail's Mot'n for Summary Judgment at 2.) Stillittano was not treated for his CTS between his June 6, 1994 appointment and August 26, 1999.

Stillittano and a number of other CP Rail employees filed a complaint against CP Rail on May 28, 1997, asserting that they had developed CTS during the course of their employment with CP Rail as a direct and proximate result of CP Rail's negligence. On August 26, 1999, CP Rail filed a motion for summary judgment only as to the claims of Stillittano, asserting that because Stillittano was aware of his injury and its possible causal relationship with his employment in the rail industry more than three years before he filed his complaint, his claims are barred by FELA's applicable three year statute of limitations. (CP Rail's Mot'n for Summary Judgment, Dkt. Entry 38.) CP Rail's motion relies upon the

¹ Local Rule of Court 56.1 requires a party moving for summary judgment to provide in separately numbered paragraphs a concise statement of material facts as to which it is contended there is no genuine dispute. The non-movant must respond to each numbered paragraph, indicating whether the movant's statement is admitted or contested. A citation to CP Rail's Statement of Material Facts in this opinion signifies that the pertinent matter has been admitted by Stillittano.

following excerpt from Stillittano's deposition testimony:

Q. Now, the subject of this lawsuit is carpal tunnel syndrome. Can you tell me, sir, when is the first time you ever felt any discomfort in either of your hands or wrists or arms?

A. Well, coming from working in an environment and working inside and going outside I'd say later. I thought it was the process of old age, I'm getting close to 60 and having tingling sensations in mostly the left and right hands, and numbness working in the environment.

Q. When did you first start to feel the numbness and tingling sensation?

A. Well, in the late 80's.

Q. From the late 80's onward, were these symptoms progressive, I mean, did they get worse and worse?

A. Winters were bad, handling the tools.

Q. Handling what tools?

A. Well, the D & H was mostly manual tools. When CP took over we got a few power tools. That's one reason I went from the shop to the yard because I thought I would be handling less tools, but the bars on the hammers still consisted of bringing those pains on.

Q. And was that happening in the late '80's, these tools they would bring those symptoms on?

A. Handling the metal bars, prying the beams back from the wheel.

Q. And in changing shoes?

A. Shoes.

Q. Did you consider in the late '80's whether it was the specific work you were doing with the tools that was causing the numbness and tingling in your hands?

A. Well, truthfully I thought it was the process maybe being old age and working for a number of years, and I think that's one reason I had the opportunity to go out in the yard, it wouldn't be strenuous, but it still

consisted of getting those tools.

Q. Did you specifically try to get in the yard job to get away from the manual tool use?

A. Well, if you talk to any railroad worker, you bid the job later in life because you know, as you progress in age, you're thinking it's; later, but it didn't turn out that way.

Q. But that's what you intended though?

A. I intended it to be.

Q. Did you think if you went and you got a job in the yard that maybe the tingling and numbness would subside or get better in your hands?

A. Well, I didn't think it would get better. I didn't think it would be as active, you know, would be as often.

Q. And that was the late '80's that you were talking about?

A. Late '80's, early 90's.

Q. So you must have thought that the tools and the things you were doing with the tools on the railroad was at least contributing to the condition; is that correct?

A. Yes.

Q. So it was causing it in some respect?

A. Yes.

Q. That was in the late '80's, early '90's that you thought that?

A. Well, yes, early '90's, '91, '92, '93.

(Exhibits to CP Rail's Mot'n for Summ. Jdgmt., Dkt. Entry 41, Exhibit "A" at 27-30; emphasis added.)

II. DISCUSSION

A. Standard

Summary judgment should be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). A fact is “material” if proof of its existence or non-existence might affect the outcome of the suit under the applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). “Facts that could alter the outcome are material facts.” Charlton v. Paramus Bd. of Educ., 25 F.3d 194, 197 (3d Cir.), cert. denied, 115 S. Ct. 590 (1994). “Summary judgment will not lie if the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson, 477 U.S. at 248.

Initially, the moving party must show the absence of a genuine issue concerning any material fact. Celotex Corp. v. Catrett, 477 U.S. 322, 329 (1986). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party, and the entire record must be examined in the light most favorable to the nonmoving party. White v. Westinghouse Elec. Co., 862 F.2d 56, 59 (3d Cir. 1988); Continental Ins. Co. v. Bodie, 682 F.2d 436 (3d Cir. 1982). Once the moving party has satisfied its burden, the nonmoving party “must present affirmative evidence to defeat a properly supported motion for summary judgment.” Anderson, 477 U.S. at 256-57. The affirmative evidence must consist of verified or documented materials. Mere conclusory allegations or denials taken from the pleadings are insufficient to withstand a motion for summary judgment once the moving party has presented evidentiary materials. Schoch v. First Fidelity Bancorporation,

912 F.2d 654, 657 (3d Cir. 1990).

B. FELA's Statute of Limitations and the Discovery Rule.

FELA provides that “[n]o action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.” 45 U.S.C. § 56. “The purpose of a statute of limitations is to encourage the filing of claims promptly by giving no more than a reasonable time within which to make a claim. By limiting the period in which a claim may be made, the statute protects defendants from having to defend actions where the truth-finding process is impaired by the passage of time.” Zeleznik v. United States, 770 F.2d 20, 22 (3d Cir. 1985), cert. denied, 475 U.S. 1108 (1986) (citing United States v. Kubrick, 444 U.S. 111, 117 (1979)). Generally, “the cause of action accrues at the time of the last event necessary to complete the tort.” Zeleznik, 770 F.2d at 22. “When the injury, however, is an occupational disease that has an indefinite beginning and progresses insidiously over many years, the statute of limitations, particularly the statutory accrual factor, becomes more difficult to measure.” Kichline v. Consolidated Rail Corp., 800 F.2d 356, 358 (3d Cir. 1986). “[I]n some circumstances, a person may know that he has been injured, but not be sufficiently apprised by the mere fact of injury to understand its cause.” Zeleznik 770 F.2d at 22. Accordingly, “the Supreme Court has indicated that the accrual of the claim would be delayed until the injured party learns of both the fact of his injury and its cause.” Zeleznik 770 F.2d at 23 (citing Kubrick, 444 U.S. at 122).

The Supreme Court first adopted the “discovery rule” in Urie v. Thompson, 337 U.S. 163, 170-71 (1949). Urie attempted “to ameliorate the harshness of statutes of limitations

when the injury is hard to detect at its inception.” Fries v. Chicago & Northwestern Transp. Co., 909 F.2d 1092, 1095 (7th Cir. 1990). The plaintiff in Urie brought claims under FELA after being diagnosed with silicosis caused by the “continuous inhalation of silica dust” while working for defendant over a thirty year period. Urie, 337 U.S. 163 at 166,169. Because Urie’s “symptoms had not yet obtruded on his consciousness,” the Court stated that an employee can be held to be injured only when the injury manifests itself. Id. at 169-70.

In United States v. Kubrick, 444 U.S. 111 (1979), the Court reexamined the “discovery rule.” Kubrick asserted claims under the Federal Tort Claims Act based upon a ringing sensation and loss of hearing caused by treatment of his right ear, in 1968, with neomycin, an antibiotic. Id. at 113-14. In 1969 an ear specialist told Kubrick that “it was highly possible that the hearing loss was the result of the neomycin treatment.” Id. at 114. Kubrick did not file suit until 1975. Id. at 114-15. Kubrick argued that his action was timely because it was within the limitations period when he first gained the knowledge that he had a malpractice claim for his hearing loss. In rejecting this contention, the Court explained:

We thus cannot hold that Congress intended that ‘accrual’ of a claim must await awareness by the plaintiff that his injury was negligently inflicted. A plaintiff such as Kubrick, armed with the facts about the harm done to him, can protect himself by seeking advice in the medical and legal community.” Id. at 123.

Although Kubrick was decided under the Federal Torts Claims Act, our Court of Appeals has held that Kubrick applies to FELA cases, observing that “Urie signalled the inception of the discovery rule and Kubrick merely restated the rule while defining its outer limits.” Kichline, 800 F.2d at 359 (quoting Dubose v. Kansas

City Southern Railway Co., 729 F.2d 1026, 1030 (5th Cir.), cert. denied, 469 U.S. 854 (1984)). “The rationale of the discovery rule as announced in Kubrick is that the statute of limitations begins to run on the date that the injured party possesses sufficient critical facts to put him on notice that a wrong has been committed and that he need investigate to determine whether he is entitled to redress.” Zeleznik, 770 F.2d at 23. “Once the injured party is put on notice, the burden is upon him to determine within the limitations period whether any party may be liable to him.” Id. Accordingly, once a plaintiff knows of an injury and the potential causes of that injury, plaintiff must “protect himself by seeking advice in the medical and legal community” and “must determine within the period of limitations whether to sue or not.” Kichline, 800 F.2d at 359 (quoting Kubrick, 444 U.S. at 123-24). “Admittedly, there is a certain harshness in this application of the rule but such a consequence is implicit in statutes of limitations generally.” Zeleznik, 770 F.2d at 24.

Stillittano’s testimony demonstrates that he was aware of his injury – numbness and tingling in his hands – in the late 1980’s. (D’s Exhibits in Support of Motion for Summary Judgment, Exhibit “A” at 30.) Some time in the early 1990’s, possibly as late as 1993, Stillittano was also aware that the tools that he was using in connection with his work were possibly causing those injuries. (Id.) Once Stillittano was aware of the injury and its potential cause, he had an affirmative duty to investigate whether he could seek legal redress against his employer – CP Rail.

Stillittano argues that summary judgment is inappropriate for the following reasons: (1) there is a clear congressional intent that railroad related injury cases,

which are governed by FELA, be submitted to a jury for resolution; and (2) his claim did not accrue until he had a medical diagnosis of his condition because Stillittano believed that his old age was the cause of his injury.

Stillittano's first contention lacks merit. "Compliance with 45 U.S.C. § 56 is a condition precedent to an injured employee's recovery in a FELA action." Emmons v. S. Pacific Transp. Co., 701 F.2d 1112, 1117 (5th Cir. 1983). Moreover, "[i]n FELA cases the running of the statute of limitations affects not only the remedy, but eliminates the cause of action itself." Kichline, 800 F.2d at 360-61 (citing Engel v. Davenport, 271 U.S. 33, 46 (1926)). A FELA plaintiff enjoys no greater right to a jury trial than any other federal court litigant. Where, as here, the facts are undisputed and not subject to conflicting inferences, a summary judgment ruling on the limitations question is plainly warranted.

Stillittano also contends that because he attributed his condition to old age, he was not aware that CP Rail had caused his injury until he received a medical diagnosis in 1994. Specifically, Stillittano contends that "[p]laintiff is simply explaining how he would experience tingling or pain after a hard day's work, and how he believed that railroad work was becoming more difficult for him, particularly outdoor work, because he was getting older." (P's Br. in Opp. to D's Mot'n for Summary Judgment at 6.) Stillittano further asserts that "[a]t no point does he indicate that, prior to 1994, he was aware that railroad work was actually 'injuring' him, nor were the sensations he was experiencing such that he should have been alarmed that he might be being 'injured.'" (Id.; emphasis omitted.)

Stillittano's arguments ignore the factual representations contained in his deposition testimony. Stillittano testified that he first felt the tingling in the late 1980's. (D's Exhibits, Exhibit "A" at 28.) Accordingly, he was aware of his injury – the tingling sensation in his hands – at that time. Stillittano testified that “[h]andling the metal bars, prying the beams back from the wheels,” would cause the tingling sensation in his hands. (Id. at 29.) Stillittano further testified by at least 1993, he knew that the tools he was using in connection with his work on the railroad were contributing to his condition. (Id. at 30.) Stillittano's testimony demonstrates that he was aware of his injury and its potential cause in 1993.

Stillittano persists that he was unaware that his work was causing his injury because he attributed his symptoms to old age. (P's Br. in Response to Mot'n for Summary Judgment at 4-6.) Accordingly, Stillittano concludes that he was not aware of his “injury” until he was diagnosed with CTS. (Id.) Other courts have rejected claims similar to those advanced by Stillittano. See Tolston v. National Railroad Passenger Corp., 102 F.3d 863 (7th Cir. 1996); Wilson v. National Railroad Passenger Corp., No. 96-CV-6950, 1997 WL 633590 (E.D. Pa. October 7, 1997).

In Wilson, 1999 WL 633590 at *1-2, plaintiff attempted to pursue claims under the FELA for CTS caused by his work on the railroad. Wilson experienced tingling and numbness in connection with his work in 1976 or 1978. Id. at *6. Reasoning that Wilson “‘had an affirmative obligation to determine the cause of such injury’ when he first became aware of it,” the court concluded that “Wilson

should have been aware of the connection between the tingling, pain and numbness and his work at Amtrak by 1990 or 1991 at the latest.” Id. The district court granted defendant’s motion for summary judgment on the ground that Wilson’s cause of action was barred by FELA’s statute of limitations. Id. at *6-7.² See also Radzwilla v. Delaware & Hudson Railway Co., No.3:CV-97-0759 (M.D. Pa., July 28, 1998)(Kosik, J.) (FELA claim based on CTS dismissed on summary judgment motion where plaintiff testified at his deposition that he experienced symptoms of CTS and suspected a causal relationship with his railroad work more than three years before bringing the action).

In Tolston, plaintiff asserted claims under FELA based upon a knee injury that she had sustained during her employment as a coach cleaner. Tolston, 102 F.3d at 864-65. The plaintiff, who had experienced knee pain since at least 1989, asserted that her claims, filed in 1995, were not untimely because “[s]he believed that her knee pain was due to ordinary wear and tear, especially because she had a weight problem that became more pronounced as time went by.” Id. at 866. The court noted that “[a] plaintiff need not be sure which cause is predominant, as long as she knows or has reason to know of a potential cause.” Id. at 865. “[A] cause of action accrues for statute of limitations purposes when a reasonable person knows or in the exercise of reasonable diligence should have known of both the injury and

² Although Wilson filed his complaint on October 7, 1996, the parties stipulated that the statute of limitations was tolled as of March 1, 1995. Wilson, 1997 WL 633590 at *2. The district court concluded that Wilson’s action was barred by the statute of limitations even if it was deemed to be filed in 1995 because he was aware of his injuries and its potential causes by 1991. Id. at *6-7.

its governing cause.” Id. (quoting Fries, 909 F.2d at 1095). Moreover, “[a]t some point, persons with degenerative conditions have a duty to investigate cause.” Id. at 866 (citing Aparicio v. Norfolk & Western Ry. Co., 84 F.3d 803, 814-15 (6th Cir. 1996) (applying Fries to FELA claim based upon CTS)). Because the “admitted facts were enough to require some investigation into the potential causes of her condition,” the district court’s grant of summary judgment was affirmed. Id.

Similarly, Stillittano was aware of his condition in the late 1980’s. Furthermore, he was aware that his work was a potential cause of those injuries. Accordingly, Stillittano had an affirmative duty to investigate whether the tingling and numbness in his hand was caused by his work for CP Rail. Stillittano’s contention that he was not “aware” that he had CTS until 1994 is immaterial. He knew of the symptoms and that they may be caused by his work more than three years before this lawsuit was filed. Accordingly, CP Rail’s motion for summary judgment will be granted.

III. CONCLUSION

Stillittano argues that because he did not discover his injury until June of 1994, his FELA action, filed in April of 1997, is not barred by FELA’s three-year statute of limitations. However, Stillittano’s deposition testimony illustrates that he began feeling numbness and tingling in his hands in the late 1980’s. Stillittano also admitted that by 1993 he was aware that his work contributed to his condition. Stillittano had an affirmative obligation to investigate whether his work caused his injury as soon as he was aware of the essential facts of his injury and its cause.

Because Stillittano was aware of these “essential facts” no later than 1993, his action, filed in 1997, is barred by FELA’s three-year statute of limitations.

Accordingly, CP Rail’s motion for summary judgment as to the claims of Stillittano will be granted. An appropriate order follows.

Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania

April 17, 2000

