

IN THE COURT OF APPEALS OF IOWA

No. 6-103 / 95-894

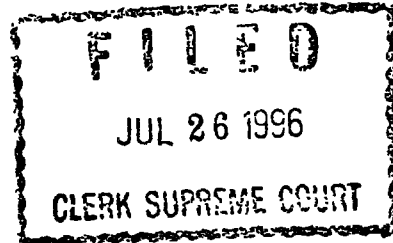
ONALEE V. GALLI,

Appellant,

vs.

K MART CORPORATION,

Appellee.



Appeal from the Iowa District Court for Linn County, Van D. Zimmer, Judge.

The petitioner appeals from the district court ruling on judicial review affirming the industrial commissioner's denial of her workers' compensation claim as untimely. **AFFIRMED.**

Ross Hauser of Shea Law Offices, Cedar Rapids, for appellant.

Merrill C. Swartz and Joel T.S. Greer of Cartwright, Druker & Ryden, Marshalltown, for appellee.

Considered by Sackett, C.J., Habhab, and Huitink, JJ.

PER CURIAM

This is an appeal by an employee claiming she is entitled to workers' compensation benefits. The district court affirmed the conclusion of the Industrial Commissioner that her request for benefits was untimely. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Onalee Galli was employed in the cafeteria in a K Mart Store in Cedar Rapids. She began to complain of knee pain in 1982. Dr. Albert Coates diagnosed Galli as having degenerative joint disease, which he believed was aggravated by her work. However, Galli did not inform her employer her knee problems were work related. In April 1984, Galli had arthroscopic surgery on her right knee which caused her to miss six weeks of work. Galli continued working for K Mart until November 1988, when she had knee replacement surgery. She never returned to work at K Mart, and in November 1989 took early retirement.

On May 18, 1990, Galli filed a claim for workers' compensation benefits. The deputy Industrial Commissioner determined Galli's date of injury was April 1984. The deputy concluded her claim was barred by the two-year statute of limitations found in Iowa Code section 85.26(1). In addition, the deputy concluded that Galli's claim was barred because she failed to give K Mart notice of her injury within ninety days of its occurrence, as required by section 86.23. The Industrial Commissioner affirmed the deputy's decision. On judicial review, the district court affirmed the commissioner. Galli now appeals.

I. Galli contends there is not sufficient evidence in the record to support the commissioner's conclusion that her date of injury was April 1984. She points out she returned to work after the 1984 surgery, and states her date of injury occurred in November 1988 when she ceased working due to knee problems.

For purposes of the cumulative injury rule, the commissioner's determination regarding the date on which an injury manifests itself will not be disturbed on appeal if it is supported by substantial evidence. *Oscar Mayer Foods Corp. v. Tasler*, 483 N.W.2d 824, 830 (Iowa 1992). We find there is substantial evidence Galli's cumulative injury manifested itself in April 1984, when she had surgery on her knee and missed six weeks of work.

II. Galli also claims she was not required to give K Mart notice of her injury within ninety days because the company had actual notice she had knee problems. Although the evidence seems clear the employer knew Galli was having problems with her knees, there is no evidence to show the employer knew her problems were caused by her employment. We affirm the commissioner's conclusion that Galli was required to give notice to her employer of her work-related injury.

We affirm the district court and the Industrial Commissioner on each issue raised in this appeal.

AFFIRMED.