STATE OF MINNESOTA

IN SUPREME COURT

A22-0803

Workers' Compensation Court of Appeals

McKeig, J.
Dissenting, Gildea, C.J.
Took no part, Anderson, J.

Neomi Schmidt,

Respondent,

vs.

Filed: April 5, 2023
Office of Appellate Courts

Wal-Mart Stores, Inc., and Wal-Mart Claims Services, Inc.,

Relators.

Gregg B. Nelson, Nelson Law Office, Inver Grove Heights, Minnesota, for respondent.

Jerome D. Feriancek, Robb E. Enslin, Trial Group North, Duluth, Minnesota, for relators.

S Y L L A B U S

1. The compensation judge's finding that the employee's *Gillette* injury culminated in October 2015 is not manifestly contrary to the evidence.

2. Under Minn. Stat. § 176.141 (2022) and this court's precedent, the compensation judge's finding that the employee's statutory notice period for her injury began in March 2019 is not manifestly contrary to the evidence.

3. The compensation judge's finding that the employee's bus-aide job was representative of her post-injury earning capacity was not manifestly contrary to the evidence.

Affirmed.

O P I N I O N

McKEIG, Justice.

Respondent-employee Neomi Schmidt was injured during her employment with relator-employer Wal-Mart Stores, Inc. (collectively "Wal-Mart" with relator Wal-Mart Claims Services, Inc.) and sought benefits for a *Gillette* injury. A compensation judge determined Schmidt was entitled to workers' compensation benefits because of her *Gillette* injury. Wal-Mart appealed. The Workers' Compensation Court of Appeals (WCCA) affirmed the compensation judge's findings and conclusions. Wal-Mart petitioned for a writ of certiorari. We affirm.

FACTS

In December 1993, Schmidt had left-knee surgery.[1] Wal-Mart hired Schmidt full-time in 2005. Schmidt worked in many roles, including "cashier, department manager, and customer service counter assistant." Schmidt's job was very physical, requiring her to stand, walk, repetitively kneel, repetitively squat, lift up to 50 pounds, and climb ladders.[2]

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[1] This surgery included an arthroscopy, lateral release, and joint debridement.

[2] While not at issue in this case, Schmidt also had right-knee problems. Schmidt underwent a right-knee arthroscopy in September 2007 after which she returned to work with some restrictions. Schmidt had a right total-knee replacement in September 2017 after which she returned to work with restrictions.

In 2011, Schmidt sought evaluation for left-knee pain twice and told her provider that her pain worsened when she knelt and, because she repetitively knelt at work, she aggravated her knee pain regularly. Schmidt sought treatment again in May 2015 for left-knee pain, swelling, and weakness. An x-ray showed "moderately advanced degenerative" arthritis in Schmidt's left knee and her physician referred Schmidt for orthopedic evaluation. The orthopedist recommended a left total-knee replacement.

On October 27, 2015, Schmidt underwent a left total-knee replacement. Schmidt returned to Wal-Mart as a cashier post-surgery, using a stool as an accommodation, but she found it difficult to perform her job while seated and still had physical job duties like walking and stocking shelves. After the left-knee replacement, Schmidt's physician periodically evaluated her left knee and administered conservative care.

In July 2018, Schmidt saw a new physician, Dr. Heller, for left-knee pain, but her x-rays and bone scans were unremarkable. Schmidt continued to have left-knee pain. Dr. Heller recommended left-knee revision surgery and suggested that Schmidt get a second opinion. The second-opinion physician agreed that a revision surgery would be appropriate if physical therapy failed. On January 16, 2019, Schmidt underwent a left-knee revision surgery. Schmidt returned to cashiering at Wal-Mart post-surgery.

On March 1, 2019, Schmidt retained an attorney who sent Wal-Mart written notice of a *Gillette* injury that same day.[3] Schmidt continued to report knee pain. In August 2019,

[3] "A *Gillette* injury occurs when the cumulative effects of minute, repetitive trauma are serious enough to disable an employee." *Ryan v. Potlatch Corp.*, 882 N.W.2d 220, 222 n.1 (Minn. 2016); *see also Gillette v. Harold, Inc.*, 101 N.W.2d 200, 206–07 (Minn. 1960)

Schmidt quit her job at Wal-Mart and started working as a bus aide, but Schmidt quit her bus-aide job in March 2020 because it aggravated her knees.

In July 2020, Schmidt filed a claim petition alleging she sustained a *Gillette* injury on October 27, 2015, or January 16, 2019—the dates of her left-knee surgeries—and sought workers' compensation benefits. Wal-Mart requested that Dr. Wicklund perform an independent medical examination of Schmidt, which he conducted in December 2020. Dr. Wicklund opined that Schmidt's employment at Wal-Mart "was not a substantial contributing, aggravating, causal, or accelerating factor" to her osteoarthritis, Schmidt's condition necessitated restrictions, and Schmidt qualified for permanent partial-disability benefits. In March 2021, Dr. Heller issued an expert report opining that Schmidt's work accelerated her preexisting condition, Schmidt's left-knee condition necessitated restrictions, and Schmidt qualified for permanent partial-disability benefits.

In September 2021, a compensation judge heard argument and testimony from Schmidt and a Wal-Mart representative. The compensation judge issued an order in October 2021. The compensation judge made three findings relevant to this appeal. First, Schmidt sustained a *Gillette* injury culminating on October 27, 2015.[4] Second, Schmidt gave Wal-Mart proper notice of her injury under Minn. Stat. § 176.141 (2022). Third, Schmidt did not fail to prove a loss in earning capacity caused by her *Gillette* injury. The

(holding that when a preexisting infirmity is aggravated by repetitive, minute trauma because of common and necessary job duties, the disability resulting from the aggravation is a compensable personal injury under the Workers' Compensation Act).

[4] In making this determination, the compensation judge found that both Schmidt's testimony about her knee pain and Dr. Heller's report were credible.

compensation judge ordered Wal-Mart to pay Schmidt temporary total-disability benefits, temporary partial-disability benefits, and 9.2 percent in permanent partial-disability benefits.

Wal-Mart appealed and the WCCA affirmed. The WCCA explained that when a *Gillette* injury culminates and when the injury notice period commences are findings of fact. The WCCA affirmed the compensation judge's findings on those issues because they were supported by substantial evidence. The WCCA also determined that substantial evidence supported the compensation judge's conclusion that Schmidt is entitled to temporary partial-disability benefits based on a loss in earning capacity. Wal-Mart petitioned this court for writ of certiorari.

ANALYSIS

Wal-Mart disputes three of the WCCA's findings: (1) the date Schmidt's injury occurred, (2) when Schmidt was required to notify Wal-Mart of her injury, and (3) the calculation of Schmidt's post-injury earning capacity. Because all three issues involve disputes over factual findings, each issue requires the same standard of review. The WCCA "must affirm the compensation judge's findings of fact unless they are clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." *Anderson v. Frontier Commc'ns*, 819 N.W.2d 143, 147 (Minn. 2012) (citation omitted) (internal quotation marks omitted); *see also* Minn. Stat. § 176.421 (2022) (providing which issues the WCCA can review and the actions the WCCA can take). When the WCCA's factual findings do not conflict with the compensation judge's findings, as is the case here, we review the WCCA's findings in the light most favorable to the findings,

and we uphold the findings unless they are manifestly contrary to the evidence. *See Lagasse v. Horton*, 982 N.W.2d 189, 202 (Minn. 2022) (referencing *Hengemuhle v. Long Prairie Jaycees*, 358 N.W.2d 54, 61 (Minn. 1984)). Manifestly contrary to the evidence means that "it is clear reasonable minds would adopt a contrary conclusion." *Hengemuhle*, 358 N.W.2d at 61. With this standard of review in mind, we address Wal-Mart's arguments in turn.

I.

Wal-Mart's first argument challenges the WCCA's finding of when Schmidt's *Gillette* injury occurred. Wal-Mart emphasizes that it does not challenge the factual findings underlying the injury-date determination. Instead, Wal-Mart argues that the facts found by the compensation judge require an injury date in 2011 rather than 2015 given the statutory definition of personal injury. *See* Minn. Stat. § 176.011, subd. 16 (2022) (defining personal injury in the Workers' Compensation Act). Given that it challenges the application of fact to law, Wal-Mart contends we should review this issue de novo.

The date an injury occurs—including a *Gillette* injury—is a question of fact. *See Balow v. Kellogg Coop. Creamery Ass'n*, 78 N.W.2d 430, 434 (Minn. 1956) ("Whether an injury is of such a nature as to indicate to an employee that it will result in disability or the date when it first becomes apparent to him that an injury believed to be nondisabling would actually result in disability are ordinarily questions of fact.").[5] As such, we will uphold the

[5] *See also Senftner v. Bimbo Bakeries USA, Inc.*, No. WC20-6385, 2021 WL 2005324, at *4 (Minn. WCCA May 4, 2021) ("The date a Gillette injury culminates is not a medical question but a fact question for the compensation judge and should be affirmed

WCCA's finding unless it is manifestly contrary to the evidence. *See Lagasse*, 982 N.W.2d at 202.

The compensation judge determined Schmidt's *Gillette* injury culminated on October 27, 2015, the date of her left total-knee replacement.[6] The WCCA determined this finding was supported by the record because on October 27, 2015, Schmidt could no longer walk, perform her job duties, and needed surgery. The WCCA also pointed out that before the surgery, Schmidt worked without restrictions and did not miss work because of her knee pain. Wal-Mart argues that the WCCA's holding creates the standard "that repetitive trauma injuries are not injuries at all until an employee is totally disabled by them," so even if an employee knows she has an injury aggravated by her work, "she does not have an injury until she undergoes surgery," which means the "employer has no chance to prevent a more serious injury."

We have held that "[a] *Gillette* injury occurs when the cumulative effects of minute, repetitive trauma are serious enough to disable an employee." *Ryan v. Potlatch Corp.*, 882 N.W.2d 220, 222 n.1 (Minn. 2016). A *Gillette* injury can arise if an employee's "work aggravated or accelerated an underlying condition or was a proximate contributing cause

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if supported by substantial evidence."), *aff'd without opinion*, 966 N.W.2d 492 (Minn. 2021).

[6] The dissent claims that "the compensation judge found" and Schmidt admitted "that she suffered work-related knee pain in 2011." *Infra* at D-1. The compensation judge's findings state that Schmidt sought evaluation for knee pain in 2011, "mentioned she was constantly aggravating her knees at work," and Schmidt "knew her work activities were causing her left knee pain" in 2011. The compensation judge's ultimate finding of fact, however, was that Schmidt "sustained a *Gillette* injury to her left knee culminating on October 27, 2015."

of the disability." *Steffen v. Target Stores*, 517 N.W.2d 579, 581 (Minn. 1994) (citation omitted) (internal quotation marks omitted). The determination of a *Gillette* injury "depends primarily on medical evidence." *Marose v. Maislin Transp.*, 413 N.W.2d 507, 512 (Minn. 1987); *accord Steffen*, 517 N.W.2d at 581. "A *Gillette* injury claim requires proof of a causal connection between the employee's ordinary daily work and the disability for which compensation is claimed." *Felton v. Anton Chevrolet*, 513 N.W.2d 457, 459 n.5 (Minn. 1994). Furthermore, the Workers' Compensation Act is meant to compensate for loss of earning power, so "injury" in the act "refers to compensable injuries, and these occur when disability appears." *Clausen v. Minn. Steel Co.*, 242 N.W. 397, 398 (Minn. 1932).

Schmidt testified that she did not have problems with her left knee after the 1993 surgery until years after she started working at Wal-Mart. Schmidt's job required repetitive walking, crouching, and kneeling, moving 50-pound pallets and other heavy items, and climbing up and down ladders. In 2011, Schmidt was first diagnosed with "[l]eft prepatellar bursitis" and advised to stay off her knee when possible and to use knee pads. In September 2011, Schmidt was diagnosed with "[c]hronic patellar bursitis" and advised to take Aleve, ice her knee daily, use knee pads, and go to physical therapy. Schmidt did not have formal work restrictions.

In May 2015, an x-ray showed a "moderately advanced degenerative change" in Schmidt's left knee and she was advised to ice her knee daily, take anti-inflammatories, rest her knee as much as practical, and consult with an orthopedist. Schmidt explained to the orthopedist that her left-knee pain worsened when she bent, flexed, turned, and rotated

her knee, and when she walked or stood. The orthopedist diagnosed Schmidt with left-knee arthritis and recommended a total knee-replacement. Schmidt underwent a left knee-replacement surgery on October 27, 2015. This was the first time Schmidt missed work or had restrictions because of her left knee. Schmidt testified that her "left knee never really did get better," even after the 2015 total-knee replacement.

The evidence shows that while Schmidt started seeking treatment for her knee pain in 2011, she did not suffer a loss to her earning capacity until she underwent the total-knee replacement in October 2015, after which she returned to work with restrictions. Thus, the WCCA's finding that substantial evidence supported the compensation judge's finding that Schmidt's *Gillette* injury culminated on October 27, 2015, is not manifestly contrary to the evidence.

II.

Wal-Mart's second argument disputes the WCCA's affirmance of the compensation judge's finding of when the statutory notice period for Schmidt's injury commenced under the Workers' Compensation Act. Wal-Mart contends the notice period for Schmidt's injury should have commenced in 2011, when Schmidt knew her work activities contributed to her knee pain. The WCCA affirmed that Schmidt gave Wal-Mart proper notice of her injury on March 1, 2019, when her attorney explained to Schmidt that her injury may be a compensable work injury. Schmidt argues that the WCCA correctly affirmed the compensation judge's finding.

We will uphold the WCCA's finding unless it is manifestly contrary to the evidence. *Lagasse*, 982 N.W.2d at 202; *see also Anderson*, 819 N.W.2d at 147 ("The date on which

an employee has sufficient knowledge to trigger the duty to give notice of injury is a question of fact."). The Workers' Compensation Act provides the notice requirement at issue: "Unless the employer has actual knowledge of the occurrence of the injury," or written notice is given to the employer after the injury happens, "no compensation shall be due until the notice is given or knowledge obtained." Minn. Stat. § 176.141. Employees have 30 days from the date of injury to give notice to employers. *Id.* This notice period is extended to 180 days from the injury date if the employee shows "that failure to give prior notice was due to the employee's . . . mistake, inadvertence, ignorance of fact or law . . . ." *Id.* If notice is not given within 180 days of the injury, "no compensation shall be allowed," unless the lack of notice is caused by the employee's mental or physical incapacity. *Id.*

In *Anderson*, we discussed the notice requirement in the context of a *Gillette* injury and stated that "an employee must give notice of injury no more than 180 days after 'it becomes reasonably apparent to the employee that the injury has resulted in, or is likely to cause, a compensable disability.' " 819 N.W.2d at 147 (quoting *Issacson v. Minnetonka, Inc.*, 411 N.W.2d 865, 867 (Minn. 1987)). We observed that the standard contemplates the "information available to" the employee at any given time, even if there is no medical record explicitly connecting an injury to an employee's job. *Id.* at 148 (determining the appellant had sufficient information "[u]nder our standard from *Issacson*," to know his injury was work-related, regardless of whether or not it was documented in his medical records, because the appellant testified that his doctors explained to him bending over pinched his spinal cord, and the appellant testified that he realized before surgery that all

the stooping and bending he did at work caused his discs to wear out).[7] In short, the statutory notice period starts to run when, based on the information available to the employee, it is reasonably apparent that the employee's injury is, or is likely to cause, a compensable disability.

Here, Schmidt's injury culminated on October 27, 2015, but she did not give notice until March 1, 2019. However, the WCCA affirmed the compensation judge's finding that Schmidt's 2019 notice was timely given the information available to her. Most compellingly, the record shows that after her 2015 knee replacement, Schmidt's surgeon

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[7] Wal-Mart argues that a recent WCCA opinion, *Senftner*, allowed ignorance of the law to toll the Workers' Compensation Act's notice requirement by creating a new standard that requires an employee to know what the term of art "*Gillette* injury" means before their injury becomes compensable. *See Senftner*, 2021 WL 2005324. Wal-Mart's concerns are easily assuaged. *Senftner* involved an employee who conservatively treated his knee pain for two years, in 2018 brought up the possibility of a *Gillette* injury to his doctor, in 2019 had a total-knee replacement, and in 2020 requested benefits. *Id.* at *2–3. The compensation judge found that Senftner's injury culminated in 2018 when he discussed the term of art "*Gillette* injury" with his physician, so Senftner was ineligible for benefits because he did not give timely notice. *Id.* at *3. The WCCA explained that *Gillette* injuries and their compensability are not common knowledge because *Gillette* "is a term of art that goes to the very nature of compensability of repetitive trauma injuries" and has no other meaning in the work injuries context. *Id.* at *5. Accordingly, the WCCA determined that Senftner *himself* raising the term "*Gillette* injury" to his physician is what triggered his obligation to report the injury. *Id.* The WCCA reiterated that "[a] definitive medical causation opinion is not necessary before notice [of a *Gillette* injury] must be given;" rather, "the evidence . . . is considered to determine when the employee, as a reasonable person, had enough information to conclude [their] work activities could be causing an injury . . . that under the law . . . was compensable." *Id.* As such, *Senftner* is in line with this court's precedents. To be clear, our standard does not require an employee to know the term of art "*Gillette* injury" or its legal significance before the statutory notice period can commence.

explicitly stated that her injury was *not* work-related.[8] The record also shows that Schmidt's knee pain did not start until six years *after* she started working at Wal-Mart. Given this lag time, it is reasonable that Schmidt would not believe her job caused her knee injury when that injury culminated in October 2015. Schmidt testified that she "didn't realize [she] could" report her knee pain and she "never connected [her left-knee pain] to a work injury because [she] didn't fall or twist [her] ankle or twist [her] knee or anything like that." Schmidt testified that "[i]t was gradual," and that even though she reported her knee pain to a manager, the manager never made an injury report.[9] The lack of an injury report from management could reasonably be construed by Schmidt to mean she did not have a compensable injury because store management did not believe the injury warranted reporting. Schmidt did not make the connection that her injury could be compensable until her March 1, 2019, meeting with her attorney, after which she immediately provided Wal-Mart with notice of a possible *Gillette* injury.

Thus, the record demonstrates that the finding that Schmidt's notice period commenced on March 1, 2019, is not manifestly contrary to the evidence because the

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[8] Schmidt's injury was not medically connected to her work at Wal-Mart until Dr. Heller's 2021 report, after she already notified Wal-Mart of her injury.

[9] Because we affirm the WCCA's finding that Schmidt's *Gillette* injury culminated in October 2015, she would not have been required to give notice until, at the earliest, 180 days after the October 2015 culmination date because a compensable injury did not exist before this date.

record indicates that it was not reasonably apparent to Schmidt, based on the information available to her, that she had a compensable injury until March 1, 2019.

Wal-Mart also argues that the WCCA erred by holding that knowledge of a compensable injury is a subjective, state-of-mind test that requires an employee to know what a *Gillette* injury is before the statutory notice period can begin. Wal-Mart seems to misconstrue the WCCA's analysis. The WCCA explained that when the notice period for a particular injury commences is a factual finding for the compensation judge and laid out the same standard under *Anderson* and *Issacson* that we describe above. Thus, rather than applying a new, subjective state-of-mind test that relies on an employee's ignorance of the law, the WCCA conducted the traditional fact-based assessment under *Anderson* and *Issacson* and determined it was not reasonably apparent to Schmidt that her injury was work related until her March 1, 2019, meeting with her attorney.[10] The WCCA concluded that the medical opinion finding no work-related injury understandably may have influenced Schmidt's understanding of her injury and, given all the facts, it was reasonable to conclude Schmidt did not understand she suffered a compensable injury until March 2019. This finding, as explained above, was not manifestly contrary to the evidence.

[10] The WCCA relied on: (1) Schmidt's testimony that she did not know her injury was compensable before meeting with her attorney; (2) neither Schmidt nor her manager filed an injury report after discussing her knee pain in 2015; (3) Schmidt's medical records did not mention a *Gillette* injury; (4) Schmidt's surgeon stated her injury was not work-related after her 2015 surgery; and (5) the first causal connection between Schmidt's work and injury was not made by a medical professional until Dr. Heller's 2021 expert report.

III.

Finally, Wal-Mart disputes the WCCA's finding that Schmidt was eligible for temporary partial-disability benefits based on her loss in earning capacity because of the pay cut Schmidt took when she began the bus-aide job. Because Schmidt returned to Wal-Mart for several months post-surgery before she quit, Wal-Mart argues that her wage at Wal-Mart should be used to determine her post-injury earning capacity. Wal-Mart also claims there is no evidence in the record to support the finding that Schmidt's earning capacity diminished.[11] Schmidt argues she left Wal-Mart because "[s]he was unable to perform her work at the level required," and Wal-Mart could not "fully accommodate her limitations."

Under the Workers' Compensation Act, temporary partial-disability benefits "may be paid only while the employee is employed, earning less than [their] wage at the time of the injury, and the reduced wage . . . is due to the injury. Minn. Stat. § 176.101, subd. 2(b) (2022). "[T]he aim of temporary partial benefits is to compensate for reduction in earning capacity." *Jasnoch v. Schwab Co.*, 495 N.W.2d 204, 205 (Minn. 1993).

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[11] Wal-Mart also argues that there is no evidence in the record to show that it could not accommodate Schmidt's restrictions and that Schmidt never applied for a sedentary job with Wal-Mart. These arguments are unpersuasive. Schmidt worked in a variety of roles during her time at Wal-Mart and ended up cashiering in 2014 because it would be more sedentary, and she could sit while working. But, as Schmidt testified, she could not cashier efficiently while sitting on a stool, and she was still required to stock shelves and walk during her shifts. Thus, the accommodations Schmidt needed—a stool and a sedentary job—were not workable even as a cashier, which seemed to be the most sedentary job available. Schmidt's decision to quit was therefore reasonable because her supposedly sedentary job was no longer performable. Additionally, when the rehabilitation consultant reached out, Wal-Mart stated they did not have light, non-modified job positions available.

"Post-injury earning capacity . . . is a more theoretical concept" than pre-injury earned wage. *Jellum v. McGough Constr. Co., Inc.*, 479 N.W.2d 718, 719 (Minn. 1992). As such, "[t]he general rule is that it is the injured employee's ability to earn (earning capacity), not the actual post-injury earnings, that should be considered in awarding temporary disability compensation—although post-injury wages create a presumption of earning capacity." *Jasnoch*, 495 N.W.2d at 205 n.3. This presumption is rebuttable if there is evidence to show post-injury wages are not "a reliable measure of earning capacity." *Mitchell v. White Castle Sys., Inc.*, 290 N.W.2d 753, 756 (Minn. 1980).

"What an employee is able to earn in [their] partially disabled condition is a question of fact." *Mathison v. Thermal Co., Inc.*, 243 N.W.2d 110, 111 (Minn. 1976) (citation omitted) (internal quotation marks omitted). As previously stated, when reviewing findings of fact, we apply a deferential standard of review—we uphold the WCCA's factual finding unless it is manifestly contrary to the evidence. *See Lagasse*, 982 N.W.2d at 202.

The compensation judge determined Schmidt was eligible for temporary partial-disability benefits because "she had restrictions attributable to her work injur[y] and worked at a wage loss" after she quit her job at Wal-Mart because her ongoing knee pain caused her to obtain a less physically demanding, lower-paying job. The WCCA determined substantial evidence supported this finding because (1) Schmidt's *Gillette* injury led to work restrictions; (2) Schmidt's earnings diminished because she could no longer do the physical work at Wal-Mart, causing her to take the lesser-paid, more-sedentary bus-aide job; and (3) Schmidt did not withdraw from the labor market. The WCCA noted that Schmidt's bus-aide wage was appropriate to calculate her earning

capacity because it represented her actual post-injury income, which is presumed to be an accurate representation of her earning capacity, and Wal-Mart did not rebut this presumption.

Schmidt's knee never got better, even after the left total-knee replacement in 2015. After surgery, Schmidt continued to see physicians for the pain and was prescribed conservative treatment and work-hour restrictions. After Schmidt's 2019 revision surgery, Schmidt continued to have left-knee pain and returned to work with limits on how often she could work. Schmidt quit her job at Wal-Mart because she could not perform the physically laborious job duties. Instead, Schmidt took the bus-aide job because she presumed it would be more sedentary.

Thus, the record reflects that Schmidt's condition steadily decreased after her total-knee replacement in 2015, culminating in her leaving Wal-Mart to seek a sedentary job because she was not physically capable of Wal-Mart's required job duties. As such, the WCCA's affirmance of the compensation judge's finding that Schmidt's bus-aide wage represented her actual post-injury earning capacity is not manifestly contrary to the evidence.

CONCLUSION

For the foregoing reasons, we affirm the decision of the Workers' Compensation Court of Appeals.

Affirmed.

Anderson, J., took no part in the consideration or decision of this case.

D I S S E N T

GILDEA, Chief Justice (dissenting).

I respectfully dissent. The relevant statute provides that "no compensation [is] due until the notice is given." Minn. Stat. § 176.141 (2022). The statute gives an employee different time periods for giving the notice, but the longest time period given to an employee is "180 days after the occurrence of the injury." *Id.* If the employee does not give the notice within that time period (absent incapacity, which is not at issue here) "no compensation shall be allowed." *Id.* Here, Schmidt admitted—and the compensation judge found—that she suffered work-related knee pain in 2011.

The compensation judge's finding is supported in the record. The record shows that Schmidt saw a doctor twice in 2011 for pain in her left knee. Schmidt described the pain as "sharp" and "excruciating" and attributed the knee pain to her work. Schmidt's doctor diagnosed her with "left prepatellar bursitis." Schmidt's medical records document the work-related pain, noting that while at work, Schmidt is "constantly on her knees" and "[a]s a result, she is constantly aggravating the area." Finally, Schmidt's testimony at the hearing before the compensation judge was clear that she understood that work was causing her left knee pain. Even though Schmidt had "excruciating" knee pain in 2011 that was caused by her work, Schmidt did not give notice to her employer in 2011.

We have recognized that when "it becomes reasonably apparent to the employee that the injury has resulted in, or is likely to cause, a compensable disability," the employee must give the notice required in Minn. Stat. § 176.141. *Issacson v. Minnetonka, Inc.*, 411 N.W.2d 865, 867 (Minn. 1987). I would hold that it was "reasonably apparent" to

Schmidt in 2011 that her left knee pain was likely to cause a compensable disability when her doctor diagnosed her with work-related "left prepatellar bursitis." *See, e.g., Fuller v. Pac. Intermountain Express Co.*, 136 N.W.2d 307, 308–10 (Minn. 1965) (recognizing that work-related knee pain following an injury led to future disabling knee injury). Accordingly, Schmidt needed to give notice within 180 days of this diagnosis under Minn. Stat. § 176.141. Requiring notice at this point in the course of Schmidt's knee injury serves the purpose of the notice provision, which we have recognized is to "enable the employer to furnish immediate medical attention in the hope of minimizing the seriousness of the injury." *Kling v. St. Barnabas Hosp.*, 190 N.W.2d 674, 677 (Minn. 1971).

Because Schmidt did not give the statutorily-required notice within the time period set in the statute, I would hold that the statute bars her claim and reverse.