

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 02-153178

Employee: Paul Bratcher

Employer: GKN Aerospace

Insurer: Zurich North America
c/o Crawford & Co.

Date of Accident: June 3, 2002

Place and County of Accident: St. Louis County

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 26, 2005. The award and decision of Administrative Law Judge Karla Ogradnik Boresi, issued April 26, 2005, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 30th day of August 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Paul Bratcher

Injury No.: 02-153178

Dependents: N/A
Employer: GKN Aerospace
Additional Party: N/A
Insurer: Zurich North America c/o Crawford & Co.
Hearing Date: March 22, 2005

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: KOB:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes.
2. Was the injury or occupational disease compensable under Chapter 287? Yes.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease: June 3, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis County
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant wore rigid, steel-toed shoes on hard concrete floors for long periods of time, causing plantar fasciitis.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Bilateral feet at the 150 week level.
14. Nature and extent of any permanent disability: 5% of the right foot and 2% of the left foot.
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$0

Employee: Paul Bratcher Injury No.: 02-153178

17. Value necessary medical aid not furnished by employer/insurer? \$1,205.00.
18. Employee's average weekly wages:
19. Weekly compensation rate: \$628.90 / \$329.42
20. Method wages computation: By agreement

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	\$1,205.00
10.5 weeks of permanent partial disability from Employer	\$ 3,458.91

22. Second Injury Fund liability: No

TOTAL:

\$ 4,663.91

23. Future requirements awarded: Employer shall provide replacement custom orthotic inserts as described in the Award.

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Richard Ameduri

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Paul Bratcher	Injury No.:	02-153178
Dependents:	N/A	Before the	
Employer:	GKN Aerospace	Division of Workers'	
Additional Party:	N/A	Compensation	
Insurer:	Zurich North America c/o Crawford & Co.	Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
		Checked by:	KOB:tr

PRELIMINARIES

The matter of Paul Bratcher ("Claimant") proceeded to hearing to determine whether Claimant sustained an occupational disease arising out of and in the course of his employment. Attorney Richard Ameduri represented Claimant. Attorney Michael Finley represented GKN Aerospace ("Employer") and its Insurer, Zurich North America c/o Crawford & Company. The Second Injury Fund was not a party to the claim.

The parties agree that on or about June 3, 2002, Claimant was an employee of Employer and earned an average weekly wage that qualified him for the maximum rates of compensation of \$628.90 for total disability benefits and \$329.42 for permanent partial disability benefits. Claimant alleges an injury to his feet on account of work related steel-toed shoes. Employer denied any liability and paid no benefits.

The issues to be determined are:

1. Did Claimant sustain an occupational disease arising out of and in the course of employment;
2. Is Claimant's medical condition causally related to his work requirements;
3. Did Claimant provide proper notice;
4. Is Employer liable to reimburse Claimant for past medical expenses up to the amount of \$4,871.24;
5. Is Employer liable to provide Claimant with future medical care in the form of orthotics; and
6. What is the nature and extent of Claimant's permanent partial disability?

With respect to the exhibits, all exhibits were admitted without objection except for the medical bills contained in Claimant's Exhibit C, to which Employer's attorney objected citing lack of foundation and proof of medical necessity. That objection is overruled, and the medical experts provide the appropriate foundation, including Employer's expert who stated the treatment in question was appropriate and reasonably successful.

FINDINGS OF FACT

Based on a thorough review of the entire record, considering the testimony of the Claimant, who I had the opportunity to observe in person and find credible, and the applicable law of Missouri, I find:

Claimant is a 34-year-old man whose job with Employer as a bonding mechanic involves constant standing. From March 1997 to December 2001, Claimant wore good solid tennis shoes. Claimant never had problems with his feet, despite the fact he has bi-lateral pronation, or flat feet, an innate condition of which he was unaware prior to 2002.

In January 2002, Employer initiated a safety policy requiring all employees to wear steel-toed shoes or boots. Employer arranged for a mobile-shoe store to come to the plant, and provided discount vouchers to employees to aid in the purchase of the shoe of their choice from the mobile unit. Claimant purchased his shoes, and wore the shoes as required. The shoes fit, but were uncomfortable, rubbed on his toes, and altered his gait. Upon the advice of a safety committee, Claimant got a new pair, but did not obtain relief. With each pair of shoes he tried, the symptoms were improved as he broke in the shoe, but he never was symptom free when he wore the steel-toed shoes.

Sometime in May 2002, Claimant reported his shoe and foot complaints to Alice Holts, his supervisor, who informed Claimant Employer was not providing any medical treatment for complaints regarding work shoes. Claimant then sought treatment on his own, with family practitioner Dr. Hammersmeier, chiropractor Dr. Clay, [\[1\]](#) and podiatrist Dr. Liu, who provided the greater part of the foot treatment, including x-rays, a cortisone injection, exercises, and custom made orthotic inserts. Claimant had a total of five visits to Dr. Liu's office – the charges associated with those visits total \$1,205.00.

The custom orthotics provided Claimant with the most relief. Dr. Liu told Claimant he has to wear the inserts as long as he has to wear safety shoes. Dr. Liu testified that the inserts should last three to five years, but Claimant testified that his first pair is beginning to wear out after two years. Dr. Liu's records indicate the total cost associated with the bi-lateral orthotics is \$660, for two office visits, casting, inserts, and fittings.

While Claimant has received a benefit from the treatment and orthotics, he has not been pain free since his foot symptoms began in 2002. He wears the orthotics and is careful to do the stretching exercises prescribed by his doctors. In February 2004, Claimant injured his left ankle when he fell off a ladder, and the treatment that followed that injury is related to that injury. In fall of 2004 he bought new work boots, but not from the company provided truck.

Dr. Sophie Liu, a podiatrist, first saw Claimant on May 23, 2003 for complaints of pain primarily in the right heel, although he also had some mild pain in the left. Symptoms were worst upon rising in the morning and after a long day standing at work. Dr. Liu diagnosed plantar fasciitis stemming from chronic irritation. She also diagnosed bi-lateral pronation, which predisposed Claimant to plantar fasciitis. She indicated that while they were not the only reasons he had plantar fasciitis, the conditions at Claimant's employment, specifically steel-toed boots and constant standing on a hard surface, were "significant" factors in aggravating his disease. Her conservative treatment consisted of taping, splints, stretching, anti-inflammatories, ultrasound, an injection, and orthotics. While acknowledging Claimant would forever have plantar fasciitis with a varying degree of symptoms, she did not feel he had "disability" in the sense he is "not disabled to the point where he cannot do any work of any type."

Dr. Russell Cantrell is a physiatrist who evaluates and treats a variety of musculoskeletal conditions, and unlike Dr. Liu, does not confine his practice to treatment of the feet and ankles. In evaluating Claimant on Employer's behalf, Dr. Cantrell recorded a history consistent with the evidence at hearing, and noted Claimant reported the symptoms to Employer, who refused treatment. Dr. Cantrell agreed with Dr. Liu's diagnosis of plantar fasciitis, assigning permanent partial disability of 2% of each hind foot, but felt that it was not substantially caused by his occupational activities or footwear - the etiology of the disease was Claimant's bi-lateral foot pronation (flat feet). Dr. Cantrell also agreed that the treatment provided by Dr. Liu was reasonable for a diagnosis of plantar fasciitis, including the continued use of orthotics. The doctor noted that prolonged standing can exacerbate symptoms, but could not be the substantial causative factor of plantar fasciitis.

RULINGS OF LAW

Based on the substantial and competent evidence, I find that Claimant has met his burden of establishing he has sustained an occupational disease arising out of and in the course of his employment, and that he is entitled to benefits under the Workers' Compensation Law of Missouri.

1. Arising out of and in the Course of Employment /Medical Causation.

Employers are only liable to compensate employees for injuries arising out of and in the course of employment. § 287.120.1. Thus, aggravation of a pre-existing condition is a compensable injury if the claimant establishes a direct causal link between her job duties and the aggravated condition. See *Smith v. Climate*

Engineering, 939 S.W.2d 429, 433-34 (Mo.App. E.D.1996). Work must have been a "substantial factor" causing the aggravated condition. §287.020.2. But if the aggravation is due to "a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal non -employment life," then the injury is not compensable. § 287.020.3(2)(d); *Rono v. Famous Barr*, 91 S.W.3d 688, 691 (Mo.App. E.D. 2002). Generally, a claimant's medical expert in an occupational disease case must establish the probability that the disease was caused by conditions in the work place. *Sheehan v. Springfield Seed & Floral, Inc.*, 733 S.W.2d 795, 797 (Mo.App.1987). Even where the causes of the disease are indeterminate, a single medical opinion relating the disease to the job is sufficient to support a decision for the employee. *Prater v. Thorngate, Ltd.*, 761 S.W.2d 226, 230 (Mo.App.1988); see also, *Dawson v. Associated Elec.*, 885 S.W.2d 712, 716 (Mo.App. W.D. 1994).

The experts agree that Claimant has plantar fasciitis and bi-lateral foot pronation, or flat feet, which preexisted Claimant's foot complaints, and make him more susceptible to plantar fasciitis. Both agree that work did not cause the bi-lateral pronation. The experts disagree on the cause of Claimant's current complaints, with one opining Claimant's plantar fasciitis was not substantially caused by his occupational activities or footwear, and the other stating conditions at Claimant's employment, specifically steel-toed boots and constant standing on a hard surface, were "significant" factors in aggravating his disease.

Of the two experts, I find Dr. Liu, Claimant's expert, to be more credible. As a podiatrist who limits her practice to diseases of the feet, she has specific expertise. She provided appropriate treatment, as testified to by Dr. Cantrell, and obtained positive results. Her testimony was more consistent with the evidence as a whole than was Dr. Cantrell's, who is a physiatrist with general medical experience, but who does not solely treat feet. Although she freely admitted she is unable to state with 100% certainty that conditions of the workplace were the only factors in causing his plantar fasciitis, she testified that the work conditions were significant^[2] in the development of the plantar fasciitis. This is consistent with the credible evidence that Claimant never had foot problems until he was required to wear steel-toed shoes at work, and that his symptoms ease with the use of orthotics or soft shoes. Even though she does not feel he has disability, Dr. Liu testified Claimant would always have plantar fasciitis

2. Notice

Employer asserts Claimant failed to provide notice. However, The notice requirement in section 287.420 does not apply to occupational diseases. *Endicott v. Display Technologies, Inc.* 77 S.W.3d 612, 616 (Mo.banc 2002)(citations omitted). Even so, I find Claimant provided proper and timely notice of his foot problems. He told Alice Holts he was having problems, and she informed him Employer was not providing any medical treatment for complaints regarding work shoes. Only after his request for treatment was denied did Claimant seek treatment on his own.

3. Past Medical Expenses

Generally, medical treatment for a work injury is at the employer's direction, and if an employee chooses a provider, it is at his cost. An employer is held liable for independent medical treatment incurred only when the employer has notice that the employee needs treatment, or a demand is made on the employer to provide medical treatment, and the employer refuses or fails to provide the needed treatment. *Hayes v. Compton Ridge Campground, Inc.*, 135 S.W.3d 465, 470 - 471 (Mo.App. S.D. 2004) citing *Blackwell v. Puritan-Bennett Corp.*, 901 S.W.2d 81, 85 (Mo.App.1995). In this case, Claimant provided notice and requested treatment, but Employer refused to provide any medical treatment for complaints regarding work shoes. Thus, Claimant was free to seek treatment on his own.

When testimony connecting the medical procedures in question to treatment for the work injury accompanies the bills, the employee identifies the bills as being related to and the product of his injury, and the bills relate to the professional services rendered as shown by the medical records in evidence, a sufficient factual basis exists for the fact finder to award compensation. The employer, of course, may show that the bills are not reasonable or fair or that the medical expenses incurred were not related to the injury in question. See *Goerlich v. TPF, Inc.*, 85 S.W.3d 724, 732 (Mo.App. E.D. 2002)(overruled on other grounds)(citations omitted). In this case, Claimant's testimony and that of the experts establish the proper foundation for the medical bills, and there is no evidence the bills were not reasonable. I find that Claimant provided documentation of medical treatment provided by Dr. Liu's office^[3] related to his work injury that total \$1,205.00.

4. Future Medical Expenses

Claimant is entitled to medical treatment as may be reasonably required "to cure and relieve from the effects of the injury." § 287.140.1. This means treatment that gives comfort or relieves even though restoration to soundness [a cure] is

beyond avail." *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 251 (Mo.banc 2003)(overruled on other grounds) citing *Sullivan v. Masters Jackson Paving Co.* 35 S.W.3d 879, 888 (Mo.App.2001) (brackets in original). Dr. Liu credibly testified that the treatment for Claimant's chronic plantar fasciitis is on going, and that he will always need to use orthotics in his work shoes, wear sensible shoes away from work, and engage in stretching exercises to manage his condition. Orthotic inserts need to be replaced every three to five years. Claimant requires orthotic replacements as long as he is required to wear rigid shoes to earn a living.

I find Claimant needs future orthotics to cure and relieve the effects of his plantar fasciitis so long as he is required to wear steel-toed shoes. The cost associated with obtaining one pair of custom inserts, including office visits, molding, and the inserts themselves, is \$660.00. Employer shall provide Claimant with replacement custom inserts of the type Claimant received from Dr. Liu's office so long as Claimant wears steel-toed, rigid footwear to earn a living. Employers obligation to provide future medical treatment in the form of orthotic shoe inserts is limited by the following conditions: 1) Employer shall not be obligated to purchase a new set of orthotics unless Claimant has used his then current pair for at least three years; and 2) in order to request replacement orthotics from Employer, Claimant must certify that he uses steel-toed or other rigid safety shoes for work purposes.

5. *Nature & Extent of Disability.*

There is conflicting evidence as to the nature and extent of disability. Claimant's expert says there is no disability because Claimant continues to work, while she also describes chronic, disabling problems associated with the work-related diagnosis. Employer's expert acknowledges Claimant has permanent partial disability of 2% of each hind foot due to plantar fasciitis, but asserts the condition is not work related. The fact finder is not bound to select a medical rating as offered by a physician, but takes into consideration all of the evidence and facts presented at trial. The assignment of residual disability is within the expertise of the Commission. *Keener v. Wilcox Elec.*, 884 S.W.2d 744, 746 (Mo. App. WD 1994)(overruled on other grounds). Taking into consideration all of the evidence and facts presented, I find that Claimant has sustained permanent partial disability of 5% of the right foot at the 150 week level, and 2% of the left foot at the 150 week level.

CONCLUSION

The conditions of Claimant's work, specifically the mandatory use of inflexible steel toed footwear on hard flooring for long periods of time, were a substantial factor in causing plantar fasciitis in his previously asymptomatic flat feet. He is entitled to recover medical expenses and permanent partial disability benefits as outlined in this award.

Attorney Richard Amaduri shall have a lien of 25% for legal services rendered.

Date: _____

Made by: _____

Karla Ogrodnik Boresi
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

[1] Claimant said he saw Dr. Clay for several problems, but only one to three times for his feet.

[2] Although there is no bright-line test or formula which sets out the requirements for what constitutes a substantial factor in determining causation in workers' compensation claims, it is well-settled that "a causative factor may be substantial even if it is not the primary or most significant factor" in

causing the injury. *Cahall v. Cahall*, 963 S.W.2d 368, 372 (Mo.App. 1998). An expert can testify to a substantial factor without using the word “substantial.” See, i.e., *Tangblade v. Lear Corp.*, 58 S.W.3d 662, 669 (Mo.App. W.D.2001). I find Dr. Liu’s testimony establishes that work is a substantial factor in Claimant’s condition.

[3] There is insufficient evidence to establish that the other charges, including those of Dr. Clay, are related to treatment of Claimant’s work-related plantar fasciitis.