

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

Injury No.: 04-045601

Employee: Deborah Debord
Employer: Independence School District
Insurer: MUSIC c/o Gallagher Bassett
Date of Accident: Alleged February 29, 2004
Place and County of Accident: Alleged Independence, Missouri

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 September 13, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Lisa Meiners, issued September 13, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 27th day of December 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Deborah Debord

Injury No. 04-045601

Employer: Independence School District

Insurer: MUSIC c/o Gallagher Bassett

Additional Party: N/A

Hearing Date: August 8, 2005

Checked by: LM/abj

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the law? No.
4. Date of accident or onset of occupational disease: February 29, 2004.
5. State location where accident occurred or occupational disease was contracted: Independence, Missouri.
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? No.
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: Employee's duties required prolonged standing and walking on concrete floor.
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: Alleged left and right feet.
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-
17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: Maximum rate.
19. Weekly compensation rate: \$457.63 / \$347.05
20. Method wages computation: By stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable: -0-

Said payments to begin upon receipt of Award and to be payable and 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 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Tom Stein.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Deborah Debord

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On August 8, 2005, the parties appeared for a hearing. The employee, Deborah Debord, appeared in person and with counsel Tom Stein. The employer, Independence School District, and insurer, MUSIC, administered by Gallagher Bassett, was represented by Melodie Powell.

STIPULATIONS

The parties stipulated to the following:

1. That the Independence School District was an employer operating subject to Missouri's workers' compensation law;
2. that Debbie Debord was its employee;
3. that jurisdiction is in Independence, Missouri;
4. that no demand for treatment occurred until August 3, 2004; and
5. that the wage rate is \$457.63 for temporary total disability benefits and \$347.05 for permanent partial disability benefits.

ISSUES

The issues to be resolved by this hearing are:

1. Whether Ms. Debord sustained an accident/occupational disease arising out of and in the course of her employment with Independence School District;
2. medical causation;
3. whether Ms. Debord notified her employer as required by law; and

4. whether Ms. Debord sustained any disability and, if so, the nature and extent of that disability.

FINDINGS AND RULINGS

Claimant, an employee of Independence School District, worked in the school food service department for approximately 23 years. The last two years of her employment were spent at William Chrisman High School as a manager of the food service department. She worked from 5:45 a.m. to 1:45 p.m. five days a week during the school year. In this capacity, Claimant oversaw 14 to 15 employees in the cafeteria, ordered products for the kitchen, cooked the meals, and basically supervised all cafeteria operations. There were times Claimant sat at a desk counting money and completing paperwork, but she walked or stood on a hard concrete surface seven hours a day, five days a week. Claimant first noticed discomfort in her left foot in the fall of 2003. Regardless, Claimant worked full duties and never missed work due to her left foot prior to the fall of 2003. Additionally, Claimant never had physical problems or saw a doctor for her feet prior to the fall of 2003. In the fall of 2003, Claimant felt aching and tenderness on the bottom left foot. Claimant's physical symptoms improved on vacations and Christmas break but resumed upon seven hours of standing and walking five days a week at her job.

Claimant finally found a Dr. Steven Robinson in the yellow pages in January 2004. Dr. Robinson, on January 8, 2004, placed Claimant's left foot in a flexible cast based on an x-ray revealing a large bone spur to Claimant's left heel. Dr. Robinson diagnosed chronic plantar fasciitis, left foot herniation of the abductor muscle, and heel spur syndrome. Dr. Robinson restricted Claimant from heavy lifting and no prolonged standing but Claimant continued to work full-duty as a manager of food services. Claimant continued to treat with Dr. Robinson in January, February, and March of 2004. Beginning in February 2004, Claimant worked only half days due to left foot complaints.

Despite conservative care of Claimant's left foot, Dr. Robinson performed a herniation repair of the muscle, plantar fasciotomy, and a heel spur reduction of the left foot on April 23, 2004. Prior to this surgery, tenderness began in Claimant's right foot. Claimant attributes use of crutches with the right foot complaints. Claimant also testified she shifted all her weight to the right foot while in the flexible cast. This, too, according to Claimant, caused right foot tenderness.

Claimant did not resume the manager's position, as a result of the surgery and summer break, until early August 2004. There, she quit after a couple of weeks because symptoms of her left and right feet restricted her from performing work as a manager of food services. In July 2004, Claimant was diagnosed with RSD "most likely aggravated by aggressive physical therapy of her left foot." (Exhibit A, page 8) Dr. Robinson sent her to pain management consultation. Claimant declined treatment recommended by the pain management doctor.

Presently, Claimant is not working. Claimant has constant pain and discomfort in both feet with worse pain of the left foot. Claimant is unable to stand or walk for prolonged periods. Additionally, Claimant's left foot swells on occasion, depending on Claimant's activity level. Claimant was described by Claudia Ketterlin, director of human resources, as an excellent employee. Indeed, Claimant had accumulated enough sick days and used them in lieu of temporary total disability benefits. Claimant is not requesting temporary total disability benefits or past medical bills relating to the left foot. Instead, Claimant requests only permanency be assessed if the Division finds the conditions to her left and right lower extremities arose out of the course and scope of her employment with Independence School District.

A workers' compensation claim bears the burden of proving an accident occurred and that it resulted in injury. For an injury to be compensable, the evidence must establish a causal connection between the accident and an injury. While the testimony of lay witnesses can constitute substantial evidence of the nature and extent of disability when the facts fall within the realm of lay understanding, an injury may be of such a nature that expert opinion is necessary to show that it was caused by the accident to which it is assigned. Medical causation which is not within common knowledge or experience of lay understanding must be established by scientific or medical evidence showing the cause-and-effect relationship between the complained-of condition and the asserted cause. *See Landers v. Chrysler Corporation*, 963 S.W.2d 275 (Mo.App. 1997).

Several doctors' reports on this subject were entered into evidence. Dr. Daniel Zimmerman, an internist, found the plantar fasciitis of both feet and resulting RSD were causally related to repetitive work duties performed as a food service manager for the Independence School District. Dr. Steven Robinson, on July 28, 2004, noted, "The cause of the herniation can't absolutely be explained but is usually caused by overt injury or repeated microtrauma." *See Exhibit A*, page 8. However, Dr. Gregory Horton and Dr. Chris Feverly found no medical causation of Claimant's current feet problems with her job duties as a food service manager. Instead, Dr. Horton found her obesity more likely the primary causative factor to Claimant's current feet complaints.

Based on the evidence presented, I find Claimant credible and certainly had pain and problems in her feet. However, I find Dr. Horton's opinion carries more weight and credibility than Dr. Zimmerman. Dr. Horton is an orthopedic surgeon specializing in ankles and feet whereas Dr. Zimmerman's qualifications are in internal medicine only. Despite the facts and credible testimony of the witness, I am unable to find Claimant has carried her burden of proving that her left and right feet complaints arose out of the course and scope of her employment with the Independence School District.

Regarding the notice issue, the notice requirement of Missouri Revised Statute §287.420 does not apply to cases of occupational disease. Endicott v. Display Technologies, Inc. (Mo. Supreme Court 2002).

This Award is subject to an attorney's lien of 25 percent for services rendered for Tom Stein.

Date: _____

Made by: _____

Lisa Meiners
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation