

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

Injury No.: 02-157005

Employee: Tina Isaac
Employer: Sigma-Aldrich Chemical Company
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: June 27, 2002
Place and County of Accident: St. Louis City, 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 October 5, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued October 5, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 3rd day of May 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

CONCURRING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

CONCURRING OPINION

I join the majority in denying compensation in this case but I write separately to state my reasoning.

I specifically disagree with the implication by the administrative law judge (and now adopted by the majority) that Dr. Schlafly's opinion is not credible because it is not shown to be founded upon an ergonomic study of employee's job duties. Such an enhanced burden of proof was recently rejected by the Court of Appeals:

There is no requirement in Missouri that expert opinion regarding causation of an occupational disease be based on an ergonomic study. It is true that Employee has the burden to prove causation of an occupational disease, but the Commission elevated Employee's burden of proof by essentially requiring that her expert rely on an ergonomic study in order for his opinion to be considered probative. Under the applicable statutes, Employee must prove that the disease "*had its origin in a risk connected with the employment*" and that the disease flowed from that source as a rational consequence. Section 287.067.1 (emphasis added). The Commission's dismissal of Dr. Cohen's opinion solely on the basis that he lacked an ergonomic study is a misapplication of the appropriate law.

Townser, 215 S.W.3d 237 (Mo. App. 2007)

I agree with the majority that employee has failed to meet her burden of proving causation. I am persuaded by the opinion of Dr. Schmidt, because he is an orthopedic surgeon who specializes in the treatment of feet and ankles. For that reason, I join in the decision of the majority except to the extent its reasoning conflicts with my reasoning herein.

John J. Hickey, Member

AWARD

Employee:	Tina Isaac	Injury No.:	02-157005
Dependents:	N/A	Before the	
Employer:	Sigma-Aldrich Chemical Company	Division of Workers'	
		Compensation	
Additional Party:	Second Injury Fund	Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	Self-Insured		
Hearing Date:	August 8, 2006	Checked by:	JED: tr

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: N/A
5. State location where accident occurred or occupational disease was contracted: N/A
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: N/A
- 12. Did accident or occupational disease cause death? N/A Date of death? N/A
- 13. Part(s) of body injured by accident or occupational disease: N/A
- 14. Nature and extent of any permanent disability: None
- 15. Compensation paid to-date for temporary disability: None
- 16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Tina Isaac Injury No.: 02-157005

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$559.28
- 19. Weekly compensation rate: \$372.87/\$329.42
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 21. Amount of compensation payable: None
- 22. Second Injury Fund liability: No
- TOTAL: -0-
- 23. Future requirements awarded: None

Said payments to begin N/A 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Tina Isaac	Injury No.:	02-157005
Dependents:	N/A	Before the	Division of Workers'
Employer:	Sigma-Aldrich Chemical Company	Compensation	
Additional Party:	Second Injury Fund	Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	Self-Insured	Checked by:	JED:tr

This case involves a disputed repetitive trauma injury to Claimant's feet with an alleged onset date of June 27, 2002. Employer admits Claimant was employed on said date and that any liability was fully self-insured. The Second Injury Fund is a party to the claim. All parties are represented by counsel.

Issues for Trial

1. Incidence of Occupational Disease;
2. Nature & Extent of Temporary Total Disability;
3. Nature & Extent of Permanent Partial Disability; and,
4. Liability of Second Injury Fund.

FINDINGS OF FACT

Stipulations

The parties stipulate that Claimant's average weekly wage was \$559.28 and applicable compensation rates of \$372.87 for temporary total disability benefits and \$329.42 for permanent partial disability benefits.

Claimant's Testimony

Claimant, age 46, was employed at Employer from 1993 until 8/12/03, or roughly 10 years. Her job title was that of Order Filler which included working in the warehouse. While employed as an order filler for Employer, Claimant would pick up packing slips and go to various locations to pick up the needed products. She worked nine 9 hour days and had a ½ hour for lunch and 2 fifteen minute breaks. She testified she would stand and walk the majority of her work days. She worked in various departments including the cooler warehouse, the dry ice section, the remote building section outside the cooler warehouse and the annex. She estimated the size of the warehouse to one-half the size of Busch Stadium although. On cross examination, she admitted she did not know the dimension of the warehouse and was only estimating.

Claimant testified Employer mandated a safety shoe program around 1996 and she began to wear steel toed safety shoes. She understood OSHA required the shoes. She admitted, on cross examination, that she had been working the same job duties from 1993 to 1996 with the same amount of walking and standing without problem. She described the safety shoes as being hard and heavy with steel in the toe. On cross examination, she testified the soles were made of rubber and the upper part of the boot or shoe was made of leather.

Claimant testified her productivity decreased as a result of wearing the shoes but denied receiving any reprimands for her work. She testified she developed discomfort in her feet and presented to Dr. Mitchell Needleman in 1997 with aching pain. Her discomfort would get better over the weekend but then return on

Mondays. She was given orthotics by Dr. Needleman which she claims she wears everyday. She testified Sigma paid for the orthotics and they cost \$250 but she admitted she did not have a receipt for the orthotics. She admitted she has not replaced the orthotics in over 9 years and further admitted she was not wearing them at the time of Trial.

Claimant admitted she was working full duty from 1997 to 2002 with no medical care sought throughout the rest of 1997, 1998, 1999, 2000 and 2001. In 2002 she presented on her own to Dr. Willie Brown who restricted her from wearing safety shoes and required her to sit down in intervals during the day. She admitted Sigma followed these restrictions and she was placed in the Annex where there was a lot less walking and standing and she did not wear safety shoes from 2002 until 2003. She was also allowed more breaks and it was lighter duty. Despite working under these restrictions from June of 2002 until August of 2003, her feet worsened according to her. She also was seen by Dr. Heutel, Dr. Metzger and Dr. Johnson.

Claimant underwent Ossatron surgery on her feet by Dr. Johnson on 1/7/04 which, in her description, consisted of laser surgery to remove bone spurs. This is not an open procedure and was done on an outpatient basis. She admitted she was only seen on one occasion in follow up on 2/9/04 and has absolutely no treatment since that date, for 2 ½ years. She takes no prescription medication for her feet and does not do her home exercises on a regular basis.

Claimant testified she left the employment at Sigma in August of 2003 because the company could no longer accommodate her restrictions by Dr. Brown. The company had been accommodating her restrictions and had her working only in the Annex where there was less walking and lighter duty. Although she had been working this restricted duty which included no safety shoes and with less walking and lighter duty since 2002 her feet worsened.

Claimant testified she could have continued to do her light duty work from August of 2003 until October of 2003 if Sigma could have accommodated her. She further testified she was incapable of working from October of 2003 until her surgery on 1/9/04 due to pain. However, on cross examination she admitted she could have continued doing the light duty work at Sigma if they had offered the same. She further admitted no doctor took her off work during this time period. She testified she needed about 3 months after surgery to recover. Again, she admitted no doctor specifically took her off work or restricted her activity post surgery. She did receive 6 to 7 weeks of Unemployment Benefits after leaving Sigma. During this time she was looking for work on the Internet

Claimant filed a Claim for Compensation but did not recall exactly when she did so. She had no reason to dispute that the formal Claim was not filed until March of 2004, 2 months after her surgery. She admitted she had no contact with anyone from Sigma after she left the employment in August of 2003. She did not inform anyone at Sigma she was undergoing the surgery in January of 2004. She chose all of the medical providers outside of BarnesCare, Dr. Schlafly and Dr. Schmidt.

Claimant saw Dr. Schlafly at the request of her attorney and acknowledged her feet were doing alright when she was seen by him. Claimant's currently complains of an inability to wear safety shoes although she does not need to wear them in her current position. She admitted her feet feel better after the Ossatron procedure and but that sometimes they ache.

At the time of trial, Claimant was working full time as a repair technician at Roho Group over the past year. Her current job includes standing during some part of her duties. She testified her current employer is happy with her work performance and denied any reprimands for failing to perform her required duties. She also denied missing any time from work as a result of her feet.

Cheryl Stipsits

Cheryl Stipsits, Supervisor in Environmental Health & Safety at Employer, testified live on behalf of Employer where she has worked for eleven years. She testified Employer manufactures and researches chemicals and employs between 1500-2000 workers. She is very familiar with the various job positions at Sigma including that of an Order Filler. She also actively participates in the various safety programs they have instituted.

Ms. Stipsits is involved in all work related injuries and takes a very active role in the investigation, assessment and medical care following an injury to an employee. She is familiar with all injuries and all Claims for Compensation that are filed. She reads every Report of Injury made at Sigma. Her involvement includes attending quarterly review meetings and monitoring all injuries in the St. Louis area. When employees are placed on medical restrictions, the documentation is presented to Health Services and then forwarded to the proper supervisor.

Ms. Stipsits testified there are a number of campuses at Sigma including the Cherokee, DeKalb and Spruce/Ewing campuses. She is aware Claimant worked at the Spruce/Ewing campus during her employment. She testified the various areas Claimant worked included cooler warehouse and annex. Ms. Stipsits testified the safety shoe program was instituted in 1996 after their procedures were re-evaluated and determined to need safety shoes for the employee's protection. She described the shoe as having a rubber sole with steel around the toe area. She testified the shoes are flexible except at the area of the toe. When asked on cross examination if she ever wore the shoes, she testified she wears them every day. She denied having problems with the safety shoes.

She testified approximately 300 to 350 employees in St. Louis participate in the safety shoe program. Out of these 300 to 350 employees, Ms. Stipsits testified there has never been another claim for injury to an employee's feet as a result of the shoes besides the current case. She also testified she has not seen another claim for injury to an employees feet as a result of walking and standing in the warehouse. This includes all employees working in the same capacity as Claimant. On cross examination she testified she is 100% certain there are no other outstanding claims of injury to an employee's feet as a result of standing, walking or wearing safety shoes. Further, she testified this was her area of responsibility at Sigma. Ms. Stipsits testimony was credible, unimpeached and completely un rebutted.

Opinion Evidence

Dr. Bruce Schlafly

Claimant offered the deposition of Dr. Bruce Schlafly, an orthopedic surgeon who limits his practice to hand and upper extremities, who examined Claimant on January 11, 2005. Dr. Schlafly admitted he does not specialize or focus his practice on the treatment of feet. He testified he would refer a patient with feet complaints to someone who specializes in this type of treatment. He admitted he studied plantar fasciitis during his orthopedic surgery residency in 1981 to 1985 but does not recall ever treating the condition since that time, in over twenty years. He agreed the condition is a common condition which is more commonly developed over time.

Dr. Schlafly testified Claimant presented to him with a history of developing heel pain while working at Employer. He asserted the safety shoes combined with working on her feet caused the bilateral plantar fasciitis.

Dr. Schlafly testified plantar fasciitis is a mechanical problems that is a tearing or giving away of the fascia in the area of attachment to the heel bone. He believes the use of safety shoes and her onset of symptoms could be coincidental but believes it contributed to her problem. He opined the Ossatron procedure was a result of her job duties but admitted, on cross-examination, that he has never performed the Ossatron procedure. He testified to other treatment options but again admitted he does not perform these type of procedures but has read about them in textbooks. Dr. Schlafly opined Claimant has a disability equal to twenty percent of each foot.

Dr. Schlafly admitted plantar fasciitis can develop idiopathically but does not recall a patient that has developed it idiopathically because he doesn't see patients with feet problems. He admitted he has no idea how Claimant has done since January of 2005.

Dr. Schlafly testified he believes her condition developed as a result of the combination of walking, standing and wearing the safety shoes. He did not separate out the factors even when presented with the fact that Claimant, by her own admission, did the exact job standing and walking from 1993 to 1996 without complaint. In addition, he could not comment on the fact that once the shoes were removed in 2002 her condition continued to

worsen. He testified the shoes weighed 3 pounds but was unaware of how this compares to other shoes. He also admitted he is unaware of what type of shoes she wore outside of work or what her activities were outside of work.

Dr. Schlafly "implied" Dr. Brown and Dr. Heutel's opinions overlapped with his. However, on cross examination, he admitted this was not clear from Dr. Brown's records and, furthermore, he was unaware Dr. Heutel actually opined her condition was not work-related. Despite reading a direct opinion on causation by Dr. Heutel, Dr. Schlafly still opined that Dr. Heutel implied a causal relationship in his medical records. He eventually agreed Dr. Heutel could have restricted her work activities because they aggravated her symptoms and not because they were the cause of her complaints. Dr. Schlafly admitted that none of the other doctors who treated Claimant opined her condition was caused by her work activities or the use of safety shoes.

Dr. Schlafly was questioned regarding the restrictions Claimant was placed under in June of 2002 which included limited duty and no use of safety shoes. Despite the restrictions, he acknowledged her conditions worsened five months later. Thus, even without the use of the shoes and light duty, her feet worsened, not improved. Dr. Schlafly opined one would hope a condition improved without the offending agent but this was not the case for Claimant but he still felt the shoes and job duties were the causes of her problems. When questioned further regarding her condition continuing to worsen after being completely off work, Dr. Schlafly testified:

- Q. So if the shoes were the offending agent and you take them away, wouldn't you expect her symptoms to decrease rather than increase?
- A. Well, you would hope that, but medical conditions don't always correct themselves when changes are made.
- Q. She stopped working in September of 2003. We're aware of that. I mean, she told you that, correct?
- A. Yes.
- Q. But the records reflect she continued to have complaints, and she actually then had the surgery done in January of 2004, correct?
- A. Yes.
- Q. Again, is that significant to you at all, that she stops working altogether? So, not only has she been away from the shoes over a year plus, but she has also been away from work several months, but her symptoms have continued to increase?
- A. Well, rest off work may be successful treatment and take care of a problem, such as plantar fasciitis or lateral epicondylitis or a herniated disc, but in some cases rest off work is unsuccessful.
- Q. When you evaluate the causation of a case, is it significant to you that away from work and away from the shoes for a period of time didn't improve her symptoms, but rather her symptoms increased?
- A. Well, in this case that does not change my opinion. But in other cases, other contexts, other facts and scenarios, that could be relevant.
- Q. But in her case it is not relevant?
- A. That's right.

Nevertheless, Dr. Schlafly provided no explanation why the condition worsened in Claimant's case despite the removal of the shoes for over a year and then complete cessation of work for five months. He did not explain why it was not relevant in Claimant's case.

Dr. Schlafly testified her physical examination was unremarkable and she had no signs of ongoing plantar fasciitis when he examined her. He conceded his disability rating of 20% of each ankle was a result solely of her subjective complaints which he did not even document in his narrative report. He acknowledged her complaints were on the sole of the foot at the heel and not at the ankle but still, for some reason, continued to feel her disability was assessed at the level of the ankle.

When questioned regarding restrictions following the Ossatron procedure, Dr. Schlafly testified cases are different and that the treatment isn't always successful. He felt Claimant had a partially successful outcome following the surgery. He could only back up this conclusion with the fact that she told him her feet ached her sometimes. He did not agree with Dr. Schmidt's testimony that patient's activity should not be restricted following the surgery. Conversely, he Dr. Schlafly testified he would have to evaluate each patient individually. He admitted he has never utilized the Ossatron procedure personally and has no working knowledge regarding the procedure. He made an educated "guess" that someone would need to be on restrictions for a month after the procedure. Again, he has no firsthand knowledge of the surgery.

Dr. Schlafly testified there were no restrictions placed on Claimant by Dr. Johnson, the surgeon. He acknowledged she only had one follow up visit with Dr. Johnson and was doing much better at that visit.

Dr. Schlafly also admitted he has no knowledge of Claimant's job duties at Employer outside of what Claimant's general description that she worked while standing and walking on her feet and that it was not a sit-down job. He has no idea of the size of the warehouse, her different job duties, the number of hours worked in each area of the warehouse or as to her particular job assignments:

Q. Are you aware of how many employees participate in the safety shoe program there:

A. No.

Q. Do you know how many people work in a similar position that Ms. Isaac worked in?

A. No.

Q. I would like you to assume that there are over three hundred employees at Employer who participate in the safety shoe program. Is it significant to you that out of all these assumed employees, approximately three hundred that wear the safety shoes daily, that there has not been another allegation of plantar fasciitis in any of those other individuals?

A. It implies it's a rare condition.

Q. But, Doctor, you testified earlier that plantar fasciitis is not a rare condition, correct? You stated it was a common condition.

A. Yes.

Q. So is it significant to you that, assuming my hypothetical, that there are three hundred employees who participate in the safety shoe program and there is not another single allegation of plantar fasciitis from any of those employees?

A. Well, by statistics that implies it is unlikely to develop plantar fasciitis if working at Sigma-Aldrich wearing safety shoes, if the facts in your hypothetical are correct.

Q. Could you clarify that? Assuming my facts to be true, and those facts are that three hundred employees participate in the program and there is not another allegation, is it your testimony that it would be unlikely that the work and the wear of the safety shoes causes plantar fasciitis?

A. In that population of three hundred, yes, it would imply that there is only a one-in-three hundred chance that a worked would develop plantar fasciitis.

Dr. Gary Schmidt

Employer offered the deposition of Dr. Gary Schmidt, Board Certified Orthopedic Surgeon specializing in foot and ankle surgery, who examined Claimant on 10/13/05. Dr. Schmidt testified he saw Claimant for an evaluation of plantar fasciitis. He has treated and continues to treat a number of patients with this condition during the course of his active practice.

Dr. Schmidt testified Claimant attributed her pain in her feet to standing and walking throughout the day while wearing steel toed shoes. She described her symptoms as being start-up in nature, meaning the pain was worse when she first got going. She described her course of treatment including the Ossatron procedure. She informed him she was doing significantly better after the surgery. When Dr. Schmidt saw Claimant she had an Achilles tendon contracture and some tenderness in the area of the insertion of the plantar fascia.

Dr. Schmidt testified plantar fasciitis is slightly more common in women than men. Per Dr. Schmidt, the condition is quite common and is seen in patients with all different activity levels from runners to people completely sedentary. He testified the plantar fascia is a long, broad ligament that runs from the toes to the heel and inserts at the bottom of the heel. It's job is to support the arch and help the arch stay as an arch while pushing your body forward during a step. He testified the Achilles tendon is the large tendon connecting the calf muscles to the heel bone. Its job is to pull on the heel bone and provide plantar flexion force, or downward push of the foot. Together, the plantar fascia and Achilles tendon work during stepping motion. Dr. Schmidt testified the finding of heel spurs in the foot do not relate to plantar fasciitis.

Dr. Schmidt testified the typical pain pattern for plantar fasciitis is start-up pain in the morning with the complaints lessening as the body warms up with walking. Exercise and stretching activity can improve the condition.

Dr. Schmidt concluded Claimant developed an insidious onset of plantar fasciitis, meaning it is not associated with a particular event. Specifically, in Claimant's case, Dr. Schmidt found a heel core contracture and Achilles tendon contracture which he testified is almost always seen in the insidious onset of plantar fasciitis. Dr. Schmidt also testified as people age the water content in their bodies decreases thereby causing a decrease in elasticity of the tendons including those in the feet which can lead to the contracture. This typically begins to occur in the 3rd and 4th decades of someone's life.

Dr. Schmidt testified he does not believe walking or standing causes plantar fasciitis. Conversely, he opined walking actually decreases the symptoms of plantar fasciitis. Dr. Schmidt pointed out Claimant told him her symptoms were returning despite the fact that she had been away from Employer since 2003 and away from the safety shoes since 2002. Using a medical postulate for causative factors of disease, Dr. Schmidt concluded the walking, standing and utilization of safety shoes did not cause the plantar fasciitis. He reasoned that after removing these alleged offending agents, the condition did not improve thereby eliminating them as the cause.

Dr. Schmidt testified the Ossatron procedure utilizes shock waves focused on the plantar fascia insert to break up or disrupt the contracture thereby healing in a more lengthened position. He is familiar with the procedure firsthand and uses it in his practice. After the procedure, he allows his patients to be up and walking right afterwards. He testified his patients typically see marked improvement right away with some soreness for a week or two. He does not restrict their work activities following an Ossatron procedure.

Dr. Schmidt concluded Claimant's work at Employer including the standing, walking and utilization of safety shoes was not a substantial factor in the development of plantar fasciitis. He opined the treatment she received was not a result of her job requirement. Likewise, any time she missed from work, was not caused by her job duties. Finally, Dr. Schmidt concluded he does not believe an individual who has had plantar fasciitis is left with any permanent partial disability in that the recovery rates are excellent for this condition.

RULINGS OF LAW

Incidence of Occupational Disease: Exposure and Medical Causation

Claimant alleges she developed bilateral plantar fasciitis as a result of her job duties at Employer Chemical Company. The review of the medical evidence and testimony at trial does not support his contention. In relevant part, Section 287.067(2) provides:

An occupational disease is compensable if it is clearly work related and meets the requirements of an injury which is compensable as provided under subsections 2 and 3 of sections 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor.

Section 287.020.2, in relevant part, provides:

2. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

Section 287.020.3, in relevant part, provides:

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee.

(2) An injury shall be deemed to arise out of and in the course and scope of the employment only if:

(a) It is reasonable apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and

- (b) It can be seen to have followed as a natural incident of the work; and
- (c) It can be fairly traced to the employment as a proximate cause; and
- (d) It does not come from 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 nonemployment life.

In a worker' compensation claim, the claimant has the sole burden of proving all material elements of her claim. Meilves v. Morris, 422 S.W.2d 335, 335 (Mo.Div.2 1968). In order to meet this burden and have a compensable injury, the claimant must show she was injured as a result of an injury which arose out of and in the course of the employment, establishing essential elements including causal connection between the incident and injury. Johnson v. City of Kirksville, 855 S.W.2d 396 (Mo.App. 1993).

"Medical causation", not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause". Brundige v. Boehriner Ingelheim, 812 S.W.2d 200, 202 (Mo.App.1994); McGrath v. Satellite Sprinkler Systems, Inc., 877 S.W.2d 704, 708(Mo.App. 1994). The development of plantar fasciitis is a medical condition not within common knowledge which is treated by physicians specializing in the treatment of feet. A claimant must present credible medical evidence to support a finding that plantar fasciitis arose out of her employment and that her duties are a substantial factor in the development of the condition.

Exposure

Claimant's testimony does not support a causal relationship between her job duties and plantar fasciitis. Further, her testimony did not support a finding of any ongoing disability in her feet. At trial, she testified she is currently working full duty, has not missed any time from work as a result of her feet and has occasional "aches". She attempted to testify that she wears her orthotics all the time but then admitted she was not wearing them in her high heeled shoes at trial. She did not provide any specifics regarding her job duties other than generally stating her job was not "sit down". She also could not explain why her complaints did not improve after she was put on restricted duty and stopped wearing the shoes in June of 2002.

Dr. Schlafly admitted he did not know any of the specifics of Claimant's job duties at Sigma. He failed to provide any ergonomic rationale to support his findings. He also failed to provide any reasonable explanation as to why Claimant's complaints in her feet increased despite being out of the safety shoes for over a year and away from her job completely for five months.

Dr. Schlafly's opinion regarding causation was clearly weakened when he admitted that if approximately 300 employees wear the safety shoes without another single report of plantar fasciitis, that is would be rare to develop the condition from the use of the shoes. In fact, he even quantified this as being a 1 in 300 chance, which is clearly not substantial. Despite opposing counsel's objections, Cheryl Stipsits provided the evidence to prove the hypothetical that 300 people participate in the program without incident. Dr. Schlafly eventually admitted that it is possible Claimant's shoes and work aggravated her underlying condition without causing it. Claimant has failed to present credible expert medical evidence to establish medical causation in this case.

Finally, Cheryl Stipsit's testimony supports the denial of this case. Ms. Stipsits testified credibly that 300 to 350 employees participate in the safety shoe program without complaint. In her position as Supervisor in Environmental Health & Safety at Employer, she is familiar with all injuries at work and plays an active role in seeing an injury through from start to finish. She would be made aware of any other claims of plantar fasciitis at Sigma. There are no other complaints of this conditions among the 100's of employees. In addition, Ms. Stipsits knows firsthand about the safety shoes since she wears them on a daily basis.

Both Ms. Stipsits and Claimant's testimony supported the fact that the safety shoes became mandatory as a result of OSHA's mandates. This is designed to protect employees from injury. If the shoes are found to cause plantar fasciitis surely there would be other cases and the shoes would be redesigned. It is against public policy to find that safety shoes mandated by OSHA actually are a substantial factor in the development of a very common condition which is medically linked to aging. To do so would put Employer, along with numerous other employers that rely on safety shoes to protect their employees, in a difficult position with OSHA and ultimately affect the safety of employees as a whole.

Medical Causation

The following discussion demonstrates Dr. Schlafly's assertion of work related plantar fasciitis is not supported by facts and reasoning lending probative force to the opinion. Claimant relies on the testimony of an expert in upper extremity orthopedics which qualification falls short of Employer's expert. By his own admission, Claimant's expert does not treat feet, has never performed the Ossatron procedure and could only recall evaluating plantar fasciitis during his residency over 20 years ago. In addition, he testified if his patient did have complaints of plantar fasciitis, he would refer that patient to a specialist. Accordingly, the fact finder cannot reasonably give the same weight Donjon v. Black & Decker (U.S.), Inc., 825 S.W.2d 31 (Mo.App. 1992).

Beyond qualification, foundational deficits further undercut the value of Dr. Schlafly's testimony. Proceeding from the above-mentioned deficit in his ergonomics foundation, Dr. Schlafly fails to reconcile the duration of Claimant's exposure, i.e. three years of full time employment, with his assertion of medical causation. No explanation is given for Claimant's *onset* of symptoms after such extended employment in the same job. His causation assertion is uncorroborated by other evidence in the record.

Regarding physical examination, his clinical findings on Claimant were *de minimis* and indistinguishable from common sense parameters of normal fatigue to which the public is equally exposed. See Section 287.020.3(2)(d) RSMo (2000). Nevertheless, he assigned very large PPD measures which are uncorroborated by Claimant's current complaints and her recent work record. Ascribing this sort of disability to someone who works unrestricted full-time employment after a non-invasive procedure and with minimal complaints on examination is simply disingenuous. It is noted that, separate from issues of expert qualification and sufficient understanding of ergonomics, this physical examination was well within his control as far as foundational requirements and yet his PPD numbers are unfounded.

Conversely, even though not necessary, Employer entered the expert testimony of Dr. Gary Schmidt. Dr. Schmidt is an orthopedic surgeon who focuses his practice solely on the treatment of feet and ankles. He is quite familiar with plantar fasciitis, treats it routinely and utilizes the Ossatron procedure in his practice. He credibly testified plantar fasciitis does not develop as the result of a shoe or from walking or standing. He explained that as we age, our body loses water content thereby causing contractures in ligaments and tendons including, quite commonly, the plantar fascia and Achilles tendon. He is the only physician who provided medical evidence to support his conclusions. It is reasonable that Dr. Schmidt's opinion be given more weight and value than Dr. Schlafly, an expert lacking in training and experience compared to Dr. Schmidt.

Conclusion

On the basis of the substantial competent evidence contained in the record, Claimant has failed to sustain her burden of proof. Claim denied. The remaining issues are moot.

Date: _____

Made by: _____

Joseph E. Denigan
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

Employee: Tina Isaac

Injury No.:

02-157005