

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

Injury No.: 07-044320

Employee: Karen Larson

Employer: Missouri Chamber of Commerce and Industry

Insurer: Self-Insured

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated January 8, 2010, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued January 8, 2010, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 7th day of April 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Karen Larson

Injury No. 07-044320

Dependents: N/A

Employer: Missouri Chamber of Commerce and Industry

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party:

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Insurer: Self-Insured

Hearing Date: December 29, 2009

Checked by: HDF/tmt

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: Cole County (alleged).
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? Self-insured.
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
See award.
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: Left foot, great toe (alleged).
14. Nature and extent of any permanent disability: None awarded.
15. Compensation paid to-date for temporary disability: None paid.
16. Value necessary medical aid paid to date by employer/insurer? \$512.91.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: N/A.

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19. Weekly compensation rate: \$376.55.
20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable: None.

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FINDINGS OF FACT and RULINGS OF LAW:

Employee: Karen Larson

Injury No: 07-044320

Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Missouri Chamber of Commerce and Industry

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party:

Insurer: Self-Insured

Checked by: HDF/tmt

ISSUES DECIDED

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on December 29, 2009.

The parties stipulated that on or about May 1, 2007, the claimant, Karen Larson, was in the employment of the Missouri Chamber of Commerce and Industry (Chamber). The employer was operating under the provisions of Missouri's workers' compensation law and was self-insured for workers' compensation liability. Cannon Cochran Management Services was the third party administrator. The employer had appropriate notice of the alleged injury; a claim for compensation was timely filed. The agreed upon rate of compensation is \$376.55 per week for all benefits sought.

No temporary disability benefits have been paid. Medical aid has been provided in the amount of \$512.91.

The issues to be resolved by hearing include 1) the occurrence of an occupational disease, 2) the causation of the alleged injury, 3) the liability of the employer/insurer for a past medical bill in the amount of \$188.38, and 4) the nature and extent of permanent partial disability.

The parties stipulated that in the event of a finding favorable to the employee on the preliminary issues, the medical bill would be the responsibility of the employer/insurer.

FINDINGS OF FACT

Karen Larson was employed by the Missouri Chamber of Commerce and Industry (Chamber) from January through June of 2007. Ms. Larson was hired as an executive assistant to Daniel Meehan, the Chamber president. During the last week of March 2007, Ms. Larson was assigned to work at the Capitol, where she would obtain amendments to bills from the copy room and then walk to a scanner where she would scan and transmit the amendments back to the offices of the Chamber. The distance from the copy room to the scanner varied, depending on the location of the scanner, but appears to have been no more than 145 feet at any time. Although Ms. Larson

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did not initially have a chair to sit in while she was stationary, after a few weeks of work at the Capitol, a chair was always available for Ms. Larson's use. Ms. Larson appears to have been at the Capitol for no more than 17.5 hours a week during the eight weeks that she was assigned to work there, sometimes working as little as four or five hours a week at the Capitol. The number of amendments handled varied from three to 40 per week, depending on the weeks and hours worked, as well as whether there was assistance from other Chamber employees.

Ms. Larson claimed that she dressed in a more business-like fashion, wearing two to two-and-one-half inch high heels when she worked in the Capitol, and that walking on the marble floors caused her to have arthritis in her left big toe, a condition called hallux limitus. There is some question regarding the requirement of wearing high heels for her work in the Capitol, as there is with regard to whether Ms. Larson actually wore heels for all of her work in the Capitol.

Ms. Larson initially complained of pain in her left big toe in April of 2007, and went to a podiatrist, Dr. Carron, on May 14, 2007. Dr. Carron initially treated Ms. Larson conservatively with a steroid shot and a flat shoe for the left foot, but operated on Ms. Larson's left big toe in November of 2007.

Dr. Carron, DPM, testified by deposition with regard to his treatment of Ms. Larson's left great toe. Dr. Carron diagnosed Ms. Larson with an arthritic condition or hallux limitus of the left great toe. Dr. Carron stated that hallux limitus is an arthritic condition of the joint that limits Ms. Larson's ability to move the joint and causes pain as she walks and tries to move the joint. Dr. Carron stated that wearing a high heel will aggravate the condition of hallux limitus and possibly precipitate symptoms "because you're forcing the foot into a position where you're – by lifting the heel, you're putting stress and dorsiflexion on the joint to the point where it can cause the spurring, if there's spurring there, to jam into the joint with more force and more pressure and become more symptomatic. So I would say that there is a correlation to wearing a high-heeled shoe aggravating the symptomatology..." When directly asked about whether the high-heeled shoes caused the hallux limitus, Dr. Carron responded that "there may be some underlying factors there, but by placing the foot in what I would consider an unnatural position in a high heel would cause the stresses that would develop the spurring and the inflammation of the joint." Dr. Carron acknowledged that the visible spurring that Ms. Larson had in the x-ray of her left big toe in May of 2007 would have taken "months to years" to develop. With regard to the surface walked on, Dr. Carron stated that the softer the surface walked on "should correlate into less pain."

Dr. Craig Aubuchon, MD, testified by deposition that he evaluated Ms. Larson's left great toe and also diagnosed hallux limitus of the left great toe. Dr. Aubuchon described hallux limitus as arthritis of the big toe and limited motion. Dr. Aubuchon stated that "high heels certainly will cause more symptoms because if one has limited motion of the big toe and you raise your heel which requires you to bring your toes up that is painful to people with arthritis of their big toe. The big toe then hits that – that spur on the top of the first metatarsal head and causes pain. It stretches things. So someone with arthritis of the big toe is more painful in high heels because of a necessity to bring the big toe up." Dr. Aubuchon stated that the surface walked on was not a big factor in aggravation of hallux limitus, rather that it was the position of the toe in pushing up and hitting the spur that caused the pain. Dr. Aubuchon opined that Ms. Larson's left great toe complaints were not work related, saying that "the fact that shortly after she developed

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symptoms she sought ... medical treatment and at that time the X-rays revealed this hallux rigidus with marked narrowing of the joint and a spur formation. So something like that to form had to take years to form. It wasn't –it didn't develop over weeks or even months. So that was a preexisting condition." Dr. Aubuchon stated that hallux limitus and hallux rigidus are interchangeable terms designating arthritis of the big toe. During cross-examination, Dr. Aubuchon again reiterated that the degenerative changes in Ms. Larson's left great toe would have taken years to develop.

APPLICABLE LAW

RSMo, Section 287.067. 1. In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

AWARD

The claimant, Karen Larson, has failed to sustain her burden of proof that she sustained an occupational disease as the result of walking on marble floors in high heels. Ms. Larson has failed to prove that she has a disease, condition, or disability arising out of and in the course of her employment. Both Doctors Carron and Aubuchon testified by deposition that Ms. Larson has an arthritic condition in her left great toe which took years to develop. Both doctors also agreed that the action of raising the great toe, which is a component of walking in a high heel, would be painful to a person with Ms. Larson's arthritis in the toe, a condition called hallux limitus or hallux rigidus. While Dr. Carron stated that the high-heeled position of the foot would cause spurring of the joint, he acknowledged that this spurring would have had to take place over a lengthy period of time, far greater than the few weeks alleged in this claim. To the extent that Dr. Carron's and Dr. Aubuchon's opinions diverge, Dr. Aubuchon's opinion is found to be the more credible. No doctor identified the marble surface of the Capitol floors as a factor in causing Ms. Larson's hallux limitus or rigidus. Thus, Ms. Larson is denied the benefits she is seeking as the result of this workers' compensation claim.

Date: _____

Made by: _____

HANNELORE D. FISCHER
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson