

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

Injury No.: 01-164534

Employee: Linda Lawson
Employer: Ford Motor Company
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: September 1, 2001
Place and County of Accident: St. Louis County, 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 March 13, 2006. The award and decision of Administrative Law Judge Linda J. Wenman, issued March 13, 2006, 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 28th day of July 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Linda Lawson

Injury No.: 01-164534

Dependents: N/A

Before the
Division of Workers'

Employer: Ford Motor Company
Additional Party: Second Injury Fund (open)
Insurer: Self-insured
Hearing Date: December 22, 2005

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

Checked by: LJW: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: September 1, 2001
5. State location where accident occurred or occupational disease was contracted: St. Louis County, MO
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: Employee developed plantar fasciitis after repetitively stepping off a platform to obtain items from a stock table.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Left foot
14. Nature and extent of any permanent disability: 20% permanent partial disability referable to the left foot, 15% for the primary injury, and 5% preexisting.
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$722.91

Employee: Linda Lawson

Injury No.: 01-164534

17. Value necessary medical aid not furnished by employer/insurer? To be determined
18. Employee's average weekly wages: Sufficient for maximum rates
19. Weekly compensation rate: \$628.90 / \$329.42
20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable:

9 5/7 th weeks of temporary total disability (or temporary partial disability)	\$6,109.31
22.5 weeks of permanent partial disability from Employer	\$7,411.95

22. Second Injury Fund liability: Open

TOTAL: \$13,521.26

23. Future requirements awarded: Pursuant to 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 in favor of the following attorney for necessary legal services rendered to the claimant: Evan Beatty

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Linda Lawson	Injury No.:	01-164534
Dependents:	N/A	Before the	Division of Workers'
Employer:	Ford Motor Company	Compensation	
Additional Party:	Second Injury Fund (open)	Department of Labor and Industrial	Relations of Missouri
		Jefferson City, Missouri	
Insurer:	Self-insured	Checked by:	LJW:tr

PRELIMINARIES

The above referenced Workers' Compensation claim was heard by the undersigned Administrative Law Judge on December 22, 2005. The case was formally submitted without briefs on February 18, 2006. Attorney Evan Beatty represented Linda Lawson (Claimant). Ford Motor Company (Employer) was self-insured, and represented by Richard Fitzgerald. The Second Injury Fund was not a party to the proceedings and will remain open.

Prior to the start of the hearing the parties identified the following issues for disposition as: occupational disease; arising out of and in the course and scope of employment; medical causation; past temporary total disability (TTD); permanent partial disability (PPD); and future medical care. Hearing venue is correct, and jurisdiction properly lies with the Missouri Division of Workers' Compensation.

Claimant offered Exhibits A-D, and Employer offered Exhibit 1. All exhibits were admitted into the record without objection. Any objections not expressly ruled on in this award are overruled.

SUMMARY OF EVIDENCE

All evidence presented has been reviewed. Only testimony necessary to support this award will be reviewed and summarized.

Testimony & medical record review

Claimant: Claimant is fifty-four years old, and has worked for Employer since 1995 in various assembly positions. During 1999, Claimant began to experience heel discomfort, and began to wear custom made orthotics. Claimant's use of orthotics relieved her discomfort, and she required no further medical care for her feet.

During January 2001, Claimant's job changed and she began installing half-shafts for steering wheels. Installing half-shafts required Claimant to obtain the shaft from a stock table, install the shaft, and tighten it into place. Claimant estimated she installed fifty-sixty half-shafts per hour, and worked on a platform approximately six inches off the concrete floor. The stock table she used was positioned ten-twelve inches from her platform, requiring her to step off the platform to retrieve a shaft. With every step off, Claimant's feet would constantly hit the concrete floor, and she would strike her left heel. For the next nine months Claimant routinely notified her supervisor of the need to move her stock table.

During March 2001, Claimant noticed her left heel felt bruised, and her small toe began hurting. She kept working. Claimant next began to notice her left ankle was swollen at the end of the day, and she had increased pain in her left heel that was different from the pain she experienced in 1999.

Claimant sought medical care and was referred to an orthopedist, Dr. Weltmer, during July 2001. Dr. Weltmer diagnosed left plantar fasciitis, and he placed Claimant in a cast for the next three weeks. Claimant's pain decreased while her foot was casted, but upon cast removal and a return to work, Claimant's pain returned. During August 2001, Claimant reported her left foot problem to Employer's plant medical, and she was authorized to see another orthopedist, Dr. Aubuchon, for further evaluation. Dr. Aubuchon recommended use of a heel night splint, and indicated he would recommend physical therapy if improvement was not noted. Claimant did not improve, and she didn't receive physical therapy because Employer's plant medical physician determined Claimant's condition was not work related.

Claimant returned to treatment with Dr. Weltmer, and he recommended surgery. On September 7, 2001, Employer repositioned Claimant's stock table. Claimant continued to work until September 9, 2001. On September 10, 2001, Dr. Weltmer performed a left plantar fasciotomy, and Claimant was off work until November 16, 2001. Following surgery Claimant experienced improvement in her left heel pain. For approximately one year following surgery, Claimant continued to wear a night splint on her left heel. Upon her return to work, Claimant no longer struck her heel because her stock table had been repositioned. On July 5, 2002, Claimant returned to Dr. Weltmer due to continued symptoms. Dr. Weltmer suggested she wear New Balance tennis shoes because of its wide heel, and she resume wearing her custom orthotics. Dr. Weltmer noted: "needless to say, the type of work she does exacerbates her heel pain."

Currently, Claimant continues to experience aching in her left heel at the end of the day, or if she has been standing or walking for prolonged periods. She notices swelling in her left foot approximately two times per week. She is unable to walk barefoot, unable to walk on uneven terrain, and can only wear wide width tennis shoes. Claimant no longer dances or gardens, and only on rare occasion will she mow the lawn. She takes Aleve twice daily, and occasionally at night for pain relief. Claimant continues to wear her orthotics, and will continue to wear orthotics in the future.

Upon cross-examination, Claimant confirmed she has undergone surgery on her right foot in 2005. Claimant acknowledged she worked eight-hour days upon her return to work during November 2001, and worked without restrictions. Claimant also confirmed she was provided sick and accident benefits in the amount of \$381.00 per week while she was recovering from her September 2001 surgery.

Medical Deposition Testimony

Dr. Volarich: Dr. Volarich examined Claimant on April 19, 2000 and January 26, 2005. Claimant's history of the injury is consistent with the records and testimony of Dr. Volarich. Upon conclusion of his examination, Dr. Volarich diagnosed a repetitive impact trauma involving Claimant's left foot causing plantar fasciitis. Dr. Volarich noted Claimant had preexisting conditions including; asymptomatic bilateral bunionectomies, right thumb fusion, and right plantar fasciitis. Dr. Volarich opined Claimant's job activities were a substantial factor in causing Claimant's left plantar fasciitis, and he rated the injury at 25% PPD at the foot level. Dr. Volarich further opined Claimant would require non-steroidal anti-inflammatory drugs as needed, "some" physical therapy, and "possible" changes in her orthotics as her symptoms change.

Upon cross-examination, Dr. Volarich acknowledged Claimant reported her left foot symptoms were much improved following her September 2001 surgery. Dr. Volarich also acknowledged Claimant's physical examination was essentially within normal limits, and any complaints voiced were primarily subjective in nature and mostly associated with prolonged weight bearing.

Dr. Anderson: Dr. Anderson examined Claimant on February 9, 2005. Claimant's history of the injury is consistent with

the records and testimony of Dr. Anderson. Dr. Anderson noted Claimant had undergone surgery in September 2001, was 90% better, but still experienced daily pain over her left heel. Upon examination Dr. Anderson noted Claimant had very mild heel discomfort to palpation across her heel pad. Dr. Anderson diagnosed plantar fasciitis, status post plantar fascial release. Dr. Anderson agreed with Dr. Weltmer that Claimant's plantar fasciitis was not caused by her work activities^[1], but testified as follows:

I certainly believe that her work activities and in particular her history of repetitively stepping off a platform at work could have aggravated the symptoms of her underlying plantar fasciitis, but I relate the diagnosis and need for her surgery to problems that preexisted her work activities.

Dr. Anderson went on to find no direct relationship between the need for surgery and Claimant's employment.

Upon cross-examination, Dr. Anderson acknowledged the etiology of plantar fasciitis is not well understood, but trauma and repetitive trauma can play a part in its development. Dr. Anderson also acknowledged he did not know how many hours per day Claimant stood or walked on concrete floors during her work hours; didn't know the level of Claimant's symptoms prior to January 2001; and didn't know how many times per day Claimant had to step off her platform to obtain a part. Finally, Dr. Anderson believed Claimant's surgery was reasonable and necessary to relieve her symptoms as conservative treatment had failed.

FINDINGS OF FACT & RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Issues relating to occupational disease, course/scope of employment, and medical causation

Claimant alleges an occupational disease due to repetitive motion that aggravated her underlying foot condition. Section 287.067 RSMo., defines occupational disease as:

. . . an identifiable disease arising with or without human fault out of and in the course of the employment.^[2] 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."

In cases of alleged occupational disease, the disease must be occupationally induced, rather than an ordinary disease of life. *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296 (Mo.App.1991) (overruled on other grounds). An occupational disease is not compensable if work is merely "a triggering or precipitating factor". §287.067.2 RSMo. However, a work related event can be both triggering and a substantial factor. *Cahall v. Cahall*, 963 S.W.2d 368 (Mo.App. 1998) (overruled on other grounds). The exposure to the disease must be greater or different from disease exposure to the general public, and there must be a disease/work link common to the specific job or profession. *Polavarapu v. General Motors Corp.*, 897 S.W.2d 63 (Mo.App. 1995). The work must be a substantial factor in the cause of the resulting medical condition or disability. §287.020.2 RSMo. A causative factor may be substantial even if it is not the primary or most significant factor. *Cahall* at 372. There is no minimum percentage set out in the Workers' Compensation Law defining 'substantial factor'. *Id.* Whether employment is a substantial factor in causing the injury is a question of fact. *Sanderson v. Porta-Fab Corp.*, 989 S.W.2d 599, 603 (Mo.App. 1999) (overruled on other grounds).

Further, the aggravation of a pre-existing condition is a compensable injury if the claimant establishes a direct causal link between job duties and the aggravated condition. *See Smith v. Climate Engineering*, 939 S.W.2d 429, 433-34 (Mo. App. E.D. 1996) (overruled on other grounds). If a claimant can show that the performance of the usual and customary duties led to a breakdown or change in pathology, the injury is compensable. *Bennett v. Columbia Health Care*, 80 S.W.3d 524 (Mo.App.W.D. 2002) (overruled on other grounds). The worsening of a preexisting condition is a change in pathology. *Id.* at 529. Determinations of this kind require the assistance of expert medical testimony. Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994) (overruled on other grounds). The weight to be accorded an expert's testimony should be determined by the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. *Choate v. Lily Tulip, Inc.*, 809 S.W.2d 102 (Mo.App. 1991) (overruled on other grounds).

After Claimant's job change during January 2001, Claimant's stock table was placed in a position that left a gap between her platform and her stock table, requiring Claimant to repetitively step off the platform and caused her to strike her

left heel upon landing on a concrete floor. Claimant's uncontested testimony is that she performed this maneuver approximately 300-400 times a day. Three months after she was placed in this configuration, she began to experience left heel pain despite wearing her orthotics. Prior to the change in her workstation, Claimant experienced no heel pain while performing her job.

Additionally, although Claimant has preexisting feet problems, the medical evidence shows a clear change in pathology. Employer's expert, Dr. Anderson, acknowledged his agreement with Claimant's surgeon, finding Claimant's diagnosis of plantar fasciitis was not caused by her work activities, but instead aggravated the underlying condition. Conservative treatment failed, and surgery was completed due to this aggravation. I find Claimant has met her burden to establish an occupational disease that arose out of and in the course and scope of her employment, and to establish medical causation.

Issues relating to temporary total disability

TTD benefits are intended to cover a period of time from injury until such time as claimant can return to work. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641 (Mo.App. 1991) (overruled in part). Claimant had a compensable work related injury. She worked until the date of surgery on September 10, 2001, and was released to return to work on November 16, 2001. During her post-operative period she was paid benefits through Employer's sick and accident program. Employer is not entitled to credit for the sick leave benefits paid. Section 287.270 RSMo., allows denial of a credit to an employer unless the employer specifically made payments to meet its workers' compensation obligations. *Campbell v. Citicorp Mortgage, Inc.*, 924 S.W.2d 323 (Mo.App. 1996) (overruled on other grounds). Additionally, sick leave benefits are an employee benefit, and §287.160.5 RSMo., excludes employers from obtaining a credit for sick pay. *Id.* I find Claimant is entitled to receive 9 5/7th weeks of TTD benefits or \$6,109.31 for which Employer is liable. Employer is not entitled to a credit.

Issues relating to permanent partial disability owed by Employer

A permanent partial award is intended to cover claimant's permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App. 1991). Dr. Volarich rated Claimant's left plantar fasciotomy at 25% PPD referable to her foot. Dr. Anderson did not find the injury to be caused by a work event, and found no disability. With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo.App. 1983) (overruled on other grounds). I find Claimant has an overall left foot disability of 20% PPD referable to the 150 week level. Of that percentage 5% is preexisting, and 15% is referable to her September 1, 2001 injury. I find Claimant is entitled to receive 22.5 weeks of PPD benefits or \$7,411.95, for which Employer is liable.

Issues relating to future medical care

Claimant seeks a ruling regarding future medical benefits as it relates to this injury. Claimant is not required to present evidence concerning the specific future medical treatment that will be necessary in order to receive an award of future medical care. *Landers v. Chrysler Corp.*, 963 S.W.2d 275 (Mo.App. 1997) (overruled in part). Future medical benefits may be awarded if a claimant shows by reasonable probability that there will be a need for additional medical care due to the work-related injury. *Id.* When future medical benefits are awarded, the medical care must flow from the accident in order to hold an employer liable. *Id.* Reasonable probability is based on reason and experience that inclines the mind to believe, but leaves room for doubt. *Tate v. Southwestern Bell Telephone Co.*, 715 S.W.2d 326, 320 (Mo.App. 1986).

Dr. Volarich made three recommendations regarding future medical; non-steroidal anti-inflammatory medication, physical therapy, and orthotics. Claimant's current medication is Aleve, which can be purchased over-the-counter, and her treating physicians have not prescribed any other drugs related to this injury. Dr. Volarich opined Claimant may need "some" physical therapy, which I find to be too speculative to reach the reasonable probable standard necessary to award future medical benefits. However, the need for future orthotics does meet the required standard needed to award benefits. Dr. Weltmar, Claimant's treating physician, indicated ten months after Claimant's surgery the need for Claimant to resume wearing custom made orthotics. The need to resume wearing the orthotics flowed from Claimant's surgery, which in turn flowed from Claimant's repetitive occupational injury. I find Employer responsible to provide Claimant with additional orthotics as needed. Employer shall keep medical open to provide for orthotic replacement as required.

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CONCLUSION

In summary, Claimant sustained an occupational injury on September 1, 2001, that arose out of and in the course of her employment with Employer. Claimant is awarded \$7,411.95 in permanent partial disability referable to Claimant's left foot, and \$6,109.31 in unpaid TTD benefits. Claimant's attorney is entitled to a 25% lien of any payments made to Claimant. The Second Injury Fund is to remain open.

Date: _____

Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation

[1] The medical records in evidence from Dr. Weltmer do not contain a causation opinion, and Dr. Weltmer was not deposed.

[2] Section 287.020.3(1) defines injury as that which has arisen out of and in the course of employment. Section 287.020.3(2) instructs that to arise out of and in the course of employment an injury must meet four requirements; (a) the employment is a substantial factor causing the injury, (b) the injury is a natural incident of the work/employment, (c) the employment was a proximate cause of the injury, and (d) the injury is not from risk unrelated to the employment to which other workers would be equally exposed outside of employment in normal life.