

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

Injury No.: 07-035004

Employee: Cindy Spittler

Employer: Coin Acceptors, Inc.

Insurer: Self-Insured c/o Corporate Claims Management

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 19, 2010. The award and decision of Administrative Law Judge L. Timothy Wilson, issued January 19, 2010, 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 28<sup>th</sup> day of April 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

## AWARD

Employee: Cindy Spittler

Injury No. 07-035004

Dependents: N/A

Employer: Coin Acceptors, Inc.

Insurer: Self-Insured  
c/o Corporate Claims Management

Additional Party: N/A

Hearing Date: December 3, 2009

Checked by: LTW

### 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: April 20, 2007
5. State location where accident occurred or occupational disease was contracted: Howell, County, 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? 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:  
In performing her work duties, Claimant sustained injuries to both feet.
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: both lower extremities
14. Nature and extent of any permanent disability: 22.5 percent permanent partial disability to the body as a whole referable to the bilateral plantar fasciitis and peroneal tendonitis.
14. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Cindy Spittler

Injury No. 07-035004

- 17. Value necessary medical aid not furnished by employer/insurer? \$1,760.00
- 18. Employee's average weekly wages: \$386.00
- 19. Weekly compensation rate: \$257.00 TTD/PPD
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Unpaid medical expenses:	\$ 1,760.00
Future medical is awarded to Claimant (See Award)	
30 6/7 weeks of temporary total disability	7,930.26
90 weeks of permanent partial disability from Employer	23,130.00

The employer is not entitled to a credit against payment of temporary or permanent disability compensation.

22. Second Injury Fund liability: No

TOTAL: \$32,820.26

23. Future requirements awarded: Future medical is provided as per 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: Kenneth Wagoner, Esq.

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Cindy Spittler

Injury No. 07-035004

Dependents: N/A

Employer: Coin Acceptors, Inc.

Insurer: Self-Insured  
c/o Corporate Claims Management

Additional Party: N/A

The above-referenced workers' compensation claim was heard before the undersigned Administrative Law Judge on December 3, 2009. The parties were afforded an opportunity to submit briefs or proposed awards, resulting in the record being completed and submitted to the undersigned on or about December 24, 2009.

The employee, Cindy Spittler, appeared personally and through her attorney, Ken Wagoner, Esq. The employer Coin Acceptors, Inc., d/b/a Mountain View Fabricators, appeared through its attorney, Mark Kornblum, Esq.

The parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about April 20, 2007, Coin Acceptors, Inc., was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully self-insured, with its benefits being administered by Corporate Claims Management.
- (2) On the alleged injury date of April 20, 2007, Cindy Spittler was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The contract of employment between the above-referenced employee and employer was made in Missouri. Further, the alleged incident of occupational disease occurred in Howell County, Missouri. Venue is proper.
- (4) The employee notified the employer of her injury as required by Section, 287.420, RSMo.
- (5) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (6) At the time of the alleged incident of occupational disease, the employee's average weekly wage was \$386.00, which is sufficient to allow a

compensation rate of \$257.00 for both temporary total disability compensation and permanent disability compensation.

- (7) Temporary disability benefits have not been provided to the employee under Chapter 287, RSMo.
- (8) The employer has not provided medical treatment to the employee under Chapter 287, RSMo.

The sole issues to be resolved by hearing include:

- (1) Whether the employee sustained an incident of occupational disease on or about April 20, 2007; and, if so, whether the incident or occupational disease arose out of and in the course of employment?
- (2) Whether the alleged incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (3) Whether the employer is obligated to pay for certain past medical care and expenses in the amount of \$1,760.00?

(The parties stipulate that the employee has received medical care, which has been paid through the employer's group health insurance plan. The aforementioned medical expenses of \$1,760.00 represent payment of co-pays and deductibles by the employee. The employee is not seeking repayment of monies paid by the employer under the group health insurance plan and the employer agrees to hold the employee harmless for payment of said medical expenses in the event the claim is found compensable and medical expenses are determined to be owed under Chapter 287, RSMo.)

- (4) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (5) Whether the employee is entitled to temporary total disability compensation?

(The employee seeks past temporary total disability compensation, payable for the period of February 8, 2008 to September 11, 2008. In context of this issue, the parties stipulate that the employee was temporarily and totally disabled for the period of February 8, 2008 to September 11, 2008.)

- (6) Whether the employee sustained any permanent disability as a consequence of the alleged incident of occupational disease; and, if so, what is the nature and extent of the disability?
- (7) Whether the employer is entitled to a credit against any award for payment of temporary total disability compensation, based on payment of short term disability compensation by the employer for the period the employee was temporarily and totally disabled, as made under the employer's short term disability policy?

**EVIDENCE PRESENTED**

The employee testified at the hearing in support of her claim. In addition, the employee offered for admission the following exhibits:

- Exhibit A..... Report of Injury
- Exhibit B..... Complete Medical Report of David T. Volarich, D.O.
- Exhibit C..... Medical Records from St. John's Clinic
- Exhibit D..... Deposition of Lynn Roberts

The exhibits were received and admitted into evidence .

The employer and insurer presented two witnesses at the hearing of this case – Mary Prange and Linda Mounce. Further, the employer and insurer offered for admission the following exhibits:

- Exhibit 1..... Complete Medical Report of John O. Krause, M.D.
- Exhibit 2..... Complete Medical Report of David C. Hicks, M.D.
- Exhibit 3..... Photograph of Work Area
- Exhibit 4..... Photograph of Work Area
- Exhibit 5..... Photograph of Work Area
- Exhibit 6..... Photograph of Work Area
- Exhibit 7..... Photograph of Work Area
- Exhibit 8..... Photograph of Work Area
- Exhibit 9..... Photograph of Work Area
- Exhibit 10..... Photograph of Work Area
- Exhibit 11..... Photograph of Work Area
- Exhibit 12..... Photograph of Work Area
- Exhibit 13..... Photograph of Work Area
- Exhibit 14..... Copy of Employee's Wage Statement
- Exhibit 15..... Photograph of Work Area

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took official or judicial notice of the documents contained in the Legal File, which include:

- Notice of Hearing

- Request for Hearing-Final Award
- Answer of Employer to Claim for Compensation
- Claim for Compensation
- Report of Injury

All exhibits appear as the exhibits were received and admitted into evidence at the evidentiary hearing. There has been no alteration (including highlighting or underscoring) of any exhibit by the undersigned judge.

### **DISCUSSION**

The employee, Cindy Spittler, is 53 years of age, having been born on July 15, 1956. Ms. Spittler is married and resides with her husband and three children in Mountain View, Missouri.

Ms. Spittler is 5' 1" tall, and weighs approximately 180 pounds. Further, Ms. Spittler graduated from high school and attended college.

#### EMPLOYMENT WITH EMPLOYER – FABRICATING WORK FROM JANUARY 1999 TO APRIL 2006

Cindy Spittler obtained employment with Coin Acceptors, Inc., d/b/a Mountain View Fabricators, in January 1999. For approximately the first seven years of her employment, she worked on the assembly line at various jobs. The assembly involved “coin acceptors,” which were described in evidence as small devices which are a part of a vending machine that accepts coins deposited by purchasers.

In her employment with the employer during the first seven years, Ms. Spittler had some jobs which were primarily sitting. She had others that involved considerable standing, but in the standing jobs she had a pad to stand on. None of her prior jobs involved frequent or constant ladder climbing or standing ten hours a day on concrete floors without a pad.

Ms. Spittler acknowledged that, during this first seven years of her employment, she had no trouble with her feet. The medical records from the St. John’s Clinic in Mountain View indicate that, during this period of her employment with the employer, Ms. Spittler voiced no complaints concerning her feet. And it is undisputed that Ms. Spittler had no prior complaints relating to her feet.

#### APRIL 2006 ASSIGNMENT TO SODA MACHINE LINE

In early 2006 the employer underwent change in its manufacturing operation, which involved phasing out its coin acceptors assembly and moving this work to China. As a consequence, Ms. Spittler applied for and was given opportunity to continue employment with the employer by transferring to the company’s soda machine refurbishing line. Notably, Ms. Spittler was one of the first employees of the employer to work on this refurbishing line, which opened in April 2006.

The soda machine refurbishing line work performed in the facility involved receiving old, dirty, and nonfunctional soda machines, and to restore them to working order, clean them and paint them, and have them leave the facility refurbished and appearing as new. Ms. Spittler worked in a section of the soda machine refurbishing line commonly referred to as the “masking line”. At this point of the process, the machines exited from a wash room where they had been washed, and then came to the masking line.

Ms. Spittler's job was to first push the vending machine down the "line" to a position where she could work on it. The "line" is shown on photographs received in evidence. It is an elevated system of rollers held by dual elevated bars which are about 10.4 inches from the floor. The vending machines are placed on wooden boards or pallets, further elevated as revealed in the photographs, so that when the machines are rolling down the line, the bottoms of the machines are about eighteen inches from the concrete floor on which the employees primarily stand.<sup>1</sup>

Soda vending machines were the vast majority of the work. According to Mary Prange, the Employer's supervisor on the line, the soda vending machines comprised eighty-one percent (81%) of the machines that were refurbished. According to Ms. Prange, all of the soda machines weighed over 600 pounds, and some of the machines weighed as much as 900 pounds.

The parties dispute the amount of force needed to push the machines down the line. Ms. Prange claimed that it took about as much force to push the soda machines down the line as it does to push a half-full grocery cart. Yet, Ms. Prange acknowledged that, at times, the wooden pallets on which the soda machines roll down the line would hang up or stick; and she estimated that this would happen several times a day.

According to Ms. Spittler, in order to push the machines down the line, she had to place her hands on the machine, flex her feet, and push with some force. She further testified that sometimes the wooden pallets on which the soda machines were placed would "hang up" or "stick" on the line and would require considerable force to be moved. This would even require at times that a male working on a different line would be summoned to help push the machines.

The work that Ms. Spittler performed included the following: Sometimes the machines would still be in need of drying or cleaning, and she would need to wipe down the side or clean off residual glue. Also, she would perform masking, which meant she would apply masking tape and paper to the machine to cover areas that were not to be painted during the next step in the refurbishing at the paint room. Additionally, she would apply decals to machines, and install a sign known as a "wave sign." All of these work processes required the use of ladders of one kind or another.

The ladders used were described in evidence, and the exhibits include photographs of three of the four ladders that were used. There was one ladder which was placed across the "line" so that employees could stand above the line for the application of decals and other work. There were taller ladders used in order to work higher up on the machines.

The tops of the soda vending machines were seven and one-half feet to eight feet from the floor below. This was established by the testimony of Mary Prange, who testified that the vending machines were either seventy-two inches (six feet) or seventy-nine inches (six feet seven inches) tall. She testified that the bottoms of the soda machines as they rolled down the line were eighteen inches (one and one-half feet) from the concrete floor below. This meant the tops of the soda vending machines were seven and one-half to eight feet from the concrete floor.

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<sup>1</sup> Mary Prange, the Employer's witness, testified to these facts.

While there was some dispute in the evidence as to the exact number of times Ms. Spittler had to climb up and down the ladders during the course of a day, it was undisputed that ladder use was steady and constant throughout the day. Mary Prange, the line supervisor, described the pace of the work as “steady.” Mary Prange testified that the employees “shouldn’t have to” go up and down a ladder more than five times to work on one machine. Ms. Prange testified that the goal was to have each employee refurbish one machine an hour. Accordingly, premised on the testimony of Mary Prange, the employer’s witness, if an employee refurbished ten machines during a ten hour shift, and even if the employee could limit ladder use to five up-and-down ladder trips per machine, the employee climbed up and down a ladder fifty times during a typical work shift.

Thus, viewing the evidence favorable to the employer, Ms. Spittler’s job required her to make steady, constant use of a ladder throughout her work day, climbing up and down a ladder about fifty times per day. The job clearly involved more ladder climbing and standing on concrete than the “ordinary activities of daily living.”

In her testimony Ms. Spittler did not give a precise number of times per machine or day that she climbed up and down the ladder. Her testimony was that she was up and down the ladder frequently and steadily throughout the day as she worked on the machines. Part of the climbing up and down was due to the fact that decals and wave signs were kept in racks that were not always in reach and required Ms. Spittler to climb back down to retrieve these items, and then climb back up the ladder to apply them. Additionally, Ms. Spittler noted that she utilized tools that she could not carry up and leave on the ladder, and she would have to climb down to retrieve these tools and then climb back up. There were likewise screws that would have to be retrieved, as well as wave signs, masking tape, and other items.

In addition, the employer notes that the ladders used by Ms. Spittler in performing her job duties did not contain rungs, but rather flattened steps leading to the top of the ladder. This distinction appears to be a nonissue, insofar as climbing either a rung or a narrow step requires a similar action of the foot and lower leg. And no medical evidence drew any distinction between climbing a ladder with rungs and climbing a ladder with steps.

#### DEVELOPMENT OF PAINFUL FOOT SYMPTOMS & REPORT OF INJURY TO EMPLOYER

Several months after commencing work on the soda machine refurbishing line, Ms. Spittler noticed the development of painful symptoms in her feet. She described these first symptoms as feeling a “tearing” in the arch of her foot.

The symptoms worsened over time; and on April 20, 2007, Ms. Spittler presented to the office of her family doctor concerning the foot complaints. She was seen by a nurse practitioner (Cora Thompson), who recommended that she see a foot specialist. Three days later, on April 23, 2007, Ms. Spittler reported her condition to Linda Mounce, the Human Resources person of the employer. A Report of Injury was completed that day.

The Employer arranged for Ms. Spittler to see John Krause, M.D., who examined her on May 21, 2007. He spent only a few minutes with Cindy. He did obtain x-rays. His “assessment” (preliminary diagnosis) was “bilateral plantar fasciitis and diffuse bilateral foot pain.” Dr. Krause stated in his report that he did not think Ms. Spittler’s work caused the plantar fasciitis, but he did advise her to quit her job. He further stated:

I find no evidence of a congenital problem that causes her symptoms. I do not believe the calcaneal bone spur is at all related to her current symptoms.

Following this exam, Ms. Spittler presented to the employer again and requested additional treatment, but her claim was denied.

The pain in Cindy's feet became so bad that it made it difficult for her to work. She took several Advil per day, more than the recommended dosage, in order to keep going. In light of the employer denying her request for medical treatment, Ms. Spittler sought and obtained medical treatment on her own. Notably, in looking for treatment, Ms. Spittler reviewed information "on the web" for foot specialists who were authorized by the employer's group health insurance plan. This search led her to Mark Seiden, D.P.M., for treatment of her medical condition.

Ms. Spittler presented to Dr. Seiden on August 3, 2007, for an examination and evaluation. He took a detailed history, examined Ms. Spittler, and obtained certain diagnostic studies, including x-rays. In light of his examination and findings, Dr. Seiden diagnosed Ms. Spittler's condition to be plantar fasciitis. And, in light of his diagnosis, Dr. Seiden initiated treatment on that first visit which included an injection of 1 cc of Lidocaine, 1 cc of dex phosphate, and 0.1 cc of Kenalog into Ms. Spittler's left heel. Dr. Seiden further advised her to use "over-the-counter orthoses" (orthotic inserts to shoes), and recommended a "Spenco plastic height."

Dr. Seiden's treatment of Ms. Spittler continued over the next 14 months, until October, 2008. During this time he examined Ms. Spittler eighteen times in his office, as reflected in his office notes.

Dr. Seiden began with conservative treatment modalities, including injections and shoe inserts. These were not successful. And by October 5, 2007, he described her condition as "recalcitrant plantar fasciitis, bilaterally." At that time he recommended a Cam boot immobilization and fitted her for a Cam boot on the left. Ms. Spittler, however, was not allowed to wear the Cam boot at work due to its open toe. When Dr. Seiden saw her back in his office on November 2, 2007, he noted that she had not been able to wear the Cam boot very much, and he recommended "possibly time off work."

On February 8, 2008, Dr. Seiden noted that Ms. Spittler had worn the boot off and on, but the pain had not gotten better. Dr. Seiden's note reflects, "She has tried stretching and icing and worn inserts, and the injections have not helped, either." On that day Dr. Seiden took Ms. Spittler off work and instructed her to wear the Cam boot on the left side at all times.

Ms. Spittler returned to Dr. Seiden on March 11, 2008, and was noted to have been wearing the Cam boot on the left and had a 70 percent improvement of the pain. Nevertheless, the right foot was very sore and not showing improvement. Dr. Seiden recommended that, in one week, Ms. Spittler switch the boot from the left to the right, continue applying ice and doing stretching, and remain off work.

On April 4, 2008, Spittler returned to Dr. Seiden, still having pain. At this point Dr. Seiden wanted to set her up for an MRI, and discussed the possibility of surgery described as

a plantar fasciotomy. And on April 10, 2008, Ms. Spittler underwent an MRI of the foot. The MRI confirmed the diagnosis of plantar fasciitis.

On April 23, 2008, Ms. Spittler returned for treatment with Dr. Seiden. In light of his examination and the MRI findings, Dr. Seiden recommended surgery for the left foot, which he scheduled and performed on May 16, 2008.

On May 20, 2008, Ms. Spittler presented to Dr. Seiden for post-surgical follow-up examination. Dr. Seiden recommended that Ms. Spittler "limit all activities and stay off the area as much as possible." Ms. Spittler continued to receive follow-up treatment with Dr. Seiden. By June 23, 2008, Ms. Spittler reported to Dr. Seiden that her left foot was 80 percent better; the sharp pains in the morning were almost gone; and the heel has no pain. Ms. Spittler, however, noted that her right foot was continuing to get worse.

In light of continuing and worsening pain in the right foot, Dr. Seiden recommended that Ms. Spittler proceed with surgery for her right foot, which he scheduled and performed on July 18, 2008. Thereafter, Dr. Seiden provided post-surgical follow-up treatment. The surgery provided Ms. Spittler with relief of the right foot pain. By July 29, 2008, Ms. Spittler was free of heel pain, although she was experiencing some "achiness at the incisions." And on August 21, 2008, Dr. Seiden noted that Ms. Spittler was "doing pretty well." But, according to Dr. Seiden, Ms. Spittler continued to experience "a little bit of achiness on the side." Dr. Seiden further noted that Ms. Spittler was continuing to experience a little tenderness from the scar, "with occasional shooting pain." In light of the improvement, but with continuing symptoms, Dr. Seiden recommended that Ms. Spittler return to wearing a soft shoe with "insoles."

On September 11, 2008, Dr. Seiden released Ms. Spittler to go back to sit-down duty at work. However, in returning Ms. Spittler to work, Dr. Seiden recommended that she not engage in "a prolonged standing job."

In a follow-up visit of October 10, 2008, Dr. Seiden discussed in detail the etiology of Ms. Spittler's plantar fasciitis. In his office notes of October 10, 2008, Dr. Seiden propounds the following comments:

The patient and I did have a discussion about the etiology and treatment of chronic plantar fasciitis. She requested my opinion on whether this was caused by standing work. I do believe it was a large contributing factor. Prolonged standing and ladder-climbing of 10 hours a day most likely caused and worsened the fasciitis.

\* \* \*

In addition, the patient and I discussed her previous work environment. She had worked at a similar plant for 10 years but did no (sic) have her job that she performed for the last three years, which was climbing, standing, and working on soda machines. And, with those activities, I feel when she took that job was when she experienced her pain, which most likely contributed to it.

Later, in a report dated November 13, 2008, Dr. Seiden opines that Ms. Spittler's employment with the employer, wherein she worked on the soda machine refurbishing line and stood on concrete for extended hours, "was a prevailing factor in causing her chronic plantar fasciitis, which did require surgical intervention, which she has undergone."

Ms. Spittler is not presently working. She continues to experience pain in her feet, and is not able to walk for any extended length. Additionally, Ms. Spittler notes that, even while sitting and her feet elevated, she experiences pain in her feet.

David T. Volarich, M.D., testified in behalf of the employee through the submission of a complete medical report. Dr. Volarich performed an independent medical examination of Ms. Spittler on February 16, 2009. At the time of this examination, Dr. Volarich took a history from Ms. Spittler, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Spittler, Dr. Volarich opined that, as consequence of Ms. Spittler's employment with Coin Acceptors, Inc., d/b/a Mountain View Fabricators, Ms. Spittler suffered repetitive trauma to her right and left feet, causing plantar fasciitis and peroneal tendonitis which necessitated surgeries in the nature of plantar fasciotomy, involving both of her right and left feet. Notably, in examining the causal relationship of the plantar fasciitis and peroneal tendonitis to her employment with Coin Acceptors, Inc., d/b/a Mountain View Fabricators, Dr. Volarich propounded the following testimony:

It is my opinion the repetitive trauma sustained by Ms. Spittler to both of her feet while working at Coin Acceptors, particularly the climbing up and down to the machine approximately 40 times per hour, as well as climbing ladders and pushing the heavy machines manually requiring her to perform push off type maneuvers with the ball of the foot, after which she experienced the development of bilateral plantar foot pain and lateral foot pain, are the substantial contributing factors, as well as the prevailing or primary factors causing the bilateral foot plantar fasciitis that required surgical repair, as well as the bilateral residual peroneal tendonitis.

It is my opinion that her obesity is a risk factor, but in this case is not the prevailing factor causing the development of her plantar fasciitis.

Further, Dr. Volarich opined that, at the time of his examination of Ms. Spittler, she was at maximum medical improvement, but is governed by permanent work restrictions. In addition, Dr. Volarich opined that, this occupational injury caused Ms. Spittler to sustain a permanent partial disability of 35 percent, referable to the right lower extremity at the ankle; this occupational injury caused Ms. Spittler to sustain a permanent partial disability of 35 percent, referable to the left lower extremity at the ankle; and the combination of the disability referable to both extremities creates a substantially greater disability than the simple sum or total of each separate disability, causing Ms. Spittler to sustain an additional permanent partial disability of 15 percent to the body as a whole, referable to the multiplicity effect due to the combination of injuries to both lower extremities.

John O. Krause, M.D., who is an orthopedic surgeon with The Orthopedic Center of St. Louis, testified in behalf of the employer through the submission of a complete medical report. Dr. Krause performed an independent medical examination of Ms. Spittler on May 21, 2007. At

the time of this examination, Dr. Krause took a history from Ms. Spittler, caused a radiological exam (AP, lateral and oblique views of the right foot) to be performed in his office, which he reviewed, and performed a physical examination of her. (Dr. Krause did not review any medical records or medical reports of other health care providers.) In light of his examination and evaluation of Ms. Spittler, Dr. Krause opined that, while Ms. Spittler presented with a medical condition in the nature of bilateral plantar fasciitis and diffuse bilateral foot pain, the medical condition is not causally related to her employment with Coin Acceptors, Inc., d/b/a Mountain View Fabricators. In this regard, Dr. Krause propounded the following testimony:

1. The patient has bilateral plantar fasciitis. I find no evidence in the record or in the patient's history that indicates that she had an accident or injury that caused this problem.
2. Plantar fasciitis is generally not accepted as a repetitive trauma work-related injury. She is wearing well-fabricated shoes.
3. I do not think her work is the prevailing factor of her current symptoms.
4. I recommend that she start a stretching program and wear soft heel cups and good cushioned orthoses while working.
5. She will likely have relatively long term problems with plantar foot pain and heel pain if she stands for 10-12 hours per day on hard surfaces. Wearing well-fabricated shoes as she has and cushioned shock absorbing orthoses will likely lessen her symptoms.
6. I find no evidence of a congenital problem that causes her symptoms. I do not believe the calcaneal bone spur is at all related to her current symptoms.

In addition, although Dr. Krause recommends use of orthoses and cautions against standing for 10-12 hours per day on hard surfaces, he opined that Ms. Spittler is able to work full duty without work restrictions. Dr. Krause did not offer an opinion of permanent disability.

David C. Hicks, who is an orthopedic surgeon with Orthopaedic Specialists of Springfield, testified in behalf of the employer through the submission of a complete medical report. Dr. Hicks performed an independent medical examination of Ms. Spittler on June 23, 2009. At the time of this examination, Dr. Hicks took a history from Ms. Spittler, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Spittler, Dr. Hicks opined that, while he could not offer a specific diagnosis of Ms. Spittler's medical condition, she "did have chronic plantar fasciitis."

Dr. Hicks further opined that, while the plantar fasciotomies provided certain relief and improvement, she may continue to experience symptoms. In this regard Dr. Hicks noted that Ms. Spittler exhibited diffuse symptoms, which he could not localize in her feet and legs, and that he did not believe any type of additional invasive treatment would be of benefit to her. Dr. Hicks opined that, at the time of his examination of Ms. Spittler, she was at maximum medical improvement. However, Dr. Hicks is of the opinion that she should continue an aggressive stretching program and continue to wear good accommodative shoe wear and insoles.

Additionally, Dr. Hicks is of the opinion that Ms. Spittler can take anti-inflammatory medications as needed for discomfort.

Dr. Hicks did not offer an opinion of permanent disability relative to Ms. Spittler's medical condition associated with her bilateral lower extremities. Yet, Dr. Hicks notes that "it is probably unlikely that she will be able to return to any type of activities that would require her to be on her feet for any length of time, due to the longevity of her symptoms."

In addressing the issue of causation, Dr. Hicks opines that the work activities in her employment with Coin Acceptors, Inc., d/b/a Mountain View Fabricators, is not the prevailing factor in causing her symptoms, but rather a triggering or exacerbating factor. In this context, Dr. Hicks propounded the following comments,

I have been asked to comment on causation for her current symptoms. It does sound like she was on her feet eight to ten hours a day on hard surfaces and this certainly may have triggered or exacerbated her symptoms but it is my opinion that the large heel spur seen on radiograph and the chronic thickening in her plantar fasciitis is something that would take years to develop and her work-related activity is not the prevailing factor but was an exacerbating factor in her symptoms. If her work activities were the prevailing factor, one would think that her symptoms would have abated once she was no longer employed in this type of job. However, she continues to have diffuse chronic symptoms in both of her feet, which really have not changed at all since her termination and even seems to have gotten worse, based on her complaints today.

## **FINDINGS AND CONCLUSIONS**

The workers' compensation law for the State of Missouri underwent substantial change on or about August 28, 2005. The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation is on the employee, Section 287.808 RSMo. Administrative Law Judges and the Labor and Industrial Relations Commission shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts, Section 287.800 RSMo.

### **I.**

#### **Nature of Injury & Medical Causation**

The underlying issue presented in this case is whether the employee sustained an incident of occupational disease in the nature of plantar fasciitis, as a consequence of her employment with Coin Acceptors, Inc., d/b/a Mountain View Fabricators.

The employee argues that the repetitive trauma to her feet, which she experienced while working on the soda machine refurbishing line in her employment with Coin Acceptors, Inc., d/b/a Mountain View Fabricators, is the prevailing factor in causing her to develop bilateral plantar fasciitis, which necessitated surgical repairs to both of her feet. The employer, however, argues that plantar fasciitis is not generally accepted as a work-related medical condition. And, at most, the employment activity was a contributing or exacerbating factor, but not the prevailing

factor in causing the employee to suffer bilateral plantar fasciitis. The parties offer competing and differing medical opinions.

The term "occupational disease" is defined in Section 287.067, RSMo. In pertinent part, this statute states:

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.

2. An injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

3. An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

In the case of *Vickers v. Missouri Department of Public Safety*, 283 S.W.3d 287 (Mo. App. W.D. 2009), the court discussed the burden of proof and evidence necessary for an employee to establish that an occupational disease is compensable under Section 287.067, as the law existed prior to the 2005 amendments. The court stated as follows, 283 S.W.3d at 292 *et seq.*:

In proving a causal connection between the conditions of employment and the occupational disease, the claimant bears the burden of proof; to prove causation it is sufficient to show a recognizable link between the disease and some distinctive feature of the job . . . and there must be evidence of a direct causal connection between the conditions under which the work is performed and the occupational disease. However, the cause and development of an occupational disease is not a matter of common knowledge. There must be medical evidence of a direct causal connection. . . . 'A claimant must submit medical evidence establishing a *probability* that working conditions caused the disease, although they need not be

the sole cause.' . . . 'Even where the causes of the diseases are indeterminate, a single medical opinion relating the disease to the job is sufficient to support a decision for the employee.'

Notably, however, the court's discussion of proving causation in *Vickers* must be viewed in context of Section 287.067, RSMo as amended in 2005. The Amendments to this statute changed the causation factor to require that the occupational exposure be the "prevailing factor" in relation to causation. See, *Lawson v. Ford Motor Co.*, 217 S.W.3d 345 (Mo. App. E.D., 2007). In discussing this new requirement, the court in *Lawson* stated:

The legislature amended several sections of the Workers' Compensation Act in 2005. In particular, portions of section 287.067 and 287.020 were rewritten. Specifically, section 287.067.2 discusses when an injury by occupational disease is considered compensable. Prior to 2005, the section stated that such an injury will be compensable if it "is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020." Subsections 2 and 3 of section 287.020 previously contained definitions for "accident" and "injury." Prior to 2005, those definitions included language which concluded that an injury was compensable if it is work related, which occurs if work was a "substantial factor" in the cause of the disability.

After the 2005 amendments to the statutes, the definition of a compensable injury by occupational disease was changed to use the language "prevailing factor" in relation to causation. Specifically, section 287.067.2 states:

An injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The 'prevailing factor' is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

Section 287.020.3 defines "injury" using similar terms.

217 S.W.3d at 349-350 *et seq.*

In this case, there is strong "biological plausibility" that the demands of the job caused the plantar fasciitis. Even the employer's own evidence establishes such a strong plausibility. Although Ms. Spittler is obese, and her obesity is a factor in her developing plantar fasciitis, it is not the prevailing factor in relation to causation. The prevailing factor in relation to causation is the demands of the job that she repetitively performed in her employment with the employer, while working on the soda machine refurbishing line.

The employer's evidence, through Mary Prange, established the following. The work on the soda machine line was performed on concrete floors with no pads. The work was performed during ten hour shifts, with frequent overtime beyond 40 hours per week. The soda machines

were the vast majority (81%) of the work done. The machines were six feet to six and one-half feet tall and weighed over 600 pounds each.

The employee pushed the machine manually down a manual conveyor line. While Ms. Prange claimed it was about as easy to do this as to push a grocery cart half full, she also testified that several times each day the machines would “hang up” on the line and would require much more forceful pushing to move them.

Because of the height of the machines, it was necessary to use a variety of ladders to perform the work. Ms. Prange said that the Employee “should” be able to complete each machine by making five up-and-down trips on a ladder per machine. Approximately one machine per hour was worked on by each employee, meaning the employee climbed up the ladder and back down five times for each machine, and in the course of a ten hour day this would translate to fifty times climbing up and down a ladder.

The employee testified that she experienced even more trips up and down a ladder. In this regard, I find the employee credible and accept as true her testimony. These job requirements were far more than the “normal activities of day-to-day living,” and were the prevailing factor in causing the employee’s development of plantar fasciitis in both feet. It is undisputed that the employee did not ever have painful symptoms in her feet before going to work on the soda machine refurbishing line. It is undisputed that she never sought prior medical treatment for any foot condition before going on the soda machine refurbishing line. It is undisputed that the symptoms developed after she had worked on the soda machine refurbishing line a few months, when she developed a painful sensation in the bottoms of her feet, which she described as a “tearing” in the arches at the bottom of the feet. All these facts are entirely consistent with the job demands of the soda machine refurbishing line being the prevailing factor in causing the plantar fasciitis.

It is persuasive that the treating physician, Dr. Mark Seiden, is of the opinion that the work the employee performed was the “prevailing factor” and even the “cause” of the employee’s plantar fasciitis. Initially, in his treatment records, Dr. Seiden identifies the employee’s employment working on the soda machine refurbishing line as being a “large contributing factor.” Later, in a report dated November 13, 2008, Dr. Seiden opines that Ms. Spittler’s employment with the employer, wherein she worked on the soda machine refurbishing line and stood on concrete for extended hours, “was a prevailing factor in causing her chronic plantar fasciitis, which did require surgical intervention, which she has undergone.”

Dr. Seiden is the only physician in the case who rendered treatment to the employee. He was not retained by either party for purposes of conducting an IME and then rendering an opinion. Dr. Seiden is board-certified by the American Board of Podiatric Surgery. He examined the employee eighteen different times over the course of at least fourteen months. He observed her condition over time, rendered various treatment modalities, and finally performed surgery on both feet. He had the most familiarity with the employee’s condition, and his opinion should be given great weight.

In addition, the plantar fasciotomy surgery relieved the heel pain, and is further evidence that the small bone spurs in the employee’s heels were *not* the cause of her symptoms. Dr. Krause, the Employer’s doctor, stated in his report that the heel spurs were not the cause of the

employee's symptoms. Drs. Seiden and Volarich were of the same opinion, as they both diagnosed the employee's condition as plantar fasciitis caused by her employment with the employer while working on the soda machine refurbishing line. The fact that the heel pain improved after the plantar fasciotomy surgery shows that it was the plantar fasciitis causing the heel pain. The bone spurs are irrelevant to the case.

I resolve the differences in medical opinion in favor of Drs. Seiden and Volarich, who I find to be credible.

Accordingly, after consideration and review of the evidence, I find and conclude that on or about April 20, 2007, the employee sustained an incident of occupational disease, as defined in Section 287.067, RSMo, which is in the nature of bilateral plantar fasciitis and peroneal tendonitis. This incident of occupational disease arose out of and in the course of her employment with the employer, and involved repetitive trauma to her right and left feet, wherein she worked on the soda machine refurbishing line and stood on concrete for extended hours. The employee's employment with the employer was the prevailing factor in causing the employee to sustain an injury in the nature of chronic plantar fasciitis to both of her feet, which necessitated surgical interventions.

## II. Medical Care

As determined, on or about April 20, 2007, the employee sustained an incident of occupational disease, as defined in Section 287.067, RSMo, which is in the nature of bilateral plantar fasciitis and peroneal tendonitis. This occupational injury necessitated receipt of medical care, including two surgical interventions, which the employer did not pay under Chapter 287, RSMo. Rather, the employer paid the medical care through the employer's group health insurance plan. As a consequence, the employee incurred out-of-pocket expenses (co-pays and deductibles) in the amount of \$1,760.00.

The medical care and expenses are supported by the medical records and are deemed to be fair and reasonable. Further, I find the medical care to be reasonable, necessary, and causally related to the occupational injury of April 20, 2007.

Notably, in light of the parties' stipulation, the employee is not seeking repayment of monies paid by the employer under the group health insurance plan and the employer agrees to hold the employee harmless for payment of said medical expenses. Accordingly, accepting the parties stipulation, the employer is ordered to pay to the employee past medical expenses in the amount of \$1,760.00.

In addition, the employee seeks additional or future medical care. Relative to this issue, the employee notes that Dr. Seiden recommends that she use special insoles, which can be purchased without a prescription from a provider in Springfield, Missouri, at a cost of \$20.00 per pair. In his office notes, Dr. Seiden does not specifically address the issue of future medical care, but states that Ms. Spittler "may return to a soft shoe with her insoles." And, while Dr. Krause differs on the issue of causation, he agrees that the employee suffers from bilateral plantar fasciitis, and wearing "well-fabricated shoes as she has and cushioned shock absorbing orthoses will likely lessen her symptoms." Similarly, Dr. Hicks recommends that Ms. Spittler wear "good

accommodative shoe wear and insoles.” Dr. Volarich does not specifically address the issue of future medical care, as he simply recommends that the employee follow-up with her personal physician for any additional medical care.

After consideration and review of the evidence, I find and conclude that, as a consequence of the occupational injury of April 20, 2007, the employee is in need of future medical care in order to cure and relieve her of the effects of the injury. This future medical care, however, is limited to cushioned shock absorbing orthoses, as may be recommended or prescribed by Dr. Seiden.

### III. Temporary Total Disability Compensation

The employee seeks payment of temporary total disability compensation for the period of February 8, 2008, to September 11, 2008 (30 6/7 weeks).

The evidence indicates that, on February 8, 2008, Dr. Seiden took the employee off work and instructed her to wear a Cam boot on the left side at all times. Late in March 2008 Ms. Spittler returned to Dr. Seiden and was noted to have been wearing the Cam boot on the left and had a 70 percent improvement of the pain. Nevertheless, the right foot was very sore and not showing improvement. Dr. Seiden recommended that in one week Ms. Spittler switch the boot from the left to the right, continue applying ice and doing stretching, and remain off work. The employee continued to remain off work until September 11, 2008, when Dr. Seiden released Ms. Spittler to go back to sit-down duty at work.

Accordingly, after consideration and review of the evidence, I find and conclude that, as a consequence of the occupational injury of April 20, 2007, the employee was temporarily and totally disabled for the period of February 8, 2008, to September 11, 2008 (30 6/7 weeks). Therefore, the employer is ordered to pay to the employee past temporary total disability compensation in the amount of \$7,930.26, which represents 30 6/7 weeks of temporary total disability, payable for the period of February 8, 2008 to September 11, 2008 at the applicable compensation rate of \$257.00.

### IV. Permanent Disability Compensation

Ms. Spittler is not presently working. Although the surgeries relieved the heel pain, Ms. Spittler continues to experience pain in her feet and is not able to walk for any extended length. Additionally, Ms. Spittler notes that, even while sitting and her feet elevated, she experiences pain in her feet. The medical records indicate that she suffers continuing and permanent pain in her feet, and she is governed by permanent restrictions that preclude her from certain employment occupations, particularly employment that would require her to be on her feet for any length of time.

After consideration and review of the evidence, I find and conclude that the employee is employable in the open and competitive labor market, but she is governed by permanent restrictions that preclude her from working in certain occupations and work environments. I further find and conclude that, as a consequence of the occupational injury of April 20, 2007, the

employee sustained a permanent partial disability of 22.5 percent to the body as a whole (90 weeks), referable to the bilateral plantar fasciitis and peroneal tendonitis.

Therefore, the employer is ordered to pay to the employee the sum of \$23,130.00, which represents 90 weeks of permanent partial disability compensation, payable at the applicable compensation rate of \$257.00.

V.

Short Term Disability Credit

The employer seeks a credit against payment of temporary or permanent disability compensation, based on payment of short-term disability compensation by the employer for the period the employee was temporarily and totally disabled, as made under the employer's short-term disability policy. In context of this issue, Linda Mounce testified that the employee received 26 weeks of short-term disability compensation in the amount of \$2,600 (\$100.00 per week), during the period of February 4, 2008, to August 14, 2008, which the employer paid under its short-term disability insurance plan. Ms. Mounce noted that the plan is limited to 26 weeks at \$100.00 per week. Ms. Mounce further noted that, under this short term disability insurance plan, the employer pays 100 percent of the plan; the employees pay no premiums.

The employee may be required by contract to reimburse the insurer, who paid the employee \$2,600 in short term disability benefits; and the employer may be entitled under contract to seek or obtain reimbursement from the employee. However, any enforcement of the contract must be adjudicated in the courts under a civil action. The Workers' Compensation Law does not recognize such an entitlement under Chapter 287, RSMo. The employer did not pay any temporary disability compensation under Chapter 287, RSMo. And the short-term disability insurance plan is not a workers' compensation policy.

The short-term disability insurance benefits paid to the employee was not made under Chapter 287, RSMo. The Workers' Compensation Law does not afford to the employer or the insurer of the short-term disability insurance plan a lien or entitlement to a credit.

Therefore, this issue is resolved in favor of the employee. The employer is not entitled to a credit under Chapter 287, RSMo.

An attorney's fee of 25 percent of the benefits ordered to be paid is hereby approved, and shall be a lien against the proceeds until paid. Interest as provided by law is applicable.

Made by: \_\_\_\_\_

L. Timothy Wilson  
*Administrative Law Judge*  
*Division of Workers' Compensation*  
(signed January 13, 2009)

Issued by DIVISION OF WORKERS' COMPENSATION

Employee: Cindy Spittler

Injury No. 07-035004

This award is dated and attested to this \_\_\_\_ day of \_\_\_\_\_, 2009.

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Naomi Pearson  
*Division of Workers' Compensation*