

**TEMPORARY OR PARTIAL AWARD**  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 15-073364

Employee: Larry Williams

Employer: Tyson Poultry, Inc.

Insurer: Self-Insured

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by § 287.480 RSMo, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms and adopts the award and decision of the administrative law judge dated July 22, 2016.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

The award and decision of Chief Administrative Law Judge Robert J. Dierkes, issued July 22, 2016, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1st day of November 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## TEMPORARY OR PARTIAL AWARD

Employee: Larry Williams

Injury No. 15-073364

Dependents:

Employer: Tyson Poultry, Inc.

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Insurer: Self-Insured

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

Add'l Party: None.

Hearing Date: July 11, 2016

Checked by: RJD/cs

### 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: August 29, 2015.
5. State location where accident occurred or occupational disease was contracted: Pettis 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? Employer is self-insured.
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Employee contracted the occupational disease of bilateral plantar fasciitis by working on concrete floors.
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: Feet.
14. Compensation paid to-date for temporary disability: None.
15. Value necessary medical aid paid to date by employer/insurer? Unknown.
16. Value necessary medical aid not furnished by employer/insurer? None at this time.
17. Employee's average weekly wages: \$498.84.
18. Weekly compensation rate: \$332.56

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19. Method wages computation: Sec. 287.250.

### **COMPENSATION PAYABLE**

Employer is ordered to provide Claimant with all such medical treatment as is reasonably required by Section 287.140, RSMo, to cure and relieve Claimant from the effects of the work-related bilateral plantar fasciitis. Employer is ordered to pay Claimant \$15,012.71 for temporary total disability benefits from August 31, 2015 through July 11, 2016.

Claimant's attorney, Corey Jackson, is allowed 25% of the temporary total disability benefits awarded to Claimant hereunder as and for necessary attorney's fees, and the amount of such fees shall constitute a lien thereon.

This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

Employee: Larry Williams

Injury No. 15-073364

**FINDINGS OF FACT AND RULINGS OF LAW:**

Employee: Larry Williams

Injury No. 15-073364

Dependents:

Employer: Tyson Poultry, Inc.

Insurer: Self-Insured

Add'l Party: None.

Hearing Date: July 11, 2016

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

**ISSUES DECIDED**

An evidentiary hearing was held in this case (Injury No. 15-073364). Claimant, Larry Williams, appeared personally and by counsel, Corey Jackson. Employer, Tyson Poultry, Inc., appeared by counsel, Matthew Murphy. Post-hearing briefs were filed on July 19, 2016. The hearing was held to decide the following issues:

1. Claimant's average weekly wage and resultant compensation rate;
2. Whether Claimant sustained an occupational disease arising out of and in the course of his employment with Tyson Poultry, Inc.;
3. Whether the alleged occupational disease was the prevailing factor in the cause of the medical condition and disability;
4. Whether Employer shall be ordered to provide Claimant with medical care and treatment pursuant to Section 287.140, RSMo; and
5. Employer's liability, if any to provide Claimant with temporary total disability benefits.

**STIPULATIONS**

For purposes of this hearing, the parties stipulated as follows:

1. The Division of Workers' Compensation has jurisdiction over this case;
2. Venue for the hearing is proper in Pettis County and adjoining counties;
3. The claim is not barred by Section 287.420 or Section 287.430, RSMo;
4. Both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
5. Employer has paid no TTD or TPD benefits;
6. Employer paid medical benefits in an amount undetermined;
7. Employer was self-insured for Missouri Workers' Compensation purposes at all relevant times.

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### **EVIDENCE**

Claimant testified on his own behalf and presented the following exhibits all of which were admitted into evidence:

*Claimant's Exhibit 1- Certified copy of Claimant's Division of Worker's Compensation file;*

*Claimant's Exhibit 2- Dr. Michael Snyder's 60-day report pursuant to § 287.210(7), RSMo.;*

*Claimant's Exhibit 3- Medical records from multiple providers; and*

*Claimant's Exhibit 4- Claimant's Personnel File*

Ms. Karen Williams, a Human Resources representative for Employer, testified at the temporary hearing and Employer introduced the following exhibit into evidence, which was admitted into evidence without objection:

*Employer/Insurer's Exhibit A- Missouri Division of Employment Security Determination of Benefits.*

### **FINDINGS OF FACT AND RULINGS OF LAW**

Larry Williams "Claimant" was born on November 3, 1960, and was hired by Tyson Poultry on 4/21/2014 as a "general laborer." On 11/11/2014, Claimant accepted a position as a "Jack Driver." Claimant testified that both positions required standing and walking on concrete floors as much as twelve hours a day as many as seven days a week during Employer's busier season. Claimant testified that Employer required specific footwear, namely boots, and described them as having little support in the sole. Claimant testified that he had bought several sets of inserts to increase the cushion of the boots, but the inserts were repeatedly stolen from his locker on Employer's premises. Claimant's position as a "Jack Driver" involved walking behind a machine that picked up wooden pallets and paid \$11.95 an hour. An "Employment Information Request" was contained in Employee's Personnel file. Said document contains a breakdown of Claimant's pay dating beginning 8/6/15. Claimant testified that these figures are consistent with the thirteen weeks preceding the alleged date of injury and Karen Williams testified that the figures contained are an accurate accounting of the purported pay for the named dates. Such figures would produce an average weekly wage of \$498.84 and TTD/PPD rates of \$332.56

Claimant testified that leading up to named date of injury, he had complained to his direct supervisor of his bilateral foot complaints. Claimant testified that his supervisor was the individual who suggested he purchase shoe inserts. Claimant informed his supervisor on or about 8/29/15-8/30/15 that his bilateral foot complaints had arisen to a level that he intended to present to the emergency room for treatment. Claimant's personnel file indicates that the last date worked was 8/29/15 (which was a Saturday). Claimant presented to Bothwell Regional Health Center Emergency Department on Monday, 8/31/15. Although Karen Williams testified that Claimant worked for Employer "off and on" after he went to the emergency room, she is clearly mistaken about that. Claimant's last day of work was 8/29/15.

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On August 31, 2015 at the emergency room, Claimant was diagnosed with Pes Planus/Plantar Fasciitis. Claimant reported to the emergency room personnel that “symptoms began one month ago”. The physician prescribed prednisone and naprosyn and recommended the use of orthotics. Claimant received a work release, which indicated that he needed to be off work for two days and that he could return to work without a re-examination.

Claimant was seen by Dr. William Pierce at Katy Trail Community Health on 9/3/2015, Dr. Pierce reaffirmed plantar fasciitis diagnosis (there is no mention of Pes Planus) and imposed the following restrictions on Claimant: “...may return to work on 9/7/2015...No walking more than 50 feet. No climbing stairs or ladders. No walking on uneven surfaces. No standing more than 10 minutes at a time. No running or jumping. For one week.” Employer has date-stamped these restrictions as having been received on 9/8/2015.

On September 29, 2015, at Employer’s request, Claimant was evaluated by Dr. Eddie Runde, an occupational medicine specialist. Dr. Runde opined that the work activities were not the prevailing factor for Claimant’s complaints and that the prevailing factor is his personal medical condition, pes planus. Dr. Runde recommended “shoe inserts/insoles, OTS NSAIDs and the home exercises.” Dr. Runde placed Claimant on restricted duty, noting: “He should limit prolonged standing and walking. No operation of foot controls. These limits are appropriate until his symptoms improve and/or until released by his doctors” and that “any prolonged standing/walking, including at work, will exacerbate his symptoms.”

At the request of his attorney, Claimant was seen by orthopedic surgeon Dr. Michael Snyder on January 14, 2016 for the purpose of independent medical evaluation. Dr. Snyder opined that Claimant had bilateral plantar fasciitis and that same was directly related to his work with Employer. Dr. Snyder acknowledged that Claimant does have congenital pes planus “but he has only evolved to the point of plantar fasciitis in both of his feet with left being worse than the right since his employment.” Dr. Snyder noted that Claimant had been placed on permanent restricted duty and had not been able to get back to work at Tyson. Dr. Snyder was of the opinion that Claimant requires additional medical treatment stating, “He needs evaluation by a foot and ankle specialist and treatment with nonsteroidal anti-inflammatories, cortisone injections, custom orthotics with an arch support and continued physical therapy.” Dr. Snyder was of the opinion that: Claimant “...needs to be on temporary restrictions for restricted duty...” Dr. Snyder states that he did not believe Claimant to be temporarily and totally disabled, noting that he “would have been able to return to work if he had proper treatment...” and that sedentary duty would have been possible had same been provided.

At the hearing, the parties stipulated that the Employer was sending Claimant for additional treatment. The treating physician is Dr. Strong, a foot specialist, who was requested by Claimant’s counsel. Claimant had apparently already seen Dr. Strong once prior to the hearing, but no record of that visit was in evidence.

There was insufficient evidence adduced to allow a finding that Claimant has received, or is receiving, unemployment compensation.

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**FINDINGS OF FACT AND RULINGS OF LAW**

In addition to those facts and legal conclusions to which the parties stipulated, I find the following:

1. Based upon the evidence adduced, the average weekly wage is \$498.84, and the compensation rate is \$332.56.
2. On or about August 29, 2015, Claimant sustained an occupational disease arising out of and in the course of his employment with Tyson Poultry, Inc., said occupational disease being bilateral plantar fasciitis.
3. Due to the occupational disease of plantar fasciitis, Claimant has been unable to compete in the open market for employment from August 31, 2015, to the date of hearing (July 11, 2016).
4. Employer has not offered Claimant work within his restrictions.
5. There is no evidence that Claimant has received unemployment compensation during the period August 31, 2015 through July 11, 2016.
6. Claimant is entitled to temporary total disability benefits from August 31, 2015 through July 11, 2016, i.e., 45 1/7 weeks, at the weekly rate of \$332.56, totaling \$15,012.71.
7. Claimant is in need of additional treatment to cure and relieve him from the effects of the work-related occupational disease.

**ORDER**

Employer is ordered to provide Claimant with all such medical treatment as is reasonably required by Section 287.140, RSMo, to cure and relieve Claimant from the effects of the work-related bilateral plantar fasciitis. Employer is ordered to pay Claimant \$15,012.71 for temporary total disability benefits from August 31, 2015 through July 11, 2016.

Claimant's attorney, Corey Jackson, is allowed 25% of the temporary total disability benefits awarded to Claimant hereunder as and for necessary attorney's fees, and the amount of such fees shall constitute a lien thereon.

This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

Made by \_\_\_\_\_  
/s/Robert J. Dierkes 7-22-1016  
Chief Administrative Law Judge  
*Division of Workers' Compensation*