IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

(July 20, 1998 Session)

FILED

October 12, 1998

Cecil W. Crowson
Appellate Court Clerk

SANDRA GAIL HOLMES, Plaintiff/Appellee v. BRIDGESTONE/FIRESTONE, INC., Defendants/Appellants	))))))))))	NO. 01S01-9710-CH-00237 RUTHERFORD CHANCERY HON. ROBERT E. CORLEW, III CHANCELLOR

For the Appellant:

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M E M O R A N D U M O P I N I O N:

Members of Panel:

Judge Ben H. Cantrell
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED **INMAN, Senior Judge**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The plaintiff sought workers' compensation benefits for plantar fasciitis, which she alleged was caused by standing on a concrete floor at work for twelve hours shifts. The defendant argued that plantar fasciitis is not caused by standing for long periods and therefore plaintiff's job did not cause her condition.

The trial court, in a comprehensive and well-reasoned opinion, found the preponderance of the evidence proved the condition to be work-related and awarded benefits, which the defendant appeals.

We affirm the judgment of the trial court.

Sandra Gail Holmes ["Employee"] began working for Bridgestone ["Employer"] in 1987. Her job as a tire builder consisted of twelve hour shifts during which she stood on a concrete floor on a 1/4" rubber mat while building tires. She was not permitted to sit unless she was on break.

In 1994 she began complaining of her feet, and on August 22, 1994, requested medical treatment at work owing to burning pain shooting through her heel and arc of her left foot, up through the calf muscle, and lesser symptoms in her right foot. The employer's on-site physician, Dr. Flynn, sent her to Dr. Mark Christofersen, an orthopedic surgeon, whom employee testified she saw once, for ten or 15 minutes, on September 1, 1994.

Dr. Christofersen examined employee and found excellent joint motion and no swelling but with tenderness to palpation at the origin of the plantar fascia and arch on the left and to a lesser extent on the right. She had been on a

course of Naprosyn, which was ineffective, and then Toradol, 10 mg., over the previous week which also was of no benefit. Dr. Christiansen discussed plantar fasciitis with her, discoursing the list of remedies, including stretching, shoe modification, anti-inflammatory, heel inserts and injections. She was not eager for injections, and because most of the first measures were ineffective, he prescribed a pair of night splints. He was not optimistic about this treatment, since night splints are mostly beneficial for patients who have pain upon arising in the morning, whereas employee's pain was not so severe in the morning but worsened during the day. His pessimism about his course of treatment appears justified, since after one visit to his office, she did not return for further treatment.

Dr. Christiansen was deposed and opined:

> "Plantar fasciitis is an inflammation of a connective tissue structure under the arch . . . and *for some reason* in people's lives, particularly between the ages of 30 and 60, inflammation can occur in that plantar fascia. And it most commonly occurs near the origin of that connective tissue at the heel."
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> . . . . .
>
> "We see heel pain in secretaries who alternate sitting and standing during the day. We see heel pain in sedentary people, people who stand all day and people who stand for extremely long shifts of time. And so because of that heterogeneity *we hesitate to blame certain settings* for heel pain."
>
> Q: Is that just typical of your practice, Dr. Christofersen, or is that opinion shared by the colleagues in your field of expertise?
>
> A: I'm confident that there is - - that *there are a variety of opinions*, and I probably shouldn't comment on that."

Dr. Christofersen also testified that his position as chief of orthopedics at Baptist Hospital places him "in charge, if you will," of the podiatry service, and that he is currently not granting privileges for [surgical] release of the plantar

fascia for heel pain because of a growing incidence of people who have intractable heel pain following endoscopic surgery for heel pain.

When asked what treatment he would recommend for an employee who continued to have symptoms despite conservative treatment he replied:

> "If they told me that they had intractable pain while standing, then I might try to work with the employer and get them a more sedentary job."

Employee then saw podiatrist Dr. Fred Marino on March 16, 1995 with sharp pain and burning in the left foot which worsened as her work shift progressed. She had milder complaints about the right foot. He performed x-ray and examination and diagnosed "plantar fasciitis heel spur syndrome." He treated employee conservatively without substantial improvement until October, 1995, when he performed surgery on her left foot.

Dr. Marino appeared at trial and testified:

> "In my experience and education, and review of the literature, my overwhelming impression is that this is a condition related to long periods of standing and periods of short walking."

When asked the basis for his disagreement with Dr. Christiansen, who had opined that plantar fasciitis cannot be attributed to standing for long periods at work, he replied:

> "My experience and a number of podiatric articles and a recent article in the 'Foot and Ankle International,' which is a publication or journal of the Foot and Ankle Society of the American Orthopedic Association."

The journal article to which Dr. Marino referred was thereupon introduced into evidence as trial exhibit #3, from which we quote:

> "There is a correlation in the incidence of plantar fasciitis with the type of floor on which a patient works. Most patients with plantar fasciitis worked on hard floors."[1]

Dr. Marino further testified that he has practiced podiatry for approximately ten years, during which time he has treated 1,951 patients with the diagnosis of plantar fasciitis, and that a substantial number of them ["probably 85 or 90 percent"] are in production work or service work such as cashiers and cafeteria workers. He opined that the basis for the high number of factory-type workers having plantar fasciitis was "in my opinion, *without a doubt,* prolong[ed] standing." Of his 1,951 such patients, 37 have undergone surgery, which he performs when a patient is "nonresponsive to conservative care with continuing disabling symptoms."

The trial judge found:

> "The basic difference between the testimonies of the two doctors appears to be that they have opposing philosophies as to the compensability of an injury diagnosed as plantar fasciitis. The particulars of the Plaintiff's condition aside, it appears that Dr. Marino firmly believes that plantar fasciitis can be and often or generally is caused by repetitive motions in the work place, while Dr. Christofersen has the opinion that the injury is either congenital, or caused by factors outside the work place, and thus is rarely if ever compensable . . . The Court must recognize that the Supreme Court has previously found the condition known as plantar fasciitis to be compensable under the workers' compensation law where the proof justifies such a finding."[2]

The trial court acknowledged the unpublished opinion of a Special Workers' Compensation Panel in *Gerdes v. Distribution and Auto Services, Inc.*, No. 01S01-9409-CH-00100 (Nashville, May 31, 1995) in which the Panel

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[1]"Outcome of Nonsurgical Treatment for Plantar Fasciitis," Gill, Lowell H., M.D. and Kiebzak, Gary M., Ph.D., FOOT AND ANKLE INTERNATIONAL, Vol. 17, No. 9, September 1996.

[2]The trial court referred to *Riley v. Aetna Casualty and Surety Co., Inc.,* 729 S.W.2d 81 (Tenn. 1987); we note that in *Riley*, the trial court found work-related causation of plantar fasciitis, and that finding was not appealed to the Supreme Court.

held that plantar fasciitis was not compensable in that case because the contradictory medical evidence supported a conclusion that the plaintiff's condition was idiopathic. The Court found it significant that in *Gerdes,* the Panel did not find plantar fasciitis to be a non-compensable condition *per se,* but merely that the plaintiff in that particular case had failed to satisfy the burden of establishing that he had sustained an injury.

The plaintiff in a workers' compensation suit has the burden of proving every element of her case by a preponderance of the evidence. *Tindall v. Waring Park Ass'n.,* 725 S.W.2d 935 (Tenn. 1987). Causation and permanency must be shown in most cases by expert medical evidence. *Id.* Although absolute certainty is not required for proof of causation, medical proof that the injury was caused in the course of the employee's work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the plaintiff's employment would be an arbitrary determination or a mere possibility. If, upon undisputed proof, it is conjectural whether disability resulted from a cause operating within petitioner's employment, or a cause operating without employment, there can be no award. If, however, equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn by the trial court under the case law. *Livingston v. Shelby Williams Indus., Inc.,* 811 w 511 (Tenn. 1991). Any reasonable doubt in this regard is to be construed in favor of the employee. We have thus consistently held that an award may properly be based upon medical testimony to the effect that a given incident "could be" the cause of the employee's injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury. *Reeser v. Yellow Freight Sys., Inc*., 938 S.W.2d 690, 692 (Tenn. 1997).

Employee testified that she had never had problems with her feet before she began working for this employer. She engaged in no strenuous physical activities or prolonged standing outside of her work environment. She said her symptoms were less when she awakened in the morning but became severe as the day progressed at work where she stood on a concrete floor.

Where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge's determination. *See Humphrey v. David Witherspoon, Inc.,* 734 S.W.2d 315 (Tenn. 1987).

The trial court accepted the opinion of Dr. Marino, who testified at trial, over that of Dr. Christiansen, who testified by deposition, and he had the discretion to do. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990). When the medical testimony is presented by deposition, as it was in the case of Dr. Christiansen, this Court is able to make its own independent assessment. *Cooper v. INA*, 884 S.W.2d 446, 451 (Tenn. 1994); *Landers v. Fireman's Fund Ins. Co.,* 775 S.W.2d 355, 356 (Tenn. 1989). We have carefully reviewed Dr. Christiansen's depositional testimony about causation:

> ". . . [W]e hesitate to blame certain settings for heel pain . . . there are a variety of opinions . . . it's common for us to see, to hear our strongest complaints from people whose jobs require them to stand because that makes them hurt in an aggravated fashion . . . probably our difficulty in saying with confidence that prolonged standing is a direct cause of plantar fasciitis is the fact that *there are so many people who are not required to do prolonged standing at work who develop plantar fasciitis."* [emphasis added]

Under the facts of this case, we agree with the trial court's finding that Dr. Christiansen's rationale, i.e., that plantar fasciitis is not caused by work because it also occurs in many non-work-related settings is unpersuasive.

The evidence preponderates in favor of the trial court's judgment, which is affirmed with costs assessed to the appellant.

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William H. Inman, Senior Judge

CONCUR:

_____
Ben H. Cantrell, Judge

_____
Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

SANDRA GAIL HOLMES,	*}*	*RUTHERFORD CHANCERY*
	}	*No. 95WC-957 Below*
Plaintiff/Appellee	*}*	
	}	*Hon. Robert E. Corlew, III*
vs.	*}*	*Chancellor*
	}	
BRIDGESTONE/FIRESTONE, INC.	*}*	*No. 01S01-9710-CH-00237*
	}	
Defendant/Appellant	*}*	*AFFIRMED*

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Defendant/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on October 12, 1998.

PER CURIAM