

Scotland v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

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| Court | B.C. Supreme Court |
| Citation | March 7, 2024 - unreported |
| Result | Petition allowed |
| Judge | Majawa |
| Date of Judgment | |
| WCAT Decision Reviewed | A2002543 |

Keywords:

Judicial review – Plantar Fasciitis – Applicable Policy – Policy #C-4-27.10 (Establishing work causation for ASTDs of the Limbs).

Summary:

The worker, a nurse, made a compensation claim for plantar fasciitis. She attributed the condition to the repetitive nature of her work, which required being on her feet for long periods of time. The worker said the condition developed and worsened after she began longer shifts and had to stand at a mobile workstation. A Board medical advisor (BMA) gave an opinion stating that plantar fasciitis often occurs in the general population without an obvious cause. The Board recognizes that workers are at higher risk of developing plantar fasciitis when exposed to direct trauma to the bottom of the foot or to unaccustomed physical strain. However, prolonged weight bearing or standing activities are not considered to be significant risk factors for plantar fasciitis.

The Board conducted a jobsite visit where a coworker explained and demonstrated the worker's job activities. A second BMA reviewed the information obtained from the jobsite visit and gave the opinion that there was no evidence of direct trauma and insufficient risk factors identified that were capable of stressing the tissues associated with plantar fasciitis. The Board denied the worker's claim. At the Review Division, a Review Division medical advisor (RDMA) reviewed the evidence and concluded that the worker had several developmental and anatomical issues with both feet which had likely existed since adolescence, and which placed the plantar fascia under constant strain. The RDMA noted several flaws in a study the worker relied on to support her claim. The RDMA's opinion was that it was unlikely the worker's plantar fasciitis was caused, worsened or triggered by standing and walking at work and it was more plausible that her plantar fasciitis was due to intrinsic anomalies in her feet.

At WCAT the worker submitted a medical opinion from Dr. Z which disagreed with the BMA's opinion and referred to the abstract of a different study stating that people who reported spending most of their workday on their feet were 3.6 times more likely to develop plantar fasciitis. Dr. Z acknowledged the shortcomings of the study identified by the RDMA, but said he was unaware of any quality study that confirmed prolonged weight bearing was not a risk factor for plantar fasciitis. In Dr. Z's opinion the prolonged weight bearing the worker's feet were exposed to at work was likely a strong risk factor contributing to her condition.

The WCAT panel noted that policy #C4-25.10 of the Rehabilitation Services and Claims Manual, Volume II (RSCM II) recognizes plantar fasciitis as an occupational disease, and that under policy #C4-27.30, the Board generally accepts that plantar fasciitis can be related to significant unusual strain placed on the plantar fascia. Workers exposed to direct trauma to the bottom of the foot or, significant unaccustomed physical strain or impact to the bottom of the foot are at increased risk for developing plantar fasciitis.

The WCAT panel considered the opinions from the two BMAs, the RDMA as well as Dr. Z's opinion. The panel commented that the abstract Dr. Z referred to in support of his opinion appeared to suffer from the same kinds of flaws as the study the worker previously submitted. The panel preferred the RDMA's opinion. The panel noted that in policy C4-25.20, consideration of the risk factors for aggravation, are the same as those for causation. Considering that the RDMA's opinion squarely addressed the issue of aggravation, the panel was satisfied that the occupational risk factors were insufficient to be of causative significance in aggravating the worker's preexisting conditions.

On judicial review, WCAT acknowledged that determining what policy or policies are applicable in an appeal is within the scope of WCAT's exclusive jurisdiction and is subject to review on the standard of patent unreasonableness. WCAT also acknowledged that in her appeal the worker had argued that policy #C4-27.10 (Establishing work causation for ASTDs of the Limbs) was applicable but the panel did not address that argument in its decision, and the failure to do so rendered the decision patently unreasonable. With the consent of the parties the court allowed the petition, set aside the WCAT decision and remitted the appeal back to WCAT.