

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 52

WCC No. 2003-0797

R. B.
Petitioner
vs.
NORTHWEST HEALTHCARE CORPORATION
Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Note: At the request of petitioner identifying references have been removed. The remainder of the decision is not changed.

Summary: A housekeeper with a long history of fibromyalgia and numerous other medical conditions sought benefits relating to a foot condition she first noticed at work. A podiatrist who performed an occupational disease evaluation at the request of the Department of Labor and Industry made a "potential diagnosis" of RSD and linked claimant's condition to her employment based on his understanding that she suffered a sharp pain while pushing a cart at work. An occupational medicine specialist, with specific training in RSD, disagreed with the diagnosis and found no basis, objective or subjective, for concluding the condition arose from work.

Held: The Court is not persuaded that claimant suffers from RSD or other foot condition caused by her work.

Topics:

Occupational Disease: Proximate cause. Foot condition involving swelling and pain suffered by nursing home housekeeper was not caused by employment where her condition was inconsistent with any trauma, even repetitive trauma, occurring at work and where she suffered a long history of fibromyalgia and other medical conditions, including prior swelling in her legs.

Medical Conditions (By Specific Condition): Fibromyalgia. Foot condition involving swelling and pain suffered by nursing home housekeeper was not caused by employment where her condition was inconsistent with any trauma, even repetitive trauma, occurring at work and where she suffered a long history of fibromyalgia and other medical conditions, including prior swelling in her legs.

Medical Conditions (By Specific Condition): Reflex Sympathetic Dystrophy. Foot condition involving swelling and pain suffered by nursing home housekeeper was not caused by employment where her condition was inconsistent with any trauma, even

repetitive trauma, occurring at work and where she suffered a long history of fibromyalgia and other medical conditions, including prior swelling in her legs.

¶1 The trial in this matter was held on June 26, 2003, in Helena, Montana. Petitioner, RB (claimant), was present and represented by Mr. David W. Lauridsen. Respondent, Northwest Healthcare Corporation, was represented by Mr. Kelly M. Wills.

¶2 Exhibits: Exhibits 1 through 4 were admitted without objection. Exhibit 5 was withdrawn.

¶3 Witnesses and Depositions: Claimant and Dan Arnold testified at trial. The parties agreed the Court should consider the depositions of claimant, Dr. Dana Headapohl, and David C. Bruce, D.P.M.

¶4 Issues Presented: The issues as set forth in the Pretrial Order are:

¶4a Whether Petitioner sustained a compensable occupational disease while acting within the course and scope of her employment with Northwest Healthcare Corporation, d/b/a Brendan House, in Kalispell, Flathead County, Montana, and thus [is] entitled to payment of compensation and medical benefits.

¶4b Whether Respondent unreasonably delayed or refused to accept liability and pay workers' compensation benefits, thereby entitling Petitioner to an increase in award pursuant to §39-71-2907, MCA.

¶4c Whether Petitioner is entitled to costs and attorney fees pursuant to §39-71-611, MCA

(Pretrial Order at 4.)

¶5 Having consider the Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, the depositions and exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

¶6 In 1991 claimant began working as a housekeeper for Brendan House, a nursing home. She initially worked part time, then began full-time work in 1993. Her duties included cleaning patient rooms, offices, bathrooms, kitchenettes, and other common areas. She spent most of her work days on her feet.

¶7 This claim arises out of a foot condition which claimant says she first noticed at work in early October 2002. She alleges that her condition arose out of and in the course of her employment and seeks benefits under the Occupational Disease Act.

Pre-existing Medical Conditions

¶8 Claimant's foot condition must be considered against the background of her medical history. She is presently 50 years old and has a long history of multiple medical

problems, including hypertension, sleep disorder, sinus infections, gastroesophageal reflux disorder, headaches, depression, obesity, arthritis, bilateral carpal tunnel symptoms, osteoarthritis of the joints of her thumbs, fibrositis, myofascial pain, fatigue syndrome, and fibromyalgia. (Ex. 4 at 2-59.) Drs. Irene Martin and Lisa Fleischer appear to be claimant's primary treating physicians, although a number of different doctors have seen her over the years. Without reviewing claimant's extensive medical history in depth, the following paragraphs provide relevant background to the present claim. Especially important is the history of prior foot problems.

¶9 The first mention of foot problems is on March 18, 1993, when claimant sought treatment for "diffuse increasing body aches" and specifically for "tenderness in her rt foot that seemed to originate when a horse stepped on her in July of this last yr, but it is getting worse." (Ex. 4 at 4.)

¶10 On February 24, 1994, the examining physician noted: "An incidental finding is of very purple color to her toes. She says that her feet are always cold even when she is hot. Her circulation appears to be decreased to her feet." (*Id.* at 10.)

¶11 On September 16, 1997, Dr. Martin noted that claimant's "L[eft] big toe is going numb" and commented that claimant was "so diffusely tender everywhere I touch her, especially over the lumbar spine, that we need to settle down fibromyalgia tendencies before we do further evaluation." (*Id.*)

¶12 On September 17, 1998, Dr. Fleischer recorded that claimant was feeling "very achy and very fatigued" with diffuse musculoskeletal pain. (*Id.* at 28.) She also noted that claimant had swelling in her ankles. Dr. Fleischer's impression after consulting with another doctor was that claimant "probably has some type of connective tissue autoimmune type disorder." (*Id.* at 29.)

¶13 On June 21, 1999, Dr. Fleischer recorded that claimant was taking 20 aspirin a day for "joint and muscle aches in her hands, neck, shoulders and low back." (*Id.* at 30.) A month later, on July 22, 1999, Dr. Fleischer diagnosed fibromyalgia. (*Id.* at 31.) Later medical notes continued to indicate a diagnosis and symptoms of fibromyalgia. (See Ex. 4, *passim* at 32-59.) In a note of February 2, 2002, Dr. Martin characterized claimant's fibromyalgia as "severe." (*Id.* at 52.)

¶14 On October 10, 2000, Dr. Martin noted: "At this time to exam she has a marked increase in fibromyalgia trigger points. Her tenderness and sleep disorder are all tied together. Our answer for that hopefully will be an increase in exercise. . . . Her Lortab she is taking several times per day for the diffuse body aches." (*Id.* at 38.) Dr. Martin also added osteoarthritis of claimant's MC and CMC joints of her thumbs to the list of medical problems.⁽¹⁾

¶15 On March 12, 2001, Dr. Martin diagnosed carpal tunnel syndrome. She then wrote:

"It is just really hard to pick out what is bothering R the worst. She had a major hot flash while she was in the room. She had so much fibromyalgia that I really do think that it is clouding everything else and so we don't know what else is ill because of the fibromyalgia.

(*Id.* at 42.)

¶16 In a July 10, 2001 office note, Dr. Martin noted *inter alia*, that claimant had worked five days and "now she is hurting in her low back, and her toes are feeling numb." (*Id.* at 47.)

¶17 On July 12, 2002, Dr. Martin recorded that claimant was suffering from "pedal edema" and noted that "none of the medications that she's on right now would cause pedal edema." (*Id.* at 58.) Pedal means "relating to the foot,"⁽²⁾ thus claimant had swelling of her feet. Dr. Martin also noted "a trace of ankle edema" and went on to say, "She is diffusely tender, as she always is, with her fibromyalgia since she still has 18 out of 18 fibromyalgia trigger points triggering." (*Id.*)

¶18 The last medical record prior to claimant's foot claim is dated September 13, 2002. Dr. Martin again noted claimant's extensive and "chronic medical problems including depression, fibromyalgia, hypertension, GERD, truncal obesity, hirsutism, stress incontinence, osteoarthritis of the CBC joints of her thumbs, plus carpal tunnel syndrome." (*Id.* at 59.) Claimant at that time expressed interest in surgery on her thumbs and for carpal tunnel syndrome. (*Id.*) Dr. Martin expressed the opinion that she should cease working as a housekeeper and be retrained for a different job. (*Id.*)

The Present Claim

¶19 On November 8, 2002, claimant signed an Employee Injury Report⁽³⁾ and a First Report of Injury and Occupational Disease.⁽⁴⁾ Both stated that her left foot had become swollen and painful at work. (Exs. 1 and 2.) The Employee Injury Report gives no date of onset. (Ex. 1.) The First Report lists "11/08/2002, 00:00" under "Injury Date and Time." (Ex. 2.)

¶20 Claimant testified that her foot became swollen after pushing the supplies cart "kind of hard." (Trial Test. and RB Dep. at 35.) She could not identify a specific time when she moved the cart or specifically identify an onset of pain and swelling. She testified the pain came on gradually during a work shift. (Trial Test. and RB Dep. at 35-36.) Another housekeeping employee noticed her ankle was swollen and took her to the Director of Nursing, who was concerned claimant might have a blood clot. (Trial Test and RB Dep at 28.) She was sent to the hospital for an ultrasound (doppler venogram), which showed no blood clot. (RB Dep. at 31.) Medical records indicate that the work shift identified by claimant was on October 2, 2002, as that was the date of the venogram. (Ex. 4 at 61.)

Medical Treatment for Foot Condition

¶21 On October 2nd, the same day as the venogram, claimant was seen by Dr. Pam Oehrtman. With reference to claimant's ankle/foot complaints, Dr. Oehrtman noted:

She presents with a slight left limp and had a doppler venogram ordered today to evaluate for possible DVT. She has been complaining of foot swelling over the last couple of days and has no known history of injury or fall. **She does have complaints of chronic worsening ankle edema somewhat bilaterally. . . .**

Upon examination, Dr. Oehrtman noted:

For today's complaint, she has + 1 edema, left pretibial area, trace on the right. She is very tender about the Achilles tendon and in the muscular attachments superiorly. Her left calf is nontender. Homan's sign is mildly positive on the left. Homan's sign is negative on the right and calf muscle is totally nontender on the right, including the Achilles tendon. Pulses are reasonable at + 1 DP and PT. No color change to the foot. The feet are only slightly cool to the touch. Tender points are exquisitely active in all four quadrants. There is no forefoot compression tenderness, nor any frank calcaneal tenderness on palpatory exam.

Her assessment was:

1. Left Achilles tendonitis.
2. Fibromyalgia syndrome, not currently in physical therapy.

(*Id.* at 61; bold added.)

¶22 Handwritten notes for the same October 2nd visit reads: "**L foot pain -- swollen -- started Friday [without] trauma. + chronic ankle edema, bilateral.**" (*Id.* at 62; bold added.) The notes are significant in that they indicate the swelling started the previous Friday, September 27, 2002, which is inconsistent with the claimant's testimony that it started the same day as the venogram. They are also significant since they indicate claimant was suffering from chronic and bilateral ankle edema not due to trauma.

¶23 Claimant continued to have pain and swelling in her left foot. On October 25, 2002, Dr. Martin suspected a stress fracture and referred claimant for a bone scan. (*Id.* at 63.) A scan was ultimately done in late November or early December 2002. On December 5, 2002, Dr. Martin reported the bone scan as showing no fracture but indicating "evidence of changes that were consistent with osteoarthritis or arthritis in both of her feet, left greater than right." (*Id.* at 64.) Dr. Martin noted at that time that claimant's left foot "hurts as badly as it did before. Plus her right foot is now hurting to some extent." (*Id.*) Dr. Martin suspected that claimant was "developing a reflex sympathetic dystrophy from immobilization." (*Id.*) The "immobilization" to which she referred was a fixed ankle walker prescribed by Dr. Ploot, a podiatrist she had seen in the interim.

¶24 Dr. Martin referred claimant to Dr. Donald P. Erickson, an orthopedic surgeon, for his opinion. Dr. Erickson examined claimant on December 19, 2002. (*Id.* at 163.) He found claimant's situation "most consistent with either a RSD or complex regional pain disorder type of situation." (*Id.* at 164.) He noted: "I cannot find evidence of any specific triggering event right now, nor can I find any evidence of any specific structural problem." (*Id.*) He recommended "a medication program with some type of neurologic acting agents and then [to] get her into an intense PT program working on desensitization, edema control, ROM." (*Id.*)

Examination by David C. Bruce, D.P.M.

¶25 On February 25, 2003, Dr. David C. Bruce, a podiatrist, performed an occupational disease evaluation of claimant at the request of the Department of Labor and Industry (Department). On examination, Dr. Bruce found her left foot was cooler than her right foot by four degrees. (Bruce Dep. at 9.) She also had "a lot of hyperesthesia or pain to virtually any manipulation of the foot." (*Id.*) Her left foot had some generalized edema. (*Id.* at 10.)

¶26 Dr. Bruce diagnosed a sympathetically mediated pain syndrome (Ex. 4 at 174), which is the new term for what has previously been called Reciprocal Sympathetic Dystrophy or RSD (Bruce Dep. at 11). He testified that he did not make "an absolute diagnosis of RSD." (*Id.*) Rather, "it was at the top of my differential, and I thought it was the potential diagnosis that needed to be explored more thoroughly." (*Id.* at 24.)

¶27 He explained his understanding of the condition as follows:

It's an abnormal systemic response to trauma. And the sympathetic nervous system is, you know, the nervous system that provides tone to our blood vessels and organs and so on. And it's a - frankly, I don't know that anybody truly understands the detailed mechanism of it, but it's an overactivity of the sympathetic nervous system.

(Bruce Dep. at 10.) He opined that the condition is "secondary to occult trauma⁽⁵⁾ sustained in the course of her job early this fall" (*id.* at 25), attributing the condition more "specifically [to] the pushing action necessary in the course of her job as a housekeeper, however, it should be noted that I feel she has developed an aberrant sympathetic response to this low grade trauma." (Ex. 4 at 174.)

¶28 Dr. Bruce testified that his opinion was based on claimant's description to him of what she was doing at work, reasoning, "there is a causal relationship between what she was doing at the time and some type of probably mild trauma to her foot." (Bruce Dep. at 11.) More specifically, Dr. Bruce testified that his conclusions were based on his understanding that claimant experienced a "sharp pain" while pushing a heavy cart around a corner. (*Id.* at 28.) He agreed that if claimant did not experience such sharp pain, there would be no way to link her condition to her work. (*Id.* at 28-29.)

¶29 Dr. Bruce acknowledged that his training in RSD was "nothing other than what you would receive at a periodic seminar or during school." (*Id.* at 19.) He has not attended any seminar focusing on RSD. (*Id.*) When asked if he was aware of the specific diagnostic criteria for RSD, Dr. Bruce testified: "I don't know of all the criteria which is why I made the neurology referral." (*Id.* at 20.) He "suggested she see a pain specialist or neurologist. I told her that I didn't think I had much to offer her therapeutically, therefore, she was not encouraged to continue treatment with me. And I made a suggestion to -- for her, broadly, to see someone that I thought was better qualified to treat this condition." (*Id.* at 20-21.)

Evaluation by Glacier Neurological Associates

¶30 On April 9, 2003, claimant was evaluated by Bret D. Lindsay, M.D., a neurologist. (Bruce Dep., Ex. 1.)

¶31 Dr. Lindsay's impression was, "Pain and swelling in her left foot, which does **not** give a clinical presentation consistent with RSD." (*Id.* at 5, emphasis added.) Dr. Lindsay did not express any opinion on causation of claimant's condition.

IME -- Dr. Dana Headapohl

¶32 Dr. Dana Headapohl, a board certified specialist in occupational and environmental medicine, performed an independent medical examination (IME) of claimant on April 10, 2003. Dr. Headapohl has had specific training regarding RSD, noting:

Well, it's a problem that's rarely seen in occupational medicine, but it's rather dramatic, so they have -- they generally include information on RSD in most musculoskeletal courses. For example, I took a course in sports medicine in San Diego, UCSD, they included information on RSD specifically, as a relatively unusual presentation and the differential diagnosis. The ACOM courses, review courses, generally include in the musculoskeletal evaluation sections, sections on RSD, as well as CRPS type problems. It's taught in the basic curriculum as well.

(Headapohl Dep. at 6-7.)

¶33 Dr. Headapohl reviewed medical records and examined claimant. (Ex. 4 at 175.) Dr. Headapohl reported claimant's explanation of the onset of injury as follows:

Ms. RB reports that on 10/2/02 she was working as a housekeeper at Brendan House, which required her to push heavy carts around all day (she estimates 8½ hours a day). While pushing a cart around a corner on a rug she reports that she had to push off on her toes. Shortly after she noticed that her shoe was tight from her foot being swollen. She says she noticed swelling on the top of her foot first.

(*Id.* at 175-76.) Dr. Headapohl noted claimant had been "off work since February 25, 2003, but still had a swollen and painful foot." (*Id.* at 176.) She noted claimant's current complaints as a "swollen left foot and ankle with constant achy pins/needles pain." (*Id.* at 177.) Claimant also reported limping, muscle spasms, and a "feeling of cold." (*Id.* at 178.)

¶34 Dr. Headapohl was unable to provide a specific diagnosis of claimant's medical condition. She noted only "Left foot pain/swelling of unclear etiology or diagnosis." However, she specifically disagreed with a RSD or sympathetically mediated pain syndrome diagnosis. (*Id.* at 182.) She listed the diagnostic criteria for RSD and testified that claimant does not meet those criteria (Headapohl Dep. at 7-8), noting that claimant "doesn't have the classic vasomotor findings or dermatologic findings" (*id.* at 14). "One of the other things you can get with RSD is flexure or flexion contracture, she doesn't have those. Her triple-phase bone scan was negative." (*Id.*) She further testified that claimant's foot symptoms "can fall within the findings in fibromyalgia" (*id.* at 16), and concluded that the most likely cause of claimant's "swelling, her left foot swelling is a result of an inflammatory process which she likely has based on the CRP⁽⁶⁾ elevation and her prior history of fibromyalgia, which is an inflammatory type of problem." (*Id.* at 27.)

¶35 As to a causal connection between work and claimant's foot condition, Dr. Headapohl found "no clear causal relationship between [claimant's] current condition and job activities," noting there "was no precipitating activity and she has not significantly improved since being off work." (Ex. 4 at 183.) She testified there is a correlation between the severity of the trauma and the likelihood of RSD. (Headapohl Dep. at 17.) Dr. Headapohl found no objective medical findings indicating claimant sustained any trauma involving her foot. (*Id.* at 18.) Finally, she testified that if claimant's swelling and subsequent foot problems came from trauma, the trauma should have been sufficient for her to have felt immediate pain or discomfort, which claimant denied having. (*Id.* at 19-20.)

¶36 Dr. Headapohl's responses to questions from claimant's counsel during her deposition are especially convincing in assessing the relatedness of the claimant's foot condition to her work:

A. What I would say is that I do not believe that the swelling in her foot was related to trauma at work. I just find no evidence of trauma to the foot. You know, if we take an example of somebody getting sinusitis and the symptoms coming on at work and there's really nothing that would suggest that work would cause it, I mean, just because something happens at work, the symptoms come on at work, doesn't mean that the work caused it.

So I think this case is similar in that she developed swelling at work but she had experienced no symptoms to suggest any unusual trauma to the foot. The swelling was significant. And were the swelling from trauma, that trauma would have to be significant.

Q. (By Mr. Lauridsen) Doctor, how is this any different from the case, and we have seen a million of them, where the guy is working, lifting at work, and he recalls no specific lifting incident, but at the end of the day or that night or later the next morning the guy can't even get out of bed; how is this any different than that?

A. The difference is that in the cases that I've seen, which are related, there are specific ongoing prolonged biomechanical forces that would account for muscle fatigue or a muscle strain, for example. You know, I don't think this is a similar case at all. You know, she is relating the onset of her foot swelling or the etiology of her foot swelling to some trauma that -- where the biomechanical forces just don't make sense in producing the kind of trauma that would lead to this kind of severe swelling.

Q. How can you say that when you don't know the weight of the cart or how big it is or what force is really necessary to push it?

A. She did not experience symptoms that would suggest undue stresses to her foot.

Q. If the diagnosis in this case was a stress fracture as originally it was thought, would you agree that it was work related?

A. It would depend on her other medical problems. For example, if she were severely osteoporotic and if she had pain in that area and if she had swelling in that area, yes,

but actually, the swelling was in a different area. So it would depend very much on the specifics of the case.

Q. How do you explain the fact that the swelling came on at work if you don't feel that it's work related?

A. I think it's like many other symptoms that come on at work. It wouldn't matter where she was. It cannot -- I do not believe it can be explained by trauma at work because there's no -- there's not even subjective evidence of any kind of significant trauma.

(Headapohl Dep. at 27-29.)

¶37 Dr. Headapohl testified it was possible that claimant's work *temporarily* aggravated an underlying foot condition, saying "this would not have been long-term and would not have been permanent, causing any material worsening." (*Id.* at 21.) She testified that any temporary aggravation would have ended when claimant stopped working. (*Id.* at 22.)

Resolution

¶38 In resolving the dispute in this case, I initially note that I was not favorably impressed with claimant's testimony. Her recollection of the onset of swelling and pain and regarding her medical treatment was vague and at times inconsistent. In her testimony, she conceded that pain came on gradually, yet she also suggested she felt sharp pain. Her initial medical treatment with Dr. Oehrtman also indicates complaints of "chronic worsening ankle edema somewhat bilaterally," yet claimant testified that her left foot condition was an entirely new one. In addition, handwritten medical notes from that same date, as well as statements to subsequent providers, indicate no trauma occurred. Yet, as litigation has unfolded, claimant seems to suggest *something* happened which she just did not notice. I am not convinced anything occurred at work to cause claimant's current foot problems.

¶39 Claimant also has failed to persuade me that she either suffers from RSD or a sympathetically mediated pain syndrome. Dr. Headapohl was far more familiar with RSD than was Dr. Bruce and testified that the claimant does not meet the diagnostic criteria for RSD. She identified specific criteria not met. Moreover, Dr. Bruce's diagnosis of RSD, by his own admission, is dependent on claimant's statement that she experienced a "sharp pain" while pushing a cart at work. (Bruce Dep. at 28-29.) In fact I find that she did not experience sharp pain.

¶40 While Dr. Martin noted an RSD diagnosis in her office notes, she did so based on Dr. Erickson's report, which indicated only that claimant's symptoms were "most consistent with either a RSD or complex regional pain disorder type of situation." (Ex. 4 at 164.) Dr. Erickson, however, was unable to find "any specific triggering event" and expressed no opinion as to cause. Dr. Erickson's RSD analysis was also contradicted by Dr. Bret Lindsay, who pointed out that claimant's symptoms did not "give a clinical presentation consistent with RSD." (Bruce Dep., Ex. 1 at 5.) In any event, Drs. Martin, Erickson, and Lindsay did not testify. While that does not lead me to disregard their

opinions, in this case I find Drs. Martin's and Erickson's impressions unpersuasive in light of the convincing testimony of Dr. Headapohl concerning RSD.

¶41 Most importantly, whatever the specific medical condition from which claimant suffers, she has failed to persuade me it was caused by her work or that her work permanently aggravated it. Again I find Dr. Headapohl's testimony the most persuasive. Even Dr. Bruce's testimony does not support a causal link between her condition and her work. I also note that Dr. Headapohl's opinion that her condition is most likely related to a non-job related inflammatory process finds support in claimant's medical history, which includes longstanding diffuse body aches and prior foot symptoms, including swelling.

CONCLUSIONS OF LAW

¶42 This case is governed by the 2001 version of the Montana Occupational Disease Act since that was the law in effect at the time of claimant's alleged occupational disease. *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶43 Claimant bears the burden of proving by a preponderance of the evidence that she is entitled to the benefits she seeks. *Ricks v. Teslow Consolidated*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wicken Bros. Construction Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

¶44 "Occupational disease" is defined in section 39-72-102, MCA (2001), as

harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or work shift. The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

Section 39-72-408(1), MCA (2001), requires proof that any disease or medical condition from which claimant suffers was proximately caused by her employment. The section provides:

(1) Occupational diseases are considered to arise out of the employment if:

(a) there is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(b) the disease can be seen to have followed a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(c) the disease can be fairly traced to the employment as the proximate cause;

(d) the disease comes from a hazard to which workers would not have been equally exposed outside of the employment.

Claimant has failed to satisfy either the occupational disease definition or the proximate cause criteria. She has failed to persuade me that her work caused or permanently aggravated her foot condition.

JUDGMENT

¶45 Claimant has not proved an occupational disease entitling her to benefits under the Occupational Disease Act. Her petition is **dismissed with prejudice**.

¶46 This JUDGMENT is certified as final for purposes of appeal.

¶47 Any party to this dispute may have twenty days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 28th day of July, 2003.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. David W. Lauridsen
Mr. Kelly M. Wills
Submitted: June 26, 2003

1. Dr. Martin related the osteoarthritis of the thumbs to claimant's work, however, the osteoarthritis is not at issue in this case and the Court makes no determination as to whether it is related to her work.
2. Britannica 2003, DVD edition.
3. The Employee Injury Report was apparently a report required by the employer.
4. The First Report was signed November 18, 2002.
5. Dr. Bruce explained that he used "occult" to mean "hidden" or "trauma that's not necessarily recognized at the time." (Bruce Dep. at 25.)
6. CRP refers to a specific metabolic problem associated with fibromyalgia. (Headapohl Dep. at 17.)