

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CLARA NASH, Claimant, vs. GENUINE PARTS COMPANY, Employer, SAFETY NATIONAL CASUALTY CORP., Insurance Carrier, Defendants.	File No. 20700884.01 ARBITRATION DECISION Headnotes: 1108.50, 1402.20
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STATEMENT OF THE CASE

Claimant Clara Nash seeks workers' compensation benefits from the defendants, employer Genuine Parts Company (Genuine Parts) and insurance carrier Safety National Casualty Corp. (Safety). The undersigned presided over an arbitration hearing on February 2, 2022, held by internet-based video under order of the Commissioner. Nash participated personally and through attorney Nicholas Adkins. The defendants participated by and through attorney Aaron Oliver.

ISSUES

Under rule 876 IAC 4.19(3)(f), the parties jointly submitted a hearing report defining the claims, defenses, and issues submitted to the presiding deputy commissioner. The hearing report was approved and entered into the record via an order because it is a correct representation of the disputed issues and stipulations in this case. The parties identified the following disputed issues in the hearing report:

- 1) Did Nash sustain an injury arising out of and in the course of her employment with Genuine Parts on April 4, 2019?
- 2) Did Nash give timely notice of the alleged injury?
- 3) Did the alleged injury cause a temporary disability during a period of recovery for which Nash is entitled to temporary disability or healing period benefits?

- 4) What is the nature and extent of permanent disability, if any, caused by the alleged injury?
- 5) Is Nash entitled to payment of the medical expenses listed in Claimant's Exhibit 3?
- 6) Is Nash entitled to recover the cost of an independent medical examination (IME) under Iowa Code section 85.39?
- 7) Is Nash entitled to taxation of the costs against the defendants?

STIPULATIONS

In the hearing report, the parties entered into the following stipulations:

- 1) An employer-employee relationship existed between Nash and Genuine Parts at the time of the alleged injury.
- 2) The commencement date for permanent partial disability (PPD) benefits, if any are awarded, is September 28, 2021.
- 3) At the time of the stipulated injury:
 - a) Nash's gross earnings were six hundred five and 52/100 dollars (\$605.52) per week.
 - b) Nash was single.
 - c) Nash was entitled to one exemption.
- 4) Prior to hearing, the defendants paid to Nash short-term disability benefits for which they are entitled to a credit.

The parties' stipulations in the hearing report are accepted and incorporated into this arbitration decision. The parties are bound by their stipulations. This decision contains no discussion of any factual or legal issues relative to the parties' stipulations except as necessary for clarity with respect to disputed factual and legal issues.

FINDINGS OF FACT

The evidentiary record in this case consists of the following:

- Joint Exhibits (Jt. Ex.) 1 through 6;
- Claimant's Exhibits (Cl. Ex.) 1 through 4;
- Defendants' Exhibits (Def. Ex.) A through O; and
- Hearing testimony by Nash, Lance Wilshusen, and Jennifer Murwanashyaka.

After careful consideration of the evidence and the parties' post-hearing briefs, the undersigned enters the following findings of fact.

Nash did not graduate high school. (Hrg. Tr. p. 13) She obtained her GED from Kirkwood Community College in the late-1980s. (Hrg. Tr. pp. 13–14) Nash also took classes at Kirkwood in pursuit of her liberal arts degree but did not obtain a postsecondary degree. (Hrg. Tr. p. 14)

Nash first worked in plant utilities at Whirlpool. (Hrg. Tr. p. 14) She filled in for absent workers on the line assembling refrigerators. (Hrg. Tr. pp. 14–15) She typically worked an eight-hour shift, standing most of the time. (Hrg. Tr. p. 15) Nash did not sustain any work injuries while employed there. (Hrg. Tr. p. 15)

Nash then took a job at Alside Windows as an inspector. (Hrg. Tr. p. 15) She worked there for two and one-half to three years inspecting windows for damage. (Hrg. Tr. pp. 15–16) Nash did not sustain any work injuries during this employment. (Hrg. Tr. p. 16)

After Alside, Nash worked for Nordstrom for about a year and a half. (Hrg. Tr. p. 16) She was a sorter, which entailed taking clothes out of a box and packaging them. (Hrg. Tr. p. 17) Nash stood most of the time and moved around. (Hrg. Tr. p. 17) Her shift was typically eight hours long but could be as long as ten if she worked overtime. (Hrg. Tr. p. 17) She did not sustain a work injury at Nordstrom. (Hrg. Tr. p. 17)

Apache hired Nash to work in microwave assembly. (Hrg. Tr. p. 18) She worked primarily on her feet. (Hrg. Tr. p. 18) Apache placed anti-fatigue matting on the floor in her work area. (Hrg. Tr. p. 18) She did not sustain any work injuries during her time there. (Hrg. Tr. p. 18)

Nash first worked at Genuine Parts through a temporary staffing firm. (Hrg. Tr. p. 31) On Nash's first day, she sustained a work injury when another worker struck her with a tub being carried by a forklift. (Hrg. Tr. pp. 31–32, 42–44) Nash almost fell into Javier, her supervisor, who initiated the report process for the incident. (Hrg. Tr. pp. 42–44)

After Nash worked at Genuine Parts through the temporary staffing firm for a period of time, Genuine Parts hired her as a picker. (Hrg. Tr. p. 19) In that job, she received an invoice list, gathered the products on it, and prepared them for shipping. (Hrg. Tr. p. 19; Def. Ex. A) Nash spent most of her eight-to-ten-hour shift, except for her break time, walking or standing on an uncovered cement floor. (Hrg. Tr. pp. 19–20) Genuine Parts required Nash to wear steel-toe footwear while working this job. (Hrg. Tr. p. 19)

In the weeks prior to March 15, 2019, Nash experienced worsening pain in both feet. (Hrg. Tr. pp. 34–35, 45) On March 15, 2019, Nash woke up and both of her feet were sore. (Hrg. Tr. p. 20) Nash's feet were burning while she was walking, and it felt like she was walking on glass with each step. (Hrg. Tr. pp. 20–21) Her supervisor,

Javier, noticed Nash seemed to be in pain and was having difficulty walking, so he asked her what was wrong. (Hrg. Tr. pp. 20–21) Nash informed him and he instructed her to go to the doctor. (Hrg. Tr. p. 21) Javier did not report Nash's injury. (Hrg. Tr. pp. 51–53)

Nash followed Javier's directive, clocked out at around 9:00 a.m., and went to Dr. Quy V. Tran-Lam at UnityPoint Westside Family Practice. (Hrg. Tr. pp. 21–22, 34; Jt. Ex. 1, pp. 1–3) Nash informed Dr. Tran-Lam she noticed knots or nodules on her foot over the previous weeks. (Hrg. Tr. p. 34) Five days later, Nash saw Xin J. Luo, M.D., who referred her to a podiatrist. (Jt. Ex. 1, pp. 7–8)

Nash attempted to return to work on March 25, 2019, but only managed to do so for a couple of hours before the pain in her feet forced her to stop. (Hrg. Tr. pp. 36, 57) As a result, she went on a medical leave of absence and applied for short-term disability benefits with Jennifer Murawanashyaka. (Hrg. Tr. pp. 57–60; Def. Ex. C, pp. 4–9) Genuine Parts authorized Nash to go on leave under the federal Family and Medical Leave Act of 1993. (Def. Ex. H, p. 22)

On April 10, 2019, Nash saw Rodney Dempewolf, D.P.M. (Jt. Ex. 3, pp. 1–2) He diagnosed Nash with plantar fibromatosis, a rare condition which involves benign soft tissue growth that takes up space and can cause pain on the bottom of the foot. (Jt. Ex. 3, pp. 1–2; Def. Ex. O, Depo. pp. 6, 8; Cl. Ex. 2, p. 13) The growths are often referred to as fibromas, tumors, or nodules. (Def. Ex. O, Depo. pp. 6, 15; Cl. Ex. 2, p. 13) There is no definitive etiology for the condition, though there seems to be a strong genetic tendency toward it as certain families have a disproportionate occurrence with the development of the nodules typically occurring between the ages of forty-five and fifty-five. (Def. Ex. O, Depo. pp. 8, 22; Cl. Ex. 2, p. 13)

During Dr. Dempewolf's deposition in this case, he explained that once somebody has plantar fibromatosis, the tumors or nodules start off singular and smaller, multiply in number, and continue to grow regardless of the person's activities. (Def. Ex. O, Depo. p. 10) In his experience, patients typically present to him after the tumors have grown over a period of months to a size that causes symptoms. (Def. Ex. O, Depo. pp. 9, 12–13) Practitioners do not understand what causes the nodules to grow. (Def. Ex. O, Depo. p. 16)

There is a correlation between the size of the nodules and severity of the pain they cause. (Def. Ex. O, Depo. p. 15) However, the size of the fibroma is not dispositive on the amount of pain it causes. "The pain is the nerve fiber transmission that's caused by pressure caused by fibromas as a space-occupying mass or lesion." (Def. Ex. O, Depo. p. 23) Thus, the location of the nodule in an individual's foot is an important factor with respect to the amount of pain it causes.

Dr. Dempewolf further testified that "[a]ny standing, walking, or shoe gear or activity typically aggravates these, these nodules. Some shoes worse than others and some activities more than others. But typically almost anything can aggravate it." (Def. Ex. O, Depo. p. 10) He agreed with the assertion that certain things make the feet of a

patient with plantar fibromatosis hurt worse but that does not necessarily mean those activities are the cause of the patient's pain. (Def. Ex. O, Depo. p. 14)

Dr. Dempewolf answered a series of questions from claimant's counsel during his deposition as follows:

Q. Do you believe within a reasonable degree of medical certainty that the amount of time that someone spends on their feet accelerates the progression of the symptoms?

A. I don't see that as being typical. I've seen these nodules grow large in people who have sedentary jobs quite quickly.

Q. Now, when you see that, is that after they present to you with either pain or fibromas?

A. Correct. Some people present and they're small and you get to watch the whole progression of it develop into large or multiple lesions over the course of time.

(Def. Ex. O, Depo. pp. 18–19)

Dr. Dempewolf agreed with the assertion that an individual with nodules in the condition of Nash's when she presented to him for care would experience aggravated pain with any standing or being on her feet. (Def. Ex. O, Depo. p. 21) He also agreed with the statement that Nash's multiple jobs that required her to work while standing and walking supported "the general conclusion that this is a personal condition and that the progression was regardless of her work environment." (Def. Ex. O, Depo. p. 21)

During Nash's first appointment with Dr. Dempewolf on April 10, 2019, he noted:

Patient has tenderness to palpation into the medial arch on the right and left side. Graded as mild on exam today. She has nodularity to the medial band of the plantar fascia proximal to the first metatarsal phalangeal joint. Typical plantar fibroma location and appearance. Both the right and left foot are involved. Fibroma size estimated at approximately ½ cm diameter with right slightly larger than left.

Reviewed the diagnosis and prognosis and x-rays in detail with the patient. She seems to have typical plantar fibromatosis with plantar fascia symptoms. Obviously related to high impact activities and standing for long periods of time.

Spent most of my time today in education and reassurance. Would expect that these nodules . . . continue to grow and become progressively

gradually symptomatic with time. Discussed conservative options including accommodative orthotic therapy as well as appropriate shoe gear.

Discussed briefly surgical intervention through her surgical excision through a radical fasciectomy.

(Jt. Ex. 3, pp. 1–2)

Dr. Dempewolf took Nash off work from April 10, 2019, through April 29, 2019. (Jt. Ex. 3, p. 4) On April 30, 2019, he extended her restriction from working until May 30, 2019. (Jt. Ex. 3, p. 5) However, Dr. Dempewolf did not give Nash a doctor's note excusing her from work at Genuine Parts past May 30, 2019. (Hrg. Tr. pp. 40, 60–61)

Genuine Parts emailed Nash regarding the lack of a doctor's note excusing her from work and her absences after May 30, 2019. (Def. Ex. D, pp. 10–14) On July 1, 2019, Genuine Parts terminated Nash's employment because it did not receive a doctor's note taking her off work past May 29, 2019. (Hrg. Tr. pp. 37, 60–61; Def. Ex. H, p. 22; Def. Ex. K, p. 51) Because Genuine Parts discharged Nash, she did not perform work for Genuine Parts after March 25, 2019. (Def. Ex. K, p. 50)

Nash returned to see Dr. Dempewolf on August 30, 2019. (Jt. Ex. 3, pp. 6–7) Dr. Dempewolf noted:

Patient presents again with continued chronic focal pain to walking, pressure and shoes with palpable and nodular mass to the left and right plantar arch. Patient [ha]s noted this mass to be present since spring 2019. Gradually becoming more symptomatic and painful. [N]ow she has noted smaller but similar type findings appreciated to the right foot. [S]he is not working because of foot pain. She says she has significant pain to any pressure [when she] wears flat soled shoes.

(Jt. Ex. 3, p. 6) He opined that he “expect[ed] these nodules to continue to grow and become progressively gradually symptomatic with time.” (Jt. Ex. 3, p. 7) Thus, Nash's pain worsened between her first appointment with Dr. Dempewolf on April 10, 2019, and her next appointment on August 30, 2019, when she was not working.

Nash followed up with Dr. Dempewolf on October 14, 2019. (Jt. Ex. 3, p. 8) She presented with ongoing pain that was “[g]radually becoming more symptomatic and painful.” (Jt. Ex. 3, p. 8) Nash was ready to undergo surgery because of her ongoing, worsening symptoms. (Jt. Ex. 3, pp. 8–9) The evidence establishes Nash's pain grew worse despite her not working between her August 30, 2019 appointment with Dr. Dempewolf and her October 14, 2019 appointment with him such that she elected to undergo surgery to remove the nodules.

On October 29, 2019, Nash underwent surgery to remove three tumors from her left foot. (Hrg. Tr. p. 24; Def. Ex. O, Depo. p. 6; Jt. Ex. 3, pp. 10–11) Nash followed up

with Dr. Dempewolf following her left-foot surgery. (Jt. Ex. 3, pp. 10–22) On February 5, 2020, Dr. Dempewolf noted:

Patient presents with ch[r]onic focal pain to palpation and nodular mass to the right plantar arch. Gradually becoming more symptomatic and painful. [E]xact similar symptoms to what she had on the left foot. She is postop radical fasciectomy and is doing well on the left foot. Full weightbearing. She notes that she is walking flat-footed on the left w[h]ere on the right she continues to limp and walk on the side of her foot avoiding the medial arch.

(Jt. Ex. 3, p. 21)

Nash was happy with the results of her left-foot surgery. (Jt. Ex. 3, p. 22) She wanted to get her right foot feeling as good as the left and to stop limping because of the pain in her right foot. (Jt. Ex. 3, p. 22) Nash elected to undergo a second surgery to remove the nodules in her right foot. (Jt. Ex. 3, p. 22)

However, the hospital had to delay Nash's surgery on her right foot for over a year because of the need to limit nonessential care due to the COVID-19 pandemic. (Hrg. Tr. p. 42; Jt. Ex. 3, pp. 34–35) Dr. Dempewolf ultimately performed the surgery on February 25, 2021. (Jt. Ex. 6, pp. 2–3) Nash followed up with Dr. Dempewolf after her right-foot surgery and participated in physical therapy. (Jt. Ex. 3, pp. 34–47; Jt. Ex. 5, pp. 1–17)

In a letter dated December 29, 201, Dr. Dempewolf followed up with defense counsel after a conversation the two had regarding Nash's condition and care. (Def. Ex. M, pp. 60–61) On the question of causation, Dr. Dempewolf opined, "In my professional opinion an[d] understanding of the diagnosis of plantar fascial fibromatosis, it is typically considered to be most significantly genetic in origin with environmental and physical factors being of consequence only with regards to exacerbation or aggravation of symptoms associated with weightbearing activities." (Def. Ex. M, p. 60) He assigned Nash a zero percent functional impairment rating using the Guides. (Def. Ex. M, p. 61)

Claimant's counsel arranged for Nash to undergo an independent medical examination (IME) with Mark Taylor, M.D., on December 13, 2021. (Cl. Ex. 2, p. 6) Dr. Taylor issued an IME, dated January 3, 2022, after examining Nash and reviewing records relating to her medical care and condition. (Cl. Ex. 2, pp. 6–16) On the question of whether Nash's employment with Genuine Parts caused her plantar fibromatosis, Dr. Taylor opined:

Unfortunately, an exact cause has not been identified or determined. It is felt that there is a genetic component, and is more common among those of Northern European descent, and is more common among men. Risk factors that have been postulated include a history of long-term alcohol abuse, which she denied. Smoking can also be a risk factor, but she stopped smoking 30 years ago. There is also some suggestion that

chronic stress or trauma to the feet may result in a localized tissue response that then leads to a fibroma.

It is unclear when the underlying fibromas may have developed. In other words, they may have pre-existed her employment at [Genuine Parts], but she was not previously symptomatic. As noted above, an exact cause or mechanism for developing the fibromas is not known. In light of this information, it is difficult to state what may have caused the fibromas themselves. However, I will also note that her work activities, including the use of steel-toed boots and standing and working on concrete the entire day, more than likely significantly contributed to the development of her symptoms. Her job duties, and coupled with the use of steel-toed footwear, placed her at an increased risk for potential foot issues, such as plantar fasciitis. This was one of the diagnoses noted by Dr. Dempewolf, including with the initial surgery on the left side. It also appears that Dr. Dempewolf was of the opinion that her work activities contributed, at least based on his April 10, 2019, clinic note. In the note, he stated, "she seems to have typical plantar fibromatosis with plantar fascia symptoms, obviously related to high-impact activities and standing for long periods of time". Furthermore, she indicated that he recommended that she not return to a job that requires the use of steel-toed footwear or being on her feet on concrete for the vast majority of her shift.

Again, the job functions may not have caused (but could have contributed to [the] formation[of]) the fibromas themselves, but based on current[] information, it is more likely than not that her use of the steel-toed boots and shoes, and being on concrete the entire day, accelerated the condition/onset of symptoms, which then required treatment with Dr. Dempewolf.

(Cl. Ex. 2, p. 13)

The doctors in this case agree that the medical community does not know what causes an individual to develop plantar fibromatosis. However, there is consensus that a person's genetic makeup is a factor because some families develop the condition more frequently than others. And in Dr. Dempewolf's experience as a podiatrist, plantar fibromatosis typically manifests between the ages of forty-five and fifty-five. Therefore, the evidence establishes the most likely factors causing Nash's plantar fibromatosis are her genetic makeup and age. The weight of the evidence establishes that Nash's plantar fibromatosis did not arise out of her employment with Genuine.

In this case, Dr. Dempewolf credibly testified that plantar fibromatosis has a natural progression. A patient such as Nash first develops one nodule, typically between the ages of forty-five and fifty-five. It grows and more nodules develop. Each new nodule also grows. They increase in size and number until they ultimately come against the anatomy of the foot, causing worsening symptoms. While a person's physical activity can make these symptoms worse, there is no way to eliminate the pain from the

growing nodules. That is why doctors must remove them, as Dr. Dempewolf did with Nash's. The weight of the evidence shows that the natural progression of plantar fibromatosis more likely than not would have caused Nash pain and the need for surgery regardless of whether she worked for Genuine Parts.

Moreover, Dr. Taylor's opinion is not persuasive because it appears to be based on an incorrect understanding of Nash's symptoms relative to her time working for Genuine Parts. Nash experienced symptoms in the weeks before March 15, 2019, when she informed Javier, her boss, that she was experiencing pain when walking and he instructed her to go to the doctor. She then was off work until March 25, 2019, when she tried to return to her job with Genuine Parts but was only able to do so for a couple of hours before her pain became too much to continue working. She did not perform work again for Genuine Parts after that.

Nash was off work at the time of her first appointment with Dr. Dempewolf on April 10, 2019, during which they did not decide to remove her nodules via surgery. Nash's symptoms then worsened over the ensuing months despite her not working. Ultimately, Nash's left foot symptoms got so bad she requested surgery and Dr. Dempewolf performed it. Nash's right-foot symptoms then worsened to the point where she decided to undergo the same surgery Dr. Dempewolf had performed on her left foot to remove the nodules even though she was not performing work duties.

For these reasons, the weight of the evidence establishes Nash's employment did not cause her nodules to develop or grow. Their development and continued growth is part of the natural progression of plantar fibromatosis, as is the pain they cause. The weight of the evidence establishes Nash would not have been able to avoid surgery to remove her nodules if she had not worked for Genuine Parts when she did. The cumulative trauma exposure she experienced while working was incidental and did not materially change the outcome of her condition.

CONCLUSIONS OF LAW

In 2017, the Iowa legislature amended the Iowa Workers' Compensation Act. See 2017 Iowa Acts, ch. 23. The 2017 amendments apply to cases in which the date of an alleged injury is on or after July 1, 2017. Id. at § 24(1); see also Iowa Code § 3.7(1). Because the injury at issue in this case occurred after July 1, 2017, the Iowa Workers' Compensation Act, as amended in 2017, applies. Smidt v. JKB Restaurants, LC, File No. 5067766 (App. Dec. 11, 2020).

1. Causation.

The Iowa Workers' Compensation Act "covers any and all personal injuries" relating to an employee's work. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823, 824 (1920). Under section 85.3(1), an employer covered by the Act must "provide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the course of the employment." The legislature has codified a partial definition of "personal injury" in

section 85.61(4) that includes death, excludes occupational disease under chapter 85A, and is not applicable here. Instead, the definition for “personal injury” articulated by the Iowa Supreme Court in its seminal Almquist v. Shenandoah Nurseries, Inc. holding governs:

“an injury to the body, the impairment of health, or a disease, not excluded by the act, which comes about, not through the natural building up and tearing down of the human body, but because of a traumatic or other hurt or damage to the health or body of an employee.... The injury to the human body here contemplated must be something, whether an accident or not, that acts extraneously to the natural processes of nature, and thereby impairs the health, overcomes, injures, interrupts, or destroys some function of the body, or otherwise damages or injures a part or all of the body.”

Dunlavey v. Econ. Fire & Cas. Co., 526 N.W.2d 845, 850–51 (Iowa 1995) (quoting Almquist, 218 Iowa 724, 732, 254 N.W. 35, 39 (1934)) (citations omitted in Dunlavey).

“In order for an injury to be compensable in Iowa, there must be ‘a connection between the injury and the work.’” Lakeside Casino v. Blue, 743 N.W.2d 169, 173 (Iowa 2007) (quoting Meyer v. IBP, Inc., 710 N.W.2d 213, 221 (Iowa 2006)). To recover, a claimant must prove by a preponderance of the evidence that the injury for which the claimant is seeking workers’ compensation arose:

- 1) Out of the claimant’s employment; and
- 2) In the course of the claimant’s employment. St. Luke’s Hosp. v. Gray, 604 N.W.2d 646, 652 (Iowa 2000) (citing Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996)); see also Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996).

“The two tests are separate and distinct.” Blue, 743 N.W.2d at 174 (quoting Miedema, 551 N.W.2d at 311). Under Iowa law, “both must be satisfied in order for an injury to be deemed compensable.” Id. (quoting Miedema, 551 N.W.2d at 311). In this case, the parties dispute only whether the injury arose out of employment.

“An injury ‘arises out of’ employment if there is a causal connection between the employment and the injury.” Id. at 652 (citing Bailey v. Batchelder, 576 N.W.2d 334, 338 (Iowa 1998)). “In other words, the injury must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of [the] employment.” Blue, 743 N.W.2d at 174. (quoting Miedema, 551 N.W.2d at 311).

Taking the words themselves, one is first struck by the fact that in the “arising” phrase the function of the employment is *passive* while in the “caused by” phrase it is *active*. When one speaks of an event “arising out of employment,” the initiative, the moving force, is something other than

the employment; the employment is thought of more as a *condition* out of which the event arises than as the force producing the event in affirmative fashion.

Meyer v. IBP, Inc., 710 N.W.2d 213, 223 (Iowa 2006) (quoting 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* (2005) § 3.06, at 3-7 to 3-8 (emphasis in original)).

Under this standard, an employee “would not be entitled to compensation for the results of a pre-existing injury or disease.” Nicks v. Davenport Produce Co., 254 Iowa 130, 135, 115 N.W.2d 812, 815 (1962). To fall within the purview of chapter 85, “the injury must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of . . . employment.” Floyd v. Quaker Oats, 646 N.W.2d 105, 107 (Iowa 2002) (quoting Miedema, 551 N.W.2d at 311). An employee may recover benefits under the Act, if the employee “had a pre-existing condition or disability that was aggravated, accelerated, worsened or ‘lighted up’” by an injury relating to work. Id.

In Hanson v. Dickinson, the claimant had pre-existing gonorrhea for which he had received treatment that left it dormant. 188 Iowa 728, 176 N.W. 823, 823–24 (1920). He then struck himself in the knee with a hammer while working, causing bruising and underlying tissue damage. Id. One doctor opined “hidden gonorrhea can be lighted up by a bruise” and this is what happened to the claimant as a result of the hammer blow. Id. On appeal, the employer argued that under the statute, “a pre-existing disease ought not to be considered, even though [it was] lighted up or accelerated by the injury.” Id. at 825. The court disagreed and found the legislature’s use of “personal injuries” instead of “personal injuries by accident” creates broad coverage for “a great number of injuries.” Id. It concluded that an employee’s claim based on the aggravation, acceleration, or lighting up of a pre-existing disease is within the purview of the statute because the claim is not based on the disease itself but the effect the employment had on the disease. Id.

The Iowa Supreme Court adopted the cumulative injury rule for claims under the Iowa Workers’ Compensation Act in McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). “In doing so, [the court] recognized that workers’ compensation liability was not confined to disabilities arising from accidents, but includes disabilities which gradually develop ‘over a period of time.’” Excel Corp. v. Smithart, 654 N.W.2d 291, 896 (Iowa 2002) (quoting McKeever, 379 N.W.2d at 373). The rationale for adopting the cumulative injury rule under the Iowa Workers’ Compensation Act is similar to that articulated by the court in Hanson to hold the Act covers the aggravation, acceleration, or lighting up of a pre-existing disease by an acute work injury. Compare McKeever, 379 N.W.2d at 373, with Hanson, 188 Iowa 728, 176 N.W. at 825. Accordingly, a claim based on the alleged aggravation, acceleration, or lighting up of a pre-existing disease by a cumulative work injury is within the purview of the Iowa Workers’ Compensation Act.

To prevail, Nash must establish the alleged work injury materially aggravated her preexisting condition. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 16 (Iowa 2007). This requires proving by a preponderance of the evidence that the work injury “significantly changed the course of the preexisting injury to bring about the need for . . . surgery.” Id. Put otherwise, Nash must show she could have avoided the surgery for her plantar fibromatosis if she had not worked for Genuine Parts during the time in question. Id.; see also Gumm v. Easter Seal Soc’y of Iowa, Inc., 943 N.W.2d 23, 32 (Iowa 2020). She cannot recover if “[t]he cumulative trauma exposure was incidental . . . and did not materially change the outcome.” Id.

As found above, the weight of the evidence establishes it is most likely Nash’s employment with Genuine Parts did not cause her to develop plantar fibromatosis. It also shows Nash’s plantar fibromatosis followed the condition’s natural progression. There is an insufficient basis in the evidence from which to conclude that Nash’s employment with Genuine Parts was a substantial factor in causing Nash’s nodules to develop or grow. It is more likely than not her nodules would have caused her symptoms regardless of her employment with Genuine Parts at the time in question.

For these reasons, Nash has failed to meet her burden of proof on causation. There is an insufficient basis in the evidence from which to conclude she would have avoided surgery to remove her nodules if she had not been employed with Genuine Parts when she was. The weight of the evidence establishes the cumulative trauma to Nash’s feet during her employment with Genuine Parts was incidental and did not materially change the outcome with respect to her plantar fibromatosis. Because Nash has failed to meet her burden of proof on the disputed issue of causation, the other disputed issues identified in the hearing report are not addressed.

2. IME.

Before the 2017 amendments enacted by the legislature, the Iowa Workers’ Compensation Act required an employer to hold an employee harmless for the cost of an IME regardless of whether the alleged work injury was ultimately found compensable. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa Ct. App. 2008); see also Miracle v. UFP Tech., Inc., File No. 5056559 (App. Mar. 13, 2019). After the amendments, however, Iowa Code section 85.39(2) provides in pertinent part, “An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury.” Applying the amended statute to this case, Nash is not entitled to an award of the cost of Dr. Taylor’s IME because she failed to show the alleged work injury is compensable.

ORDER

Based on the above findings of fact and conclusions of law, it is ordered:

- 1) Nash shall take nothing more from this case.
- 2) The parties shall be responsible for paying their own hearing costs.

Signed and filed this 4th day of August, 2022.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a horizontal line.

BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Nicholas Adkins (via WCES)

Aaron Oliver (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.