IN THE DISTRICT COURT
AT WELLINGTON

I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA

[2022] NZACC 125 ACR 134/21

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	JAMES WILLIAMS Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: 23 May 2022
Heard at: Auckland/Tāmaki Makaurau

Appearances: Appellant in person
Ms H L Botha and Ms H Ifwersen for the Respondent

Judgment: 28 June 2022

RESERVED JUDGMENT OF JUDGE C J McGUIRE
[s 100 – Entitlement to Weekly Compensation
Accident Compensation Act 2001]

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[1] At issue is the respondent's decision of 21 September 2020 declining Mr Williams weekly compensation on the basis that his incapacity was related to a gradual process condition.

Background

[2] On 20 April 2020, Mr Williams was running on soft sand on a beach when he noticed a pull in the heel of his left foot. He says that this made him stop running and return home.

[3] On 8 May 2020, Mr Williams saw Physiotherapist Andrew Baunton via Telehealth. This consultation resulted in a claim being made for a left foot sprain ("probable plantar fascia strain"). On 26 May 2020, the claim was granted.

[4] On 24 July 2020, an X-ray and ultrasound was undertaken by Radiologist, Mr Davies, who concluding "prominent partial thickness tear of the medial aspect of the central band of the plantar fascia".

[5] On 11 August 2020, Mr Williams applied for weekly compensation. This was declined by ACC on 21 September 2020 on the basis that Mr Williams' incapacity was related to plantar fasciitis, a gradual process condition, not covered by ACC.

[6] Mr Williams' general practitioner, Dr Morar, issued two ACC 18 medical certificates certifying Mr Williams to be fully unfit for work due to a foot sprain resulting in a "painful left foot in ankle" from 20 April 2020 until 19 July 2020 and 20 July 2020 until 20 September 2020.

[7] As a self-employed aluminium expandable barrier producer, Mr Williams' role involved prolonged standing at a work bench. Following the incident, Mr Williams was not standing for long periods at work and had taken up some administrative duties.

[8] On 26 August 2020, Mr Williams saw Orthopaedic Surgeon, Helen Rawlinson, who considered that his clinical picture fitted with a "recurrence of plantar fasciitis". In her report, she referred to the fact that Mr Williams had previously suffered plantar fasciitis in his left foot. She referred to an X-ray showing a mature 5mm plantar heel spur and the ultrasound showing a "thickening of plantar fascia" and large partial thickness tear.

[9] An MRI scan was taken on 26 August 2020 which showed "plantar fasciitis with intra substance tear within the central and lateral bands of the plantar fascia at the origin, bony spurring and calcaneus with adjacent bone marrow oedema".

[10] Following this on 27 August 2020, Dr Rawlinson examined Mr Williams and discussed the MRI findings with him. She recommended continued non-operative management with calf stretching, gradual return to activity as tolerated without any surgery or injections.

[11] On 18 September 2020, Ms Kylie Hughes, ACC's internal physiotherapist advisor, gave her opinion that:

> The covered sprain has resolved. Current condition requiring treatment is plantar fasciitis which is not accident related. Request for WC is not clinically supported, as there is no causal link to the covered injury.

[12] In her view, the persistence of symptoms in current clinical presentation and investigations were more consistent with the recurrent diagnosis plantar fasciitis which required treatment. She concluded that the request for weekly compensation was not clinically supported as the clinical evidence did not have a causal link between the injury and the index event.

[13] On 21 September, ACC issued a decision declining Mr Williams' application for weekly compensation on the basis that the gradual process nature of the plantar fasciitis was not covered under his claim for sprain.

[14] On 2 November 2020, Mr Williams sought medical opinion from a sports and exercise physician, Dr Benjamin Speedy, who after examining Mr Williams and reviewing the X-ray, ultrasound and MRI results, diagnosed the injury as "plantar fascia origin tear", stating the tear occurred as a result of the accident and not due to a gradual degenerative process. Dr Speedy considered that Mr Williams may have sustained a minor sprain of the Lisfranc ligament but clinically this had resolved.

[15] On 2 February 2021, Dr Speedy provided further comment stating that the most salient point was that Mr Williams had an acute onset of pain following the run and his pain did not have a gradual onset. He did not believe that Mr Williams' injury was partially or wholly due to a gradual process. Dr Speedy specifically stated that Mr Williams had no prior symptoms before the injury and had a sudden acute onset of bad pain in the left heel when running on a beach, consistent with an acute injury.

[16] Dr Speedy said that running is a plausible and reasonable mechanism of an acute plantar fascia tear, noting that such tearing can be caused by a sudden overload of the plantar fascial ligaments.

[17] On 9 April 2021, Dr Speedy issued a further report noting that he had reviewed Mr Williams and that his symptoms were settling. There had been a flair up a couple of weeks prior with significant pain at the origin of the left plantar fascia, especially first thing in the morning. Dr Speedy said he was repeating an ultrasound to check for healing and that he would review Mr Williams again.

[18] At the review hearing on 14 April 2020, Mr Williams gave evidence that his left foot was fine before the accident. He noticed a pull in his heel when he was running, and he returned home. He said that he has had plantar fasciitis in his right foot and had taken steps for that but that he has not had it in his left foot.

[19] Following an unsuccessful review by Mr Williams and the lodging of this appeal, ACC requested further medical comment from ACC's clinical advisor, Physiotherapist, Ms Hughes. She considered the report of Dr Rawlinson of 14 September 2020 and the report from Dr Speedy of 3 November 2020.

[20] On 6 September 2021, she confirmed her opinion that Mr Williams was suffering from aggravated plantar fasciosis/fasciitis and not acute plantar fascia tear. She said:

> The plantar fascia is a tough, fibrous band of tissue that takes the full weight of the body through it. An acute tear to this structure would result in significant disability. One would not try to "run through" an acute tear to the plantar fascia – this would result in inability to walk.
>
> The patient would also be unable to attempt "drills from YouTube" to treat such an injury within two weeks of it occurring. Recovery would take months.
>
> Aggravated degenerative plantar fasciitis with an associated tear, on the other hand (as described by the surgeon) would likely result in acute discomfort that would limit normal activities but also allow basic function – as is described here.
>
> The client was described as having "good balance and normal gate" at lodgement. An acute plantar fascia tear would result in significant limping, if not the need for crutches and/or a moonboot, the client would not be able to

> bear weight through the foot two and half weeks after the citing event. There is also no description of bruising or swelling…

[21] On 13 October 2021, Mr Williams filed additional evidence from Andrew Baunton, Physiotherapist. He said:

> It is my opinion that Mr Williams sustained a sudden traction type injury while running resulting in a sprain and subsequently confirmed as tear with imaging after an appropriate period and sessions of conservative management for this type of injury when failing to adequately progress. He did not have any previous signs or symptoms of plantar fasciopathy prior to this event. It is unlikely that he would have suffered a tear of this nature from progressive loading while standing at work or walking but instead from the sudden overload as described.

Appellant's submissions

[22] In Court, the appellant read his prepared court statement making the following points:

- Given that New Zealand was in Level 4 Lockdown thus limiting face to face consultations before and after the injury, dates of treatment cannot be considered fully in determining the outcome of this hearing.

- ACC's group of advisors have not definitively determined either cause or effect but have chosen for convenience to quote "degeneration … yet they have no guage or history on my personal condition". He says that Dr Speedy, Sports and Exercise Physician, and Andrew Baunton, Physiotherapist, both highly regarded locally and internationally within the field of sports injuries speciality and "subsequent cause and effect".

- He also refers to his highly experienced lifetime doctor, Dr Morar, who is well aware of the appellant's business activity and the time it takes to heal such a traumatic injury.

- Once he was able to finally visit Dr Morar face to face, he was able to view the reports and consider all facts and thus determine time off work and rest periods.

- He says it was only then that ACC made a concerted effort in not only eventually following up, as is proper under the ACC Act, but deciding that his time off work was not valid.

- ACC also continued to support its decision based on the views of Ms Rawlinson and Hughes.

- ACC did not consult with the first, primary care physiotherapist, Andrew Baunton, who was the only person able to provide the initial care and to expand on his view of this injury.

- He requests that the fair way solutions decision be overturned.

Respondent's submissions

[23] Ms Botha reminds the Court that s 26 of the Act defines personal injury to include "for example, a strain or sprain".

[24] She reminds the Court that s 26(2) provides that a personal injury does not include personal injury caused wholly or substantially by a gradual process (except for a work-related gradual process injury).

[25] Likewise, a personal injury does not include personal injury caused wholly or substantially by the aging process.

[26] She refers to *McDonald* where the Court said:[1]

> If medical evidence establishes that there are pre-existing degenerative changes which are brought to light or which become symptomatic as a consequence of an event which constitutes an accident, it can only be the injury caused by the accident and not the injury that is continuing effects of pre-existing degenerative condition that can be covered. The fact that it is the event of the accident which renders symptomatic that which was previously asymptomatic does not alter that basic principle.

[1] *McDonald v Accident Rehabilitation and Compensation Insurance Corporation* [2002] NZAR 970 (HC) at [26].

[27] She refers to Dr Rawlinson's report of 26 August 2020 where she says:

> As discussed with James, his clinical picture fits with recurrence of plantar fasciitis.

[28] At Dr Rawlinson's request, an MRI was undertaken of Mr Williams' left ankle on 26 August 2020. Dr Rawlinson reported again on 27 August following the MRI saying:

> As discussed with James, this scan is consistent with an established case of plantar fasciitis with degenerative type intrasubstance split. There is no evidence of an acute traumatic rupture of the tendon.

[29] Ms Botha submits that Dr Rawlinson is eminently qualified as an orthopaedic surgeon to make this diagnosis. Whereas she submits that Mr Williams is heavily reliant on the temporal link between the soft tissue sprain on 20 April 2020 and the onset of his symptoms. She submits that this should not be preferred over the opinion of an orthopaedic surgeon who has interpreted an MRI scan.

Decision

[30] Mr Williams, according to the ACC injury claim form, was running in soft sand on dunes on 20 April 2020 when he "pulled" his left foot.

[31] He initially consulted Telehealth and was eventually assessed by Andrew Baunton on 8 May 2020.

[32] Mr Baunton noted his current symptoms as a constant dull ache central to medial left heel and tight band around ankle. Intermittent sharp twinges and tightening in arch to heel.

[33] Mr Baunton records:

> 2/52 ago running in sand, soft and on heels and 3/4 through felt pull in base of foot and heel. Tried to run through but didn't get better. Been doing some stretches and drills from YouTube for P/fascia but not settling. Unable to do any runs and avoiding soft sand etc as too painful to control.

[34] Mr Baunton diagnosed:

> Possible left plantar fascia strain- origin.

[35] Mr Williams had further physiotherapy sessions on 19 May 2020, 26 May 2020, 3 June 2020, 9 June 2020 and 23 June 2020. On each occasion, it is recorded that there was some improvement. At the final assessment on 7 July 2020, it was noted:

> Overall some improvement. However, the appellant reported that the plantar fascia was not able to load much and he was frustrated as he was not able to run.

[36] Mr Williams consulted Dr Rawlinson, who, following an MRI scan of his left foot and ankle, concluded:

> This scan is consistent with an established case of plantar fasciitis with degenerative type intrasubstance split. There is no evidence of an acute traumatic rupture of the tendon…

[37] She recommended continued non-operative management with calf stretching, gradual return to activity as tolerated without any surgery or injections.

[38] On 2 November 2020, Mr Williams was examined by Dr Speedy who considered the MRI scan of 26 August 2020 and stated:

> I think that James' injury is a plantar fascia origin tear. The thickening and oedema I believe to be secondary to the tear and I think that the tear occurred with his accident as described on 20 April 2020… He may have sustained a minor sprain of the Lisfranc ligament but clinically this has resolved.

[39] Dr Speedy reported further on 2 February 2021 saying:

> The history is outlined in detail in my letter dated 2 November 2020. The most salient point is that James had an acute sudden onset of pain in the region of the left plantar fascia origin (calcaneus/medial ankle) during a run on a beach on 20 April 2020. In particular, his pain did not have a gradual onset.

[40] He went on to say:

> I do not believe that James' injury was partially or wholly due to a gradual process or aging. He had no prior symptoms to the injury and had a sudden acute onset of bad pain in the left heel when running on the beach, consistent with an acute injury.

> I believe that running was a plausible and reasonable mechanism to cause an acute plantar fascia tear. Plantar fascia tearing can be caused by a sudden overload of the plantar fascial ligaments and can occur with running.

[41] In a report of 27 September 2021, Ms Hughes advised, in response to points raised by Dr Speedy, that:

> An acute onset of pain represents a temporal link – it is not evidence of a causal link. Aggravation of a pre-existing condition would also cause an acute onset of pain. Conditions such as plantar fasciitis are commonly asymptomatic until they reach level of loading where they become symptomatic. Given these conditions are related to loading, it is not only common, but expected that the first onset of pain would have happened during a loading activity such as walking or running. This is not at all unusual.
>
> Tearing is a common part of degenerative plantar fasciitis, as previously mentioned.
>
> Given the above points, the important clinical issue is the client's mechanism of accident and the acute presentation. As explained in my previous comment, these do not support an acute tear.

[42] Finally, Andrew Baunton, on 30 October 2021, said:

> It is my opinion that Mr Williams sustained a sudden traction type injury while running resulting in a sprain and subsequently confirmed as tear with imaging after an appropriate period and sessions of conservative management for this type of injury when failing to adequately progress. He did not have any previous signs or symptoms of plantar fasciopathy prior to this event. It is unlikely he would have suffered a tear of this nature from progressive loading while standing at work or walking but instead from the sudden overload as described.
>
> It is impossible to determine if Mr Williams had any tear or injury prior to this event as there is no prior imaging. While it is possible there may have been some degenerative changes at the plantar fascia origin, it is also just as likely that the trauma suffered during the event caused an acute tear of the proximal plantar fascia and this should reasonably be accepted as an accident event causing injury.

[43] In this case the mechanism of injury described in the claim form is:

> Running in soft sand on dunes and pulled left foot.

[44] In terms of the definitions in the Act the accident in this case was an event that involved the application of force, in this case gravity, external to the human body, that is to say the running in soft sand when he "pulled his left foot". It is

Mr Williams' position that as a result he suffered a personal injury, namely a strain or sprain of his left foot.

[45] The opposing medical opinions in this case are from Dr Rawlinson, Orthopaedic Surgeon and Ms Hughes, the ACC's Clinical Physiotherapy Advisor, on behalf of ACC versus Dr Speedy, Sports and Exercise Physician and Mr Baunton, Physiotherapist on behalf of Mr Williams.

[46] After viewing the MRI scan, Dr Rawlinson said in her report of 27 August 2020 that the scan was consistent with an established case of plantar fasciitis with degenerative type intrasubstance split. She also noted there was no evidence of an acute traumatic rupture of the tendon.

[47] Opposed to this, is the evidence Dr Speedy, who said in his report of 2 November 2020:

> I think that James' injury is a plantar fascia origin tear. The thickening and oedema I believe to be secondary to the tear and I think that the tear occurred with his accident as described on 20 April 2020.

[48] Dr Speedy also noted in his further report of 2 February 2021 that Mr Williams's pain did not have a gradual onset.

[49] Dr Speedy went on to say:

> I believe that the running was a plausible and reasonable mechanism to cause an acute plantar fascia tear. Plantar fascia tearing can be caused by a sudden overload of plantar fascio ligaments and can occur with running.

[50] Dr Speedy also said that he did not believe that the partial tear was caused by gradual process plantar fasciitis as Mr Williams had no preceding symptoms.

[51] As already mentioned, Panckhurst J in *McDonald*, said:

> If medical evidence establishes that there are pre-existing degenerative changes which are brought to light or which become symptomatic as a consequence of an event which constitutes an accident, it can only be the injury caused by the accident and not the injury that is continuing effects of pre-existing degenerative condition that can be covered.

[52] It is noted that in *McDonald*, Mr McDonald, who was employed as a fireman, injured his right knee as a result of a fall on stairs while responding to a fire call.

[53] In this case, Mr Williams was running on soft sand.

[54] In Dr Rawlinson's report of 27 August 2020, after citing what the MRI imaging showed, she said:

> This scan is consistent with an established case of plantar fasciitis with degenerative type intrasubstance split. There is no evidence of an acute traumatic rupture of the tendon.

[55] Whereas Dr Speedy in his report of 2 November 2020 simply says:

> I think that James' is a plantar fascia origin tear. The thickening and oedema I believe to be secondary to the tear and I think that the tear occurred with his accident as described on 20 April 2020.

[56] As Dr Speedy makes no mention of the intrasubstance split being of a degenerative type, I infer that he has somewhat glossed over this issue saying:

> I do not believe that James' injury was partially or wholly due to a gradual process or aging. He had no prior symptoms to the injury and had an acute onset of bad pain in the left heel when running on the beach, consistent with an acute injury.

[57] Mr Baunton, in his report of 13 October 2021, acknowledges that plantar fasciitis is commonly considered a progressive injury. He also acknowledges that a tear of the plantar fascio origin can occur as a direct result of sudden trauma or an injury from a sudden overload event "similar to that described by Mr Williams".

[58] Finally, Ms Hughes, in her email of 27 September 2021, said:

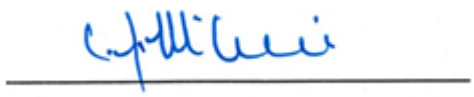
> Conditions such as plantar fasciitis are commonly asymptomatic until they reach a level of loading where they become symptomatic.

[59] Ms Hughes went on to say that it was expected that the first onset of pain would happen during a loading activity such as walking or running and that this was not at all unusual.

[60] Certainly, the mechanism of accident in this case, the running on soft sand, is a "loading activity".

[61] I conclude therefore that the weight of evidence in this case, particularly that of Ms Hughes and Dr Rawlinson, tips in favour of a degenerative cause as opposed to injury by accident, with the plantar fasciitis being rendered symptomatic while the appellant was running on soft sand on the day in question. On the balance of probabilities therefore, I find that Mr Williams' underlying condition of his left ankle, the plantar fasciitis, was degenerative in nature and not caused wholly or substantially by his accident. Accordingly, I must dismiss the appeal.

[62] There is no order as to costs.



Judge C J McGuire
District Court Judge

Solicitors: Meredith Connell, Auckland for the respondent.