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Louisiana Workers Compensation

Chapter 4

Accident

The goal of workers compensation is to place the expense of work related injuries on the employer. The goal is not to provide health insurance or to substitute workers compensation for health insurance. Workers will have heart attacks at home or at work. Workers will catch the flu at home or at work. Workers will have degenerative processes cause arthritis in their joints and make them less physically strong over time. A heavily litigated area of workers compensation is whether an injury occurred at work or whether the employee is being worn down by old age and general physical activity, non-work related.

The definition of "Accident" under the Louisiana Workers' Compensation Act

The Workers' Compensation Act defines accident and injury. In reading these definitions listed below it is quite apparent that both definitions were written by lawyers. The definitions are contained in the Louisiana R.S. 23:1021 and state:

> "Accident" means an unexpected or unforeseen actual, identifiable, precipitous event happening suddenly or violently, with or without human fault, and directly producing at the time objective findings of an injury which is more than simply a gradual deterioration or progressive degeneration.

Burden of Proving a Job Accident

Workers compensation laws are liberally construed to find coverage for an injured worker. The injured worker is given many benefits of the doubt. The most difficult workers compensation claim to defend is an unwitnessed accident. An unwitnessed accident can be proven if: (1) no other evidence discredits or cast serious doubt upon the workers version of the incident; and (2) the workers testimony is corroborated by circumstances following the alleged incident. If a worker reports an injury contemporaneous with its happening. HE then goes to a healthcare professional and reports the accident. Shortly thereafter, he is listed as disabled by the accident. Unless the employer can present affirmative proof that the accident did not happen at work, the worker will be presumed to have been injured and disabled by the work accident. The Louisiana Supreme Court in *Bruno v. Harbert Int'l, Inc.,* 593 So.2d 357, 361 (La. 1992), discussed the burden of proof in a workers compensation case as follows:

> Despite the liberal construction of the statute afforded the worker in a compensation action, the worker's burden of proof is not relaxed. *Prim v. City of Shreveport,* 297 So.2d 421 (La. 1974). Rather, as in other civil actions, the plaintiff-worker in a compensation action has the burden of establishing a work-related accident by a preponderance of the evidence. *Id.*; *Nelson, supra*. A worker's testimony alone may be sufficient to discharge this burden of proof, provided two elements are satisfied: (1) no other evidence discredits or casts serious doubt upon the worker's version of the incident; and (2) the worker's testimony is corroborated by the circumstances following the alleged incident. *West v. Bayou Vista Manor, Inc.,* 371 So.2d 1146 (La. 1979); Malone and Johnson, *13 Louisiana Civil Law Treatise*, *Workers' Compensation*, § 253 (2d Ed. 1980). Corroboration of the worker's testimony may be provided by the testimony of fellow workers, spouses or friends. Malone & Johnson, *supra*; *Nelson*, *supra*. Corroboration may also be provided by medical evidence. *West*, *supra.*
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> In determining whether the worker has discharged his or her burden of proof, the trial court should accept as true a witness's uncontradicted testimony, although the witness is a party, absent "circumstances casting suspicion on the reliability of this testimony." *West*, 371 So.2d at 1147; *Holiday v. Borden Chemical*, 508 So.2d 1381, 1383 (La. 1987).

While the Louisiana Supreme Court and numerous Courts of Appeals have stated that the burden of proof is not relaxed in a workers compensation case, it clearly is. An injured worker can prove the occurrence of an accident by his testimony alone. Unless the employer can cast serious doubt on his version of the facts, or impeach him with inconsistent statements, and greatly attack the injured workers creditability, the courts overwhelmingly find the occurrence of an accident.

Burden of Proof for Un-Witnessed Accident

Temple v. Global Construction, 13-38 (La. App. 5 Cir. 5/23/13), 119 So.3d 704:

Mr. Temple was an employee of Global on February 26, 2011. Global provided labor in converting the Mandeville Street Wharf to a tourism facility. While working in the early morning hours, Mr. Temple fell or stepped off of a "pick board" or concrete support underneath the wharf, while accessing a concrete pier support. Mr. Temple injured his left elbow and his back in the fall. Craig Rink, Mr. Temple's supervisor, took Mr. Temple to the hospital after the fall.

On July 8, 2011, Mr. Temple filed his Disputed Claim for Compensation. In the claim, Mr. Temple alleged he injured his back and left elbow "while trying to secure roofing." Mr. Temple verified that no wage benefits had been paid to him and no medical treatment was authorized by his employer. In his amended claim filed on July 18, 2011, Mr. Temple provided that he injured his left elbow, low back, neck, left hip and left leg on cement piling while walking down a pick board.

The trial court found that Mr. Temple carried his burden of proving an accident, and Global was ordered to pay Mr. Temple $8,000.00 in penalties and $10,000.00 in attorney fees pursuant to *La. R.S. 23:1201(1)*.

Global appealed and alleges the trial judge did not apply the correct legal standard in concluding that Mr. Temple proved entitlement to workers' compensation benefits and failing to cite *La. R.S. 23:1021(1)*. Global argues that Mr. Temple failed to prove any immediate objective medical findings of his injuries, despite the fact that Mr. Temple injured himself during a fall on concrete. Global contends that an objective medical finding of a bruise or a mark of some type on Mr. Temple's back should have been visible during his first couple of medical examinations, especially during his first emergency room visit. Global further contends the only positive objective medical finding for Mr. Temple was an MRI performed on April 14, 2011, which showed a pre-existing degenerative finding that pre-dated Mr. Temple's February 26, 2011 fall and does not show impingement that would account for Mr. Temple's subjective complaints. As such, Global concludes that Mr. Temple failed to prove a back injury as required by *La. R.S. 23:1021(1)*.

The employee in a workers' compensation action has the burden of proving a work-related accident by a preponderance of the evidence. *Marange v. Custom Metal Fabricators, Inc., 11-2678 (La. 7/2/12), 93 So.3d 1253, 1257*. An employee may prove that an unwitnessed accident occurred in the course and scope of his employment by his testimony alone if the employee can prove (1) no other evidence discredits or casts serious doubt upon the worker's version of the incident; and (2) the worker's testimony is corroborated by the circumstances following the alleged incident. *Id*. Corroboration of the worker's testimony may be provided by the testimony of fellow workers, spouses, or friends, or by medical evidence. *Ardoin v. Firestone Polymers, L.L.C., 10-245 (La. 1/19/11), 56 So.3d 215, 219*.

The Court of Appeal concluded:

From the evidence presented at trial, we do not find the trial judge was manifestly erroneous in finding Mr. Temple discharged his burden of proof that he sustained injuries from an accident while working on the job on February 26, 2011. Mr. Temple's testimony was not discredited, and the circumstances following the accident were corroborated by Mr. Rickson's testimony and Mr. Martin's written statement. Furthermore, the medical evidence presented established objective findings that Mr. Temple had a back strain from his fall on February 26, 2011. Therefore, we will not disturb the trial judge's findings.

Franklin v. Calcasieu Parish Sch. Bd., 108 So. 3d 907 (La.App. 3 Cir. 2013) clearly demonstrates the relaxed burden of proof is workers' compensation cases:

Calcauieu Parish Sch. Bd. ("CPSB") contends the Workers Compensation Judge's ("WCJ") finding that Ms. Franklin carried her burden of proof was erroneous because (1) the WCJ did not make a specific finding as to Ms. Franklin's credibility and (2) Ms. Franklin's claim was contradicted by her coworkers' testimony. In cases such as this one, where the fact finder concludes that a party carried her burden of proof, a credibility determination can be implied from that finding. *Douglas v. Grey Wolf Drilling Co., 03-515 (La. App. 3 Cir. 11/5/03), 858 So.2d 830*. Accordingly, CPSB's first contention lacks merit.

"An appellate court cannot reverse a WCJ's factual findings that are based on a reasonable credibility evaluation if the record "furnishes [a] reasonable factual basis for the trial court's finding." *Marange, 93 So.3d at 1258* (quoting *Canter v. Koehring Co., 283 So.2d 716, 724 (La.1973))*. When, as here, "there is a conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable." *Id*.

"Contrary to CPSB's claims, Ms. Franklin's claim that she was injured in the course and scope of her employment in June 2011 is corroborated by circumstances following her alleged accident. Misty King, Ms. Franklin's daughter, testified her mother related to her that "she got hurt working the big machine at work." Ms. King further testified that after her mother injured herself, she observed Ms. Franklin had problems rising from a seated position and that she could not do housework or her normal daily activities." Id.

"Shayne Matte, one of Ms. Franklin's coworkers, also corroborated her claim, though he initially seemed to contradict it. Counsel for CPSB asked Mr. Matte the following about whether she reported her accident to him:

She has told us that she suffered an accident at work early in June of 2011. She's told us that she was working that day with you, Jacob, and Linda Chesson. She's told us that she was using a floor stripping type machine when she -- when her legs split apart[,] and she said she pulled them back together. She's told us that when this happened, you and Jacob and Linda had gone down the hall somewhere to get water. She says that when you

all got back as a group, the three of you all, that she immediately told all three of you that she had hurt herself while using the floor stripper. My question to you is: Did she ever report an accident of that type to you last summer?" Id.

Mr. Matte answered: "No, sir, not that I remember."

"During examination by counsel for Ms. Franklin, Mr. Matte testified that Ms. Franklin "complain[ed] a lot" of her back hurting during the month of June. He further testified that all the employees were involved in stripping the floors and that the women used the stripping machine. This testimony contradicted the testimony of their coworker Linda Chesson and their supervisor, Bonnie Guillory." Id.

"The WCJ questioned Mr. Matte to clarify his testimony as to whether Ms. Franklin reported that she injured her back at work, asking: "You said you don't remember if Ms. Charlotte reported to you that she was hurt?" Mr. Matte responded: "I do remember her talking about her back being injured, but I don't remember her telling me that [it] was because of the stripping of the floor." Id.

"Ms. Franklin acknowledges that she has numerous health conditions, including diabetes mellitus II, fibromyalgia, and arthritis, and that she often complained of pain before injuring herself at CPSB, but she points to her medical treatment after her injury as additional corroboration of her claims. On June 2, 2011, she went to a nurse practitioner for a follow up of her diabetes. On that date, she complained "of severe low back pain, arthritis pain in hands and pain in general all over." She related that she had "been using heavy equipment at work this week[,] and [it] has really caused some pain." The Review of Systems portion of that office visit note states, in part: "Musco: Joint Pains - Leg Swelling-, Myalgia-, Pain in hand-, Pain in lower back- No Arthritis Pain, Edema, Muscle cramps, Other, Pain in ankle, Pain in hip, Pain in knee, Pain in mid back, Pain in neck, Pain in shoulder, Pain in wrist, Weakness." After conducting a physical examination of Ms. Franklin's back and extremities, the nurse practitioner noted "lumbar tenderness" and "Joints severe pain with palpation over bilateral SI joints. Multiple moderate to severe tender points upper and lower extremities." Id.

"Comparison of Ms. Franklin's previous visit on May 2, 2011, to her June 2, 2011 visit shows her physical condition had clearly declined during that one month interval. The May 2, 2011 office visit note reflects that Ms. Franklin did not complain of back pain, hand pain, or joint pain on that date and that examination of her spine showed her spinal curvature was normal and her spine and musculature were "non tender." Ms. Franklin's condition continued to worsen after her June 2, 2011 visit. Her nurse practitioner prescribed physical therapy which initially progressed well. Approximately three months after beginning therapy, however, Ms. Franklin began complaining to her physical therapist of soreness and pain and "catching along the bilateral SI joint." He suspected the increased pain and catching were related to her use of the treadmill which he believed caused sacral inflammation. The physical therapist recommended that Ms. Franklin not be allowed to return to work due to the heavy lifting requirements of her job." Id.

"Ms. Franklin was referred to an orthopedic surgeon who opined that she had a probable "HNP" (herniated nucleus pulposus) at L4-5 and recommended that she undergo an MRI and attend physical therapy. CPSB refused to pay the cost of this recommended treatment. Our review of the record reveals no basis for the reversal of the WCJ's determination that Ms. Franklin carried her burden of proof. Evidence exists that casts doubt upon Ms. Franklin's testimony regarding her accident, but other testimony and medical evidence corroborate her claims." Id.

"Ms. Franklin answered the appeal, seeking an award of attorney fees for the work performed by her attorney on appeal. We award $2,500.00 for the work her attorney performed on appeal." *Franklin v. Calcasieu Parish Sch. Bd.*, 108 So. 3d 907 (La. App. 3 Cir. 2013)

Bollich v. Family Dollar, Inc. 05-1459 (La. App. 3 Cir. 6/21/06), 934 So.2d 249 is an example in which the employee failed to carry the burden of proving a job accident:

Mrs. Bollich worked as a manager for Family Dollar Store (Family Dollar). On August 17, 2002, she was unloading boxes of groceries stacked on a dolly when some of the boxes fell, with one striking her in the rib cage and another scraping her left leg. She was initially treated in the emergency room on August 23, 2002, where she was given a rib belt and pain medication for complaints of chest pain caused by a box falling on her at work. She returned to the emergency room the next day, where she was diagnosed with a fracture of the seventh left rib. Thereafter, she returned to the emergency room several times in October of 2002, with chief complaints of headache pain radiating from the base of the skull, or top of the neck, to the head. At these visits, she did not relate her symptoms to a recent trauma, but rather she reported a history of hypertension and chronic headaches, and she referenced an automobile accident that occurred several years ago.

In the present case, the record reveals that Mrs. Bollich had a history of neck pain and headaches before this accident and that her hypertension and thyroid problems predated the accident as well. In her emergency room visits in October of 2002, Mrs. Bollich did not relate her symptoms to a recent, work-related trauma, but instead reported her history of hypertension, chronic headaches, and an automobile accident that occurred many years ago. In November of 2002, she applied for disability payments, stating that her neck and headache symptoms were not work related.

Two of Mrs. Bolllich's treating physicians, Dr. Molleston and Dr. Bernauer, did relate her neck injury to an accident of August 17, 2002; however, their description of the accident varies with that of the employer's accident report and Mrs. Bollich's testimony at trial. Dr. Molleston's records reflect a history of falling and being struck by several boxes, but Mrs. Bollich testified that only one box hit her rib cage and the accident report does not mention a fall. Dr. Bernauer stated that his opinion as to causation was based upon an accident history in "which she fell hitting her head and having boxes fall on her." At trial, Mrs. Bollich denied that she told Dr. Bernauer that she hit her head, and the medical

records make no reference to a head trauma.

On the record before us, we cannot conclude that the WCJ committed a legal error in not applying the presumption of causation, given Mrs. Bollich's pre-accident medical history, the lack of corroboration of a trauma-induced neck injury in the medical records most recent to the accident, and the various discrepancies of the accident history that appear in the later records. Accordingly, we find no manifest error in the WCJ's failure to award indemnity and medical benefits.

Degenerative Condition is Not an Accident

The Workers' Compensation Act is not intended to cover injury or illness which is "simply a gradual deterioration progressive degeneration." The courts have struggled greatly with this issue. When is an injury to a worker the cause of their physical breakdown as opposed to the general aging process? As we have discussed, it is not the goal of workers compensation to provide health insurance for workers. The purpose of workers' compensation is to place the expense of work related injuries on the employer. The question becomes, is the employee simply wearing down due to old age or illnesses unrelated to his employment, or is the employment somehow the catalyst of the ultimate breakdown of the physical body of the workers?

Cases on this issue are widely varied. Often times the outcome is determined by the credibility of the employee. Unfortunately, a very honest employee often will testify themselves out of the possibility of workers' compensation recovery. When an employee testifies emphatically that he did not have an accident, but the employee feels like their condition started at work or was somehow related to work, they will be denied workers' compensation benefits. If, on the other hand, an employee with a history of low back pain testifies that the back pain was materially different following a very minor accident occurring at work, the courts will often give that employee recovery.

> *McConnell v. City of Ruston, 660 So. 2d 100 (La. App. 2 Cir. Aug. 23, 1995). Flat footedness provides an illustration of the difference between a degenerative condition and an accident. In McConnell, the Court of Appeal concluded that a worker with flat feet did not have an "accident", and therefore, was not entitled to workers' compensation*:

McConnell alleged that he has been totally disabled from working since February 1991, and by the effect of his work on a congenital foot condition, flat-footedness, which condition made him susceptible to developing painful lesions or calluses on the soles of his feet.

McConnell testified that he had no problems with his feet until October or November of 1990, shortly after he was assigned to the box truck crew and began spending more of his work time on his feet. He said he then began developing calluses which hurt "a little bit" at first, but "gradually" and "progressively" became more painful over the next

few months, prompting him to seek treatment from a podiatrist on February 18, 1991.

McConnell attributed the calluses to his frequently having to step or jump a distance of 1 1/2 -3 feet to get in and out of the passenger compartment of the box truck, depending on whether he used the step on the side of the truck or simply jumped to the ground. He could not recall a specific incident or event that triggered the onset of the calluses.

With respect to the foot condition, which McConnell said developed gradually, and which was not alleged or shown to have resulted from an identifiable incident or event that may be construed as an "accident" under the w.c. law, the City contends compensation is legally barred, citing the statutory definition of the term "accident," LRS 23:1021(1), as amended by Acts 1989, No. 454, and this court's interpretation of the amended definition in *Rice v. AT & T, 614 So. 2d 358 (La. App. 2d Cir. 1993)*. See discussion infra.

"Accident" means an unexpected or unforeseen actual, identifiable, precipitous event happening suddenly or violently, with or without human fault, and directly producing at the time objective findings of an injury **which is more than simply a gradual deterioration or progressive degeneration**.

LRS 23:1021(1), as amended by Acts 1989, No. 454, effective Jan. 1, 1990. Our emphasis.

The emphasized language did not appear in the pre-1990 definition, leading this court to conclude, in *Rice v. AT & T*, cited supra, that the amendment reflected the legislature's deliberate intention "to . . . reduce the circumstances which amounted to an accident under [the pre-1990] law." Fn. 3, *614 So. 2d at 361*. Our brackets.

McConnell gave this testimony about his foot calluses:

Q. When did your foot problem start; do you know?

A. It started -- my feet started bothering me between October and November a little bit, just slightly. But it progressively got worse.

Q. Now, where were you when you hurt your feet?

A. **I don't know.** Like I say, **it started gradually hurting.**

Q. Can you give me an idea of what caused it to hurt?

A. I think jumping in and out of that truck in cold weather, 20 degrees, your feet wet, **jumping in and out of that truck.** That's what I think it started from.

Q. But this started you think in October or November while you were on the job?

A. Yeah. **Gradually starting to build up,** yes. (Our emphasis.)

According to the office notes of McConnell's podiatrist, Dr. Reeves, McConnell's chief complaint on his initial visit, February 18, 1991, was "painful feet making work hard to accomplish." McConnell gave Dr. Reeves a description of his normal job duties for the City, and said his feet had been bothering him for about four months, but did not mention a particular incident or event that he associated with the onset of the calluses, other than "walking on and off the truck." McConnell was then 49 years old and had held other jobs that require frequent standing, such as finishing concrete and managing restaurants, for many years before he began working for the City.

In his deposition, Dr. Reeves explained the correlation between McConnell's flat-footedness and the painful calluses, or keratosis:

What I mean by flat feet, he has no arch. When his foot strikes the ground, it strikes it in a totally flat plane which is not . . . normal and is considered a deformity in the sense that it tends to promote these . . . calluses that he came in complaining and showing me were hurting him. And this type of foot problem [flat-footedness] . . . [is] something that he . . . had at birth, and it's not something that is . . . caused by a job.

He stated to me in his medical history that this had only bothered him for four months prior to my seeing him, and the type of foot that he has been there since birth. . . . **He may have been . . . undergoing** a **change where . . . his foot type with the flat feet couldn't tolerate this kind of work anymore, and the end result is that these [calluses] start to arise.**

And if I could use an analogy, it would be like a ballplayer who's a pitcher going out and pitching a baseball game and he's been doing it for quite a while, but he's getting on up [in] age [and] the amount of stress that he's putting on himself begins to work on his . . . muscles, bone structure, skin structure. **As he gets older, his body can't tolerate [as] much stress as it once did,** maybe, say, when he was [20] years old, and . . . if he continues to do the kind of regimen that he's required to do in either . . . pitching or, in this case, walking or jumping on and off a truck, **the end result is that the foot starts to break down** and develop these . . . [calluses]. (Our emphasis and brackets.)

In a letter report that McConnell delivered to his supervisor shortly after his visit to Dr. Reeves, the doctor opined that McConnell's "**normal work/walking on and off truck** . . . has made a normally asymptomatic foot deformity [flat-footedness] crippling . . . Return patient to previous job description, eliminating walking on and off vehicle." (Our emphasis.) The City had no job openings within these restrictions. McConnell elected not to return to his former duties, effectively terminating his employment with the City on February 20, 1991.

The hearing officer found that McConnell "accelerated his pre-existing foot condition while employed . . . [by] the City of Ruston. This condition occurred as the result of his jumping in and out of the garbage truck daily, as well as in and out of the [trash] bins

in search of the boxes to be thrown out."

The evidence in this record, even when viewed most favorably to McConnell, does not prove the requisite element of *accidental injury* under § 1031, as that term has been legislatively defined in § 1021(1). Absent such proof, McConnell is not entitled to recover weekly benefits (§ 1221) or medical and travel expenses (§ 1203) for his foot injury.

Aggravation of Degenerative Condition Is an Accident

Dyson v. State Employees Group Ben. Program, 610 So. 2d 953 (La. App. 1 Cir. 1992). By contrast, the Dyson court in found the aggravation of preexisting flat footedness to be an accident:

Mrs. Dyson began work for the State as an "Examiner II", a sedentary job in which she typed the information needed to handle benefits claims. Two years later, in March 1990, she began work as a "Clerk III". This job required her to stand all day, except during allotted breaks, at the photocopier making copies. In unrebutted testimony, Mrs. Dyson stated that she began feeling very light pain in her feet approximately one month after taking on her new responsibilities.

On June 22, 1990, Mrs. Dyson testified that she felt very sharp pain "shoot" through her feet as she turned, or pivoted, to pick up a large bundle of copies. The stack of copies was unusually large because the fiscal year was drawing to a close. The bundle was approximately two feet thick. Normally these stacks were no more than approximately two inches thick. However, Mrs. Dyson also testified that the weight of the copies did not contribute to her episode of pain, but that the turning or pivoting movement alone caused her pain.

Mrs. Dyson notified her immediate supervisor on Monday, June 25th, and was told to take it easy for two days. When Betty Browning, the office manager, returned from sick leave on Wednesday, June 27th, Mrs. Dyson was told to resume her former duties even though her feet were still swollen and painful. On Friday, June 29th, Mrs. Dyson went to see Dr. Kucharchuk, an orthopedic surgeon, who prescribed orthotic lifts for her to wear in her shoes, and who told her not to stand for more than one hour at a time.

This was a restriction that neither Betty Browning nor the State were apparently willing to honor. Mrs. Dyson was fired on July 24, 1990, after her sick leave expired and a pre-termination hearing was not resolved in her favor.

Dr. Kucharchuk testified by deposition and stated that Mrs. Dyson has flat feet, making her more prone to foot problems caused by prolonged standing. He further stated that he diagnosed her problem as plantar fasciitis, an inflammation in the heel area common in people like Mrs. Dyson who are overweight, flatfooted, and required to stand on their feet for prolonged periods of time. Dr. Kucharchuk further explained that this is a

cumulative trauma disorder that is nonapparent until sufficiently aggravated by, for example, prolonged standing when it becomes apparent by pain. Dr. Kucharchuk stated that Mrs. Dyson's flat feet were not caused by prolonged standing, as that is a developmental defect, but that the work activities she engaged in caused her flat feet to result in plantar fasciitis.

The State contends that these facts show that Mrs. Dyson had a gradual or progressive degeneration of her feet of the type meant to be excluded from worker's compensation coverage by the amendment to *La. R.S. 23:1021(1)*'s definition of accident because there is no actual, identifiable, or precipitous event marking the development of her condition. The State contends that the sharp pain Mrs. Dyson experienced is insufficient, alone, to constitute an accident because "*in every gradual, progressive infirmity there must be some point at which the full-blown condition manifests itself.*"

The State argues that the sudden onset of pain in Mrs. Dyson's feet does not satisfy the requirement that there be an unexpected, unforeseen, actual, identifiable, and precipitous event because all diseases progress to this point. This argument is wholly lacking in merit. At no time in this case has Mrs. Dyson claimed that the mere onset of her pain constituted an "event" such as that contemplated by the definition of accident. In this case, the "event" would be the pivoting or turning movement Mrs. Dyson made which immediately preceded her pain. It may be true that all diseases progress to this point, but, to follow the State's rationale, this would mean that no disease could be said to result from an "event".

The State also argues, even if the onset of her pain was sudden and traceable to a single event, that Mrs. Dyson's injury is nothing more than a gradual deterioration or progressive degeneration of her already flat feet. In support of its contentions, the State relies heavily upon the term Dr. Kucharchuk applies to plantar fasciitis: cumulative trauma disorder.

The term reflects the development of plantar fasciitis. It is a condition that develops over time as a result of nonapparent stress that will eventually signal the appearance of the mature condition through sudden pain. This, Dr. Kucharchuk testified, is what happened to Mrs. Dyson after standing on her feet for eight hours a day for several months when, upon turning and feeling sharp pain "shoot" through her feet, she became aware of her condition. Dr. Kucharchuk's description of Mrs. Dyson's injury appears to match this latter part of the definition of accident, because her injury is, partially, the result of a gradual deterioration or progressive degeneration of her already flat feet.

However, as Mrs. Dyson correctly argues, an otherwise healthy employee with a preexisting condition is entitled to benefits if she can prove that her work contributed to, aggravated, or accelerated her injury. This is still the meaning of the last clause of section 1021(1), which requires that an injured employee be able to identify the event marking the time when one can identify an injury. In this case, it was the pivoting movement Mrs. Dyson made. It may be true, as the State has suggested, that Mrs. Dyson might have eventually reached the same point without an identifiable, on-the-job injury. But the

suggestion in no way alters the fact that Mrs. Dyson can, and has, identified the moment her preexisting condition became an injury through her accident.

Cases suggesting that the amendments to section 1021(1) were meant to exclude from coverage people like Mrs. Dyson, and many others, who are worn down by their work rather than immediately crippled by it are not consistent with the purpose of the worker's compensation scheme, and are not to be followed. See *Nelson v. Roadway Express, Inc., 573 So.2d 591, 595 n.3* (La. App. 2d Cir.), *reversed on other grounds*, *588 So.2d 350 (La. 1991)*. Considering the nature of Mrs. Dyson's injury in light of these amendments, we are still able to find that Mrs. Dyson did suffer an accident within the meaning of *La. R.S. 23:1021(1)*, and is, therefore, entitled to worker's compensation benefits.