

Yetter, Gary

RETROACTIVITY OF STATUTORY AMENDMENTS

Mental/Mental Occupational Disease claims for firefighters and Law enforcement officers

Statutory amendments to RCW 51.08.142 and RCW 51.32.185 contain no language providing for retroactive application and are neither curative nor remedial; such amendments operate prospectively and will not apply retroactively to conditions diagnosed prior to the amendments effective date.*In re Gary Yetter*, BIIA Dec., **1911900 (2020)** [*Editor's Note:* The Board's decision was appealed to superior court under King County Cause No. 21-2-00347-4 SEA]

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

IN RE: GARY A. YETTER

DOCKET NO. 19 11900

CLAIM NO. SK-90738

DECISION AND ORDER

In 2017, Gary Yetter retired from his position as a King County Medic One paramedic firefighter. Mr. Yetter said he retired because of post-traumatic stress disorder (PTSD) he developed from regular and continuous exposure to traumatic calls over the course of his career. On June 7, 2018, Substitute Senate Bill 6214, which created a mental/mental occupational disease claim for firefighters and law enforcement officers, took effect. At the end of the following month, Mr. Yetter filed this application for benefits. The Department rejected Mr. Yetter's claim. Mr. Yetter seeks retroactive application of SSB 6214's changes. Our industrial appeals judge determined that SSB 6214 was not retroactive and affirmed claim rejection. All parties petitioned for review. Mr. Yetter seeks allowance of his claim via retroactive application of the amendments. The Department asks us to strike as irrelevant certain portions of evidence offered in support of claimant's statutory construction arguments. The employer seeks clarity in the Conclusions of Law to comprehensively address all findings. We agree that SSB 6214 is not retroactive. We granted review strictly to supplement the findings and conclusions, in part as suggested by the employer and in part to correctly cite the statute impacted by SSB 6214 to allow firefighters to file occupational disease claims for PTSD (that is, RCW 51.08.142). The Department order denying Mr. Yetter's claim is **AFFIRMED.**

DISCUSSION

The parties filed cross motions for summary judgment. The following documents were considered in connection with the summary judgment motions.

1. The claimant's Motion for Summary Judgment and supporting documentation dated June 11, 2020.
 - a. Declaration of Michael White with attached Exhibit 1.
 - b. Declaration of Gary Yetter with attached SIF (2) form.
 - c. Declaration of Brian M. Wright with attached Exhibits 1 through 7.
2. The Department's Motion for Summary Judgment dated June 10, 2020.
3. The Self-Insured Employer's Motion for Summary Judgment and supporting documentation dated June 11, 2020.
 - a. Affidavit of Counsel with attached Exhibit 1.
4. Claimant's Response to Department's and Employer's Motions for Summary Judgment dated June 24, 2020.

- 1 5. Department's Response to Claimant's Motion for Summary Judgment
- 2 dated June 24, 2020.
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- 4 6. Self-Insured Employer's Response to Claimant's Motion for Summary
- 5 Judgment dated June 24, 2020.
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- 7 7. Claimant's Reply in Support of Motion for Summary Judgment.
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- 9 8. Department's Reply in Support of Motion for Summary Judgment.
- 10 9. Self-Insured Employer's Reply to Claimant's Response in Support of
- 11 Motion for Summary Judgment.

12 Gary Yetter, a paramedic firefighter, retired from King County Medic One on August 31, 2017,
13 due to PTSD he developed from regular and continuous exposure to traumatic calls over the course
14 of his career. Historically, mental conditions or disabilities caused by stress, including PTSD, have
15 not met the definition of an occupational disease for any worker in any occupation.¹

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17 That changed on June 7, 2018, when SSB 6214 took effect. The legislation authorized
18 firefighters and law enforcement officers diagnosed with PTSD to obtain benefits under the Act. While
19 a worker may wait up to a year to file an injury claim² and two years from notice to file an occupational
20 disease claim,³ a worker's rights "are controlled by the law in force at the time of the person's injury,
21 rather than by a law which becomes effective subsequently."⁴ Thus, although Mr. Yetter filed his
22 Application for Benefits after SSB 6214 took effect, because he was diagnosed with and retired due
23 to PTSD in 2017 (months before SSB 6214 took effect), this dispute boils down to whether SSB 6214
24 applies retroactively.

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26 There is no genuine issue as to any material fact or law and the Department/employer are
27 entitled to judgment as a matter of law. In Washington, statutes are presumed to operate
28 prospectively.⁵ This presumption is overcome only when the Legislature explicitly provides for
29 retroactivity, when the amendment is "curative," or when the statute is "remedial."⁶ None of those
30 exceptions apply.

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43 ¹ RCW 51.08.142(1); WAC 296-14-300; *Rothwell v. Nine Mile Falls Sch. Dist.*, 149 Wn. App. 771 (2009).

44 ² RCW 51.28.050.

45 ³ RCW 51.28.055.

46 ⁴ *Ashenbrenner v. Dep't of Labor & Indus.*, 62 Wn.2d 22 (1963).

47 ⁵ *Ashenbrenner*, at 25 (quoting *Lynch v. Dep't of Labor & Indus.*, 19 Wn.2d 802 (1944)).

⁶ *Densley v. Dep't of Ret. Sys.*, 162 Wn.2d 210 (2007).

1 ***The SSB 6214 Amendments Do Not Explicitly Provide for Retroactivity***

2 Because the amendments are unambiguous, it is not appropriate to resort to statutory
3 construction or legislative history to determine legislative intent.⁷ Arguing that various pieces of
4 evidence, including testimony provided by non-legislators, is irrelevant in this inquiry, the Department
5 has asked us to strike certain portions of Mr. Yetter's statutory construction/legislative history
6 arguments. But here, neither RCW 51.08.142 nor RCW 51.32.185 contain language explicitly
7 providing for retroactivity. Instead, only present and future tenses are used. This becomes
8 particularly clear when compared to the Legislature's contemporaneous amendments establishing
9 the retroactive Hanford presumption, RCW 51.32.187(5), which specifically provides the following:

- 10 (c) This section applies to decisions made after June 7, 2018, without regard
11 to the date of last injurious exposure or claim filing.

12 Considering we need not resort to a legislative history analysis, admission of the evidence addressed
13 in the Department's Petition for Review, even if incorrect, constitutes harmless error.

14 ***The SSB 6214 Amendments are not Curative***

15 An amendment is curative only if it clarifies or technically corrects an ambiguous statute.⁸ But,
16 the previous version of RCW 51.08.142 was not ambiguous. It clearly excluded from the definition
17 of occupational disease any claims for mental conditions caused by stress. SSB 6214 **created an**
18 **exception** to that rule, but only for firefighters and law enforcement officers with PTSD. This was not
19 a technical correction to a statute, but rather, a substantive change to the language of a statute that
20 had not altered since its adoption in 1988.⁹

21 ***The SSB 6214 Amendments are not Remedial***

22 Remedial statute relates to practice, procedure, or remedies. They do not affect substantive
23 or vested rights.¹⁰ Remedial statutes do not create a new right of action.¹¹ Here, SSB 6214 created
24 a new right of action for a certain class of workers under the Industrial Insurance Act. Prior to June 7,
25 2018, all workers were explicitly barred from obtaining occupational disease coverage for mental
26 conditions caused by stress. Beginning on June 7, 2018, firefighters and law enforcement officers
27 could obtain coverage for PTSD, a mental condition caused by stress, as an occupational disease.

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44 ⁷ *State v. Velasquez*, 176 Wn.2d 333 (2013); *Griffin v. Thurston Cty.*, 165 Wn.2d 50 (2008).

45 ⁸ *State v. Jones*, 110 Wn.2d 74 (1988).

46 ⁹ Compare Laws of 1988, ch. 161, § 16 with RCW 51.08.142 (2017).

47 ¹⁰ *Miebach v. Colasurdo*, 102 Wn.2d 170 (1984).

¹¹ *Loeffelholz v. Univ. of Wash.*, 175 Wn.2d 264 (2012).

1 In conclusion, while we wish to gratefully acknowledge the decades that Mr. Yetter has spent
2 in service of the public, and while we are sure this result is certain to be disappointing to him, as an
3 administrative tribunal, we may authorize benefits only insofar as they have been conferred to
4 Washington workers by their Legislature.
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7 **DECISION**

8 In Docket No. 19 11900, the claimant, Gary A. Yetter, filed an appeal with the Board of
9 Industrial Insurance Appeals on March 6, 2019, from an order of the Department of Labor and
10 Industries dated January 10, 2019. In this order, the Department denied Mr. Yetter's claim as neither
11 an industrial injury nor an occupational disease. This order is correct and is affirmed.
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15 **FINDINGS OF FACT**

- 16 1. On April 30, 2019, and July 8, 2020, an industrial appeals judge certified
17 that the parties agreed to include the Jurisdictional History in the Board
18 record solely for jurisdictional purposes.
- 19 2. Gary Yetter worked as a paramedic firefighter for 22 years for King County
20 Medic One until he retired, on January 5, 2017, effective August 31, 2017.
- 21 3. Mr. Yetter identified post-traumatic stress disorder (PTSD) not caused by
22 any one incident or event as the reason he removed himself from
23 employment as a paramedic firefighter with King County on January 5,
24 2017.
- 25 4. On July 31, 2018, the Department received Mr. Yetter's claim for benefits
26 for PTSD with a date of manifestation of January 5, 2017.
- 27 5. On January 10, 2019, the Department issued an order that denied the
28 claim because the contended condition was not an industrial injury, and
29 because it was not an occupational disease and is excluded from
30 coverage as a mental condition caused by stress.
- 31 6. Former RCW 51.08.142, in effect on January 5, 2017, bars occupational
32 disease claims for mental health conditions caused by stress.
- 33 7. An amendment to RCW 51.08.142, which became effective on June 7,
34 2018, allows paramedic firefighters to file claims for PTSD as an
35 occupational disease.
- 36 8. The pleadings and evidence submitted by the parties demonstrate that
37 there is no genuine issue as to any material fact.

38 **CONCLUSIONS OF LAW**

- 39 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
40 and subject matter in this appeal.
- 41 2. Gary Yetter worked for 22 years as a firefighter within the meaning of
42 RCW 51.08.142.

3. Former RCW 51.08.142 was the law in effect on January 5, 2017.
4. The June 7, 2018 amendments to RCW 51.08.142 and RCW 51.32.185 are not retroactive.
5. Under former RCW 51.08.142, Mr. Yetter's claim is excluded from coverage as an occupational disease.
6. Mr. Yetter did not sustain an industrial injury within the meaning of RCW 51.08.100.
7. The Department and the employer are entitled to a decision as a matter of law as contemplated by CR 56.
8. The Department order dated January 10, 2019, is correct and is affirmed.

Dated: December 14, 2020.

BOARD OF INDUSTRIAL INSURANCE APPEALS



LINDA L. WILLIAMS, Chairperson



JACK S. ENG, Member

Addendum to Decision and Order
In re Gary A. Yetter
Docket No. 19 11900
Claim No. SK-90738

Appearances

Claimant, Gary A. Yetter, by Causey Wright Industrial Strength Law, per Brian M. Wright
Self-Insured Employer, King County, by Holmes Weddle & Barcott PC, per Ann M. Silvernale
Department of Labor and Industries, by Office of the Attorney General, per Kendra E. LaCour

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The claimant and employer filed timely Petitions for Review of a Proposed Decision and Order issued on September 11, 2020, in which the industrial appeals judge affirmed the Department order dated January 10, 2019. On November 5, 2020, the Department filed a reply to the claimant's Petition for Review.

Evidentiary Rulings

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed. The rulings are affirmed.