Heimbecker, Kenneth

INJURY (RCW 51.08.100)

"Physical conditions"

In addition to a tangible happening, there must be a resulting physical condition or bodily harm before an industrial accident can constitute an "injury," and the causal relationship between the physical condition and the accident must be established by medical testimony.In re Kenneth Heimbecker, BIIA Dec., 41,998 (1975)

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS STATE OF WASHINGTON

IN RE: KENNETH E. HEIMBECKER)	DOCKET NO. 41,998
	`	

CLAIM NO. G 308210) DECISION AND ORDER

APPEARANCES:

Claimant, Kenneth E. Heimbecker, by Bovy, Graham, Cohen & Wampold, per Norman Cohen, and John Carlson, Associate Counsel

Employer, Fred Jansen, by R. A. Hensel

Department of Labor and Industries, by The Attorney General, per James D. Pack, Assistant

This is an appeal filed by the claimant on January 10, 1973, from an order of the Department of Labor and Industries dated December 20, 1972, which rejected this claim for the reason that the claimant's condition was pre-existing and was unrelated to the injury for which this claim was filed.

REVERSED AND REMANDED.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order issued by a hearing examiner for this Board on January 15, 1974, in which the order of the Department dated December 20, 1972, was sustained.

The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no prejudicial error was committed and said rulings are hereby affirmed.

The issue in this case is whether the claimant sustained an "injury" within the meaning of the Act, in the course of his employment for Fred Jansen, a wheat farmer at Mansfield, Washington, on May 12, 1972.

The evidence definitely establishes that a traumatic incident did occur in the course of claimant's employment on May 12, 1972. There was some confusion at first as to whether the actual date of the incident was May 19 or May 12, but we are satisfied that the earlier date is the correct one. The incident occurred while the claimant was servicing a farm tractor, and he raised up and struck the back of his head or neck on a metal hydraulic lift bracing on the front of the

tractor. Specifically, he said he struck the base of his skull where it "hooks onto" the neck. He felt a little dizzy for about five minutes, and then returned to his tasks, but he testified that thereafter he suffered a stiff and painful neck.

The claimant raises the argument for the first time in his Petition for Review, that a finding that this incident occurred is all that is necessary for the Board to reverse the Department's rejection order. This argument is inconsistent with his notice of appeal and with his own presentation of evidence in support of his appeal. The argument is not correct. The term "injury," as defined by RCW 51.08.100, has two distinct elements. First, there is the tangible happening or incident which may be termed the accident. Second, there must be a resulting "physical condition," or what may be termed the bodily harm. Obviously, every slip, fall, bump, and the like, does not result in bodily harm -- in other words, not every accident results in some physical condition. Thus, every industrial accident does not constitute an industrial "injury." Further, the law requires that causal relationship between the incident and the physical condition must be established by medical testimony. Jackson v. Department of Labor & Industries, 54 Wn. 2d 643.

Especially is this true in this case, where one of the grounds for the Department's rejection order was specifically that claimant's physical condition was pre-existing and was unrelated to the alleged incident on the job; and the claimant's notice of appeal from said order challenged that finding and alleged that his causally-related conditions included "injuries to his emotional constitution, back, legs, extremities, head, neck, and viscera with resulting disability in the claimant." Furthermore, the great majority of the evidence presented at the hearings herein, by counsel for the claimant as well as the Department, had to do with the medical questions of diagnosis of claimant's abnormal physical conditions, and, more particularly, which of such conditions resulted from the incident of May 12, 1972, and which of them were not causally related to said incident. Thus, the issue of presence or absence of causal relationship of claimant's conditions to the May 12, 1972 incident is clearly the principle issue before this Board for decisions in this case, and we will make findings thereon. See Lenk v. Department of Labor & Industries, 3 Wn. App. 977 (1970), which is in complete accord with our conclusion as to the issues which we should decide in this appeal.

Turning, then, to the medical evidence, we find that Dr. Merton D. Proctor, a general practitioner of East Wenatchee and claimant's medical witness, testified that he first examined and treated the claimant on June 20, 1972 (after claimant had previously visited a doctor in Davenport,

Washington). Dr. Proctor received a history of the May 12, 1972 incident in accord with claimant's testimony herein, and he diagnosed an acute cervical myositis caused by that incident. He treated the claimant a number of times thereafter. He further defined cervical myositis as an acute inflammation of the muscles of the neck, and he said that there were objective findings to confirm his diagnosis, including tenderness and spasm in the cervical spine muscles, and limited neck motions on rotation, flexion and extension.

Dr. Proctor, at the time he first saw the claimant, was not aware of complaints and problems which claimant previously had regarding headaches, sub-occipital pain, and dizzy spells, extending back to late 1968 at least, for which he had undergone extensive diagnostic studies for suspected brain damage while living in California in 1969, and also complaints of headaches, dizziness, generalized nervousness, ringing in the ears, and blackout spells for which he visited a neurosurgeon in Everett in March of 1972.

It is the Department's position that these varied complaints were all part and parcel of conditions which existed prior to the incident of May 12, 1972, and which continued in existence there-after, but totally unaffected by said incident. This was the sub-stance of the testimony of Dr. Robert M. Rankin, a clinical neurologist and the Department's medical witness, who had examined claimant in December of 1968 and examined him again on November 20, 1972. Based on the latter examination, and the various head complaints of the claimant, Dr. Rankin diagnosed claimant's condition as a chronic neuromuscular tension state, and secondly a psycho-physiologic reaction, which is a mental condition evidenced in this case by a generalized nervousness and shakiness. It was Dr. Rankin's testimony that these diagnosed conditions were not due to any effects of the incident of May 12, 1972.

The one weakness in Dr. Rankin's testimony is that, in our opinion, he did not satisfactorily explain why he felt the objective findings of cervical myositis as made by Dr. Proctor in July of 1972 were unrelated to the claimant's tractor incident in May, 1972, in face of the facts that claimant apparently did <u>not</u> have <u>neck</u> pain and stiffness (as distinguished from his various complaints referable to the <u>head</u>) prior to that incident, and that Dr. Rankin, at his 1968 examination, did not find any limitations of neck motions.

Dr. Proctor's testimony, on the other hand, is persuasive in connecting the neck condition of acute cervical myositis to the incident of May 12, 1972. Once he was made aware, during the course of his treatment of the neck condition, of claimant's prior history of head symptoms and

treatment therefor, he seriously considered the question of whether the neck and head conditions were somehow interrelated or were separate problems. His testimony on this question was:

"A After I first saw Mr. Heimbecker and started treating him, he then started coming in with regard to these blacking out spells, so that this was another aspect of his problem. At the time I was concerned and sought out evidence in consultation, with possible intracranial disease which was causing these problems as opposed to the neck problem, and I felt after getting the information from Dr. Mead, who is a neurosurgeon here, which was another consultation, he indicated that Mr. Heimbecker had seen Dr. Johnston with regard to these symptoms, the headache, dizziness and blackout spells, but no mention was made to Dr. Mead or in Dr. Rankin's report with regard to neck problems, it was primarily the head.

A It raised questions about his general condition as to whether he was giving me the whole information; the point, however, is, regardless the patient was complaining about dizziness and passing out before the accident, and when he came to me he was complaining about neck pain and subsequently headaches and blackouts, and dizzy spells, I initially started typing the three things together as far as the injury was concerned, but I was unable to confirm the fact that the blackout spells, the dizziness and the headaches were necessarily related to the accident, but that his neck problem was.

- Q You indicated you felt his condition of myositis of the neck was acute as opposed to chronic, I presume, because you said it was responsive to some of your treatment, is that correct?
- A That's correct.

- Q Yes, but as far as causal relationship, <u>cervical myositis is the only thing</u> you say was probably either caused by or aggravated by that alleged <u>injury of May 1972</u>?
- A That's correct.

In this case when you formed your opinion as to causal relationship between the alleged injury of May 1972 and the diagnosis of cervical myositis, you were presuming, were you not, that the claimant's history that he had no problems for a month or two before this industrial injury was true?

A When we first started, yes, but as the case developed and I got this other information, then I was able to at least in my mind separate the two things, they weren't necessarily related to each other, the neck was one thing and the head was another." (Emphasis supplied)

In accord with claimant's medical witness' opinions, it is clear that we should find that claimant's <u>neck</u> condition of acute cervical myositis, as diagnosed by the doctor, <u>was caused</u> by his traumatic incident of May 12, 1972 on the job. Likewise, it is equally clear that claimant's <u>head</u> conditions, as evidenced by his several long-standing complaints showing chronic head and metal problems, must be found to be <u>unrelated</u> to said incident.

FINDINGS OF FACT

In view of the foregoing, and after reviewing the entire record herein, the Board finds as follows:

- 1. The Department of Labor and Industries on June 20, 1972, received an accident report from the claimant, Kenneth E. Heimbecker, alleging that an industrial accident had occurred on May 19, 1972, while claimant was in the course and scope of his employment with Fred Jansen, a wheat farmer, which resulted in an injury to claimant's neck.
- 2. On August 14, 1972, the Department entered an order rejecting the claim for the reason that at the time of the injury the claimant was not in the course of his employment. On August 30, 1972, the Department entered an order holding in abeyance the Department's order of August 14, 1972. On December 20, 1972, the Department entered an order stating as follows:

"WHEREAS, this claim was filed for an alleged injury occurring on May 19, 1972, and

WHEREAS, subsequent investigation and the claimant's affidavit reveals that the claimant alleges the injury occurred on May 12, 1972, and

WHEREAS, this claim was rejected by Order and Notice dated August 14, 1972, for the reason that at the time of injury the claimant was not in the course of his employment, and

WHEREAS, timely request for reconsideration was received from the claimant, and

WHEREAS, further investigation and medical evidence reveals that the claimant's condition pre-dates both dates of alleged injury and the claimant's condition is pre-existing and is unrelated to the injury for which this claim is filed:

- IT IS HEREBY ORDERED that the claim remain rejected for the reasons cited above, CLAIM IS HEREBY REJECTED."
- 3. On January 10, 1973, claimant filed a notice of appeal from the Department's order of December 20, 1972, and on January 19, 1973, the Board of Industrial Insurance Appeals entered an order granting the appeal, and hearings were held thereafter.
- 4. On May 12, 1972, the claimant, while in the course of his employment, struck the back of his neck at the base of the skull, on a metal hydraulic lift bracing on the front of a farm tractor.
- 5. As the result of the incident described in Finding No. 4, the claimant sustained an acute cervical myositis, which is an acute inflammation of the muscles of the neck, and which condition was confirmed by medical findings of tenderness and spasm in the cervical muscles and some limited neck motions.
- 6. The claimant has had chronic head and mental conditions, which were medically observed as early as 1968, and again in 1969 and in March of 1972, manifested by complaints of headaches, pain in the occipital region, dizziness, blackout spells, ringing in the ears, and generalized nervousness and tremor, and diagnosed as chronic neuromuscular tension state and a psychophysiologic reaction. These conditions are unrelated to the claimant's job incident of May 12, 1972 described in Finding No. 4.

CONCLUSIONS OF LAW

Based on the foregoing findings, the Board concludes:

- 1. The Board has jurisdiction of the parties and the subject matter of this appeal.
- 2. The claimant sustained an industrial injury in the course of his employment on May 12, 1972, producing a condition of acute cervical myositis.
- 3. The order of the Department of Labor and Industries dated December 20, 1972, rejecting this claim, is incorrect and is reversed, and the claim is remanded to the Department with direction to allow the claim for the acute cervical myositis condition, and to take such further action as may be indicated and authorized or required by law.

It is so ORDERED.

Dated this 29th day of August, 1975.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
PHILLIP T. BORK Chairman

/s/
R. M. GILMORE Member

/s/
SAM KINVILLE Member