### Cooper, Laura

## **INJURY (RCW 51.08.100)**

"Sudden and tangible happening"

Emotional trauma at work over a period of five hours, which lights up latent, asymptomatic and non-disabling multiple sclerosis, constitutes an injury. [RCW 51.08.100.] ....In re Laura Cooper, BIIA Dec., 54,585 (1981)

Scroll down for order.

# BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS STATE OF WASHINGTON

| IN RE: LAURA COOPER | ) | <b>DOCKET NO. 54,585</b>  |
|---------------------|---|---------------------------|
|                     | ) |                           |
| CLAIM NO. H-497958  | ) | <b>DECISION AND ORDER</b> |

#### APPEARANCES:

Claimant, Laura D. Cooper, by Powell and Harnetiaux, per Bryan P. Harnetiaux

Employer, Inchelium School District No. 70, by Winston and Cashatt, per Robert W. Winston, Jr. and Stanley D. Moore

Department of Labor and Industries, by The Attorney General, per Thomas B. Maloney and Joseph C. Albo, Assistants

This is an appeal filed by the claimant on June 4, 1979, from an order of the Department of Labor and Industries dated May 2, 1979, which rejected her claim. **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 timely Petitions for Review filed by the employer and the Department of Labor and Industries to a Proposed Decision and Order issued by a hearing examiner for this Board on August 18, 1980, in which the order of the Department dated May 2, 1979 was reversed and this claim remanded to the Department with direction to allow the claim.

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.

Claimant alleges that for some unknown period prior to January 10, 1979, she was suffering from a latent multiple sclerosis which became symptomatic and disabling on or about January 10, 1979, as the result of emotional stress occurring during the course of claimant's employment from late 1978 up to January 5, 1979.

Little further purpose would be served by detailing all of the events occurring to Ms. Cooper during the 1978-79 school year. These matters have been very adequately discussed in our hearings examiner's Proposed Decision and Order. It should suffice to state that the record shows no doubt that Ms. Cooper's teaching experience up to January 5, 1979 was particularly stressful to her. She not only had disciplinary problems with her students, but also difficulty with other school

employees, including the principal and the superintendent. These difficulties increased in intensity throughout the school year until they culminated in one particularly stressful day, January 5, 1979, when she was the subject of severely critical evaluations concerning her competence and effectiveness, and at which time her career as a teacher was in danger of being terminated. It is not our function to identify blame or assess fault in this matter, but it is clear that events did occur which were very distasteful to the claimant and resulted in emotional stressful times. The Department and the employer attempted to show that some of these events were not correctly reported by the claimant, and this may well be true. However, the employer has not denied that the claimant did have many problems to face during the teaching year, or that her abilities as a teacher were not seriously questioned by the employer. After a careful review of this record, we believe the claimant was under extreme stress during the 1978-79 teaching year which created an emotional vulnerable atmosphere for the events of January 5, 1979, to play upon. Approximately five days later she was hospitalized for treatment of multiple sclerosis which was symptomatic and disabling in the extreme.

Through their petitions for review and written memorandums, the employer and the Department argue that neither medical witness presented by the claimant was able to state that the stress sustained by the claimant prior to and on January 5, 1979, "more than likely," or "probably" caused the multiple sclerosis to become symptomatic. According to these parties, both testifying physicians felt that it was only "possible" that there was such relationship. The Board has carefully read and evaluated the testimony by these witnesses. We are persuaded that they were in agreement that the stress suffered by the claimant culminating in the events of January 5, 1979 probably caused the symptoms to develop some five days later.

Another argument presented by the parties was that the opinions of the claimant's medical witnesses concerning the relationship of stress to the onset of symptoms are not held by the majority of the doctors who specialize in multiple sclerosis. Dr. Roy Swank, one of the claimant's medical witnesses, acknowledged this to be the case, but further stated that many doctors in his specialty supported his position. Even if the Board acknowledges that the majority of doctors do not accept all of the opinions expressed by Dr. Swank and Dr. Bond, this does not require the Board to completely disregard their opinions. This is especially so when we are presented with the testimony by a doctor with Dr. Swank's credentials. He certainly carries high credentials as an authority on multiple sclerosis and occupies a very high position in his specialty. Virtually the same

thing could be said of Dr. Bond who, although he does not have the experience of Dr. Swank is also highly qualified. We are faced with the difficult task of determining which opinions to accept from four highly-qualified medical specialists. We choose to accept the opinions expressed by Dr. Bond and Dr. Swank concerning the cause of the onset of symptoms indicating multiple sclerosis which first became apparent on or about January 10, 1979.

Assuming, however, that we adopt the opinions expressed by the claimant's medical witnesses concerning causal relationship, a further question arises, whether the events occurring to the claimant on or about January 5, 1979 are within the definition of "injury."

RCW 51.08.100 describes injury as follows:

"'Injury' means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical condition as result therefrom"

In 1971 the court of appeals considered the question whether emotional, as contrasted with physical exertion, stress, or strain, could constitute "a sudden and tangible happening of a traumatic nature" within the meaning of the statute, Sutherland v. Department of Labor and Industries, 4 Wn. App. 333. The court stated that a reading of RCW 51.08.100 clearly revealed that unusual emotional exertion, stress, or strain is not expressly excluded, and that the phrase "sudden tangible happening" was not limited to a "physical" happening. The court went on to hold that since statutory causation was not limited to a consideration of only physical trauma, it was within the realm of the trier of fact to ascertain whether an unusual emotional stress or strain may be a "sudden and tangible happening of a traumatic nature" within the meaning of the statute. It should be noted that the court referred to "unusual" emotional stress for the reason that the medical condition developed by the claimant in <u>Sutherland</u> was a heart attack which to be compensable required evidence of an "unusual" exertion or emotional stress to establish a compensable "injury". Windust v. Department of Labor and Industries, 52 Wn. 2d 33 (1958). The stressful events in the Sutherland case occurred over a period of approximately three hours and were followed a short time thereafter by the heart attack. In the instant case, the stressful events took place over a period of perhaps five hours during January 5, 1979, followed by appearance of the symptoms of multiple sclerosis approximately five days later. Testimony of both of the medical witnesses presented by the claimant which we accept indicates that this is the usual length of time for symptoms of multiple sclerosis to develop following emotional trauma.

We feel that there is convincing medical evidence showing that the claimant developed symptoms manifesting a lighting up of a previously latent, asymptomatic and non-disabling multiple sclerosis condition which became disabling. We determine this lighting up was related to stressful emotional incidents occurring to the claimant on January 5, 1979. Such evidence establishes a compensable "injury" occurring on that date within the meaning of the statute.

#### FINDINGS OF FACT

After a careful review of the record, the Board finds as follows:

- 1. On April 25, 1979 the claimant, Laura Cooper, filed a report of accident with the Department of Labor and Industries alleging that she sustained an injury on January 5, 1979, while in the employ of Inchelium School District #70. On May 2, 1979, the Department issued an order rejecting the claim for the reasons: (1) that there is no proof of a specific injury at a definite time and place in the course of employment, (2) that the claimant's condition is not the result of the injury alleged, (3) that the claimant's condition is not the result of an industrial injury as defined by the Workers' Compensation Act, (4) that the claimant's condition is not an occupational disease as contemplated by RCW 51.08.140. On June 4, 1979, the claimant filed a notice of appeal with the Board of Industrial Insurance Appeals. On June 20, 1979, the Board granted the appeal and directed that proceedings be held thereon.
- 2. On or about the month of September, 1978, the claimant was hired as a science teacher by the employer to teach in its public school. This was the first teaching job that the claimant had obtained since her graduation from college. Shortly after the commencement of the school year, the claimant began to experience difficulty in handling certain aspects of her position including (1) disciplinary problems with students, (2) a poor working relationship with her supervisors.
- 3. Near the end of 1978, the claimant received an unfavorable job performance evaluation from her supervisors and in response thereto filed a grievance against the school district. Following her return to work after the Christmas break, the claimant was faced with the same problems that existed the previous year.
- 4. On January 5, 1979, at approximately 8:00 in the morning, the claimant met with one of her supervisors to discuss a performance evaluation. At this conference, she received an adverse evaluation rating for reasons that she believed was not her fault. She then requested a copy of her personnel file, but one of her immediate supervisors stated they had no time to get the file.
- 5. Shortly after a noon recess on January 5, 1979, the claimant became engaged in a verbal confrontation with a student in her classroom, and the student left the classroom without permission by the claimant.

Shortly, thereafter, a meeting was held in her supervisor's office, at which the student involved in the confrontation was present, as well as the claimant. During the meeting, the student was permitted to give her version of the confrontation but the claimant was not permitted to tell her side of the story. After the student left the room, the claimant and her supervisor continued a discussion of the student-teacher confrontation and the manner in which the supervisor was handling it which resulted in the claimant being verbally remonstrated and being placed on probation.

- Ouring the course of the meeting, the claimant's supervisor accused her of blaming her difficulties on others and stated that he was deeply distressed by the direction that her professional life had taken. Other accusations and comments were made reflecting very adversely on the claimant's professional career.
- 7. All of these events of January 5, 1979 had a traumatic emotional effect upon the claimant and caused her to become upset and cry uncontrollably which effect carried into the night and several following days.
- 8. On the evening of January 10, 1979, the claimant went to the emergency room of the Sacred Heart Medical Center, Spokane, Washington, complaining of vertigo, hallucinations, nausea, headache and general weakness. She was admitted to the hospital on January 11, as her symptoms continued and she began to lose coordination.
- 9. For some unknown period of time prior to January 1979, the claimant was suffering from multiple sclerosis, which was latent, asymptomatic, and non-disabling.
- 10. The symptoms that the claimant was suffering on January 10, 1979, were manifestations of the multiple sclerosis, were disabling at that time, and required medical treatment.
- 11. The above-recited events occurring on January 5, 1979, caused the multiple sclerosis to become symptomatic and disabling on January 10, 1979.
- 12. Although the multiple sclerosis suffered by the claimant on or about January 10, 1979 likely would have become symptomatic and disabling at some future time, it would not have become evident for some indeterminate period of time following January 10, 1979.

Based on the foregoing findings of fact, the Board concludes as follows:

- 1. The Board of Industrial Insurance Appeals has jurisdiction of the parties and subject matter to this appeal.
- The claimant sustained an injury within the meaning of the Workers' Compensation Act on January 5, 1979, while in the course of her employment with Inchelium School District #70.

3. The order of the Department of Labor and Industries dated May 2, 1979 in Claim No. H-497958 rejecting the claim in incorrect, should be reversed, and the claim remanded to the Department with direction to allow the claim, and to take such other action as is indicated or required by law.

It is so ORDERED.

Dated this 9th day of February, 1981

| BOARD OF INDUSTRIAL INS       | SURANCE APPEALS |
|-------------------------------|-----------------|
| <u>/s/</u><br>MICHAEL L. HALL | Chairperson     |
| <u>/s/</u><br>SAM KINVILLE    | Member          |