

## **Erickson, David, Dec'd**

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### **INJURY (RCW 51.08.100)**

#### **"Sudden and tangible happening"**

Three weeks of harassment by a co-worker, producing a mental condition, constitutes an industrial injury. The emotional trauma was fixed as to time, a matter of notoriety, and susceptible to investigation. ...*In re David Erickson, Dec'd*, BIIA Dec., 65,990 (1985)

### **SUICIDE (RCW 51.32.020)**

#### **Volitional act**

Suicide does not bar compensation unless it is a volitional act, i.e., the product of a free exercise of choice. ...*In re David Erickson, Dec'd*, BIIA Dec., 65,990 (1985)

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

STATE OF WASHINGTON

1  
2 In Re: DAVID T.D. ERICKSON, Dec'd ) DOCKET NO. 65,990  
3 )  
4 )  
5 CLAIM NO. J-298603 ) DECISION AND ORDER  
6 )  
7 )

8 APPEARANCES:

9  
10 Widow-petitioner, Andrea Erickson, by  
11 Sackman Law Office, per  
12 Steven H. Sackman

13  
14 Employer, Columbia Basin Health Association,  
15 None

16  
17 Department of Labor and Industries, by  
18 The Attorney General, per  
19 Marcy L. Edwards and Gregory M. Kane, Assistants  
20

21 This is an appeal filed by Andrea T. Erickson, the widow of the  
22 deceased worker, David Erickson, on October 10, 1983 from an order of  
23 the Department of Labor and Industries dated August 10, 1983 which  
24 rejected the petitioner's claim for widow's benefits on the ground  
25 that the decedent's death resulted from his deliberate intent to take  
26 his own life. Reversed and remanded.

27 DECISION

28 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is  
29 before the Board for review and decision on a timely Petition for  
30 Review filed by the widow-petitioner to a Proposed Decision and Order  
31 issued on December 14, 1984 in which the order of the Department  
32 dated August 10, 1983 was affirmed.

33 The Board has reviewed the evidentiary rulings in the record of

7-15-85

1 proceedings and finds that no prejudicial error was committed and said  
2 rulings are hereby affirmed, with the exception of a ruling, infra, as  
3 to certain testimony of Nancy Blaisdell.

4 The general nature and background of this appeal are as set forth  
5 in the Proposed Decision and Order and our discussion of the case  
6 merely builds thereon.

7 We would begin by noting that the conclusion of industrial  
8 causation in this case, a case of death by suicide, is unavoidable.  
9 The depth and magnitude of the mental stress and harassment to which  
10 the decedent was constantly subjected over a period of three weeks  
11 from a mentally deranged co-worker defies practical description. The  
12 degree of this stress cannot be fully appreciated or comprehended  
13 without an actual reading of this record. A small sense of this  
14 appreciation can perhaps be imparted through the statement of Dr.  
15 Ralph W. Bolton, the decedent's preceptor who witnessed much of the  
16 harassment, to wit:

17 " ... I have been around for, I have been practicing  
18 for thirty-three years and I have never seen anything  
19 like it before."  
20

21 Even more telling was Dr. Bolton's response when asked if it  
22 "were not true" that the harassing co-worker was mentally unstable, to  
23 wit:

24 "A. And after that three weeks I was beginning to be."

25 Further, the description of Nancy Blaisdell, a registered nurse  
26 and one of the decedent's co-workers, fully documents the  
27 extraordinary nature of the work situation under which the decedent  
28 was placed:

1 "Q. From January 6 when you first began working up there,  
2 up until the time of his death, was his condition much  
3 the same or better or worse, or what was the  
4 progression?  
5

6 A. It became progressively worse. I think we were all  
7 more progressively more stressed. By the 27th we  
8 were all ready to hang it. I, myself, was pushed to  
9 the ultimate. Dave and I both had a long week-end  
10 and we both couldn't get out of there fast enough. I  
11 have never been put under such stress, and I have  
12 worked at the Sacred Heart Hospital in the  
13 neurosurgical unit where you are under a great deal of  
14 stress with critical patients and a lot going on, and  
15 never, never have I taken harassment that we took out  
16 there."  
17

18 The widow-petitioner presented six witnesses in this matter, five  
19 of whom worked closely with the decedent at the clinic, and witnessed  
20 directly much of the harassment in this matter, and its toll upon the  
21 decedent. They testified as to how the accusations against the  
22 decedent (which had been thoroughly investigated and shown to be  
23 groundless) accelerated and intensified. It became magnified to the  
24 point that the accusations began to be echoed throughout the general  
25 community with the result that the clinic began receiving threatening  
26 telephone calls from members of the public at large. The instigating  
27 co-worker had been relieved of her duties and placed on sick leave  
28 shortly after her first accusations against the decedent. This action,  
29 however, apparently, simply gave her more time to devote to her  
30 campaign of harassment which came to include incessant phone calls at  
31 all hours to the decedent, as well as other members of the clinic  
32 staff. Dr. Bolton testified that he received "15, 20 or more" such  
33 calls at his home at night. The petitioner testified that things  
34 reached the point where the decedent would finally take the home phone

1 off the hook at night.  
2  
3

4 The record in this matter is replete with eye-witness testimony  
5 describing the utter mental unravelling of the decedent as the  
6 accusations against him continued unabated over a three-week period of  
7 time. To understand his torment requires some understanding of the  
8 decedent himself.

9 To begin with, Mr. Erickson, the decedent, was no stranger to  
10 stress. He served two tours of combat duty, each of nine months'  
11 duration, as a medic in Vietnam. He volunteered for the second  
12 tour. He was the recipient of various letters of commendation for  
13 his conduct in battle, and was awarded the Purple Heart and the Bronze  
14 Star. Although he sustained multiple wounds from shrapnel, and a  
15 ruptured eardrum from a hand grenade, he fully recovered from these  
16 injuries and was left with no physical impairment therefrom. From a  
17 mental or emotional standpoint, there is no indication that he ever  
18 had any problems as a result of his combat experience.

19 At the time of his death, the Ericksons had been married about  
20 ten years and were without children. Mrs. Erickson described her  
21 husband as being the strong one in their relationship -- the one who  
22 always handled any stressful matters that arose -- and as always being  
23 very protective of her. From all that appears, they had a loving and  
24 stable marriage. However, each had their own interests in life and  
25 pursued these interests separately. The decedent was not one to  
26 verbalize his emotions or feelings; thus their emotional communication

1 or attachment was not particularly close.

2 For the decedent, his life revolved greatly around his job. The  
3 record shows he greatly enjoyed his work and was immensely proud to be  
4 a physician's assistant. He took great pride in his professional  
5 competence -- evidently, with good reason. Dr. Bolton testified  
6 that in his job performance rating of the decedent, he had rated him  
7 so high that the clinic management made him lower the rating  
8 somewhat. Although the decedent loved the field of medicine, he had  
9 no aspirations of becoming a medical doctor. He had found his niche  
10 in the profession as a physician's assistant, and he wanted nothing  
11 more than to be the best in that role as he possibly could. In sum,  
12 from the testimony of the various witnesses in this matter who knew  
13 and worked with David Erickson, his attitude and devotion to his work  
14 may be fairly stated to be the center of gravity of his life.

15 With this profile of the decedent as a backdrop, the effect of the  
16 false accusations against the decedent can best be weighed. That  
17 effect was described by Dr. Paul Hofheins, a fellow-employee of the  
18 clinic:

19 "Q. How did David react to the charges that were made upon  
20 him in that month of January?  
21

22 A. The charges devastated him. As I said before, David  
23 was in his niche and he took great pride in his  
24 position and his professionalism, and charges like  
25 this can be devastating to a P.A.'s career, probably  
26 even more so than a physician, because a physician's  
27 assistant just sits in his, is vulnerable, and is not  
28 in the type of authority position that a doctor is.  
29 Accusations of this nature, whether or not they are  
30 true, can destroy a person's career, and David's  
31 career was extremely important to him."  
32

33 Also, Dr. Bolton elaborated on his view of the decedent's mental  
34

1 reaction:  
2

3 "Q. And as far as this mental condition that arose, again  
4 not from the performance of his job duties, which, I  
5 take it, he did very well, but from the accusations  
6 and the emotional effect that had on him by a mentally  
7 incompetent co-worker, is that correct?  
8

9  
10 A. That is not true.

11  
12 Q. Okay, explain?  
13

14 A. Explain, okay. It was very much related to work  
15 because he, being the kind of person he was, being a,  
16 he is a perfectionist, he has wanted very much to do  
17 everything right, and he is a highly intelligent man,  
18 and when somebody starts questioning, the nurse that  
19 works with him, and the people that work with him  
20 start saying you did something wrong, you did this  
21 wrong, he begins to question himself, therefore, when  
22 somebody does those things, that is a severe blow to  
23 his, not only his emotions, but to his ego, to his  
24 sense of that he is an important person, and it  
25 destroys some of that, and I think that is where the  
26 problem came from."  
27

28 Finally, we admit as evidence a further excerpt from the testimony  
29  
30 of Nancy Blaisdell, previously placed in the record as colloquy, but  
31  
32 which we hereby place in evidence:  
33

34 "He was extremely depressed. I think his self-image  
35 was totally destroyed, something that meant  
36 everything to him had been sabotaged and destroyed.  
37 He had put his whole being, his whole life into being the  
38 best physician's assistant he could possibly be. Her  
39 verbalized that he felt like he had been, you know,  
40 completely just sabotaged, his career, his career that  
41 meant so much to him had been destroyed, and no matter  
42 what he said to anybody, it wasn't going to make any  
43 difference."  
44

45 In sum, suffice it to say that it is clear from the record as a  
46 whole that the false accusations against the decedent which continued  
47 unabated, day after day, and with no end in sight, caused the decedent  
48 to become totally defeated mentally. Despite repeated assurances

1 from his co-workers and superiors that his job was secure, the  
2 decedent's mental state became such that he perceived his career to  
3 have ended, which, in turn, prompted him to end his life as well.  
4

5 Given the foregoing factual background, the initial legal question  
6 with which we are confronted is whether the mental condition which led  
7 the decedent to take his own life, albeit industrially caused,  
8 qualifies as an injury or an occupational disease under the Act.  
9 Prior to Department of Labor and Industries v. Kinville, 35 Wash.App.  
10 80 (1983), we would have no problem in finding that the decedent's  
11 condition constituted an occupational disease. However, Kinville  
12 introduced a requirement in occupational disease cases that the job  
13 requirements of the particular occupation must expose the worker to a  
14 greater risk of contracting the disease in issue than would other  
15 types of employment or non-employment life. That test cannot be met  
16 in the case at hand. The risk of being subjected to harassment by a  
17 mentally deranged co-worker is no greater in the decedent's particular  
18 line of work than in any other -- a point which was readily conceded  
19 by each witness who was specifically queried thereon.

20 We have, however, come to the determination that the decedent's  
21 mental condition qualifies as an injury under the Act. There is no  
22 question but what unusual mental stress and strain falls within the  
23 purview of the phrase "sudden and tangible happening" as used in the  
24 definition of the term "injury". Sutherland v. Department of Labor  
25 and Industries, 4 Wn.App. 333 (1971). Nor does the fact that the  
26 resulting condition is mental, as opposed to physical, bar a finding



1 of "injury". Peterson v. Department of Labor and Industries, 178  
2 Wash. 15 (1934). Under the law, the trauma, be it emotional or  
3 physical, which is relied upon as a "sudden and tangible happening"  
4  
5 must be something "of some notoriety, fixed as to time and susceptible  
6 of investigation". Lehtinen v. Weyerhaeuser Co., 63 Wn.2d. 456  
7 (1964). In this case, the trauma was certainly a matter of "some  
8 notoriety"; it was certainly "fixed as to time" -- from January 6 to  
9 January 31, 1982, and, not only was it "susceptible to investigation",  
10 but in fact it was investigated -- very thoroughly. The trauma here  
11 involved was not ill-defined in nature or sustained over an  
12 "indefinite" period of time [Compare Cooper v. Department of Labor and  
13 Industries, 49 Wn. 2d. 826 (1957) ]. Rather, it was very well-defined  
14 and sustained over a specific three-week period of time. Under these  
15 circumstances, we hold that the emotional trauma sustained by the  
16 decedent qualifies as "a sudden and tangible happening" within the  
17 purview of RCW 51.08.100, and that his resulting mental condition  
18 constituted an "injury" under the Act.

19 There remains the question of whether the petitioner's claim for  
20 benefits is barred by RCW 51.32.020, which bars self-inflicted  
21 injuries. As noted in the Proposed Decision and Order, this state's  
22 landmark case construing that statute is Schwab v. Department of Labor  
23 and Industries, 76 Wn.2d. 784 (1969), wherein the court reviewed its  
24 prior suicide holdings and then summarized its current view as follows:  
25 "This review of our prior decisions on the questions  
26 at hand indicates that while we started with and  
27 adhere to the requirement of a direct causal  
28 relationship between a workman's industrial injury,

1 insanity, and resultant self-destruction, we have  
2 tended to lean away from characterizing, in the  
3 traditional tort sense, volitional or conscious  
4 suicidal acts as an independent intervening cause  
5 precluding compensation. Rather, it appears that we  
6 have inclined more toward looking upon RCW 51.32.020  
7  
8  
9

10 as erecting a statutory bar between cause and a  
11 proximately related result. Likewise, it would  
12 appear that we have broadened, somewhat, the concept,  
13 found in In re Sponatski, 220 Mass. 526, 108 N.E.  
14 466 (1915), that an injury occasioned suicidal death to  
15 be compensable must occur from an uncontrollable  
16 impulse or in a delirium of frenzy without conscious  
17 volition to produce death, by extending it to include  
18 irresistible impulse, delirium caused by injury  
19 related drugs, pain, and suffering and/or other forms  
20 of acute dementia, any of which render the injured  
21 workman incapable, at the pertinent time, of forming a  
22 volitional and deliberate intent to commit suicide."  
23 (Emphasis supplied.)  
24

25 It is of some interest to note that Prof. Arthur Larson, the  
26 leading text book authority on workers' compensation, discusses the  
27 Schwab case at some length. After setting out the above quotation  
28 from Schwab, he asks, rhetorically, "Where does this leave the rule in  
29 Washington?" In answer thereto, Larson suggests that our court, by  
30 its decision in Schwab, has, without expressly saying so, in fact  
31 aligned itself with the majority rule in suicide cases -- the  
32 chain-of-causation rule -- which holds a suicidal death compensable if  
33 the injury caused the mental condition which in turn caused the  
34 suicide. See Larson, Workmen's Compensation Law, Volume 1A, Section  
35 36.22.

36 Under the chain-of-causation rule, we would have no problem in  
37 finding that the suicide in this case was compensable. Unlike  
38 Larson, however, we are not prepared to suggest that this is now the

1 rule in Washington. As we read Schwab, a suicide, even though it be  
2 the result of a deliberate and conscious act (which admittedly was the  
3 case here), must also be "volitional" if it is to bar compensation.  
4 The word "volitional" implies the free exercise of choice. Dr.  
5 Philip G. Bernard, a clinical psychologist, performed what is termed a  
6 psychological autopsy of the decedent's death. Of the two mental  
7 experts to testify herein, we attach the greater weight to that of Dr.  
8 Bernard. His knowledge and study of the decedent's background and  
9 the events leading up to the death, was superior in our view to  
10 that of Dr. James Kilgore, a psychiatrist who testified on behalf of  
11 the Department. When questioned as to the decedent's mental state at  
12 the time of death, Dr. Bernard stated that the decedent was suffering  
13 from a major depressive episode to the extent that he "had no other  
14 choice" but suicide. He testified that the repeated accusations  
15 against the decedent built up, like brick upon brick, until the  
16 decedent was faced with a "wall without any openings" and he had "no  
17 other alternative" but suicide.

18 In sum, we hold that the decedent's suicide was not a "volitional"  
19 act on his part. His industrially-induced mental condition caused  
20 him to believe he had no choice other than to take his own life.  
21 Faced with no choice, one can hardly be said to have acted  
22 volitionally.

#### 23 FINDINGS OF FACT

24 Findings 1 and 2 of the Proposed Decision and Order entered in  
25 this matter on December 14, 1984 are hereby adopted by the Board and  
26 incorporated herein by this reference as the Board's Findings 1 and

1 2. In addition, the Board finds:

2 3. During the month of January, 1982, beginning on or  
3 about the 6th thereof, a series of accusations were  
4 made against Mr. Erickson by Jean Sheahan, a  
5 registered nurse who worked closely with Mr.  
6 Erickson

7  
8  
9 at the Columbia Basin Health Association.  
10 Specifically, the major accusations against Mr.  
11 Erickson were to the effect that he had bungled the  
12 treatment of a gunshot wound victim, thereby causing  
13 the victim's death; that he had taken indecent  
14 sexual liberties with young females during the  
15 course of sports physicals; and that he had tried to  
16 poison her, Jean Sheahan, by putting poison in a  
17 drink he had given her. These charges or  
18 accusations were fully investigated and found to be  
19 groundless. Mrs. Sheahan was found to be mentally  
20 ill and in need of psychiatric treatment. It was  
21 later found that she had a long history of drug and  
22 alcohol abuse. Shortly after she began making the  
23 accusations against Mr. Erickson, Ms. Sheahan was  
24 relieved of her work duties and placed on sick  
25 leave. This, however, did not stop the accusations,  
26 but rather they accelerated to the point that Ms.  
27 Sheahan was spreading them throughout the community  
28 and harassing Mr. Erickson both at work and at home  
29 through telephone calls made to him and his  
30 co-workers at all times of the day and night. It  
31 was not long before Ms. Sheahan's accusations were  
32 being echoed by the public and the clinic began  
33 receiving numerous phone calls of a threatening  
34 nature from members of the public atlarge.  
35

36 4. The accusations against Mr. Erickson continued  
37 virtually unabated from January 6, 1982 to January  
38 31, 1982, on which latter date Mr. Erickson took his  
39 life by means of a self-inflicted gunshot wound. At  
40 the time of his death, Mr. Erickson was suffering  
41 from a mental condition diagnosed as a major  
42 depressive episode. The decedent's mental  
43 condition developed as a direct result of the  
44 repeated accusations and harassment to which he had  
45 been subjected almost continually over a period of  
46 three weeks.  
47

48 5. At the time of the decedent's death on January 31,  
49 1982, his mental condition was such that he believed  
50 that his job and career as a physician's assistant  
51 had ended as a result of the accusations against

1 him, despite the fact that he had been told on a  
2 number of occasions by his superiors that his job  
3 was secure.  
4

5 6. At the time of his death on January 31, 1982, the  
6 decedent's mental condition was induced by the false  
7 accusations that had been directed against him over  
8 a three-week period of time.  
9

10  
11  
12  
13 7. The decedent's act of suicide on January 31, 1982  
14 was not a volitional act on his part in that his  
15 industrially-induced mental condition caused him to  
16 believe that he had no choice other than to take his  
17 own life.  
18

19 CONCLUSIONS OF LAW  
20

21 1. The Board of Industrial Insurance Appeals has  
22 jurisdiction of the parties and the subject matter  
23 of this appeal.  
24

25 2. The mental condition, diagnosed as a major  
26 depressive episode, developed by the decedent as a  
27 direct result of the accusations leveled against him  
28 and harassment he endured over a three-week period  
29 of time constitutes an industrial injury within the  
30 meaning of RCW 51.08.100.  
31

32 3. The decedent's act of suicide on January 31, 1982 is  
33 not barred by the provisions of RCW 51.32.020.  
34

35 4. The order of the Department of Labor and Industries  
36 dated August 10, 1983, rejecting the  
37 widow-petitioner's claim for benefits pursuant to  
38 RCW 51.32.020 on the grounds that the decedent's  
39 death was the result of a self-inflicted gunshot  
40 wound, and was not related to an industrial injury  
41 or an occupational disease, is incorrect, should be  
42 reversed, and this claim remanded to the Department  
43 with direction to grant the petitioner's claim for  
44 widow's benefits.  
45

46 It is so ORDERED.  
47

48 Dated this fifteenth day of July, 1985.  
49

50 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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/s/ \_\_\_\_\_  
MICHAEL L HALL Chairperson

/s/ \_\_\_\_\_  
FRANK E. FENNERTY, JR. Member