

Groce, Eleanor

COURSE OF EMPLOYMENT (RCW 51.08.013; RCW 51.08.180(1))

Reaction to treatment for probable occupational disease

Home health care worker's negative reaction to medical treatment, undertaken when her patient was misdiagnosed as having tuberculosis, constitutes an occupational disease. Risk of exposure was a distinctive condition of employment and treatment precautions undertaken by worker were in furtherance of the employer's interests and therefore occurred in the course of employment. ...*In re Eleanor Groce*, BIA Dec., 87 3645 (1989)

Scroll down for order.

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

1 **IN RE: ELEANOR R. GROCE**) **DOCKET NO. 87 3645**
2)
3 **CLAIM NO. J-689534**) **DECISION AND ORDER**
4

5 APPEARANCES:

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7 Claimant, Eleanor R. Groce, by
8 Walthew, Warner, Keefe, Costello, Thompson & Eagan, per
9 Edward F. Boyer

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11 Employer, Abbott Home Health Care Services, Inc.
12 None

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 Ellen Arbetter, Assistant
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18 This is an appeal filed by the claimant on October 14, 1987 from an order of the Department of
19 Labor and Industries dated September 21, 1987. That order declared the Department orders dated
20 October 29, 1986 and April 20, 1987 null and void for the reason that the Department did not have
21 jurisdiction on this claim at the time the orders were entered, and further ordered that this claim remain
22 rejected for the reason that the Department was unable to accept responsibility for the Isoniazid
23 treatment, its immunological benefit or the reaction to the Isoniazid treatment, as those benefits were
24 not statutorily available until June 11, 1986. **REVERSED AND REMANDED.**

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28 **DECISION**

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30 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
31 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
32 issued on June 24, 1988 which affirmed the September 21, 1987 Department order.

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34 The issues presented by this appeal and the evidence presented by the parties are, in part,
35 adequately set forth in the Proposed Decision and Order. However, a brief recitation of the underlying
36 facts is necessary for our discussion of the issues in a more complete fashion.

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39 The claimant, Eleanor Groce, was a home health care worker employed by Abbott Home
40 Health Care Services, Inc. In October 1985 Ms. Groce was assigned to care for Murray Marsh. On
41 October 8, 1985, Mr. Marsh was diagnosed as having tuberculosis.

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43 Because of the tuberculosis diagnosis and their close association with Mr. Marsh, both Ms.
44 Groce and John Gilbert, Mr. Marsh's grandson, were given tuberculin skin tests. Ms. Groce tested
45 positive. While she had no other symptoms of tuberculosis and no significant chest x-ray findings, it
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1 was determined to be prudent to treat her with the drug Isoniazid "[b]ased on her contact with a proved
2 infectious case of tuberculosis and her positive skin test." Exhibit No. 2. She began this treatment on
3 October 9, 1985.
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5 On November 12, 1985 Ms. Groce consulted Frederick Casserd, M.D., an internist, with
6 "flu-like" symptoms. Dr. Casserd discontinued the Isoniazid treatment and within a week the
7 symptoms dissipated. It was Dr. Casserd's opinion that Ms. Groce's symptoms were probably a
8 reaction to the drug Isoniazid. Dr. Charles M. Nolan, Director of the Infectious Disease Section of the
9 Seattle-King County Department of Public Health, expressed some doubts with respect to this causal
10 nexus. He stated:
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12 It is not possible to ascertain with certainty whether Isoniazid caused the
13 illness that Mrs. Groce sustained. The main findings, as I understand
14 them, were an elevated sedimentation rate, flu like symptoms, and
15 evidence of moderate anemia of rather rapid onset. Isoniazid rarely
16 causes hematologic dyscrasias, more commonly bone marrow
17 suppression rather than an acute hemolytic picture. Isoniazid may also on
18 rare occasions be associated with a Lupus Erythematosus syndrome, with
19 joint pains and fever. Another consideration for Mrs. Groce's illness would
20 be a viral or mycoplasma infection with acute hemolysis.
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25 Exhibit No. 2. Nevertheless, Dr. Nolan did not deny that a reaction to Isoniazid can cause the type of
26 symptoms experienced by Ms. Groce. Thus we accept Dr. Casserd's opinion that the most likely
27 explanation for Ms. Groce's symptoms in November of 1985 was a reaction to the Isoniazid drug
28 therapy. We find Dr. Casserd's opinion particularly persuasive since Ms. Groce's symptoms subsided
29 after discontinuance of the Isoniazid.
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32 Up to this point the facts are fairly straightforward. However, in December 1985 it was
33 determined that Mr. Marsh did not suffer from tuberculosis, but instead had a closely related infection -
34 - mycobacterium avium.
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36 The Department based its rejection of this claim for benefits on a change in the statute
37 occurring after October and November, 1985. While the order under appeal does not specify with
38 particularity its statutory reference, it can be inferred that the Department was relying on the new last
39 paragraph of RCW 51.36.010, which became effective on June 11, 1986, and which states in part:
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42 "The supervisor of industrial insurance, the supervisor's designee, or a
43 self-insurer, in his or her sole discretion, may authorize inoculation or other
44 immunological treatment in cases in which a work-related activity has
45 resulted in probable exposure of the worker to a potential infectious
46 occupational disease.
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2 The reliance of the Department on this statutory reference is misplaced. The 1986 amendment does
3 not affect the allowance or rejection of a claim. Indeed, it goes on to specifically provide:
4 "Authorization of such [immunological] treatment does not bind the department or self-insurer in any
5 adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease."
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7 Thus, reference to RCW 51.36.010 adds little to our analysis. The real question in this appeal is
8 whether Ms. Groce's drug reaction should be allowed as an occupational disease or industrial injury
9 under the Industrial Insurance Act.
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12 Ms. Groce's exception to Proposed Finding of Fact No. 4, which states that she "did not sustain
13 a sudden and tangible happening of a traumatic nature, occurring from without at any time during
14 October or November 1985 during the course of her employment with Abbott Home Health Care
15 Services, Inc. as a home health aide", can be dealt with summarily. Ms. Groce's drug reaction was
16 quite obviously not the result of a "sudden and tangible happening". It was a condition which
17 developed from a course of treatment which lasted several weeks. Therefore, it does not fall within
18 the definition of "injury" as contained in RCW 51.08.100. Instead, the focus must be on whether the
19 claimant developed an occupational disease within the meaning of RCW 51.08.140 during October
20 and November 1985, as a result of her employment as a health care aide with Abbott Home Health
21 Care Services, Inc.
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24 RCW 51.08.140 defines occupational disease as "such disease or infection as arises naturally
25 and proximately out of employment". In this case, Ms. Groce suffered a drug reaction as a result of
26 her taking Isoniazid. She undertook this treatment after a patient for whom she was caring was
27 diagnosed, at least tentatively, as suffering from active tuberculosis. This exposure was considered
28 serious enough to require tuberculin skin tests for both her and the patient's grandson. When her skin
29 test proved positive, the next reasonable step was obviously to undertake a course of drug therapy.
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32 In analyzing the "arises naturally and proximately out of employment" portion of the statute, the
33 court in Dennis v. Department of Labor and Industries, 109 Wn.2d 467, 481 (1987) stated:
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36 We hold that a worker must establish that his or her occupational disease
37 came about as a matter of course as a natural consequence or incident of
38 distinctive conditions of his or her particular employment.
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41 Certainly, in this case, the claimant's exposure to what was believed to be an active case of
42 tuberculosis, resulting in a need for treatment measures, came about as a natural consequence of
43 distinctive conditions of her health care provider occupation. However, the disease which Ms. Groce
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1 developed was not contracted in the work place, but in response to a treatment regimen instituted by
2 the Seattle-King County Department of Public Health. The central question as we see it then, is
3 whether the disease for which benefits are sought can be said to have occurred "in the course of
4 employment". See RCW 51.32.180. We believe that the Isoniazid treatment was undertaken by the
5 claimant in furtherance of her employer's business and, therefor, that her reaction to the drug therapy
6 occurred in the course of employment. RCW 51.08.013.

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10 In Dickinson v. Edwards, 105 Wn.2d 457, 467 (1986), the court stated:

11 The test in Washington for determining whether the employee was, at any
12 given time, in the course of his employment, is "whether the employee
13 was, at the time, engaged in the performance of the duties required of him
14 by his contract of employment, or by specific direction of his employer; or,
15 as sometimes stated, whether he was engaged at the time in the
16 furtherance of the employer's interest". Elder v. Cisco Constr. Co., 52 Wn.
17 2d 241, 245, 324 P.2d 1082 (1958) (citing Green v. St. Paul-Mercury
18 Indem. Co., 51 Wn. 2d 569, 573, 320 P.2d 311 (1958)).

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20 Such acts in furtherance of the employer's business need not always be the best choice. In Elder the
21 court quoted from Prosser, Torts (2d ed.) 352, stating that "within the course and scope of his
22 employment ". . . refers to those acts which are so closely connected with what the servant is
23 employed to do, and so fairly and reasonably incident to it, that they may be regarded as methods,
24 even though improper ones, of carrying out the master's orders." Elder, at 243-244 (Emphasis
25 added).

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27 In this case, Mr. Marsh's positive initial diagnosis of tuberculosis, made it reasonable for Ms.
28 Groce to take the necessary steps to determine if she had sustained an infectious exposure. Her
29 positive skin test appeared to confirm the tuberculosis exposure and a resulting disease condition.
30 The next reasonable step was to undertake a course of treatment for the disease which was
31 manifested by the positive tine test. Such a course of treatment, if successful, would have eliminated
32 the risk of exposure to other patients Ms. Groce might come in contact with. The treatment must
33 therefore be seen as furthering her employer's business, as well as her own interests.

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35 While, with the benefit of hindsight, we now know that Ms. Groce had not in fact been exposed
36 to tuberculosis by Mr. Marsh, Ms. Groce was required to act on the best information available as
37 events were unfolding. She relied on competent and reasonable medical opinion and advice from the
38 Seattle-King County Department of Health. She reasonably believed she had tuberculosis and
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1 reasonably underwent treatment for that condition, which had apparently manifested itself in a positive
2 tine test. In fact, to have refused treatment at that time would have been an imprudent decision.

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4 While not directly on point, two court decisions lend some analytical support. In Jones v.
5 Department of Labor and Industries, 193 Wash. 358 (1938), the court essentially held that "exploratory
6 surgery deemed necessary to make a determination on the question of causal relationship between a
7 worker's complaint and an industrial injury is properly chargeable against the medical aid fund." Digest
8 of Washington Cases on Workers' Compensation Law, at 503 (1986). This is true even though the
9 surgery in Jones disclosed no condition causally related to the industrial injury. In Anderson v. Allison,
10 12 Wn. 2d 487, 490 (1942), the court concluded that the consequences of treatment are considered
11 part and parcel of the industrial injury, even though the treatment may be negligent. These decisions
12 suggest that Ms. Groce's claim should be allowed even though, in retrospect, the drug therapy which
13 caused her condition was unwarranted.

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15 Taken as a whole, the record supports the conclusion that the claimant had a probable
16 exposure to an infectious disease. The risk of such exposure was a distinctive aspect of her
17 employment. She responded to the exposure in a reasonable fashion, furthering her employer's
18 business interests, as well as her own interests, by undertaking a course of drug treatment, which
19 resulted in a reaction to the drug. That reaction to the drug therapy is an occupational disease which
20 arose naturally and proximately from her employment, and occurred in the course of her employment.

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22 After consideration of the Proposed Decision and Order and the Petition for Review filed
23 thereto, and a careful review of the entire record before us, we are persuaded that the Department
24 order dated September 21, 1987 rejecting this claim is incorrect and should be reversed.

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26 Proposed Findings of Fact Nos. 1, 2, 3, and 4, and Proposed Conclusions of Law Nos. 1, 2,
27 and 3, are hereby adopted as the Board's final findings and conclusions and are incorporated herein
28 by this reference. In addition, we enter the following:

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FINDINGS OF FACT

5. The claimant's reaction to the Isoniazid drug therapy during October and November, 1985 arose naturally and proximately out of distinctive conditions of her employment as a home health aide with Abbott Home Health Care Services, Inc.

CONCLUSIONS OF LAW

4. The claimant developed an occupational disease, i.e., a reaction to Isoniazid drug therapy, within the meaning of RCW 51.08.140 during October and November 1985, while engaged in the course of her

1 employment as a health care aide with Abbott Home Health Care
2 Services, Inc.

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4 5. The Department order dated September 21, 1987, which declared null and
5 void Department orders dated October 29, 1986 and April 20, 1987 "as the
6 Department did not have jurisdiction on this claim at the time the orders
7 were entered," and further ordered that the claim remain rejected for the
8 reason that the Department is unable to accept responsibility for the
9 Isoniazid treatment, its immunological benefit or the reaction to the
10 Isoniazid treatment, as the benefits were not statutorily available until June
11 11, 1986, is incorrect and is reversed and this matter remanded back to
12 the Department with instructions to allow the claim as an occupational
13 disease and provide such benefits as are required by law.

14 It is so ORDERED.

15 Dated this 9th day of January, 1989.

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17 BOARD OF INDUSTRIAL INSURANCE APPEALS

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19
20 /s/
21 SARA T. HARMON Chairperson

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24 /s/
25 FRANK E. FENNERTY, JR. Member

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27
28 /s/
29 PHILLIP T. BORK Member