Simmonds, David

OCCUPATIONAL DISEASE (RCW 51.08.140)

Psychiatric conditions (mental/mental)

A worker's mental breakdown due to stress, anxiety and fearfulness arising out of a temporary job as a store manager qualifies as an occupational disease where the conditions leading to the breakdown were objectively manifested, and were not of a kind to which persons in all employments and all activities are exposed. [Pre-*Kinville* (35 Wn. App. 80).] **….*In re David Simmonds*, BIIA Dec., 45,038 (1976)** [dissent] [*Editor's Note*: Claim was filed before the passage of 51.08.142, which excluded mental conditions caused by stress.]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: DAVID J. SIMMONDS	)	**DOCKET NO. 45,038**
	)	
CLAIM NO. G-559623	)	**DECISION AND ORDER**

APPEARANCES:

Claimant, David J. Simmonds, by
Campbell, Johnston & Roach, per
Patrick T. Roach

Employer, Kennewick IGA Foodliner, by
John Eastlund, Owner

Department of Labor and Industries, by
The Attorney General, per
Daniel Harbaugh, James A. McDevitt, and Robert DiJulio, Assistants

This is an appeal filed by the claimant on January 16, 1975, from an order of the Department of Labor and Industries dated November 21, 1974, which rejected the claim on the grounds: (1) That the claimant's condition is not the result of an industrial injury as defined by the Workmen's Compensation Act; (2) That the claimant's condition is not an occupational disease as contemplated by Section 51.08.140 RCW. **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 Department of Labor and Industries to a Proposed Decision and Order issued by a hearing examiner for this Board on February 5, 1976, in which the order of the Department dated November 21, 1974, was reversed and this claim remanded to the Department with direction to accept the claim as an occupational disease diagnosed as an acute paranoid schizophrenic reaction, and to take such further action as my be indicated and authorized or required by law.

The nature and background of this case are outlined in the hearing examiner's Proposed Decision and Order, and shall not be repeated in detail herein.

If the claimant is to prevail in this case, it must be under the theory that he sustained an occupational disease. The incident which he relies upon as constituting "a sudden and tangible happening of a traumatic nature" – i.e., an alleged burglary on February 14, 1974, of the IGA Foodliner Store he was temporarily managing -- so as to bring his claim within the purview of the statutory definition of "injury", was not proved, but in fact was disproved by the evidence. In the

view of his attending psychiatrist, the "burglary" was a delusion of the claimant, and was but a manifestation of the "changes that took place in his nervous system as a consequence of his reaction to the peculiar conditions and circumstances" of his employment situation.

The medical evidence uniformly establishes (and the Department concedes in its Petition for Review), that the claimant's nervous or mental breakdown was directly due to stress, anxiety, and fearfulness arising out of the pressures from his 9 or 10 day temporary stint as store manager, an experience which he had never undergone before. Still, however, the Department contends that the "proximate cause" requirements of an occupational disease as prescribed by the Court in Favor v. Department of Labor and Industries, 53 Wn. 2d 698 (1959), cannot be met in this case. Broadly stated, the issue presented for decision is whether or not a mental illness (acute paranoid schizophrenic reaction) caused by work-induced mental stimuli (excessive anxiety, worry and sleeplessness building up over a period of 9 or 10 days) qualifies as an occupational disease.

This is the type of case that Arthur Larson, author of the leading textbook on workmen's compensation, classifies as being in the "mental-mental" category -- i.e., a mental stimulus with a mental result. According to him, "a distinct majority position supporting compensability in these cases" has emerged. See Larson, Workman's Compensation Law, Volume 1A, Sec. 42.43. After examining the judicial decisions which Larson relies upon in making this statement, it appears that he makes no distinction between those cases where the mental stimulus was of a sudden or shocking nature, i.e., a dramatic event, as opposed to those where the mental stimulus (stimuli) has taken a cumulative form. Of the latter type cases, two lines of authority are clearly discernible, to wit: (1) Where the occupational disease statute is of the broad, general type, the claim is held compensable. See e.g., American Nat'l Red Cross v. Hagen, 327 F. 2d 559 (1964); Butler v. District Parking Management Co., 363 F. 2d 682 (1966); Carter v. General Motors Corp., 106 N.W. 2d 105 (1960); (2) Where the occupational disease statute limits compensability to specifically enumerated diseases, compensability is denied because mental illness is not one of the diseases enumerated. See e.g., Jacobs v. Goodyear Tire & Rubber Co., 412 P. 2d 986 (1966).

Our own statute, RCW 51.08.140, defining occupational disease as "such disease or infection as arises naturally and proximately out of employment", is, of course, of the broad, general type -- the type under which other jurisdictions, as above-noted, have found for compensability. Our occupational disease provision compares most closely with that contained in the Longshoremen's and Harbor Workers' Compensation Act which defines "occupational disease" as

"such ... disease or infection as arises naturally out of such employment ..." It was under this provision that both the American Red Cross and Butler cases, supra, were decided. See 33 U.S.C.A Sec. 902 (2). In the absence of controlling authority in point from our own jurisdiction, we think these cases constitute strong persuasive authority in support of compensability in light of the close similarity of the occupational disease statute there in issue to our own.

As for our own jurisdiction, the only case which may be said to have any material bearing upon the question at hand is Favor v. Depart-ment of Labor and Industries, supra. In that case the Court held that a coronary occlusion which allegedly resulted from anxiety and worry arising out of the claimant's job as a state agricultural inspector did not qualify as an occupational disease. Admittedly, there is to be found language in that case which, if taken literally, might seem to foreclose "anxiety and worry" from becoming legal causes of an occupational disease. We refer to that portion of the Court's opinion where it undertook to explain what was meant by the "rule of proximate cause", and stated:

> "Persons in all employments, and in all activities are exposed to the emotional stress and strain of anxiety and worry, and it cannot be said to have arisen naturally and proximately from the claimant's employment."

In other words, if the harmful exposure giving rise to the disease which is claimed to be an occupational disease is a type of exposure that persons in all walks of life are exposed to, the disease cannot qualify as an "occupational" disease.

The quoted language, of course, is dictum and has no binding authority. Further, the language would, if taken literally, exclude as occupational diseases a host of diseases that have regularly and traditionally been allowed as such over the years. See J. Harris Lynch's comments in Digest of Leading Cases on Workmen's Compensation Law, page 168. Also, the language does not square with the definite and clear holding in the leading case of Simpson Logging Co. v. Department of Labor and Industries, 32 Wn. 2d 472 (1949), which we think is the correct principle to be applied:

> "...Under the present act, no disease can be held not to be an occupational disease as a matter of law, where it has been proved that the conditions of the ...employment in which the claimant was employed naturally and proximately produced the disease, and that but for the exposure to such conditions the disease would not have been contracted." (Emphasis supplied)

As for the Court's statement in Favor to the effect that "Statements by a claimant as to purely subjective conditions, peculiar to himself" do not provide the "objective circumstances" necessary to prove proximate cause, we would only observe that, whatever lack of "objective circumstances" there may have been in the Favor case, there is no such lack here, where the stress and strain of claimant's being placed for the first time in the responsibilities of full store managership were objectively manifested in several ways, e.g., extremely long hours of work, abnormal attention to, and worry over, the store's financial accounts, and increasing agitation and sleeplessness because of the job. This was not the kind of stress and anxiety to which persons in all employment and all activities are exposed.

In summary, the evidence establishes without contravention that the claimant's mental illness, diagnosed as an acute paranoid schizophrenic reaction, arose naturally and proximately out of his employment, in the sense that there was no intervening independent and sufficient cause for the mental illness, and that the claimant would not have suffered such illness when he did but for the conditions of his employment as store manager. Accordingly, under the plain terms of RCW 51.08.140, claimant's mental illness must be held to qualify as an occupational disease. Simpson Logging Co. v. Department of Labor and Industries, supra.

FINDINGS OF FACT

Based upon the record, the Board makes the following findings of fact:

1. On March 18, 1974, the claimant, David J. Simmonds, filed an accident report with the Department of Labor and Industries alleging that he had sustained an injury or suffered an occupational disease on February 15, 1974, during the course of his employment for Kennewick IGA Foodliner. On September 16, 1974, the Department issued an order rejecting the claim on the grounds that the claimant had not sustained an industrial injury, and that his condition did not constitute an occupational disease. Both the claimant and the employer filed timely protests with the Department from its order of rejection, whereupon the Department reassumed jurisdiction of the claim for further investigation and consideration. On November 21, 1974, the Department issued an order adhering to the provisions of its order of September 16, 1974, rejecting the claim. On January 16, 1975, the claimant filed a notice of appeal, and on January 24, 1975, this Board issued an order granting the appeal.

2. Appellate proceedings were conducted before the Board of Industrial Insurance Appeals, and on February 5, 1976, a hearing examiner of the Board entered a Proposed Decision and Order in connection with this appeal. Thereafter, within the time allotted by law, a Petition for Review

was filed and the case referred for review by the Board pursuant to RCW 51.52.106.

3. In early February, 1974, the claimant's father-in-law, owner-operator of Kennewick IGA Foodliner went on vacation for a period of 9 or 10 days, leaving the claimant in sole charge of the store's operations. This was the first time that the claimant had sole management responsibility for the store's operations.

4. As a result of the various pressures and responsibilities of his employment in temporarily managing the store over said period of 9 or 10 days, the claimant became increasingly consumed by stress, worry, and anxiety, to the point that on or about February 14, 1974, he suffered a mental breakdown diagnosed as an acute paranoid schizophrenic reaction.

5. The claimant, who was 26 years of age at the time of his testimony herein, had no history of mental illness or mental aberrations prior to his mental breakdown in February, 1974.

6. But for the conditions of claimant's employment as temporary store manager for the period of 9 or 10 days in February, 1974, the claimant would not have suffered at that time the mental illness which developed on February 14, 1974, and which required medical treatment on February 15, 1974, and thereafter.

CONCLUSIONS OF LAW

Based upon the foregoing findings, the Board makes the following conclusions:

1. The Board has jurisdiction of the parties and the subject matter of this appeal.

2. The claimant's mental illness, diagnosed as an acute paranoid schizophrenic reaction, constitutes an occupational disease as that term is defined by RCW 51.08.140.

3. The order of the Department of Labor and Industries dated November 21, 1974, rejecting this claim, should be reversed and this claim remanded to the Department with instructions to allow the claim as an occupational disease, and to take such other and further action as indicated and authorized by law.

It is so ORDERED.

Dated this 14th day of September, 1976.

BOARD OF INDUSTRIAL INSURANCE APPEALS
/s/_____
PHILLIP T. BORK Chairman
/s/_____
SAM KINVILLE Member

DISSENTING OPINION

I disagree with the majority decision in this case. To me, it is entirely unreasonable to attempt to broaden or circumvent the occupational disease statute in this matter under the facts which appertain in this instance. In my opinion, the claimant did not contract his emotional condition, diagnosed as a paranoid reaction, as a natural and proximate consequence of his employment. The emotional illness did not arise out of the employment, and therefore is not an occupational disease.

The record does not support the theory that managers of stores are more susceptible to suffering a paranoid reaction than individuals engaged in the work force in all occupations, nor in my opinion does the record offer persuasive proof that the conditions of claimant's employment produced the mental illness from which he suffers. To allow this claim would be tantamount to agreeing that nay psychiatric illness suffered by a worker is an occupational disease. Parenthetically, although the act is meant to be remedial, this member is not unmindful that the rule that such statutes should be liberally construed does not mean that the trier of fact should reach for the broadest possible interpretation of the statute or reach for Larson's Workmen's Compensation treatise with the excuse that by so doing he is merely interpreting the Act liberally. This Board does not have the responsibility to stretch the occupational disease statute, specifically RCW 51.08.140, to that extent.

In the case under consideration here, there is insufficient proof in my view that the claimant's employment was the proximate cause of his paranoid schizophrenic reaction. In my opinion, the claimant did not contract an occupational disease as defined in the Industrial Insurance Act of this state.

Accordingly, I dissent.

Dated this 14th day of September, 1976.

/s/ _____
R. M. GILMORE Member