

## **Brolli, Lyndall**

---

### **OCCUPATIONAL DISEASE (RCW 51.08.140)**

#### **Psychiatric conditions (mental/mental)**

A mental illness caused by work-induced mental stimuli qualifies as an occupational disease since it arose naturally and proximately out of employment, there was no intervening or independent cause, and the worker would not have suffered the illness but for the conditions of employment. [Pre-*Kinville* (35 Wn. App. 80).] ...***In re Lyndall Brolli*, BIIA Dec., 49,051 (1977)** [dissent] [*Editor's Note*: Claim was filed before the passage of 51.08.142, which excluded mental conditions caused by stress.]

Scroll down for order.

1 The issue presented by this appeal and the evidence presented by the parties are very  
2 adequately set forth in our hearing examiner's Proposed Decision and Order. Specifically, the legal  
3 issue is whether a mental illness cause by work-induced mental stimuli qualifies as an occupational  
4 disease under our statute, RCW 51.08.140.  
5

6  
7 On September 14, 1976, we issued a Decision and Order in the case of In re David J.  
8 Simmonds, Claim No. G-559623, Docket No. 45,038, wherein the facts and applicable law were  
9 closely parallel. In that case, we extensively reviewed the pertinent statutory and judicial  
10 authorities, including the authorities cited to us here by Department's counsel. We there held:

11  
12 "the claimant's mental illness...arose naturally and proximately out of his  
13 employment, in the sense that there was no intervening independent  
14 and sufficient cause for the mental illness, and that the claimant would  
15 not have suffered such illness when he did but for the conditions of his  
16 employment as store manager."  
17

18  
19 Accordingly, we allowed that claim as an occupational disease, within the meaning of RCW  
20 51.08.140 and the principle expressed in the leading case of Simpson Logging Co. v. Department  
21 of Labor and Industries, 32 Wn. 2d 472 (1949)  
22

23  
24 Similarly, here, we incorporate our hearing examiner's concluding paragraph of his  
25 discussion in his Proposed Decision and Order, as follows:

26  
27 "The evidence establishes that claimant's mental illness, diagnosed as  
28 situation depression, arose naturally and proximately out of her  
29 employment, in the sense that there were no other intervening  
30 independent and sufficient causes for the mental illness, and that the  
31 claimant would not have suffered such illness when she did but for the  
32 conditions of her employment as a school administrator. The claimant  
33 has presented a prima facie case with her own testimony and that of Dr.  
34 Hunter which testimony was un rebutted by the Department of Labor and  
35 Industries. Accordingly, under the plain terms of RCW 51.08.140 the  
36 claimant's mental illness must be held to qualify as an occupational  
37 disease. Simpson Logging Co. v. Department of Labor and Industries,  
38 supra, and Larson, Workmen's Compensation Law, Volume 1A, section  
39 42.23."  
40

41 After consideration of the Proposed Decision and Order and the Petition for Review filed thereto,  
42 and a careful review of the entire record before us, we are persuaded that the Proposed Decision  
43 and Order is supported by the preponderance of the evidence and is correct as a matter of law.  
44  
45  
46  
47

1 The hearing examiner's proposed findings, conclusions and order are hereby adopted as this  
2 Board's findings, conclusions and order and are incorporated herein by this reference.

3  
4 It is so ORDERED.

5  
6 Dated this 9th day of December, 1977.

7 BOARD OF INDUSTRIAL INSURANCE APPEALS

8  
9  
10 /s/  
11 PHILLIP T. BORK Chairman

12  
13 /s/  
14 SAM KINVILLE Member

15  
16 **DISSENTING OPINION**

17  
18 The majority decision cites the Decision and Order issued September 14, 1976, in the appeal  
19 of David J. Simmonds and remarks that the facts are applicable and closely parallel. A dissenting  
20 opinion was rendered in that case as well. I hold that the conclusion of that particular dissent is  
21 equally applicable in this case.

22  
23 Additionally, the Proposed Decision and Order which is adopted by the majority cites Larson,  
24 Workmen's Compensation Law, Volume 1A, Section 42.23, as one of the reasons to hold the  
25 claimant's mental illness qualifies as an occupational disease. I am more impressed with two  
26 citations in the Department's petition for Review found on page 3. Namely:

27  
28 "An ailment does not become an occupational disease simply because it  
29 is contracted on the employer's premises. It must be one which is  
30 commonly regarded as natural to, inhering in, and incident and  
31 concomitant of the work in question. There must be a recognizable link  
32 between the disease and some distinctive feature of the claimant's job,  
33 common to all jobs of that sort - - - an occupational disease is one which  
34 results from the nature of the employment, and by nature is meant - - -  
35 conditions to which all employees of a class are subject, and which  
36 produce the disease as a natural incident of a particular occupation, and  
37 attach to that occupation a hazard which distinguishes it from the usual  
38 run of occupations and is in excess of the hazard attending employment  
39 in general".

40  
41  
42 And

43 "It seems obvious that, if men in all employments suffer from the same  
44 disease as that of the claimant, it does no(t) meet the proximate cause  
45 requirement of the statute; nor does the fact that the claimant worried  
46 about his work distinguish the case. Persons in all employments and in  
47

1 all activities are exposed to the emotional stress and strain of anxiety  
2 and worry, and it cannot be said to have arisen naturally and  
3 proximately from the claimant's employment."  
4

5 It is my view that the Department's order should have been sustained and, accordingly, I  
6 dissent from the majority decision.  
7

8 /s/  
9 WILLIAM C. JACOBS Member  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47