# Murray, Bill (I)

## OCCUPATIONAL DISEASE (RCW 51.08.140)

### Psychiatric conditions (mental/mental)

The response of the average person to a mental stress or physical demand is not the proper test for determining the existence of an occupational disease. An "acute situational reaction" resulting from the particular worker's real and perceived job stress constitutes an occupational disease. [Pre-*Kinville* (35 Wn. App. 80).] **….*In re Bill Murray* (I), BIIA Dec., 57,009 (1981)** [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**

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| **IN RE: BILL E. MURRAY** | **)** | **DOCKET NO. 57,009** |
| | **)** | |
| **CLAIM NO. H-502652** | **)** | **DECISION AND ORDER** |

APPEARANCES:

Claimant, Bill E. Murray, by
Landerholm, Memovich, Lansverk, Whitesides, Wilkinson,
Klossner & Perry, per
Marla Ludolph

Employer, Clark County, P.U.D., by
Blair, Schaefer, Hutchison, Wynne, Potter & Horton, per
John R. Potter

Department of Labor and Industries, by
The Attorney General, per
John R. Dick, Assistant

This is an appeal filed by the claimant on June 10, 1980 from an order of the Department of Labor and Industries dated May 23, 1980, which adhered to an order dated May 16, 1979, which rejected the claim for benefits for injury, accident or occupational disease because the condition was not the result of an industrial injury as defined by the Workers' Compensation Act. **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 employer to a Proposed Decision and Order issued by a hearings examiner for this Board on April 24, 1981, in which the order of the Department dated May 23, 1980 was reversed, and remanded to the Department with direction to allow the claim for the condition diagnosed as acute situational reaction with anxiety and depression and to take such further action as may be authorized or indicated by law.

The Board has reviewed the evidentiary rulings of the hearings examiner and finds that no prejudicial error was committed and said rulings are hereby affirmed.

Confronting the Board in this appeal is the question whether work-related mental stresses or perceived stresses acting as stimuli can produce physical and/or psychological manifestations of disease which are compensable as an occupational disease under this state's Workers' Compensation Act.

At the outset, the Board expressed its appreciation to the parties for their fine examples of advocacy. The Petition for Review from the employer's counsel and the response thereto submitted by counsel for the claimant have received our careful scrutiny. Both submittals have provided useful assistance for resolution of the issues before us.

Mr. Murray works as a dispatcher for the Clark County P.U.D. In 1973 he started as relief dispatcher necessitating periodic service on the day, swing and graveyard shifts. In 1977 he became a regular dispatcher. His job involved sending field maintenance men to cure service defects and outages and providing information to the field workers relating to switching of electrical lines. In January 1978 his employer moved to a new building with greatly increased security control affecting the workload of the dispatchers. In April 1979 the actual or perceived stress of his working environment caused him to undergo an acute situational reaction with anxiety and depression along with physical manifestations of nausea, vomiting and diarrhea.

He sought the medical attention of Dr. Robert Blomquist, an internist, who testified unqualifiedly that there was "a reasonable probability that the stress of the job did provoke the response of the patient in terms of anxiety and depression."

There is clearly no one incident which can be discerned as the precipitating event or happening leading to the development of the claimant's condition. Consequently, if the claimant is to prevail in this appeal he must persuade that his abnormal reaction was the result of a compensable occupational disease. Under this state's Industrial Insurance Act, the term "occupational disease" is defined as "...such disease or infection as arises naturally and proximately out of employment...." RCW 51.08.140.

In Simpson Logging Company v. Department of Labor & Industries, 32 Wn. 2d 472 (1949), the court articulated the controlling principal of law:

> "...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 added.)

In the record before us there is nothing to suggest that any other significant emotional spurs were attendant in the claimant's life which would explain the onset of his emotional response. The record implies that Mr. Murray suffered some pre-existing emotional frailty because of prior abuses of

alcohol. He readily admits his alcoholism, but we do not see that disease as enveloping the condition for which he now seeks compensation.

We note a growing tend in compensation litigation to permit recovery. See Larson Workmen's Compensation Law, Sec. 42.20. In fact this Board on two prior occasions has allowed occupational disease claims for mental conditions. In re David J. Simmonds, Docket No. 45,038, September 14, 1976, a claim for a paranoid schizophrenic reaction arising out of a late-night burglary was held to arise naturally and proximately out of employment. In a later appeal, In re Lyndall S. Brolli, Docket No. 49,051, December 9, 1977, a situation depression was allowed as an occupational disease for a schoolteacher/administrator. Her illness followed a recent increase in job responsibility and her subsequent inability to cope with the emergent work conditions coincident with that change.

In the case before us, the only real change in the claimant's work conditions was what he perceived to be a more confining and depressive work environment, which developed following the change of office premises.

The employer argues that there was really nothing unusual about the amount of stress upon Mr. Murray and that the reasoning of the court in Favor v. Department of Labor & Industries, 53 Wn. 2d 698 (1959), should be applied in this appeal to deny compensation. We cannot agree with the employer's contention. First, Favor was concerned with a heart condition by which the law in this state followed a minority of jurisdictions imposing an unusual or extraordinary circumstance rule for compensability of such conditions. We do not think it was the intention of our Supreme Court to extend an unusual circumstance rule to other types of pathology (see, e.g., Longview Fiber Company v. Weimer, 95 Wn. 2d 583 (1981)) or to occupational diseases in general.

The court has not been generous in its explanations of what the phrase "arises naturally and proximately" means in our definition of occupational disease. The court in Favor did state:

> "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."

However, we do not believe that excerpt of obiter dicta provides a binding authority for the type of case before us. If we were to follow the language literally an entire host of disease traditionally allowed over the years would be excluded. See the comments of J. Harris Lynch in Digest of

Leading Cases on Workmen's Compensation Law at page 168. Nor does the above-quoted language square with the court's strong statement quoted earlier from the Simpson Logging case.

The response of the average person to a mental stress or a physical demand is not the test which need be applied in determining the existence of an occupational disease. The stress which serves as a mere challenge making the job interesting to one worker may operate as a mental meataxe to another. Our court has acknowledged that individual differences must be recognized and respected in our compensation scheme:

> "We are, in this case, concerned only with the affect of the fumes and smoke that did exist upon this particular man. If his pulmonary difficulties are disabling, and if the fumes in the aluminum plant, though they be the perfumes of Arabia to others, are responsible for his pulmonary difficulties, his disability is attributable to his employment and he is entitled to treatment and such compensation as the facts and the law may warrant. Industry takes the workman as he is." Groff v. Department of Labor & Industries, 65 Wn. 2d 35 (1964).

Based upon the record before us, Mr. Murray clearly was provoked solely by the real and perceived stress of his job in the development of his abnormal situational reaction. For such he deserves compensation.

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

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

It is so ORDERED.

Dated this 30th day of November, 1981.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
MICHAEL L. HALL Chairman

/s/_____
FRANK E. FENNERTY, JR. Member

## DISSENTING OPINION

I must dissent from the decision of the Board majority to allow this claim. The claimant's mental condition, for which he seeks benefits under the Act, was diagnosed by the medical witness herein as an acute situational reaction with anxiety and some depression. Said witness also stated that this condition was probably provoked in claimant by "the stress of the job." What stress? The legal question is: Is simply "the stress of the job" enough to make this type of claim compensable, as a matter of law? I submit that it is not.

The majority correctly notes that if claimant's mental condition is compensable at all, it must be on the basis of calling it an occupational disease since there was clearly no injury -- no one happening or incident of trauma, physical or emotional, which precipitated the mental condition. Thus, claimant's condition to be found compensable, must be said to be an illness which "arises naturally and proximately out of employment . . ." RCW 51.08.140. This "arising proximately out of" or "but for" test must be satisfied. How must it be satisfied in this type of case, i.e., gradual mental stimulus allegedly producing a mental illness?

The logical answer is found in Larson on Workmen's Compensation Law, Vol 1B, sec. 42.23(b), at page 7-639:

> "The real distinction here should be, not between sudden and gradual stimuli, but between gradual stimuli that are sufficiently more damaging than those of everyday employment life to satisfy the normal "arising out of" test, and those that are not . . . ."
>
> "Wisconsin has produced the most straightforward example of this correct way of drawing the line, in Swiss Colony v. Dept. ILHR, 72 Wis 2d 46, 240 N.W. 2d 128 (1976). The claimant was a purchasing agent for a mail order cheese business. She suffered a schizophrenic mental breakdown, which she attributed to nerve-wracking seasonal business and harassment by her supervisor. After the hearing examiner had entered an award, the Supreme Court announced the rule in School District v Dept. ILHR, 62 Wis. 2d 370, 215 N.W. 2d 373 (1974) that 'in order for non-traumatically caused mental injury to be compensable in a workmen's compensation case, the injury must have resulted from a situation of greater dimensions than the day-to-day mental stress and tensions which all employees must experience.'" (Emphasis and citations added)

Were there, in the instant case, any stressful stimuli on the job sufficiently more damaging than the stresses of everyday employment life? Were there situations of greater dimensions than the day-to-day mental stress and tensions which employees may expect to experience in their job?

The answer is no. The Board majority finds no such extraordinary stressful stimuli, either, and correctly observes that the only real change in this claimant's long-performed work conditions was "what he perceived to be a more confining and depressive work environment which developed following the change of office premises." This is clearly not enough, in my opinion. Such things as moving of office premises, remodeling of work spaces, assignment of particular types of furniture and equipment, etc. (the examples could go on) may bring about greater job contentment in some employees and less in others, but these are effects which are inevitably a part of everyday employment life, and "stresses" which all employees must expect to experience. To allow this type of claim as a mental "occupational disease" could open the gates for claims by employees who are simply unhappy or "depressed" by their "perception" of job environment. I cannot believe the workers' compensation law was intended for this. I cannot conclude that this claimant's mental condition arose out of any extraordinary mental stimuli or situations required by this job. Thus, as a matter of law, this is not a compensable "occupational disease."

The majority places emphasis on two prior decisions of this Board: In re David J. Simmonds, Docket No. 45,038 September 14, 1976, and In re Lyndall S. Brolli, Docket No. 49,051, December 9, 1977. I am familiar with those cases, having participated in the decisions to allow them both as occupational diseases.

In Simmonds, the claimant was a supermarket employee, and was suddenly and for the first time placed in the responsibilities of full store managership for a period of about ten days while his father-in-law, the owner of the store, was away on vacation. As a result of the extremely long hours of work, abnormal attention to, and worry over, the stores' financial accounts, and increasingly stressful responsibilities as the temporary store manager, he suffered a mental breakdown of acute paranoid schizophrenic reaction. He would not have suffered such illness but for the particular conditions of his employment as temporary store manager.

In Brolli, the claimant began work for a special privately-funded school as a teacher/administrator, and had no job-related problems for over a year and a half. Then she began to encounter problems which she was unable to cope with, including change in emphasis of her activities from teaching to administration, problems with staff who disapproved of her changed role at the school, serious conflicts with a new employee she hired, drug use by her students, and much pressure and adverse publicity resulting from a school Christmas party. As a result of all these compounding pressures over the course of three months, the claimant suffered a mental condition

diagnosed as situation depression which required medical treatment. Significantly, in allowing Ms. Brolli's claim for occupational disease, we cited as support the section from Larson's legal treatise which I have alluded to in this dissent.

The difference between this case and the Simmonds and Brolli cases is clear. They both meet the test for these kinds of cases as set out by Larson, i.e., the mental illnesses resulted from stressful situations and identifiable mental stimuli of much greater dimensions than the day-to-day stress and tensions of employment life. The allowance of those cases was legally proper. The rejection of this case is legally proper and required, in my opinion.

Accordingly, I dissent from the Board's majority decision.

Dated this 30th day of November, 1981.

/s/_____
PHILLIP T. BORK Member