

## **Pacheco, Amada**

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

#### **Physical/mental conditions**

Worker suffered a non-toxic exposure to fertilizer that caused her to believe she was injured, resulting in a conversion disorder, and mixed personality disorder. This belief that a condition resulted from the incident is sufficient to sustain a claim. ....*In re Amada Pacheco*, BIA Dec., 03 11030 (2004)

Scroll down for order.

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

1 **IN RE: AMADA Z. PACHECO ) DOCKET NO. 03 11030**  
2 )  
3 **CLAIM NO. X-117828 ) DECISION AND ORDER**

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5 **APPEARANCES:**

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7 Claimant, Amada Z. Pacheco, by  
8 Smart Law Offices, P.S., per  
9 Michael V. Connell

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11 Employer, George E. Johnson,  
12 None

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14 Department of Labor and Industries, by  
15 The Office of the Attorney General, per  
16 James A. Yockey, Assistant

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18 The claimant, Amada Z. Pacheco, filed an appeal with the Board of Industrial Insurance  
19 Appeals on February 3, 2003, from an order of the Department of Labor and Industries dated  
20 December 11, 2002. In this order, the Department corrected and superseded an order dated  
21 June 26, 2002, and further provided that the Department cannot demand repayment of provisional  
22 time loss benefits more than one year after payment; rejected the claim as the claimant's condition  
23 is not an occupational disease, nor is it the result of the alleged exposure to fertilizer. The  
24 Department order is **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 January 29, 2004, in which the industrial appeals judge affirmed the Department order  
33 dated December 11, 2002.

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35 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
36 no prejudicial error was committed. The rulings are affirmed. We have granted review because we  
37 believe this matter should be allowed as an industrial injury pursuant to the rationale in *In re Adeline*  
38 *Thompson*, BIIA Dec., 90 4743 (1992).

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40 Amada Z. Pacheco is a 38-year-old woman who arrived from rural Mexico in 1985. She has  
41 a fourth grade education, and can barely read or write Spanish. Her English is rudimentary, at best,  
42 and she needs a translator for anything other than the most basic of interactions. She married at  
43 age 19, and although she and her husband have been separated for the last eight years, they

1 remain married. Ms. Pacheco has four of her own children, and cares for a granddaughter, born to  
2 Ms. Pacheco's daughter when the daughter was 12 years old. As Ms. Pacheco had only recently  
3 given birth herself, she nursed that child, who is now five years old, and considers her as her own.  
4 It would appear that Mr. Pacheco fathered two of the children and the other two belong to another  
5 man who does not apparently have anything to do with Ms. Pacheco or her children. Indeed, she is  
6 the single parent of five children.  
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10 We cannot but observe, however, that much of Ms. Pacheco's testimony is at best  
11 ambiguous, or at worst untruthful. Ms. Pacheco is a very poor historian, due either to a pre-existing  
12 personality disorder, or a lack of sophistication coupled with poor education and cultural  
13 differences. As our industrial appeals judge pointed out, there are numerous inconsistencies in her  
14 testimony. After careful consideration of the record as a whole, we are persuaded that she is not a  
15 liar, nor is she a malingerer for the reasons we set forth.  
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19 Ms. Pacheco was working in the fields on January 26, 1999, pruning vines. A contractor was  
20 at work spreading fertilizer in the fields by way of a truck with a large hopper. The fertilizer was  
21 granulated ammonium sulphate, a relatively benign substance, and was cast in a 30-foot circle  
22 about two feet off the ground. Ms. Pacheco testified that as the truck drove by her, the fertilizer got  
23 on her body, her face, and in her nose and mouth. She immediately felt a headache, and began to  
24 vomit. Although she finished the shift, she could not thereafter work and has experienced nausea,  
25 vomiting, severe headaches, and states she is "sick in the head." She cannot remember things, is  
26 dizzy, and experiences hallucinations and depression.  
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31 Ms. Pacheco testified that she had never had mental health problems prior to this incident;  
32 however, this would appear not to be the case. In April 1998, she sought psychological assistance,  
33 as she was depressed and could not function. In addition to this, she testified that she had never  
34 had domestic problems with her husband, but this is not the case either. When she sought  
35 psychological help in 1998, she gave a history of assault by Gregorio Pacheco, her husband. Also,  
36 just prior to the January 1999 incident, her father died; she has alternately said that he died in a fall  
37 from a burro or that he was murdered. Moreover, just prior to the incident, there is evidence that  
38 Ms. Pacheco's brother-in-law threatened Gregorio Pacheco with death, as Mr. Pacheco had  
39 declined to participate in illegal drug commerce.  
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1 Gregorio Pacheco was in the field at the time Ms. Pacheco was exposed to fertilizer. He  
2 was about three feet away from her, and the fertilizer was cast upon him as well. He, however, only  
3 had a temporary headache. He notices that since the incident, Ms. Pacheco is “much fatter,” is  
4 very sad, and sleeps a lot.  
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7 Silvia Pacheco is the claimant’s eldest (17 years old) daughter. She notices that since the  
8 January 1999 incident, her mother has changed. Ms. Pacheco (the younger) stated that her mother  
9 cannot go anyplace without asking where she is, cannot cook, cannot do laundry, and her eyes are  
10 usually quite red. Prior to the incident, however, her mother was always happy.  
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13 Two experts testified on behalf of Ms. Pacheco: one was Andrew D. Whitmont, Ph.D., a  
14 clinical psychologist, and the other was Frederick A. Montgomery, M.D., a psychiatrist.  
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16 Dr. Whitmont is a Spanish-speaking clinical psychologist who evaluated Ms. Pacheco at the  
17 request of her attorney on December 18, 2002. She told Dr. Whitmont that she had panicked when  
18 the fertilizer hit her, and that she had started to foam at the mouth and vomit.  
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20 During the evaluation, Dr. Whitmont noted that her speech was clear and goal directed, but  
21 that she lacks a boundary between herself and others, that she has poor judgment, and her current  
22 fund of knowledge is poor. He believes that her IQ is in the low normal range. Although he noted  
23 the hallucinations, he does not believe that this represents psychosis, but rather a dissociative  
24 disorder because she has some insight into her hallucinations.  
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28 Ultimately, Dr. Whitmont diagnosed conversion disorder, depression, and post-traumatic  
29 stress disorder (PTSD). He stated that she meets the criteria for PTSD, and that even though the  
30 fertilizer was not toxic, she **believed** that it was, and this caused her reaction.  
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32 Dr. Whitmont explained that Ms. Pacheco has a constellation of traits that made her  
33 susceptible to PTSD as a result of the incident. She has poor attention and concentration, with low  
34 average IQ. She has little education, but is highly imaginative and is susceptible to suggestion. He  
35 gave a couple of examples. In one case, he made a very rough sketch of a plate of food, and  
36 asked her if she could eat the drawing. She said that she could, and when, after some discussion,  
37 he persuaded her that it was simply a drawing, she was quite crestfallen and disappointed.  
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40 Dr. Whitmont explained this by stating:  
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42 And instead what I found was that since her imagination was so strong  
43 and vivid, that she was lacking in this judgment and discrimination to tell  
44 the difference, because the emotional excitement which she felt about  
45 eating the food prevailed.  
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Whitmont Dep. at 30.

1 Dr. Whitmont also recounted another incident, wherein several hours into the testing she  
2 stated she could not keep going due to a headache. He suggested that she imagine a small, magic  
3 fairy, wearing a yellow shirt, and that she was to imagine this fairy coming into her head and  
4 sweeping away the headache with a magic broom. After doing so, she happily continued with the  
5 testing. Dr. Whitmont understood this interaction as follows:  
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8 Her desire was to end the testing session to go home, she had a  
9 headache, and she wanted to get out of here. And she responded  
10 positively and shifted that desire to being comfortable with being  
11 present. So, therefore, I don't believe that this response was something  
12 which was motivated by trying to please me or gain a secondary gain,  
13 but rather that it is simply a demonstration of her responsiveness and  
14 high hypnotizability based on both being suggestible and imaginative,  
15 which corresponds with what I said before about her imagination, as well  
16 as the statements I made about the dissociation associated with  
17 post-traumatic stress disorder. And it further emphasizes that we're not  
18 dealing with a psychosis.  
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20 Whitmont Dep. at 32. Dr. Whitmont also explained that Ms. Pacheco is an unreliable historian for  
21 the above reason, in that her definition of reality is very flexible and her ability to distinguish  
22 between fantasy and reality is not very good, and is influenced by her emotional state. Whitmont  
23 Dep. at 55.  
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26 Finally, Dr. Whitmont observed that another factor is cultural, and that Ms. Pacheco comes  
27 from a culture replete with fantasy phenomena.  
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29 And in the uneducated, rural, poor Mexican culture I have seen a lot of  
30 that. They believe in ghosts and fantasies. They have festivals, like the  
31 Day of the Dead. They have miscellaneous, assorted people roaming  
32 the countryside with guns, shooting people. And they use hexes, they  
33 use talismans, they believe in things like when there's an accident your  
34 soul leaves your body. And so I think that that has to be factored in, too.  
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36 Whitmont Dep. at 68.  
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38 Frederick A. Montgomery, M.D., is a physician certified as a specialist in psychiatry who saw  
39 Ms. Pacheco on two occasions: the first time at the request of the Department on May 24, 2000,  
40 and the second time at the request of her attorney in January 2003. Dr. Montgomery took  
41 essentially the same history, and noted that subsequent to the incident, Ms. Pacheco had been  
42 involuntarily committed in February 2000. In his opinion, she has a conversion disorder with mixed  
43 presentation, which he explained was the situation where psychiatric problems are converted to  
44 physical ones.  
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1 For his examination in January 2003, Dr. Montgomery reviewed numerous medical records  
2 and met with Ms. Pacheco again. His diagnosis was the same, that of conversion disorder with  
3 mixed features with motor and sensory deficits. In his opinion, this condition is related to the  
4 industrial injury of January 1999. Dr. Montgomery also addressed the issue of whether  
5 Ms. Pacheco was malingering. He stated that he certainly had given consideration to this issue, but  
6 that given what he knows about the claimant, including her cultural background, he does not  
7 believe she is malingering. In this regard, he looked particularly at whether she was functioning  
8 better than what she professed, and determined that in fact, she was not.  
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13 The Department presented a number of witnesses, the first of whom was Charles E.  
14 Schwartz, the field manager for George E. Johnson, the business for which Mr. and Ms. Pacheco  
15 worked. Mr. Schwartz testified that he has known the Pacheco family personally for the last  
16 17 years. He characterized them as hard workers, and that the farm had depended on them for  
17 17 years as well. Indeed, Mr. Schwartz had given Mr. Pacheco a car in the last few years.  
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20 Dennis Stump, M.D., a physician certified as a specialist in occupational medicine, evaluated  
21 Ms. Pacheco on April 11, 2002, at the request of the Department. He, too, took a history and  
22 reviewed medical records. Dr. Stump noted that the substance to which Ms. Pacheco was exposed  
23 is an irritant, and would at most cause temporary irritation of her nose and mouth. It is not,  
24 however, toxic.  
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28 In Dr. Stump's opinion, Ms. Pacheco suffers from depression, which causes her tension  
29 headaches. He does not believe that she has a psychiatric condition caused by the exposure.  
30 Instead, he believes that any psychiatric condition she might have is related to the many stressors  
31 in her life, such as her financial problems, an unplanned pregnancy, her husband leaving her, the  
32 death and/or murder of her father, and her many family problems.  
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35 Jacquelyn Weiss, M.D., a physician certified as a specialist in neurology, saw the claimant  
36 as part of the same panel as Dr. Stump. Dr. Weiss noted that some of Ms. Pacheco's complaints  
37 included headaches and numbness in her left upper extremity. However, Ms. Pacheco's  
38 neurological examination was entirely normal. Ultimately, Dr. Weiss diagnosed tension-type  
39 headaches, which are non-organic in nature and not the result of any on-the-job exposure.  
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43 Finally, the Department called Douglas Robinson, M.D., a physician certified as a specialist  
44 in psychiatry. Dr. Robinson performed a psychiatric evaluation of the claimant as part of the  
45 April 11, 2002 panel examination.  
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1 Dr. Robinson also reviewed medical records and examined Ms. Pacheco. He noted a  
2 confusing array of symptoms that suggest a mood disorder, an anxiety disorder, and a convergent  
3 disorder. He characterized her as a person with a histrionic personality style, who is dramatic,  
4 expressive, and suggestible. In Dr. Robinson's opinion, however, Ms. Pacheco's condition is not  
5 related to any exposure; rather it is the result of her personality structure, which is lifelong, in  
6 combination with her many psychosocial stressors. Although she attributes her symptoms to the  
7 exposure, the symptoms are really the culmination of her personality and stress.  
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11 Dr. Robinson does not believe that the claimant has PTSD, largely because she did not  
12 report those symptoms to him. He noted that Dr. Whitmont asked her point blank if she had the  
13 symptoms that make up the criteria for PTSD. Given her suggestible personality, he believes that it  
14 is hardly surprising that she responded affirmatively.  
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17 After careful review of the record, we are persuaded that this matter closely parallels the  
18 facts in *In re Adeline Thompson*, BIIA Dec., 90 4743 (1992). Ms. Thompson was a Boeing  
19 employee who showed up for work one day only to find a parking lot full of emergency vehicles.  
20 Any employees already at the building were evacuated and Ms. Thompson was told to wait in the  
21 parking lot, and that there had been a hydrochloric acid spill in the building. A couple hours later,  
22 she was allowed into the building, where she experienced a bad taste in her mouth, itching, and  
23 difficulty breathing. She was taken to Harborview, where she was hospitalized for several days.  
24 Later, she filed an application for benefits, which was denied. At the hearing, there was absolutely  
25 no evidence that she had ever been exposed to anything at all, as instrumentation designed to  
26 detect the presence of hydrochloric acid did not detect the presence of that chemical at the relevant  
27 time.  
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34 Nonetheless, the Board issued a Decision and Order allowing the claim based on an injury  
35 theory. In the *Thompson* decision, the Board observed:

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37 Dr. McConnell testified on the claimant's behalf that absent actual  
38 exposure to the chemical, the mere knowledge of and concern about the  
39 spill triggered the conversion reaction. He also considered the "turmoil"  
40 at the job site surrounding the apparent spill. Hundreds of workers were  
41 diverted to the cafeteria where they waited with incomplete knowledge  
42 of the situation.  
43

44 *Thompson*, at 5. Further, the Board recognized that Ms. Thompson had a volatile emotional life,  
45 and was very sensitive to stress. Her history included a nervous breakdown in 1969, as well as the  
46 suicide of a stepson and sexual abuse of a daughter. Finally, the Board noted:  
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1 The record indicates that while there was considerable activity in  
2 response to the spill, that the events were actually fairly well controlled  
3 and orderly. It would be tempting to question the validity of a  
4 mental/emotional response that reacted to the spill differently than the  
5 common experience of most of the people present. But that is not the  
6 basis for our inquiry. As noted in *Hedblum* and *Heassler*, we take a  
7 worker as we find her and she need only prove that the events, such as  
8 they were, proximately caused the condition complained of.  
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10 *Thompson*, at 6.

11 Like Ms. Thompson, Ms. Pacheco believes that a particular incident caused her harm, even  
12 though there is no possible causal connection. Like Ms. Thompson, Ms. Pacheco had a very  
13 chaotic life and most likely a pre-existing personality disorder. However, Ms. Pacheco had an  
14 incident at work that she believes caused her harm. We think that she is truthful in this regard, and  
15 we therefore allow this claim under the *Thompson* rationale for a conversion disorder.  
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18 In this regard, we agree with Dr. Montgomery and Dr. Robinson, at least with respect to the  
19 diagnosis. We are not persuaded that Ms. Pacheco has post-traumatic stress disorder, in part due  
20 to the manner in which the diagnosis was made. We are, however, persuaded that she had a  
21 conversion disorder with a mixed presentation, proximately caused by the fertilizer incident.  
22 Accordingly, we reverse the Department order of December 11, 2002, and remand this matter to  
23 the Department with direction to issue a further order allowing this claim for a conversion disorder  
24 with mixed presentation resulting from an industrial injury, and for other benefits as may be  
25 authorized by law.  
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### 31 **FINDINGS OF FACT**

- 32 1. On February 5, 1999, the claimant, Amada Z. Pacheco, filed an  
33 application for benefits with the Department of Labor and Industries,  
34 alleging that she sustained an industrial injury on January 26, 1999,  
35 while in the course of employment with George E. Johnson. On  
36 December 11, 2002, the Department corrected and superseded a  
37 June 26, 2002 order and rejected the claim. On February 3, 2003, the  
38 claimant appealed the order to the Board of Industrial Insurance  
39 Appeals. On March 19, 2003, the Board issued an order granting the  
40 appeal and assigned it Docket No. 03 11030.  
41
- 42 2. On January 26, 1999, Amada Z. Pacheco was pruning grape vines. A  
43 spreading machine drove within a few feet of her and spread ammonia  
44 sulfide fertilizer on the ground. Some of the fertilizer got on  
45 Ms. Pacheco's body and face.  
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- 1 3. The claimant is a 38-year-old woman who arrived from rural Mexico in  
2 1985. She has a fourth grade education, and can barely read and write  
3 Spanish. She speaks English on a very rudimentary level.  
4  
5 4. Before January 26, 1999, Ms. Pacheco had depression and anxiety  
6 caused by domestic and financial problems. Those problems persisted  
7 through 1999 and caused Ms. Pacheco to experience emotional  
8 distress.  
9  
10 5. Prior to the incident of January 26, 1999, Ms. Pacheco was an  
11 unsophisticated individual who is highly imaginative and susceptible to  
12 suggestion. Her ability to distinguish between fact and fantasy is poor,  
13 and she was raised in a culture replete with fantasy phenomena.  
14  
15 6. The exposure to fertilizer on January 26, 1999, constitutes a sudden and  
16 tangible happening of a traumatic nature, and such event, superimposed  
17 upon Ms. Pacheco's pre-existing personality traits, her lack of education,  
18 and her cultural background, produced an immediate and prompt result,  
19 diagnosed as a conversion disorder with mixed presentation, requiring  
20 medical treatment.  
21

#### 22 CONCLUSIONS OF LAW

- 23 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
24 parties to and the subject matter of this appeal.  
25  
26 2. Amada Z. Pacheco's conversion disorder with mixed presentation  
27 resulted from an industrial injury on January 29, 1999, as defined in  
28 RCW 51.08.100.  
29  
30 3. The order of the Department of Labor and Industries dated  
31 December 11, 2002, is incorrect and is reversed. This matter is  
32 remanded to the Department with direction to issue a further order  
33 allowing this claim for a conversion disorder with mixed presentation  
34 resulting from an industrial injury, and for other benefits as may be  
35 authorized by law.  
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37 It is so **ORDERED**.

38 Dated this 6th day of May, 2004.

39 BOARD OF INDUSTRIAL INSURANCE APPEALS

40  
41 /s/ \_\_\_\_\_  
42 THOMAS E. EGAN Chairperson

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