

## **Bartran, Lance**

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### **SECOND INJURY FUND (RCW 51.16.120)**

#### **Bodily disorder**

The term "bodily disorder", as used in RCW 51.16.120, includes a pre-existing personality disorder. ....*In re Lance Bartran*, BIIA Dec., 04 21232 (2005)

Scroll down for order.

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

1 **IN RE: LANCE BARTRAN** ) **DOCKET NOS. 04 21232 & 04 23432 &**  
2 ) **04 23522**  
3 )  
3 **CLAIM NO. W-002880** ) **DECISION AND ORDER**

4  
5 **APPEARANCES:**

6 Claimant, Lance Bartran, Pro Se

7 Self-Insured Employer, The Boeing Company, by  
8 Reinisch, Weier & MacKenzie, P.C., per  
9 Renee M. Bliss

10 Department of Labor and Industries, by  
11 The Office of the Attorney General, per  
12 William A. Garling, Jr., Assistant

13 The self-insured employer, The Boeing Company, filed three appeals under this claim with  
14 the Board of Industrial Insurance Appeals on August 26, 2004.

15 Under **Docket No. 04 23522**, The Boeing Company filed an appeal on August 26, 2004,  
16 from an order of the Department of Labor and Industries dated June 30, 2004. In this order, the  
17 Department placed the claimant on a pension effective July 16, 2004; terminated time-loss  
18 compensation benefits as paid through July 15, 2004; authorized treatment of the claimant's  
19 accepted condition of depression with Dexedrine, one psychiatric visit per month for medication  
20 monitoring; stated that treatment shall not include Schedule 1 through 4 drugs in accordance with  
21 RCW 51.36.010; and stated that the pension will be administered by the Department. The  
22 Department order is **REVERSED AND REMANDED**.

23 Under **Docket No. 04 21232**, The Boeing Company filed an appeal on August 26, 2004,  
24 from an order of the Department of Labor and Industries dated July 23, 2004. In this order, the  
25 Department stated that the claimant had been placed on a pension effective July 16, 2004; set the  
26 monthly benefit amount; and instructed The Boeing Company to pay the pension reserve amount in  
27 full or make a deposit of three times the monthly benefit, file a bond to cover the reserve amount,  
28 and then to make quarterly deposits to the Department. The Department order is **REVERSED AND**  
29 **REMANDED**.

30 Under **Docket No. 04 23432**, The Boeing Company filed an appeal on August 26, 2004,  
31 from an order of the Department of Labor and Industries dated July 1, 2004. In this order, the  
32

1 Department stated that Second Injury Fund Relief is not applicable to this case. The Department  
2 order is **REVERSED AND REMANDED.**

### 3 DECISION

4 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
5 and decision on a timely Petition for Review filed by the self-insured employer to a Proposed  
6 Decision and Order issued on July 11, 2005, in which the industrial appeals judge affirmed the  
7 orders of the Department dated June 30, 2004; July 1, 2004; and July 23, 2004.

8 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
9 no prejudicial error has occurred. The rulings are affirmed.

10 We have granted review to correctly resolve the issues raised by the self-insured employer  
11 regarding the effective date of the pension and second injury fund relief. The self-insured employer  
12 presented testimony from Phillip G. Lindsay, M.D., the treating psychiatrist; Paul B. Brown, M.D.,  
13 Ph.d., an attending physician; and Dr. Jill E. Rosenthal, the vocational counselor. The Department  
14 did not present evidence.

15 Dr. Lindsay testified that he has treated Mr. Bartran since September 23, 1999. Dr. Lindsay  
16 has treated the claimant for his major depressive disorder, single episode, chronic, that was caused  
17 by the industrial injury. In addition, Dr. Lindsay has diagnosed pre-existing schizoid personality  
18 disorder, a condition which is not responsive to treatment. Dr. Lindsay testified that the schizoid  
19 personality disorder precludes Mr. Bartran from many types of available work that he would  
20 otherwise have been able to perform. Dr. Lindsay stated that the claimant was permanently unable  
21 to be gainfully employed on a reasonably continuous basis as a result of the combination of the  
22 pre-existing schizoid disorder and the medical and psychiatric conditions that were caused by the  
23 industrial injury. Dr. Lindsay indicated that the psychiatric conditions were fixed and stable on  
24 February 8, 2002. Dr. Brown has treated Mr. Bartarn since May 23, 2001, for the fibromyalgia  
25 resulting from the injury. Dr. Brown testified that the condition had reached maximum medical  
26 improvement on September 9, 2002. Jill Rosenthal testified that on February 26, 2001, she began  
27 an assessment of Mr. Bartran's vocational abilities for gainful employment. Within the context of  
28 her testimony as a whole, it appears that Dr. Rosenthal did not complete the assessment and report  
29 her conclusions until April 22, 2002.

30 In the Proposed Decision and Order, the industrial appeals judge properly states that the  
31 effective date of the pension is the date that Mr. Bartran was medically fixed and stable, and as a  
32 vocational matter it was demonstrated that he was permanently unable to be gainfully employed on

1 a reasonably continuous basis. *In re Frederic Cuendet*, BIIA Dec., 99 21825 (2001). Although  
2 Dr. Lindsay concluded that Mr. Bartran's mental conditions were fixed and stable as of  
3 February 8, 2002, and Dr. Rosenthal concluded the vocational assessment on April 22, 2002,  
4 Dr. Brown did not observe that the conditions that he was treating had reached maximum medical  
5 improvement until September 9, 2002. The evidence demonstrates that the effective date of the  
6 pension is September 9, 2002, and not July 16, 2004, as indicated by the Department in its order  
7 dated June 30, 2004.

8 Although the industrial appeals judge correctly indicates that the language in the second  
9 injury fund statute, RCW 51.16.120, refers to previous bodily disability from any injury or disease,  
10 we find no authority for, nor do we agree with, the implication made by him that the omission of the  
11 term "mental" from the statute operates to exclude pre-existing mental disabilities from the relief of  
12 second injury fund. The testimony of Dr. Lindsay and Dr. Brown leave little doubt that Mr. Bartran's  
13 pre-existing schizoid personality disorder constitutes a disease in the form of a mental illness  
14 affecting the entire person. Mr. Bartran's personality disorder created a previous bodily disability  
15 that qualifies for consideration under RCW 51.16.120. According to the expert witnesses,  
16 Mr. Bartran can no longer perform his job of injury and he is not capable of gainful employment. In  
17 addition, the record of evidence, especially the vocational testimony of Dr. Rosenthal, demonstrates  
18 that Mr. Bartran requires retraining to be employed and that his schizoid disorder disables him from  
19 such retraining. To qualify for second injury fund relief, the employer must establish that the  
20 disability resulting from the injury would not have been total but for the pre-existing condition. *In re*  
21 *Alfred Funk*, BIIA Dec., 89 4156 (1991). Although the facts of this case are distinguishable from the  
22 facts considered under *Funk*, we find that the employer has established that the pre-existing  
23 schizoid personality disorder was an actual cause of the claimant's permanent total disability.  
24 Second injury fund relief is applicable.

### 25 **FINDINGS OF FACT**

- 26 1. On February 7, 1997, Lance Bartran, the claimant, filed an Application  
27 for Benefits with the Department of Labor and Industries in which he  
28 alleged that an injury to his right shoulder occurred during the course of  
29 his employment with The Boeing Company, a self-insured employer.  
30 On February 13, 1997, the Department issued an order in which it  
31 allowed the claim. On February 11, 1998, the Department issued an  
32 order in which it closed the claim because the claimant's covered  
medical condition was stable, ended time-loss compensation benefits as  
paid through June 19, 1997, and paid an award for permanent partial  
disability consistent with Category 2 permanent cervical and  
cervico-dorsal impairments.

1  
2 On April 7, 1999, the claimant filed an application to reopen the claim for  
3 aggravation of his accepted condition. On April 15, 1999, the  
4 Department issued an order in which it reopened the claim effective  
5 February 7, 1999, for the accepted conditions of right shoulder and  
6 cervical disc conditions, and denied responsibility for a psychiatric  
7 condition.

8  
9 On April 26, 1999, the claimant filed a Protest and Request for  
10 Reconsideration of the Department order dated April 15, 1999. On  
11 May 7, 1999, the self-insured employer filed a Protest and Request for  
12 Reconsideration of the Department order dated April 15, 1999. On  
13 August 27, 1999, the Department issued an order in which it held its  
14 order dated April 15, 1999, in abeyance. On March 16, 2000, the  
15 Department affirmed the order dated April 15, 1999.

16  
17 On March 27, 2000, the claimant filed a Notice of Appeal with the Board  
18 of Industrial Insurance Appeals from the Department order dated  
19 March 16, 2000. On April 5, 2000, the Department issued an order in  
20 which it held its order dated March 16, 2000, in abeyance. On April 6,  
21 2000, the Board issued an order in which it returned the case to the  
22 Department for further consideration. On April 7, 2000, the Department  
23 issued an order in which it corrected its order dated April 15, 1999, and  
24 reopened the claim effective February 7, 1999, for authorized treatment  
25 and action.

26  
27 On June 30, 2004, the Department issued an order in which it placed  
28 the claimant on the pension rolls effective July 16, 2004; terminated  
29 time loss compensation benefits as paid through July 15, 2004;  
30 authorized treatment of the claimant's accepted condition of depression  
31 with Dexedrine, one psychiatric visit per month for medication  
32 monitoring, and determined that treatment shall not include Schedule 1  
through 4 drugs in accordance with RCW 51.36.010; and determined  
that the pension would be administered by the Department. On  
August 26, 2004, the self-insured employer filed a Notice of Appeal with  
the Board of Industrial Insurance Appeals from the Department order  
dated June 30, 2004. On September 27, 2004, and October 5, 2004,  
the Board issued orders in which it extended the time to act on the  
appeal an additional ten days. On October 12, 2004, the Board issued  
an order in which it granted the appeal; assigned the appeal Docket  
No. 04 23432; and ordered that further proceedings be held.

On July 1, 2004, the Department issued an order in which it determined  
that Second Injury Fund Relief was not applicable in this case. On  
August 26, 2004, the self-insured employer filed a Notice of Appeal with  
the Board of Industrial Insurance Appeals from the Department order  
dated July 1, 2004. On September 27, 2004, and October 5, 2004, the  
Board issued orders in which it extended the time to act on the appeal

1 an additional ten days. On October 12, 2004, the Board issued an order  
2 in which it granted the appeal; assigned the appeal Docket  
3 No. 04 23522; and ordered that further proceedings be held.

4 On July 23, 2004, the Department issued an order in which it placed the  
5 claimant on the pension rolls effective July 16, 2004; set the monthly  
6 benefit amount at \$2,119.81; and instructed The Boeing Company to  
7 pay the pension reserve amount of \$180,448.00 in full, or to make  
8 deposit of three times the monthly benefit, file a bond to cover the  
9 reserve amount, and then make quarterly deposits to the Department.  
10 On August 26, 2004, the self-insured employer filed a Notice of Appeal  
11 with the Board of Industrial Insurance Appeals from the Department  
12 order dated July 23, 2004. On September 27, 2004, and October 5,  
2004, the Board issued orders in which it extended the time to act on the  
13 appeal an additional ten days. On October 12, 2004, the Board issued  
14 an order in which it granted the appeal; assigned the appeal Docket No.  
15 04 21232; and ordered that further proceedings be held.

- 16 2. The claimant, Lance Bartran, graduated high school in 1965. He  
17 attended trade school on and off, and performed sheet metal work until  
18 1989, when he was hired by The Boeing Company as a welder.
- 19 3. On December 5, 1996, while at work with The Boeing Company,  
20 Mr. Bartran injured his right shoulder and neck while struggling with a  
21 460-pound object. The industrial injury proximately caused conditions of  
22 fibromyalgia and depression that were permanently partially disabling.
- 23 4. Mr. Bartran suffers from schizoid personality disorder, a disease that  
24 pre-existed the industrial injury of December 5, 1996. Prior to the  
25 industrial injury of December 5, 1996, the schizoid personality disorder  
26 was symptomatic and disabling. It limited Mr. Bartran's ability to obtain  
27 and perform the full scope of his employment potential. The personality  
28 disorder precluded him from having transferable job skills and precluded  
29 him from participating in work retraining programs. Prior to the  
30 occurrence of the industrial injury, the disability caused by the schizoid  
31 personality disorder did not preclude Mr. Bartran from reasonably  
32 continuous employment at the job of injury.
5. As of September 9, 2002, the conditions proximately caused by the  
industrial injury had reached maximum medical improvement and were  
fixed and stable. As of September 9, 2002, it was demonstrated as a  
vocational matter that Mr. Bartran was unable to obtain and engage in  
gainful employment on a reasonably continuous basis.
6. As of September, 9, 2002, the conditions proximately caused by the  
industrial injury limit Mr. Bartran from returning to his job at injury. The  
residuals of the injury, alone, do not limit Mr. Bartran's transferable job  
skills, or his capacity to be retrained. The conditions proximately caused

1 by the industrial injury, did not render Mr. Bartran incapable and unable  
2 to obtain reasonably continuous employment in the competitive labor  
3 market, when considered in conjunction with his age, education,  
4 training, work history, transferable skills. The industrial injury was, in  
itself, insufficient to cause permanent total disability.

- 5 7. As of September 9, 2004, the permanent residuals caused by the  
6 December 9, 1999 industrial injury, combined with and superimposed  
7 upon the pre-existing disabling condition, precluded Mr. Bartran from  
8 obtaining or performing reasonably continuous gainful employment in  
9 the competitive labor market, when considered with his age, education,  
10 training, work history, transferable skills and ability to be retrained.
- 11 8. As of June 30, 2004, the Department authorized the claimant to  
12 receive Dexedrine treatment for his accepted condition of depression,  
13 one psychiatric visit per month for medication monitoring, and in which  
14 the Department determined that treatment shall not include Schedule 1  
15 through 4 drugs in accordance with RCW 51.36.010.
- 16 9. As of July 23, 2004, the Department set forth in an order the monthly  
17 benefit amount as \$2,119.81; and instructed that The Boeing Company  
18 pay the pension reserve amount of \$180,448.00 in full, or makes deposit  
19 of three times the monthly benefit, file a bond to cover the reserve  
20 amount, and then make quarterly deposits to the Department.

### 21 **CONCLUSIONS OF LAW**

- 22 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
23 parties to and the subject matter of these appeals.
- 24 2. Effective September 9, 2002, Mr. Bartran was a permanently totally  
25 disabled worker within the meaning of RCW 51.32.060, due to the  
26 combined effects of the industrial injury of December 5, 1996,  
27 superimposed upon the pre-existing condition.
- 28 3. Effective September 9, 2002, the self-insured employer was entitled to  
29 distribution of the accident costs under the provisions of  
30 RCW 51.16.120, with respect to the industrial injury of the claimant  
31 occurring on December 5, 1996.
- 32 4. The self-insured employer, The Boeing Company, is entitled to Second  
Injury Fund Relief as provided by RCW 51.16.120. The order of the  
Department of Labor and Industries dated July 1, 2004, is incorrect and  
is reversed. The matter is remanded to the Department with direction to  
provide the self-insured employer with distribution of the accident costs  
under the provisions of RCW 51.16.120.

- 1 5. The order of the Department of Labor and Industries dated June 30,  
2 2004, is incorrect and is reversed. The matter is remanded to the  
3 Department to place the claimant on a pension effective September 9,  
4 2002; terminate time-loss compensation benefits as paid through  
5 September 8, 2002; authorize treatment for the accepted condition of  
6 depression with Dexedrine, one psychiatric visit per month for  
7 medication monitoring; and state that treatment shall not include  
8 Schedule 1 through 4 drugs in accordance with RCW 51.36.010; and  
9 determine that the pension will be administered by the Department.
- 10 6. The order of the Department of Labor and Industries dated July 23,  
11 2004, is incorrect and is reversed. The matter is remanded to the  
12 Department to issue an order in which the claimant is placed on a  
13 pension effective September 9, 2002; the monthly benefit amount is set;  
14 and The Boeing Company is instructed to take such action as is  
15 indicated and in accordance with this order.

16 It is so **ORDERED**.

17 Dated this 16th day of November, 2005.

18 BOARD OF INDUSTRIAL INSURANCE APPEALS

19 /s/ \_\_\_\_\_  
20 THOMAS E. EGAN Chairperson

21 /s/ \_\_\_\_\_  
22 FRANK E. FENNERTY, JR. Member

23 /s/ \_\_\_\_\_  
24 CALHOUN DICKINSON Member