

Bartran, Lance

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.

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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