Gorre, Edward

HEART ATTACK

Presumption in RCW 51.32.185

A firefighter must initially offer evidence that the condition is one contemplated by the statute. Only after doing so is the burden shifted to the Department or the self-insured employer to rebut the presumption by a preponderance of the evidence. …In re Edward Gorre, BIIA Dec., 09 13340 (2010) [Editor's Note: Affirmed, Gorre v. City of Tacoma, 184 Wn.2d 30 (2015). See also Spivey v. City of Bellevue, 187 Wn.2d 716 (2017) (presumption does not disappear on the production of contrary evidence, but rather shifts the burden of production and persuasion to the employer).]

Scroll down for order.
IN RE: EDWARD O. GORRE  ) DOCKET NO. 09 13340
CLAIM NO. SB-29707  ) DECISION AND ORDER

APPEARANCES:

Claimant, Edward O. Gorre, by
Ron Meyers & Associates, PLLC, per
Ron Meyers

Self-Insured Employer, City of Tacoma, by
Pratt, Day & Stratton, PLLC, per
Marne J. Horstman

Department of Labor and Industries, by
The Office of the Attorney General, per
Pat L. Demarco, Assistant

The claimant, Edward O. Gorre, filed an appeal with the Board of Industrial Insurance
Appeals on April 8, 2009, from an order of the Department of Labor and Industries dated March 24,
2009. In this order, the Department set aside an order dated March 26, 2008, and rejected
Mr. Gorre's Application for Benefits for the stated reasons that there was no proof of a specific
injury at a definite time and place during the course of his employment, his condition was not the
result of the injury alleged, the condition was not the result of an industrial injury, as that term is
defined in RCW 51.08.100, and the condition was not an occupational disease within the meaning
of RCW 51.08.140. The Department order is AFFIRMED.

DECISION

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for
review and decision. The claimant and employer filed timely Petitions for Review of a Proposed
Decision and Order issued on October 1, 2010, in which the industrial appeals judge affirmed the
Department order dated March 24, 2009.

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

We agree with our industrial appeals judge's assessment of the evidence and the
conclusions he drew from it. We have granted review to add Findings of Fact and Conclusions of
Law to clarify why Mr. Gorre's medical condition cannot be presumed to be an occupational disease
under the provisions of RCW 51.32.185, and to briefly explain why we conclude that Mr. Gorre did not satisfy his burden of proof.

RCW 51.32.185 creates a rebuttable prima facie presumption that a firefighter who develops certain medical conditions is presumed to have developed the illness because of an occupational disease process. The conditions include respiratory disease, cancer, heart conditions that become manifest within 72 hours of exposure to smoke, fumes, or toxic substances or within 24 hours after strenuous physical exertion and infectious diseases. Subsection (4) of the statute states:

The presumption established in subsection (1)(d) of this section [infectious diseases] shall be extended to any firefighter who has contracted any of the following infectious diseases: Human immunodeficiency virus/acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, or mycobacterium tuberculosis.

Mr. Gorre asserts that he did not have to produce any evidence to prove that his condition was presumed to be an occupational disease. We disagree with his interpretation of the applicability of the presumption. For the presumption to apply, a firefighter must first present evidence that his or her medical condition is one contemplated by the statute to have been presumptively caused by an occupational disease process. Only after he or she has done so, does the burden of producing a preponderance of the evidence to rebut the presumption fall to the Department or the firefighter's self-insured employer. If the condition for which Mr. Gorre here seeks industrial insurance coverage is not one presumed by statute to be an occupational disease, he carries the burden of proof.

The diagnosis of the condition Mr. Gorre developed is critical to a determination of whether his condition was presumptively an occupational disease. Mr. Gorre advanced two theories to support his prayer for relief. Under one of the theories, Mr. Gorre asserts that he was exposed to harmful substances during the course of his employment that caused him to develop a respiratory disorder, eosinophilic pneumonia, and that the treatment for the respiratory condition resulted in an infectious disease, coccidioidomycosis. The Department and the City of Tacoma contend that Mr. Gorre contracted only coccidioidomycosis, and that distinctive conditions of his employment did not naturally and proximately cause the coccidioidomycosis.

Four medical experts, Christopher H. Goss, M.D., Royce H. Johnson, M.D., Garrison H. Ayers, M.D., and Emil J. Bardana, Jr., M.D., detailed their opinions regarding the nature of the condition Mr. Gorre developed. They agreed that the claimant suffered from coccidioidomycosis. The ailment is commonly known as Valley Fever. Valley Fever is caused by Coccidioides immitis,
an organism that lives in the soil in desert areas such as Mexico, the Sonoran desert, other areas of California and Arizona, and in Nevada and other southwestern states. The organism produces arthrospores that become airborne when the soil is disturbed and may be inhaled and cause disease in humans. Because it thrives only in desert climates, the organism cannot live in the northwestern United States. About 60 percent of the people who are exposed to the organism that causes Valley Fever never develop any symptoms. The symptoms from which the other 40 percent suffer are similar to those caused by the flu or colds. Valley Fever is an infectious disease, the symptoms of which can affect a patient's respiratory functions.

No case of Valley Fever has ever been reported as having been proximately caused by an exposure that happened in the State of Washington. The few patients who have been treated for the condition in Washington contracted it elsewhere.

Mr. Gorre's Relevant Background

Mr. Gorre lived in Fair Oaks, California from 1986 until he graduated from high school. Fair Oaks is a suburb of Sacramento. After the claimant graduated, he enlisted in the United States Army and served in the armed forces for three years. He was stationed in Germany for the first two years of his enlistment but ended his Army career after he was posted in Saudi Arabia for the final 12 months. He traveled in Iraq and Kuwait during that time.

Mr. Gorre then lived in the Sacramento area from 1990 through sometime in 1994. He attended a community college and then obtained his college degree from California State Los Angeles. Mr. Gorre resided in Long Beach, California from 1994 through 1997. He relocated to the State of Washington in early 1997.

The firefighter acknowledged that before he moved to Washington, he traveled throughout California. He visited Mexico in the late 1980s, early 1990s, and in 2008. From 1995 through 2004, Mr. Gorre visited Fair Oaks between five and ten times to visit his father. In November 2005, Mr. Gorre took a trip to Nevada, where he played golf outside the city limits of Las Vegas.

Mr. Gorre conceded that he could not identify one specific instance in which he was exposed to a substance during the course of his work as a firefighter/EMT that proximately caused the condition for which he seeks industrial insurance coverage. The record demonstrated that the claimant responded to few calls to fight fires, but many calls for EMT services from 2005 through early 2007. Considering the time within which Valley Fever usually becomes symptomatic following exposure, it is that time period that is important.
The Medical Evidence

No medical witness identified any specific substance to which Mr. Gorre was exposed during the course of his job that was the probable proximate cause of his condition.

Mr. Gorre relied on the opinions of two medical experts to support his claim for benefits.

The Theory of Christopher H. Goss, M.D.

Christopher H. Goss, M.D., is certified by the American Board of Critical Care Physicians as qualified in that medical specialty. The doctor treated Mr. Gorre for the symptoms that are at issue. He concluded that Mr. Gorre actually suffered from two medical conditions. Eosinophilic pneumonia, which the doctor thought was the first disease the claimant contracted, is a respiratory disease of the vessels of a person's airway. Dr. Goss believed that the disease resulted from "multiple occupational exposures," but he could not identify when the exposures happened or the substances that likely caused the pneumonia.

Mr. Gorre was treated with steroids for the presumed pneumonia. Dr. Goss believed that while the steroids resolved the pneumonia, they also caused the Valley Fever organism that had lain dormant for many years after the claimant contracted it when he lived in an area in which the organism is endemic, to become active and symptomatic. The record established that in the 40 percent of people who become ill after exposure to the Valley Fever organism, symptoms usually begin within two weeks of exposure. The organism may, however, remain dormant for several years.

Thus, based on Dr. Goss's testimony, Mr. Gorre contended that the proper and necessary treatment he underwent for a respiratory disease that was proximately caused by occupational exposures "caused dissemination of coccidioidomycosis which he may have acquired as a young man while growing up in California . . .." Goss Dep. at 24. While proximate cause may be established under such circumstances, In re Arvid Anderson, BIIA Dec., 65,170 (1986), we are not convinced of the efficacy of Dr. Goss's theory.

Garrison H. Ayers, M.D., is certified by the American Boards of Internal Medicine, Infectious Diseases, and Allergy and Clinical Immunology as a qualified medical specialist. He examined Mr. Gorre on September 3, 2008. The doctor said that Mr. Gorre did not report having been exposed to any substance that could have caused chronic eosinophilic pneumonia. Dr. Ayers also declared that the symptoms Mr. Gorre had when he saw Dr. Goss were consistent with a person who has Valley Fever, but not eosinophilic pneumonia. He explained:

Well, I think, it is clear that this gentleman had coccidioidomycosis, and that he had been in endemic areas and lived in typical areas, which one
would obtain it. And therefore, is at higher risk, and also given the fact
that he is Philippino, which increases his risk of dissemination, and that
the picture that, not only from my history that I obtained and reviewing
the records goes along perfectly well with that, and the fact that he had
biopsy that was not consistent with hypersensitivity pneumonitis.

He had clinical symptoms that you don’t see with chronic pulmonary
eosinophilic pneumonia, and that he had arthralgias and rash, and those
kind of symptoms.

And then, of course, the icing on the cake, which I did not have in my
first visit, by the way, is that he grew coccidioidomycosis. So, I think it is
unequivocal that this gentleman had coccidioidomycosis as his initial,
and only disease, and it is a farfetched stretch without clinical data to
support that he had another disease that resulted in him getting treated
with Prednisone that immunosuppressed him more so he came out with
coccidioidomycosis. For him to come out with coccidioidomycosis he
already had it. It is clear it was present before.

6/14/10 Tr. at 104, 105.

Paul L. Bollyky, M.D., is certified as a qualified specialist in internal medicine and infectious
diseases. As did Dr. Goss, Dr. Bollyky treated Mr. Gorre for the condition that is here at issue. The
physician confirmed that the claimant suffered from Valley Fever. He was unsure whether
Mr. Gorre ever suffered from the pneumonia that Dr. Goss diagnosed. Dr. Bollyky noted that the
symptoms of Valley Fever may be misdiagnosed as a respiratory disease because the symptoms of
the infectious disease and of respiratory illnesses are similar.

Emil J. Bardana, Jr., M.D., holds credentials from the American Boards of Internal Medicine
and Allergy and Immunology. He reviewed a complete set of Mr. Gorre’s records in October 2009.
Dr. Bardana described the medical records he reviewed as much more comprehensive than the
ones Dr. Goss and Dr. Johnson reviewed, as, he said, were the records he read regarding where
Mr. Gorre had lived and his history of travel. The doctor concluded that Mr. Gorre developed only
one disease, Valley Fever, which is an infectious disease, and that he did not contract any
eosinophilic lung, or respiratory disease caused by a harmful exposure during the course of his job
as a firefighter. Dr. Bardana stated that unless a firefighter’s breathing apparatus either fails or
comes off, "[e]osinophilic lung disease in firefighters is almost a non-issue." 6/24/10 Tr. at 57.

Dr. Bardana determined that Mr. Gorre’s travel history was a critical factor in determining
when he was exposed to the Valley Fever organism. He concluded that the claimant was probably
exposed to the organism during his trip to Nevada in November 2005. By way of explanation,
Dr. Bardana outlined Mr. Gorre’s medical history after he returned from Nevada. In
December 2005, the claimant had a three or four day episode during which he had an acute febrile
illness demonstrated by a fever, muscle pains, arthralgias, sweats, sore throat and headache. The symptoms recurred in January and May 2006. When he experienced another episode in June 2006, Mr. Gorre sought medical treatment.

The infectious disease specialist said that between June 2006 and February 2007, Mr. Gorre developed an allergic response or hypersensitivity caused by Valley Fever. The witness noted that of all of the doctors who participated in treating Mr. Gorre during that time, only Dr. Goss steadfastly thought the claimant had a distinct respiratory disease. Dr. Bardana noted that the steroids with which Dr. Goss treated Mr. Gorre improved the claimant's hypersensitivity response but did not address his primary illness of Valley Fever. That condition, which Dr. Bardana concluded caused all of Mr. Gorre's symptoms, not only did not respond to the steroids, the infectious disease "actually flourished and became disseminated, and he later required antifungal therapy." 6/24/10 Tr. at 24.

The Theory of Royce H. Johnson, M.D.

Royce H. Johnson, M.D., enjoys certification as a specialist by his peers in the American Board of Internal Medicine and in a subspecialty of infectious diseases. He promoted the second theory of proximate cause that Mr. Gorre advanced. Dr. Johnson postulated that the claimant's exposure to the Valley Fever organism happened when a vehicle drove through the Tacoma area after having been in one of the southwestern areas of the United States in which the organism is endemic. The vehicle, he thought, probably caught fire on Interstate 5, and Mr. Gorre responded to the scene where he contracted the disease during the course of his employment.

Dr. Johnson was unaware that Mr. Gorre had lived in California.

We find Dr. Johnson's theory of causation to be highly improbable.

Payam Fallah Moghadam, Ph.D., is a mycologist, whose occupation involves the study of organisms. He said that the organism that causes Valley Fever would have immediately died if it was carried to an environment such at Washington's. He also averred that the organism cannot survive fires that reach temperatures of more than 130 degrees F. Both of these factors detract from the persuasiveness of Dr. Johnson's theory.

By far, a preponderance of the persuasive evidence leads us to conclude that Mr. Gorre did not contract a respiratory disease that distinctive conditions of his employment as a firefighter naturally and proximately caused. He contracted an infectious disease because of his exposure to the Valley Fever organism that did not happen during the course of his employment for the City of Tacoma.
FINDINGS OF FACT

1. On April 26, 2007, the claimant, Edward O. Gorre, filed an Application for Benefits with the Department of Labor and Industries, in which he alleged that he contracted an occupational disease that distinctive conditions of his employment with the City of Tacoma Fire Department naturally and proximately caused. The Department rejected the claim for benefits on August 13, 2007, for the stated reason that Mr. Gorre did not provide it with a physician’s report or medical proof. In its order the Department also informed Mr. Gorre that he had the right to file another claim with the Department so long as he filed it within one year of the date he was injured. The City of Tacoma protested the order on September 6, 2007. On February 11, 2008, the Department held the August 13, 2007 order in abeyance and rejected Mr. Gorre’s claim for benefits because there was no proof of a specific injury at a definite time and place during the course of his employment, his condition was not the result of the injury he alleged, and the condition was not caused by an industrial injury event or occupational disease process. Mr. Gorre protested the order on February 20, 2008. On March 26, 2008, the Department allowed Mr. Gorre’s claim for an occupational disease that the Department described as interstitial lung disease, nodular with eosinophilia and granulomatous disease with possible sarcoid. The Department held the order in abeyance one day later. On March 24, 2009, the Department canceled the March 26, 2008 order and rejected Mr. Gorre’s claim for benefits because there was no proof of a specific injury at a definite time and place during the course of his employment, his condition was not the result of the injury he alleged, and the condition was not caused by an industrial injury event or occupational disease process. Mr. Gorre filed a Notice of Appeal with the Board of Industrial Insurance Appeals from the March 24, 2009 Department order on April 8, 2009. On May 7, 2009, the Board agreed to hear the appeal, and under Docket No. 09 13340, it issued an Order Granting Appeal.

2. In 2000, Mr. Gorre began working as an EMT for the City of Tacoma’s Fire Department. From that time through April 2007, by far the majority of the claimant’s work duties involved EMT work. The City of Tacoma hired Mr. Gorre as a firefighter on March 17, 2007.

3. Mr. Gorre was exposed to the organism that causes Valley Fever when he took a golfing trip to Nevada in November 2005.

4. Valley Fever is an infectious disease.

5. Mr. Gorre became symptomatic from Valley Fever in December 2005.

6. Mr. Gorre did not contract any respiratory condition that distinctive conditions of his occupation as a firefighter for the City of Tacoma naturally and proximately caused.
CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the subject matter of and the parties to this appeal.

2. During the course of his employment with the City of Tacoma's Fire Department, Mr. Gorre did not develop any disabling medical condition that the provisions of RCW 51.32.185 mandate be presumed to be an occupational disease.

3. Mr. Gorre did not incur any disease that arose naturally and proximately from distinctive conditions of his employment with the City of Tacoma's Fire Department.

4. The March 24, 2009 order of the Department of Labor and Industries is correct and is affirmed.

Dated: December 8, 2010.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ DAVID E. THREEDY Chairperson

/s/ FRANK E. FENNERTY, JR. Member

/s/ LARRY DITTMAN Member