

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*, BIA Dec., 09 13340 (2010) [Editor's Note: Affirmed, *Gorre v. City of Tacoma*, 184 Wn.2d 30 (2015).]

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

1 **IN RE: EDWARD O. GORRE**) **DOCKET NO. 09 13340**
2 **CLAIM NO. SB-29707**) **DECISION AND ORDER**
3 _____)

4 APPEARANCES:

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

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

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

14 The claimant, Edward O. Gorre, filed an appeal with the Board of Industrial Insurance
15 Appeals on April 8, 2009, from an order of the Department of Labor and Industries dated March 24,
16 2009. In this order, the Department set aside an order dated March 26, 2008, and rejected
17 Mr. Gorre's Application for Benefits for the stated reasons that there was no proof of a specific
18 injury at a definite time and place during the course of his employment, his condition was not the
19 result of the injury alleged, the condition was not the result of an industrial injury, as that term is
20 defined in RCW 51.08.100, and the condition was not an occupational disease within the meaning
21 of RCW 51.08.140. The Department order is **AFFIRMED**.

22 style="text-align:center">**DECISION**

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

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

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

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

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

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

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

31 Four medical experts, Christopher H. Goss, M.D., Royce H. Johnson, M.D., Garrison H.
32 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*,

1 an organism that lives in the soil in desert areas such as Mexico, the Sonoran desert, other areas of
2 California and Arizona, and in Nevada and other southwestern states. The organism produces
3 arthrospores that become airborne when the soil is disturbed and may be inhaled and cause
4 disease in humans. Because it thrives only in desert climates, the organism cannot live in the
5 northwestern United States. About 60 percent of the people who are exposed to the organism that
6 causes Valley Fever never develop any symptoms. The symptoms from which the other 40 percent
7 suffer are similar to those caused by the flu or colds. Valley Fever is an infectious disease, the
8 symptoms of which can affect a patient's respiratory functions.

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

12 Mr. Gorre's Relevant Background

13 Mr. Gorre lived in Fair Oaks, California from 1986 until he graduated from high school. Fair
14 Oaks is a suburb of Sacramento. After the claimant graduated, he enlisted in the United States
15 Army and served in the armed forces for three years. He was stationed in Germany for the first two
16 years of his enlistment but ended his Army career after he was posted in Saudi Arabia for the final
17 12 months. He traveled in Iraq and Kuwait during that time.

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

22 The firefighter acknowledged that before he moved to Washington, he traveled throughout
23 California. He visited Mexico in the late 1980s, early 1990s, and in 2008. From 1995 through
24 2004, Mr. Gorre visited Fair Oaks between five and ten times to visit his father. In November 2005,
25 Mr. Gorre took a trip to Nevada, where he played golf outside the city limits of Las Vegas.

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

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1 The Medical Evidence

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

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

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

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

13 Mr. Gorre was treated with steroids for the presumed pneumonia. Dr. Goss believed that
14 while the steroids resolved the pneumonia, they also caused the Valley Fever organism that had
15 lain dormant for many years after the claimant contracted it when he lived in an area in which the
16 organism is endemic, to become active and symptomatic. The record established that in the
17 40 percent of people who become ill after exposure to the Valley Fever organism, symptoms
18 usually begin within two weeks of exposure. The organism may, however, remain dormant for
19 several years.

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

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

32 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

1 would obtain it. And therefore, is at higher risk, and also given the fact
2 that he is Philippino, which increases his risk of dissemination, and that
3 the picture that, not only from my history that I obtained and reviewing
4 the records goes along perfectly well with that, and the fact that he had
5 biopsy that was not consistent with hypersensitivity pneumonitis.

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

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

17 6/14/10 Tr. at 104, 105.

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

24 Emil J. Bardana, Jr., M.D., holds credentials from the American Boards of Internal Medicine
25 and Allergy and Immunology. He reviewed a complete set of Mr. Gorre's records in October 2009.
26 Dr. Bardana described the medical records he reviewed as much more comprehensive than the
27 ones Dr. Goss and Dr. Johnson reviewed, as, he said, were the records he read regarding where
28 Mr. Gorre had lived and his history of travel. The doctor concluded that Mr. Gorre developed only
29 one disease, Valley Fever, which is an infectious disease, and that he did not contract any
30 eosinophilic lung, or respiratory disease caused by a harmful exposure during the course of his job
31 as a firefighter. Dr. Bardana stated that unless a firefighter's breathing apparatus either fails or
32 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

1 illness demonstrated by a fever, muscle pains, arthralgias, sweats, sore throat and headache. The
2 symptoms recurred in January and May 2006. When he experienced another episode in
3 June 2006, Mr. Gorre sought medical treatment.

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

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

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

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

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

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

28 By far, a preponderance of the persuasive evidence leads us to conclude that Mr. Gorre did
29 not contract a respiratory disease that distinctive conditions of his employment as a firefighter
30 naturally and proximately caused. He contracted an infectious disease because of his exposure to
31 the Valley Fever organism that did not happen during the course of his employment for the City of
32 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

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Dated: December 8, 2010.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
DAVID E. THREEDY Chairperson

/s/
FRANK E. FENNERTY, JR. Member

/s/
LARRY DITTMAN Member