

Larkin, Owen, Dec'd

BENEFICIARIES

Permanent total disability benefits

PERMANENT TOTAL DISABILITY (RCW 51.08.160)

Survivors' benefits

SUICIDE (RCW 51.32.020)

Permanent total disability at time of death (RCW 51.32.050(6))

While the death of a worker who commits suicide with intent and deliberation is not compensable under RCW 51.32.020, the surviving spouse is not foreclosed from benefits under RCW 51.32.050(6) if the worker was permanently totally disabled at the time of death. ...*In re Owen Larkin, Dec'd, BIIA Dec., 18,441 (1965)* [dissent] [*Editor's Note*: Rule upheld by *Department of Labor & Indus. v. Baker*, 57 Wn. App. 57 (1990).]

Scroll down for order.

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

1 **IN RE: OWEN J. LARKIN, DEC'D**) **DOCKET NO. 18,441**
2)
3 **CLAIM NO. C-363419**) **DECISION AND ORDER**
4 _____)

5 APPEARANCES:
6

7 Petitioner, Marion Larkin, by
8 Stubbs, Batali, Combs and Small, per
9 Jerome F. Combs

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11 Employer, Western State Hospital,
12 None

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 Robert M. Elston, H. Graham Fitch,
17 Thomas O'Malley, Robert G. Swenson, and Kenneth E. Phillipps, Assistants
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19 Appeal filed by the petitioner on August 23, 1962, from an order of the supervisor of
20 industrial insurance dated July 19, 1962, rejecting this claim for widow's benefits under the
21 workmen's compensation act. **REVERSED AND REMANDED.**

22 **DECISION**
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25 The Board has reviewed the record in the light of a Proposed Decision and Order issued in
26 this matter on December 23, 1964, and exceptions duly filed thereto by the department on January
27 22, 1965. As a result thereof, the Board concludes that the exceptions have merit in part, but that
28 the petitioner is still entitled to benefits under the act.
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31 The hearing examiner found that the decedent took his life as a result of an irresistible or
32 uncontrollable impulse, and concluded therefrom under the rule of Karlen v. Department of Labor
33 and Industries, 41 Wn. 2d 301, that the death was compensable under the act. The department
34 challenges the correctness of such finding and we are of the view that the challenge is well taken.
35 In Gatterdam v. Department of Labor and Industries, 185 Wash. 628, the court approved a trial
36 court instruction which defined "uncontrollable impulse" as follows:
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40 " '...an uncontrollable impulse is that action of the body, in no way
41 guided by the mind, which may cause the individual to execute a
42 completed act where there is no direction from the mind, in other words,
43 if there be any direction of the mind controlling the chain of events or
44 any part of them then the same is not an uncontrollable impulse....' "

1 The psychiatric evidence concerning the decedent's state of mind was rendered by Dr. Myron C.
2 Kass, who testified in material part as follows:
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4 "Q Doctor, again, assuming the facts in the hypothetical to be true as
5 amended, your medical training and experience, are you able to form an
6 opinion as to whether or not the suicide was an intentional act on the
7 part of the deceased?
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9 A Yes. In my psychiatric opinion, this man was capable of developing
10 intent but that this intent is based on and a product of his mental illness."
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13 Q At the time that you felt then that on the date of his suicide, I believe was
14 February 22, 1962, that he was capable of forming an intent to perform
15 the act?

16 A Yes, as previously testified, I felt he was capable of forming intent but
17 the mental dynamics and configuration of the formation of the intent was
18 based on an unsound mind and based on mental illness and the thinking
19 going into the formation of the intent was sick thinking.
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21 Q But on the date of his death, he was capable of formulating a plan to kill
22 himself, is that not correct?

23 A Yes, but the thinking is sick. This is not the imagination of the normal
24 mind.
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26 Q Would the fact that Mr. Larkin committed suicide while no one else was
27 in the house indicate that an intent was also a part of a plan?

28 A This would indicate the deliberateness and seriousness of the intent."
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31 Q Doctor, you state that Mr. Larkin was unable to help himself or couldn't
32 stop this suicide at the time that he committed the suicide but we are
33 looking at that after it has happened, but the pattern that we can see
34 that he obtained a revolver and the ammunition and waited until
35 everyone was out of the house, that indicates that it was an act of
36 reason leading up to the act?

37 A The answer would be yes, but as similarly testified before, this is sick
38 reasoning. A person is able to reason normally or abnormally and they
39 are able to reason healthfully or sick reasoning and in my opinion this is
40 an abnormal sick reasoning, sick process based upon his mental
41 illness."
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43 It is clear from the doctor's further testimony that he did not consider the decedent to be psychotic
44 or insane. His testimony, in our opinion, admits of no other conclusion but that the decedent's
45 death was a product of intent and deliberation, be it sick or otherwise, and not the result of an
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1 "uncontrollable impulse" as that term has been judicially defined. Accordingly, the decedent's death
2 is not compensable under the act. Karlen v. Department of Labor and Industries, supra; Gatterdam
3 v. Department of Labor and Industries, supra; RCW 51.32.020.
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6 Parenthetically, it should be noted that we have assumed, as did the parties, that the
7 decedent's death was not a pure accident. The parties stipulated at the outset that the decedent
8 expired as the result of a "self-inflicted gunshot wound." This, of course, does not rule out the
9 possibility of accident. There is no direct evidence in the record as to the facts and circumstances
10 surrounding the decedent's death. These particulars are all set forth in the form of questions
11 without any underlying support in the evidence. The only indirect evidence upon the point is Dr.
12 Kass' hearsay statement, to which no objection was made, that he had heard that the decedent had
13 committed "suicide." Of course this constitutes a mere legal conclusion, but even as such it
14 necessarily implies that the death was not accidental. Since the case was both prosecuted and
15 defended upon the theory that the shooting was not accidental, we have simply followed suit in
16 passing upon the exceptions presented.
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20 Although the decedent's death is not compensable as it was deliberate and intentional, this
21 does not per se foreclose the petitioner, as surviving widow, from benefits under the act. The
22 hearing examiner found that the decedent was permanently and totally disabled within the meaning
23 of the act at the time of his death. The department takes no issue with this finding on its merits, but
24 simply excepts thereto on the grounds that it is immaterial. Before addressing ourselves to this
25 contention, we merely note that the finding of permanent and total disability is well supported by the
26 evidence.
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30 In contending that the fact that the decedent was permanently and totally disabled at the time
31 of his death is "immaterial," counsel for the department cites and relies exclusively upon RCW
32 51.32.020, which provides in material part as follows:
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36 "If injury or death results to a workman from the deliberate intention of
37 the workman himself to produce such injury or death, or while the
38 workman is engaged in the attempt to commit, or the commission of, a
39 crime, neither the workman nor the widow, widower, child or dependent
40 of the workman shall receive any payment whatsoever out of the
41 accident fund."
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44 Counsel is content to cite this statute and rest his case without further contention, argument or
45 authority. He chooses to ignore the mandate of RCW 51.32.050 (6), to the effect that if an injured
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1 workman dies during the period he is permanently and totally disabled, "whatever the cause of
2 death," his surviving widow and issue are entitled to certain specified benefits. Why is not this
3 provision of the law applicable her? Is it counsel's position that this provision conflicts with RCW
4 51.32.020, supra, and has somehow been impliedly repealed thereby, or that the latter carves out
5 an exception to the former, or what? Counsel's client, the department, is charged with the
6 administration of the act. Does the position taken by counsel in the instant matter accord with the
7 administrative construction placed upon the act over the years by his client?
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11 In short, it seems to us that the contention raised goes no further than to invite the Board to
12 create a conflict in the act where none necessarily exists, and thereby present a problem of
13 statutory construction. We decline the offer. It is axiomatic that the provisions of an act will not be
14 construed so as to create a conflict when any other course is reasonably possible. Rosenoff v.
15 Cross, 95 Wash. 525.
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19 It seems apparent to us that the two sections in question may operate independently of each
20 other to their full extent without conflict or inconsistency. Under RCW 51.32.050, there can be no
21 recovery for an injury or death that was intentionally caused by the workman himself. As applied to
22 the instant case, this means the decedent's death as heretofore noted was not a compensable
23 event under the act and the petitioner cannot recover any benefits therefor, including the statutory
24 burial allowance. On the other hand, RCW 51.32.050(6), is not concerned with death or injury as a
25 compensable event. The only inquiry under its provisions is whether or not the workman was
26 permanently and totally disabled within the meaning of the act at the time of his death. The
27 compensation provided for therein is not awarded for the workman's death, but for his industrially
28 related disability that immediately pre-existed his death. Death is merely the operable, not the
29 compensable, event.
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33 It is our conclusion that the petitioner is entitled to benefits under the provisions of RCW
34 51.32.050 (6).
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37 **FINDINGS OF FACT**

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39 Based upon the record, the Board makes the following findings:

- 40 1. On September 25, 1956, the decedent, Owen J. Larkin, sustained an
41 industrial injury to his neck, back, shoulder area and nervous system
42 when he was struck several times with a chair by an emotionally
43 disturbed patient while in the course of his employment with Western
44 State Hospital. His claim was allowed and on February 22, 1962, Mr.
45 Larkin took his own life by means of a gun. On May 14, 1962, the
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1 petitioner Marion Larkin, filed an application for widow's benefits under
2 the workmen's compensation act. On July 19, 1962, the department
3 issued an order rejecting the claim for the reason that the decedent's
4 industrial injury of September 25, 1956, was not the cause of the
5 claimant's death as contemplated by the law. On August 23, 1962, the
6 petitioner filed a notice of appeal, and on September 6, 1962, the Board
7 issued an order granting the appeal.

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2. The act of the decedent in shooting himself with a gun was a deliberate and intentional act and was not the result of an irresistible or uncontrollable impulse.
 3. The decedent's condition resulting from his industrial injury of September 25, 1956, had rendered him permanently unfit to engage in any form of gainful employment immediately prior to his death.

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CONCLUSIONS OF LAW

Based upon the foregoing findings, the Board makes the following conclusions:

1. This Board has jurisdiction of the parties and the subject matter of this appeal.
2. Under the provisions of RCW 51.32.020, the decedent's death was not a compensable event under the workmen's compensation act.
3. At the time of the decedent's death, he was permanently and totally disabled within the meaning of the workmen's compensation act.
4. Under the provisions of RCW 51.32.050 (6), the petitioner is entitled to benefits as therein provided.
5. The order of the supervisor of industrial insurance dated July 19, 1962, should be reversed and this claim remanded to the department of labor and industries with instructions to allow the claim under the provisions of RCW 51.32.050 (6).

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It is so ORDERED.

Dated this 17th day of November, 1965.

BOARD OF INDUSTRIAL INSURANCE APPEALS

J. HARRIS LYNCH Chairman

R. H. POWELL Member

DISSENTING OPINION

The majority opinion in this case finds that the deceased was totally and permanently disabled by reason of his industrial injury at the time of his death. I cannot agree with this finding.

1 Dr. Myron Kass, in his testimony on behalf of the petitioner, stated that he saw the deceased
2 in a hospital on February 29, 1956, at which time he diagnosed "anxiety hysterical reaction with
3 conversion hysteria." At the time the deceased had sever paralysis of the left side of his body,
4 which paralysis was, according to Dr. Kass, entirely psychosomatic in nature. The deceased left
5 the hospital on March 2, 1956, and Dr. Kass subsequently saw the deceased on March 16, 22, 26,
6 and April 6, 1956, for acute psychosomatic symptoms.
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10 This industrial injury (which was comparatively mild as to actual physical severity), occurred
11 on September 25, 1956, which was about six months after Dr. Kass last saw him for his previous
12 psychiatric seizure. While it may be true that the injury aggravated the pre-existing condition, such
13 a finding does not per se lead to the conclusion that the deceased was totally and permanently
14 disabled due to the injury at the time of his death. In order for RCW 51.32.050 to come into play,
15 the workman must be totally and permanently disabled as a result of the injury (see Hiatt v.
16 Department of Labor and Industries, 48 Wn. 2d 843). That was not, in my opinion, demonstrated in
17 this case.
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19 I would sustain the department of labor and industries.
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21 Dated this 17th day of November, 1965.
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23 BOARD OF INDUSTRIAL INSURANCE APPEALS
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29 _____
30 R. M. GILMORE

31 Member
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