Gillilan, George, Dec'd

SUBSEQUENT CONDITION TRACEABLE TO ORIGINAL INJURY

Worry over industrial injury causing further condition

A heart attack caused by worry over the physical residuals of an industrial injury is compensable as part of the injury. ***….In re George Gillilan, Dec'd*, BIIA Dec., 24,780 (1967)** [special concurrence]

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: GEORGE D. GILLILAN, DEC'D	**)**	**DOCKET NO. 24,780**
	)	
CLAIM NO. F-150597	**)**	**DECISION AND ORDER**

APPEARANCES:

Widow-petitioner, Dorothy Gillilan, by
Fredrickson, Maxey and Bell, per
Leo H. Fredrickson

Employer, Tonasket Wenoka Growers,
None

Department of Labor and Industries, by
The Attorney General, per
H. Collyer Church and John T. Krall, Assistants

This is an appeal filed by the petitioner on July 16, 1965, from an order of the Supervisor of Industrial Insurance dated November 27, 1964 (not communicated to petitioner until at least June 15, 1965), which rejected her claim for a widow's pension under the Industrial Insurance Act. **REVERSED AND REMANDED**.

DECISION

This matter is before the Board for review and decision on a timely Statement of Exceptions filed by the Department of Labor and Industries to a Proposed Decision and Order issued by a hearing examiner for this Board on June 24, 1966, in which the order of the Supervisor of Industrial Insurance dated November 27, 1964, was reversed and the matter was remanded to the Department with direction to allow the widow's claim.

The Board has reviewed the evidentiary rulings of the hearing examiner and, finding no prejudicial error involved, said rulings are hereby affirmed.

The deceased workman sustained an injury in the course of his employment for Tonasket Wenoka Growers on December 16, 1963, which caused a right inguinal hernia and a low back injury. He died about two months later, to wit, on February 11, 1964, due to a heart attack. During that two-month period, he had been unable to work due primarily to the acute back condition, and surgical repair of his hernia had not been performed prior to his death because of insufficient recovery from his back condition up to that time.

The factual basis upon which the hearing examiner proposed to allow the claim was his Finding No. 2, reciting:

> "That the precipitating cause of the coronary occlusion sustained by the workman, from which he died on February 11, 1964, was the industrial injury of December 16, 1963, which injury resulted in a disability preventing the workman from returning to work and caused him grief and anxiety and worry, to such an extent that his heart was thereby affected."

The Department has excepted to this finding, and to the hearing examiner's conclusions of law based thereon, concluding that the workman's death was the result of the injury within the contemplation of the Act and that petitioner's claim should therefore be allowed on the ground that said finding and conclusions are "contrary to law."

Although the Department's exceptions are based solely on the ground that the above-quoted finding and the conclusion based thereon are contrary to law, the argument advanced in support thereof is directed primarily to the legal question raised, a portion thereof apparently attempts to challenge the factual correctness of the quoted finding. On this score, we observe (as did the hearing examiner) that the testimony of decedent's attending physician is probably insufficient to prove a causal relationship between decedent's industrial injury and his death, since this doctor's opinion appears to be, in the final analysis, that "I just don't know."

However, the medical opinion which is controlling in this case is that of Dr. Willis Smick, a general practitioner of Spokane, with the great majority of his practice involving treatment of the heart and cardiovascular system. We, like the hearing examiner, believe that Dr. Smick's testimony must be accepted. His opinion was that very probably the workman's heart attack was precipitated by worry, anxiety, nervous tension, depression, and insecurity, which he suffered as the result of the pain from his injury and the economic burden his inability to work was causing. Dr. Smick's medical explanation was that worry and anxiety affect a person's anatomy by reacting on the sympathetic nerves and causing toxic secretions, which in turn act upon the blood vessels and cause restriction thereof. It was the doctor's opinion that this process must have been going on during the period of the workman's incapacity and insecurity, finally restricting his coronary blood vessels to the extent that the fatal coronary thrombosis occurred. That the decedent was in fact worried, anxious, and "wound up" over the injury and its effects is amply demonstrated in the record.

Department's counsel has attacked Dr. Smick's theory as being "very novel" and "weird" and speculative, and "unsubstantiated by medical authority." However, Dr. Smick stated that he had

given thought to this problem for many weeks before he testified and had researched medical literature on this theory before coming to his conclusion. If his theory is in fact "weird" or "very novel," presumably the Department could have presented evidence to so show. None was presented; and, based on the record in this case, by which we are bound, Dr. Smick's opinion should be accepted as the "medical authority" in this case.

Turning, then, to the legal ground for the Department's exceptions, it is specifically posed as follows:

> "Is a heart attack which may have been caused by the claimant's brooding over or worrying about the effects of his injury, his economic status since the injury, the amount of compensation he had received, or the compensation proceedings, a compensable condition under the Washington State Workmen's Compensation Act?"

Counsel urges that this question should be answered in the negative, as a matter of law.

The case of Berndt v. Department of Labor and Industries, 44 Wn. 2d 138, is cited by counsel as a case in which our court rejected a widow's claim for benefits under the Act based on the death of her husband from a heart attack allegedly resulting from his worry over the effects of an occupational disease. However, the result in the Berndt case was based on the holding that the medical witness who expressed the opinion on causal connection between the worry and the heart attack did so on the basis of a hypothetical question which omitted material and undisputed facts and also on the basis of assumption of some facts which were not included in the hypothetical question or proved by any evidence, and therefore his medical opinion was entitled to no probative value. In other words, in Berndt it was simply held that there was a failure of evidentiary proof on the fact of causal relationship. Such is not the situation in the instant case.

It is noted that our court in Berndt, in pure dictum, cited the Michigan case of Schneyder v. Cadillac Motor Car Co., 280 Mich. 127, 273 N.W. 418 (1936), and cases from two other jurisdictions, as standing for the following rule (which we quote from the Schneyder case):

> "(1) Where the accident has a direct effect upon the nervous system, all the results thereof, both physical and mental, go to make up disability and determine compensability; (2) but where the mental disturbance is collateral to the injury, does not arise directly from it, but is due to worry, anxiety, or brooding over the accident or its effects or compensation for it, or the like, it is not compensable." (Emphasis added)

Department's counsel urges that this rule should be adopted under our Act.

It is noted that this rule refers to "collateral" mental disturbances, but counsel urges that it should be equally applicable to "collateral" physical conditions, i.e., heart attacks, which arise from worry, anxiety, brooding over the effects of the injury, or compensation for it, or the like.

We have not found any cases squarely on this issue, where these so-called collateral factors have produced a physical condition. However, there are a number of cases from various jurisdictions, of which Schneyder is but one, dealing with compensability of mental conditions produced by such factors. We are persuaded that the above-quoted rule is no longer the majority rule, if it ever was, nor is it the proper rule in compensation law theory, nor is it the rule in the State of Washington. Indeed, in view of the comments of the Michigan Court in the later case of Redfern v. Sparks-Withington Co., 353 Mich. 286, 91 N.W. 2d 516, it is doubtful that Schneyder will remain in effect if the issue is again squarely raised in that state.

The basic rule, which is now universally accepted everywhere, is that any mental condition or neurosis which is medically attributable to a physical injury, is compensable. As stated in Larson's Workmen's Compensation Law, Sec. 42.22: "Dozens of cases, involving almost every conceivable kind of neurotic, psychotic, depressive, or hysterical symptom or personality disorder, have accepted this rule." Our court, too, clearly accepts the rule. Husa v. Department of Labor and Industries, 20 Wn. 2d 114; Anderson v. Department of Labor and Industries, 23 Wn. 2d 76; Jacobson v. Department of Labor and Industries; 37 Wn. 2d 444.

The only remaining controversy over allowance for mental conditions is that of compensability of so-called "compensation neurosis." See Larson, Sec. 42.24, where it is stated that: "'Compensation neurosis," which must be distinguished from conscious malingering, may take the form of an unconscious desire to obtain or prolong compensation, or perhaps of sheer anxiety over the outcome of compensation litigation -- in either case producing a genuine neurosis disabling the claimant." (Emphasis added) Clearly, this is the type of "collateral" mental disturbance which the Schneyder case held to be non-compensable, and which the Department's counsel in this case urges should be held non-compensable.

However, Larson goes on to cite several cases holding this type of a mental condition to be compensable, including the Washington case of Peterson v. Department of Labor and Industries, 178 Wash. 15, 33 P. 2d 650. That case was the first one in which our court squarely held that a traumatic neurosis is compensable. Further, the court demolished the contention that claimant's

neurosis was a desire or "compensation" neurosis and should therefore not be recognized, with the following language:

> "...Classifying is case as a 'desire neurosis,' it is still traumatic in origin. It is real, and it is a condition that would not exist but for the accident, that he may sometime recover, is no justification for denying him compensation." (Emphasis added)

Our jurisdiction, therefore, has not followed the idea, as expressed in Schneyder, of denying coverage for a mental condition brought about by worry or anxiety over an injury or compensation to be awarded therefor. On the contrary, in its first neurosis case, our court upheld compensability for that type of mental condition.

Two or three jurisdictions have not allowed compensation in this type of situation, but they appear to be in the minority, and contrary to the trend of most decisions in more recent years. See Miller v. U.S. Fidelity & Guaranty Co., (La.) 99 So. 2d 511 (1957); Gallagher v. Industrial Commission, 9 Wis. 2d 361, 101 N.W. 2d 72 (1960); National Lumber & Creosoting Co. v. Kelly, 101 Colo. 535, 75 P. 2d 144; Hood v. Texas Indemnity Insurance Co., 146 Tex. 522, 209 S.W. 2d 345 (1948); Welchlin v. Fairmont Railway Motors, 180 Minn. 411, 230 N.W. 897 (1930); Ross v. Sayers Well Servicing Co., Inc., 414 P. 2d 679 (N.M. 1966).

Further, the majority rule as exemplified by our Peterson case appears correct in legal theory. Larson states, in Sec. 42.24, p. 622.181:

> "As a matter of compensation theory, the cases awarding compensation have the better of it, since, assuming that the anxiety over compensation and the accompanying neurosis is genuine, the line of causation from the original injury to the present disability is unbroken. The denial of compensation is probably dictated less by causation theory than by a fear that the extremely fine line between malingering and 'compensation neurosis' cannot as a practical matter be successfully drawn. It will not do to brush aside such claims, however, as the dissent in the Hood case did, by asking, 'How could it be real when, as shown by Dr. Cline's testimony, it was purely mental . . .?' While it lasts, the neurotic mental disability is as real as any other disability and, in the absence of evidence of malingering, is as much a personal injury."

Since, then, a genuine mental condition brought about by worry, anxiety, or brooding over an injury or its consequences or the compensation to be awarded, is compensable as a matter of law, we cannot see any reason why a definite physical condition brought about in the same manner should not also be compensable. As distinguishing it from malingering. Even this argument evaporates,

however, in the case of a definite diagnosed physical condition, such as the heart attack which occurred in the instant case. The workman here was not malingering or feigning anything; he actually had the heart attack!

Finally, we note that we are not unmindful of the case of Gakovich v. Department of Labor and Industries, 29 Wn. 2d 1, wherein our court observed that all severe injuries would normally result in nervousness, irritability, and a great deal of worry on the part of the injured workmen, but that such "inevitable consequences" had been considered and taken into account in fixing the amount of awards for physical injuries and could not, of themselves, justify additional compensation. However, Gakovich does not apply here. In the first place, that case recognizes that "there may be extraordinary instances when worry over an injury may result in a definite neurosis of so grave a character as to justify an additional award." This, of course, is in line with the decision in the Peterson case, supra. Secondly, we are not here allowing compensation or benefits for nervousness, irritability, and worry per se; we are allowing benefits for a definite physical condition resulting from such emotional factors. As pointed out in our preceding discussion, such physical condition should be accepted the same as would a genuine mental condition.

Based on all the foregoing, we conclude that the Department's exceptions are not well taken. The Proposed Decision and Order correctly found the facts, and also made the proper conclusions of law.

The proposed findings, conclusions and order are hereby adopted as this Board's findings, conclusions and order and incorporated herein by this reference.

It is so ORDERED.

Dated this 31st day of July, 1967.

BOARD OF INDUSTRIAL INSURANCE APPEALS

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J. HARRIS LYNCH Chairman

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R. H. POWELL Member

SPECIAL CONCURRING OPINION

Although I have serious misgivings in this case, I agree that we are bound by the record which is devoid of any testimony actively disputing or negating the causal relationship theory

evolved by Dr. Smick (who qualified himself as at least a sub-specialist in cardiovascular disorders). His somewhat complex theory appears to me to be quite ephemeral in its essence, however, it stands uncontroverted.

I do not accept the basic causal relationship principle advanced herein, but reluctantly go alone with this record as it is.

Dated this 31st day of July, 1967.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
R. M. GILMORE Member