

## **Lindblom, Marion, Dec'd**

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### **INJURY (RCW 51.08.100)**

#### **Idiopathic fall**

An injury sustained in a fall which was caused by conditions personal to the worker (i.e., a seizure resulting from alcohol withdrawal) is compensable under the Act, as there is no statutory requirement that the injury "arise out of employment." ...*In re Marion Lindblom, Dec'd, BIIA Dec., 45,619 (1976)* [dissent]

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1 the mental or physical condition of the employee." 99 C.J.S., Workmen's Compensation, Section  
2 257(1). In other words, the decedent's fall and consequent death arose out of a risk "personal" to  
3 him, rather than a risk attributable to his employment. This fact, the employer contends, renders  
4 the claim non-compensable as a matter of law.  
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7 The employer concedes that "technically" the decedent's fatal fall qualifies as an "injury"  
8 under the statutory definition of that term. See RCW 51.08.100. Moreover, there can be no  
9 question but what the decedent was "in the course of employment" at the time of his fall, since he  
10 was on the job and engaged in the very duties for which he was being paid. The employer,  
11 however, strenuously argues that in both reason and law a compensable claim cannot arise unless  
12 there exists some causal "nexus" between the injury and the employment, at least to the extent that  
13 the injury arise out of some risk attendant to the employment.  
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17 The question of compensability of injuries resulting from idiopathic falls is not a new or novel  
18 one to the law of workmen's compensation. The question has arisen time and again in those  
19 jurisdictions where the governing statute requires that the injury "arise out of" as well as be "in the  
20 course of" employment. In those jurisdictions, the general rule has evolved that an injury resulting  
21 from an idiopathic fall "arises out of" the employment and is compensable if the workman's  
22 employment in any way increases the dangerous effects of the fall, such as working from a height  
23 (even of a mere two feet), near machinery, or around projecting objects or sharp corners. See  
24 Larson, Law of Workmen's Compensation, Vol. 1, Sec. 12.11, and cases cited therein.  
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27 Our own jurisdiction, of course, has no statutory "arising out of" requirement, a point  
28 expressly noted by our court in Tilley v. Department of Labor and Industries, 52 Wn. 2d 148 (1958).  
29 Washington is numbered among a handful of jurisdictions whose statutes merely require that the  
30 injury occur "in the course of" employment. See Larson, Law of Workmen's Compensation, Vol 1,  
31 Sec. 6.10. The governing rule under this type of statute is well-stated in 99 C.J.S., Workmen's  
32 Compensation, Sec. 257 (1), as follows:  
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35 "Where it is sufficient under the statute that the injury occur in the course  
36 of employment and it is not required that the injury arise out of the  
37 employment, an injury resulting from a fall is compensable without  
38 regard to the cause of the fall, and the injury resulting from an idiopathic  
39 fall in the course of employment is compensable."  
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44 Prime examples of the application of this rule are to be found in the cases of McCarthy v. General  
45 Electric Company, 293 Pa. 448, 143 A. 116, and Tavey v. Industrial Commission of Utah, 106 Utah  
46  
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1 489, 150 P. 2d 379. In McCarthy, the court in construing the Pennsylvania statute which, like our  
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3 own, has no "arising out of" requirement, held:

4 "In England and some American jurisdictions, the injury must grow out of  
5 the employment, but our statute contains no such requirement. It is  
6 sufficient if the accidental injury happens in the course of the  
7 employment.... Furthermore, it is not necessary that the fall result from  
8 an accident, as the fall is the accident; nor is it material that the  
9 employee fell because he became dizzy or unconscious. An injury  
10 sustained by an accidental fall is compensable, although the fall resulted  
11 from some disease with which the employee was afflicted."  
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13 Likewise, in Tavey, under the statute of Utah which has no "arising out of" requirement, it was held:

14 "Our statute does not require that an injury to be compensable, must  
15 both arise out of and occur in the course of employment. In its present  
16 form, it is more liberal toward the workman than the compensation  
17 statutes of most of the states or the original compensation statute of  
18 England from which these were derived. ...Under this statute [Utah's] an  
19 injury may be compensable if caused by accident occurring in the  
20 course of employment, regardless of whether it grows out of any special  
21 hazard connected with the employment."  
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24 The answer to the numerous cases cited by the employer's counsel in support of his position that  
25 the instant claim is non-compensable is fully contained in the following quotation from Tavey:

26 "The cases cited by counsel for defendants in which compensation was  
27 denied where the injury resulted from a fall caused by fainting or a fit of  
28 epilepsy, are from jurisdictions where the statute requires that in injury to  
29 be compensable, must be the result of accident occurring in the course  
30 of employment and also arising out of the employment." (Emphasis  
31 supplied)  
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34 In sum, we hold that the employer's position in this matter is not well taken, and that the claim is  
35 compensable as a matter of law. As noted by counsel for the widow-petitioner in answer to the  
36 employer's Petition for Review, the argument set forth herein by employer's counsel must be  
37 addressed to the Legislature, and not this forum.  
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40 The proposed findings, conclusions and order of the Proposed Decision and Order are  
41 hereby adopted by the Board and are incorporated herein by this reference, with the exception that  
42 Proposed Findings 3, 4 and 5 hereby stricken, and the Board makes the following Finding No. 3:  
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- 44 3. On January 7, 1975, the decedent fell during the course of his regular  
45 work on the premises of The Boeing Company, striking his head on the  
46 concrete floor and sustaining a skull fracture from which he  
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1 subsequently died. The cause of the decedent's fall was a sudden  
2 seizure resulting from his withdrawal from alcohol.  
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4 It is so ORDERED.

5 Dated this 22nd day of December, 1976.  
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7 BOARD OF INDUSTRIAL INSURANCE APPEALS  
8

9  
10 /s/ \_\_\_\_\_  
11 PHILLIP T. BORK Chairman

12  
13 /s/ \_\_\_\_\_  
14 SAM KINVILLE Member

15 **DISSENTING OPINION**

16 The fall to the floor which caused decedent's death was due to a seizure which was in no  
17 way related to the employment. There is nothing in the record to indicate that the fall to the level  
18 floor surface was due to an unsafe condition, an unsafe work assignment, practice or by any  
19 condition of employment. In my opinion, the fall on the part of the decedent was not an industrial  
20 injury. It was due to a violent syncopal seizure brought on by a long history of seizures and  
21 alcoholism. It is beyond my comprehension to believe that the Legislature contemplated this type  
22 of situation as being an industrial injury under the Act.  
23

24 Is it fair to ask the employer to pay for the consequences of a death at work which occurred  
25 because of a seizure? Does this claim represent a fair demand upon the resources of the  
26 compensation system? I say no, therefore, I dissent from the decision of the majority of the Board.  
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28 Dated this 22nd day of December, 1976.  
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31 /s/ \_\_\_\_\_  
32 R. M. GILMORE Member  
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