Lindblom, Marion, Dec'd

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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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: MARION LINDBLOM, DEC'D	**)**	**DOCKET NO. 45,619**
	)	
CLAIM NO. G 687745	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, Marion Lindblom, Dec'd.
Widow-Petitioner, Nobuko Lindblom, by
Ross Kingston, and by Walthew, Warner, Keefe, Arron, Costello & Thompson, per
Stephen M. Reilly and Eugene Arron

Employer, The Boeing Company, by
Perkins, Coie, Stone, Olsen and Williams, per
Calhoun Dickinson

Department of Labor and Industries, by
The Attorney General, per
Richard R. Roth, Assistant

This is an appeal filed by the employer, The Boeing Company, on June 2, 1975, from an order of the Department of Labor and Industries dated April 4, 1975, which granted a widow's pension to the surviving spouse of the deceased workman on the basis that he suffered a fatal industrial injury in the course of his employment. **SUSTAINED**.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the employer to a Proposed Decision and Order issued by a hearing examiner for this Board on June 11, 1976, in which the order of the Department dated April 4, 1975 was sustained.

The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no prejudicial error was committed and said rulings are hereby affirmed.

The nature and background of the case are well set forth in the Proposed Decision and Order and shall not be repeated herein in detail. Marion Lindblom, while employed at The Boeing Company on January 7, 1975, suffered a sudden fall and struck his head on the concrete floor, which caused a fracture of the skull from which he died soon thereafter.

At the outset, it should be pointed out that the evidence in this matter establishes, in terms of probability, that the cause of the decedent's sudden seizure and resulting fall was withdrawal from alcohol. Accordingly, we are dealing with a fatal injury due to an "idiopathic" fall, i.e., "one due to

the mental or physical condition of the employee." 99 C.J.S., Workmen's Compensation, Section 257(1). In other words, the decedent's fall and consequent death arose out of a risk "personal" to him, rather than a risk attributable to his employment. This fact, the employer contends, renders the claim non-compensable as a matter of law.

The employer concedes that "technically" the decedent's fatal fall qualifies as an "injury" under the statutory definition of that term. See RCW 51.08.100. Moreover, there can be no question but what the decedent was "in the course of employment" at the time of his fall, since he was on the job and engaged in the very duties for which he was being paid. The employer, however, strenuously argues that in both reason and law a compensable claim cannot arise unless there exists some causal "nexus" between the injury and the employment, at least to the extent that the injury arise out of some risk attendant to the employment.

The question of compensability of injuries resulting from idiopathic falls is not a new or novel one to the law of workmen's compensation. The question has arisen time and again in those jurisdictions where the governing statute requires that the injury "arise out of" as well as be "in the course of" employment. In those jurisdictions, the general rule has evolved that an injury resulting from an idiopathic fall "arises out of" the employment and is compensable if the workman's employment in any way increases the dangerous effects of the fall, such as working from a height (even of a mere two feet), near machinery, or around projecting objects or sharp corners. See Larson, Law of Workmen's Compensation, Vol. 1, Sec. 12.11, and cases cited therein.

Our own jurisdiction, of course, has no statutory "arising out of" requirement, a point expressly noted by our court in Tilley v. Department of Labor and Industries, 52 Wn. 2d 148 (1958). Washington is numbered among a handful of jurisdictions whose statutes merely require that the injury occur "in the course of" employment. See Larson, Law of Workmen's Compensation, Vol 1, Sec. 6.10. The governing rule under this type of statute is well-stated in 99 C.J.S., Workmen's Compensation, Sec. 257 (1), as follows:

> "Where it is sufficient under the statute that the injury occur in the course of employment and it is not required that the injury arise out of the employment, an injury resulting from a fall is compensable without regard to the cause of the fall, and the injury resulting from an idiopathic fall in the course of employment is compensable."

Prime examples of the application of this rule are to be found in the cases of McCarthy v. General Electric Company, 293 Pa. 448, 143 A. 116, and Tavey v. Industrial Commission of Utah, 106 Utah

489, 150 P. 2d 379. In McCarthy, the court in construing the Pennsylvania statute which, like our own, has no "arising out of" requirement, held:

> "In England and some American jurisdictions, the injury must grow out of the employment, but our statute contains no such requirement. It is sufficient if the accidental injury happens in the course of the employment.... Furthermore, it is not necessary that the fall result from an accident, as the fall is the accident; nor is it material that the employee fell because he became dizzy or unconscious. An injury sustained by an accidental fall is compensable, although the fall resulted from some disease with which the employee was afflicted."

Likewise, in Tavey, under the statute of Utah which has no "arising out of" requirement, it was held:

> "Our statute does not require that an injury to be compensable, must both arise out of and occur in the course of employment. In its present form, it is more liberal toward the workman than the compensation statutes of most of the states or the original compensation statute of England from which these were derived. ...Under this statute [Utah's] an injury may be compensable if caused by accident occurring in the course of employment, regardless of whether it grows out of any special hazard connected with the employment."

The answer to the numerous cases cited by the employer's counsel in support of his position that the instant claim is non-compensable is fully contained in the following quotation from Tavey:

> "The cases cited by counsel for defendants in which compensation was denied where the injury resulted from a fall caused by fainting or a fit of epilepsy, are from jurisdictions where the statute requires that in injury to be compensable, must be the result of accident occurring in the course of employment and also arising out of the employment." (Emphasis supplied)

In sum, we hold that the employer's position in this matter is not well taken, and that the claim is compensable as a matter of law. As noted by counsel for the widow-petitioner in answer to the employer's Petition for Review, the argument set forth herein by employer's counsel must be addressed to the Legislature, and not this forum.

The proposed findings, conclusions and order of the Proposed Decision and Order are hereby adopted by the Board and are incorporated herein by this reference, with the exception that Proposed Findings 3, 4 and 5 hereby stricken, and the Board makes the following Finding No. 3:

> 3. On January 7, 1975, the decedent fell during the course of his regular work on the premises of The Boeing Company, striking his head on the concrete floor and sustaining a skull fracture from which he

subsequently died. The cause of the decedent's fall was a sudden seizure resulting from his withdrawal from alcohol.

It is so ORDERED.

Dated this 22nd day of December, 1976.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
PHILLIP T. BORK Chairman

/s/_____
SAM KINVILLE Member

DISSENTING OPINION

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

Is it fair to ask the employer to pay for the consequences of a death at work which occurred because of a seizure? Does this claim represent a fair demand upon the resources of the compensation system? I say no, therefore, I dissent from the decision of the majority of the Board.

Dated this 22nd day of December, 1976.

/s/_____
R. M. GILMORE Member