Jacobs, James

INJURY (RCW 51.08.100)

"Sudden and tangible happening"

A mile hike by a land surveyor, producing a hyperventilation syndrome and an anxiety reaction, constitutes a "sudden and tangible happening." There is no legal requirement that tangible happenings be instantaneous or confined to a period measured in a certain number of seconds or even minutes. **….*In re James Jacobs*, BIIA Dec., 48,634 (1977)**

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: JAMES V. JACOBS	)	**DOCKET NO. 48,634**
	)	
CLAIM NO. G-691921	)	**DECISION AND ORDER**

APPEARANCES:

Claimant, James V. Jacobs, Pro se

Employer, Petersen and Associates, by
Darrell Petersen, Owner

Department of Labor and Industries, by
The Attorney General, per
James D. Pack, Assistant

This is an appeal filed by the claimant on July 2, 1976, from an order of the Department of Labor and Industries dated May 14, 1976, which rejected the claim for the reason that the claimant's condition is not the result of an industrial injury as defined by the Workmen's Compensation Act or an occupational disease within the meaning of the Act. **REVERSED AND REMANDED**.

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 Department of Labor and Industries to a Proposed Decision and Order issued by a hearing examiner for this Board on July 14, 1977, in which the order of the Department dated May 14, 1976 was reversed, and the claim remanded to the Department with instruction to allow the claim for an industrial injury occurring on January 9, 1975, and to take such other and further action as indicated and required or authorized by law.

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 issue presented by this appeal and the facts shown by the evidence herein are, by and large, adequately set forth in our hearing examiner's Proposed Decision and Order. We agree with his proposed disposition, in concluding that claimant sustained an industrial injury within the meaning of the Act on January 9, 1975. However, in light of Department's counsel's legal arguments in his Petition for Review, we feel that findings and conclusions should be recited with greater clarity.

Counsel acknowledges that the medical opinion herein establishes the necessary causal relationship between claimant's "hyperventilation syndrome" and "anxiety reaction" and an episode of overexertion in "hiking out" of the Lake Ozette area on the Olympic Peninsula, in the course of his land-surveying work on January 9, 1975. However, counsel argues that this is not enough, because there was no identifiable "sudden and tangible happening" of a traumatic nature producing a prompt result, and thus no "injury" under the statutory definition thereof, RCW 51.08.100. We do not agree with counsel's contention.

The "injury" statute has been interpreted by our courts on numerous occasions, and clearly the judicial holding do require that there be some identifiable happening, event, or occurrence, capable of being fixed in time and place in the employment and susceptible of investigation. See Higgins v. Department of Labor and Industries, 27 Wn. 2d 816 (1947), and Spino v. Department of Labor and Industries, 1 Wn. App. 733 (1969). However, there is no legal requirement that such tangible happening or event be instantaneous or confined to a period measured in a certain number of seconds or even minutes. See, for example, Lehtinen v. Weyerhaeuser Company, 63 Wn. 2d 456 (1963).

In our understanding of this record, there was a sufficiently sudden, tangible, and identifiable happening or event in the morning of January 9, 1975, namely, a hike by claimant of almost a mile into his surveying area in the Lake Ozette vicinity, over rough terrain and mostly uphill and with a heavy equipment pack on his back, from the strenuous exertion of which, superimposed upon fatigue from three prior days of exhausting field work, he collapsed with severe chest pain within a very short time after completion of the hike. This collapse and severe pain was brought on by the hyperventilation syndrome which resulted from the hiking overexertion. In light of this factual picture, we have no trouble in finding all elements of an "injury", within the meaning of RCW 51.08.100 and the judicial interpretations thereof.

In passing, we note the correctness of Department's counsel's observation that claimant was not "hiking out" of the Lake Ozette area when he collapsed from the overexertion. Rather, the claimant had "hiked in" and shortly thereafter collapsed from said overexertion. However, the geographical direction of the strenuous hike is not the important thing; but rather the fact that it did occur and did promptly produce the collapse and chest pain by reason of the hyperventilation.

Findings and conclusions will be entered accordingly.

FINDINGS OF FACT

Based on the record herein, the Board finds:

1. On January 9, 1975, and for a number of years prior thereto, claimant was in land surveying work in the employ of Petersen and Associates, in State of Washington, which employment was covered by the terms of the Washington State Industrial Insurance Laws (Workmen's Compensation Act).

2. On January 27, 1975, claimant filed with the Department of Labor and Industries, an accident report, alleging an industrial injury occurred on January 9, 1975. On May 14, 1976, the Department issued an order rejecting the claim on the ground that it was neither an industrial injury nor an occupational disease as contemplated by the Workmen's Compensation Act. On July 2, 1976, claimant filed a notice of appeal with this Board. On August 20, 1976, the Board issued an order granting the appeal, and proceedings were thereafter duly held.

3. On the morning of January 9, 1975, after three prior days of surveying work in heavily forested country near Lake Ozette on the Olympic Peninsula, with difficult working conditions, wet and cold weather, and exhausting terrain, the claimant hiked almost a mile into the survey area over rough ground and mostly uphill, with a heavy equipment pack on his back. As a result of the overexertion in this hike, superimposed on fatigue from the prior work-days, he collapsed with severe chest pain within a few minutes after contemplation of the hiking. This collapse and pain were the signs of a hyperventilation syndrome and an anxiety reaction, precipitated by the episode of hiking overexertion.

4. As the result of the hyperventilation syndrome and anxiety reaction, claimant was medically evacuated by helicopter into Port Angeles, and received diagnostic measures and medical treatment. He was temporarily off work because of these conditions from January 10 through January 19, 1975, and returned to his regular surveying job on January 20, 1975, and worked steadily thereafter.

5. Although there was concern that claimant was possibly suffering a heart attack at the time of the above-described collapse and development of chest pain on January 9, 1975, subsequent diagnostic tests disclosed that he did not have a heart attack or heart damage.

CONCLUSIONS OF LAW

Based on the foregoing findings, the Board concludes:

1. The Board has jurisdiction of the parties and of the subject matter of this appeal.

2. Claimant suffered an industrial injury on January 9, 1975, within the contemplation of the Workmen's Compensation Act.

3. The order of the Department of Labor and Industries dated May 14, 1976, which rejected the claim, is incorrect and should be reversed, and this claim remanded to the Department with instruction to allow the claim as an industrial injury, and to take such other and further action as indicated and required or authorized by law.

It is so ORDERED.

Dated this 7th day of October, 1977.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
PHILLIP T. BORK Chairman

/s/
SAM KINVILLE Member

/s/
WILLIAM C. JACOBS Member