

Brolli, Lyndall

OCCUPATIONAL DISEASE (RCW 51.08.140)

Psychiatric conditions (mental/mental)

A mental illness caused by work-induced mental stimuli qualifies as an occupational disease since it arose naturally and proximately out of employment, there was no intervening or independent cause, and the worker would not have suffered the illness but for the conditions of employment. [Pre-*Kinville* (35 Wn. App. 80).] ...*In re Lyndall Brolli*, BIIA Dec., 49,051 (1977) [dissent]

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

1 **IN RE: LYNDALL S. BROLLI**) **DOCKET NO. 49,051**
2)
3 **CLAIM NO. G-858379**) **DECISION AND ORDER**
4

5 **APPEARANCES:**

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7 Claimant, Lyndall S. Brolli, by
8 Graham, Cohen, Wampold, Wesley & Munro, per
9 Thomas P. Graham

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11 Employer, Wenatchee Education Forum,
12 None

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 Gayle Barry, Tracy Madole, and Joseph Albo, Assistants
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18 This is an appeal filed by the claimant on October 19, 1976, from an order of the Department
19 of Labor and Industries dated October 7, 1976, which adhered to the provisions of a previous order
20 dated May 12, 1976, rejecting her claim on the grounds: (1) The claimant's condition is not the
21 result of an industrial injury as defined by the Workmen's Compensation Act; (2) That the claimant's
22 condition is not an occupational disease as contemplated by section 51.08.140 R.C.W.

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24 **REVERSED AND REMANDED.**

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27 **DECISION**

28 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
29 and decision on a timely Petition for Review filed by the Department of Labor and Industries to a
30 Proposed Decision and Order issued by a hearing examiner for this Board of July 27, 1977, in
31 which the order of the Department dated October 7, 1976 was reversed, and the claim remanded to
32 the Department with instruction to allow the claim as an occupational disease, and to take such
33 other and further action as indicated and authorized by law.

34 The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no
35 prejudicial error was committed and said rulings are hereby affirmed.
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1 The issue presented by this appeal and the evidence presented by the parties are very
2 adequately set forth in our hearing examiner's Proposed Decision and Order. Specifically, the legal
3 issue is whether a mental illness cause by work-induced mental stimuli qualifies as an occupational
4 disease under our statute, RCW 51.08.140.
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7 On September 14, 1976, we issued a Decision and Order in the case of In re David J.
8 Simmonds, Claim No. G-559623, Docket No. 45,038, wherein the facts and applicable law were
9 closely parallel. In that case, we extensively reviewed the pertinent statutory and judicial
10 authorities, including the authorities cited to us here by Department's counsel. We there held:

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12 "the claimant's mental illness...arose naturally and proximately out of his
13 employment, in the sense that there was no intervening independent
14 and sufficient cause for the mental illness, and that the claimant would
15 not have suffered such illness when he did but for the conditions of his
16 employment as store manager."
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19 Accordingly, we allowed that claim as an occupational disease, within the meaning of RCW
20 51.08.140 and the principle expressed in the leading case of Simpson Logging Co. v. Department
21 of Labor and Industries, 32 Wn. 2d 472 (1949)
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24 Similarly, here, we incorporate our hearing examiner's concluding paragraph of his
25 discussion in his Proposed Decision and Order, as follows:

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27 "The evidence establishes that claimant's mental illness, diagnosed as
28 situation depression, arose naturally and proximately out of her
29 employment, in the sense that there were no other intervening
30 independent and sufficient causes for the mental illness, and that the
31 claimant would not have suffered such illness when she did but for the
32 conditions of her employment as a school administrator. The claimant
33 has presented a prima facie case with her own testimony and that of Dr.
34 Hunter which testimony was un rebutted by the Department of Labor and
35 Industries. Accordingly, under the plain terms of RCW 51.08.140 the
36 claimant's mental illness must be held to qualify as an occupational
37 disease. Simpson Logging Co. v. Department of Labor and Industries,
38 supra, and Larson, Workmen's Compensation Law, Volume 1A, section
39 42.23."
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41 After consideration of the Proposed Decision and Order and the Petition for Review filed thereto,
42 and a careful review of the entire record before us, we are persuaded that the Proposed Decision
43 and Order is supported by the preponderance of the evidence and is correct as a matter of law.
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1 The hearing examiner's proposed findings, conclusions and order are hereby adopted as this
2 Board's findings, conclusions and order and are incorporated herein by this reference.

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4 It is so ORDERED.

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6 Dated this 9th day of December, 1977.

7 BOARD OF INDUSTRIAL INSURANCE APPEALS

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10 /s/
11 PHILLIP T. BORK Chairman

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13 /s/
14 SAM KINVILLE Member

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16 **DISSENTING OPINION**

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18 The majority decision cites the Decision and Order issued September 14, 1976, in the appeal
19 of David J. Simmonds and remarks that the facts are applicable and closely parallel. A dissenting
20 opinion was rendered in that case as well. I hold that the conclusion of that particular dissent is
21 equally applicable in this case.

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23 Additionally, the Proposed Decision and Order which is adopted by the majority cites Larson,
24 Workmen's Compensation Law, Volume 1A, Section 42.23, as one of the reasons to hold the
25 claimant's mental illness qualifies as an occupational disease. I am more impressed with two
26 citations in the Department's petition for Review found on page 3. Namely:

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28 "An ailment does not become an occupational disease simply because it
29 is contracted on the employer's premises. It must be one which is
30 commonly regarded as natural to, inhering in, and incident and
31 concomitant of the work in question. There must be a recognizable link
32 between the disease and some distinctive feature of the claimant's job,
33 common to all jobs of that sort - - - an occupational disease is one which
34 results from the nature of the employment, and by nature is meant - - -
35 conditions to which all employees of a class are subject, and which
36 produce the disease as a natural incident of a particular occupation, and
37 attach to that occupation a hazard which distinguishes it from the usual
38 run of occupations and is in excess of the hazard attending employment
39 in general".

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42 And

43 "It seems obvious that, if men in all employments suffer from the same
44 disease as that of the claimant, it does no(t) meet the proximate cause
45 requirement of the statute; nor does the fact that the claimant worried
46 about his work distinguish the case. Persons in all employments and in
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1 all activities are exposed to the emotional stress and strain of anxiety
2 and worry, and it cannot be said to have arisen naturally and
3 proximately from the claimant's employment."
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5 It is my view that the Department's order should have been sustained and, accordingly, I
6 dissent from the majority decision.
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8 /s/
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10 WILLIAM C. JACOBS Member
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