

Burr, Judith

SCOPE OF REVIEW

Occupational disease and industrial injury as alternative theories

An accident report must be viewed as a claim for compensation for either an industrial injury or an occupational disease and the Department must adjudicate the claim under both theories. The Board therefore had jurisdiction to reach the question of whether the worker's condition was an occupational disease even though the only stated reason for rejecting the claim was that the worker's condition was not the result of an industrial injury.*In re Judith Burr*, BIIA Dec., 52,023 (1979) [dissent]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

1 IN RE: JUDITH K. BURR) DOCKET NO. 52,023
2)
3 CLAIM NO. H-324581) DECISION AND ORDER
4 _____)

5 APPEARANCES:
6

7 Claimant, Judith K. Burr,
8 Pro se
9

10 Employer, Pacific Coast Services, per
11 Henry Dehaan
12

13 Department of Labor and Industries, by
14 The Attorney General, per
15 James D. Pack and David W. Robinson, Assistants
16

17 This is an appeal filed by the claimant on June 1, 1978, from an order of the Department of
18 Labor and Industries dated May 25, 1978, which rejected her claim for benefits under the Industrial
19 Insurance Laws of the State of Washington. **REVERSED AND REMANDED.**
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21 **DECISION**
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23 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
24 and decision on a timely Petition for Review filed by the Department of Labor and Industries to a
25 Proposed Decision and Order issued by a hearing examiner for this Board on January 19, 1979, in
26 which the order of the Department dated May 25, 1978 was reversed, and the claim remanded to the
27 Department with direction to allow the claim, and to take such other and further action as indicated,
28 and required or allowed by law.
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30 The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no
31 prejudicial error was committed and said rulings are hereby affirmed.
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33 This claim was rejected by an order of the Department of Labor and Industries dated May 25,
34 1978, on the ground that claimant's condition was not the result of an industrial injury as defined by the
35 industrial insurance laws.
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37 After a hearing held before this Board, our hearing examiner entered a Proposed Decision and
38 Order determining that the claimant developed a condition diagnosed as traumatic paresthesia in her
39 left hand as a result of resting her left elbow on a table while telephoning at her place of employment
40 over a two-day period. Our hearing examiner determined that the condition described above was
41 related to the trauma caused by resting the elbow on the table for a few hours and remanded the claim
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1 to the Department with directions to allow it. At no place in the body of his Proposed Decision and
2 Order, or in his findings and conclusions and order, did the hearing examiner describe the condition
3 either as an "industrial injury" or as an "occupational disease".
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6 In his Petition for Review filed with this Board, counsel for the Department very effectively
7 argues that the condition that the claimant developed could not be described as an "injury" within the
8 definition of RCW 51.08.100. Counsel does not discuss whether the condition could be described as
9 an occupational disease within the definition of RCW 51.08.140, possibly because the claim was not
10 rejected on the ground it was not an "occupational disease" and furthermore, there was no mention of
11 a disease in the hearing examiner's order. We agree with counsel, the claimant's condition does not
12 constitute an "injury" within the definition of the statute.
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16 The claimant has presented un-contradicted evidence that she developed a condition while
17 employed in covered employment within the state of Washington, and that the condition grew out of,
18 and is related to, her activity at work.
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21 RCW 51.08.140 defines an occupational disease as follows:

22 "Occupational disease' means such disease or infection as arises
23 naturally and proximately out of employment under the mandatory or
24 elective adoption provision of this title." (Emphasis supplied)
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26 In Simpson Logging Company v. Department of Labor and Industries, 32 Wn.2d 472, our Supreme
27 Court held that:
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29 "Under the present act, no disease can be held not to be an occupational
30 disease as a matter of law, where it has been proved that the conditions of
31 the extra-hazardous employment in which the claimant was employed
32 naturally and proximately produced the disease, and but for the exposure
33 to such conditions the disease would not have been contracted."
34 (Emphasis supplied)
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36 "Disease" has been defined as any departure from health or illness in general (Webster's New World
37 Dictionary). It's also been described as a particularly destructive process with a specific cause and
38 characteristic symptoms. Dorland's Medical Dictionary (23rd edition) defines "disease" as "a definite
39 morbid process having characteristic train of symptoms; it may affect the whole body or any of its
40 parts, and its etiology, pathology, and prognosis may be known or unknown." A traumatic
41 paresthesia, requiring medical treatment, would appear to fall within these definitions.
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45 In rejecting the claim, the Department gave its reason in the typewritten portion of its order as:
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1 "That claimant's condition is not the result of an industrial injury as defined
2 by the industrial insurance laws."
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4 In that portion of its order, no mention was made concerning whether the claim might be compensable
5 as an occupational disease. However, the "accident report" which Ms. Burr filed with the Department
6 operates not just as a request for benefits for an "injury". Such report is most properly termed an
7 application for compensation, as that is the term which the statute uses to describe the document a
8 person must file to initiate a claim with the Department. RCW 51.28.020.
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11 Being a general application for benefits, the Department must consider the claim as one for
12 either an industrial injury or occupational disease. The Department cannot adjudicate the allowance of
13 a claim on one ground only, i.e., injury. The Department's duty is to adjudicate an application for
14 compensation on its merits as either an injury or disease. In fact, we believe the Department can be
15 held responsible for having done so in this case.
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19 We make this conclusion without reservation upon a simple reading of the printed portion of the
20 Department's order form. Immediately preceding the typewritten reason for rejecting the claim, the
21 printed form reads: "This claim for injury, accident or occupational disease is rejected because..."
22 (Emphasis supplied) By noting in its printed order, alternative grounds by which an application for
23 compensation can be considered, we assume the Department has taken the opportunity to do so.
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27 Thus, even though the Department's order typed in a single reason for rejecting the claim, we
28 believe it also acted to reject the claim as an occupational disease. By so doing, the issue of the
29 claimant's condition as an occupational disease properly lies within the jurisdiction of this Board to
30 determine.
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33 Upon a consideration of the record before us in accord with the foregoing discussion, we
34 conclude that Ms. Burr did develop an occupational disease within the meaning of the Workers'
35 Compensation Act. We further conclude, therefore, the Department's order of May 25, 1978, is
36 incorrect and this matter should be remanded to the Department with direction to allow the claim.
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39 **FINDINGS OF FACT**

40 After a careful review of the record, the Board finds as follows:

- 41 1. On May 18, 1978, the claimant, Judith K. Burr, filed an application for
42 workers' compensation benefits with the Department of Labor and
43 Industries alleging the onset of a compensable condition on April 26, 1978,
44 while she was employed by Pacific Coast Services. On May 25, 1978, the
45 Department issued an order rejecting the claim for reason that the
46 "claimant's condition is not the result of an industrial injury as defined by
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1 the industrial insurance laws." On June 1, 1978, the claimant filed a notice
2 of appeal with this Board, and on June 23, 1978, the Board granted the
3 appeal.

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5 2. While talking on the telephone during working hours on April 26 and April
6 27, 1978, the claimant repeatedly rested her left elbow on a table and as
7 the result of this maneuver of her left upper extremity during this two day
8 period, she developed a condition, traumatic paresthesia, involving her left
9 hand and fingers, and which required medical treatment.
- 10 3. The claimant's traumatic paresthesia in her left upper extremity was the
11 natural and proximate result of positions required in the performance of
12 her employment.

13 **CONCLUSIONS OF LAW**

14 Based on the foregoing findings of fact, the Board concludes as follows:

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16 1. This Board has jurisdiction of the parties and the subject matter of this
17 appeal.
- 18 2. The claimant developed an occupational disease within the meaning of the
19 Industrial Insurance Act on or about April 27, 1978, while in the course of
20 her employment with Pacific Coast Services.
- 21
22 3. The order of the Department of Labor and Industries dated May 25, 1978,
23 effectively rejecting her application for benefits was incorrect, should be
24 reversed, and the claim remanded to the Department with direction to
25 allow the claim for an occupational disease, and to take such other and
26 further action as may be indicated, and required or authorized by law.

27 It is so ORDERED.

28 Dated this 18th Day of April, 1979.

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30 BOARD OF INDUSTRIAL INSURANCE APPEALS

31
32 /s/ _____
33 MICHAEL L. HALL Chairman

34
35 /s/ _____
36 SAM KINVILLE Member

37 38 **DISSENTING OPINION**

39 The Department argues well and convincingly that claimant suffered no "injury" such as falls
40 within either statute law or case law. The Proposed Decision and Order recognizes this and
41 addresses itself instead to finding an occupational disease.
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44 "Occupational disease," according to the law, "means such disease or infection as rises
45 naturally and proximately out of employment..." (Emphasis supplied). Note the conjunctive "and."
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Nowhere in the testimony is there found any evidence, claim or assertion that claimant's condition is the type of condition or disease which might rise "naturally and proximately" out of the employment.

It does not appear to be within the authority of this Board to make such findings without testimony from some medical expert that claimant's condition might naturally arise from the employment. There is no testimony to that effect in the record.

Dated this 18th day of April, 1979.

/s/
AUGUST P. MARDESICH Member