

Murray, Bill (II)

OCCUPATIONAL DISEASE (RCW 51.08.140)

Psychiatric conditions (mental/mental)

A worker's acute reaction to job stress, even though greater than might be expected for most individuals, constitutes an occupational disease where the increased stress and tension present in the working climate were objectively verifiable and greater than the day-to-day mental stress common to all occupations and to non-employment life. [Post-*Kinville* (35 Wn. App. 80).] ...*In re Bill Murray (II)*, BIIA Dec., 57,009 (1984) [special concurrence and dissent]

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

STATE OF WASHINGTON

In re: BILL E. MURRAY)	DOCKET NO. 57,009
)	
Claim No. H-502652)	DECISION AND ORDER
_____)	

APPEARANCES:

Claimant, Bill E. Murray, by
 Landerholm, Memovich, Lansverk, Whitesides, Wilkinson,
 Klossner & Perry, per
 Marla Ludolph

Employer, Clark County, P.U.D., by
 Blair, Schaefer, Hutchison, Wynne, Potter & Horton, per
 John R. Potter and Wayne Nelson

Department of Labor and Industries, by
 The Attorney General, per
 John R. Dick and S. Frederick Feller, Assistants

This is an appeal filed by the claimant on June 10, 1980 from an order of the Department of Labor and Industries dated May 23, 1980, which adhered to an order dated May 16, 1979, which rejected the claim "for benefits for injury, accident or occupational disease because the condition is not the result of an industrial injury as defined by the Workers' Compensation Act". Reversed and remanded.

DECISION

This matter comes before the Board pursuant to an order of the Clark County Superior Court dated August 24, 1984. That order, received by this Board on August 30, 1984, directed the Board to further consider its Decision and Order of November 30, 1981 in this matter "based on the Department of Labor and Industries v. Kinville,

35 Wn. App. 80 (1983)". The court's order further directed:

- a. This consideration shall be based on the record already established; no further testimony shall be allowed to be taken.
- b. The Board shall have ninety (90) days from the receipt of this order to make consideration and issue a Decision and Order.

In the decision of November 30, 1981, this Board placed heavy reliance on the law recited in Simpson Logging Company v. Department of Labor and Industries, 32 Wn. 2d 472 (1949). We characterized that case as setting forth the controlling principle of law regarding compensability of a disease as an occupational disease under

1 Title 51 RCW. We attempted to distinguish the reasoning of a sub-
2 sequent case, Favor v. Department of Labor and Industries, 53 Wn.
3 2d 698 (1959), as controlling even though it dealt with the effect
4 of "the emotional stress and strain of anxiety and worry" in relation
5 to a worker's employment.

6 Subsequent to our November 30, 1981 Decision and Order in the
7 instant case, this state's Court of Appeals, Division II, issued its
8 opinion in Kinville, supra. In that opinion the court concentrated
9 on the definition of occupational disease, as set forth in RCW
10 51.08.140. Particularly, it focused on the phrase, "naturally and
11 proximately" in an effort to ascribe meaning to its totality which,
12 the court felt, prior case law had failed to do.

13 Prefacing its reasoning, the Kinville court acknowledged the
14 holdings in Simpson and Favor. It declared its inability to reconcile
15 the reasoning contained in the two cases. It further expressed its
16 belief that the Supreme Court in Favor had sub silentio overruled
17 Simpson insofar as the latter had rejected the "peculiar to the
18 occupation" test of compensability for occupational disease. The
19 court stated the "naturally" requirement in the definition of
20 occupational disease, must be interpreted as referring to "something
21 more" than mere proximate or legal causation. The court further
22 stated that a disease can be found to arise "naturally and proximately"
23 out of a claimant's employment only when the causative elements are
24 found to be inherent in the claimant's particular occupation. In
25 adopting this construction of the natural and proximate elements
26 of RCW 51.08.140, the court held that the worker has the burden of
27 establishing that the conditions producing his disease are peculiar to,
28 or inherent in, his particular occupation.

29 Since that decision has come down, this Board has faithfully
30 attempted to apply the Kinville test to the circumstances presented
31 in appeals before us. Such applications have resulted in a number of
32
33

1
2 claims being held non-compensable which would have received a
3 different holding under the Simpson cause-in-fact analysis.

4 By its order dated August 24, 1984, the Superior Court now directs
5 this Board to evaluate the evidence once again against the standard
6 of proof required in Kinville. The strict holding in that decision
7 is stated in its penultimate paragraph:
8 "...Her disease can be held to have arisen naturally
9 out of her employment only if her job environment
10 exposed her to a greater risk of developing the
11 mental condition than employment generally or
12 non-employment life. Satisfaction of this standard
13 requires a showing by the claimant that her employment
14 involved greater stress and tension than the day-to-day
15 mental stress common to all occupations..."
16

17 The same burden now applies to Mr. Murray. We still have
18 absolutely no difficulty instating at the outset that the "proximate"
19 element of the statutory definition is satisfied. In response to
20 questions directed toward determining cause in fact, Dr. Robert
21 Blomquist, an internist, responded that:

22 "A ...the stress, the feelings of his stress of the
23 job at that point in time were such that it
24 provoked a state of anxiety and depression such
25 that he wasn't able to keep up with continued
26 working without some help.
27

28 Q Again, doctor, could you express that opinion
29 in terms of reasonable medical probability as to
30 the relationship between what you understood
31 about Mr. Murray's reaction to his job situation
32 and the condition you diagnosed?
33

34 A I think there is reasonable probability that the
35 stress of the job did provoke the response of
36 the patient in terms of the anxiety and
37 depression."
38

39 The nature of Mr. Murray's illness was one of both physical and
40 emotional manifestations. He was suffering interference with his
41 sleep and was subject to episodes of nausea, vomiting, and diarrhea.
42 The development of these manifestations coincided with a change in
43 working conditions which Mr. Murray described in some detail.

44 His position at the time of symptom onset was that of a dispatcher
45 working the swing shift for the Clark County P.U.D. In early 1978,
46

1
2
3
4 the P.U.D. moved its headquarters. He described the change of
5 physical surroundings for his own job which occurred with the change
6 in relocation of the headquarters:

7 "We moved into the new building in January of '78.
8 In there you're confined, there is no windows or
9 anything to look out. You're just like being locked
10 up in a jail."
11

12 Mr. Murray also described the nature of increased job stress which
13 was attendant at the time of headquarters relocation affecting the
14 total working environment:

15 "...it was in the middle of the building boom and we
16 had six or seven of our underground crews working
17 plus three contracting crews working plus our crews
18 on the underground was working every Saturday. The
19 underground was being put in faster than we could
20 get it on our maps and when we did have trouble under
21 the underground and call a man out at night we would
22 try to go by our maps and they wouldn't even jibe
23 with what was in the field. It got so that some of
24 the servicemen was a little lerry on switching and
25 I was a little leery on switching because I didn't
26 have it in front of me and I figure there (sic) are
27 eyes out there and I was afraid that I was going to hurt
28 somebody, plus the fact that we have quite a few people
29 that had turned off for non-payment of lights, they
30 didn't pay their bill.
31

32 The swing shift is busiest, busiest shift of the
33 whole work. You're by yourself from 3:30 to 11:30.
34 When you have an outage -- I think at that time we
35 had three or four lines in there and if you had a
36 pretty good-sized outage you was busy plus getting
37 the calls from the people that came home and found
38 their lights being turned off. You was called everything
39 under the sun, you was threatened, sometimes I did call
40 an extra dispatcher in to help me if it was real big.
41

42 . . .
43

44 The dispatcher's office worked for a long time
45 shorthanded where some of the other departments grew.
46 When I became sick and we hired two extra men in the
47 dispatcher's office, so we do have more help in the
48 dispatcher's office now than we did before."
49

50 Thus, Mr. Murray felt under a much greater amount of stress
51 during this time than he had previously. His reaction to the stress
52 was subjective, of course, but there were objective indices to sub-
53 stantiate a real change in working environment. His new assigned

1 confines were like a "jail"; there were no windows; there were

2
3
4
5
6 greatly increased security precautions -- monitors which were to be
7 watched; "buzzers" would ring when people entered the secured
8 facilities; "beepers" went off for people entering and leaving the
9 compound. These added elements would often interrupt customer calls,
10 placing the solitary dispatchers serving the swing shift under
11 greater stress. In short, the working climate in the new facility was
12 austere and threatening.

13 Superimposed on this more stressful austere environment was a
14 very real concern about the accuracy of electrical schematic config-
15 urations upon which he as dispatcher had to rely in advising persons
16 in the field responsible for repairing outages. Apparently, these
17 schematics or "maps" were not updated with sufficient frequency
18 during the "building boom" occurring in the P.U.D's service area.
19 Mr. Murray feared that the true field arrangement would not be
20 reflected in the schematics he had to rely upon in giving switching
21 directions. He was genuinely concerned that one of his directions
22 based on inaccurate data might cause severe injury or death to a
23 repair person. On top of this was a climate of a great number of
24 power outages and customers whose electricity had been terminated
25 for non-payment which precipitated numerous phone call complaints
26 and threats to him personally from outraged power users.

27 Viewing these facts, we have no reluctance to find that the
28 stress and tension present in such a working climate was greater
29 than the day-to-day mental stress common to all occupations and non-
30 employment life. Mr. Murray's acute reaction to these stresses may
31 have been greater than might be expected for most individuals, but
32 his proclivity for the development of such a reaction does not
33 mitigate against compensability of his diagnosed condition under this

1 state's Industrial Insurance Act.

2 Had this case been one of a heart attack precipitated by
3 emotional stress, this Board majority would have no difficulty in
4
5
6
7 finding it to meet the parameters of unusual stress required of such
8 cases. See Windust v. Department of Labor and Industries, 52 Wn. 2d
9 33 (1958) and Sutherland v. Department of Labor and Industries, 41
10 Wn. App. 333 (1971). We find no greater test to be applied under
11 the Kinville doctrine to questions of occupational disease
12 precipitated by unusual emotional stress and tension.

13 FINDINGS OF FACT

- 14
- 15 1. On May 3, 1979, Bill E. Murray filed an accident
16 report alleging that he had suffered an industrial
17 injury or occupational disease, as a result of
18 conditions occurring during the course of his
19 employment as a service dispatcher with the
20 Clark county P.U.D. on and preceding April 28, 1979.
21 On May 16, 1979 the Department issued an order
22 rejecting the claim for benefits for the reason
23 that the claimant's condition was not the result
24 of an industrial injury as defined by the
25 Workers' Compensation Act. On May 22, 1979, the
26 claimant
27 filed a protest and request for reconsideration, and
28 On July 5, 1979 the Department issued an order
29 holding its order of May 16, 1979 in abeyance. On
30 May 23, 1980, the Department issued an order
31 adhering to its order of May 16, 1979 rejecting the
32 claim. On June 10, 1980, claimant filed a notice
33
34 of appeal from the Department's order of May 23, 1980.
35 On June 26, 1980, the Board issued an order granting
36 the appeal and hearings were held thereafter.
37
 - 38 2. The claimant, Bill E. Murray, was first employed by
39 the Clark County P.U.D. as a journeyman lineman
40 in 1949. He has been continuously employed with the
41 P.U.D. since February 1969. He began training as a
42 dispatcher in 1973 and was working as a full-time
43 service dispatcher on the swing shift between
44 January 1978 and April 28, 1979.
45
 - 46 3. During the period January 1978 through April 28,
47 1979, Mr. Murray's work as a service dispatcher for
48 the P.U.D. required him to deal with complaints from
49 customers whose electrical service had been
50 discontinued as well as complaints of consumers
51 suffering from power outages. The physical
52 environment in the area in which the dispatcher
53 had to work changed after the P.U.D. relocated
54 its headquarters in January 1978 to one of being
55 significantly more stark and austere than the

1 location of his prior headquarters.
2

- 3 4. During this period, the dispatcher unit was shorthanded
4 and information upon which they had to rely to assist
5 field personel in making repairs for power outages
6 was not fully accurate resulting in a real concern
7 over the reliability of switching directions
8
9

10
11
12
13
14
15
16 communicated from the dispatchers to repair
17 persons.
18

- 19 5. The conditions of the physical facility of the
20 claimant's working environment, together with the
21 high level of stress created by irate electric
22 power consumers and unreliable data upon which
23 dispatchers had to rely for giving directions,
24 created a climate of greater stress and tension
25 than generally found in other employment or non-
26 employment life.
27
- 28 6. On or about April 28, 1979 the claimant suffered
29 from a condition diagnosed as acute situational
30 reaction with anxiety and depression which was a
31 natural proximate result of stress related to
32 the working climate of his job situation as
33 dispatcher for Clark County P.U.D.
34

35 CONCLUSIONS OF LAW
36

- 37 1. The Board of Industrial Insurance Appeals has
38 jurisdiction of the parties and subject matter
39 of this appeal.
40
- 41 2. On or about April 28, 1979, claimant exhibited a
42 condition compensable as an occupational disease
43 under the Workers' Compensation Act of this
44 state.
45
- 46 3. The order of the Department of Labor and Industries
47 dated May 23, 1980 which rejected the claimant's
48 application for benefits, is incorrect, should
49 be reversed, and this claim remanded to the
50 Department with direction to allow the claim for
51 acute situational reaction with anxiety and
52 depression as an occupational disease, and to
53 take such further action as may be authorized
54 or indicated by law.
55

56 It is so ORDERED.
57

58 Dated this 27th day of November, 1984.
59

60 BOARD OF INDUSTRIAL INSURANCE APPEALS
61

62
63 /s/ _____
64 MICHAEL L. HALL Chairman
65

66 /s/ _____
67

SPECIAL CONCURRING STATEMENT

I have signed the foregoing majority decision, because I concur with the Chairman that, even in light of the Kinville decision, this claim is allowable as a compensable mental occupational disease.

In

particular, I concur with and adopt the formal Findings of fact, Conclusions of law, and Order, showing that this case meets the "greater stress and tension" test of Kinville, which also was an alleged mental occupational illness case.

However, I would go further in the discussion in the "Decision" portion, to clearly reflect my view that the Kinville decision only applies to alleged mental occupational diseases, and does not, and should not, apply to any other occupational disease claims. Accordingly, I would add, on page 2, line 9, after the word "disease," the phrase "as it relates to mental occupational disease,"; I would add, on page 2, line 20, after the word "disease," the phrase "as it relates to mental occupational disease,"; and I would add, on page 2, line 27, after the word "his" the word "mental".

Dated this 27th day of November, 1984.

/s/

FRANK E. FENNERTY, JR.

Member

DISSENTING OPINION

It is interesting to note the characterization of the factual evidence, in the foregoing decision of the Board majority. Valiant attempt is made, by emphasizing portions of the claimant's testimony, to cast the evidence in such a light that the facts now constitute "stress and tension present in such a working climate...greater than

1 the day-to-day mental stress common to all occupations and non-
2 employment life", so as to bring this case within the legal holding
3 of Kinville.

4 This contrasts with the majority's quite different view of the
5 evidence in the Board's prior Decision and Order of November 30,
6 1981, wherein it was stated that "the only real change in the
7 claimant's work conditions was what he perceived to be a more confining
8
9
10
11
12
13 and depressive work environment, which developed following the change
14 of office premises".

15 It must be noted that, in my dissenting opinion on November 30,
16 1981, I essentially agreed with the majority's then view of the facts,
17 wherein I stated:

18 "Were there, in the instant case, any stressful stimuli
19 on the job sufficiently more damaging than the stresses
20 of everyday employment life? Were there situations of
21 greater dimensions than the day-to-day mental stress and
22 tensions which employees may expect to experience in
23 their job? The answer is no. The Board majority finds
24 no such extraordinary stressful stimuli, either, and
25 correctly observes that the only real change in this
26 claimant's long-performed work conditions was 'what
27 he perceived to be a more confining and depressive
28 work environment which developed following the change
29 of office premises'". (Emphasis mine)
30

31 I see no reason to change that view. It was appropriate then. It is
32 appropriate now.

33 The effect of the Kinville decision has been to clarify the case
34 law of this state in such a manner that it clearly gives further
35 support to the legal position taken in my prior dissent. The Kinville
36 decision made such clarification by reviewing all prior judicial
37 decisions, and then interpreting and giving meaning and intent to the
38 word "naturally" in the statutory definition applying to compensa-
39 bility of all alleged occupational diseases. Prior judicial decisions
40 had not given meaning to the "naturally" requirement -- nor, I hasten

1 to add, did my prior dissenting opinion in this case clearly do so.

2 However, as to compensability of alleged mental occupational
3 diseases, I cited as a "logical answer", Larson's textbook on
4 Workmen's Compensation Law, Vol. 1B, sec. 42.23, for the requirement
5 that mental illnesses, to be compensable, must result from "stressful
6 situations and identifiable mental stimuli of much greater dimensions
7 than the day-to-day stress and tensions of employment life". This
8 is certainly compatible with the "greater risk" principle set forth
9 by Kinville in interpreting the scope of compensability of alleged

10
11
12
13
14 occupational diseases in general. A strikingly similar reference to
15 the same section of larson's treatise was made by the Kinville court,
16 in a footnote at page 89, wherein the court stated in support of its
17 holding:

18 "Our analysis in this regard accords with the generally
19 recognized rule that compensation for a mental disease
20 or injury caused by gradual mental stimuli in the job
21 environment is appropriate only where the evidence
22 establishes that the objective conditions of employment
23 involve significantly more tension than the day-to-day
24 mental stress that all employees experience." (Emphasis added)
25

26 In light of all the foregoing, I adhere to my opinion expressed
27 on November 30, 1981, and again dissent from the Board's majority
28 decision.

29 Dated this 27th day of November, 1984.

30
31 /s/ _____
32 PHILLIP T. BORK Member
33