

Strothers, Gloria

OCCUPATIONAL DISEASE (RCW 51.08.140)

Psychiatric conditions (mental/mental)

A mental condition induced by cumulative stress, the origin and reality of which is solely within the subjective perception of the worker, is not compensable as an occupational disease. [Pre-Kinville (35 Wn. App. 80).]*In re Gloria Strothers*, BIIA Dec., 58,772 (1982) [special concurrence and dissent] [*Editor's Note*: The Board's decision was appealed to superior court under King County Cause No. 82-2-11969-5.]

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

IN RE: GLORIA D. STROTHERS)	DOCKET NO. 58,772
)	
CLAIM NO. H-638193)	DECISION AND ORDER

APPEARANCES:

Claimant, Gloria D. Strothers, by
Walthev, Warner, Keefe, Arron, Costello and Thompson, per
John Costello

Employer, CX Corporation,
None

Department of Labor and Industries, by
The Attorney General, per
William Garling and Verlaina Keith-Miller, Assistants

This is an appeal filed by the claimant on February 13, 1981, from an order of the Department of Labor and Industries dated December 17, 1980, which adhered to the provisions of a prior order rejecting this claim for the reasons: (1) the claimant's condition is not the result of exposure alleged, and (2) that the claimant's condition is not an occupational disease as contemplated by 51.08.140 RCW. **AFFIRMED.**

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 on January 6, 1982, in which the order of the Department dated December 17, 1980 was reversed, and this claim remanded to the Department with direction to allow the claim.

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

The issue for our determination is stated in the Proposed Decision and Order as one "whether the claimant suffered a psychiatric illness compensable under the ...Act". Though we do not disagree with that statement, we believe that phraseology strokes with too broad a brush. We see the issue properly stated to be:

1 Can a claim for benefits under the Industrial Insurance Act be allowed
2 as an occupational disease where the condition for which compensation
3 is sought is one of mental aberration precipitated solely by gradually
4 occurring subjective mental impressions and perceptions of the
5 claimant/worker which are not corroborated or verified?
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7 In this appeal, Ms. Strothers alleges that as a result of perceived developments while she was
8 employed by CX Corporation, CX Processing, she incurred a psychiatric condition which should be
9 allowed as an occupational disease by the Department of Labor and Industries.
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11 The facts contained in the record of proceedings are reasonably well summarized in the
12 Proposed decision and Order, but to aid our discussion, we feel it necessary to make a
13 restatement.
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15 The claimant is a young lady who joined her employer in 1975 working initially as a clerk.
16 Her beginning years were happy and uneventful. As the company grew, she rose in competence
17 and value and was promoted to the position of "expediter" in January 1979. It was after this event
18 that Ms. Strothers' perceptions of her job and her role working under a new supervisor become
19 material.
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21 She last worked for her employer on November 16, 1979. On that date, she returned from
22 her lunch break and discovered that more "papers and things" had been placed on her desk. This
23 seemed to be the last straw, and as she stated it "seemed that everything in my whole body just
24 seemed to explode". She began screaming, hollering, pulling her hair, and shaking. She crawled
25 out on a window ledge threatening to take her life by jumping.
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27 We do not understand the facts to support, nor the claimant to contend, that it was merely
28 the events of that day as producing the causative nexus for the claimant's psychiatric breakdown. It
29 is our understanding that the claimant contends that events and alleged pressures of the 6 months
30 immediately preceding underlaid a developing psychiatric problem. The post-prandial
31 circumstances merely served to trigger the long simmering and increasingly fragile emotional
32 makeup of the claimant.
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34 During the course of her testimony, the claimant recited a number of impressions and
35 perceptions which she had of her work situation after her promotion. She stated she "thought she
36 was having problems with her supervisor." It "seemed like [her supervisor] would give [her] extra
37 work" to do. In addition she felt "pressure" to finish her own assigned work. The spectre of racial
38 discrimination or prejudice was also perceived. Ms. Strothers described her supervisor to hold a
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1 "snooty attitude" toward her. In describing the daily difficulty of fulfilling her role, the claimant
2 indicated her supervisor would delegate her own work to Ms. Strothers and "expect it to be done".¹
3 She perceived that her supervisor felt threatened in her position by the good job the claimant was
4 doing and thus harbored animosity toward her.
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7 After she left her job, Ms. Strothers was referred to a Dr. Robert B. Olsen, who limits his
8 practice to internal medicine and psychiatry. He first saw Ms. Strothers November 21, 1979, noting
9 a severe depression. He began to wonder about the possibility of an acute organic brain
10 syndrome. By early december 1979, her status had become more clear. Having received a more
11 coherent history, he gave as his "assessment" that she suffered from a severe psychotic
12 depression -- she had a depressive illness and was not in touch with reality. Ms. Strothers made
13 clear to Dr. Olsen her perceptions of her work situation, as he noted she felt overwhelmed at work
14 and had made a "suicide gesture". After a brief hospitalization, the discharge diagnosis was "below
15 normal intelligence...depressive neurosis...and situational disturbance to adult life." The final
16 aspect of the diagnosis, Dr. Olsen explained, meant that a person was having a "pronounced
17 reaction to stressors that most of us would handle better."
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24 In summarizing his opinion concerning the claimant's psychiatric condition and her work
25 situation, Dr. Olsen stated:
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30 ¹ When queried about the extent of her workload, the record contains the following interchange:
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32 "Q. Ms. Strothers, did you have to start putting in considerable amount of overtime?

33 A. Yes. Sometimes it was mandatory that we had to do it. When the big president said that
34 well, we got to hurry up and get this out, mandatory. And sometimes I had to put in overtime
35 because my supervisor would say, like, I want certain things done; I want work orders picked or
36 pulled out and where you could turn it back up to the stores and I need that done and I want it
37 done before the morning time. So sometimes I'd have to stay there after working 8 hours and
38 get it done.

39 Q. What portions of your work, if any, did you consider to be frustrating or stressful?

40 A. Oh, boy, mostly all of it. Making sure that all machineries and the parts got to the certain
41 location where they had to be, making sure that I had to go back at a certain time, making sure
42 that I get them back after they got through testing or whatever had to be done at that point,
43 making sure that I do back and get them in time so they wouldn't hold up the production,
44 holding up everybody else's work, making sure I get them back in time, plus trying to finish
45 doing -- come back and have a note on my desk saying you have to stop and do something
46 else and trying to get all the other main, more important things back to the other different
47 engineers and manufacturers that built them and stuff. Day after day, I guess that can get
frustrating."

1 "...The opinion was that there were long term difficulties with her
2 interaction with her supervisor, which deteriorated to the point where
3 she felt as though she was being discriminated against. The anxiety
4 and resentment engendered thereby interfered with her ability to
5 perform her job well. She then developed secondary anxiety over her
6 job performance, but because of the first problem, that is, difficulty with
7 the supervisor, she was unable to get the matter resolved. Both of
8 these problems attributed to the development of depression, enhanced
9 to her hospitalization.

10 ...

11 One, there was ongoing conflict with her supervisor, which was very
12 difficult for Gloria to attempt to overcome. Second, there was a change
13 in her responsibilities at work, most likely overtaxing her limited
14 intellectual capacities, thus producing a significant degree of anxiety and
15 because of the problem with the supervisor, and she not (sic) have any
16 or she could not conceive of any intervening effectively to reduce her
17 anxiety."
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19 He listed three final diagnoses in his testimony: (1) a major depressive disorder with mood
20 congruent hallucinations, (2) employment problem, and (3) mental retardation. He labeled two
21 problems stemming from Ms. Strothers' work situation, changing responsibilities at work and trouble
22 with her supervisor, as producing stress and commented:
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24 "...The psychiatric literature of the past 15 years had devoted increasing
25 amounts of attention to the effects of stress on an individual's health,
26 both physical and mental. It is known that sufficient accumulation of
27 what is known as life changes or life stress event will precipitate illness
28 with a 95% probability within 12 to 18 months after accumulating that
29 amount of stress."
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32 Accepting for the moment Dr. Olsen's summation, it would appear that the record contains sufficient
33 medical evidence of a psychiatric condition developing because of stress in the claimant's life.
34 There is further sufficient evidence to conclude that, at least from the claimant's subjective
35 perspective, her work situation following her January 1979 promotion contributed greatly to the
36 stress in the claimant's life. However, we must scrutinize the facts to determine whether their
37 acceptance supports the conclusion that the claimant developed an occupational disease
38 compensable under this state's Industrial Insurance Act.
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40 If the claimant is to prevail in this appeal, she must persuade that her abnormal reaction was
41 a result of a compensable occupational disease. Under this state's Act, the term "occupational
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1 disease" is defined as "...such disease or infection as arises naturally and proximately out of
2 employment..." RCW 51.08.140.
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4 In Simpson Logging Co. v. Department of Labor and Industries, 32 Wn. 2d 472 (1949), the
5 court announced the controlling principle of law:
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7 "...Under the present act, no disease can be held not to be an
8 occupational disease as a matter of law, where it has been proved that
9 the conditions of...employment in which the claimant was employed
10 naturally and proximately produced the disease, and that but for the
11 exposure to such conditions the disease would not have been
12 contracted."
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14 In a few instances, this Board has been directly confronted with the question whether the
15 development of psychiatric conditions under certain circumstances constituted occupational
16 diseases. The Proposed Decision and Order rightly cites three previous instances where such
17 claims were allowed, In re David J. Simmonds (1976), In re Lyndall Brolli (1977), and In re Bill
18 Murray (1981).
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20 In his learned treatise, The Law of Workmen's Compensation, Professor Arthur Larson
21 recognizes three categories of cases involving mental illness or physical illness from mental stimuli.
22 These are (1) mental stimulus causing physical manifestation of injury, (2) physical trauma causing
23 nervous or mental injury, and (3) mental stimulus causing mental or nervous injury. See Larson, §
24 42.21 et. seq. Apart from Professor Larson's cogent observations, we are constrained by the terms
25 of our own statute and appellate decisions rendered thereunder.
26

27 Although we do not feel absolutely constrained by stare decisis to apply the precedent set by
28 the decisions of prior Board members, we cannot help but observe that the circumstances in
29 previous appeals where the Board has allowed claims differ markedly from the circumstances
30 presented in Ms. Strothers' case. In the Simmonds matter, there was an extremely unusual event
31 which produced a prompt paranoid schizophrenic response in the claimant. In Lyndall Brolli, the
32 mental disease was slower in onset but clearly was due to upsetting work conditions, which could
33 be objectively observed and corroborated by witnesses other than the claimant and were more than
34 a mere reaction to normal cumulative stress. In re Bill Murray, also involved independent
35 objectively verifiable significant changes in working conditions, and was allowed for mentally
36 induced physical abnormalities.
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1 In none of these prior appeals was there a mental condition induced by cumulative stress,
2 the origin and reality of which was solely within the subjective perception of the claimant. In fact,
3 substantial evidence in the record shows that Ms. Strothers' perceptions of problems with her
4 supervisor simply do not square with other people's views of her actual work situation.
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7 Where the stress of a job change or working conditions is not only perceived by the
8 worker/claimant but is objectively verifiable through other's observations and experience and the
9 result is physical illness, that is one thing. Especially, when the record is silent as to other reasons
10 or other stressors producing the illness. But here, the claimant is alone in her allegations of undue
11 job stress; although we do not doubt her belief in them. There is evidence from Dr. Olsen which
12 supports that the claimant had difficulty with alcohol and was deficient intellectually, being
13 somewhat mentally retarded.
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18 Dr. Olsen's comments, regarding the claimant's "disease" being a result of cumulative
19 stresses, suggests in itself that there were stressors other than the claimant's work situation
20 contributing to her developmental problems.
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22 We do not find sufficient evidence of stress other than the claimant's own unverifiable
23 perceptions. We cannot find that her real work situation was a significant cause for her breakdown,
24 need for psychiatric treatment and hospitalization. In short, the failure to supply corroborative
25 evidence, coupled with evidence of other significant stressors independent from the claimant's work
26 situation, causes us to conclude that Ms. Strothers' mental illness simply did not arise naturally and
27 proximately out of her employment. Certainly an employer is responsible for the hazards present in
28 employment, including hazards contributing to significant mental stress. However, the reality of
29 those stresses, albeit a perceived mental meat axe to one, cannot be left solely to the subjective
30 perception of the worker involved. Even the perfumes of Arabia are independently verifiable. See
31 Groff v. Department of Labor and Industries, 65 Wn. 2d 35 (1964). We think alleged mental
32 stresses existing in the work place should also be identifiable and verifiable by corroboration.
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FINDINGS OF FACT

1. 39 On January 18, 1980, Gloria D. Strothers, the claimant, filed an
40 application for benefits under the Industrial Insurance Act with the
41 Department of Labor and Industries. That application alleged that she
42 suffered an occupational disease as a result of her work situation during
43 the course of her employment at CX Corporation, CX Processing, as an
44 expediter. Following interlocutory adjudication, the Department issued
45 an order on December 17, 1980, adhering to the provisions of a prior
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1 order rejecting the claim for the reasons that (1) the claimant's condition
2 was not the result of the exposure alleged, and (2) the claimant's
3 condition was not an occupational disease as contemplated by RCW
4 51.08.140. On February 13, 1981, the claimant filed a notice of appeal
5 with the Board of Industrial Insurance Appeals. On March 9, 1981, the
6 Board issued an order granting the appeal and directed that
7 proceedings be held on the issues raised by the appeal.
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- 9 2. In 1975 the claimant began employment with this employer as a clerk.
10 In January 1979, she changed jobs to become an expediter with an
11 increase in salary. During the initial months of her new job, she was
12 able to perform her duties adequately and without consequence.
- 13 3. During May 1979, the claimant's work was overseen by a new
14 supervisor who remained the claimant's supervisor until November 16,
15 1979, the claimant's last day of employment.
- 16 4. During the final six months of her employment, the claimant perceived
17 that her relationship with her new supervisor was one of hostility and
18 animosity and that she was being required to do more work and work
19 longer hours than previously.
- 20 5. On November 16, 1979, upon returning from her lunch break and finding
21 her desk containing additional work than prior to her break, she broke
22 down, began screaming, hollering, pulling her hair and made a suicidal
23 gesture threatening to jump from a window ledge.
- 24 6. Prior to November 16, 1979, the claimant perceived that her supervisor
25 had increased her workload by 2 1/2 times, that she was being
26 harrassed by her supervisor and was being unfairly treated for tardiness,
27 absences, and inability to get along with fellow employees. None of
28 these perceptions were corroborated or independently verified and did
29 not represent an accurate assessment of her true situation.
- 30 7. The claimant did develop a mental disorder which included a final
31 diagnosis of mental retardation, employment problem, and major
32 depressive disorder with mood congruent hallucinations. None of these
33 diagnoses arose naturally and proximately out of conditions of the
34 claimant's employment but were influenced solely by stressors existent
35 in the claimant's life situation and by her sole subjective, but incorrect,
36 perceptions of her work situation.
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39 **CONCLUSIONS OF LAW**

- 40 1. The Board of Industrial Insurance Appeals has jurisdiction of the parties
41 and subject matter of this appeal.
- 42 2. The claimant did not develop an occupational disease within the
43 meaning of RCW 51.08.140 during the course of her employment with
44 CX Corporation, CX Processing.
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1 3. The order of the Department of Labor and Industries dated December
2 17, 1980, effectively rejecting the claimant's application for benefits, is
3 correct and should be affirmed.

4 It is so ORDERED.

5 Dated this 4th day of August, 1982

6 BOARD OF INDUSTRIAL INSURANCE APPEALS

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8 /s/ _____
9 MICHAEL L. HALL Chairman

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11 /s/ _____
12 PHILLIP T. BORK Member

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15 **SPECIAL CONCURRING STATEMENT**

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17 I have signed the foregoing majority decision, because I concur with my colleague in the
18 belief that this claimant did not develop an "occupational disease" within the meaning and intent of
19 the statutory definition. In particular, I agree that the law does not cover a mental condition or
20 "disease" of a worker which does not arise out of actual extraordinary stressful stimuli in the work
21 place. I think the reality of such extraordinary stresses must be shown -- they must be identifiable
22 and verifiable. I agree that it is not enough that the worker simply has subjective perceptions of
23 such stresses.
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26 My reason for making this additional statement is solely because of the discussion in this
27 decision of the three prior Board decisions involving mental conditions as occupational diseases, In
28 re David J. Simmonds (1976), In re Lyndall Brolli (1977), and In re Bill Murray (1981). My colleague
29 characterizes those decisions as rightly allowing those claims because, in all three, there was
30 objective verification of the extraordinary stressful situations in the work place. While agree with
31 this viewpoint as to Simmonds and Brolli (and I participated in the decisions to allow those cases), I
32 do not agree with this view of Murray (and I dissented from the allowance of that case). In my
33 opinion, Murray as well as this case involved just subjective "perceptions" by the worker of job
34 stresses. I do not want it to appear now that I have somehow changed my view of the result which
35 should have been reached in the Murray case.
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37 Dated this 4th day of August, 1982.

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39 /s/ _____
40 PHILLIP T. BORK Member

1 **DISSENTING OPINION**

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3 There is no doubt in my opinion that the claimant, Ms. Gloria D. Strothers, suffers from an
4 occupational disease identified as depressive neurotic or psychotic illness or, as Dr. Olsen stated:
5 "Placed in current diagnostic terminology, it would be a major depressive disorder with mood
6 congruent hallucinations, employment problem, mental retardation" which he causally related to the
7 stress of her employment. Dr. Olsen on cross-examination was asked if whatever happened to the
8 claimant at work arose naturally out of the employment situation and his response was that the
9 employment situation contributed significantly to the development of her mental illness. Dr. Olsen
10 supported with proof by medical evidence that Ms. Strothers' mental illness was directly related to
11 the stresses of her employment situation.
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14 Every individual reacts to situations differently, whether they be physical, mental, social, etc.
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16 In re Bill E. Murray, Docket No. 57,009, mentioned in the Proposed Decision and Order and in the
17 majority opinion, the majority in that case in coming to their decision made the following comment:
18 "The response of the average person to a mental stress or a physical demand is not the test which
19 need by applied in determining the existence of an occupational disease. The stress which serves
20 as a mere challenge making the job interesting to one worker may operate as a mental meataxe to
21 another." To deny Ms. Strothers her due under the Industrial Insurance Act would be a great
22 miscarriage of justice. Ms. Strothers' mental being may not be as strong as most of us, but we see
23 case after case of those who have injured their back, neck, arm or other physical part of their body
24 while working under normal work situations that are justly compensated. It may be that Ms.
25 Strothers' working conditions were normal (heavy overtime, greatly increased job responsibilities,
26 new supervisor, quick growing company) to most of us, but to Ms. Strothers they were not. She felt
27 harassed by her new supervisor. She had been written up twice for disciplinary reasons by her new
28 supervisor. She was having to do her new supervisor's work, and she felt discriminated against by
29 her new supervisor. She felt overwhelmed by her job duties, which when her personnel manager,
30 Rick Coffey, was asked by claimant's counsel, "I believe you mentioned at that time her job duties
31 may have outgrown her performance abilities due to the company increase in size, do you recall
32 that?" His response was "yes". Mr. Coffey further stated that he felt Ms. Strothers to be under an
33 extreme amount of pressure if she understood that her job duties were greater than her job abilities.
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36 All the evidence leads me to the ultimate conclusion that this woman with her 11th grade
37 education who had been working for only a four and one-half year period after being a housewife
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1 for approximately 11 years, has suffered an occupational disease which is compensated by the
2 Industrial Insurance Act. Further, I hereby incorporate within my dissent the Proposed Decision
3 and Order of the industrial appeals judge who found the claimant to have suffered an occupational
4 disease.
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7 Dated this 4th day of August, 1982.
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9 /s/
10 FRANK E. FENNERTY, JR. Member
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