

## **Dowd, William**

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### **[AGGRAVATION \(RCW 51.32.160\)](#)**

#### **Proximate cause of worsened condition: new injury vs. aggravation**

Where a new traumatic event was wholly and independently responsible for the worker's worsened low back condition and the accepted industrial injury was not a proximate cause of the later occurring symptoms, the *McDougle* (64 Wn.2d 640) reasonableness test was inapplicable. ...***In re William Dowd*, BIIA Dec., 61,310 (1983)** [*Editor's Note*: Consider continued application in light of *In re Robert Tracy*, BIIA Dec., 88 1695 (1990).]

Scroll down for order.

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

1     **IN RE: WILLIAM R. DOWD**                     )     **DOCKET NO. 61,310**  
2   )  
3     **CLAIM NO. H-271019**                     )     **DECISION AND ORDER**  
4

5 APPEARANCES:

6  
7         Claimant, William R. Dowd, by  
8         Chapman, Forbes and Pack, per  
9         James D. Pack

10  
11        Employer, Cemco Products, Inc.,  
12        None

13  
14        Department of Labor and Industries, by  
15        The Attorney General, per  
16        J. Dianne Garcia, Nadine Scott, and Meredith Lehr, Assistants  
17

18        This is an appeal filed by the claimant on January 19, 1982, from an order of the Department  
19        of Labor and Industries dated January 11, 1982, which denied the claimant's application to reopen  
20        the claim for aggravation of condition and alleged the claimant's condition to be the result of a new  
21        traumatic incident. **AFFIRMED.**

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24        Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
25        and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order  
26        issued on December 28, 1982, in which the order of the Department dated January 11, 1982 was  
27        sustained.  
28

29  
30        The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no  
31        prejudicial error was committed and said rulings are hereby affirmed.

32  
33        The general nature and background of this appeal are as set forth in the Proposed Decision  
34        and Order, and shall not be reiterated herein.  
35

36        We have granted review of this matter so as to make clear our view that the rejection of this  
37        claim should be based upon an "injury" basis, and not an "aggravation" basis. It is clear that the  
38        claimant's low back condition resulting originally from his industrial injury of January 12, 1978, was  
39        worsened by an off-the-job tree-cutting Incident of November 11, 1980, when the claimant became  
40        pinned between two trees. The claimant described this incident in his testimony as follows:  
41

42        "Q     And, when you say the tree rolled and picked you up; what do you mean  
43                'picked you up'?

1 A Well, it was about six inches off the ground and out in the woods and  
2 there's brush all around and really I don't know how far off the ground it  
3 was. It just caught me under the knees and started pushing me  
4 backwards. And as it did my feet got caught in the brush and all of a  
5 sudden I found myself trying to untangle my feet and deal with this log.  
6 And, the next thing I knew there was nothing to deal with because I was  
7 pinned up and there was – other than trying to -- starting to pin me, I  
8 tried to push myself away and I couldn't get away from it fast enough.  
9 and, it pushed me into the other tree and pinned me there.

10 Q What part of your body was pinned?

11 A My lower leg.

12 Q Left leg?

13 A Yeah.

14 Q What did you do then?

15 A Well, it's hard to explain. The whole thing is just –

16 Q Well, what I mean, physically what did you do after you were pinned. I  
17 presume that the tree stopped at that point, the rolling tree stopped once  
18 it pinned you up against the upright tree.

19 A Right. And, when it did, I gave myself a mighty jerk and snapped my leg  
20 out of there and nothin' moved.

21 Q. So, how did you get out?

22 A. Well, Rod waited for the end of the tree to finish its arch and when it  
23 started back he gave a jerk and then I jerked my leg and it popped out of  
24 the hole. And, the tree just rested against the tree that I had been  
25 pinned into.

26 Q. What did you feel in your body at that time?

27 A. Lots of pain.

28 Q. Where?

29 A. In my leg. My back.

30 Q. left leg?

31 A. Yes.

32 Q. The one that was pinned?

33 A. Um-hum.

34 Q. What part of your back?

35 A. Lower.

36 Q. Was this a different part of your back than the prior pain that you'd had?

37 A. No, same place."

1  
2 The claimant was taken immediately to the hospital. As to his hospital stay, the claimant testified in  
3 significant and relevant part as follows:  
4

5 "Q During that period of time in the hospital what parts of your body were  
6 bothering you?  
7

8 A My leg and my lower left back.

9 Q Left leg?  
10

11 A Um-hum.

12 Q Same or different part of your back that had bothered you before?  
13

14 A Same

15 Q How did you [sic] back feel at this time compared to the way it had been before this,  
16 say for the several months before?  
17

18 A Traumatically worse.

19 Q In what way?  
20

21 A Well, --

22 Q Are you talking about discomfort or excruciating pain?  
23

24 A Excruciating pain. Unbearable. Incredible."  
25

26 In short, the claimant's worsened low back condition resulted from a new and independent injury  
27 sustained by the claimant on November 11, 1980. The injury of January 12, 1978 to the claimant's  
28 low back in no way contributed to the development of symptoms which Mr. Dowd experienced on  
29 November 11, 1980. The "reasonableness" test of McDougle v. Department of Labor and  
30 Industries, 64 Wn. 2d (1964) used to determine compensability in aggravation cases, has no  
31 application where the accepted industrial injury was not a contributory element, i.e., proximate  
32 cause of later-occurring symptoms. In this case, a new traumatic event was wholly and  
33 independently responsible for the production of symptoms.  
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36

37 **FINDINGS OF FACT**  
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39 Finding No. 1 of the Proposed Decision and Order entered herein on December 28, 1982, is  
40 hereby adopted by the Board and incorporated herein by this reference. In addition, the Board  
41 finds:  
42

- 43 2. On November 11, 1980, while cutting firewood for his house with a  
44 friend, the claimant was tossed about by a rolling log which ultimate  
45 came to rest and pinned his left leg against a tree, fracturing the tibia  
46  
47

1 bone. Attempting to extricate his left leg, the claimant gave a mighty  
2 jerk and felt immediate and excruciating pain in his low back.

- 3  
4 3. The claimant's worsened low back condition resulted directly from the  
5 log-pinning incident of November 11, 1980, and was not due to a natural  
6 progression or worsening of his industrial injury to his low back of  
7 January 12, 1978..

8 **CONCLUSIONS OF LAW**

- 9  
10 1. The Board of Industrial Insurance Appeals has jurisdiction of the parties  
11 and the subject matter of this appeal.  
12  
13 2. The claimant's worsened low back condition is the result of a new and  
14 independent injury sustained by the claimant on November 11, 1980.  
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16 3. The order of the Department of Labor and Industries dated January 11,  
17 1982, denying the claimant's application to reopen this claim for alleged  
18 aggravation of condition on the ground that the claimant's condition  
19 resulted from a new traumatic incident occurring in November 1980, is  
20 correct and is affirmed.

21 It is so ORDERED.

22 Dated this 25th day of April, 1983.

23 BOARD OF INDUSTRIAL INSURANCE APPEALS

24  
25 /s/ \_\_\_\_\_  
26 MICHAEL L. HALL Chairman

27  
28 /s/ \_\_\_\_\_  
29 FRANK E. FENNERTY, JR. Member

30  
31 /s/ \_\_\_\_\_  
32 PHILLIP T. BORK Member