

Hammond, James, Dec'd

HEART ATTACK

Emotional stress

The principles of *Sutherland* (4 Wn. App. 333) apply to a claim for a heart attack precipitated by unusual emotional stress whether the stress is caused by an external, tangible and objective event which has taken place or one which is about to take place.*In re James Hammond, Dec'd*, BIIA Dec., 67 968 (1986)

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

IN RE: JAMES L. HAMMOND, DEC'D) DOCKET NO. 67,968
CLAIM NO. J-400043) DECISION AND ORDER

APPEARANCES:

Widow-Petitioner, Carol E. Hammond, by
Ferguson & Burdell, per
Dennis J. Dunphy

Employer, Lynden Transport Inc.,
None

Department of Labor and Industries, by
The Attorney General, per
Paula Selis and Carol Molchior, Assistants

This is an appeal filed by the widow-petitioner on June 11, 1984 from an order of the Department of Labor and Industries dated April 10, 1984 which rejected her claim for the reason that the decedent's death was due to natural causes and was not the result of an industrial injury within the meaning of the Workers' Compensation Act. **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 widow-petitioner to a Proposed Decision and Order issued on July 26, 1985 in which the order of the Department dated April 10, 1984 was affirmed.

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 issues presented by this appeal and the evidence presented by the parties are adequately set forth in the Proposed Decision and Order and will be reiterated only in part herein.

After reviewing the record and the Petition for Review, we are persuaded that the Proposed Decision and Order is supported by the preponderance of the evidence. However, we believe it took a rather narrow view of the court's holding in the case of Sutherland v. Department of Labor and Industries, 4 Wn. App. 333 (1971), where the court held that "Unusual emotional stress or strain may be a "sudden, tangible happening of a traumatic nature" within the meaning of the statute." Sutherland did not distinguish between emotional stress injuries resulting from external tangible events such as meetings, verbal/physical altercations, tests, speeches, etc., and those resulting from internal intangibles such as anticipation, tension, dread, and anxieties caused by upcoming events.

1 The Proposed Decision and Order recognized that unusual emotional stress may be an industrial
2 "injury" within the meaning of the Act; nevertheless, the intangible anticipation of an event was found
3 an insufficient cause of an emotional stress injury. We do not find such a distinction necessarily
4 warranted; we believe the principles of Sutherland can cover a claim for unusual emotional stress
5 whether it be caused by an external, tangible and objective event which has taken place or one which
6 is about to take place.
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10 In this case, as in Sutherland, the key to coverage turns on the question of whether Mr.
11 Hammond's death by cardiac arrest was the prompt result of an unusual emotional exertion occurring
12 because of dread and morbid anticipation on the morning before an important meeting; or whether his
13 death resulted from a normal, routine activity of the employee.
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16 The record clearly establishes that James Hammond was not a stranger to a high pressure
17 work environment. He served on the Board of Directors of Tradex, a clearing house for the motor
18 carrier industry. Prior to that, he worked at Lynden Transport Inc. as an executive and CPA. Lynden
19 was a major participant in Tradex and Tradex's largest customer. Signs of legal and financial
20 problems involving Tradex became apparent in 1982. In January, 1983 Hammond resigned from the
21 Tradex Board of Directors and became a special consultant for Lynden. His sole duty was to save
22 Tradex from its difficulties. Richard A. Carpella, chief financial officer of Lynden, stated Hammond
23 "jumped in with both feet" in an attempt to salvage Tradex from bankruptcy and financial ruin. In
24 August 1983 Hammond became a key figure in a lawsuit against Tradex. It also named Hammond
25 individually as a defendant thereby placed his personal funds and reputation at risk. The suit alleged
26 federal and state securities law violations, fraud violations, violations under the Racketeer Influence
27 and Corrupt Organization Act. In August 1983 the lawsuit was Hammond's primary work focus. Many
28 meetings with lawyers appeared likely, including the meeting scheduled for November 1, 1983.
29 Carpella testified, "He was . . . a focal point of everything that had transpired or holding things
30 together, he . . . became a focal point as far as ascertaining the facts and answering the lawsuit." Mr.
31 Hammond had been in direct contact with his lawyers prior to his death the morning of November 1,
32 1983. His lawyer testified, "He was spending a great deal of time with that and bringing the
33 information back to the lawyers and dealing with them ... he was more directly involved with the
34 defense of the lawsuit."
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45 To our mind, the anticipation of the meeting which was to occur on November 1, 1983 was an
46 integral and normal part of Mr. Hammond's work life. It may also be surmised, especially from Dr.
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1 Levenson's testimony, that the strain under which Mr. Hammond was working was of a protracted
2 nature causing apprehension which was most likely to grow as time went on. From August through
3 October, Hammond lived and worked with tension and anxiety, which directly affects the
4 characterization to be afforded to the "apprehension" occurring during the non-working morning hours
5 of November 1, 1983. Considering the nature of Mr. Hammond's work as a special consultant hired
6 solely to salvage Tradex from a lawsuit, not to mention his efforts to save his personal reputation and
7 fortune, we must conclude that the anticipation and dread on November 1, 1983 was an integral and
8 expected feature of Hammond's employment life, a life attendant to his insecurity, worry, apprehension
9 and dread. These facts show cumulative emotional stimuli which were not objective and tangible but
10 subjective and not verifiable by a quantitative yardstick. Furthermore, the attack occurred away from
11 work, at home during a traditionally non-working hour. Though we can view an unusual emotional
12 stimulus, in accordance with the Sutherland holding, as an industrial injury, we believe such coverage
13 extends only when the emotional exertion can be deemed unusual, as opposed to a normal integral
14 routine part of an employment life. The facts of this case clearly show the apprehension and anxiety
15 were a normal integral routine part of James Hammond's work life.

16 For these reasons, we find the case must be resolved in favor of the Department's
17 determination not to extend workers' compensation coverage.

18 **FINDINGS OF FACT**

19 We conclude that the Proposed Decision and Order reaches the correct result. The Proposed
20 Findings of Fact Nos. 1, 2, 3, 4 and 5 are incorporated herein as the Board's final findings. In addition,
21 the Board enters Finding No. 6 as follows:

- 22 6. The ventricular fibrillation which resulted in James Hammond's death on
23 November 1, 1983 was related to normal routine acts incident to and part
24 of his personal and work life.

25 **CONCLUSIONS OF LAW**

26 We hereby incorporate the proposed Conclusions of Law Nos. 1, 2 and 3 as the Board's final
27 Conclusions of Law.

28 It is so ORDERED.

29 Dated this 18th day of February, 1986.

30 BOARD OF INDUSTRIAL INSURANCE APPEALS

31 /S/ _____

32 GARY B. WIGGS Chairperson

33 /S/ _____

34 PHILLIP T. BORK Member