Lee, Deborah

AGGRAVATION (RCW 51.32.160)

Psychiatric conditions

The rule in *Price* (101 Wn.2d 520), eliminating the need to show objective evidence of worsening, does not apply unless the worker's condition has a psychiatric rather than a physical basis and the diagnosis is in the terminology of the Diagnostic and Statistical Manual of Mental Disorders (DSM III) as required by WAC 296-20-330(e). ***….In re Deborah Lee,* BIIA Dec., 71 058 (1987)** [dissent] [*Editor's Note*: *Affirmed, Lee v. Department of Labor & Indus*., 54 Wn. App. 1057 (1989).]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: DEBORAH A. LEE	)	**DOCKET NO. 71058**
	)	
CLAIM NO. S-625538	)	**DECISION AND ORDER**

APPEARANCES:

Claimant, Deborah A. Lee, by
Calbom & Schwab, P.S.C., per
Thomas Coy and Kenneth Schmidt

Self-Insured Employer, Twin City Foods, Inc., by
Gavin, Robinson, Kendrick, Redman & Pratt, Inc., P.S., per
Steven Woods and Darrell K. Smart

This is an appeal filed by the claimant on June 24, 1985 from an order of the Department of Labor and Industries dated May 28, 1985 which denied claimant's application to reopen her claim for aggravation of condition. **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 employer to a Proposed Decision and Order issued on July 1, 1986 in which the order of the Department dated May 28, 1985 was reversed, and the claim was remanded to the Department with direction to reopen the claim and to provide the claimant with medical treatment including enrollment in a comprehensive pain management program and to take such other and further action as is indicated under the facts and the law.

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 claimant's contention in this appeal is that by May 28, 1985, her physical condition related to her low back injury of December 6, 1982 had worsened since September 28, 1984, the date the Department had closed her claim with a permanent partial disability award for a low back condition rated at Category 2 of lumbosacral impairments. She also contends that by May 28, 1985, she had an industrially related condition described as a chronic pain syndrome for which she needed treatment. The Department has not heretofore recognized in this claim that the claimant has an industrially related mental health condition.

On December 6, 1982, the claimant injured her low back at work when she slipped and fell while stacking sixty-pound bags of corn. She has received conservative treatment and has not had

surgery. She returned to manual labor in late 1983, although she had some pain in her left hip and leg. On February 4, 1985, she said she had a reoccurrence of strong pain in her hip and has not returned to work after that date.

A number of physicians who examined and treated the claimant have testified. The record supports the Industrial Appeals Judge's conclusion that there is insufficient evidence of objective worsening of her physical disability to require a reopening of her claim under RCW 51.32.160. To establish a case for such worsening, a claimant must provide medical testimony of a change in objective findings between the terminal dates. Phillips v. Department of Labor and Industries, 49 Wn. 2d 195, 197 (1956). Here, the only objective evidence presented was of x-rays which showed some mild degenerative arthritis in her low back, a mild scoliosis, and a subluxation at L5. However, the record shows that these conditions probably existed on the first terminal date. Thus, without evidence of worsening, the claimant's case for reopening due to alleged increase in physical disability must fail.

The Industrial Appeals Judge concluded that by May 28, 1985, the claimant had developed a condition known as chronic pain syndrome, which was causally related to the December 6, 1982 industrial injury. However, a review of the record does not support this conclusion. The Industrial Appeals Judge correctly cites Knowles v. Department of Labor and Industries, 28 Wn. 2d 970 (1947) for the proposition that a claim may be reopened for aggravation based upon objective medical evidence of a condition which has arisen since the last previous claim closure and which is causally related to the industrial injury. Here, the claimant has presented expert opinion testimony from Ty Hongladarom, M.D., and David Fordyce, Ph.D., that as of May 28, 1985 the claimant had a chronic pain syndrome which was causally related to the 1982 industrial injury and which could be treated through a pain management program.

The problem with the claimant's case rests with the failure of her expert witnesses to establish whether chronic pain syndrome is a medical or a psychiatric condition. This is important under industrial insurance law. See Price v. Department of Labor and Industries, 101 Wn. 2d 520 (1984).

Dr. Hongladarom testified that chronic pain syndrome can encompass many disease processes. However, he did not testify to any disease process which the claimant was suffering and, in fact, he admitted that there was no medical evidence of objective worsening of her physical condition but only of an increase in subjective complaints.

Dr. Fordyce, a clinical psychologist, concluded that the claimant had a chronic pain syndrome and would benefit from a pain management program. However, he also testified that chronic pain

syndrome is not exclusively a psychological diagnosis and said that it would be difficult to evaluate whether the claimant also had had the chronic pain syndrome on the first terminal date. Again, objective evidence of worsened physical condition is lacking.

Certainly, on this record chronic pain syndrome cannot be said to be solely a physical diagnosis. Thus, we believe it must also be reviewed under mental health terminology. Under WAC 296-20-330(e), all reports of mental health evaluations are required to use diagnostic terminology listed in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM III). Chronic pain syndrome is not listed in that manual. The closest diagnosis in that manual is psychogenic pain disorder (See DSM III, Third Edition, page 249). The diagnostic criteria for that disorder includes severe and prolonged pain which is grossly in excess of what would be expected from physical findings, and the pain's allowing the individual to get support from the environment or to avoid some activity which is noxious to the individual. These criteria seem to parallel those mentioned by the claimant's experts with regard to chronic pain syndrome. However, DSM III also requires that a diagnosis of psychogenic pain disorder must be differentiated from other causes of the dramatic presentation of pain, such as histrionic personality traits, other psychiatric conditions such as somatization disorder, and malingering. Here, the expert evidence presented by the claimant did not establish the existence of a psychogenic pain disorder or any other recognized psychiatric condition which is causally related to the 1982 industrial injury. Thus, the principle of Price does not apply here.

While the claimant may be dramatically presenting pain which cannot be explained by her physical findings, the claimant has not proven on a more probable than not basis that it is the industrial injury that is causing her to express her pain to this augmented extent. In sum, the claimant has not established that she has developed a new or worsened psychiatric condition which is causally related to the industrial injury for which she is in need of treatment.

Findings of Fact Nos. 5 and 6 and Conclusions of Law Nos. 2 and 3 of the Proposed Decision and Order are hereby stricken. The remaining Proposed Findings and Conclusions are hereby adopted as this Board's final Findings and Conclusions and incorporated herein by this reference.

The Board enters the additional Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

5. Between September 28, 1984 and May 28, 1985, the claimant's physical condition causally related to her industrial injury of December 6, 1982 did not objectively worsen or become aggravated; nor did she, during said

period, develop any new or worsened recognized psychiatric condition related to the industrial injury.

CONCLUSIONS OF LAW

2. Between September 28, 1984 and May 28, 1985, the claimant's disability causally related to her industrial injury of December 6, 1982, did not become aggravated within the meaning of the Washington State Industrial Insurance Act.

3. The order of the Department of Labor and Industries dated May 28, 1985, which denied the claimant's application to reopen her claim for alleged aggravation, is correct and should be affirmed.

It is so ORDERED.

Dated this 5th day of February, 1987.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/S/
GARY B. WIGGS Chairperson

/S/
PHILLIP T. BORK Member

DISSENT

I strongly disagree with the majority opinion in this case. I would adopt the Proposed Decision and Order and thereby reverse the Department Order of May 28, 1985 and remand the claim with instructions that treatment be provided including enrollment in a comprehensive pain management program.

Ms. Lee, the claimant, has not worked since March of 1985 following an episode of extreme pain in her left leg and hip, the site of her industrially related condition. Deborah Lee's inability to work is an obvious sign of the increase in her disability and of the aggravation of her condition causally related to the industrial injury. While there is a dispute whether there is objective evidence of worsening of her physical condition, there is no evidence in the record which contradicts the opinions of Dr. Hongladarom and Dr. Fordyce that by May 28, 1985 Mr. Lee had developed a new condition known as a chronic pain syndrome which was causally related to the industrial injury. Dr. Hongladarom and Dr. Fordyce recommended a pain clinic program. Such treatment is designed to reduce the insured worker's disability and make her a productive member of the labor force once again. Therefore, Deborah Lee has a right to such treatment under the Industrial Insurance Act.

The majority adopts the narrow view that to find a psychiatric condition causally related to an industrial injury, there must be expert testimony which utilizes one of the diagnoses listed in DSM III. I would not limit expert witnesses to that extent. Regardless, in adopting the majority narrow view, the testimony of Dr. Hongladarom and Dr. Fordyce explaining their diagnosis of chronic pain syndrome exactly meets the criteria under DSM III for the diagnosis of psychogenic pain disorder. No evidence was presented that Deborah Lee had a history of other conditions which would differentiate that diagnosis. Certainly, the record shows that Ms. Lee has been a hard worker for all of her life and that there is no inference of malingering. There is no evidence to contradict a finding of psychogenic pain disorder. I would find that this psychological condition is related to the industrial injury. Again, a pain clinic program would probably improve this condition and thereby reduce her disability.

The industrial appeals judge correctly cited the Supreme Court decision of Price v. Department of Labor and Industries, 101 Wn. 2d 520 (1984) as eliminating the requirement that there must be objective evidence of worsening of a psychological condition to find aggravation. As the Supreme Court said, "Symptoms of psychiatric injury are necessarily subjective in nature." 101 Wn. 2d at 528. Furthermore, Ms. Lee's psychological condition is a new condition which is related to the industrial injury and therefore, its existence is relevant and not any question of worsening of the condition.

In summary, it is manifestly unjust for Deborah Lee to be deprived of treatment which would probably reduce her disability and allow her to return to work.

Dated this 5th day of February, 1987.

/S/ _____
FRANK E. FENNERTY, JR., Member