

## **Gallier, Renford**

---

### **[INJURY \(RCW 51.08.100\)](#)**

#### **"Sudden and tangible happening"**

Two hours of hand-carrying boxes and removing office belongings, resulting in the aggravation of a preexisting shoulder strain, meets the definition of an industrial injury.  
*...In re Renford Gallier, BIA Dec., 89 3109 (1990)*

Scroll down for order.



1 On May 21, 1989 Mr. Gallier was involved in a car accident in which he sustained a minor injury  
2 to his left shoulder. This was a non- industrial accident. Mr. Gallier describes his only symptom  
3 following the car accident as soreness in his left shoulder. He scheduled an appointment to see his  
4 family doctor for evaluation of his shoulder on May 22, 1989. Also on May 22, 1989 Mr. Gallier was to  
5 move his office belongings from the State Gambling Commission offices in Tacoma to be taken to his  
6 new office in Seattle. He began moving his belongings at approximately 1:30 in the afternoon, using a  
7 hand truck. After approximately a half hour, he stopped to attend his doctor's appointment.  
8  
9

10  
11 Dr. Alexander Mihali has been Mr. Gallier's family physician since 1978. At the examination on  
12 May 22, 1989 Dr. Mihali noted Mr. Gallier's complaints of tenderness in the trapezius muscle, but  
13 otherwise found the examination to be fairly unremarkable. The doctor diagnosed a mild strain of the  
14 left trapezius muscle as a minor consequence resulting from the previous day's automobile accident.  
15 The doctor estimated recovery time at approximately one to two weeks.  
16  
17

18  
19 Following his medical appointment, Mr. Gallier returned to work to continue moving his office  
20 belongings at about 3:00 P.M. Mr. Gallier stated that a hand truck was not then available and he had  
21 to hand-carry all of the boxes downstairs from his second story office to his car in the parking lot. He  
22 finished moving in approximately two hours. After moving, he noticed swelling in his neck and  
23 numbness in his left arm. When Mr. Gallier drove to work the next day he noticed increased pain and  
24 stiffness in his left shoulder area. Mr. Gallier stated he had difficulty driving. He scheduled an  
25 appointment to see Dr. Mihali again that day, May 23, 1989.  
26  
27

28  
29 On examination, Dr. Mihali noted a marked degree of tenderness and increased tone in the  
30 trapezius area. These findings were not what Dr. Mihali anticipated from the automobile accident and  
31 his examination of the previous day. The doctor was of the opinion that Mr. Gallier's activities at work  
32 involving approximately two hours of moving boxes and other belongings aggravated and worsened  
33 Mr. Gallier's mild shoulder strain which had resulted from the automobile accident.  
34  
35

36  
37 The Department of Labor and Industries called no medical witnesses. Three lay witnesses  
38 testified that Mr. Gallier did not complain of any pain or discuss any specific injury occurring during the  
39 moving of the boxes from the Gambling Commission offices.  
40

41  
42 RCW 51.08.100 defines an industrial injury as a:

43 Sudden and tangible happening, of a traumatic nature, producing an  
44 immediate or prompt result, and occurring from without, and such physical  
45 conditions as result therefrom.  
46  
47

1 The issue in this case concerns what constitutes a "sudden and tangible happening". This Board  
2 looked at this requirement in its decision in In re James D. Jacobs, BIIA Dec. 48,634 (1977). In that  
3 decision we noted that the "injury" statute had been interpreted by our courts on numerous occasions.  
4 The judicial holdings require that there be some identifiable happening, event, or occurrence capable  
5 of being fixed in time and place in the employment and susceptible of investigation. In Jacobs, we  
6 found that there was a sufficiently sudden and tangible happening of a traumatic nature consisting of  
7 Mr. Jacobs hiking almost a mile into a surveying area over rough terrain with a heavy pack on his  
8 back, from which he shortly thereafter suffered a hyperventilation syndrome. We stated that there was  
9 no legal requirement that the tangible happening or traumatic event be instantaneous or confined to a  
10 period measured by a certain number of seconds or even minutes.

11  
12  
13  
14  
15  
16 Contrary to the assertion of the Department, Garrett Freightlines v. Dep't of Labor & Indus., 45  
17 Wn.App. 335, 725 P.2d 463 (1986) supports this view. In that decision, the Court of Appeals stated  
18 that "Washington law does not clearly mandate a certain temporal duration to establish 'a sudden and  
19 tangible happening,' as required by RCW 51.08.100." Garrett Freightlines, at 342. In Garrett  
20 Freightlines, the worker's repetitive trauma was experienced over a period of years, loading and  
21 unloading trucks. The court stated that repetitive trauma over several years did not constitute an  
22 industrial injury. At the same time, the court noted that "The key is not in the establishment of a  
23 duration or time frame, as L & I suggests, but in the establishment of causation, the connection  
24 between the physical condition and employment." Garrett Freightlines, at 342. Here, unlike Garrett  
25 Freightlines, the medical testimony clearly establishes a tangible happening in the workplace which  
26 caused a worsening of Mr. Gallier's mild shoulder strain. The trauma Mr. Gallier experienced in the  
27 two hours of hand-carrying boxes and removing office belongings on the afternoon of May 22, 1989 is  
28 comparable to the event described in Jacobs and meets the definition of industrial injury under the Act.

29  
30  
31  
32  
33  
34  
35  
36 After consideration of the Proposed Decision and Order and the Petition for Review filed  
37 thereto, the Department's Response to the Petition for Review, and a careful review of the entire  
38 record before us, we are persuaded that the Proposed Decision and Order is incorrect. We enter the  
39 following as the final findings, conclusions and order of this Board:

#### 40 41 42 **FINDINGS OF FACT**

- 43  
44  
45  
46  
47
1. On May 31, 1989 the Department of Labor and Industries received an accident report from the claimant, Renford Gallier, alleging an industrial injury occurred on May 22, 1989 during the course of his employment with Washington State Gambling Commission. On June 7, 1989 the

1 Department issued an order paying provisional time loss compensation  
2 from May 27, 1989 through June 4, 1989.

3  
4 On July 21, 1989 the Department issued an order rejecting the claim on  
5 the basis that there was no proof of a specific injury at a definite time and  
6 place; the condition was not the result of the injury alleged; the condition  
7 preexisted the alleged injury, and was not related thereto. On July 21,  
8 1989 the Department issued another order correcting and superseding the  
9 order of June 7, 1989 and rejected the claim on the basis that there was  
10 no proof of a specific injury of a definite time and place; the condition was  
11 not the result of the injury alleged; the condition preexisted the alleged  
12 injury and was not related thereto; and, the provisional time loss  
13 compensation paid for the period May 27, 1989 through June 4, 1989 in  
14 the amount of \$469.94 was ordered to be repaid to the Department.

15 On August 17, 1989 Mr. Gallier filed a notice of appeal with the Board of  
16 Industrial Insurance Appeals from the Department order of July 21, 1989.  
17 On September 8, 1989 the Board issued an order granting the appeal,  
18 assigned it Docket No. 89 3109, and directed that further proceedings be  
19 held on the issues raised in the appeal.

- 20  
21 2. On May 21, 1989 Mr. Gallier was involved in a non-industrial automobile  
22 accident for which he saw his family physician on May 22, 1989 and was  
23 diagnosed as having a mild strain of his left trapezius muscle which was  
24 expected to resolve in one to two weeks.
- 25  
26 3. On the afternoon of May 22, 1989, after his doctor's appointment, Mr.  
27 Gallier was required to move and hand-carry boxes and office belongings  
28 from his office in his employer's Tacoma location over approximately a  
29 two-hour period from 3:00 to 5:00 P.M. As a result of this moving and  
30 carrying activity Mr. Gallier noticed swelling in his neck and numbness in  
31 his left arm and shoulder areas.
- 32  
33 4. On May 23, 1989 Mr. Gallier again saw his family physician who noted  
34 increased symptoms and findings in the left trapezius area which were  
35 greater than the findings the doctor had noted on his examination on the  
36 previous day following the automobile accident.
- 37  
38 5. The activity of Mr. Gallier in moving and carrying boxes and belongings  
39 out of his office in Tacoma, as described in Finding No. 3, was a required  
40 work activity of Mr. Gallier as an employee of the Washington State  
41 Gambling Commission.
- 42  
43 6. As a result of this work activity from 3:00 to 5:00 P.M. on May 22, 1989,  
44 Mr. Gallier suffered an aggravation of the mild strain of his left trapezius  
45 muscle which had resulted from the May 21, 1989 automobile accident,  
46 and this aggravated and worsened condition required medical treatment.

#### 45 **CONCLUSIONS OF LAW**

- 46  
47 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties  
and the subject matter to this appeal.

- 1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15
2. On May 22, 1989 Mr. Gallier sustained an industrial injury within the meaning of RCW 51.08.100, while moving and carrying boxes and belongings from his office to his vehicle while in the course of his employment with the Washington State Gambling Commission.
  3. The order of the Department of Labor and Industries dated July 21, 1989 which rejected this claim for benefits on the basis that there was no proof of a specific injury at a definite time and place; the condition was not the result of the injury alleged; the condition preexisted the alleged injury and was not related thereto; and, demanded repayment of provisional time loss compensation paid for the period May 27, 1989 through June 4, 1989 in the amount of \$469.94, is incorrect and is reversed, and the matter remanded to the Department with directions to allow this claim as an industrial injury occurring on May 22, 1989, and provide such benefits as required by law and indicated by the facts.

16 This is so ORDERED.

17 Dated this 13<sup>th</sup> day of December, 1990.

18 BOARD OF INDUSTRIAL INSURANCE APPEALS

19  
20  
21  
22 /s/  
23 SARA T. HARMON Chairperson

24  
25  
26 /s/  
27 FRANK E. FENNERTY, JR. Member

28  
29  
30 /s/  
31 PHILLIP T. BORK Member