

Baxter, Sharon

OCCUPATIONAL DISEASE (RCW 51.08.140)

Onset of condition

Even though the likeliest source of a worker's exposure to hepatitis C was "needle sticks" during employment as a dental assistant and the worker could have filed an injury claim based on the needle sticks, the condition did not develop to the extent that it was disabling or required treatment until 1992. For that reason, the claim should be considered as a request for benefits for an occupational disease as defined by RCW 51.08.140.*In re Sharon Baxter, BIIA Dec., 92 5897 (1994)*

TIMELINESS OF CLAIM (RCW 51.28.050; RCW 51.28.055)

Occupational disease [after 1984 amendment to RCW 51.28.055]

Because the earliest date that events which could have led to the filing of a claim occurred in December 1984, when the worker was told that she had a non-A/B hepatitis but was not provided a definitive diagnosis because type C had yet to be identified by medical science, 1984 amendments to RCW 51.28.055 apply.*In re Sharon Baxter, BIIA Dec., 92 5897 (1994)*

Scroll down for order.

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

1 **IN RE: SHARON BAXTER**) **DOCKET NO. 92 5897**
2)
3 **CLAIM NO. N-390479**) **DECISION AND ORDER**
4

5 APPEARANCES:

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7 Claimant, Sharon Baxter, by
8 Rolland, O'Malley, Williams & Wyckoff, P.S., per
9 Douglas P. Wyckoff, Attorney

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11 Employer, Dolgash & Haines, by
12 Candy Snyder, Business Manager

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14 Department of Labor and Industries, by
15 The Office of the Attorney General, per
16 Thomas Adkins, Assistant, and Whitney Cochran, Paralegal
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18 This is an appeal filed by the claimant, Sharon Baxter, on November 30, 1992 from an order of
19 the Department of Labor and Industries dated November 10, 1992 which corrected and superseded
20 an order dated May 26, 1992, and which rejected the claim for the reason no claim has been filed by
21 said worker within one year after the day upon which the alleged injury occurred, and that claimant's
22 condition is not an occupational disease, and bills regarding this claim are rejected except those which
23 are authorized for diagnosis. **REVERSED AND REMANDED.**

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27 **EVIDENTIARY AND PROCEDURAL MATTERS**

28 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
29 and decision on a timely Petition for Review filed by the claimant, Sharon Baxter, to a Proposed
30 Decision and Order issued on September 24, 1993 in which the order of the Department dated
31 November 10, 1992, rejecting the claim was affirmed.
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34 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no
35 prejudicial error was committed and said rulings are hereby affirmed.
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37 **DECISION**

38 Based on the uncontroverted medical evidence contained in the record we believe that Ms.
39 Baxter has a valid claim for an occupational disease. While it is doubtlessly true that the incidents
40 which resulted in her contracting hepatitis C could also have formed the basis for an injury claim,
41 separate claims are not mutually exclusive. Just as one incident can result in aggravation of a
42 condition caused by a previous injury and also be the basis for a new claim, one incident can serve as
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1 the basis for both an injury¹ and for an occupational disease² claim. The record supports Ms. Baxter's
2 contention that she contracted an occupational disease as a result of exposure during the course of
3 employment and filed an application for benefits in a timely manner. She is entitled to have her claim
4 allowed.
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7 The only medical evidence presented was the testimony of two physicians who had treated Ms.
8 Baxter. Both Dr. James F. Kruidenier, a specialist in gastroenterology and hepatology, and Dr.
9 Michael R. Boyd, a family practitioner, were of the opinion that she had contracted hepatitis C as a
10 result of exposure to contaminated blood and tissue during the course of her employment as a dental
11 assistant. Ms. Baxter's only exposure occurred while she was working for Dr. Dolgash and Dr.
12 Haines, oral surgeons, during a two and one-half year period ending in June of 1982. Following
13 termination of employment she was seen by Dr. Boyd for vague and non-specific complaints which
14 were ultimately attributed to some form of hepatitis. As medical science had not identified hepatitis C
15 at that time her condition was described as non-A/non-B hepatitis. Even this rather vague and
16 preliminary diagnosis was not made until December of 1984, when Dr. Boyd discussed the issue of
17 causation with Ms. Baxter for the first time. Ms. Baxter's condition was not definitively diagnosed until
18 some time in 1990 when she saw a physician in Las Vegas, Nevada. Following termination of her
19 employment with Dr.'s Dolgash and Haines, she was able to work on a fairly regular and continuous
20 basis and was not impaired or disabled as a result of her hepatitis. She received no treatment for
21 hepatitis C until April of 1992 when as the result of reading a magazine article she sought and was
22 provided interferon by Dr. Kruidenier.
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31 It is clear that Ms. Baxter suffers from a job-related condition which would entitle her to benefits
32 if she filed an application for benefits within the period provided in the statute. If this condition is
33 considered to have arisen out of a "sudden and tangible happening" and to constitute an industrial
34 injury, the period for filing an application for benefits would be one year following the incident as
35 provided in RCW 51.28.050. In light of the uncontroverted medical testimony presented this is not the
36 conclusion we reach. While the "needle stick" incidents satisfy the definition of an injury contained in
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42 ¹ RCW 51.08.100 "Injury." "Injury" means a sudden and tangible happening, of a traumatic nature, producing
43 an immediate prompt result, and occurring from without, and such physical conditions as result therefrom.
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45 ² RCW 51.08.140 "Occupational Disease." "Occupational disease" means such disease or infection as arises
46 naturally and proximately out of employment under the mandatory or elective adoption provisions of this title.
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1 RCW 51.08.100 and could have served as the basis for separate claims, no claims for these incidents
2 were filed within the one year period set forth in the RCW 51.28.050.
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4 While the condition for which this claim was filed occurred as a result of on-the-job exposure
5 and the likeliest source of this exposure were "needle sticks", there was, nevertheless nothing
6 "immediate or prompt" about the onset of the physical conditions resulting therefrom. In light of the
7 testimony of Dr. Kruidenier, the attending specialist, it is unlikely that the particular "needle stick" which
8 initiated the disease process can be identified. In particular, he thought it unlikely that the disease was
9 contracted from a hepatitis carrier identified in the early 1980's, as there was no test to identify
10 hepatitis C until the 1990's. During the period within which Ms. Baxter could have filed an injury claim
11 the disease had not developed to the extent that it was diagnosable and, had it developed, the medical
12 community had no test to identify the condition.
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18 Ms. Baxter's condition did not develop to the extent that it was disabling or required treatment
19 until 1992. Both the manner in which the condition developed and the definition of an occupational
20 disease convinces us that this is a condition or ailment which should be evaluated under the
21 provisions of RCW 51.08.140. Consideration of the decisions in Nygaard v. Department of Labor &
22 Indus., 51 Wn.2d 659 (1958) and Williams v. Department of Labor & Indus., 45 Wn.2d 574 (1954),
23 supports our conclusion that this is precisely the type of condition which should be covered as an
24 occupational disease. In light of the lengthy period that elapsed before the disease developed, was
25 diagnosed, or required treatment, it would be unreasonable to require that a claim be filed within the
26 period provided for a claim arising out of a ". . . sudden and tangible happening, of a traumatic nature,
27 producing an immediate or prompt result . . .". RCW 51.08.100. (Emphasis added).
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33 Even under the most literal and restrictive interpretation of RCW 51.28.055, as it existed prior to
34 the 1984 amendment, the events which would initiate the period for filing a claim did not occur until
35 December of 1984. Even then there was no positive diagnosis of the condition, as no test existed to
36 provide this diagnosis, and the condition had not progressed to the extent that it was disabling or in
37 need of treatment. As the 1984 amendments to RCW 51.28.055 became effective prior to that date
38 and are clearly remedial in nature, they must be used in determining the timeliness of Ms. Baxter's
39 application for benefits. Sharon Baxter filed an application for benefits within two years of the date on
40 which she was notified in writing by a physician of the nature of her occupational disease.
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2 After consideration of the Proposed Decision and Order, the Petition for Review filed thereto on
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4 behalf of the claimant, and a careful review of the entire record before us, we are persuaded that the
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6 Department order dated November 10, 1992 is incorrect and must be reversed and the claim
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8 remanded for allowance of the condition hepatitis C as an occupational disease.

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10 **FINDINGS OF FACT**

- 11 1. On May 18, 1992, claimant, Sharon Baxter, filed an application for benefits
12 alleging that she contracted hepatitis C as a result of exposure to
13 contaminated blood and tissue during the course of her employment by
14 Dr.'s Dolgash & Haines. The claim was assigned Claim No. N-390479.

15 The Department of Labor and Industries issued an order dated November
16 10, 1992, which corrected and superseded an order dated May 26, 1992,
17 and which rejected the claim because

18 no claim has been filed by said worker within one year after
19 the day upon which the alleged injury occurred. That the
20 claimant's condition is not an occupational disease as
21 contemplated by Section 51.08.140 RCW. Any and all bills
22 for services or treatment concerning this claim are rejected,
23 except those which are authorized by the Department for
24 diagnosis.

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26 Claimant filed a Notice of Appeal with the Board of Industrial Insurance
27 Appeals on November 30, 1992 from the Department order dated
28 November 10, 1992. On December 21, 1992 the Board issued its order
29 granting the appeal, and directing that further proceedings be held on the
30 issues raised by the notice of appeal.

- 31 2. During the two and one-half years she was employed as a dental assistant
32 by Dolgash & Haines, claimant, Sharon Baxter, was exposed on a number
33 of occasions to contaminated blood and tissue.
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35 3. As a direct and proximate result of her occupational exposure, claimant's
36 developed the condition of chronic hepatitis C, and status-post interferon
37 treatment therefore.
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39 4. No earlier than December 1984, claimant was told by her physician that
40 she suffered from hepatitis non-A/non-B as a result of her occupational
41 exposure to contaminated blood and tissue.
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43 5. Claimant's condition of hepatitis C was not definitively diagnosed until
44 1990 and she was not impaired or disabled by this condition until May of
45 1992 when she received treatment, which treatment had not previously
46 been available or required.
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48 6. Claimant first received written notice of her condition and its cause from
49 her physician in February 1992.

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3 **CONCLUSIONS OF LAW**
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- 5 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
6 and the subject matter to this appeal.
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8 2. As a result of exposure during the course of her employment, claimant,
9 Sharon Baxter, contracted an occupational disease within the meaning of
10 RCW 51.08.140, when she was exposed to contaminated blood and
11 tissue.
12 3. Claimant, Sharon Baxter, filed an application for benefits within the time
13 limits set forth in RCW 51.28.055.
14 5. The order of the Department of Labor and Industries dated November 10,
15 1992, which corrected and superseded an order dated May 26, 1992 and
16 which rejected the claim for the reasons that:

17 no claim has been filed by said worker within one year after
18 the day upon which the alleged injury occurred, and the
19 claimant's condition is not an occupational disease as
20 contemplated by Section 51.08.140 RCW.

21 is incorrect, and is reversed, and the claim is remanded with directions to
22 allow the claim for the occupational disease of hepatitis C, and to take
23 such further action as may be authorized or indicated by law.

24 It is so ORDERED.

25 Dated this 7th day of January, 1994.

26 BOARD OF INDUSTRIAL INSURANCE APPEALS
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30 /s/
31 S. FREDERICK FELLER Chairperson

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34 /s/
35 FRANK E. FENNERTY, JR. Member
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