

## Key, Virginia

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

#### "Sudden and tangible happening"

An event is a sudden and tangible happening of a traumatic nature when it is something of notoriety, fixed as to time and susceptible of investigation. In this decision *In re Adeline Thompson*, BIIA Dec., 90 4743 (1992) is designated as "significant." ...***In re Virginia Key, BIIA Dec., 94 4700 (1996)*** [dissent] [*Editor's Note: The Board's decision was appealed to superior court under King County Cause No. 97-2-24869-9KNT.*]

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

**IN RE: VIRGINIA KEY ) DOCKET NO. 94 4700**  
**CLAIM NO. T-771753 ) DECISION AND ORDER**

**APPEARANCES:**

Claimant, Virginia Key, by  
Peter Moote & Associates, per  
Tim Wakenshaw

Self-Insured Employer, The Boeing Company, by  
Craig, Jessup & Stratton, per  
Rebecca D. Craig

The claimant, Virginia Key, filed an appeal with the Board of Industrial Insurance Appeals on June 31, 1994, from an order of the Department of Labor and Industries dated June 16, 1994. The order of June 16, 1994, canceled an earlier Department order of February 1, 1994, and affirmed a Department order dated December 10, 1993. The order of December 10, 1993, rejected the claim for the reasons that there was no proof of a specific injury at a definite time and place in the course of employment; that the claimant's condition was not the result of an industrial injury as defined by the industrial insurance laws; that the claimant's condition was not an occupational disease as contemplated by section 51.08.140 RCW; and that claims based on mental conditions or mental disabilities caused by stress were specifically excluded from coverage by law. **REVERSED AND REMANDED.**

**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 self-insured employer to a Proposed Decision and Order issued on February 28, 1996, in which the order of the Department dated

7/29/96

1 June 16, 1994, was reversed and remanded to the Department with instructions to allow the claim  
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3 and provide treatment and other benefits as indicated.  
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5 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
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7 no prejudicial error was committed and the rulings are affirmed.  
8

9 The issue presented by this appeal is whether the claimant, Virginia Key, has a psychiatric  
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11 condition proximately caused by her employment at The Boeing Company, which is the result of a  
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13 sudden and tangible event occurring from without, and producing an immediate or prompt result.  
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15 We find that the claimant has experienced such a condition and that the Department order of  
16  
17 June 16, 1994, is incorrect and should be reversed.  
18

19 On December 2, 1993, Virginia Key filed an application for benefits alleging that she  
20  
21 suffered from a psychological condition resulting from her employment at The Boeing Company.  
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23 Ms. Key was employed by The Boeing Company in a "lead" position in the Proposal Development  
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25 Organization (PDO) from June 1990 until May 1994. Among the people working in the PDO was  
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27 Boeing employee Sandra Spence, who reported not only to Ms. Key, but also to Karen Mowrey and  
28  
29 Nancy Gross, the acting manager and manager, respectively, of the PDO.  
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31 Testimony from at least two witnesses suggests that there was a long history of conflict  
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33 among the members of the PDO. Terry Burdick, a human resources representative from The  
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35 Boeing Company, described the PDO as dysfunctional. Similarly, Nancy Gross, the manager of  
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37 the PDO, testified that when she arrived in June of 1993 the atmosphere of the group was stressful  
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39 and combative. On several occasions, Sandra Spence sought counseling from Terry Burdick and  
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41 Nancy Gross concerning her personality conflicts with Virginia Key. Ms. Spence testified that  
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43 although she and Ms. Key had a friendly relationship when they began working together in the  
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45 spring of 1990, the relationship changed in 1992 when Karen Mowrey became acting manager. It  
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1 appears that both Ms. Mowrey and Ms. Key implemented policies that required more reporting from  
2  
3 the proposal developers and that Ms. Spence was resistant to these reporting requirements.  
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5 On September 13, 1993, Nancy Gross, Virginia Key, Sandra Spence, and Karen Mowrey  
6  
7 attended a meeting that was held in Nancy Gross's office for the purpose of addressing the conflict  
8  
9 that had arisen among Ms. Spence, Ms. Mowrey, and Ms. Key. Although Ms. Spence appeared  
10  
11 angry and hostile, Virginia Key agreed that most of the anger appeared to be directed toward  
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13 Karen Mowrey.  
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15 At the conclusion of the meeting, Nancy Gross met privately with Sandra Spence. During  
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17 the course of this meeting, Ms. Spence made inappropriate comments about Ms. Mowrey and  
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19 Ms. Key. These comments included words to the effect that if Ms. Spence had a gun she would  
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21 shoot both Ms. Mowrey and Ms. Key and she wished they were on a plane that crashed. In  
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23 Ms. Spence's opinion, many of the problems that were confronting the PDO group would be solved  
24  
25 if Ms. Key and Ms. Mowrey were not to return. Ms. Spence, who was immediately admonished by  
26  
27 Ms. Gross, indicated that she did not really mean what she said.  
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29 The following morning, September 14, 1993, Ms. Gross spoke to Ms. Mowrey about the  
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31 situation. Ms. Gross indicated that neither Ms. Mowrey nor Ms. Key were to have any one-on-one  
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33 meetings with Sandra Spence. Ms. Mowrey, in turn, passed that information along to Virginia Key.  
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35 However, when Ms. Key asked what the warning meant, Ms. Mowrey was vague, indicating that  
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37 she had no idea what the direction was about. At the time of the hearing, Nancy Gross clarified her  
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39 instructions, stating that the reason for her forbidding any further one-on-one meetings among  
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41 Ms. Spence, Ms. Mowrey, and Ms. Key, was to prevent any further disputes among the three  
42  
43 women about "who said what to whom."  
44

45 Despite Nancy Gross's instructions that Virginia Key was to avoid private meetings with  
46  
47 Sandra Spence, Ms. Key met with Sandra Spence on three occasions during September 14 and

1 September 15, 1993. It was at the third meeting, during the afternoon of September 15, 1993, that  
2  
3 Virginia Key felt Sandra Spence to be particularly unfriendly and curt. In Ms. Key's opinion, Sandra  
4  
5 Spence was hostile and irrational to the point that Ms. Key approached Karen Mowrey in tears  
6  
7 complaining about Ms. Spence.  
8

9 In a subsequent meeting with Terry Burdick in human resources, Ms. Key learned that there  
10  
11 was a concern for Ms. Key's physical well being. Ms. Key claims that she was asked to leave the  
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13 meeting at the human resources office so that the meeting could be continued with Ms. Mowrey  
14  
15 and other supervisors. An hour or so later, when Ms. Mowrey emerged from the meeting, Ms. Key  
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17 noted that she was drained of color. Ms. Mowrey said that something was going on but that she  
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19 could not tell Ms. Key what it was. At that point, Ms. Key understood Ms. Mowrey to advise her not  
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21 to go to her office in the morning but to go to another part of the plant. Failing that, she should stay  
22  
23 home. Ms. Key testified that she attempted to get as much information as she could so that she  
24  
25 could assess the threat but the information was not forthcoming. When she related the steps she  
26  
27 had taken at home such as staying away from windows and doors, not going outside, and keeping  
28  
29 her dogs inside, she was told that was good and she should keep it up. She said she was then told  
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31 it would be a good idea to leave town for the weekend.  
32

33 We pause to observe that at no point in the record is there any statement that Sandra  
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35 Spence made a direct threat to Virginia Key. To the contrary, the evidence indicates that Ms. Key  
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37 was not present during the meeting on September 13, 1993, between Nancy Gross and Sandra  
38  
39 Spence when Ms. Spence made her comments about the gun and the plane crash. It is  
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41 nonetheless clear, however, that on the afternoon of September 15, 1993, Ms. Key believed that  
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43 her life had been threatened. She had found Sandra Spence to be particularly unfriendly and  
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45 hostile. She was of the impression, based upon a meeting with Terry Burdick, that there was a  
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47 concern for her physical well being. She was aware of a meeting at the human resources office

1 that was held to discuss the matter, and at the close of the meeting, she was advised by  
2 Ms. Mowrey, who appeared "drained of color," that something was going on, but that Ms. Key could  
3 not be told what it was. That comment, together with Ms. Mowrey's statement that Ms. Key was  
4 not to go to her office in the morning, but to go to another part of the plant or, stay home,  
5 constitutes circumstances to lead Ms. Key to believe that she had been threatened. Indeed, the  
6 instructions given to Ms. Key to take precautions not to come to her work area and the ambiguity  
7 involving the reasons for these instructions only tended to heighten Ms. Key's concerns regarding  
8 the magnitude and gravity of her situation.  
9

10  
11 Our Industrial Insurance Act covers both industrial injuries and occupational diseases which  
12 occur as a proximate result of performing work duties. However, RCW 51.08.142 and  
13 WAC 296-14-300 proscribe claims for occupational diseases based on mental conditions or mental  
14 disabilities caused by stress. In particular, WAC 296-14-300(1)(d) specifically excludes  
15 "relationships with supervisors, co-workers, or the public" as grounds for a stress related  
16 occupational disease claim. Given this, it is clear that Ms. Key's claim cannot be allowed as an  
17 occupational disease.  
18

19  
20 We have long recognized, however, that a mental condition resulting from an industrial injury  
21 may fall within the Act's coverage. Stress resulting from exposure to a single traumatic event will  
22 be adjudicated with reference to RCW 51.08.100. WAC 296-14-300(2). "Injury" means a sudden  
23 and tangible happening, of a traumatic nature, producing an immediate and prompt result, and  
24 occurring from without and such physical conditions as result therefrom. RCW 51.08.100. As we  
25 have done in a series of earlier Board cases, we construe this to mean that if a mental disability is  
26 the result of a sudden and tangible traumatic event occurring from without, the disability may be  
27 compensable.  
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1 In the case before us, Virginia Key seeks acceptance of an industrial injury to her mental  
2 health suffered in the course of her employment with The Boeing Company. She alleges that she  
3 experienced a psychiatric condition known as post-traumatic stress disorder as a result of actual or  
4 perceived threats to her physical well being which were proximately caused by the events at work  
5 in September 1993. This is, then, a mental/mental industrial injury case. Ms. Key is held to no  
6 greater or lesser burden of proof on the question of the causal relationship of her psychiatric  
7 condition to on-the-job stress than would apply in any industrial injury case. Her claim for benefits  
8 must be supported, if at all, based on her subjective reaction to the events at work on  
9 September 13-15, 1993.

10  
11 The Board has previously allowed mental health conditions as industrial injuries. Two of  
12 these cases are: *In re Daniel R. Heassler*, Dckt. No. 89 2447 (November 13, 1990) and *In re*  
13 *Robert A. Hedblum*, BIIA Dec., 88 2237 (1989). In *Hedblum*, the claimant suffered an anxiety  
14 reaction after he inadvertently deleted an important computer program. The claimant was actively  
15 involved as a person responsible for the error. The stressful event was the deletion of the program  
16 along with its negative professional and financial consequences. The claim was allowed as an  
17 injury. A unanimous Board stated:

18  
19 While it is apparent from Dr. Langer's testimony that the unfortunate  
20 incident of April 18, 1987 acted upon Mr. Hedblum's preexisting  
21 psychological makeup, it is equally apparent that under our industrial  
22 insurance scheme we must take the workers as we find them. See,  
23 *Metcalf v. Department of Labor & Indus.*, 168 Wash. 305, 11 P.2d 821  
24 (1932). Additionally, it is clear that the requirements of proof for an  
25 industrial injury are not as stringent under our system as the  
26 requirements of proof for an occupational disease. An industrial injury  
27 need not rise naturally and proximately out of employment; it must only  
28 occur during the course of employment. Proof that an on-the-job  
29 incident proximately caused the condition complained of will suffice.  
30 Furthermore, the objective corroboration requirements imposed by  
31 *Favor v. Department of Labor & Indus.*, 53 Wn.2d 698, 336 P.2d 382  
32 (1959) as to the mental/mental and mental/physical occupational  
33 disease cases, are not applicable to industrial injury cases.

1 Hedblum, at 6. (Emphasis added.)  
2

3 In a previous Decision and Order we addressed the objectivity of the precipitating events in  
4 a mental/mental industrial injury case. "While the Board rejected the objective corroboration  
5 element of *Favor*, it should be clarified that an event that is purely the perception of an individual  
6 worker without any basis in fact would fail in proof for lack of proximate cause in that there would  
7 be no "sudden and tangible happening, of a traumatic nature, . . . occurring from without . . ." RCW  
8 51.08.100. *Adeline Thompson*, BIIA Dec., 90 4743 (1992) at 5. (Emphasis in the original.)<sup>1</sup> In  
9 other words, we continue to believe that in order for an incident to be a sudden and tangible  
10 happening of a traumatic nature it must be something of notoriety, fixed as to time, and susceptible  
11 of investigation.<sup>2</sup> Examining the facts of this case, we see that the events of September 13 through  
12 15 of 1993 were not imaginary or purely the perception of the individual worker without basis in  
13 fact. Ms. Mowrey warned Ms. Key not to go to her office on the morning of September 16th but to  
14 go to another part of the plant. Against a background of conflict over the proceeding two days, we  
15 believe this warning to be something tangible, fixed as to time, and raising the immediacy of the  
16 concerns for Ms. Key's safety so that it constitutes an injury within the meaning of RCW  
17 51.08.100.<sup>3</sup>  
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33 At all times relevant to this claim, the relationship among Ms. Spence, Ms. Mowrey, and  
34 Ms. Key was not good. Ms. Spence made statements to Ms. Gross, who passed them on to Terry  
35 Burdick in a meeting held for the purpose of doing something about Ms. Spence's anger.  
36 Ms. Mowrey and Ms. Key were told by Ms. Gross not to meet alone with Ms. Spence. Ms. Mowrey  
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43 <sup>1</sup> *Adeline Thompson* was not previously designated as a "Significant Decision" of this Board. RCW 51.52.160. In view  
44 of our statement regarding the proof required in mental/mental industrial injury cases we feel it is appropriate to  
45 designate *Adeline Thompson* as "significant" in order to provide guidance to parties in future cases involving this issue.  
46 This is necessary as we continue to disfavor citing Decisions and Orders that have not been designated as significant.

47 <sup>2</sup> We mean "notoriety" in the sense of actual events rather than a "notorious" event connoting some well-known and/or  
particularly remarkable event.

<sup>3</sup> 'Injury' means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and  
occurring from without, and such physical conditions as result therefrom. RCW 51.08.100.

1 was given fairly specific information about Ms. Spence's statements. Ms. Key was not. However,  
2  
3 Ms. Mowrey gave Ms. Key reason to believe that her personal safety was at issue. Virginia Key's  
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5 attempts to get factual data were not successful. Ms. Key was given many verbal assurances that  
6  
7 matters were being properly handled but her attempts to get factual data so that she could assess  
8  
9 the reliability of the assurances were not successful.

10  
11 When Ms. Key perceived a threat and when she tried without success to learn what steps  
12  
13 had been taken to protect her, she suffered a mental condition diagnosed as post-traumatic stress  
14  
15 disorder. It does not matter that not all information was communicated to Ms. Key accurately or  
16  
17 that Ms. Spence did not literally mean the statement that she made. It does not matter that  
18  
19 Ms. Key reacted differently to the statements than others may have reacted, or that The Boeing  
20  
21 Company did take steps to evaluate what danger, if any, existed. What matters is that a traumatic  
22  
23 event, the perceived threat as represented by Ms. Mowrey's instructions for Ms. Key to take  
24  
25 precautions for her safety, produced a prompt result.

26  
27 The sudden traumatic event occurred when Ms. Key concluded that her well being was  
28  
29 threatened. The impact occurred on September 15, 1993, when Ms. Mowrey emerged from the  
30  
31 meeting with Terry Burdick, the meeting from which Ms. Key had been excluded. Ms. Key's  
32  
33 perception of physical danger, made more real by a lack of information that may have served to  
34  
35 change her perception, is the sudden emotional stress that constitutes an industrial injury.

36  
37 In the case at hand, we believe that the claimant has shown by a preponderance of the  
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39 credible medical evidence that she suffers post-traumatic stress disorder and that the condition is  
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41 proximately caused by the events at work in September 1993. Stephen Klein, Ph.D., a  
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43 psychologist, treated Ms. Key between October 5, 1993 and April 7, 1994. He noted that Ms. Key  
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45 displayed characteristic symptoms of extreme anxiety reaction. She could not sleep, she would  
46  
47 startle easily, she cried, and could not concentrate. Ms. Key relayed to Dr. Klein the incident at

1 work, including her perception that there had been a death threat made against her. Dr. Klein  
2 diagnosed post-traumatic stress disorder causally related to the September 1993 events at work.  
3

4  
5 Ross Grumet, M.D., first treated Ms. Key on June 20, 1994. Dr. Grumet noted that when he  
6 first saw Ms. Key she was crying, depressed, and exhausted. She was in an agitated, anxious  
7 state. Dr. Grumet also diagnosed post-traumatic stress disorder and concluded that it had gone  
8 from an acute to a chronic state. He testified that post-traumatic stress disorder occurs when a  
9 person perceives a threat to their integrity, be it their life, health, or mental stability, that is likely to  
10 result in major, possibly permanent harm. The diagnosis requires that there be an initiating event  
11 of an extreme traumatic stressor involving direct personal experience. The onset of symptoms  
12 might be immediate, as in this case, or delayed. Sometimes the symptoms are of over-activity,  
13 hyper-vigilance, hyper-alertness, being startled by sounds, having nightmares, and re-living the  
14 event. Sometimes the sufferer feels numb, estranged from others, and feels life has little meaning  
15 or purpose.  
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27 In conclusion, we find that Ms. Key has experienced a sudden and tangible happening of a  
28 traumatic nature producing an immediate and prompt result and occurring from without. We find  
29 that she has experienced a mental condition as a result of the sudden and tangible happening.  
30 Finally, we conclude that she has proven by a preponderance of the credible medical evidence that  
31 her mental condition is causally related to the sudden and tangible happening that occurred in the  
32 course of her employment at The Boeing Company in September of 1993. Given this, Ms. Key's  
33 claim should be allowed and benefits provided.  
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#### 41 **FINDINGS OF FACT**

- 42  
43 1. On December 2, 1993, the claimant, Virginia Key, filed an application  
44 for benefits alleging a stress condition which resulted during the course  
45 of her employment with The Boeing Company, a self-insured employer.  
46

47 On December 10, 1993, the Department of Labor and Industries issued  
an order rejecting the claim because there was no proof of a specific

1 injury at a definite time and place during the course of employment, and  
2 because the claimant's condition was not the result of an industrial  
3 injury and was not an occupational disease, and because claims based  
4 on mental conditions and mental disabilities caused by stress are  
5 specifically excluded by law.  
6

7 On December 29, 1993, the claimant filed a protest and request for  
8 reconsideration of the December 10, 1993 order.  
9

10 On February 1, 1994, the Department issued an order canceling the  
11 order dated December 10, 1993, and allowing the claim for treatment  
12 and benefits.  
13

14 On March 29, 1994, the self-insured employer filed a protest and  
15 request for reconsideration of the order issued on February 1, 1994.  
16

17 On June 16, 1994, the Department issued an order canceling the order  
18 issued on February 1, 1994, affirming the order issued on  
19 December 10, 1993, rejecting the claim.  
20

21 On June 31, 1994, the claimant filed a Notice of Appeal from the order  
22 dated June 16, 1994, with the Board of Industrial Insurance Appeals.  
23

24 On July 14, 1994, the Board issued an order granting the appeal and  
25 assigned it Docket No. 94 4700.  
26

27 2. As of September 13, 1993, and at all times relevant to this claim, the  
28 claimant, Virginia Key, was employed by The Boeing Company in the  
29 position of lead proposal developer in the Proposal Development  
30 Organization. Ms. Key supervised Sandra Spence. Ms. Key was  
31 supervised by Karen Mowrey and Nancy Gross.  
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34 3. On September 13, 1993, Virginia Key attended a meeting with co-  
35 workers Gross, Mowrey, and Spence, which was followed by a meeting  
36 attended only by Ms. Gross and Ms. Spence. Ms. Spence displayed an  
37 angry demeanor during both meetings and at the private meeting  
38 Ms. Spence stated that if she had a gun she would shoot Ms. Mowrey  
39 and Ms. Key, and she also stated that she wished Ms. Mowrey and  
40 Ms. Key would be in a plane crash.  
41

42 Ms. Gross relayed those statements to personnel in Boeing's human  
43 resources department who, in turn, relayed the statements to  
44 Ms. Mowrey in a meeting on September 15, 1993. Ms. Key was  
45 excluded from that meeting and she was not specifically told about the  
46 statements Ms. Spence had made, but the threat was common  
47 knowledge in the office. Ms. Gross expressed to Ms. Mowrey some  
concern for the well being of Ms. Mowrey and Ms. Key and instructed

1 Ms. Mowrey and Ms. Key not to be alone with Ms. Spence. Following  
2 the September 13, 1993 meeting, Ms. Key had several contacts with  
3 Ms. Spence, who again displayed an angry demeanor.  
4

5 On September 15, 1993, following the meeting with personnel from  
6 human resources, Ms. Key was told by Ms. Mowrey that something was  
7 going on, but that Ms. Key could not be told what it was. Ms. Key was  
8 told by Ms. Mowrey that she should not go to her usual work place the  
9 next day, and if she could not arrange for a different work area, she  
10 should stay home. Ms. Mowrey appeared frightened. Ms. Key  
11 concluded that her life had been threatened.  
12

- 13 4. Following the September 15, 1993 meeting, the claimant displayed  
14 symptoms that are characteristic of an extreme anxiety reaction. She  
15 developed a condition diagnosed as post-traumatic stress disorder  
16 proximately caused by the emotional stress of believing that her life had  
17 been threatened and that she was in physical danger that occurred  
18 during the course of her employment with The Boeing Company, a  
19 self-insured employer.  
20

21 **CONCLUSIONS OF LAW**  
22

- 23 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
24 parties and the subject matter to this appeal.  
25  
26 2. On September 15, 1993, the claimant sustained an industrial injury  
27 within the meaning of RCW 51.08.100.  
28  
29 3. The order of the Department of Labor and Industries dated  
30 June 16, 1993, that canceled the order dated February 1, 1994, and  
31 that affirmed the order dated December 10, 1993, rejecting the claim, is  
32 incorrect and is reversed. The claim is remanded to the Department  
33 with instructions to allow the claim and provide treatment and other  
34 benefits.  
35

36 It is so ORDERED.  
37

38 Dated this 29th day of July, 1996.  
39

40 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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44 /s/ \_\_\_\_\_  
45 S. FREDERICK FELLER Chairperson  
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47

1 /s/ \_\_\_\_\_  
2 FRANK E. FENNERTY, JR. Member  
3

4  
5 **DISSENT**  
6

7 With due respect to the majority, I must strongly disagree with their opinion in this case.  
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9 Ms. Key's claim is precisely the type of case the Legislature determined to exclude from worker's  
10 compensation coverage.  
11

12  
13 I have previously dissented from the majority opinion in a similar case. I incorporate some  
14 of that dissent here. I would specifically overrule *In re Robert Hedblum*, BIIA Dec., 88 2237 (1989);  
15 *In re Daniel Heassler*, Dckt. Nos. 89 2447 & 89 2448 (November 13, 1990); and *In re Adeline*  
16 *Thompson*, Dckt. No. 90 4743 (1992) to the extent they conclude that mental/mental claims fall  
17 under the definition of injury in RCW 51.08.100.  
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23 In 1988, the Legislature enacted RCW 51.08.142, that provides:  
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25 The department shall adopt a rule pursuant to chapter 34.05 RCW that  
26 claims based on mental conditions or mental disabilities caused by  
27 stress do not fall within the definition of occupational disease in RCW  
28 51.08.140.  
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30 Legislative history supports the conclusion that the Legislature intended to exclude all  
31 mental/mental claims from coverage under the Industrial Insurance Act. The purpose was to  
32 protect and promote the financial stability of the industrial insurance system, particularly the State  
33 Fund.  
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38 The language of RCW 51.08.142 is plain. A mental/mental claim is not compensable as an  
39 occupational disease as defined in RCW 51.08.140. Similarly logic demands that a mental/mental  
40 claim cannot be compensable as an injury as defined in RCW 51.08.100 for the reason that  
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44 51.08.100 requires a physical result.  
45

46 'Injury' means a sudden and tangible happening, of a traumatic nature,  
47 producing an immediate or prompt result, and occurring from without,

