

## CRIME VICTIMS COMPENSATION

### **Burden of proof – injury resulting in death**

When an injury results in the death of a crime victim, RCW 7.68.070(3) requires that beneficiaries' evidence must give rise to only an initial inference that the death was due to an injury received as a result of a crime. Additional proof is not required of the beneficiary unless the Department presents evidence that, if unrebutted, creates a reasonable inference that the victim was attempting to commit or committing a felony when fatally injured. ....*In re TJR*, BIIA Dec., 99 C0080 (2001) [dissent]

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

1 **IN RE: THOMAS J. RIGGINS, JR., DEC'D ) DOCKET NO. 99 C0080**  
2 )  
3 **CLAIM NO. VH-97072 ) DECISION AND ORDER**  
4 \_\_\_\_\_)

5 **APPEARANCES:**

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7 Beneficiary, Della Montgomery-Riggins, by  
8 Law Offices of Lembhard G. Howell, P.S., per  
9 Lembhard G. Howell and Mark E. Koontz

10  
11 Department of Labor and Industries, by  
12 The Office of the Attorney General, per  
13 James S. Kallmer, Assistant  
14

15 The beneficiary, Della Montgomery-Riggins, filed an appeal that was received at the Board  
16 of Industrial Insurance Appeals on October 8, 1999. The appeal is from an order of the Department  
17 of Labor and Industries dated June 24, 1999. The Department order was communicated on  
18 June 28, 1999, and the appeal was mailed with proper postage and address on September 25,  
19 1999. The June 24, 1999 order rejected the crime victim compensation claim on grounds that there  
20 was not sufficient evidence that a felony or gross misdemeanor crime occurred. **REVERSED AND**  
21 **REMANDED.**  
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**PROCEDURAL AND EVIDENTIARY MATTERS**

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30 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
31 and decision on a timely Petition for Review filed by the Department of Labor and Industries to a  
32 Proposed Decision and Order issued on August 4, 2000, in which the order of the Department  
33 dated June 24, 1999, was reversed and remanded to the Department with directions to allow the  
34 claim for crime victim compensation.  
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41 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
42 no prejudicial error was committed. We affirm the rulings.  
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1 **DECISION**

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3 Della Montgomery-Riggins is the widow of Thomas J. Riggins, Jr., Dec'd. Acting on her own  
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5 behalf and that of minor children of Mr. Riggins, she filed a crime victim compensation claim. The  
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7 Department of Labor and Industries denied the claim. The issue in this appeal is whether  
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9 Ms. Montgomery-Riggins has met her burden of proof to establish that Mr. Riggins' death was due  
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11 to a criminal act. We hold that she has met that burden and the claim should be allowed.

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13 Thomas J. Riggins, Jr., sustained stab wounds, including a fatal stab wound to the chest with  
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15 "incision of right ventricle of heart" on February 17 or 18, 1999. Exhibit No. 2, King County Medical  
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17 Examiner AUTOPSY REPORT, PATHOLOGICAL DIAGNOSES. Under the section of the report  
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19 entitled "OPINION", Dr. Richard C. Harruff, Associate Medical Examiner, and Dr. Donald T. Reay,  
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21 Chief Medical Examiner, indicated "The manner of death is homicide." Exhibit No. 2. Neither  
22  
23 Dr. Harruff nor Dr. Reay testified at hearing. Their opinion is admitted by way of Exhibit No. 2.

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25 The only testimony provided at hearing was that of Ms. Montgomery-Riggins and Officer  
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27 Russ Weklych, an investigating officer assigned to the Seattle Police Homicide Unit.  
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29 Ms. Montgomery-Riggins did not provide any testimony relevant to the determination of whether a  
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31 crime had been committed. She only testified regarding her marriage to Mr. Riggins and their  
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33 children, and she presented Mr. Riggins' Certificate of Death, Exhibit No. 1.

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35 Officer Weklych testified that he interviewed Donald Peoples, who he knew to have stabbed  
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37 Mr. Riggins in the chest. Officer Weklych testified that he did not arrive at the scene until several  
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39 hours after the incident. He testified that Mr. Peoples "did suffer injuries, and I believe they were  
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41 photographed and documented." 5/30/00 Tr. at 13. Officer Weklych testified that he did not  
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43 observe that Mr. Peoples had injuries when he first saw Mr. Peoples on February 18, 1999, but that  
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45 later at the homicide office, Officer Weklych saw that Mr. Peoples "had a cut on his tongue and  
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47 some swelling to his lip." 5/30/00 Tr. at 15.

1 We emphasize that our account thus far fully summarizes the whole of the evidence  
2 presented at hearing regarding the cause and circumstance of Mr. Riggins' death, that is:  
3 (a) Mr. Riggins suffered stab wounds and died as a result of a stab wound to the heart; (b) the  
4 medical examiners characterized the death as a "homicide"; and, (c) the alleged individual who  
5 stabbed Mr. Riggins is Mr. Peoples, who was observed later by Officer Weklych, but not necessarily  
6 upon first observation, to have a cut on his tongue and a swollen lip. If the Department had any  
7 more information than this when making its decision to deny the crime victim claim, such  
8 information was not presented at hearing.  
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11 The Department contends that, although the medical examiners characterized the manner  
12 of death as "homicide," that leaves open the possibility that Mr. Riggins' death was not the result of  
13 a criminal act.  
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16 Homicide is the killing of a human being by the act, procurement, or  
17 omission of another, death occurring at any time, and is either  
18 (1) murder, (2) homicide by abuse, (3) manslaughter, (4) excusable  
19 homicide, or (5) justifiable homicide.  
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22 RCW 9A.32.010. Excusable homicide or justifiable homicide, for instance, are not crimes. The  
23 Department argues that Mr. Peoples' injuries suggest self-defense, rather than a criminal act,  
24 occurred.  
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27 In an appeal of denial of benefits under the Crime Victims Compensation Act, the claimant or  
28 beneficiaries have the burden of presenting a prima facie case. Once evidence is offered to rebut  
29 the prima facie case, the burden falls on the claimant or beneficiaries to prove the claim by a  
30 preponderance of the evidence. *Stafford v. Department of Labor & Indus.*, 33 Wn. App. 231, 234  
31 (1982). A prerequisite to receipt of benefits under the Act is that the victim was injured or died as a  
32 result of a "criminal act." RCW 7.68.070.  
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35 In addition to the requirement that injury or death be the result of a criminal act,  
36 RCW 7.68.070(3) imposes certain limitations upon the right to receive benefits under the Act. Until  
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1 1996, RCW 7.68.070(3)(a) raised a statutory bar to recovery of benefits where injury or death was  
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3 "the result of consent, provocation, or incitement by the victim." *Stafford*. RCW 7.68.070(3)(b) still  
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5 raises a statutory bar to benefits where the injury or death was sustained "while the crime victim  
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7 was engaged in the attempt to commit, or the commission of, a felony."  
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9 By way of Laws of 1996, ch. 122, § 5 (Substitute House Bill 2358), the Legislature amended  
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11 RCW 7.68.070(3)(a) such that consent, provocation, or incitement by the victim no longer preclude  
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13 benefits when the injury results in death of the victim. Now, benefits are precluded by  
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15 RCW 7.68.070(3)(a) when the injury for which benefits are sought, was the "result of consent,  
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17 provocation, or incitement by the victim, ***unless an injury resulting from a criminal act caused***  
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19 ***the death of the victim.***" (Emphasis added.) The bar in RCW 7.68.070(3)(b) (pertaining to the  
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21 victim engaging in attempts to commit or commission of a felony) was not modified, and that  
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23 statutory bar continues to apply to death as well as non-death cases.  
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25 Considering RCW 7.68.070(3)(a), prior to the 1996 amendment, the *Stafford* court, 33 Wn.  
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27 App. at 236, noted there was no express statutory statement as to whether the Department or the  
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29 claimant has the burden of proving the existence or non-existence of the limitations contained in  
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31 that provision. After examination of analogous limitations on general entitlement to benefits in  
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33 workers' compensation law, the court held:  
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35 Similarly, the limitation in RCW 7.68.070(3)(a) also raises a statutory bar  
36 to recovery. And unless the claimant can prove the *absence* of consent,  
37 provocation or incitement *when the facts in evidence raise an issue as*  
38 *to one of these elements*, the claimant has not demonstrated his claim  
39 by strict proof.  
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41 *Stafford*, at 237. (Emphasis added.) This holding should likewise be considered applicable to the  
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43 bar in RCW 7.68.070(3)(b).  
44

45 We noted, from the above holding in *Stafford*, the language "when the facts in evidence  
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47 raise an issue as to one of these elements." We have also indicated our belief that such holding

1 from *Stafford* applies equally to the question of whether the injury was sustained while the victim  
2 was engaged in an attempt to commit, or commission of, a felony within the meaning of  
3 RCW 7.68.070(3)(b). In the present case, we must first determine, then, whether Ms. Montgomery-  
4 Riggins presented sufficient evidence which, if not rebutted, would establish that, more likely than  
5 not, Mr. Riggins' death was due to a crime. Assuming the answer to be "yes," we must then  
6 determine whether the facts in evidence further "raise an issue" as to whether Mr. Riggins was  
7 himself engaged in an attempt to commit, or the commission of, a felony. If we were to determine  
8 that the facts raise such an issue, then we would turn to the question of whether Mr. Riggins'  
9 beneficiary proved by a preponderance of the evidence that such a bar did not exist, as required by  
10 *Stafford*.

11 To satisfy the requirement of presenting evidence sufficient to make a prima facie case, the  
12 party having the burden must present substantial evidence. Substantial evidence is "that character  
13 of evidence which would convince an unprejudiced, thinking mind of the truth of the fact to which  
14 the evidence is directed." *Sacred Heart Medical v. Carrado*, 20 Wn. App. 285, 288 (1978), *citing*  
15 *Omeitt v. Department of Labor & Indus.*, 21 Wn.2d 684, 686 (1944). Given this standard, we find  
16 that Ms. Montgomery-Riggins' proof (that her husband suffered several stab wounds and that he  
17 died from a stab wound to the heart such that the medical examiners characterized the manner of  
18 death as homicide) rises to this level and meets her initial burden. An unprejudiced mind should,  
19 without other substantial evidence raising a contrary inference, reasonably draw an initial inference  
20 that a stabbing death is **more likely than not** the result of a criminal act perpetrated against the  
21 deceased.

22 In contrast, in these circumstances (Mr. Riggins being dead from the stab wound to the  
23 heart), the Department's evidence (that Mr. Peoples, the slayer, had a cut on his tongue and a  
24 swollen lip) should not in our view raise any more than **sheer speculation**, in the mind of an

1 unprejudiced, thinking person, as to whether Mr. Riggins was attempting to commit, or committing,  
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3 a felony when he was killed, or that Mr. Peoples was acting in self-defense or that the homicide was  
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5 justifiable. **Given only the evidence presented to us**, it is just as reasonable, indeed more  
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7 reasonable, to infer that the lesser wounds sustained by Mr. Peoples, if indeed he sustained them  
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9 in the incident, were self-inflicted or accidental or the result of Mr. Riggins' attempts to fend off an  
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11 attack by Mr. Peoples. In sum, the Department itself merely **suggests** to us that Mr. Riggins was  
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13 culpable or that Mr. Peoples' act of homicide was not criminal in nature. The actual **evidence**  
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15 presented, however, does not effectively "raise an issue as to one of these elements" so as to  
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17 require further proof by Mr. Riggins' widow, as indicated in *Stafford*.

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19 Finally, we hold that the particular statutory bar to recovery in RCW 7.68.070(3)(a) is not  
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21 applicable in a case where the evidence establishes the victim died of injuries caused by the  
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23 alleged criminal act. RCW 7.68.070(2) establishes the claimant's initial burden of producing  
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25 evidence of a crime. The legislative history of Laws of 1996, ch. 122 (SHB 2358) evinces a clear  
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27 legislative intent to amend RCW 7.68.070(3)(a) so as, in death cases, to fully relieve surviving  
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29 spouses and other dependents of the burden of proving that the victim's death was **not** the result of  
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31 consent, provocation, or incitement by the victim. The original House Bill (HB 2358) did not contain  
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33 such relief. However, SHB 2358, passed by the House and the Senate, in Section 5, amended  
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35 RCW 7.68.070(3)(a) to contain the relief. The Department of Labor and Industries provided an  
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37 Individual State Agency Fiscal Note that indicated belief that the relief would result in an  
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39 approximate 12 additional fatal claims per year. The Senate Bill Report stated:

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41 If a victim is killed due to any injury from a crime, the department may no  
42 longer deny benefits on the basis that the victim's "consent, provocation,  
43 or incitement" resulted in the injury.

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45 Senate Bill Report, SHB 2358, at 2. The Crime Victims Compensation Act is "patently remedial"  
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47 and any doubts with regard to legal interpretation should be resolved in favor of the injured crime

1 victim and beneficiaries. *Haddenham v. State*, 87 Wn.2d 145, 148 (1976); *Sebastian v. Department*  
2 *of Labor & Indus.*, 95 Wn. App. 121, 125 (1999), affirmed Slip Opinion No. 68228-3, November 2,  
3 2000. It is apparent to us that, in amending RCW 7.68.070(3)(a), the Legislature was furthering the  
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5 remedial purposes of the Act by relieving beneficiaries of certain proof requirements in death cases.  
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9 Thus, in a death case, the beneficiaries' evidence must properly give rise to an initial  
10 inference that the death was due to an injury sustained as the result of a crime. In order to require  
11 more of the beneficiary, the Department must produce evidence to reasonably rebut such  
12 inference, and/or the Department must present substantial evidence from which, if un rebutted, an  
13 unprejudiced, thinking person would infer that the victim was attempting to commit, or committing, a  
14 felony. In the present case, Ms. Montgomery-Riggins presented sufficient evidence from which an  
15 unprejudiced, thinking person would infer that her husband was slain by a criminal act. The  
16 Department did not present sufficient evidence from which it would be reasonable to infer  
17 otherwise, and the Department did not present sufficient evidence from which it could be inferred  
18 that Mr. Riggins was attempting to commit, or committed, a felony.  
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29 After consideration of the Proposed Decision and the Petition for Review filed thereto, and a  
30 careful review of the entire record before us, we make the following:  
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33 **FINDINGS OF FACT**  
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- 35 1. On May 20, 1999, the Department of Labor and Industries received an  
36 application for benefits from the widow-beneficiary, Della Montgomery-  
37 Riggins, alleging that her deceased husband, Thomas J. Riggins, Jr.,  
38 was assaulted and injured and died from fatal wounds, the result of a  
39 crime, on February 17, 1999. By order dated June 24, 1999, the  
40 Department denied the claim, indicating there is not sufficient evidence  
41 that a felony or gross misdemeanor crime occurred. The June 24, 1999  
42 order was not communicated to the beneficiary until June 28, 1999. On  
43 September 25, 1999, the beneficiary placed in the United States Postal  
44 Service, with proper postage and address, her Notice of Appeal from the  
45 June 24, 1999 Department order. The Board of Industrial Insurance  
46 Appeals received the appeal on October 8, 1999, and assigned the  
47 appeal Docket No. 99 C0080. On November 4, 1999, the Board issued



1 an order granting the appeal and directing that further proceedings be  
2 held on the issues raised therein.

- 3
- 4 2. On February 17 or 18, 1999, Thomas J. Riggins, Jr., was stabbed in the  
5 chest and heart, which proximately caused his death on February 18,  
6 1999.
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- 8 3. Stab wounds that he sustained as a victim of a felony crime proximately  
9 caused Thomas J. Riggins, Jr.'s death on February 18, 1999.
- 10
- 11 4. There is insufficient evidence presented from which an unprejudiced,  
12 thinking person could reasonably infer that Mr. Riggins was attempting  
13 to commit, or committing, a felony when he was stabbed on  
14 February 17 or 18, 1999.
- 15
- 16 5. On February 17 and 18, 1999, Della Montgomery-Riggins was the  
17 spouse of Thomas J. Riggins, Jr.

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19 **CONCLUSIONS OF LAW**

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- 21 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
22 parties and the subject matter of this appeal.
- 23
- 24 2. Thomas J. Riggins, Jr.'s death on February 18, 1999, was proximately  
25 caused by his being the victim of a crime within the meaning of  
26 RCW 7.68.070.
- 27
- 28 3. The order of the Department of Labor and Industries dated June 24,  
29 1999, is incorrect and is reversed. The matter is remanded to the  
30 Department with directions to allow the claim and to take such further  
31 action as indicated by the facts and the law.
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33 It is so ORDERED.

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35 Dated this 22nd day of February, 2001.

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37 BOARD OF INDUSTRIAL INSURANCE APPEALS

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40 /s/ \_\_\_\_\_  
41 THOMAS E. EGAN Chairperson

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44 /s/ \_\_\_\_\_  
45 FRANK E. FENNERTY, JR. Member

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1 **DISSENT**

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3 I must dissent from the majority decision. That decision wrongfully shifted a burden of proof  
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5 to the Department that should have remained with Mr. Riggins' beneficiaries. Mr. Peoples, the  
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7 individual alleged to have stabbed Mr. Riggins, sustained injuries. As acknowledged by the  
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9 majority, the finding of the medical examiner left open the possibility that the manner of death, while  
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11 homicide, was not by way of a criminal act. Acts of excusable homicide or justifiable homicide are  
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13 not felonies, as required to establish a proper claim. *Stafford v. Department of Labor & Indus.*,  
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15 33 Wn. App. 231 (1982) still stands clearly for the proposition that a strict burden is upon the crime  
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17 victim compensation claimants to establish their claim, including each element, by a preponderance  
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19 of the evidence. The doubts left in the evidence, to which the Department points, are sufficient to  
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21 "raise an issue as to one of these elements." *Stafford*, at 237. The issue is raised in my view. The  
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23 evidence presented by the beneficiaries did not address the issue. Their claim must fail. The  
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25 Board majority should have affirmed the Department order that rejected the claim.

26  
27 Dated this 22nd day of February, 2001.

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29 BOARD OF INDUSTRIAL INSURANCE APPEALS

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32 /s/ \_\_\_\_\_  
33 JUDITH E. SCHURKE Member  
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