Significant Washington Board decisions refresher: **Occupational Disease**

By Mary Hannon ■ October 1, 2021

Welcome to our Significant Board of Industrial Insurance Appeals Decisions Refresher series, which focuses on Board decisions that form the fundamentals of claims processing in Washington. The following is one of twelve blogs that will break down some of the most impactful Board significant decisions. Each blog will include key takeaways from referenced Board decisions that affect Washington workers' compensation rules and laws, and ultimately affect how you process your claims.

This week's refresher concerns significant Board decisions related to **occupational disease.** The statute defines an occupational disease as "such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title"[1] *Dennis v. Dept. of Labor & Indus.* is the seminal occupational disease case.[2]

The Supreme Court of Washington held that in order for a claimant to demonstrate that his or her condition constitutes an occupational disease under RCW 51.08.140, a claimant must satisfy a two-pronged test. First, the condition must have arisen "proximately" from the employment, meaning that it would not have occurred *but for* the conditions of that employment (emphasis added).[3] Second, the condition must have arisen "naturally," meaning it arose as a "natural consequence or incident of *distinctive conditions* of his or her particular employment" (emphasis added). This prong requires a showing that "particular work conditions more probably caused his or her disease or disease-based disability than conditions in everyday life or all employments in general."[4]

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The following five Board significant decisions related to occupational disease claims provide insight into specific areas and minutiae of these claims.

Significant Decision #1: *In re Cathy Lively*, BIIA Dec., 62, 097 (1983)

- Legal Issue: Does the Board have jurisdiction to consider whether claims should be allowed for an occupational disease if the issue was not considered by the Department in the order on appeal and not specifically alleged by claimant in her pro se notice of appeal?

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Reinisch Wilson Weier PC
LAW OFFICES

OREGON: 10260 SW Greenburg Rd., Suite 1250, Portland, OR 97223 ● T 503-245-1846 / F 503-452-8066
WASHINGTON: 15395 SE 30th Place, Suite 230, Bellevue, WA 98007 ● T 206-622-7940 / F 206-622-5902
www.rwwcomplaw.com

Mary Hannon is an attorney at Reinisch Wilson Weier PC. She may be reached at 503.972.2538 or MaryH@rwwcomplaw.com.

Refresher: Occupational Disease (continued)

- Key Point: While not alleged in a notice of appeal by claimant or addressed by the Department, it is within the Board's jurisdiction to consider whether a claim should have been allowed as an occupational disease, particularly where the parties are in tacit agreement.

Significant Decision #2: *In re Moises Cobian*, BIIA Dec., 10 13290 (2011)

- Legal Issue: What happens when a claim is not clearly designated as an industrial injury or occupational disease?
- Key Point: When an allowed claim has not been clearly designated as an industrial injury or occupational disease, the parties and the industrial appeals judge must clearly address the question of whether the claim is for an industrial injury or occupational disease. In this case, the Board found the parties acquiesced in treating the claim as an allowed claim for occupational disease.

Significant Decision #3: *In re Donald Plemmons*, BIIA Dec., 04 12018 (2005)

- Legal Issue: Is objective proof of worsening a prerequisite to allowing a claim as an occupational disease?
- Key Point: Aggravation of a pre-existing condition by distinctive conditions of work can be the basis for an occupational disease claim allowance without a showing that the pre-existing condition has objectively worsened. Rather, a claim for occupational disease can be allowed based on medical testimony establishing aggravation of pre-existing condition due to work activities.

Significant Decision #4: *In re Daniel Ramos*, BIIA Dec., 91 6906 (1993)

- Legal Issue: Can on-the-job stress resulting in a purported mental condition or reaction be compensable as an occupational disease?
- Key Point: No. When on-the-job stress (i.e. failed job performances and related disciplinary actions leading to dismissal) is the cause of a mental condition or mental disease the resultant condition is not an occupational disease pursuant to RCW 51.08.142. According to that statute, posttraumatic stress disorder is not considered an occupational disease if the disorder is directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer. However, mental conditions may be compensable if they are the result of industrial injuries. WAC 296-14-300(2). (Note: There is a firefighter/law enforcement presumption that posttraumatic stress disorder is an occupational disease under RCW 51.08.140, if certain criteria are met.[5]

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Significant Decision #5: *In re Amy Dunnell*, BIIA Dec., 03 18764 (2005)

- Legal Issue: If an occupational disease arises during the course of concurrent employment with multiple employers, can liability be apportioned?
- Key Point: Concurrent employers' liability for an occupational disease can be apportioned when (i) it cannot be proven which employment was the proximate cause of the occupational disease; or, (ii) both jobs were proximate causes of the occupational disease.

Reach out to the attorneys at Reinisch Wilson Weier if you have any questions on the above significant decisions, on what constitutes an occupational disease, or on any workers' compensation matter. ■

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[1] RCW 51.08.140.

[2] *Dennis v. Dept. of Labor & Indus*. 109 Wn.2d 467, 477 (1987).

[3] *Id.* at 481

[4] *Id.*

[5] *See* RCW 51.32.185.

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