

COURT OF APPEALS  
DIVISION II

CO. AFR-2 BY 2/01

STATE OF WASHINGTON  
BY *Vib*

NO. 38374-8

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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NANCY BUCHANAN,

Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES, STATE OF  
WASHINGTON,

Respondent.

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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

This workers' compensation appeal brought by claimant Nancy Buchanan arises under the Industrial Insurance Act, Title 51 RCW. The Act provides for two types of claims: "industrial injury" and "occupational disease." The Act explicitly precludes workers' compensation coverage in the occupational disease category for mental conditions caused by stress. RCW 51.08.142. Instead, a stress-related mental condition is covered only when a "single traumatic event"—an industrial injury—proximately causes the condition. *See* WAC 296-14-300(2).

Ms. Buchanan seeks reversal of a Department of Labor and Industries order denying her claim for benefits based on a mental health condition that arose as a result of workplace stress. RCW 51.08.100 defines "industrial injury" as "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." Both the Board of Industrial Insurance Appeals and the superior court found as fact, based on the evidence presented at the Board, that Ms. Buchanan's condition was not proximately caused by an industrial injury; rather, the Board and the court found that the condition arose gradually from long-standing stressful conditions at work.

Because Ms. Buchanan's stress claim for her mental condition does not qualify as an "industrial injury" under RCW 51.08.100, and because such a claim is barred from coverage as an "occupational disease" by RCW 51.08.142 and WAC 296-14-300, the Department properly denied her claim and the Board correctly affirmed the Department's decision. The superior court reached the same conclusion when it affirmed the decisions of the Board and the Department. This Court should affirm the superior court decision.

## **II. COUNTERSTATEMENT OF THE ISSUES**

Pursuant to RCW 51.08.142 and WAC 296-14-300, a claim for a stress-related mental health condition is allowable only if the condition is proximately caused by a "single traumatic event." Ms. Buchanan worked for nearly 23 years at a doctor's office in a job that included billing patients and insurance companies, and she experienced increasing levels of stress over the years.

1. Does the record contain substantial evidence to support the superior court's finding that the doctor's request that she collect and deposit outstanding bills during his annual two-week medical mission was not a single traumatic event that proximately caused her stress-related mental health problems?

2. Do the superior court findings support its conclusions of law denying Ms. Buchanan's industrial insurance claim?

### III. COUNTERSTATEMENT OF THE CASE

#### A. Facts

##### 1. Background facts

Dr. Simon Elloway has a family practice clinic in Chehalis. BR N. Buchanan at 34.<sup>1</sup> At this clinic, Nancy Buchanan worked for Dr. Elloway for nearly 23 years. *Id.*; BR Elloway at 68. During most of her time there, Dr. Elloway employed two people: Ms. Buchanan and a nurse. BR N. Buchanan at 35; BR Elloway at 68–69. Ms. Buchanan's usual job duties included scheduling, filing, balancing the checkbook, writing checks, paying bills, filling medication refills, handling insurance referrals, doing medical coding, completing all of the billing, collecting funds, and making bank deposits. BR N. Buchanan at 35, 62; BR Elloway at 68.

Whenever a nurse would leave, Ms. Buchanan would take over the nursing duties, including patient intake and lab work, in addition to her

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<sup>1</sup> Documents in the Certified Appeal Board Record are referenced as "BR" followed by the stamped number in the lower right corner of the document. Testimony of witnesses at the Board hearing (held November 6, 2007) is referenced as "BR" followed by the name of the witness and the page number in the hearing transcript. Deposition testimony is referenced as "BR, Dep." followed by the name of the witness and the page number in the deposition transcript.

many other duties. BR N. Buchanan at 35–36; BR Elloway at 69. This was the case, for example, from April 2006 through January 2007, when Ms. Buchanan was Dr. Elloway’s only employee. BR Elloway at 70. Ms. Buchanan testified that during that time period, her stress level increased with the increase in duties. BR N. Buchanan at 59.

Over time, Ms. Buchanan’s workload increased. In 2003, it increased abruptly due to new insurance laws; it increased further in later years. *Id.* at 59. Her workload also got heavier over time because Dr. Elloway saw more and more patients; by March 2007, he was seeing 25 to 30 patients per day. *Id.* at 63. Still, during her nearly 23 years of employment, Ms. Buchanan did not take any vacation time despite Dr. Elloway’s requests that she do so. *Id.* at 61; BR Elloway at 73–74.

In addition to working during the day, Ms. Buchanan regularly worked during the evening because it was quiet and she could get more work done. In March 2007, however, she stopped working in the evening because she felt that the neighborhood was no longer safe. BR N. Buchanan at 61–62.

Each year, Dr. Elloway would go on a two-week medical mission. *Id.* at 37. On March 14, 2007, he left to go on his annual mission, this time to Ecuador. BR N. Buchanan at 39. As usual, Ms. Buchanan would be the only employee working during his absence. *Id.* Before leaving, the doctor

instructed Ms. Buchanan that he expected her to complete her billing and get \$10,000–\$15,000 in the bank before he returned. *Id.* There is no evidence that this was an unusually high amount to set as a collection goal.

Ms. Buchanan also had to arrange for another doctor to cover his patients while he was gone, as was customary, but this time he had her call a doctor who did not usually cover for him. *Id.* at 41–42. She later testified, at the Board hearing, that other than the coverage issue, nothing was out of the ordinary when she left work on March 14. *Id.* at 42. When asked whether she faced expectations different from normal while Dr. Elloway was gone in March 2007, she said only that the expectations were more difficult than they used to be because of the increased number of patients. *Id.* at 63.

On March 15, 2007, Ms. Buchanan went to her office and tried to organize her desk so she could begin work, but it “turned into an all-day project” because of paperwork that had built up over a month and a half that needed to be filed. *Id.* at 42–43. She experienced what she later described as a “panic attack and anxiety, high anxiety.” *Id.* at 43. Ms. Buchanan testified that these symptoms had probably started when she had to arrange coverage for Dr. Elloway’s patients during his absence, *id.*, but she also testified that *she could not state whether there was one single event that caused her mental condition, id.* at 65–66. Concerned

about getting all of her work done, she felt that “[i]t would not be a good situation” for her, Dr. Elloway, and the other employee if she could not collect the money that Dr. Elloway expected her to collect. BR N. Buchanan at 44–45.

This was not the first time Ms. Buchanan had experienced an abnormal mental health condition. She later testified to a “similar episode” about fifteen years ago when she “thought [she] was going nuts” because she was not sure whether she could get everything done at work. *Id.* at 38. Dr. Elloway had treated her for that episode by prescribing vitamin B-12 shots. *Id.*

The next morning, March 16, 2007, Ms. Buchanan was unable to go to work because of another panic attack with anxiety, and her family took her to the hospital in Centralia. *Id.* at 46–49. She was discharged, but three days later, after observing unusual symptoms and behavior, her family took her back to the hospital. *Id.* at 49–52.

## **2. Medical treatment and testimony**

At the hospital in Centralia, Dr. Douglas Hayden, an emergency room physician, evaluated Ms. Buchanan. BR Hayden at 98–101. He took her medical history, and she told him that “she was both the nurse and secretary” for a physician and that “[t]hat had become increasingly hard for her, and she just felt totally overworked and overstressed by that

position.” BR Hayden at 102. Neither she nor her family reported a specific incident or cause that they felt triggered her symptoms. *Id.* at 103.

While Ms. Buchanan was at the emergency room, Mr. T.F. Moore, a registered counselor, interviewed her. BR, Dep. Moore at 4–6. He spent five and a half hours with Ms. Buchanan, including interviews with her, her family, and medical providers at the hospital. *Id.* at 6, 10. From his interviews, he gained the impression that “for quite a period of time now,” she “had been kind of a one-woman show” at work, “running the office pretty much solely.” *Id.* at 9. He noted “a repeated theme of job-related stress and stressors,” *id.*, and felt that her job had been stressful for many years, *id.* at 11–12.

Mr. Moore felt that something had changed within the few days prior to Ms. Buchanan’s coming to the hospital. *E.g., id.* at 16–18. He had the “general impression” that it was related to Dr. Elloway’s departure. *Id.* at 17–18. However, Ms. Buchanan did not report a specific event to him. *Id.* at 16. When asked whether he could pinpoint a specific event that triggered her condition, which he diagnosed as psychosis, *id.* at 10, Mr. Moore responded, “No single event,” *id.* at 16. He could not say, on a more probable than not basis, that a specific traumatic event had caused the symptoms that Ms. Buchanan was reporting. *Id.* Summing up his opinion, Mr. Moore stated, “I’m just aware that she consistently

reported, as did her husband, that she had been under a lot of stress at work. Something had recently changed or increased with that within the last few days prior to her coming to the ER.” BR, Dep. Moore at 17.

Shortly after Mr. Moore completed his evaluation, Ms. Buchanan’s family took her to the psychiatric unit at St. Peter’s Hospital in Olympia. BR J. Buchanan at 19. There, Dr. Stephen Lykins, a psychiatrist, treated Ms. Buchanan for four days, learning of her situation through interviews with Ms. Buchanan and her family members and through review of hospital records from Centralia. BR, Dep. Lykins at 5, 8, 21. When he asked her about her chief complaint, she responded, “It’s my work. It was getting too much for me. I thought I had to be perfect.” *Id.* at 10. She described herself to Dr. Lykins as

a person who through much of her life had been driven towards perfection and somewhat anxious by nature, though, she had felt that it had gotten worse in recent weeks. And she also felt that her mood had—had been somewhat off, perhaps for as long as two or three years and that had also worsened in recent weeks.

*Id.* Ms. Buchanan recounted to Dr. Lykins various details of her life and her job, including sources of stress. *Id.* at 10–13. She told him she had been “[w]orking too many long hours for the last 22 years.” *Id.* at 13. Her husband reported to Dr. Lykins a sense that Ms. Buchanan “had become gradually depressed” before worsening a few days earlier. BR, Dep.

Lykins at 15–16. Dr. Lykins diagnosed major depression with anxiety. BR, Dep. Lykins at 22.

When asked whether Ms. Buchanan’s major depression and anxiety were caused or aggravated by any sudden event at work, Dr. Lykins responded, “She—she never brought anything like that up. . . . I don’t know of any sudden thing that happened at work. . . . It was more of a gradual sense of more and more work, technology changing, regulations changing, and it’s a—just building up.” *Id.* at 29.

After Ms. Buchanan was discharged from the psychiatric unit at the hospital, she was seen several times by Dr. Richard Crabbe, a psychiatrist, for follow-up treatment. BR, Dep. Crabbe at 4, 16. Dr. Crabbe testified that he thought the “trigger” for Ms. Buchanan’s condition “may have been her boss leaving.” *Id.* at 16; *see also id.* at 7, 13–14. He diagnosed her with a brief psychotic disorder and post-traumatic stress disorder. *Id.* at 13, 16. However, he recognized that Ms. Buchanan’s work was too much for her and that her mental condition was likely going to happen at some point:

- Q. Would you say the trauma-caused disorder was fixed in time as opposed to just an endless amount of—
- A. No, it wasn’t fixed in time. It was something that was ongoing over a long period of time.
- Q. But was the triggering diagnosis, was that something that occurred in a fixed time period?
- A. Yes.

- Q. You mentioned March 15th.
- A. Yes.
- Q. Did she have this disorder before March 15th.
- A. No. But the trauma that led to what happened on March 15th had been going on all through her working life.
- Q. So would you say that she was predisposed for the trauma that occurred?
- A. She was predisposed in the sense that she was doing duties and work that was too much for her.
- Q. Okay. If her doctor had not left to go to Ecuador, do you believe that she would have suffered this trauma on March 15th?
- A. I would say it's unlikely, but again it's a difficult question to answer, because at some point what happened was going to happen if she had continued working long enough.

BR, Dep. Crabbe at 17–18. Dr. Crabbe further testified,

- Q. And Ms. Buchanan was feeling, from what you understand, a lot of workload pressures because of the Doctor's departure, correct?
- A. *No. From what I understand, she was feeling a lot of workload pressures from the work she does—that she had been doing over the months and years.*
- Q. So it was an ongoing thing?
- A. Exactly.
- Q. And then the doctor departing presented her with a situation where she would have added pressure?
- A. She would have had added pressure because he was not there to ask questions and answer them and she was going to have to do everything by herself.

*Id.* at 21 (emphasis added). When asked whether Dr. Elloway's departure, in and of itself, would be considered a traumatic experience from a medical standpoint, Dr. Crabbe said it would not. *Id.* at 20.

In addition to Dr. Crabbe, Ms. Buchanan also saw Jeanette Revay, a psychiatric nurse practitioner, for follow-up treatment. BR, Dep. Revay at 4, 5. Ms. Revay's testimony regarding the cause of Ms. Buchanan's mental condition, which she diagnosed as post-traumatic stress disorder and major depressive disorder with anxiety, *id.* at 12, focused on Dr. Elloway's departure and his statement of expectations as being a precipitating event, *e.g.*, *id.* at 8–9. Ms. Revay said Ms. Buchanan had understood Dr. Elloway's statement as a threat of possible job loss if she did not get the money in the bank. *Id.* at 13, 17–19.

However, like all of the other expert witnesses, Ms. Revay also testified regarding the stressful conditions of Ms. Buchanan's job in general. For instance, the following dialogue occurred:

- Q. The nature of Ms. Buchanan's job over time caused her stress, right?
- A. Correct.
- Q. Okay. So it was something of an ongoing nature that became worse in March of 2007; is that right?
- A. Yes.

*Id.* at 17. And she testified that "there was always conflict in" the relationship between Ms. Buchanan and Dr. Elloway. *Id.* at 19.

## **B. Procedural History**

### **1. Department action on Ms. Buchanan's claim**

Ms. Buchanan filed a claim for industrial insurance benefits, which the Department denied by order dated April 3, 2007. BR at 30 (Finding of Fact (FF) 1). In that order, the Department determined that Ms. Buchanan's condition did not result from an industrial injury. *Id.*<sup>2</sup> Following a protest, the Department issued an order on April 19, 2007, affirming the prior order. *Id.* at 30–31 (FF 1). Ms. Buchanan appealed that order to the Board. *Id.* at 31 (FF 1).

### **2. The Board's review**

The Board, through an industrial appeals judge (IAJ), held a hearing during which Ms. Buchanan presented her own testimony and the testimony of Joseph Buchanan, Linda Hughes, and Walter Hughes. BR at 17, 19, 20. She presented the testimony of Ms. Revay, Mr. Moore, and Dr. Crabbe through depositions for the perpetuation of testimony. *Id.* at 16. The Department presented the testimony of Dr. Elloway, Tara Hicks,

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<sup>2</sup> Ms. Buchanan takes language out of context from that order to try to suggest that the Department order both made an incorrect statement of law and ignored WAC 296-14-300(2) in denying Ms. Buchanan's claim. Appellant's Brief (AB) at 18. This is not so. As the Board found in an unchallenged finding, the order "reject[ed] the claim for the reasons that the claimant's condition is not the result of [sic] industrial injury as defined by the industrial insurance laws, and claims based on mental conditions or mental disabilities caused by stress are specifically excluded from coverage by law." BR at 30 (FF 1).

and Dr. Hayden at the hearing, BR at 25, 26, and of Dr. Lykins by deposition, *id.* at 16.

In a Proposed Decision and Order issued on February 11, 2008, the Board's IAJ affirmed the order denying Ms. Buchanan's claim. BR at 16–31. He noted the “increasing stress in her job over an extended period,” the recurring nature of Dr. Elloway's medical missions, and the routine character of the tasks Dr. Elloway expected Ms. Buchanan to do while he was gone. *Id.* at 29. In discussing whether the claim might qualify as an industrial injury, the IAJ observed that Ms. Revay alone testified to events that might satisfy the definition of an industrial injury. *Id.* at 30. Considering all of the evidence, he was persuaded that Ms. Buchanan's condition did not arise from an industrial injury. *Id.*

Accordingly, the IAJ's Proposed Decision and Order included the following findings of fact:

- On or about March 16, 2007, Nancy D. Buchanan did not sustain an industrial injury in the course of her employment as a medical secretary in the office of Simon Elloway, M.D.
- The claimant's mental health condition, for which she required treatment in March 2007, was not proximately caused by a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without.
- The claimant's mental health condition, for which she required treatment in March 2007, arose gradually from the stress of years of overwork.

BR at 31 (FF 2–4). The IAJ also made the following conclusions of law:

- The claimant’s mental health condition of [sic] is not proximately caused by an industrial injury within the meaning of RCW 51.08.100.
- The claimant’s mental health condition is caused by stress within the meaning of RCW 51.08.142. Accordingly, her mental health condition is not an occupational disease within the meaning of RCW 51.08.140.
- The order of the Department of Labor and Industries dated April 19, 2007, is correct and is affirmed.

BR at 31 (Conclusions of Law (CL) 2–4).

Ms. Buchanan petitioned the three-member Board for review of the IAJ’s Proposed Decision and Order. BR at 3–12. The Board denied her petition, adopting the IAJ’s Proposed Decision and Order as the final Decision and Order of the Board. BR at 2; *see* RCW 51.52.106. Ms. Buchanan appealed to Lewis County Superior Court. Clerk’s Papers (CP) at 67–68.

### **3. Superior court review of the board decision**

In a bench trial, the superior court reviewed the Board record *de novo*, though with a presumption of correctness of the Board’s findings as required by RCW 51.52.115. CP at 4, 7–8. The court affirmed the Board’s decision, adopting verbatim and fully incorporating the findings and conclusions contained in the Board order. CP at 4–5. Ms. Buchanan appeals. CP at 1–2.

#### IV. STANDARD OF REVIEW

In an appeal from a Board decision *to* superior court, an injured worker challenging the findings of the Board has the burden, under a preponderance of the evidence standard, of overcoming a presumption of correctness of the Board's findings. RCW 51.52.115; *Ruse v. Dep't of Labor & Indus.*, 138 Wn.2d 1, 5–6, 977 P.2d 570 (1999). Ms. Buchanan suggests that the same standard applies in this appeal. AB at 10. She is wrong.

In an appeal *from* superior court, this Court applies the ordinary civil review standard, reviewing the findings of the Superior Court to determine whether those findings are supported by substantial evidence, and determining whether the conclusions of law flow from those findings of fact. RCW 51.52.140; *Ruse*, 138 Wn.2d at 5–6 (citing *Young v. Dep't of Labor & Indus.*, 81 Wn. App. 123, 128, 913 P.2d 402 (1996)).

“A party seeking to reverse a trial court's finding of fact must meet a difficult standard. A reviewing court is constitutionally limited to determining whether there is ‘substantial evidence’ to support the trial court's findings.” *Garrett Freightlines, Inc. v. Dep't of Labor & Indus.*, 45 Wn. App. 335, 339–40, 725 P.2d 463 (1986); *see also Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 575, 343 P.2d 183 (1959). Evidence is “substantial” when its character would convince an

unprejudiced, reasoning person of the factual proposition at issue. *Ehman v. Dep't of Labor & Indus.*, 33 Wn.2d 584, 595–97, 206 P.2d 787 (1949). This standard mandates appellate deference to the trial court's decision even if the appellate court might have resolved a factual dispute in another way. *Thorndike*, 54 Wn.2d at 575. Furthermore, in determining whether substantial evidence exists, the Court must “tak[e] the record in the light most favorable to the party who prevailed in superior court”—in this case, the Department. *Harrison Memorial Hosp. v. Gagnon*, 110 Wn. App. 475, 485, 40 P.3d 1221 (2002).

The Court applies de novo review to questions of law, including statutory construction. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001).

## V. ARGUMENT

Under the Industrial Insurance Act, Title 51 RCW, workers may apply for benefits if they either sustain industrial injuries or develop occupational diseases. RCW 51.32.010; RCW 51.32.180. Stress-related mental health conditions, however, are not allowable as occupational diseases. RCW 51.08.142.<sup>3</sup> Instead, benefits are provided for such conditions only if they are the result of an industrial injury, i.e., a “single

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<sup>3</sup> A copy of this statute is attached hereto as Appendix A.

traumatic event.” RCW 51.08.142; WAC 296-14-300.<sup>4</sup> Because substantial evidence supports the conclusion that Nancy Buchanan’s mental health condition did not result from an industrial injury, the superior court in this case properly upheld the denial of Ms. Buchanan’s claim.

**A. Ms. Buchanan’s Mental Health Condition Cannot Be Allowed As An Occupational Disease**

An occupational disease, for purposes of the Industrial Insurance Act, is “such disease or infection as arises naturally and proximately out of employment under . . . this title.” RCW 51.08.140. Under certain circumstances and absent further legislative direction, a stress-related mental health condition could constitute an occupational disease. The Legislature, however, has limited the definition by requiring the Department to “adopt a rule . . . that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease.” RCW 51.08.142.

The Department followed the Legislature’s mandate by adopting WAC 296-14-300, which states,

(1) Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease in RCW 51.08.140.

Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease

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<sup>4</sup> A copy of this rule is attached hereto as Appendix B.

shall include, but are not limited to, those conditions and disabilities resulting from:

- (a) Change of employment duties;
- (b) Conflicts with a supervisor;
- (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- (d) Relationships with supervisors, coworkers, or the public;
- (e) Specific or general job dissatisfaction;
- (f) Work load pressures;
- (g) Subjective perceptions of employment conditions or environment;
- (h) Loss of job or demotion for whatever reason;
- (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- (j) Objective or subjective stresses of employment;
- (k) Personnel decisions;
- (l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.

(2) Stress resulting from exposure to a single traumatic event will be adjudicated with reference to RCW 51.08.100.

WAC 296-14-300.

Ms. Buchanan does not contend that her condition should be allowed as an occupational disease, as she recognizes the legislative decision to bar such claims. AB at 12.<sup>5</sup> Thus, the only remaining question

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<sup>5</sup> Ms. Buchanan does suggest, without citation to any relevant authority, that the evidence "might establish a *prima facie* case for an occupational disease." AB at 14. Her suggestion is baseless, both in light of WAC 296-14-300(1) (barring stress-based occupational disease claims) and in light of the general requirement for proof of occupational disease that distinctive conditions of employment be a proximate cause of the disease. See, e.g., *Wheeler v. Catholic Archdiocese of Seattle*, 65 Wn. App. 552, 566-68, 829 P.2d 196 (1992), *rev'd on other grounds*, 124 Wn.2d 634, 880 P.2d 29 (1994) (finding that a worker's condition did not arise naturally out of employment

is whether Ms. Buchanan's mental health condition was the result of an industrial injury. Substantial evidence supports the superior court's decision that it was not.

**B. In Order To Be Compensable, A Mental Condition Must Be Proximately Caused By An Event That Is Both "Single" And "Traumatic"**

Although claims based on stress do not qualify as occupational diseases, "[s]tress resulting from exposure to a single traumatic event will be adjudicated with reference to RCW 51.08.100." WAC 296-14-300(2). RCW 51.08.100 defines an "injury" as "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."<sup>6</sup> Thus, the key to deciding whether a claim for a mental condition based on stress can be allowed is determining whether it resulted from a "single traumatic event." See WAC 296-14-300(2).

The Court of Appeals has confirmed that a single traumatic event is required to give rise to an industrial injury claim for a mental health condition. See *Boeing Co. v. Key*, 101 Wn. App. 629, 5 P.3d 16 (2000) . The claimant in *Boeing Co* worked in a "dysfunctional, tense and hostile"

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because stressful conditions in her workplace were merely coincidental to work, in that the conditions could have occurred in any workplace (the facts arose before RCW 51.08.142 and WAC 296-14-300 were adopted)).

<sup>6</sup> A copy of this statute is attached hereto as Appendix C.

environment, and over the course of approximately four days, she had several contacts with a particular co-worker who “was hostile towards her each time.” *Id.* at 631. At the end of that period, she was told not to report to work the next day, as a result of which she concluded that her co-worker had made a death threat against her. *Id.* She consequently developed a mental condition and filed an industrial insurance claim. *Id.*

The Court of Appeals approved of the use of a jury instruction that stated that a claim for a mental disability caused by stress can only be allowed if it results from “exposure to a sudden and tangible happening of a traumatic nature producing an immediate and prompt result.” *Boeing Co.* at 632. The *Boeing Co.* Court also observed that the jury had reasonably found that Ms. Key’s condition did not result from an industrial injury because “her emotional distress manifested as a result of events that unfolded gradually over a period of time rather than from a sudden, tangible, traumatic incident that produced an immediate result.” *Id.* at 634.

The Court of Appeals has also concluded that no injury occurred in a case involving a supervisor’s harassment of a worker because the harassment “did not occur suddenly or have an immediate result; rather, it consisted of a series of actions over a period of more than a year which resulted in increasing fear and depression.” *Wheeler v. Catholic*

*Archdiocese of Seattle*, 65 Wn. App. 552, 566, 829 P.2d 196 (1992), *rev'd on other grounds*, 124 Wn.2d 634, 880 P.2d 29 (1994).<sup>7</sup> The supervisor, in addition to harassing the worker, threatened revenge on the worker, and there were incidents at work in which the worker was subjected to danger. *Id.* at 558. Quoting RCW 51.08.100 (requiring a “sudden and tangible happening”) and citing a Board case that found no industrial injury where medical evidence focused not on a single event but on a series of events as the cause of the claimant’s mental condition, the *Wheeler* Court held that the harassment did not constitute an industrial injury. *Wheeler*, 65 Wn. App. at 566 (citing *In re Robin Reid*, Dckt. No. 88 0793 (Dec. 27, 1989)).<sup>8</sup> *Wheeler* thus confirms that a mental condition resulting from a series of events rather than a single event is not an industrial injury.

In *Snyder v. Medical Service Corp. of Eastern Washington*, 98 Wn. App. 315, 318–19, 988 P.2d 1023 (1999), a worker was “intimidated by, and scared of,” her supervisor, whom the court described as “intimidating, threatening, belligerent, and abusive.” The worker “frequently” discussed

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<sup>7</sup> The court in *Wheeler* addressed whether there was an industrial injury or an occupational disease to decide whether a civil suit was precluded by the exclusive remedy of the Industrial Insurance Act. 65 Wn. App. at 565–66.

<sup>8</sup> The Board uses two citation formats for its decisions. In addition to the case name and Board docket number, decisions that the Board designates per RCW 51.52.160 as “significant” are cited with the notation “BIIA Dec.” and the year, while other decisions use the notation “Dckt. No.” and the full date of the decision. As reflected in *Wheeler*, courts consider both types of Board decisions. Courts give deference to interpretations of Title 51 RCW by both the Department and the Board. See *Weyerhaeuser Co. v. Tri*, 117 Wn.2d 128, 138, 814 P.2d 629 (1991); *Dolman v. Dep’t of Labor & Indus.*, 105 Wn.2d 560, 566, 716 P.2d 852 (1986).

her salary with her supervisor, and one time, the supervisor threatened to discipline the worker if she raised the issue again. *Id.* at 319. On a later date, after the worker received a raise, the supervisor told her that if she told anyone about the raise, the supervisor would “literally hunt [her] down and kill [her].” *Id.* Later still, the supervisor asked the worker and others to work extra hours without pay, and when the worker protested, the supervisor belittled her in front of the others. *Id.* Afterwards, when the worker and supervisor again talked about the request, the supervisor walked toward her, poked her, and told her she would not tolerate insubordination. *Id.* The worker subsequently experienced mental health problems. *Id.* at 320.

Despite these events—which many would describe as “traumatic”—the Court of Appeals found that no industrial injury occurred, citing RCW 51.08.100 (for the requirement of a sudden traumatic happening) and *Wheeler. Snyder*, 98 Wn. App. at 321.<sup>9</sup> The citation to *Wheeler*, in the context of the facts of the case, demonstrates that the court felt there was no single event that caused the mental condition and that the absence of such an event precluded a finding of an injury.

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<sup>9</sup> The court in *Snyder* also addressed whether there was an industrial injury or an occupational disease to decide whether a civil suit was precluded by the exclusive remedy of the Industrial Insurance Act. 98 Wn. App. at 321.

Other Board cases in addition to *In re Reid* illustrate the type of situation in which a claim based on a mental condition may be allowed as an industrial injury. For instance, in *In re Robert Hedblum*, BIIA Dec., 88 2237 (1989), the claimant was working overtime on a Saturday to complete a computer program that had to be finished by Monday. *Id.* The claimant accidentally deleted the program and, as a consequence, suffered an anxiety reaction. *Id.* There was no evidence in *In re Hedblum* of any gradual build-up of stress or any cause other than the specific incident of losing the computer program, so the Board determined that the event gave rise to an industrial injury claim. *Id.*

In *In re Michelle Glenn*, Dckt. No. 05 12322 (July 12, 2006), the claimant had pre-existing mental health conditions that had gradually improved during her time working for a doctor as an office manager. *Id.* One day, the claimant sent the doctor home when he arrived at work drunk. *Id.* Later that day, the claimant received a phone call saying the doctor had committed suicide. *Id.* Her attending physician testified that the suicide, which the Board characterized as “a sudden and traumatic event,” aggravated her pre-existing conditions and caused new mental health conditions. *Id.* Finding that “[t]his event was the proximate cause of the worsening,” the Board ordered her claim allowed as an industrial injury. *Id.*, FF 7, CL 2, 4.

The claimant in *In re Etta Fisher*, Dckt. No. 97 0134 (Aug. 28, 1998), was a social worker who had the responsibility to notify an attorney when certain court proceedings would be required. *Id.* On a single occasion she gave very little advance notice, and the angry attorney took the claimant into a room and stood over her while loudly berating her job performance. *Id.* The shouting was overheard by the claimant's co-worker in another room. *Id.* The Board found that this incident proximately caused the claimant to develop a mental health condition. *Id.* Once again, there was a single traumatic incident, and the Board, although "view[ing] th[e] appeal as a close case," found that it constituted an industrial injury. *Id.* As in *In re Hedblum*, there is no evidence of a gradual build-up of symptoms in *In re Fisher*.

Ms. Buchanan relies on *In re David Erickson, Dec'd*, BIIA Dec., 65,990 (1985), in which the worker was "constantly subjected" to a three-week period of harassment, the "depth and magnitude" of which "defies practical description." *Id.*; see AB at 12-13. The *Erickson* Board found that the worker's resulting mental condition arose from an industrial injury because the trauma that caused it "was not ill-defined in nature or sustained over an 'indefinite' period of time. Rather, it was very well-defined and sustained over a specific three-week period of time." *Id.* (citation omitted). *In re Erickson* is questionable in that it stretches the

concept of a single event to cover a three-week period, but this Court need not address that question in light of the facts and issues before the Court in this case.

More relevant to the present appeal are the Board decisions finding no industrial injury. For example, the claimant in *In re Daniel Ramos*, BIIA Dec., 91 6906 (1993), was fired because of dishonesty and lack of attention to job duties following three specific incidents of poor job performance, after each of which he had been counseled about his responsibilities. *Id.* After the firing, he developed a mental health condition and filed an industrial insurance claim. *Id.* The Board found no evidence that “the dismissal interview or the events leading to the dismissal were traumatic in nature.” *Id.* The claimant had been aware of his performance problems and knew that dismissal might result from his most recent incident of poor performance. *Id.* As a result, “the actual dismissal was, if anything, anticlimactic and void of any traumatic impact . . . .” *Id.* Furthermore, the Board noted that the events leading up to the termination occurred over a six-month period, which prevented the claimant from “establish[ing] the suddenness or trauma sufficient to meet the requirements of an industrial injury.” *Id.*

The Board also rejected an industrial injury claim in *In re Carol Damron*, Dekt. No. 99 19957 (July 5, 2001), in which the claimant

developed mental health problems after arriving at work and being informed that she would be placed on administrative leave. *Id.* Experts attributed Ms. Damron’s mental health problems to a “cluster” or “series” of work-related events over a two-year period, rather than to the specific event of being placed on leave. *Id.*

Noting the distinction between a mental health disease claim “that arises from a series of stressful work-related events” and a mental injury claim that results from a “sudden and tangible happening, of a traumatic nature,” the *Damron* Board found no injury. *Id.* (quoting RCW 51.08.100). The Board also found “nothing about the incident [of being placed on leave] that can be said to be sufficiently traumatic to constitute an industrial injury” in that case. *Id.*

**C. Substantial Evidence Supports The Finding That Ms. Buchanan’s Mental Health Condition Was Not Caused By An Industrial Injury**

As set out above, a stress-related mental health condition is compensable only where it results from an industrial injury. Such an “injury” must meet two independent requirements: it must be (a) “single” and (b) “traumatic.”

The superior court adopted the Board’s findings that Ms. Buchanan’s mental health condition (a) “was not proximately caused by a sudden and tangible happening, of a traumatic nature, producing an

immediate or prompt result, and occurring from without,” and (b) “arose gradually from the stress of years of overwork.” CP at 4; BR at 31. The decision makers below thus found that Ms. Buchanan’s condition resulted from events that were neither “single” nor “traumatic.” Because substantial evidence supports these findings, the superior court’s determination that the claim cannot be allowed as an industrial injury was correct and should be affirmed.

Ms. Buchanan’s brief generally fails to adhere to the substantial evidence standard that governs review here. For instance, she invites this Court (1) to make a “preponderance” assessment of evidence, AB at 18–19; (2) to decide this case based on her claim that some, but not all, health care professionals support her theory, AB at 1; and (3) to reject, as outweighed by other evidence, Dr. Lykins’s testimony that her condition was not caused by a single traumatic event, AB at 9–10. She is not allowed, however, to re-try her case in this Court.<sup>10</sup> *E.g., Thorndike*, 54 Wn.2d at 575.

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<sup>10</sup> Ms. Buchanan also suggests that “[t]here exists no genuine factual dispute in the case.” AB at 11. This is not so. There is conflicting evidence, particularly with respect to what caused her mental health condition. She loses her appeal because she lost the factual dispute below, and because the findings of fact made below are supported by substantial evidence.

**1. Substantial evidence supports the finding that Ms. Buchanan's mental condition was not caused by a single event**

The event that Ms. Buchanan alleges caused the mental condition occurred when Dr. Elloway told Ms. Buchanan that he expected her to collect \$10,000–\$15,000 in unpaid bills and deposit it in the bank before he returned from his annual two-week trip. AB at 12, 15. Ms. Buchanan argues, “There was significant testimony involving the single precipitating stressful event.” *Id.* at 15. She also asserts that “[a] preponderance of medical opinions attributed the proximate cause of Ms. Buchanan’s condition to the single, traumatic event.” *Id.* at 18–19. The record does not support these assertions.

Ms. Buchanan herself, during most of her treatment as well as her testimony, failed to point to a single event as the cause of her condition. Most telling was her own testimony before the Board of Industrial Insurance Appeals: she could not state whether there was one single event that caused her mental condition. BR N. Buchanan at 65–66. Likewise, she did not identify a specific event to Dr. Hayden in the emergency room, BR Hayden at 103; to Mr. Moore during his evaluation, BR, Dep. Moore at 16; or to Dr. Lykins during his four days of treating her, BR, Dep.

Lykins at 29.<sup>11</sup> It is unclear whether she identified a specific event during her treatment with Dr. Crabbe, whose testimony focused more on Dr. Elloway's departure than on any specific statement he made or any expectations he placed on Ms. Buchanan during his absence. *E.g.*, BR, Dep. Crabbe at 7, 13–14, 16.

While Dr. Elloway's request that she collect outstanding bills may well have contributed to Ms. Buchanan's stress in mid-March 2007, it must be viewed in the context of the underlying conditions that led to her symptoms. Several work-related factors contributed to a gradual build-up of stress for Ms. Buchanan. For instance, from April 2006 until January 2007, she performed the work of two people within the office. BR N. Buchanan at 59. Her work load increased during that time, but it had also permanently increased in 2003 due to a change in insurance laws, and Dr. Elloway had seen an increasing number of patients over time, reaching 25 to 30 patients *per day*. *Id.* at 59, 63.

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<sup>11</sup> Ms. Buchanan makes much of the fact that Dr. Lykins was unaware of Dr. Elloway's mission and his request that she collect outstanding bills during his absence. *See* AB at 9–10. Of course, the history that Dr. Lykins described was provided to him by Ms. Buchanan herself and by hospital records from Centralia. BR, Dep. Lykins at 21. The fact that she made no mention to her attending psychiatrist of the events that immediately preceded her admission to the hospital, together with the fact that the Centralia hospital records did not alert him to those events, supports Dr. Lykins's conclusion that Ms. Buchanan's difficulties were the result of "a gradual sense of more and more work . . . just building up." *Id.* at 29. Furthermore, Ms. Buchanan had a full opportunity at the Board to cross examine Dr. Lykins, and the weighing of his testimony was exclusively for the fact finders below. *E.g.*, *Thorndike*, 54 Wn.2d at 575.

Additionally, Ms. Buchanan used to work at the office in the evenings, but in March 2007—shortly before Dr. Elloway’s annual medical mission and the comments to which she attributes her mental health condition—she felt that the neighborhood had become too unsafe, so she stopped working after hours. *Id.* at 61–62. Since she had felt that evenings were quiet and she could get more work done, *id.*, the change must have increased the amount of work she had to do during office hours, contributing to the stress she was already having at her job.

While these changes were occurring, however, two things remained constant: Ms. Buchanan never took any vacation time during her nearly 23 years working for Dr. Elloway, *id.* at 34, 61; BR Elloway at 73–74, and there was conflict in her relationship with the doctor, BR, Dep. Revay at 19.

The Court need not rely on common sense alone to conclude that it was reasonable for the superior court to infer from the preceding facts that Ms. Buchanan’s mental condition resulted from a gradual build-up of stress. All five of the medical and mental health professionals who testified in this case gave testimony that supports the superior court’s findings:

- Ms. Buchanan told Dr. Hayden, the emergency room physician, that “she was both the nurse and secretary” for a physician and that

“[t]hat had become increasingly hard for her, and she just felt totally overworked and overstressed by that position.” BR Hayden at 102.

- Mr. Moore, the registered counselor, testified, “I’m just aware that she consistently reported, as did her husband, that she had been under a lot of stress at work.” BR, Dep. Moore at 17. It was Mr. Moore’s understanding that Ms. Buchanan’s job had been stressful for many years. *Id.* at 11–12.
- Dr. Lykins, the psychiatrist at St. Peter’s Hospital, gave the following response when asked whether Ms. Buchanan’s major depression and anxiety were caused or aggravated by any sudden event at work: “She—she never brought anything like that up. . . . I don’t know of any sudden thing that happened at work. . . . It was more of a gradual sense of more and more work, technology changing, regulations changing, and it’s a—just building up.” BR, Dep. Lykins at 29.
- Dr. Crabbe, the psychiatrist who provided follow-up treatment, testified that Ms. Buchanan’s work was too much for her and that her mental condition was likely going to happen at some point:

Q. Would you say the trauma-caused disorder was fixed in time as opposed to just an endless amount of—

- A. No, it wasn't fixed in time. It was something that was ongoing over a long period of time.
- Q. But was the triggering diagnosis, was that something that occurred in a fixed time period?
- A. Yes.
- Q. You mentioned March 15th.
- A. Yes.
- Q. Did she have this disorder before March 15th?
- A. No. But the trauma that led to what happened on March 15th had been going on all through her working life.
- Q. So would you say that she was predisposed for the trauma that occurred?
- A. She was predisposed in the sense that she was doing duties and work that was too much for her.
- Q. Okay. If her doctor had not left to go to Ecuador, do you believe that she would have suffered this trauma on March 15th?
- A. I would say it's unlikely, but again it's a difficult question to answer, because at some point *what happened was going to happen if she had continued working long enough.*

BR, Dep. Crabbe at 17–18 (emphasis added). He further testified,

- Q. And Ms. Buchanan was feeling, from what you understand, a lot of workload pressures because of the Doctor's departure, correct?
- A. *No. From what I understand, she was feeling a lot of workload pressures from the work she does—that she had been doing over the months and years.*
- Q. So it was an ongoing thing?
- A. Exactly.
- Q. And then the doctor departing presented her with a situation where she would have added pressure?
- A. She would have had added pressure because he was not there to ask questions and answer them and she was going to have to do everything by herself.

*Id.* at 21 (emphasis added).

- Finally, Ms. Revay, the psychiatric nurse practitioner, also testified regarding ongoing conditions of Ms. Buchanan's job. For instance, the following dialogue occurred:

Q. The nature of Ms. Buchanan's job over time caused her stress, right?

A. Correct.

Q. Okay. So it was something of an ongoing nature that became worse in March of 2007; is that right?

A. Yes.

BR, Dep. Revay at 17. And she testified, "[T]here was always conflict in" the relationship between Ms. Buchanan and Dr. Elloway. *Id.* at 19.

When viewed in this context, it is easy to see how the Board and superior court each found as fact that Dr. Elloway's request that Ms. Buchanan collect outstanding bills during his absence does not stand out as a "single" event that caused Ms. Buchanan's mental condition. Ms. Buchanan's work history, combined with the medical testimony, presents a picture of an individual who worked too hard for too long and who finally became unable to bear the stress. This constitutes substantial evidence that her mental condition arose from work-related stress

consisting of a gradual build-up culminating in the routine but stressful conditions of March 2007.<sup>12</sup>

Moreover, while more evidence of prior symptoms might show the cause of her condition more clearly, their absence does not prove that Ms. Buchanan was not under the long-term stress that ultimately caused her condition to develop without any traumatic incident. *See, e.g.*, BR, Dep. Lykins at 29; BR, Dep. Crabbe at 17–18. And in spite of her assertions that she “had no history of any medical disorder” and that “[t]he evidence is overwhelming that [she] did not have any . . . treated, or identifiable mental health disorder before March 15, 2007,” AB at 3, 17, Ms. Buchanan testified to a “similar episode” about fifteen years ago when she “thought [she] was going nuts” because she was not sure whether she could get everything done at work. BR N. Buchanan at 38. Dr. Elloway treated her for that episode by prescribing vitamin B-12 shots. *Id.* Additionally, Ms. Buchanan’s husband told Dr. Lykins that Ms. Buchanan “had become gradually depressed” before worsening in March 2007. BR,

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<sup>12</sup> It is true that something changed in Ms. Buchanan in March 2007, as she points out in her brief, citing Mr. Moore’s testimony. AB at 7–8 (citing BR, Dep. Moore at 12). However, Mr. Moore refused to attribute her condition, on a more probable than not basis, to a specific traumatic event. BR, Dep. Moore at 16. Furthermore, as Dr. Crabbe opined, some kind of breakdown was inevitable, and it resulted from long-standing conditions of her employment. BR, Dep. Crabbe at 17–18. In other words, the fact that Ms. Buchanan’s symptoms appeared in March 2007 does not mean her condition was caused by a single event in March 2007.

Dep. Lykins at 15–16. Thus, there was evidence of stress causing mental health problems before March 2007.

Ms. Buchanan's case resembles the facts underlying the Board's decisions in *In re Reid*, *In re Ramos* and *In re Damron*, in that the factors underlying her mental health condition occurred over a period of time. In contrast, her situation differs from those of the claimants in *In re Hedblum*, *In re Glenn*, and *In re Fisher*, each of which identified a single, specific event as the basis for allowance of an industrial injury claim.<sup>13</sup> And unlike *In re Erickson*, in which the worker's stress was caused by a specific, identifiable, virtually constant stream of events occurring during a specific, identifiable three-week period, the time period during which Ms. Buchanan's stress arose was long and "indefinite." See *In re Erickson*.

Ms. Buchanan's condition also arose in circumstances similar to those addressed by the Courts of Appeals in *Boeing Co.*, *Snyder*, and *Wheeler*. All four workers worked in stressful environments involving

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<sup>13</sup> Ms. Buchanan cites two additional Board cases that also differ from her situation. AB at 13–14. The claimant in *In re Sharon Baxter*, BIIA Dec., 92 5897 (1994), experienced multiple needle sticks while working as a dental assistant and developed hepatitis. In the Board's view, each separate needle stick satisfied the definition of an injury. *In re Baxter*. The case is inapplicable to Ms. Buchanan because Ms. Buchanan did not experience any industrial injury, and also because the events in *In re Baxter* were physical, unlike the sources of Ms. Buchanan's symptoms.

*In re Santos Saucedo*, Dckt. No. 99 18557 (Jan. 25, 2001), is also inapplicable because it addresses an asthma claim based on physical exposure, and because the claim there was allowed exclusively as an occupational disease.

tension with others. *Boeing Co.*, 101 Wn. App. at 631; *Snyder*, 98 Wn. App. at 318–19; *Wheeler*, 65 Wn. App. at 566; BR Dep. Revay at 19. At least three of the workers experienced a build-up of stress or tension followed by a more identifiable series of conditions that led to the development of a mental condition. *Boeing Co.*, 101 Wn. App. at 631, 634; *Snyder*, 98 Wn. App. at 319–20; BR N. Buchanan at 39–44, 61–63. All four workers experienced or perceived some kind of threat: Ms. Key perceived a death threat, 101 Wn. App. at 631; Ms. Snyder received a death threat, 98 Wn. App. at 319; Ms. Wheeler’s supervisor threatened “revenge,” and she was subjected to danger, 65 Wn. App. at 558; and Ms. Buchanan perceived a threat of job loss or discipline, BR, Dep. Revay at 19.

Just as Ms. Key did, Ms. Buchanan seeks allowance of her claim as an industrial injury. Just as the court said a jury could reasonably conclude that Ms. Key’s “emotional distress manifested as a result of events that unfolded gradually over a period of time rather than from a sudden, tangible, traumatic incident that produced an immediate result,” 101 Wn. App. at 634, and just as the courts found no injury in *Snyder* and *Wheeler*, the substantial evidence of multiple significant factors over time causing Ms. Buchanan’s stress-related mental health condition, together with the testimony of the claimant and most other witnesses *not*

identifying one specific event, supports the superior court's finding that her condition did not result from a "single" event. It was, therefore, not an industrial injury.

**2. Substantial evidence supports the finding that the incident that allegedly caused Ms. Buchanan's mental condition was not traumatic**

Ms. Buchanan's industrial injury claim should also be denied because Dr. Elloway's statement was not traumatic. Neither the medical mission nor the work request was out of the ordinary. Dr. Elloway took a two-week trip every year. BR N. Buchanan at 37. Although Dr. Crabbe identified Dr. Elloway's departure as the possible "trigger" for her condition, he testified that the doctor's departure, in and of itself, would not be considered a traumatic experience from a medical standpoint. BR, Dep. Crabbe at 16, 20. Moreover, Ms. Buchanan did the billing and had to get money in the bank every month as part of her routine job duties. BR N. Buchanan at 62. When asked whether she faced expectations different from normal while Dr. Elloway was gone in March 2007, she said only that the expectations were more difficult than they had previously been because over time Dr. Elloway had increased the number of patients he saw. *Id.* at 63.

Dr. Crabbe did mention "trauma" in conjunction with Ms. Buchanan's mental condition; however, he said the "trauma-caused

disorder” was not “fixed in time. It was something that was ongoing over a long period of time. . . . [T]he trauma that led to what happened on March 15th had been going on all through her working life.” BR, Dep. Crabbe at 15. In other words, he did not feel that there was a traumatic “event”; rather, he viewed Ms. Buchanan’s job itself as “traumatic.” This is entirely distinct from a traumatic event that constitutes an industrial injury.

Comparison with court and Board cases also shows why Dr. Elloway’s temporary absence and his statement of expectations should not be considered “traumatic” for purposes of constituting an industrial injury. Ms. Key perceived a death threat, 101 Wn. App. at 631; Ms. Snyder received a death threat, 98 Wn. App. at 319; and Ms. Wheeler’s supervisor threatened “revenge,” and she was subjected to some kind of danger, 65 Wn. App. at 558. Ms. Buchanan, on the other hand, felt her job might be in jeopardy. BR, Dep. Revay at 19. On the “trauma” scale, threats of death and revenge should outweigh a worker’s inference or speculation that her job might be in jeopardy, but a death threat did not convince the jury to allow Ms. Key’s claim, 101 Wn. App. at 630, and the courts did not find injuries in *Snyder*, 98 Wn. App. at 321, or *Wheeler*, 65 Wn. App. at 566.

Furthermore, the Board found the termination of a worker's employment in *In re Ramos* not to be traumatic enough to give rise to an industrial injury claim because the events were foreseeable. *In re Ramos*. Likewise, Dr. Elloway's departure and his expectation that Ms. Buchanan would perform her routine job duties while he was gone were foreseeable and even expected.

In contrast, the claimants in *In re Hedblum* and *In re Glenn*, whose claims were allowed, faced non-routine, unexpected events that a reasonable person would consider traumatic: sudden deletion of a work project due in two days (*In re Hedblum*) and learning of a boss's suicide (*In re Glenn*). And the Board's description of the harassment in *In re Erickson*—saying its “depth and magnitude . . . defies practical description”—leaves no doubt as to its traumatic character. *In re Erickson*. Dr. Elloway's departure and his statement of expectations do not match the trauma that occurred in these cases.

In any event, substantial evidence, including Ms. Buchanan's own testimony and the expert testimony, supports the finding that neither the doctor's departure nor the work he expected her to do was traumatic. And the superior court's findings support its conclusions of law rejecting the argument that Ms. Buchanan's claim should be allowed as an industrial injury.

**3. Ms. Buchanan’s multiple proximate cause theory does not overcome the substantial evidence supporting the findings**

Ms. Buchanan correctly points out that in general, under the Industrial Insurance Act, a condition may have one or more proximate causes and that an industrial injury need not be the sole proximate cause of a particular condition for a claim to be allowed. AB at 13. She also cites *Miller v. Dep’t of Labor & Indus.*, 200 Wash. 674, 94 P.2d 764 (1939), and the Board decision *In re Suzanne Dyer*, Dckt. Nos. 03 15747, 03 15748, 03 16355 (March 1, 2005), for the proposition that when a “latent or quiescent infirmity” is activated by an industrial injury, the resulting condition is to be entirely attributed to the injury. AB at 15–16. However, these arguments change nothing in this case because of the substantial evidence that Ms. Buchanan’s condition simply was not caused by an industrial injury—a single traumatic event.

For the same reason, Ms. Buchanan’s reliance on the superior court’s passing statement in its memorandum decision that the doctor’s remark about collecting bills was “the straw that broke the camel’s back” is misplaced. *See* AB at 15; CP at 20. Nothing in the memorandum decision and nothing in the findings of fact by the superior court suggests that the superior court saw the remark as a traumatic event. A “straw” that is not a traumatic event is not an injury.

Finally, Ms. Buchanan's hypothetical regarding an ironworker, AB at 17, is entirely irrelevant because her hypothetical assumes the occurrence of a single traumatic event that qualifies as an industrial injury. Here, on the other hand, the superior court found on substantial evidence that no single traumatic event occurred.

In addition, Ms. Buchanan's hypothetical describes a *physical injury* as a result of *physical activity*. AB at 17. Ms. Buchanan's appeal, on the other hand, involves a mental health condition arising from stress and is governed by the unique provisions of RCW 51.08.142 and WAC 296-14-300. Under the evidence, the superior court findings, and the applicable court and Board decisions, the superior court was correct in determining that Ms. Buchanan's claim should be denied. And contrary to Ms. Buchanan's claims, the Department's theory does not "result in all mental health disorders related to work being barred." AB at 18.

If the superior court had weighed the evidence differently, and had found that a single traumatic event, rather than a long-standing build-up of stress, proximately caused Ms. Buchanan's condition, her claim would have been rightfully allowed as an industrial injury. But substantial evidence supports the superior court's findings to the opposite effect, and no legal error supports reversal of the superior court's decision.

## VI. CONCLUSION

Substantial evidence supports the superior court's findings that Nancy Buchanan's mental health condition did not result from an industrial injury. Therefore, the Department requests that this Court affirm the superior court's decision upholding the denial of Ms. Buchanan's claim.

RESPECTFULLY SUBMITTED this   1   day of April, 2009.

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# APPENDIX A

**RCW 51.08.142**

**"Occupational disease" — Exclusion of mental conditions caused by stress.**

The department shall adopt a rule pursuant to chapter 34.05 RCW that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease in RCW 51.08.140.

[1988 c 161 § 16.]

# APPENDIX B

296-14-200 << 296-14-300 >> 296-14-310

**WAC 296-14-300**

No agency filings affecting this section since 2003

**Mental condition/mental disabilities.**

(1) Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease in RCW 51.08.140.

Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease shall include, but are not limited to, those conditions and disabilities resulting from:

- (a) Change of employment duties;
- (b) Conflicts with a supervisor;
- (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- (d) Relationships with supervisors, coworkers, or the public;
- (e) Specific or general job dissatisfaction;
- (f) Work load pressures;
- (g) Subjective perceptions of employment conditions or environment;
- (h) Loss of job or demotion for whatever reason;
- (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- (j) Objective or subjective stresses of employment;
- (k) Personnel decisions;
- (l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.

(2) Stress resulting from exposure to a single traumatic event will be adjudicated with reference to RCW 51.08.100.

[Statutory Authority: Chapters 51.08 and 51.32 RCW. 88-14-011 (Order 88-13), § 296-14-300, filed 6/24/88.]

APPENDIX C

**RCW 51.08.100**  
**"Injury."**

"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.

[1961 c 23 § 51.08.100. Prior: 1959 c 308 § 3; 1957 c 70 § 12; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

COURT OF APPEALS  
DIVISION II

09 APR -2 PM 2:01

STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

NO. 38374-8-II

**COURT OF APPEALS FOR DIVISION I  
STATE OF WASHINGTON**

NANCY BUCHANAN,

Appellant,

v.

WASHINGTON STATE  
DEPARTMENT OF LABOR  
AND INDUSTRIES,

Respondent.

CERTIFICATE OF  
SERVICE

I, MARY L. STREET, certify under penalty of perjury under the laws of the state of Washington, that I caused the documents referenced below to be delivered via the method listed to the following parties:

DOCUMENTS:      **Brief Of Respondent  
Certificate of Service**

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Tacoma, WA 98402-4427

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Williams Wyckoff & Ostrander PLLC  
PO Box 316  
Olympia, WA 98507-0316

DATED this 1st day of April, 2009, at Tumwater, Washington.

A handwritten signature in cursive script that reads "Mary L. Street". The signature is written in black ink and is positioned above a horizontal line.

MARY L. STREET  
Legal Assistant