NO. 100041-3

SUPREME COURT OF THE STATE OF WASHINGTON

JULIE D. COOK-CRIST,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

KENDRA E. LACOUR
Assistant Attorney General
WSBA No. 49604
Office Id. No. 91018
800 Fifth Ave Suite 2000
Seattle, WA 98104
(206) 464-6597

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Rules

I. INTRODUCTION

This case involves an issue of statutory interpretation that is settled and does not warrant review. WAC 296-14-300 and RCW 51.08.142 exclude conditions that are the result of workplace stress from workers' compensation coverage. Julie Cook-Crist filed a claim for mental conditions resulting from job loss concerns and from workplace conflicts with her coworker and supervisor. Her central argument is that her conditions are not truly mental nor the result of stress, but involve physical changes to her brain due to non-physical traumatic interactions.

But all of her conditions appear within the American Psychiatric Association's Diagnostic and Statistical Manual (DSM), the authoritative treatise of mental disorders, and resulted from workplace stressors explicitly excluded by WAC 296-14-300. The Court of Appeals recognized the longstanding exclusion of such claims and affirmed the superior court's

denial of Cook-Crist's claim. Cook-Crist identifies no grounds under RAP 13.4 (and none exist) to take review of this decision.

II. ISSUE PRESENTED

Do RCW 51.08.142 and WAC 296-14-300 bar Cook-Crist's industrial insurance claim when the contended conditions are mental health conditions caused by job loss concerns and by conflicts with a coworker and supervisor?

III. STATEMENT OF THE CASE

A. Statutory Background

A worker who is injured at work or who sustains an occupational disease may file a claim for industrial insurance benefits. RCW 51.28.020. Industrial injuries result from a single traumatic event, while occupational diseases arise naturally and proximately out of employment over time and may include multiple exposures. RCW 51.08.100, .140; *Weyerhaeuser Co. v. Tri*, 117 Wn.2d 128, 135, 814 P.2d 629 (1991). An occupational disease must arise out of the distinctive conditions of employment rather than conditions

coincidentally occurring in the workplace. *Dennis v. Dep't of Lab. & Indus*., 109 Wn.2d 467, 481, 745 P.2d 1295 (1987). Washington courts have previously held that conflicts with supervisors and coworkers are not distinctive conditions of employment because they can arise in all employments. *Gast v. Dep't of Lab. & Indus.*, 70 Wn. App. 239, 243, 852 P.2d 319 (1993); *see also Wheeler v. Cath. Archdiocese of Seattle*, 65 Wn. App. 552, 566–68, 829 P.2d 196 (1992), *reversed in part on other grounds*, 124 Wn.2d 634, 880 P.2d 429 (1994).

In 1988, the Legislature enacted RCW 51.08.142, explicitly directing that "[t]he 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." Laws of 1988, ch. 161, § 16.

The same year, the Department adopted WAC 296-14-300, which specified that "[c]laims 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." Wash. St. Reg. 88-14-011. The rule also included a nonexclusive list of circumstances that might arise in a workplace but could not result in a compensable occupational disease claim:

> 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.

WAC 296-14-300(1). Where a mental health condition is caused by stress arising "from exposure to a single traumatic event," the Department adjudicates the claim as an industrial injury. WAC 296-14-300(2). In such cases, or whenever mental health conditions arise on a claim, evaluation of mental health impairment must use the DSM. WAC 296-20-330(5).

The Department amended WAC 296-14-300 in 2015 and RCW 51.08.142 in 2018 and 2020. Wash. St. Reg. 15-19-139; Laws of 2018, ch. 264, § 2; Laws of 2020, ch. 234, § 1. These amendments do not apply here because, in occupational disease cases, the disease's date of manifestation controls which law applies. RCW 51.32.180; WAC 296-14-350(3). Unless otherwise noted, references to RCW 51.08.142 and WAC 296-14-300 refer to the 1988 versions.

B. The Department Rejected Cook-Crist's Occupational Disease Claim

From 2007 to 2010, Cook-Crist worked at Network Communications, Inc. (NCI). AR 610. Cook-Crist reported that, beginning in mid-2008, her coworker, Andrea North, directed

anger at Cook-Crist, which continued over the course of Cook-Crist's employment at NCI. AR 580–95, 600–10. North yelled at her and engaged in aggressive behavior that caused her to experience anxiety and to feel afraid and intimidated. AR 580–83, 585, 588. Cook-Crist tried to address or avoid the conflict with North, and then sought assistance from her supervisor, Terry Fritz. AR 580–81, 584–85. Cook-Crist felt that Fritz did not address her concerns and that she might lose her job as a result of the situation with North, and eventually sought help from Human Resources. AR 585, 606–08, 618–20.

Cook-Crist's employment ended in March 2010. AR 608. In June 2013, Cook-Crist applied for workers' compensation benefits. AR 613, 1637–38. The application listed her diagnoses as depression with anxiety, and obsessive-compulsive disorder (OCD). AR 1637. The Department denied the claim, explaining that its decision turned on RCW 51.08.142 and WAC 296-14-300. AR 1639, 1642–43.

C. The Board, Superior Court, and Court of Appeals Denied Cook-Crist's Claim as a Matter of Law

Cook-Crist appealed to the Board of Industrial Insurance Appeals. AR 536. Cook-Crist requested accommodations and the Board granted her additional hearing time and assistance with preparing for hearings, and allowed her to recall prior witnesses and obtain the testimony of additional witnesses. AR 363–67, 390–93.

Over the course of two and a half years before the Board, Cook-Crist presented several medical witnesses to testify about her mental health conditions and their causes. Her therapist, Susan Valentine, testified Cook-Crist's "situation at work" worsened her pre-existing OCD, which is a mental health condition. AR 641, 643, 649, 652. Laura Brown, Ph.D., a psychologist who evaluated Cook-Crist in 2014, agreed that Cook-Crist's interactions with North were "highly stressful" and that Cook-Crist felt that her supervisor's interventions were not protective. AR 666, 669–70, 679, 684. Dr. Brown diagnosed OCD, unspecified depressive disorder, unspecified

trauma and stressor related disorder, and obsessive-compulsive personality disorder, all of which she described as mental health conditions or diagnoses made according to the DSM-V. AR 669, 673–76.

Cook-Crist's other witnesses also diagnosed a variety of mental health conditions. Forensic psychiatrist Richard Adler, M.D., diagnosed OCD, dysthymia or depressive disorder unspecified, and stressor-related disorder unspecified, all based on the DSM-V, which he described as a tool to diagnose mental disorders. AR 686, 690–91, 697, 1397. Martha Glisky, Ph.D., a neuropsychologist, diagnosed OCD, persistent depressive disorder, adjustment disorder not otherwise specified, and unspecified neurocognitive disorder. AR 1222–23, 1227, 1235. Dr. Glisky considered Cook-Crist's conditions to be physical or neurobiological, as well as mental, and agreed they would be considered both physical and mental conditions in the medical community, with providers and the DSM-V referring to the conditions as mental disorders. AR 1275–78, 1303.

After Cook-Crist presented her case, the Department moved to dismiss under CR 41(b)(3) on the basis that RCW 51.08.142, WAC 296-14-300, and case law barred her claim for mental health conditions caused by workplace conflict as an occupational disease. AR 116–31. The Board agreed, finding that her eight alleged mental health conditions did not constitute occupational diseases as a matter of law, and dismissed her appeal. AR 14. It also found that Cook-Crist's conditions did not arise naturally and proximately out of the distinctive conditions of her employment because conflict with a supervisor and coworker can arise in all employment. *See* AR 9–11, 13.

Cook-Crist appealed to superior court, which also dismissed her appeal, concluding that "the very conduct she complains of fits neatly into the applicable WAC." CP 70, 72. The Court of Appeals agreed in an unpublished opinion, finding that there is no "legally relevant distinction in this context between 'stress' and 'trauma resulting from stress,'" and that

courts had long recognized that claims from stress are not compensable unless they arise from a single traumatic event as an industrial injury. *Cook-Crist v. Dep't of Lab. & Indus.*, No. 81325-1-I, slip op. at 11–12 (Wash. Ct. App. June 1, 2021). The court further held that "[i]t is undisputed that Cook-Crist's alleged conditions are mental conditions and that Cook-Crist's experts relied on the DSM-V in diagnosing them," identifying the DSM as the "authoritative treatise" on mental disorders. *Id.* at 12 (quoting *LaRose v. Dep't of Lab. & Indus.*, 11 Wn. App. 2d 862, 870, 456 P.3d 879 (2020)). The court concluded that the superior court properly denied Cook-Crist's claim as a matter of law. *Id.* at 12–13.[1]

Cook-Crist petitions this Court for review.

[1] As a result, the court did not reach the alternative ruling that Cook-Crist failed to establish that her conditions arose naturally and proximately from distinctive conditions of her employment. *Cook-Crist*, slip op. at 13.

IV. ARGUMENT

No review is warranted in this case. Cook-Crist asserts illegality, irrationality, and procedural impropriety as the basis for review, yet this Court is governed by the bases in RAP 13.4. Cook-Crist identifies no conflicts, constitutional questions, or issues of substantial public interest; rather, she largely reargues her case. But the Court of Appeals' decision is thoroughly consistent with principles of statutory interpretation and with more than a decade of cases interpreting stress, trauma, and the statutory bar to occupational disease claims based on mental conditions caused by stress, presenting no reason for review.

A. The Decision of the Court of Appeals is Consistent with Principles of Statutory Interpretation and Over a Decade of Appellate Cases Addressing the Statutory Bar

As the Court of Appeals recognized, the plain language of WAC 296-14-300 precludes Cook-Crist's occupational disease claim, the regulation contains none of the distinctions she seeks, and the Legislature has acquiesced to the Department's interpretation. *Cook-Crist*, slip op. at 9–13.

Under RCW 51.08.142, the Department adopted a rule excluding stress-based claims from the definition of an occupational disease, and identified a nonexclusive list of workplace stressors that cannot give rise to compensable claims. WAC 296-14-300(1). Among these excluded stressors are conflicts with supervisors, actual or perceived threats of job loss, relationships with supervisors or coworkers, and the worker's "[s]ubjective perceptions of employment conditions or environment." WAC 296-14-300(1)(b)–(d), (g). Where such stressors are the cause of a mental condition or disability, the claim is not compensable as an occupational disease. WAC 296-14-300.

Cook-Crist has sought to distinguish her mental health conditions on the basis that they have a physical component. Pet. 15–21. But the law makes no such distinction, and the court does not add words to the statute. *See City of Seattle v. Fuller*, 177 Wn.2d 263, 269, 300 P.3d 340 (2013). Cook-Crist's proposed rule would give no meaning to the statutory bar in

RCW 51.08.142 because many mental health conditions ultimately have a physiological component, with recent developments in "cognitive neuroscience, brain imaging, epidemiology, and genetics" needing to be accounted for in the DSM-V. *See* DSM-V at 5. The DSM-V is rife with mental health conditions that have physical manifestations, whether in brain chemistry or symptomatology, and psychological conditions must interface through the brain in a physical manner to have any effect. Cook-Crist's proposed distinctions find no support in the plain language of the law, which she acknowledges is unambiguous. Pet. 15.[2]

Cook-Crist has also sought to distinguish her claim because her witnesses characterized her workplace experiences as repetitive traumas, rather than stress. Pet. 15–19. But it is

[2] As a result, contrary to Cook-Crist's argument, the doctrine of liberal construction is inapplicable here. *Harris v. Dep't of Lab. & Indus*., 120 Wn.2d 461, 474, 843 P.2d 1056 (1993) (citations omitted) (noting that rule of liberal construction does not apply to unambiguous terms).

irrelevant whether these stressors are considered repeated trauma, workplace stress, or something else when WAC 296-14-300 expressly excludes mental health conditions resulting from Cook-Crist's exact experiences. WAC 296-14-300(1); *see also Boeing Co. v. Key*, 101 Wn. App. 629, 631–34, 5 P.3d 16 (2000) (upholding jury instruction excluding benefits "caused by stress resulting from relationships with supervisors, co-workers, or the public" as an occupational disease based on WAC 296-14-300); *Snyder v. Med. Serv. Corp. of E. Wash.*, 98 Wn. App. 315, 318–21, 988 P.2d 1023 (1999) (holding that worker's post-traumatic stress disorder resulting from conflicts or relationships with supervisors was not an occupational disease due to WAC 296-14-300). Mental health conditions caused by workplace conflicts, concerns about job loss, and subjective impressions of the work environment are not occupational diseases as a matter of law.

Additionally, the Court of Appeals has repeatedly held that there is no distinction between stress and trauma. *LaRose*,

11 Wn. App. 2d at 886–88 (finding that the worker's proposed distinction between stress and trauma was inapplicable to WAC 296-14-300); *Rothwell v. Nine Mile Falls Sch. Dist.*, 149 Wn. App. 771, 780–82, 206 P.3d 347 (2009) (holding that "emotionally traumatic experiences" occurring over a period of time were not an occupational disease due to the statutory bar). While the version of WAC 296-14-300 at issue here is an earlier version than the one at issue in *LaRose*, the 2015 amendments merely added language to the version applicable to Cook-Crist. *Compare* former WAC 296-14-300 (1988) *with* WAC 296-14-300 (2015). Contrary to Cook-Crist's assertion, AB 23, the *LaRose* Court acknowledged that the unchanged portions, like the 2015 amendments, were "[i]n accord with the express direction of the legislature" to exclude "mental conditions or mental disabilities caused by stress" from coverage as an occupational disease and to address single traumatic events as industrial injuries. *LaRose*, 11 Wn. App. 2d at 884 (quoting RCW 51.08.142).

Recent amendments to RCW 51.08.142 show that the Legislature has acquiesced to the interpretation that no distinction exists between stress and trauma. *See LaRose*, 11 Wn. App. 2d at 888–91. The 2018 amendment, which exempted firefighters and law enforcement officers with post-traumatic stress disorder from the statute's exclusion for stress-based mental health conditions, left in place the general exclusion for repeated traumatic events. Laws of 2018, ch. 264, § 2. The 2020 amendment added emergency dispatchers to this exemption with no other modifications. Laws of 2020, ch. 234, § 1. These amendments are a strong indication of approval of the Department's determination that traumatic events are no different from other excluded workplace stresses. *See Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit Cnty.*, 135 Wn.2d 542, 566, 958 P.2d 962 (1998) (citations omitted) ("The Legislature's failure to amend a statute which has been interpreted by administrative regulation may constitute 'silent acquiescence' in the agency's interpretation of the statute.").

The very same stressors identified in WAC 296-14-300 are the basis for Cook-Crist's claim (job loss concerns and workplace conflicts with her coworker and supervisor), and no proposed distinction exempts her from the regulation's restriction. Her contended conditions are all excluded mental conditions, each of which appears in the DSM-V.[3] Cook-Crist's own experts relied on the DSM-V for their diagnoses. AR 675–76, 1301, 1303, 1397. And the DSM-V recognizes a physical component to mental health disorders. *See* DSM-V at 5; AR 1398–400. Cook-Crist's mental conditions, caused by conflicts with her coworker and supervisor and her concerns about job

[3] DSM-V at 155–88 (depressive disorders), 222–26 (generalized anxiety disorder), 235–42 (obsessive-compulsive and related disorders), 286–89 (adjustment disorder), 290 (unspecified trauma- and stressor-related disorder), 643 (unspecified neurocognitive disorder); *see also* AR 1303 (OCD, depressive disorder, adjustment disorder, unspecified neurocognitive disorder), 1397 (OCD, unspecified depressive disorder, unspecified stressor-related disorder), 1401 (unspecified stressor-related disorder).

loss, are not compensable and present no constitutional question or issue of substantial public interest that would warrant review.

B. Cook-Crist's Remaining Arguments Show No Basis for Review

Cook-Crist asserts that there is a conflict of interest based on her belief that the Department has received unfounded favorable decisions from the Board and the courts. Pet. 2–3. Cook-Crist does not substantively support this argument, nor identify a corresponding basis for review. The Department receives no deference on factual disputes. Cook-Crist's disagreement with prior decisions that she failed to establish a prima facie case does not create a conflict of interest, nor does it create a basis for review under RAP 13.4(b).

Cook-Crist also compares her case to the claimant in *Weaver v. City of Everett*, yet the case is inapplicable here. Pet. 4; 194 Wn.2d 464, 450 P.3d 177 (2019). First, Cook-Crist's claim arises from mental conditions appearing in the DSM, which were contended as an occupational disease. The claimant in *Weaver* suffered from a physical condition, melanoma, which

had spread to Weaver's brain. *Weaver*, 194 Wn.2d at 469–71. More importantly, this Court reached no determination on the allowance of Weaver's claim. *Contra* Pet. 4. The case was decided on collateral estoppel grounds, and was remanded for further litigation on whether Weaver's melanoma was, in fact, caused by his employment. *Weaver*, 194 Wn.2d at 483.

Relatedly, Cook-Crist seeks reversal on the basis that the Department has presented no medical experts or other evidence, yet ignores that this is because the Department prevailed on a motion to dismiss for failure to make a prima facie case under CR 41(b)(3). Pet. 5–6. Should Cook-Crist prevail in this appeal, the proper remedy would be for this Court to remand the case to the Board to allow the Department to present its case, as it has not "waiv[ed] the right to offer evidence." CR 41(b)(3). The procedural posture of this case presents no basis for review under RAP 13.4(b).

Cook-Crist also alleges inconsistency between Department publications regarding workplace violence and the

statutory bar to mental conditions arising from stress as occupational diseases. Pet. 5. Again, Cook-Crist does not substantively support this argument, nor does she identify a corresponding basis for review. Whatever encouragement the Division of Occupational Safety and Health may give to employers regarding awareness and prevention, however, has no bearing on interpretation of a statutory bar to coverage under the Industrial Insurance Act. AR 1073–75. Cook-Crist's contended conflict between the two presents no basis for review under RAP 13.4(b).

Cook-Crist asserts, for the first time, that a disability accommodation during Board hearings was not followed due to a neurologist not being allowed to testify, "among other issues." Pet. 4. Cook-Crist does not substantively support this argument, nor identify a corresponding basis for review, yet Cook-Crist received accommodations from the Board and first obtained a continuance to have a neurologist testify in November of 2014. AR 363–67, 390–93, 543. Over three years later, hearing time

that had been set aside for a neurologist to testify was cancelled after Cook-Crist had yet to identify a doctor or provide any of their records. AR 171–76, 1315. When Cook-Crist provided a declaration but no testifying witness, the declaration was excluded as hearsay. AR 1513, 1598–99. Cook-Crist provides no explanation of how this violated her accommodation, nor does she identify the "other issues" to which she refers. Pet. 4. As a result, this Court should disregard this claimed error, which presents no basis for review. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); RAP 13.4(b), (c).

Finally, Cook-Crist argues, also for the first time, that the denial of her claim and the statutory bar to occupational diseases based on mental health conditions caused by stress constitute illegal discrimination. Pet. 3–4. To the extent Cook-Crist seeks to raise a new constitutional argument, courts do not address constitutional arguments unsupported by adequate briefing, which includes citation to authority and presentation

of argument. *Havens v. C & D Plastics, Inc.*, 124 Wn.2d 158, 169, 876 P.2d 435 (1994); *State v. O'Hara*, 167 Wn.2d 91, 97–98, 217 P.3d 756 (2009) (citation omitted) (quoting RAP 2.5(a)); RAP 13.4(c). Nevertheless, "[a] duly adopted regulation is presumed constitutional." *Wash. Cedar & Supply Co. v. Dep't of Lab. & Indus.*, 137 Wn. App. 592, 604, 154 P.3d 287 (2007). Cook-Crist offers no more than conjecture to the contrary, and presents no basis for review.

V. CONCLUSION

The Department asks that this Court deny review.

This document contains 3,421 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 31st day of March, 2023.

ROBERT W. FERGUSON
Attorney General

KENDRA E. LACOUR
Assistant Attorney General
WSBA No. 49604
Office Id. No. 91018
800 Fifth Ave Suite 2000
Seattle, WA 98104

No. 100041-3

SUPREME COURT
STATE OF WASHINGTON

JULIE D. COOK-CRIST, Petitioner, v. WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, Respondent.	CERTIFICATE OF SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served, Dept.'s Answer to Petition for Review and this Certificate of Service in the below described manner:

E-Filing via Washington State Appellate Courts Portal:

Erin L. Lennon
Supreme Court Clerk
Supreme Court of Washington

E-Mail via Washington State Appellate Courts Portal:

Julie Cook Crist
copperswirl@Hotmail.com

DATED this 31st day of March, 2023.

LISA HENLEY
Legal Assistant
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 389-3897

WASHINGTON ST. ATTORNEY GENERAL - LABOR & INDUSTRIES DIVISION - SEATTLE

March 31, 2023 - 1:41 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	100,041-3
Appellate Court Case Title:	Julie D. Cook-Crist v. Department of Labor & Industries

The following documents have been uploaded:

- 1000413_Answer_Reply_Plus_20230331133717SC294807_1411.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  Certificate of Service
  The Original File Name was 230331_AnswerToPFR.pdf

A copy of the uploaded files will be sent to:

- copperswirl@hotmail.com

Comments:

Dept.'s Answer to Petition for Review and Certificate of Service

---

Sender Name: Brittney Valandingham - Email: brittney.valandingham@atg.wa.gov
Filing on Behalf of: Kendra Erin Lacour - Email: kendra.lacour@atg.wa.gov (Alternate Email:)

Address:
800 Fifth Avenue, Ste. 2000
Seattle, WA, 98104
Phone: (206) 464-7740

Note: The Filing Id is 20230331133717SC294807