

No. 73744-9-I

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

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 COURT OF APPEALS DIVISION I
 STATE OF WASHINGTON
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JAMES D. AMPHLETT,

Appellant,

v.

THE DEPARTMENT OF
LABOR & INDUSTRIES
OF THE STATE OF WASHINGTON,

Respondent.

REPLY BRIEF OF APPELLANT

Thomas A. Thompson, WSBA #10595
WALTHER, THOMPSON, KINDRED,
COSTELLO & WINEMILLER, P.S.
3000 1st. Avenue
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I. INTRODUCTION

The only interpretation of the evidence presented in this case is that Mr. Amphlett's industrial injury was a cause of the aggravation of his adjustment disorder. Therefore the Superior Court erred in not granting judgment as a matter of law.

The Respondent has tried to set forth facts that Mr. Amphlett industrial injury did not have an immediate psychiatric reaction upon him. This is not relevant. The order under appeal was entered November 11, 2011 and affirmed January 5, 2012, over a year after his injury. The issue is what effect the industrial injury had on Mr. Amphlett as of January 5, 2012, the date of the order under appeal.

None of the arguments presented in Respondent's brief refute the fact every medical expert (including Respondent's expert) plainly and unambiguously stated that Mr. Amphlett's industrial injury was a cause of the aggravation of his adjustment disorder. Instead, Respondent's brief offers a plethora of irrelevant facts and arguments in an effort to paint Mr. Amphlett in a bad light. As President Lincoln said, "many silly reasons are given, as is usual in cases where a single good one is not to be found."¹ Respondent cannot cite any medical testimony to refute why Mr. Amphlett is not entitled to judgment as a matter of law.

The only question before this Court is whether or not Mr. Amphlett is entitled to judgment as a matter of law where the uncontested medical

¹ Michael Burlingame, *Abraham Lincoln; A Life* (2008), Baltimore: Johns Hopkins University Press, 1:215.

testimony sets forth and unequivocally that his industrial injury was a proximate cause of the aggravation of his preexisting condition. Respondent's arguments about Mr. Amphlett's preexisting condition and the other possible causes of his adjustment are misleading as to the terms "aggravation" and "proximate cause".

II. ARGUMENT

A. **Mr. Amphlett is entitled to judgment as a matter of law because all of the medical evidence supports the fact that his industrial injury aggravated his adjustment disorder.**

Mr. Amphlett is entitled to judgment as a matter of law because the evidence indicating a causal relationship between his industrial injury and the aggravation of his adjustment disorder is so strong that there is "only one reasonable view of the evidence." *Harris v. Drake* 116 Wn. App. 261, 289 (2003).

Respondent's assertion that the Superior Court properly weighed "inconsistencies" in the medical evidence fails because there was no contradictory evidence for the Superior Court to weigh. Instead, the Superior Court exceeded its authority in finding against Mr. Amphlett and Respondent is now attempting to rewrite the law and open a loophole to allow a trier of fact to ignore uncontradicted expert medical opinions.

The medical testimony is uncontradicted that Mr. Amphlett had preexisting mental issues, and that his industrial injury caused an aggravation of his adjustment disorder. All of the medical evidence,

including that provided by Respondent's own expert, Dr. Gamrath, sets forth that Mr. Amphlett's adjustment disorder was aggravated by his industrial injury. It is important to note that before the injury Mr. Amphlett was not treating with a psychologist, and only began said treatment after the Respondent sent Mr. Amphlett to be examined by Timothy Cahn, Ph.d. (Dr. Cahn), and Dr. Cahn recommended treatment for the industrial injury, and he so testified.

1. Mr. Amphlett's adjustment disorder was aggravated after his 2010 industrial injury.

At no point in time has Mr. Amphlett argued that his adjustment disorder became aggravated immediately after his industrial injury. It is his position his preexisting adjustment disorder was aggravated as of the Respondent's order of January 5, 2012. This aggravation was brought on in part by the industrial injury and the residuals of said injury (surgery, loss of job, inability to perform his past employment and all that came with said loss, etc.).

On page eight of Respondent's brief, they admit that "In [Dr. Gamrath's] opinion, Amphlett had an underlying anxiety disorder that could be aggravated with changes in his situation." Changes like suffering a debilitating injury that prevented Mr. Amphlett from working. Respondent's brief further admits, Dr. Gamrath "testified that the 2010 work injury added on to his preexisting mental health problems." (Resp. Br. 8).

Respondent's argument that Mr. Amphlett's adjustment disorder was not aggravated by his injury is not legally sound in light of the medical evidence in this matter. On page fifteen, Respondent argues that Mr. Amphlett's adjustment disorder was not aggravated because his worsened mental state after the industrial injury could have been expected based on his preexisting condition. This argument is incorrect in light of the medical evidence presented in this matter. They make this argument in spite of the fact they sent Mr. Amphlett to Dr. Cahn who testified otherwise-as did Dr. Gamrath.

If one were to accept the Respondent's position a worker with a back condition that was being treated were to fall off a ladder and was to undergo further treatment that all doctors related to the fall, his back injury would not be accepted as an industrial injury if he would of still needed treatment for his preexisting condition.

There is no evidence to contradict the medical testimony of Dr. Gamrath and Dr. Cahn and therefore, Mr. Amphlett's adjustment disorder was aggravated as a matter of law.

2. Mr. Amphlett's industrial injury was a cause of the aggravation of his adjustment disorder.

For an aggravation of a condition to be compensable under the Industrial Insurance Act, the industrial injury must be a proximate cause of condition or disability. *See Wendt v. Dep't of Labor & Indus.*, 18 Wn. App. 674, 684, 571 P.2d 229 (1997); *Longview Fibre Co. v. Weimer*, 95

Wn.2d 583, 589, 628 P.2d 456 (1981). The industrial injury does not need to be the sole cause or even the most significant cause of the aggravation. As Respondent acknowledged, “it is sufficient to sustain an injury that aggravates a preexisting infirmity, including a preexisting mental health condition.” (Resp. Br. 15).

No evidence has been offered to contest the fact that Mr. Amphlett’s industrial injury was a proximate cause of the aggravation of his adjustment disorder. Dr. Gamrath, Respondent’s only medical expert, testified repeatedly that Mr. Amphlett’s industrial injury was a cause of Mr. Amphlett’s mental condition that needed treatment. (CP 295, 303, 304). Dr. Cahn also testified that Mr. Amphlett’s physical condition and work stressors after the industrial injury were causes of his aggravated adjustment disorder. (CP 173, 182). At no point in time did either doctor make any statements inconsistent with their testimony that Mr. Amphlett’s industrial injury was a cause of the aggravated adjustment disorder. Furthermore, the testimony of Dr. Gamrath and Dr. Cahn is supported by the fact that Mr. Amphlett was not receiving treatment from a psychologist until well after his industrial injury.

Because there is no medical evidence to contradict the testimony of Dr. Gamrath and Dr. Cahn, Respondent has resorted to muddying the waters by listing off other possible causes of Mr. Amphlett’s adjustment disorder aggravation. In so doing, Respondent wrongfully asserts that the presence of other causes negates the fact that Mr. Amphlett’s industrial injury was a cause of his aggravation. In their brief the Respondent’s

acknowledge “the industrial injury must be a proximate cause of the condition or disability.” The presence of possible additional causes does not preclude allowance of the aggravation in this matter in light of the medical testimony.

The only issue before this Court is whether or not Mr. Amphlett’s industrial injury was a cause of the aggravation of his mental condition. Respondent admits that both medical experts testified that Mr. Amphlett’s industrial injury was a cause of his aggravated adjustment disorder.

B. Attorney’s fees should be granted to Mr. Amphlett.

Because Mr. Amphlett is entitled to judgment as a matter of law finding that his adjustment disorder was aggravated by his industrial injury, Mr. Amphlett respectfully requests that reasonable attorney’s fees be granted in accordance with RCW 51.52.130. RCW 51.52.130 provides for an award of attorney’s fees to a worker who prevails on an appeal that grants relief.

III. CONCLUSION

Based on the testimony of the medical experts and the foregoing authorities, James D. Amphlett respectfully requests that this Court reverse the Superior Court’s decision and hold that, as a matter of law Mr. Amphlett’s adjustment disorder was aggravated by his industrial injury because the Respondent failed to provide medical evidence on which a trier of fact could have found otherwise, and to find in favor of the

Respondent would be to rewrite the law to allow a trier of fact to ignore uncontradicted expert medical opinion in ruling on the casual relationship on a medical condition.

RESPECTFULLY SUBMITTED this 8th day of January, 2016



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