No. 26876-4-III

Kulik, J. (dissenting) — RCW 51.08.100 defines "injury" as a "sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result." And the guiding principle in construing the Industrial Insurance Act (Act), Title 51 RCW, is that the "Act is remedial in nature and is to be liberally construed in order to achieve its purpose of providing compensation to all covered employees injured in their employment, with doubts resolved in favor of the worker." *Dennis v. Dep't of Labor & Indus.*, 109 Wn.2d 467, 470, 745 P.2d 1295 (1987); *see* RCW 51.12.010. Here, the mental condition sustained by Debbie Rothwell resulted from cleaning up brain matter, bone, blood, and medical supplies after a student committed suicide by shooting himself in the head. Ms. Rothwell's physical and mental responses occurred suddenly, were tangible, and produced immediate results. Therefore, I disagree with the majority's conclusion that Ms. Rothwell was not covered by the Act, and respectfully dissent.

As noted in the majority, a mental condition "resulting from exposure to a single traumatic event" is considered an injury under the Act. WAC 296-14-300(2). Even a cautious construction of the Act provides for coverage of Ms. Rothwell's mental

condition arising from the sudden, tangible, and traumatic actions of cleaning up a student's remains and searching for bombs. Whether the school administrators asked, directed, instructed, or ordered Ms. Rothwell to assist with these duties does not impact her entitlement to coverage under the Act. The school administrators were dealing with a tragic event and asked for Ms. Rothwell's assistance. Unlike cases of dysfunctional or harassing employee-employer relationships, here the administrators sought the help of Ms. Rothwell. Ms. Rothwell's complaint does not allege she experienced posttraumatic stress disorder (PTSD) because of harassment or discrimination by school administrators.

The majority agrees, and Ms. Rothwell concedes, that the stress of cleaning up the suicide scene, searching for bombs, and discovering that a bag she handled might have contained an explosive device all contributed to her mental condition. Immediately after Ms. Rothwell learned the identity of the student, she became physically ill and emotionally distraught, forcing her to leave the school. Later, she looked for bombs, cleaned up soot from the bomb detonation, and cleaned up candles and cards placed at the suicide scene.

Ms. Rothwell is being penalized by the majority for having a series of traumatic events that she sustained only because she was a dedicated employee who kept returning to ever-increasing emotional tasks at work. Had Ms. Rothwell simply left the school after

completing her first task and suffered PTSD, the majority's conclusions would support coverage under the Act as a single, traumatic injury. By focusing on the series of incidents, the majority assumes that the individual incidents did not constitute an industrial injury. Even though these actions occurred over several days, they caused Ms. Rothwell sudden, immediate mental harm.

The majority cites *Snyder v. Medical Service Corporation of Eastern Washington*[1] and *Boeing Co. v. Key*[2] to conclude that Ms. Rothwell's mental condition does not constitute an industrial injury for purposes of the Act. The majority also suggests that these cases are analogous to Ms. Rothwell's situation because each involved a plaintiff diagnosed with PTSD or other mental condition resulting from harmful employer treatment. But these cases are clearly distinguishable. And the same trial judge ruled correctly in *Snyder*, as he did here, although with opposite results.

Ms. Snyder allegedly suffered PTSD as a result of her supervisor's intimidating, threatening, belligerent, harassing, and abusive behavior toward her. *Snyder v. Med. Serv. Corp. of E. Wash.*, 98 Wn. App. 315, 320, 988 P.2d 1023 (1999), *aff'd*, 145 Wn.2d 233, 35 P.3d 1158 (2001). The conduct occurred for over 10 months. We affirmed the

[1] *Snyder v. Med. Serv. Corp. of E. Wash.*, 98 Wn. App. 315, 988 P.2d 1023 (1999), *aff'd*, 145 Wn.2d 233, 35 P.3d 1158 (2001).

[2] *Boeing Co. v. Key*, 101 Wn. App. 629, 5 P.3d 16 (2000).

trial court's conclusion that Ms. Snyder's claims were not an injury under the Act. In *Boeing*, the evidence at trial showed that the tension and hostility between the plaintiff and her supervisor had been increasing for quite some time. *Boeing Co. v. Key*, 101 Wn. App. 629, 634, 5 P.3d 16 (2000).

Likewise, in *Wheeler v. Catholic Archdiocese of Seattle*, Catherina Wheeler sued her employer for negligent supervision, claiming that harassment by a co-worker caused her to suffer emotional distress and PTSD. *Wheeler v. Catholic Archdiocese of Seattle*, 65 Wn. App. 552, 565, 829 P.2d 196 (1992), *rev'd on other grounds*, 124 Wn.2d 634, 880 P.2d 29 (1994). The harassment in *Wheeler* occurred for more than one year. The court denied coverage under the Act as it did in *Snyder* and *Boeing*.

These cases point out that conflicts with supervisors or harassment by supervisors do not constitute an industrial injury. And Ms. Rothwell does not assert either a conflict relationship or harassment. She does not claim the kind of "rude, boorish, overbearing behavior of a supervisor" that occurred for over 10 months in *Snyder*[3] or the harassment in *Wheeler* or *Boeing*.

Importantly, the decisions of the Board of Industrial Insurance Appeals (Board) also demonstrate that Ms. Rothwell's claim for coverage under the Act would have been

[3] *Snyder*, 98 Wn. App. at 318.

accepted as an industrial injury.

In the Board's decision, *In Re Michelle D. Glenn*, No. 05 12322 (Wash. Bd. of Indus. Ins. Appeals July 12, 2006), the Board determined that Ms. Glenn sustained an industrial injury under the Act. Ms. Glenn was subjected to a sudden, traumatic event during the course of her employment when she learned that her employer had committed suicide. Ms. Glenn worked as the assistant for Dr. Greg Tindal, a chiropractor. One morning, Dr. Tindal came to work intoxicated, following several weeks of problem drinking. Ms. Glenn sent him home to sober up. Later that day, while Ms. Glenn was performing office work at home, she was told that Dr. Tindal had shot and killed himself in his backyard. Ms. Glenn felt guilty and partially responsible. She suffered severe depression, anxiety, and physical symptoms including headaches, muscle spasms, heart palpitations, and she developed PTSD due to the incident.

The Board concluded that hearing of Dr. Tindal's suicide was an industrial injury, a sudden and traumatic event occurring during the course of Ms. Glenn's employment.

Similarly, in *In Re Sara S. Deneke*, No. 06 17462 (Wash. Bd. of Indus. Ins. Appeals Sept. 24, 2007), the Board concluded that Ms. Deneke suffered an industrial injury. Ms. Deneke worked at a bank and had spoken with a bank robber. While working at the bank, Ms. Deneke learned the robber had been armed with a weapon. She

suffered PTSD including symptoms of anxiety, irritability, sleeplessness, and panic attacks. One year later, while working at the bank, Ms. Deneke overheard a co-worker recounting the experience the co-worker had with a robbery. The Board found that "[u]pon hearing the coworker's description of that robbery, Ms. Deneke experienced an immediate onset of anxiety related problems." *Id.* at 4. The event aggravated Ms. Deneke's PTSD, which was caused by her reaction to the bank robbery. The Board concluded that Ms. Deneke sustained an industrial injury from the initial robbery and again, a new and separate injury, when she overheard her co-worker speaking about the co-worker's robbery incident. These Board cases are factually and legally applicable to Ms. Rothwell's case.

The majority rejects Ms. Rothwell's claim under the Act on the basis that it resulted from a series of incidents over a period of a few days, assuming that Ms. Rothwell's PTSD was not the result of a single traumatic event. While the majority seeks to provide Ms. Rothwell individually with a remedy, the majority's holding that she did not suffer an industrial injury will preclude other workers from being compensated for similar traumatic incidents at work. This narrow interpretation of industrial injury is contrary to the liberal construction of the Act required by statute and case law.

Ms. Rothwell's mental condition was caused by a sudden and tangible happening

of a traumatic nature. Ms. Rothwell's mental condition caused by the injury is compensable under the Act. The trial court properly granted Nine Mile Falls School District's CR 12(b)(6) motion dismissing Ms. Rothwell's claims.

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Kulik, J.