

A Smorgasbord of Interesting Disability Cases: Accidental Bodily Injury

December 9, 2011 by [Martin Rosen](#)

[**Boly v. The Paul Revere Life Ins. Co.**](#), 238 Ore. App. 702 (2010)

Facts and holding: In the late 1980s, Jeffrey Boly (“Boly”) was diagnosed with sleep apnea and narcolepsy. With treatment, doctors were able to stabilize Boly’s nighttime sleeping, but Boly’s daytime tiredness persisted and interfered with his ability to perform his job duties. As a result, Boly applied for and received partial disability benefits from his insurer, The Paul Revere Life Insurance Company (“Paul Revere”).

Thereafter, Boly began to experience cognitive impairment. He was evaluated by a neuropsychologist who determined that Boly’s cognitive impairment likely resulted from chronic, nocturnal hypoxia (lack of oxygen to the brain) associated with sleep apnea that occurred prior to the diagnosis and treatment of Boly’s sleep apnea.

In 2006, the year before Boly’s 65th birthday, Boly requested that Paul Revere reclassify his disability as resulting from “injury” rather than from “sickness.” (Under the terms of Boly’s policy, disability benefits were available until age 65 if the disabling condition resulted from “sickness,” but for life if it resulted from “injury.”) The policy defined “injury” as “accidental bodily injury,” but did not define the term “accidental.” During its consideration of Boly’s request, Paul Revere had its doctors examine Boly’s medical records and, like Boly’s physicians, concluded that Boly’s cognitive impairment resulted from sleep apnea and narcolepsy. Based on this finding, Paul Revere denied Boly’s request and discontinued his benefits on his 65th birthday.

Boly brought suit against Paul Revere seeking reinstatement of his disability benefits and a declaration that he was entitled to lifetime benefits. Paul Revere moved for summary judgment on the grounds that Boly’s disability resulted from a sickness — sleep apnea. Boly argued that his brain injury was an accidental injury because it was an unintended result of an external event — either his failure to breathe during episodes of sleep apnea or his physician’s failure to diagnose his sleep apnea.

The trial court granted Paul Revere’s motion for summary judgment, ruling that Boly’s nocturnal hypoxia was the consequence of his sleep apnea (a sickness). The Court of Appeal affirmed. Since Boly’s policy did not provide a definition for “accidental bodily injury,” the meaning of the term depended on the “understanding of the ordinary purchaser of insurance.” Applying that standard, the Court rejected Boly’s argument that every unintentional result is accidental as long as it is caused by external events or forces. And the Court was right. Otherwise, every heart attack that could be traced to high cholesterol and every case of lung cancer that could be traced to smoking would also be considered “accidental injuries.”

The Court held that Boly’s failure to breathe and his undiagnosed sleep apnea were not “forces” or “events” in the same sense as lightening (as in being struck) or gravity

(as in falling). The typical purchaser of insurance would regard Boly's condition as analogous to organ failure or damage that resulted from disease. Such disabilities do not arise from "accidental bodily injury." Therefore, Boly's brain damage was not "accidental."

Lessons Learned: Boly's position was that his hypoxia should be considered an "accidental bodily injury" because it was the unintended result of his sleep apnea. While an unintended result is one factor many courts consider in determining whether a disabling condition is an "accident," the condition must also not be the result of a naturally occurring process, such as cancer, aging, medical disorders, etc. See, e.g., [*Khatchatrian v. Continental Casualty Co.*](#), 332 F.3d 1227 (9th Cir. [Cal] 2003) (death from stroke not "accidental" because death was caused by natural, rather than external causes).

For a related case in which a heart attack at rest was considered not to be accidental, see *Evans v. Mutual of Omaha Ins. Co.*, 2008 Cal. App. Unpub. LEXIS 2572 (2008) (in which the author prevailed).

From [*A Smorgasbord of Interesting Disability Cases*](#).