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Article 18

Workmen's Compensation - Heart Attack Held Within Statute

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(2) neither party made any report of the option in his income tax returns in the year the option was granted.

The fact that the disposal value of the option was speculative, coupled with the failure of both the employer and employee to claim any deduction in their income tax returns for the value of the stock when given, was sufficient for the court to distinguish the Van Dusen case from the instant case.

The only authority cited for the holding in the instant case was the dicta contained in the case of *Commissioner of Internal Revenue v. Smith*.[15] Although the court in that case held that the compensation was not confined to the mere delivery of an option of no value, but included the compensation obtainable by the exercise of the option given for that purpose, the court further stated:

> When the option price is less than the market price of the property for the purchase of which the option is given, it may have present value and may be found to be itself compensation for services rendered.[16]

It is upon this statement that the instant court relies.

This case is significant because it is the first to hold that the value of the option, when granted, is the amount to be reported as income. However, the possibility of other courts following this precedent is slight because none seem to favor the taxpayer as much as the instant court, and since the decisions in such cases rest on the facts involved, courts will have little trouble distinguishing other cases from the instant case.

WORKMEN'S COMPENSATION–HEART ATTACK HELD WITHIN STATUTE

The plaintiff was a police captain whose duties were mainly supervisory. On the day in question, plaintiff led an emergency search for a fugitive, an activity unusual to the normal performance of his duties. Because of the heavy strain of walking three hours over rugged terrain and the digging out of his car, which had become stuck in the sand, the plaintiff suffered a heart attack and was permanently disabled. Action was brought to recover compensation. The court allowed the claim, holding that the disability was a result of strain on the heart due to unusual exertion and was an "accident arising out of and in the course of employment" within the meaning of the Workmen's Compensation Act.[1] *Hathaway v. New Mexico State Police*, 57 N.M. 747, 263 P. 2d 690 (1953).

Generally, when the courts speak of "accident" as used in Workmen's Compensation Acts, they are construing the term liberally and in its

[15] 324 U.S. 177 (1945).

[16] Ibid., at 181. [1] Workmen's Compensation Act, 1941 Comp. §§ 57-902.

popular sense, finding it to mean "any mishap or untoward event"[2] which is "produced by something unforeseen, unexpected and unavoidable in the act which precedes the injury."[3] The courts are apparently satisfied with this early construction since it has remained constant throughout the years. Indicative of the early decisions on this point is the case of *United States Mutual Accident Ass'n. v. Barry*[4] where the court said:

> If a result is such as follows from ordinary means voluntarily employed in a not unusual or unexpected way, . . . it cannot be called a result effected by accidental means; but if in the act which precedes the injury something unforeseen, unexpected, unusual, occurs, which produces the injury, then the injury has resulted . . . through accidental means.[5]

It was not the intention of the legislature to make the employer an insurer against all accidental injuries which might occur to an employee while in the course of employment. In order for an accident to be compensable under the Act, there must be a causal connection; it must be reasonably connected with the employment.[6] In *Dreyfus & Co. v. Meade*[7] the court stated that the words "arising out of" and "in the course of" have to be used conjunctively, and to satisfy the statute both conditions have to occur. It is not enough that the accident occur in the course of employment, but the causative danger must also arise from it. The words "arising out of" refer to the origin of the accident and describe its character, while "in the course of" refers to the time, place, and circumstances under which the accident has taken place. Whether the employee was in the sphere of his duty when the accident occurred is very important in determining whether recovery will be allowed.[8]

There are two basic principles which the courts follow in deciding the heart cases. The first is that when death or a disabling heart injury results from unusual strain or exertion in the ordinary course of employment, the victim shall be compensated.[9] In *Margolies v. Crawford Clothes*[10] the court followed this principle and allowed recovery to a salesman who had suffered a disabling heart attack while in the process of moving several hundred overcoats onto the sales floor. The court was of the opinion that even though this salesman had previously moved other garments in much smaller quantities when called upon to do so,

[2] Stacey Bros. Gas Const. Co. v. Massey, 92 Ind. App. 348, 175 N.E. 368 (1931).
[3] Crews v. Moseley Bros., 148 Va. 125, 127, 138 S.E. 494, 496 (1927).
[4] 131 U.S. 100 (1889).
[5] Ibid., at 109.
[6] Patterson v. S. S. Thompson, Inc., 12 N.J. Misc. 4, 169 Atl. 338 (S. Ct., 1933).
[7] 142 Va. 567, 129 S.E. 336 (1925).
[8] Porter v. Industrial Commission, 352 Ill. 392, 186 N.E. 110 (1933).
[9] Hill v. Thomas S. Gassner Co., 124 Pa. Super. 217, 188 Atl. 382 (1936).
[10] 24 N.J. Super. 598, 95 A. 2d 413 (1953).

the fact remained that his remuneration was dependent on commission received while on the sales floor. The court concluded that the task undertaken was unusual to the type of work there involved.

In some cases, the employer has contended that recovery should not be allowed where the employee had already been doing strenuous work. The court in *Industrial Commission of Ohio v. Franken*[11] pointed out that this contention has no merit. It was there held that whether the work being done was "light" or "heavy" had no place in the consideration of a claimant's right to recover. The problem still resolves around the unusualness of the work at the time the accident occurred. This rule has been relaxed somewhat by the New York Courts. In the case of *Masse v. James H. Robinson Co.*,[12] plaintiff had long been doing physically hard work. During the particular week in question, the plaintiff was engaged in unusually strenuous work and as a result suffered a heart attack. It was pointed out, however, that the attack did not occur until Saturday, plaintiff's day off, and that there was no "extraordinary or catastrophic incident" to which the attack could be traced. The court, in allowing recovery, stated that, "whether the incident was an accident is determined not by legal definition but by the common sense view point of the average man."[13] The rule set forth in the *Masse* case has been limited to some extent by the decision in *Devo v. Village of Piermont Inc.*[14] In that case, plaintiff, a policeman, was exposed to exceptionally bad weather while directing traffic. This was not an unusual incident in his normal day's work. Four days later the plaintiff lost the use of his arm. At no time did plaintiff suspect an injury before the actual "loss of use" occurred, yet medical testimony traced it to the day in question. Recovery was denied. After recognizing that the trend in New York cases is to relax the rule which requires that the work be unusual, and allow recovery where the attack occurred from exertion of work, the court stated that the "common sense" interpretation of what constitutes an accident should not be extended to "fringe cases" where there is no single incident which can be regarded as an accident. What cases fall within the "fringe" area is a matter of court interpretation, and might mean, depending on the future outlook of the courts, either a complete reversal of the present trend or only a precedent for future use when the lower courts "go too far."

A few courts which interpret their statutes literally hold that in order for an accident to be compensable it must happen suddenly, violently, and produce at the time an injury to the physical structure of the

[11] 126 Ohio St. 299, 185 N.E. 199 (1933).

[12] 301 N.Y. 34, 92 N.E. 2d 56 (1950).

[13] Ibid., at 34 and 57.

[14] 283 App. Div. 67, 126 N.Y.S. 2d 523 (1953).

body.[15] In *Costly v. City of Eveleth*,[16] the deceased, a member of the city fire department, suffered chill and exposure while attending a fire. Shortly thereafter, he developed pneumonia and died. The court held that this was not compensable under the statutory definition of accident since there was no proof of "injury to the physical structure of the body."

An Illinois court in *Marsh v. Industrial Commission*[17] attempted to follow a somewhat similar view to that set down in the *Costly* case. The employee in the *Marsh* case was apparently healthy, but after lifting a heavy weight he became sick and disabled. The cause of his illness was diagnosed as a fibrillating heart (a heart not beating in rhythm). Medical testimony was introduced to show that such exertion would aggravate an existing heart condition but would have no effect on a normal heart. The court did not allow compensation, laying stress upon the fact that there must be external evidence of the accident. In reversing the lower court, the Supreme Court stated:

> It is well settled the Workmen's Compensation Act is not limited in its application to healthy employees. Where one sustains an accidental injury which aggravates a diseased condition, or where, in performance of his duties and as a result thereof, he is suddenly disabled, an accidental injury is sustained even though the result would not have obtained had the employee been in normal health.[18]

The *Marsh* case, then, settles the question of whether an employee can recover compensation where he had a pre-existing heart disease. But as pointed out in the case of *O'Neil v. W. R. Spencer Grocer Co.*,[19] the Act is not intended to cover aggravation of a pre-existing disease without an "accident" or "fortuitous event." In that case, the plaintiff was a salesman whose normal day's work involved a considerable amount of driving. On the particular day in question, the plaintiff was operating his car in a heavy snow when he suffered a heart attack. The court refused recovery, stating that driving through a heavy snow is not such an unusual event as to amount to an "accident." The plaintiff's cardiac failure was viewed as being due to a disease of life to which everyone is exposed.

The second principle which the courts follow in heart cases is that recovery is allowable even though the accident was caused by complainants pre-existing heart disease.[20] The most common argument against recovery in such cases has been that since the accident was precipitated by

[15] Costly v. City of Eveleth, 173 Minn. 564, 218 N.W. 126 (1928); Blair v. Omaha Ice and Cold Storage Co., 102 Neb. 16, 165 N.W. 893 (1917).

[16] 173 Minn. 564, 218 N.W. 126 (1928).

[17] 386 Ill. 11, 53 N.E. 2d 459 (1944).

[18] Ibid., at 13 and 460.

[19] 316 Mich. 320, 25 N.W. 2d 213 (1946).

[20] Christensen v. Dysart, 42 N.M. 107, 76 P. 2d 1 (1938).

the plaintiff's heart disease, it did not "arise out of" employment, and therefore, is not compensable. However, the courts adhering to this argument are in the minority.[21]

In the case of *Savage v. St. Aeden's Church*,[22] the employee was found dead in a room where he was preparing to paint. Evidence was introduced establishing that death resulted from a skull fracture suffered as a consequence of a fall believed to have been precipitated by a heart attack. In allowing recovery, the court pointed out that an injury suffered during employment does not fail being one which "arises out of" employment merely because some infirmity resulting from a disease originally set in action the final proximate cause of the injury.

There have been many heart cases so holding, but the greatest number of cases adhering to this principle involve diseases other than those of the heart.[23] The court in the case of *Rockford Hotel Co. v. Industrial Commission*[24] allowed recovery to a workman who fell into a pit of hot cinders and died shortly thereafter. The cause of the fall was traced to an epileptic fit. It was urged that the seizure was the direct cause of the injury and that it therefore did not "arise out of" his employment. After carefully studying the question, the court stated:

> Some cases hold that, where an employee is seized with a fit and falls to his death, the employer is not liable, because the injury did not arise out of the employment . . . but a majority of the courts, American and English, hold that, if the injury was due to the fall, the employer is liable, even though the fall was caused by a pre-existing idiopathic condition.[25]

In all of these cases the courts have been careful to point out that it is not because of the heart disease or previous ailment that they are allowing recovery but that in each case it has been proved that the plaintiff suffered disability or death from the fall or other accident, even though the accident was precipitated by the heart disease or previous ailment.

It seems apparent, from the forgoing cases, that precedent set in other jurisdictions means very little. Although the courts have the aforementioned principles to guide them, what the outcome will be in any jurisdiction, even where the facts are identical, depends to a large extent on the interpretation placed on the particular Workmen's Compensation Act there involved. If the courts construe it liberally, complainant is compensated; if not, recovery is denied.

[21] Pierce v. Phelps Dodge Corp., 42 Ariz. 436, 26 P. 2d 1017 (1933); Stombough v. Peerless Wire Fence Co., 198 Mich. 445, 164 N.W. 537 (1917); McNamara v. Industrial Accident Commission, 130 Cal. App. 284, 20 P. 2d 53 (1933).

[22] 122 Conn. 343, 189 Atl. 599 (1937).

[23] New Amsterdam Casualty Co. v. Hoage, 62 F. 2d 468 (App. D.C., 1932); Van Watermeuller v. Industrial Commission, 343 Ill. 73, 174 N.E. 846 (1931); Rockford Hotel Co. v. Industrial Commission, 300 Ill. 87, 132 N.E. 759 (1921).

[24] 300 Ill. 87, 132 N.E. 759 (1921). [25] Ibid., at 89 and 760.