of dynamite and other explosives except under supervision and laws which require the exercising of extreme care and caution.

It is hoped that the cases and authorities in law cited and quoted from hereinabove will prove interesting and informative to anyone interested in cases involving explosions or the use of explosives.

# Workmen's Compensation or Employment Disability Compensation

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WORKMEN'S compensation laws, like all laws, came into being and effect as a result of crystalized public opinion. The growth and development of this social legislation has been relatively slow. The first workmen's compensation law was enacted in New York some forty-five years ago. Mississippi, the last of the forty-eight states, enacted its workmen's compensation law approximately five years ago.

There are now forty-eight separate systems of workmen's compensation in the United States, three federal, three territorial, and one municipal system in the Virgin Islands. The laws vary in coverage and benefits, but the trend in legislation and amendments to such laws, as well as the administration and construction by the courts in recent years is only in one direction. That direction or trend is to greater coverage and benefits. Today the workmen's compensation laws embrace many benefits to workmen that were unknown and unheard of under the early administration and construction by our courts. The future of workmen's compensation as to its further coverage and benefits is uncertain. It is, however, more or less certain that in the future there will be broader coverages and benefits, together with added advantages to the injuried employee.

Workmen's compensation laws at present are one of the outstanding forms of social legislation. Social security laws and old age pensions have followed, and we can expect that further development of workmen's compensation will assume additional liability which perhaps rightfully belong to other fields of social security law now enacted in some states, such as unemployment compensation disability.

Unemployment compensation disability laws were designed to compensate for non-industrial injuries. In California the unemployment compensation is administered by the unemployment compensation commission, the same commission which provides coverage and benefits for unemployment. Other unemployment compensation laws are administered in like manner in the states of New Jersey, Rhode Island.

In New York, the unemployment compensation disability law is administered by the workmen's compensation board. Since these laws do not provide for medical benefits commensurate with workmen's compensation laws, there are none of them which equal the benefits under the workmen's compensation laws.

What then is the future of workmen's compensation laws? Suppose a workman has what honestly and fairly is a non-occupational disability which affects his future employability and which requires a large amount of medical and hospital expense. This employee will most likely look to that system of social security which will provide the greatest financial benefit. He will probably associate his disability in some manner with his employment, so as to receive the increased benefits thereunder. Claims made under unemployment compensation disability are usually paid without regard to whether the claim is industrially caused or not. The unemployment compensation disability carrier will promptly inquire as to whether or not a claim has been made under the workmen's compensation law. The unemployment compensation disability carrier will prob-

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ably assist the claimant in making a claim under the workmen's compensation law, thereby putting itself into a position where it can claim a lien against any award allowed by the workmen's compensation board.

By the very nature of workmen's compensation law, there must be rules and requirements which must be met to justify the collection of benefits under this law. The rules of workmen's compensation laws most uniformly laid down require that the disability must have been caused by accident or injury and that the same must arise out of and be in the course of the employee's occupation and have been proximately caused thereby. The barrier between unemployment compensation disability and workmen's compensation is then clear cut by definition. A non-industrial disability could not meet the requirements so as to be compensable under workmen's compensation law.

This latter statement is, however, more theoretical than true. The problem is not that simple. What is an accident and what arises out of and occurs in the course of the employment and is proximately caused thereby has been the source of much litigation. It is a complex subject and one upon which even the courts have not agreed. In the early days of workmen's compensation administration, claimants were rarely represented by an attorney. Nor were the insurers or employers represented by attorneys. The insurers' representatives were usually claims men except in those states where representation was required to be by one admitted to practice law. The hearing officer in most instances looked to and attempted to protect and prove the claim of the workman. With the growth and development of workmen's compensation, attorneys now have interested themselves in representing both applicants and the defendants. The fees for claimants' attorneys are now higher—and let me say here that on the whole they are higher than those for the attorneys employed by and who represent insurance companies in defending workmen's compensation claims.

Referees and commissioners of workmen's compensation have always championed the cause of the workman and endeavored not only to give the workmen's compensation law the broad and liberal construction called for by statute but have liberally construed the facts. Claimants' attorneys have become experts in strategy in workmen's compensation so that it has become so complex that matters which used to be handled in a very few minutes now take several days in litigating the questions of compensability. The question of industrial or non-industrial condition has become to a great degree a medical problem, and there are medical experts whose conclusions and opinions are usually decisive of the rights of the claimants under compensation laws.

The trend, therefore, in workmen's compensation has reached a point where more considered thought need be given to the boundaries between industrial and non-industrial disability. A discussion of a few cases will demonstrate the need for clear thinking. The requirement that a line of demarcation be made between unemployment compensation disability claims and workmen's compensation claims must be made. The commissions and the courts were prone to find a condition as industrial because there was no other system of social security laws by which the man could recover. I have yet to observe or find any case which discusses the need for a close distinction as is now presently required as to whether the injury arose out of and occurred in the course of employment and was proximately caused thereby. Since workmen's compensation was a matter of special legislation whose constitutionality has been sustained and which sets forth the lines of demarcation between non-industrial and industrial, should not the courts, in view of new social security laws such as unemployment compensation disability, make more careful analyses to see that industry is not burdened with non-industrial conditions?

Consider for a moment the case of *University of Denver* v. *Nemeth*, 257 P. 2d 423, where a student football player was injured in spring football practice. He was employed by the university at $50 a month to do work about the campus and tennis courts. The court held the university was liable for workmen's compensation benefits and justified its conclusion by saying that their decision was consistent with the broad aims of compensation laws. If one were to consider that this state had an unemployment compensation disability law in effect at the time that this accident occurred, would then the court have felt it was necessary or consistent with the law to hold that this student was in the course of his employment while playing football

when he was actually hired and employed to do work about the campus and tennis courts? Then there would have been no need to indulge in the idea that the student was a paid football player. The court could then have well said that the man was entitled to benefits under the unemployment compensation disability law.

It is this liberal construction of the facts which is breaking down the rules so necessary to the life and existence of the workmen's compensation laws. The requirement for closer adherence to those rules is necessary in view of the enactment of unemployment compensation disability laws in our several states.

Under many union contracts, employers are required to pay travel time to and from the job. Injuries suffered while on travel time have consistently been held to be in the course of the employment. However, under no interpretation except liberality can it be said that the employee is performing any service for his employer during such travel time. I know that many applicants and industrial boards would take issue with this statement, but such injuries in truth and in fact do not meet the requirements of such compensation laws. In New Mexico, in *Livingston v. State IAC,* and in Arizona, in *Serrano v. Arizona Industrial Accident,* employees injured while on travel time were awarded compensation. It is noteworthy to mention that the industrial boards in those states had denied compensation benefits but that the appellate courts reversed the boards' decisions. Again let us inquire if any unemployment compensation disability law had been in effect in those states at the time of those injuries would the courts need to have gone beyond the intended limitation of coverage and grant benefits when another social security system would have compensated the employee? The hazards of travel to work are hazards to which all of us are exposed while upon the streets or highways. They are not peculiar to the employment. Many claimants and their attorneys argue they would not have been at the place or riding in such automobile were it not by reason of their employment and except that they were travelling to get to work. We would not need go much further to provide that any injury to and from work is compensable because of the fact that each and every person employed is required to hazard heavy traffic, ice, rain, snow and other hazards to get to work. The mere fact that the employee risks these hazards would justify his assertion that they were purely by reason of his occupation. The necessity for demarcation and boundary between non-industrial and industrial is obviously therefore required even more so today than ever before.

Another undue extension of arising out of and occurring in the course of employment and proximately caused thereby is that of injuries which arise from idiopathic seizures. Courts and industrial boards in their earlier decisions held such injuries did not meet with the requirements and were therefore not compensable. Later it was held that if some incident of the employment contributed to the injury, such as coming in contact with machinery or falling from heights, that such accident was therefore compensable. This latter rule has now been abrogated in California. In the case of *Employers Mutual v. IAC,* 41 Cal. 2d 676, the Supreme Court of California, by a four to three decision, held that where an employee suffered an epileptic seizure while working in an aisleway at his place of employment, who fell as a result of his epilepsy, he had suffered an industrial injury. The employee in this case had suffered a skull fracture. His head had struck the hard cement floor. The hazard of injury or skull fracture was no greater than if he had been walking upon a public sidewalk or even upon a hardwood floor. The cement floor was but a condition and not a proximate cause. In the earlier decisions, the proximate cause followed the definition ordinarily followed in tort cases. The courts now have said that the proximate cause as used in workmen's compensation law merely refers to some connection with the employment rather than meeting the usual thought that attorneys are familiar with.

Heart conditions manifesting themselves at work have become compensable under many state laws. I have heard many competent physicians and surgeons say that arterial sclerosis, or atherosclerosis are responsible for coronary attacks and myocardial infarctions which we laymen frequently call heart attacks. It has been learned that through disease such as arterial sclerosis the arteries have become hardened and that they become coated so that the space for the blood to flow becomes smaller and smaller until an occlusion occurs and heart trouble develops. Earlier decisions that you have all read

have unanimously held that disability from heart conditions such as these were not proximately caused by the employment. In those days it was held that the disability was merely a step in the advancement of the disease which led to the disability. Later cases have held that where there was some unusual strain that the cases were compensable.

The most recent trend in heart cases now holds that they are compensable without the need of an unusual exertion so long as it could be said there was at least some connection with the employment, no matter how slight. In *Krawczyk v. Jefferson Hotel,* 103 N.Y.Supp. 2d 40, a 70-year old hotel cook died soon after witnessing an assault on his assistant by another hotel employee. The court held that the shock and emotional strain on the heart muscle from witnessing the assault showed a connection with the work and justified an award in favor of the employee. In *Kehoe v. London Guarantee & Accident Co.,* 103 N.Y.Supp. 2d 72, the employee, after climbing 91 stairs leading from the subway to the street died of a coronary heart attack. The court held the use of the stairs involved considerable strain and precipitated the attack. This man had suffered from a previous heart condition for some time. Yet the employee was required to use the subway in going and coming to his daily work.

In *Howell v. Charles Bacon Co.,* 98 F. Supp. 567, the deceased employee suffered a fracture of his heel bone in a fall. He was in constant pain and worried a great deal about his condition. He died of a coronary thrombosis *three months* after the injury, having suffered his heart attack two weeks before the fatal attack. The court held that the inseparable consequences of ceaseless pain and worry aggravated a pre-existing coronary sclerosis and hastened his death.

A police chief chased a hit and run driver, became excited and flushed. He was exhausted afterwards and died two days later at night of a heart attack. There was evidence that about a month before the exciting incident he suffered his first heart attack. The court held the exertion of the automobile chase precipitated his death by a second heart attack. It was said that the mere fact that his second heart attack was delayed a few days and occurred after he had left the employer's premises was no bar to recovery. *Maryland Gas Co. v. Dixon,* 63 S.E. 2d 272.

In *Jones v. California Packing Corp.,* 244 P. 2d 640 (Supreme Court of Utah, May 15, 1952), a foreman at the defendant's pea viner was required because of the perishable nature of peas to see to it that they were harvested speedily. On June 28 and 29, 1950, the deceased worked eight hours each; on the 30th he worked 11½ hours; and July 1 and 2 he worked 13¼ and 15½ hours respectively. After a hot night with little sleep, he was back to work at 2:00 A. M., went home for breakfast at 6:30 A. M., returned to work at 7:00 A. M., became ill at 8:30 A. M., staggered home and died a few minutes later from a coronary occlusion. The deceased had a pre-existing thickening of the coronary artery. The medical evidence as to cause was conflicting. The court held that pre-existing disease when aggravated by industrial accident is compensable, and an internal failure caused by exertion may be an *accident* within the meaning of the law without the requirement that the injury result from some incident which happened suddenly and is identifiable at a definite time and place. The court further commented that the Workmen's Compensation Act should be liberally construed to effectuate its purposes and when in doubt an award should be resolved in favor of coverage of the employee.

A widow sought death benefits for a fatal heart attack alleged to have been precipitated by her husband's work, in an action entitled *Merritt v. Dept. of Labor,* 251 P. 2d 158 (Wash.) The employee, a 68-year old re-saw operator in a lumber mill, was required to sit on a bench and handle various levers with either hand. The levers had a pressure of 40 pounds. No lifting was required. Twenty minutes after his work day, he was found unconscious on the floor of the tool shed. He was taken to the hospital and found dead on arrival. The probable cause of death revealed by autopsy was a clogging of the right coronary artery. There was medical testimony that the fatal attack was precipitated by the physical activity. In the State of Washington, the term "injury" has a requirement for compensability that there be some sudden and tangible happening of a traumatic nature. The court said that this means an "accident" arises out of the employment when the required exertion producing the "accident" is too great for the man undertaking the work, whatever the

degree of exertion or the condition of the workman's health.

In earlier days we have heard of railroad spines; then we next heard of sacroiliac sprains, and now we hear of damage to intervertebral discs. Many physicians have attributed such disc disability to degenerative processes. Some have said they were caused by industrial lifting, strains at work and position of the workman at the time he felt his pain. The causes of disc injuries as they refer to industrial and non-industrial conditions would require volumes to discuss, but suffice it here to say that those cases due to disease which merely manifest themselves while at work rather than being caused by the work should be held to be non-industrial.

The trend and direction of workmen's compensation is to liberality of the facts not so much as to the law. The laws have been well defined. Since this is the present situation, it calls for and requires more careful presentation of the facts under workmen's compensation claims, with rigid adherence to the requirements of injuries arising out of and occurring in the course of the employment and being proximately caused thereby, or else the claim should be rejected so that such other social security laws can pay and should pay for the disability incurred by such workman.

Yes, we have heard and will hear that unemployment compensation disability systems are not adequate. Most of them in fact are not, but we have long heard that workmen's compensation is not adequate and we find that in each and every session of the legislature that the workmen's compensation laws are enlarged in coverage and benefits. Efforts should be bent to see that non-industrial conditions are charged to unemployment compensation disability, and if the coverages are not adequate such steps should be taken as to enlarge upon this social system of law. The coverages under unemployment compensation disability are largely those by monopolistic governmental fund. Such coverage could well be granted by private insurance were it not due to the fact that private insurers in some instances are required to write unemployment compensation disability coverages at the same costs that the monopolistic fund writes it but in so writing it the private carrier must include added benefits. Many of these written by private carriers offer medical expenses, and in some instances death benefits. There is no justifiable reason why industry should be called upon to pay these costs, nor is there any reason that the public should be called upon to pay the increased costs of services and products where non-industrial conditions are assessed against an employer. The field of unemployment compensation disability is young. There are many problems such as cost and administration which need be considered in view of the laws which are now in force. As we have indicated, the workmen's compensation board in New York administers the unemployment compensation disability and the workmen's compensation law. One board then must decide under which social system the claimant may recover. In those states where there are two commissions administering the law each will attempt to say that the claim belongs to the other system. The problems of cost of administration of the unemployment compensation disability law are many and complex, but they deserve our best efforts in an attempt to solve, as we are confronted with possible federal legislation in the field of health insurance and rehabilitation. President Eisenhower in his health message expressed the hope that the various states would participate equally in the cost of rehabilitation. Federal security administrators have long been anxious to have health insurance coupled with a program for disability, so the need is great to see that all claims under workmen's compensation laws are only found compensable when they meet the requirements originally laid down for these laws. The boundaries must therefore be kept, and whether we like it or not unemployment compensation disability laws probably will likely be passed in other states and their coverages extended irrespective of who pays the cost. We all know that disability and health insurance is becoming a political football so that the future life of workmen's compensation laws and their administration at this stage of the trend in social security laws is most important.