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WORKMEN'S COMPENSATION — STATUTORY REQUIREMENT OF INJURY BY ACCIDENT

The Supreme Court of Mississippi in a 1958 case has affirmed the action of the State Workmen's Compensation Commission in an award where claimant's disability was the result of mental and physical strain incident to her work and aggravating a pre-existing hypertensive condition culminating in her disability due to a cerebral thrombosis. Claimant was employed in a supervisory position with the Insurance Department of Mississippi and had just finished the busiest three months of her working year when her stroke occurred[1].

The Mississippi court found that medical testimony was sufficient to develop a casual relation between the claimant's employment and cerebral thrombosis. According to the majority of the court:

> The issue as a matter of medical causation is the ability of the particular work activities or strains to affect the particular diseased vascular system. The direct medical question is whether, given this employee's pathology and the exertions of the job, the exertions in fact contributed to the collapse[2].

In effect, the majority of the court did not consider the statutory limitation of an accidental injury as controlling, and affirmed the award without discussing the point. In doing so, Mississippi has clearly endorsed the theory that a workman's normal duties when coupled with a pre-existing infirmity can constitute grounds for relief under the Mississippi Workmen's Compensation Law.

The Virginia Workmen's Compensation Act requires "personal injury by accident" and the accident must "arise out of and in the course of employment[3]." It is not necessary that the

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1 Insurance Dept. of Miss. et. al. v. R. R. Dinsmore, Adm'r., Estate of Mrs. Alice Dinsmore, Deceased, 104 So.2d 296 (1958).

2 *Id.* at 298.

3 Va. Code, § 65-7 (1950).

employee be engaged in activity which is unusual if the resulting injury is a sudden structural change in the body[4]. The Virginia court, on the other hand, has denied compensation where the injury is gradual in nature and the employee has not engaged in work which was abnormal in terms of his regularly assigned duties[5].

In accordance with the great majority of jurisdictions, a pre-existing disease is not a bar to compensation when the injury partakes of the nature of an accident[6]. However compensation has been denied when a pre-existing disease and normal duties have combined to produce a cerebral hemorrhage[7]. The Virginia rule, therefore, requires that the cause of the injury or the resulting consequences must be capable of classification as an accident and the Supreme Court of Appeals has not extended the concept beyond these limitations.

The great majority of Workmen's Compensation statutes restrict compensation to those injuries which are accidental in nature[8]. The judicial interpretation of this statutory requirement has been an extremely broad one, and a number of cases have denied that "accidental" has any precise significance when applied to Workmen's Compensation cases[9]. Generally, "accidental" is interpreted in accordance with the spirit and purpose of the acts, and several opinions do not hesitate to

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4 Virginia Elec. & Power Co. v. Quann, 197 Va. 9, 87 S.E.2d 624 (1955); Derby v. Swift & Co., 188 Va. 336, 49 S.E.2d 417 (1948); Big Jack Overall Co. v. Bray, 161 Va. 446, 171 S.E. 686 (1933).

5 Aistrop v. Blue Diamond Coal Co., 181 Va. 287, 24 S.E.2d 546 (1943).

6 Liberty Mutual Ins. Co. v. Money, 174 Va. 50, 4 S.E.2d 739 (1939).

7 Rust Engineering Co. v. Ramsey, 194 Va. 975, 76 S.E.2d 195 (1953).

8 Statutory requirements of accidental injury may take any number of forms. A summary of the phraseology used in stating the requirement may be found in 1 Larson, WORKMEN'S COMPENSATION LAW, 511 (1952).

9 Lynchburg Foundry Co. v. Irvin, 178 Va. 625, 16 S.E.2d 646 (1941); Laclede Steel Co. v. Industrial Commission, 6 Ill.2d 296, 128 N.E.2d 718 (1955); Rivard v. J. F. McElwain Co., 95 N.H. 100, 58 A.2d 501 (1948).

indicate that requirements of "accidental injury" should not result in defeating the workman's claim[10].

The requirement of accidental injury does, however, impose some limitations and the courts do not agree as to exactly what types of claims should be excluded as non-accidental. A consideration of the amount and type of exertion engaged in by the employee and the nature of the injury are helpful in analyzing the cases in this respect[11].

An employee who has not exceeded the normal exertions of his regular job and who suffers a rather localized injury, such as a hernia or a rupture, is generally held to have received an injury by accident. In these cases the resulting injury is "unforeseen" and "sudden" and a majority of courts state that the requirements of an accident are present[12]. On the other hand, the decisions are not so apt to find an accident when normal exertion causes a more generalized result such as a coronary thrombosis or a muscle strain. Here, the courts are hard pressed to find a sudden or violent event in either cause or result, and many deny compensation[13].

In this latter group of cases the claimant is often suffering from a pre-existing disease which is also a causal factor in his ultimate injury. The pre-existing disease which is accelerated by employment conditions is generally held to be no bar to recovery and is practically uniformly held to meet the "arising

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10 ". . . we early warned against too literal an interpretation of the elements of the definition of an accident. The purpose of these warnings to avoid a strained and technical meaning which would defeat the obvious intent and purpose of the act, namely, the industry should bear the expense of injuries to workmen occasioned by the employment." Winkelman v. Boeing Airplane Co., 166 Kan. 503, 203 P.2d 171 at 173 (1949). Hardin's Bakeries v. Ranager, 217 Miss. 463, 64 So.2d 705 (1953).

11 Larson, *op. cit. supra* note 8, at 512.

12 Duff Hotel Co. v. Ficara, 150 Fla. 442, 7 So.2d 790 (1942); Rathbun v. Taber Tank Lines, 129 Mont. 121, 283 P.2d 966 (1955).

13 Hillerich & Bradley Co. v. Parker, —Ky.—, 267 S.W.2d 746 (1954); Carlson v. Batts, 69 Idaho 456, 207 P.2d 1023 (1949); Smith v. Gen. Motors Corp., Fisher Body, St. Louis Div., Mo., 189 S.W.2d 259 (1945); Nelson v. Industrial Comm., 150 Ohio St. 1, 80 N.E.2d 430 (1948).

out of" employment criterion[14]. Those cases which deny recovery when the injury itself is not sufficiently fortuitous to qualify as an accident are not, as a general rule, denying compensation due to the existence of pre-existing disease but are denying compensation because they can find no accident[15]. Without an accident, the disease itself, as aggravated by the normal working conditions of the employee's employment, is the cause of claimant's disability, and the Workmen's Compensation Acts are not designed to compensate for risks which are personal to the employee.

The question then is: does the acceleration of a pre-existing disease by the normal duties of the employee constitute an accident within the meaning of the Workmen's Compensation Statutes?

In those jurisdictions which answer this question in the affirmative, the only question is one of medical and not legal causation[16]. Conversely those courts, which do not accept normal duties plus a pre-existing disease as an accident, find it necessary, in order to justify compensation, to answer one of the two following questions in the affirmative:

1) Did the employee exceed his normal exertion pattern prior to the injury[17]?

2) Is the injury, itself, such that it partakes of the nature of an accident[18]?

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14 Michel v. Maryland Casualty Co., —La.App.—, 81 So.2d 36 (1955); Special Indemnity Fund v. McFee, 200 Okla. 288, 193 P.2d 301 (1948).

15 Baker v. Slaughter, 220 Ark. 325, 248 S.W.2d 106 (1952); Price v. B. F. Shaw Co., 224 S.C. 89, 77 S.E.2d 491 (1953).

16 Liberty Mutual Ins. Co. v. Industrial Accident Comm., 73 Cal.App.2d 555, 169 P.2d 908 (1946); Finch v. Evins Amusement Co., 80 Ga.App. 457, 56 S.E.2d 489 (1949).

17 Brown v. Minneapolis Board of Fire Underwriters, 210 Minn. 529, 299 N.W.14 (1941); Hanzlik v. Interstate Power Co., 67 S.D. 128, 298 N.W. 589 (1940).

18 See note 7 *supra.*

It is submitted that the Mississippi decision represents a trend in Workmen's Compensation litigation which extends coverage beyond the statutory language in order to keep pace with modern theories on the function and purpose of the Workmen's Compensation Acts. As the statutory language becomes less important, the courts are forced to depend upon vague considerations of public policy in the field. If "injury by accident" is not to limit the award of Workmen's Compensation, the legislature is the proper tribunal to delete the phrase from the statute.

T. D. T.