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Diaz v. United States Textile Corp.: Accidental Injuries Arising Out of and In the Course of Employment

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An injury is compensable under the North Carolina Workers' Compensation Act[1] only if it is an "injury by accident arising out of and in the course of employment . . . ."[2] The worker need not show negligence attributable to the employer, and contributory negligence on the part of the claimant is not a bar to compensation.[3] In *Diaz v. United States Textile Corporation*,[4] however, the North Carolina Court of Appeals denied compensation to an employee and intimated that the employee's contributory negligence was the basis for the court's refusal to affirm the Industrial Commission's award of compensation.[5] If the contributory negligence doctrine was the basis for the court's decision, the *Diaz* holding represents an erroneous application of North Carolina's workers' compensation law.[6] This note examines the *Diaz* court's construction of the phrase "injury by accident arising out of and in the course of employment."

Carlos Diaz worked as an electrician for defendant. The Industrial Commission found that his duties included installing certain machines in defendant's textile plant, and adapting the machines to the existing voltage at the plant.[7] In the course of these duties, Diaz entered one of the electrical substations located on defendant's premises to determine whether the power source "was resistant enough to bear the load of the charge that was going to be put upon it . . . . He gained entrance to the enclosed sub-station by placing a

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1. N.C. GEN. STAT. §§ 97-1 to -122 (1979 & Cum. Supp. 1983).

2. *Id.* § 97-2(6) (1979). This phrase has been the subject of much judicial analysis. *See, e.g.*, Note, *Workmen's Compensation—Accident Arising Out of and In Course of Employment In North Carolina*, 10 N.C.L. REV. 373, 373 (1932).

There is only one exception to the rule that an injury must occur accidentally to be compensable: occupational diseases are compensable even though they do not occur as the result of accident. N.C. GEN. STAT. § 97-52 (1979).

3. This change in the common law resulted from the fact that,

> [w]orkers' compensation laws were a statutory compromise. The . . . acts assured workers compensation for injuries arising out of and in the course of employment without their having to prove negligence on the part of the employer. In exchange for the employer's loss of common law defenses . . . the employee gave up his right to common law verdicts . . . . In effect, tort liability was replaced with no fault liability.

Andrews v. Peters, 55 N.C. App. 124, 125, 284 S.E.2d 748, 749 (1981), *disc. rev' denied*, 305 N.C. 395, 290 S.E.2d 364 (1982). Furthermore, " 'It is generally conceded by all courts that the various compensation acts were intended to eliminate the fault of the workman as a basis for denying recovery.' " Archie v. Greene Bros. Lumber Co., 222 N.C. 477, 480, 23 S.E.2d 834, 836 (1943) (quoting Chambers v. Union Oil Co., 199 N.C. 28, 33, 153 S.E. 594, 596 (1930)). *See also* Hartley v. North Carolina Prison Dep't, 258 N.C. 287, 289, 128 S.E.2d 598, 600 (1962); Vause v. Vause Farm Equip. Co., 233 N.C. 88, 91, 63 S.E.2d 173, 175-76 (1951); *see infra* note 31 and accompanying text.

4. 60 N.C. App. 712, 299 S.E.2d 843, *disc. rev. denied*, 308 N.C. 386, 302 S.E.2d 250 (1983).

5. The court found that claimant's injuries were not the result of an accident because he "should have known" that his actions would result in "severe electrical burns." *Id.* at 717, 299 S.E.2d at 846.

6. *See infra* note 31 and accompanying text.

7. *Diaz*, 60 N.C. App. at 714, 299 S.E.2d at 845.

wooden stepladder against the fence . . . and climbing over [it]."[8] While inside, Diaz "made an inspection of the transformer and discovered a piece of wood, approximately two to three feet long resting between a wire and one of the transformers. He did nothing about the board at that time, and left the sub-station."[9] After a coffee break, Diaz "decided to reenter the substation and remove the piece of wood to avoid a serious accident . . . . When he reached the piece of wood, he gave it a hard blow with his left hand . . . [and] received a great electrical shock."[10] As a result, both of plaintiff's arms had to be amputated."[11]

The Commission found that claimant "sustained an injury by accident arising out of and in the course of his employment,"[12] and awarded compensation. The court of appeals reversed.[13] The evidence presented to the Commission was conflicting. First, evidence was presented that cast doubt on whether the injury was an accident. The court noted the alleged existence of a suicide note.[14] Furthermore, Diaz offered contradictory explanations of why he attempted to remove the board—initially explaining that "he needed a board inside the fence,"[15] but later testifying that "the piece of wood could fall and provoke an accident, so I decided to remove it."[16] Moreover, both Diaz's coworkers and others investigating the incident testified that they found no board inside the substation.[17] Second, evidence was presented that cast doubt on whether Diaz's injury occurred "in the course of employment." Diaz had never entered the electrical substation before[18] and had not been directed to do so.[19]

Although these factors cast doubt on the Commission's decision, "[t]he finding of the Commission . . . is conclusive if supported by any competent evidence."[20] The court's review is "limited . . . to two questions of law . . .: (1) Whether or not there was any competent evidence before the Commission to support its findings of fact; and (2) whether or not the findings of fact . . . justify . . . the legal conclusions and decisions."[21] Thus, the determination of whether an accident arises out of and in the course of employment is a mixed

8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.* at 713, 299 S.E.2d at 844.
12. *Id.* at 714, 299 S.E.2d at 845.
13. *Id.* at 717, 299 S.E.2d at 847.
14. *Id.* The record does not state when, and under what circumstances, the alleged suicide note written by plaintiff was found. The court deemed it unnecessary to consider defendant's contention that the note should be admitted into evidence because of the court's disposition of the case. *Id.*
15. *Id.* at 716, 299 S.E.2d at 846. A deputy sheriff testified that Diaz offered this explanation to him at Duke Hospital. *Id.*
16. *Id.*
17. *Id.*
18. *Id.* at 714, 299 S.E.2d at 845.
19. *Id.* at 716, 299 S.E.2d at 846.
20. Cole v. Guilford County, 259 N.C. 724, 726, 131 S.E.2d 308, 310 (1963).
21. Henry v. Lawrence Leather Co., 231 N.C. 447, 449, 57 S.E.2d 760, 762 (1950).

question of law and fact,[22] one in which the court must give due regard to the Commission's findings.

The statutory condition that an injury is compensable only if caused by an "accident arising out of and in the course of employment" is intended to separate work-related injuries from nonwork-related injuries.[23] Its primary function is to determine the relationship between injury and employment.[24] The test is composed of three parts, the first of which requires that the injury be the result of an accident.[25] The North Carolina courts define "accident" as "an unlooked for and untoward event . . . not expected or designed by the person who suffers the injury."[26] An accidental injury is fortuitous and unintentional.[27]

The court in *Diaz*, however, held that the evidence did not satisfy the requirements of injury by accident.[28] This was because the claimant, "an experienced electrician, *should have known* that if he hit a wet board with his bare hand while standing on wet grass and while the board was resting on a wire with at least 3,000 volts of electricity running through it, he would receive severe electrical burns."[29]

Whether a claimant "should have known" is not the appropriate test; rather, the standard is whether claimant "expected or designed" the injury.[30] The court's holding implies that Diaz's injuries were not by accident because he was negligent. The court's finding was an erroneous application of workers' compensation law because even gross negligence is no defense to a compensation claim.[31] The elimination of contributory negligence is a foundation of the Workers' Compensation Act.[32]

The second and third requirements of the test, that the accident "arise out of" and "in the course of" employment "are not, and should not be, applied entirely independently . . . . [D]eficiencies in the strength of one factor are sometimes allowed to be made up by strength in the other."[33] At this point, however, it will be helpful to examine the phrases separately.

The phrase "arising out of the employment" refers to the origin or cause of the injury.[34] It is not enough that the injury occurs at the workplace; rather, it must be "a natural and probable consequence or incident of the employment and a natural result of one of its risks, so that there is some causal relation

22. Gallimore v. Marilyn's Shoes, 292 N.C. 399, 402, 233 S.E.2d 529, 531 (1977).
23. Watkins v. City of Wilmington, 290 N.C. 276, 281, 225 S.E.2d 577, 581 (1976).
24. *Id.*
25. *See* N.C. GEN. STAT. § 97-2(6) (1979).
26. Hensley v. Farmers Fed'n Coop., 246 N.C. 274, 278, 98 S.E.2d 289, 292 (1957).
27. *See* Smith v. Cabarrus Creamery Co., 217 N.C. 468, 472, 8 S.E.2d 231, 233 (1940).
28. *Diaz*, 60 N.C. App. at 717-18, 299 S.E.2d at 846.
29. *Id.* at 717, 299 S.E.2d at 846 (emphasis added).
30. *See supra* note 27 and accompanying text.
31. Hartley v. North Carolina Prison Dep't, 258 N.C. 287, 289, 128 S.E.2d 598, 600 (1962).
32. *See supra* note 3 and accompanying text.
33. Watkins v. City of Wilmington, 290 N.C. 276, 281, 225 S.E.2d 577, 581 (1976) (quoting 1 A. LARSON, WORKMEN'S COMPENSATION LAW § 29.00 (1972)).
34. Robbins v. Nicholson, 281 N.C. 234, 238, 188 S.E.2d 350, 353 (1972).

between the injury and the performance of some service of the employment."[35] Furthermore, the risk generally must be one that a reasonable person would assume to be "incidental to the service when he entered the employment."[36]

The employee in question, however, need not have perceived the risk before the injury occurred. It is sufficient that the injury be "one which, after the event, may be seen to have had its origin in the employment."[37] If it originated in the employment, it need not be shown that it ought to have been foreseen or expected.[38]

The court in *Diaz* did not explicitly address whether plaintiff's injury arose out of the employment, but implied that it did not. Diaz's duties, according to the court, did not include having to connect the wiring from the substation to the machinery, nor was Diaz directed by his superiors to enter the substation.[39] Furthermore, even if one of his duties was to check the voltage in the substation, Diaz had completed the duty before he reentered the substation.[40] Therefore, the court seemed to imply that the claimant was acting outside the scope of his employment by reentering the substation and attempting to remove the board.[41]

If the court intended to imply that Diaz's injury did not arise out of the employment, such a finding is incorrect. Whether Diaz's duties included checking the power source does not determine whether the injury arose out of the employment. An employee may perform a task beyond the scope of his assigned duties if he reasonably believes that it will further his employer's interests.[42] The Commission believed Diaz's explanation that he was attempting to eliminate a safety hazard, and therefore properly may have found that Diaz reasonably believed that he was furthering his employer's interests. A reviewing court is bound by the Commission's finding if any competent evidence exists to support it.[43]

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35. Perry v. American Bakeries Co., 262 N.C. 272, 274, 136 S.E.2d 643, 645 (1964). *See also* Harless v. Flynn, 1 N.C. App. 448, 455, 162 S.E.2d 47, 52 (1968) ("When an injury cannot fairly be traced to the employment as a contributing proximate cause, or if it comes from a hazard . . . common to others, it does not arise out of the employment.").

36. Robbins v. Nicholson, 281 N.C. 234, 239, 188 S.E.2d 350, 354. *See also* Allred v. Allred-Gardner, Inc., 253 N.C. 554, 557, 117 S.E.2d 476, 479 (1960) ("Where any reasonable relationship to the employment exists, or employment is a contributory cause, the court is justified in upholding the award as 'arising out of employment.' ").

37. Conrad v. Cook-Lewis Foundry Co., 198 N.C. 723, 726, 153 S.E. 266, 269 (1930).

38. *Id.* at 726, 153 S.E. at 269. *See also* Taylor v. Twin City Club, 260 N.C. 435, 438, 132 S.E.2d 865, 868 (1963).

39. *Diaz*, 60 N.C. App. at 717, 299 S.E.2d at 846.

40. *Id.*

41. *Id.*

42. According to Professor Larson, "an employee who honestly attempts to serve his employer's interests by some act outside of his fixed duties should not be held to the exercise of infallible judgment on what best serves those interests." 1 LARSON, *supra* note 33, at § 27.12. *Accord* Stubblefield v. Watson Elec. Co., 277 N.C. 444, 177 S.E.2d 882 (1970); Guest v. Brenner Iron & Metal Co., 241 N.C. 448, 85 S.E.2d 596 (1955). For application of this doctrine to the "in the course of employment" part of the test, see *infra* notes 44-47 and accompanying text.

43. *See supra* notes 20-22 and accompanying text.

The third requirement of the test, that the employee be injured "in the course of the employment," refers "to the time, place and circumstances under which an accidental injury occurs."[44] Since there was no dispute that Diaz was injured during his working hours and on his employer's premises, only the "circumstances" part of the test need be considered here. "[W]here the employee is engaged in activity which he is authorized to undertake and which is calculated to further, *directly or indirectly*, the employer's business,"[45] the circumstances are said to be within the course of employment.

The court of appeals relied in part upon Diaz's apparent lack of authority to enter the substation in holding that the injury did not occur in the course of employment.[46] Whether Diaz was authorized to enter the substation, however, is not dispositive. If he "had reasonable grounds to believe that the act . . . was incidental to his employment, or . . . would prove beneficial to his employer's interest . . ., compensation may be recovered, since then a causal connection between the employment and the accident may be established."[47] If Diaz reasonably believed that his act was either incidental to his employment or beneficial to his employer's interest, then compensation was proper.

A second reason for the court's finding that Diaz's injury did not occur in the course of employment was that, under either of the explanations Diaz gave for his behavior, he acted outside the scope of his employment. The court held that Diaz "was not doing what a man so employed may reasonably do at a time he was employed and at a place where he may have been during the time to do that thing."[48]

The court's decision may have been influenced by Diaz's contradictory explanations of why he hit the board, the testimony that no board was found inside the substation after the accident, and the alleged existence of a suicide note.[49] All of these factors suggest that Diaz may have intended to injure or kill himself. If this were so, Diaz's injuries would not be the result of an accident,[50] and denial of compensation would be proper.[51] The weighing of this

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44. Robbins v. Nicholson, 281 N.C. 234, 238, 188 S.E.2d 350, 353 (1972).

45. Harless v. Flynn, 1 N.C. App. 448, 456, 162 S.E.2d 47, 53 (1968).

46. *Diaz*, 60 N.C. App. at 717, 299 S.E. 2d at 846.

47. Harless v. Flynn, 1 N.C. App. 448, 456, 162 S.E.2d 47, 53 (1964). The supreme court held in 1982 that:

> "[C]ompensability of a claim basically turns upon whether or not the employee was acting for the benefit of his employer 'to any appreciable extent' when the accident occurred . . . . Such a determination depends largely upon the unique facts of each particular case, and, in close cases, the benefit of the doubt . . . should be given to the employee in accordance with the established policy of liberal construction and application of the Workers' Compensation Act."

Hoffman v. Ryder Truck Lines, 306 N.C. 502, 506, 293 S.E.2d 807, 810 (1982) (quoting Guest v. Brenner Iron & Metal Co., 241 N.C. 448, 452, 85 S.E.2d 596, 600 (1955)).

48. *Diaz*, 60 N.C. App. at 717, 299 S.E.2d at 846.

49. *See supra* notes 14-19 and accompanying text.

50. Under the generally accepted definition of the term "accident," the injury must not have been "expected or designed" by the employee. *See supra* note 26 and accompanying text.

51. *See* N.C. GEN. STAT. § 97-12(3) (1979), which states in pertinent part: "No compensation shall be payable if the injury or death to the employee was proximately caused by: . . . (3) His willful intention to injure or kill himself or another."

evidence is within the province of the Industrial Commission, however, and must be accepted as fact by a reviewing court if supported by *any* competent evidence.[52] Applying the Commission's findings of fact to the law, an award of compensation was proper.

The *Diaz* decision represents an erroneous application of workers' compensation law and should be overruled expressly by the North Carolina Supreme Court. By holding that the claimant's injuries did not arise by accident because he "should have known" that injury would result from his actions, the court of appeals incorrectly interjected the concept of contributory negligence into workers' compensation law.[53] By rejecting the Commission's findings that Diaz reasonably believed his actions were incidental to his employment and would further his employer's interests, the court of appeals rejected findings of fact that were supported by competent evidence and were therefore binding on the court. Until *Diaz* is disapproved by a higher court it may invite the Industrial Commission and other panels of the court of appeals to deny meritorious claims under a misconception of the law.

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52. *See supra* notes 20-22 and accompanying text.
53. *See supra* notes 3, 31, and accompanying text.