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Workmen's Compensation -- Receipt Concurrent with Unemployment Compensation

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WORKMEN'S COMPENSATION—RECEIPT CONCURRENT WITH UNEMPLOYMENT COMPENSATION

A deputy commissioner of the Florida Industrial Commission awarded claimant compensation for permanent partial disability as a result of an injury to his back. The award was reversed by the full commission, which concluded that there was no competent, substantial evidence to support the finding of the deputy. The commission gave consideration to the fact that during the period of the alleged disability the claimant had applied for and received unemployment compensation benefits.[1] On claimant's petition for certiorari, the Florida Supreme Court *held*: the order of the deputy commissioner was supported by adequate evidence, and receipt of unemployment benefits did not preclude recovery of the workmen's compensation award. *Edwards v. Metro Tile Co.*, 133 So.2d 411 (Fla. 1961).

The pattern of wage-loss legislation throughout this country did not evolve in accordance with a master blueprint, but developed as a patchwork of legislative responses to popular interest in employee protection. First, protection for loss of earning capacity because of sickness or injury of industrial origin was provided by the workmen's compensation acts. Later, protection for wages lost because of unemployment of a seasonal or cyclical economic nature was provided by the unemployment acts. If a claimant seeks the benefits of both of these acts at the same time, an inconsistency arises. The theory of collecting under a workmen's compensation act is that the employee is totally or partially incapacitated for work.[2] The theory of receiving payments through an unemployment compensation act is that the employee is willing and able to work, but cannot find work.[3] The precise issue of whether a person concurrently may collect workmen's compensation and unemployment compensation has received little judicial scrutiny.[4] Those courts which have considered

1. The opinion states that the unemployment compensation was received during a period of alleged *total* disability. Edwards v. Metro Tile Co., 133 So.2d 411, 412 (Fla. 1961). However, the record shows that unemployment benefits were paid after the claimant had reached maximum medical recovery for total disability benefit purposes and while he was claiming compensation for permanent partial disability. Record, pp. 38, 46, 47, Brief for Respondent, app. 19, 24, 25.

2. 99 C.J.S. *Workmen's Compensation* § 13 (1958). "The workmen's compensation law is intended to compensate an injured employee only for the loss of earning capacity attributable to, and resulting from, the injury . . . . [I]f an employee is injured, but is able to work, he is not entitled to compensation." 35 FLA. JUR. *Workmen's Compensation* § 87 (1961).

3. California Compensation Ins. Co. v. Industrial Acc. Comm'n, 128 Cal. App. 2d 797, 805, 276 P.2d 148, 151, *rehearing denied*, 128 Cal. App. 2d 797, 813, 277 P.2d 442 (Dist. Ct. App. 1954); Gallant's Case, 329 Mass. 607, 609, 109 N.E.2d 829, 830 (1953); see FLA. STAT. §§ 443.05(3), 443.06 (1961); 33 FLA. JUR. *Unemployment Compensation* §§ 23-25 (1960).

4. California Compensation Ins. Co. v. Industrial Acc. Comm'n, *supra* note 3, at 804, 276 P.2d at 151.

the problem of duplication of benefits have reached dissimilar results. The differences have occurred partly because of various statutory provisions and partly because of disparate approaches relating to the theory of social insurance.

The earliest reported cases dealing with the issue were decided in Michigan which has separate agencies administering the unemployment compensation and the workmen's compensation laws.[5] The Supreme Court of Michigan held that the Department of Labor and Industry, which administers the workmen's compensation law, could not deny benefits to a claimant entitled to them under the workmen's compensation statute, even though the claimant had previously collected unemployment benefits from the agency administering that law.[6] Great weight was given to the considerations that the two agencies were independent of each other, and that neither of the statutes involved contained any express provision precluding an employee's simultaneous recovery under both statutes. The court was quick to add that there is incongruity in the statutory provisions, but that nevertheless, the judiciary is bound by the wording of the statutes. "The remedy is with the legislature who alone can provide for deductions or denial of compensation under one act or the other."[7]

A Tennessee case,[8] cited as an authority by the court in the instant case,[9] centered on the question of whether the claimant had wilfully deceived the trial court as to her ability to work after an industrial accident. The claimant sought to prove permanent total disability. The order granting workmen's compensation was appealed from by the employer on the evidentiary basis that the claimant-employee had represented to the Department of Unemployment Compensation that she was able to work. Finding that "the weight of the evidence shows that the petitioner was not able to perform much physical labor,"[10] the Supreme Court of Tennessee affirmed the workmen's compensation award. Mr. Chief Justice Neil explained: "If this case was before us on broad appeal and we were thus trying the issues de novo as an equity case, we would be disposed to give consideration to the question of estoppel. But disputed

5. Unemployment Compensation Act § 3, MICH. COMP. LAWS § 421.3 (1948); Workmen's Compensation Act § 1, MICH. COMP. LAWS § 408.1 (1948). The possible consequence of provisions for two *independent* departments is that a finding of fact by one department that a claimant is able to work may have no bearing upon the other department's finding that he is not.

6. Bartels v. Ford Motor Co., 292 Mich. 40, 289 N.W. 322 (1939); *accord*, Henry v. Ford Motor Co., 291 Mich. 535, 289 N.W. 244 (1939).

7. Henry v. Ford Motor Co., *supra* note 6, at 541, 289 N.W. at 246. In Bartels v. Ford Motor Co., *supra* note 6 at 41, 289 N.W. at 324, the court said: "The remedy lies with the legislature."

8. Crane Enamel Co. v. Jamison, 188 Tenn. 211, 217 S.W.2d 945 (1948), *aff'd on appeal from remand*, 237 S.W.2d 546 (1951).

9. Edwards v. Metro Tile Co., 133 So.2d 411, 412 (Fla. 1961).

10. Crane Enamel Co. v. Jamison, 188 Tenn. 211, 222, 217 S.W.2d 945, 950 (1948).

questions of fact in compensation cases cannot be made the basis of assignment of error on appeal."[11]

The tendency of some courts to allow a disability claim under a workmen's compensation statute, despite representations in an unemployment insurance application that the claimant is able to work, is thus shown in the positions taken by Michigan and Tennessee.[12]

A more recent and opposing view is expressed by courts of California and Massachusetts and by some textwriters. These authorities are influenced by the idea that workmen's compensation is only one unit in an overall system of wage loss protection and duplication of benefits from different parts of the system ordinarily should not be allowed.[13] A California court held that an earlier unemployment award, granted by an administrative board separate from the workmen's compensation administrator, must be deducted from a later workmen's compensation award.[14] In Massachusetts, the rule is that even if unemployment benefits are received first, their receipt *bars* workmen's compensation benefits, since the two statutes must be read together.[15]

11. *Id.* at 220, 221, 217 S.W.2d at 949.

12. This tendency is also shown by the Connecticut judiciary. Osterlund v. State, 135 Conn. 498, 66 A.2d 363 (1949). The Florida Supreme Court in the instant case and 2 LARSON, WORKMEN'S COMPENSATION § 57.65 (1952), cite the case of American Employers Ins. Co. v. Climer, 220 S.W.2d 697 (Tex. Civ. App. 1949), for the proposition that receipt of unemployment compensation benefits does not preclude a workmen's compensation award. However, the facts of the case and the holding merely support the rule that the Texas Employment Commission was neither a "necessary" nor a "proper party" to a suit to set aside an award of the Industrial Accident Board, since the former could not recover any of the compensation due the claimant.

13. 2 LARSON, WORKMEN'S COMPENSATION §§ 97.00, 97.10, 97.20 (1952, Supp. 1960). See 1 SCHNEIDER, WORKMEN'S COMPENSATION § 47, at 412 (2d ed. 1932).

14. California Compensation Ins. Co. v. Industrial Acc. Comm'n, 128 Cal. App. 2d 797, 276 P.2d 148, *rehearing denied*, 128 Cal. App. 2d 797, 813, 277 P.2d 442 (Dist. Ct. App. 1954). The court explained the effect of the provision, common in workmen's compensation laws, that "liability for compensation shall not be reduced or affected by any insurance, contribution or other benefits whatsoever due to or received by the person entitled to such compensation." This provision was "clearly intended to accomplish no more than to protect the private financial resources of a disabled worker eligible for workmen's compensation from being used as a basis for curtailing the employer's liability for such compensation. It would be out of harmony with the principles . . . (of both acts) to take this language out of the context of the circumstances under which it was adopted and extend it to cover benefits received by the employee under a parallel act which is part of the pattern of wage-loss legislation." *Id.* at 810, 276 P.2d at 154. See 99 C.J.S. *Workmen's Compensation* § 330(g) (1958).

15. Gallant's Case, 329 Mass. 607, 109 N.E.2d 829 (1953); Pierce's Case, 325 Mass. 649, 92 N.E.2d 245 (1950). In these cases the Massachusetts court was interpreting an unemployment insurance statute in which a recipient of compensation for disability is expressly disqualified from receiving unemployment benefits for the period of his receipt of disability compensation. The court read the restriction of the unemployment act into the workmen's compensation act, and held that one who has recovered unemployment benefits cannot later recover workmen's compensation benefits. Of course, this bar on workmen's compensation benefits is only operative for the actual period that the unemployment benefits are received, and not for the entire period of continuous unemployment. 2 LARSON, WORKMEN'S COMPENSATION § 57.65 (Supp. 1960). The Florida Unemployment Compensation Law, FLA. STAT. § 443.06(3)(b) (1961), provided that an individual is disqualified

The three most recent decisions on the issue[16] are not discussed in the *Edwards* opinion. One of these decisions, rendered by a Florida district court, was apparently overruled. In *Stubbs v. C. F. Wheeler Builder*[17] the claimant was injured on the job and continued to work until he was discharged by his employer. After a deputy commissioner awarded compensation for temporary total disability, the full commission ruled that "a matter of some payments of unemployment compensation made to the claimant should be investigated."[18] The district court upheld the commission in excluding compensation for disability for any period of time during which the claimant may have received unemployment compensation. "[T]he Workmen's Compensation Law does not sanction or authorize the collection of both unemployment compensation and workmen's compensation for the same periods of time."[19] There was no suggestion of fraud in the record.

> [H]owever, the . . . impropriety of the claimant receiving inconsistent benefits is obvious. It is unfair that an employer should be required to furnish both unemployment compensation and workmen's compensation payments to the same employee for the same period of time. If the employee has elected to collect one, then that payment is exclusive for the period of time covered by the payment collected.[20]

The court in the instant case discussed the "apparent" inconsistency of duplication of benefits and resolved it by taking into consideration "the objectives to be accomplished by the two types of protection."[21]

> A claimant may honestly represent to the unemployment compensation agency that he is able to do some work if a job is made available to him. At the same time, with equal honesty, he might properly represent to the workmen's compensation agency that he was totally disabled during the same period because no one would give him a job in his then physical condition.[22]

As authority for the rule that receipt of unemployment compensation does not preclude a claimant from receiving workmen's compensation, Mr. Justice Thornal cited Larson's text on Workmen's

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for unemployment benefits for any week in which he receives compensation for temporary partial disability under any workmen's compensation law.

16. California Compensation Ins. Co. v. Industrial Acc. Comm'n, 128 Cal. App. 2d 797, 276 P.2d 148, *rehearing denied*, 128 Cal. App. 2d 797, 813, 277 P.2d 442 (Dist. Ct. App. 1954); Stubbs v. C. F. Wheeler Builder, 106 So.2d 104 (Fla. App. 1958); Utica Mutual Ins. Co. v. Pioda, 90 Ga. App. 593, 83 S.E.2d 627 (1954).

17. 106 So.2d 104 (Fla. App. 1958).

18. *Id.* at 105.

19. *Id.* at 107. The court cited FLA. STAT. § 443.05 (1961) and 2 LARSON, WORKMEN'S COMPENSATION §§ 97.00, 97.10, 97.20 (1952) in support of the proposition advanced.

20. *Id.* at 107. For a contrary viewpoint, see Utica Mutual Ins. Co. v. Pioda, 90 Ga. App. 593, 83 S.E.2d 627 (1954).

21. Edwards v. Metro Tile Co., 133 So.2d 411, 412 (Fla. 1961).

22. *Ibid.*

Compensation, section 57.65.[23] However, the cited section refers the reader to section 97.10 where Professor Larson sets forth his theory as follows:

> [Workmen] experiencing only one wage-loss . . . , in any logical system, should receive only one wage-loss benefit. This conclusion is inevitable, once it is recognized that workmen's compensation (and) unemployment compensation . . . are all parts of a system based upon a common principle. If this is denied, then all coordination becomes impossible and social legislation becomes a grab-bag of assorted unrelated benefits.[24]

It is submitted that a result more nearly consistent with the objectives of the two types of protection would have been reached had the court considered the fact that "the Florida Industrial Commission is charged with the duty of administering both the Workmen's Compensation Act and the Unemployment Compensation Act."[25] A major reason for allowing duplication of compensation in some states has been the independence of the two separate administrators of the acts.[26] But the possibility of one commission's infringing upon the jurisdiction of another is not presented in Florida, as it might be in states where each act is administered by an independent authority. In considering the objectives of the two acts, the court should have given effect to the intent of the legislature.[27] By placing wage-loss protection under one commission, the legislature indicated an intent that correlation, not duplication, of benefits should be attained.[28] A further indication of that intent lies in the fact that the unemployment compensation law disqualifies an individual from receiving unemployment benefits for the same period in which he collected workmen's compensation.[29] If the Florida court believes that it should not read the two acts together, as the California and Massachusetts courts did, the legislature should amend

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23. 2 LARSON, WORKMEN'S COMPENSATION § 57.65 (1952), cited in Edwards v. Metro Tile Co., 133 So.2d 411, 412 (Fla. 1961).

24. 2 LARSON, WORKMEN'S COMPENSATION § 97.10 (1952). This is the section of Larson which was cited by the district court in Stubbs v. C. F. Wheeler Builder, 106 So.2d 104, 107 (Fla. App. 1958). See text accompanying note 19 *supra*.

25. Stubbs v. C. F. Wheeler Builder, 106 So.2d 104, 107 (Fla. App. 1958); FLA. STAT. §§ 440.33, 443.12 (1961).

26. See Bartels v. Ford Motor Co., 292 Mich. 40, 289 N.W. 322 (1939) and Henry v. Ford Motor Co., 291 Mich. 535, 289 N.W. 244 (1939), cited by the court in the instant case, Edwards v. Metro Tile Co., 133 So.2d 411, 412 (Fla. 1961). See also 2 LARSON, WORKMEN'S COMPENSATION § 97.20 (1952).

27. In order for the beneficent purposes of the workmen's compensation act to be achieved, the act is to be construed liberally in favor of the claimant. However, the rule of liberal construction does not justify expanding it to the point where it becomes unreasonably burdensome to the industry or actually stultifies the accomplishment of its objectives. 35 FLA. JUR. *Workmen's Compensation* § 9 (1961).

28. 2 LARSON, WORKMEN'S COMPENSATION § 97.20 (1952); *accord*, Stubbs v. C. F. Wheeler Builder, 106 So.2d 104 (Fla. App. 1958).

29. FLA. STAT. § 443.06(3)(b) (1961); see note 15 *supra*.

the workmen's compensation law to provide explicitly that workmen's compensation benefits are excluded for the time period when unemployment benefits have been collected.

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SALE OF A RETAINED LIFE ESTATE IN CONTEMPLATION OF DEATH—EFFECT UPON THE GROSS ESTATE

The deceased created an irrevocable trust for her children, reserving to herself three-fifths of the income for life. In contemplation of death, at a time when her life estate was valued at 135,000 dollars, the deceased transferred her life estate to her son for a consideration of 140,000 dollars. At the time of the deceased's death three-fifths of the corpus was valued at 900,000 dollars. The commissioner assessed an estate tax on the corpus, less the 140,000-dollar purchase price of the life estate. The executors were successful in their suit for a refund. On appeal, *held*, reversed: the corpus of a reserved life estate is not removed from a decedent's gross estate by a transfer at the value of the life estate in contemplation of death. *United States v. Allen*, 293 F.2d 916 (10th Cir.), *cert. denied*, 368 U.S. 944 (1961).

The question of whether the sale of a retained life estate, for adequate consideration, in contemplation of death, will remove the entire corpus of previously transferred property from the gross estate appears to be novel to the federal courts. Section 2036(a)(1) of the Internal Revenue Code of 1954[1] provides, in part, that the value of the corpus of a trust created by the decedent, in which the decedent *retained* the right to income for life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death, shall be included in his gross estate.[2] A literal reading of this

1. In the instant case decedent died and the controversy arose prior to the adoption of the Internal Revenue Code of 1954. Therefore, the 1939 Code was applicable. The applicable sections of the 1939 Code and their 1954 counterparts are as follows: Section 811(c)(1)(A) of the 1939 Code corresponds to section 2035 of the 1954 Code and section 811(c)(1)(B) of the 1939 Code corresponds to section 2036 of the 1954 Code. In so far as the instant case is concerned there is no difference in effect between these sections of the Code. For purposes of clarity the 1954 Code will be used as the reference herein. Unless otherwise specified all citations will be to that Code.

2. Section 2036(a)(1) reads as follows:

(a) The value of the gross estate shall include the value of all property (except real property situated outside of the United States) to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—

(1) the possession or enjoyment of, or the right to the income from, the property . . . .