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Workmen's Compensation--Heart Case After 1956 Amendment Requiring Traumatic Personal Injury

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WORKMEN'S COMPENSATION—HEART CASE AFTER 1956 AMENDMENT REQUIRING TRAUMATIC PERSONAL INJURY—Decedent's wife appealed the judgment of the circuit court which affirmed the dismissal by the Workmen's Compensation Board of her claim for death benefits. Decedent after operating an air hammer for two hours became ill. He was rushed to a hospital where he died within forty minutes. The attending physician certified that the immediate cause of death was coronary thrombosis, or occlusion with coronary arteriosclerosis as a secondary cause. Decedent had no known previous manifestation of a coronary ailment, but *medical testimony established the presence of a pre-existing heart condition.* Other testimony was related to the decedent's exertion: one doctor stated that the exertion *could have* contributed to his death, and two others stated that it *probably did. Held:* Reversed with directions to apportion the award between the pre-existing disease and the injury. In so holding, the court considered the development of trauma as a requirement for compensation in Kentucky. Prior to 1955 the court proceeded on the assumption that an injury, to be compensable, had to be traumatic. *Adams v. Bryant,*[1] in 1955 established that an injury *need not be traumatic* to be compensable. In 1956 the Kentucky Workmen's Compensation Act[2] was amended by insertion of the word *traumatic* preceding the words *personal injury.*[3] In a case arising before the effective date of the amendment, but decided in 1960, *Terry v. Associated Stone Co.,*[4] it was held that physical exertion precipitating a coronary occlusion is a personal injury by accident within the meaning of the statute. The parties seem to agree that the purpose of the 1956 amendment was to nullify the effect of the *Adams* case. But in view of the meaning of that slippery word, traumatic, we are unable to determine the legislative intent of the 1956 amendment. The intent was not that an employee might suffer a work-connected accidental injury without compensation. The Court was not persuaded that such an anomaly was wittingly contemplated by the legislature, especially in view of the clear injunction of the law that it be liberally construed. As the testimony establishes a direct contribution between the work and the heart attack, the injury is compensable. *Grimes v. Goodlett & Adams,* 345 S.W.2d 47 (Ky. 1961).

This comment purports to show that the court in the principal case has, by evading the issue, consciously misapplied the statutory law of this state. This misapplication resulted from the court's inter-

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[1] 274 S.W.2d 791 (Ky. 1955).
[2] Ky. Rev. Stat. § 342.005(1) (1956) [hereinafter referred to as KRS].
[3] KRS 342.005(1).
[4] 334 S.W.2d 926 (Ky. 1960).

pretation or its failure to interpret the phrase *traumatic personal injury*. The original Workmen's Compensation Act, which was enacted in 1916, did not contain the word *traumatic* as a modifier of the phrase *personal injuries*.[5] However, there has been a great deal of confusion as to whether trauma was required. This comment will not attempt to answer this question, as it is discussed in a previous note.[6]

The Workmen's Compensation Act, as amended in 1956, provided that employers were liable only for traumatic personal injuries:

> It shall affect the liability of the employers subject thereto to their employes for a *traumatic personal injury* sustained by the employe by accident, . . . provided, however, that 'traumatic personal injury by accident' as herein defined shall not include diseases except where the disease is the natural and direct result of a traumatic injury by accident nor shall it include the results of a pre-existing disease. . . .[7] (Emphasis added.)

What was the purpose of the amendment? The court in the principal case recognized that it was to nullify the effect of *Adams v. Bryant*,[8] which held that an injury *did not* have to be traumatic to be compensable. The statute was amended in the next session of the General Assembly following the *Adams* decision so logically it was intended to offset *Adams'* potential effect. However, it appears that the court in the principal case felt the established law was sufficient and ignored the legislative effort.

Statutes must be interpreted by the courts, and the Workmen's Compensation Act requires a liberal construction,[9] but as stated in *Howard v. Dawkins*:

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[5] Ky. Acts 1916, ch. 33, § 1:
> It shall affect the liability of the employers subject thereto to their employes for personal injuries sustained by the employe by accident arising out of and in the course of his employment or for death resulting from such accidental injury: provided, however, that personal injury by accident as herein defined shall not include diseases except where the disease is the natural and direct result of a traumatic injury by accident. . . .

[6] Note, 47 Ky. L.J. 437 (1959). The author of the note, in tracing the definition of trauma in Kentucky prior to 1956, states that the definition was established in Great Atl. & Pac. Tea Co. v. Sexton, 242 Ky. 266, 271, 46 S.W.2d 87, 89 (1932):
> It will be noted that this does not include within its scope and meaning only physical force in the sense of a blow, a current of electricity, or like terms implying power, vigor, violence, or energy in the commonly accepted meaning of those terms, but may be as consistently construed to include any independent influence or causes external to the body coming into direct contact with, and causing injury to, the physical structures thereof.

[7] KRS 342.005(1).

[8] 274 S.W.2d 791 (Ky. 1955).

[9] KRS 342.004:
> This chapter shall be liberally construed on questions of law, as distinguished from evidence, and the rule of law requiring strict con-

(Footnote continued on next page)

> [L]iberality of construction or interpretation—as well as administration—does not license the court or the administrative board to amend or emasculate the statute so as to create liability thereunder when it by its express terms, as construed and applied by the courts, excludes the particular accident from the benefits conferred.[10]

Kentucky cases have distinguished between internal injuries resulting from strain, which generally have been compensable,[11] and heart cases. "A disabling heart attack resulting from a pre-existing disease but possibly superinduced by excitement or exertion has not been recognized in this jurisdiction as compensable."[12] Because of this distinction, and the absence of any indication in the amended statute that a new definition of trauma was to be applied to any particular injury, the court in the principal case should have been limited by the definition of trauma which existed in heart cases prior to the *Adams* case.[13]

The testimony in the principal case established that decedent had a pre-existing heart condition, and that he suffered a heart attack after exerting himself in the course of his employment. In 1922 the court denied compensation, where decedent ascending a ladder in a moment of excitement suffered a heart attack, because the death resulted from a pre-existing heart condition and not a traumatic personal injury.[14] In a case involving a more strenuous exertion, the court failed to find what they considered the requisite trauma where an employee with no knowledge of a previous heart ailment (although medical testimony established the existence of a pre-existing heart condition) assisted in the shoeing of a reluctant mule and died that evening of heart failure.[15] In *Aden Mining Co. v. Hall*,[16] where decedent was injured by a slate

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(Footnote continued from preceding page)

> struction of statutes in derogation of the common law shall not apply to this chapter.

[10] 284 Ky. 9,12, 143 S.W.2d 741, 742 (1940).

[11] See Note, 49 Ky. L.J. 394, 400 (1961) and cases cited therein. The author of the note questions the appropriateness of the distinction.

[12] Terry v. Associated Stone Co., 334 S.W.2d 926, 928 (Ky. 1960). The injury in this case occurred in 1955, before the effective date of the amendment to KRS 342.005(1), and was the first case in this jurisdiction to award compensation for a disabling heart attack resulting from a pre-existing heart disease which had possibly been superinduced by strain.

[13] Frye's Guardian v. Gamble Bros., 188 Ky. 283, 288, 221 S.W. 870, 872 (1920), wherein the court stated:

> It may be proper, in giving a construction to a statute, to look to the effects and consequences, when its provisions are ambiguous, or the legislative intention is doubtful. But, when the law is clear and explicit, and its provisions are susceptible of but one interpretation, its consequences, if evil, can only be avoided by a change of the law itself, to be effected by legislative and not judicial action.

[14] Rusch v. Louisville Water Co., 193 Ky. 698, 237 S.W. 389 (1922).

[15] Wallins Creek Collieries Co. v. Williams, 211 Ky. 200, 277 S.W. 234 (1925).

[16] 252 Ky. 168, 66 S.W.2d 41 (1933).

fall and after returning to work suffered a strain from lifting a timber and subsequently died of a heart ailment, the court said, in the absence of any record of a previous heart ailment:

> The Board is unable to find, without speculation or conjecture, that the decedent died as a direct or natural result of a traumatic injury by accident, but is of the opinion that the death was the result of a pre-existing disease, which disease was not the natural or direct result of a traumatic injury by accident.[17]

These cases illustrate the Kentucky law prior to the *Adams* case, *i.e.*, where there is a pre-existing heart condition which is manifested during the usual course of employment, there is not a traumatic personal injury. Apparently the court felt this was bad law and disregarded the efforts of the legislature by referring to traumatic as a "slippery word"[18] and making no pretense of any attempt to define or apply it.

When there is a pre-existing heart condition, and the employee is stricken while performing the routine duties of his employment, should the injury be compensable?[19] The writer would answer this question in the negative. Cardiovascular diseases account for over half of all deaths in the United States, and these deaths occur during inactivity as often as during periods of physical exertion.[20] There is a great deal of controversy among the medical authorities as to the causes of heart failure.[21]

If these injuries are recognized as compensable, the courts will establish a radical inconsistency among claimants in Kentucky. If an employee suffering from an unknown heart condition is stricken away from the job, he will be denied compensation. Such manifestation could occur during sleep or during a period of extreme exertion, and regardless of what caused the manifestation it is almost certain that he would be denied compensation. However, place the same employee on the job and allow the manifestation to occur! Based on the decision in the principal case the injury would be compensable. The employee in the last mentioned hypothetical situation would be compensated because he was fortunate enough to be at work when the attack occurred.

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[17] *Id.* at 171, 66 S.W.2d at 43.

[18] Grimes v. Goodlett & Adams, 345 S.W.2d 47, 51 (Ky. 1960).

[19] See Note, 49 Ky. L.J. 394, 395 (1961). The author answers this question in the affirmative and suggests that the court should ignore the 1956 amendment:

> [I]n spite of or notwithstanding the addition of the word 'traumatic' to the statute, the Workmen's Compensation Board and the Kentucky Court of Appeals should not retreat from this forward-looking position.

[20] *Id.* at 396.

[21] Kissan, *Injury and Heart Disease—Legal Aspects*, 15 Ohio St. L.J. 409 (1954).

The effect of the present decision is to make the employer an insurer of any employee suffering from an unknown heart condition, while on the job. This could be a liberal step toward the realization of the court's statement in a 1939 decision:

> If the plaintiff's illness is compenable here, then in a factory where a window or door is opened for ventiliation, and one workman out of 100 catches a cold in his head and chest and six months thereafter develops tuberculosis, such workman would be entitled to compensation, because it is common knowledge that such a cold fertilizes the ground for tubercle-bacilli.[22]

Regardless of the merits of the claim, the court in the principal case was bound to construe the statute "with a view to promote their objects and carry out the intent of the legislature."[23] The court failed to do this by refusing to recognize the intent of the 1956 amendment.

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[22] American Rolling Mill Co. v. Pack, 278 Ky. 175, 182-83, 128 S.W.2d 187, 191 (1939).

[23] KRS 446.080(1).