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Ohio's Workmen's Compensation Law

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THE IDEA OF WORKMEN'S COMPENSATION originated in Germany in 1884, and was designed as a crutch rather than a punitive action. It was financial aid to the injured workman coupled together with adequate medical aid.

In the State of Ohio prior to the Workmen's Compensation Law, the employee could seek relief by suing his employer in Common Pleas Court. This type of action generally proved too expensive for the employee. It was also noted that the employers could not pay for an injury that was very costly because they had no reserve set up for the situation.

In such cases before the courts, the employee had to prove negligence on the part of the employer. The defendant employer could then set up the defenses of contributory negligence, the fellow servant rule and assumption of risk.

In 1911, workmen's compensation originated in Ohio and it was called the "Employer's Liability Act" [1] with the employers contributing 90% and the employees contributing 10%. The purpose of the act was to provide compensation for loss resulting from disability or death of a workman from industrial accidents or disease without regard to negligence and fault. In 1912, by constitutional amendment, authority was given to the legislature to pass laws providing for a State Fund to be created by compulsory contributions by employers only. In 1913, legislation made the law compulsory and created the Industrial Commission, thereby eliminating the Board of Awards. In 1924, the right of an employee to sue at law was taken away and the addition of the right to an additional award was given for a violation of a specific safety requirement.[2] Later the definition of injury[3] was set up to include any injury received in the course and arising out of the injured employee's employment.[4] In 1955, the

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[1] Passed on May 31, 1911.

[2] Ohio Rev. Code § 4121.131 gives the Industrial Commission power to determine such claims under Section 35 of Article II of the Ohio Constitution. See also Rules of Procedure, p. 50, dated 9-15-48.

[3] Passed on Feb. 26, 1913, and effective Sept. 1, 1913.

[4] Passed by the General Assembly on July 10, 1937, and further amended in 1959, and effective Nov. 2, 1959 (§ 4123.01rc).

Bureau of Workmen's Compensation originated as part of the Industrial Commission. Its purpose is to adjudicate all new claims and it is charged with the general business management of the administrative agencies. The Industrial Commission remained charged with the duty of final decision in matters of disputed claims and also of passing upon all applications of permanent disability and all applications for settlement of claims. It also has the final authority to fix rates, determine classifications and manage the Fund.

The first test of this act occurred in 1912[5] when the Court upheld the constitutionality of the act as long as the contributions were on a voluntary basis.

Financial Aspects

There are two ways of administering Workmen's Compensation in Ohio. One is by the State Fund System, wherein employers pay rated premiums based upon the risk involved in their industry directly to the State Fund. These premiums are paid in advance and each employer is required to report his payroll every six months in order to determine his premium. In establishing an employer's rate, each industry is classified according to the hazard it represents. There are 241 classifications of hazards and each is given a manual number.[6] A merit rating system is used to promote safety practices which gives an employer a credit against the basic rate for his classification. In order to participate in a merit award, an employer must pay at least $2000.00 of premium within a five year experienced period.

The second method of administering is by self-insurance. At present, there are 214 self-insurers in Ohio. These employers are required to place a bond with the Industrial Commission of Ohio to insure that they will make payment of all their adjudicated compensation claims. No less than a $25,000.00 bond nor more than a $500,000.00 is required. A new bond is required each year. In starting out as a self-insurer, an employer is generally required to place a bond equal to eight months premium.

Administrative costs are furnished by an assessment to the companies in addition to their regular rate and by general revenue. Employers are charged four cents per one hundred dol-

[5] State ex rel. v. Creamer, 85 O. S. 349 (1912).

[6] See Premium Rules and Rates, No. 49, effective July 1, 1961, issued by the Industrial Commission of Ohio.

lars of their payroll and this represents two-thirds of the administrative premium. The remaining one-third is obtained from general revenue. The administrative budget for the year generally runs around $10,500,000. This figure represents a 5% ratio to the Fund and it is considered the lowest in the United States. In Ohio, there is presently a $413,000,000.00 fund set up to handle a total of 6,000,000 active claims.

Under the Disabled Worker's Relief Fund[7] which is *not* Workmen's Compensation, a claimant who is on Permanent Total disability and is receiving less than $40.25 weekly benefits, may obtain sufficient money from this fund up to $40.25. There are about 5200 claimants participating in this fund at the present time. Money for this fund was originally obtained through general revenue but now it is arrived at by general revenue and an excise tax of 3¢ for every $100.00 of each company's payroll.

The Surplus Fund[8] is set up to provide disbursement of funds under the handicap provisions[9] to claimants as the Commission determines. The Fund is provided for by setting aside ten per cent of the money paid into the State Fund until a surplus of $100,000.00 is obtained.

Rates of Compensation

Compensation is paid every two weeks at a rate of two-thirds of the average weekly wage of the injured or deceased workman for the year prior to injury or death. The maximum rate at the date of such incident is determined by the following amounts:

Prior to Aug. 25, 1921	$12.00
Prior to Jan. 1, 1924	15.00
Prior to Sept. 4, 1941	18.75
Prior to Sept. 12, 1947	21.00
Prior to Sept. 1, 1949	25.00
Prior to Sept. 18, 1951	30.00
Prior to Oct. 5, 1955	32.20
Prior to Nov. 2, 1959	40.25

The current rate, effective November 2, 1959, is $49.00 per week.

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[7] Established Oct. 21, 1953, and amended effective Nov. 2, 1959.

[8] § 4123.34(B).

[9] § 4123.343 as amended November 2, 1959.

Injury

The Supreme Court has defined an "injury" in the line of insurance being carried for accidents and not health insurance. It has been proven often that a claimant described a disability rather than an injury.

Of significance are the cases decided by the courts since the Amendments to the Act in 1937. In *Malone v. Industrial Commission*[10] the plaintiff's husband died of heat exhaustion in the course of performing his regular duties under intense heat. The Court held that an injury had to be accidental in character and result and held that this was a compensatory situation. This case loosened up the law of injury by maintaining that any disability suddenly and unexpectedly occurring at work was compensable.

In *Reynolds v. Industrial Commission,*[11] the claimant had been working in a cramped position for about three months and developed back trouble. The Supreme Court, after referring to the definition of a compensable injury outline in the above case, stated that nothing had occurred to the claimant within the purview of such definition which would constitute an accidental injury.

In *Matczak v. Goodyear Tire and Rubber Co.,*[12] the claimant suffered a back disability while lifting bags fourteen inches higher than he customarily lifted them. Here the Court held that he was not entitled to benefits as he had not sustained an accidental injury. (Note this case was decided before the *Malone* case).

In *Artis v. Goodyear Tire and Rubber Co.,*[13] the claimant, because of a shortage of help was forced to stack liners upon skids to a height of seven feet, whereas he normally stacked them only to a height of five feet. While doing so he developed a sudden pain in his back. The Court held that there was no evidence of any sudden mishap or happening causing injury to him. Also, that the only unusual thing about his work was lifting liners a greater distance and this did not constitute such a claim upon which workmen's compensation could be based.

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[10] 140 O. S. 292 (1942).

[11] 145 O. S. 389 (1945).

[12] 139 O. S. 181 (1942).

[13] 165 O. S. 412 (1946).

In 1956, the now famous *Dripps case,*[14] was decided and the Court in its opinion stated as follows:

> Ohio Workmen's Compensation Act, comprehends a physical or traumatic damage or harm accidental in character and as the result of external and accidental means in the sense of being the result of a sudden mishap, occurring by chance, unexpectedly and not in the usual course of events, at a particular time and place.

This case had given a clearer explanation of the requirement that an injury had to be accidental and that it had to be the result of an accidental cause or means and it was not sufficient that the result be unexpected or accidental.

However, effective in 1959,[15] the definition was redefined as follows:

> "Injury" includes any injury whether caused by external accidental means or accidental in character and result, received in the course of and arising out of, the injured employe's employment.

It would appear that there is a close relationship between this definition and the *Malone* case which is pre-*Dripps* case.

The Deputy Administrator has written an opinion in *Harris-Seybold v. Hamm,*[16] in which he interprets the new definition of an injury by setting up the following guide in order to determine whether an injury is compensable:

1. There must be a showing that the injury was sustained in the course of and arising out of employment.
2. There must be something accidental in character and result.

Pertinent Portions of the Act

Temporary Total Disability.[17] An employee having been found to be entitled to temporary total disability benefits, because of injury at work will be entitled to receive sixty-six and two-thirds per cent of his average weekly wage up to $49.00 as long as the disability remains total. In no case shall such benefits exceed ten thousand, seven hundred and fifty dollars. The minimum rate is $25.00 per week.

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[14] 165 O. S. 407 (1946).

[15] § 4123.01(C).

[16] Reported in the Merriman Sutherly Journal #36, dated 8-22-60.

[17] § 4123.56.

Permanent Partial Disability.[18] An employee entitled to an award of permanent partial disability may elect to accept such award under an impairment of physical disability, the impairment or earning capacity and the vocational handicap. No such award can be made before forty weeks after the injury or his return to work following his first period of Temporary Total disability. However, an employee entitled to an award because of amputation, ankylosis, loss of eye, loss of hearing (total loss) or facial disfigurement does not have such election, but he must accept under a schedule of loss set up by law. Under this section no waiting period is necessary. The maximum amount payable is nine thousand, eight hundred dollars.

Temporary Partial Disability.[19] An employee having been found to be able to return to work but who suffers an impairment in his earning capacity by reason of his injury may receive benefits. This is paid at the rate of two-thirds of his actual impairment. Any payments as such may be offset whenever the employee receives his permanent award if any. The maximum amount payable is ten thousand dollars.

Permanent Total Disability.[20] After an employee has been found to be permanently and totally disabled he will receive a weekly benefit until his death. The loss of both hands, both arms, both feet, both legs or both eyes or any two thereof constitutes permanent and total disability.

Death.[21] If death occurs within two years following the injury or if the disability has been continuous between injury and death, the dependents of the decedent are entitled benefits. The maximum benefit payable is eighteen thousand, five hundred dollars.

Medical.[22] An employee who is injured in the course of his employment has a right to choose any licensed physician,[23] he may desire. He may not change physicians without the consent of the Commission. Such fees as are charged are governed by the Industrial Commission.[24]

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[18] § 4123.57.

[19] § 4123.57(d).

[20] § 4123.58.

[21] § 4123.59.

[22] § 4123.651.

[23] This includes medical doctors, dentists, chiropractors, osteopaths and mechanotherapists, or any licensed doctor in the State of Ohio.

[24] See Fee Schedule for Physicians Bulletin, effective Jan. 1, 1962.

Hearings

If a case becomes controverted by reason of the employer denying any or all of the allegations set out by the employee-claimant, a hearing is held before a deputy administrator who is located nearest to the claimant's home address. There are sixteen such locations. The hearing officer is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure.[25]

Following this hearing either of the parties may file an application for reconsideration to the Administrator within ten days after receipt of the final order of the deputy administrator's decision or file a notice of appeal to the local regional board. There are five such boards located in Ohio. From a decision of the Administrator, either party may appeal to the regional board within twenty days of receipt of the final order of the administrator. From the regional board, either party may file an appeal to the Industrial Commission who may or may not grant a hearing. From here, either party may file a Notice of Appeal to the Common Pleas Court along with his Petition in Appeal. The claimant may, however, file his appeal directly to the Common Pleas Court from a decision of the Regional Board. In practice, the claimant generally exhausts all of his appeal rights with the Industrial Commission before going to court.

In order to properly be heard on appeal, an Application for Reconsideration must be filed within ten days from receipt of a final order. To file a Notice of Appeal, it must be filed within twenty days from receipt of a final order, or sixty days if the appeal is to Common Pleas Court.

No appeal is permitted from a hearing before the Referee of the Industrial Commission on the question of percentage of permanent partial disability, however, the full Commission may grant a rehearing before them on an Application for Reconsideration. All of the hearings are *de novo*.

Borderline Cases

Many cases arise which carry the color of gray. These have come to be known as borderline cases or cases in the gray area. It has been difficult to establish the compensability in each case. Listed here are some of the leading cases in Ohio which have helped to establish the law in this area:

[25] § 4123.515.

Ott v. Industrial Commission.[26] The Court of Appeals set out that both the employee and the employer received consideration for a benefit from this recreation activity which was the direct outgrowth of a program which was not only authorized by the corporation but definitely sponsored by it because the equipment was furnished by it. The decedent suffered a heart attack when he sat down on the bench after being tagged out while running the bases during a softball game.

It was held that there was sufficient relationship at the time of his death to his employment to justify the conclusion that the claimant was entitled to compensation. There is a general feeling if such a case were presented to the Supreme Court, the employer would prevail. The Court in this case noted the Industrial Commission rule[27] pertaining to athletics that it was sufficient to make this case compensable and that they (Industrial Commission) had not exceeded their rule making power in promulgating this rule.

Scores of compensable accidental injuries result where no accidental circumstances precedes or causes them. Many such injuries have been recognized as compensable by the Supreme Court of Ohio,[28] while in many other cases regarding injuries to employees outside of the employer's premises have been held not compensable[29] even though an actual injury had occurred.

With regard to parking lot cases, *Walburn v. General Fireproofing Co.*,[30] held that where the hazard was no greater than it

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[26] 830 O. App. 13 (1948).

[27] Item #4 Important Resolutions, Rules, Order and Instructions issued by the Bureau of Workmen's Compensation, revised April 1, 1956:

> It is hereby directed that in all cases where the employer encourages the employes to engage in athletics, either during working hours or outside of working hours, and supervises or directs, either directly or indirectly, such activities, meritorious claims for injuries to any such employes while so engaged will be recognized, the employer's risk and experience to be charged with such cases. In the event any such employes, while so engaged, receive extra compensation from the employer, the same shall be included in the payroll reports of this department.
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> This order shall not apply to employers who do not supervise and direct either directly or indirectly athletic activities of their employes or do not pay the employes for the time devoted to athletics.

[28] See 43 N. E. 2d at 270 (Malone Case).

[29] See 107 O. S. 387 (1923), 123 O. S. 604 (1931), 127 O. S. 345 (1933), O. S. 129 (1934), 10 N. E. 2d 242 (1937), 145 O. S. 198 (1945).

[30] 147 O. S. 507 (1947).

was to the general public no liability will lie. This remains in effect today.

In *Pickett v. Industrial Commission*,[31] the plaintiff was injured in the parking lot at work. The employer neither owned or controlled the parking lot. The court held that an accident occurring in the parking lot before the employee starts work or after he finishes work was normally compensable.

In *Fike v. Goodyear Tire and Rubber Co.*,[32] the plaintiff sued at common law for injuries he sustained on a public sidewalk along the employer's plant where he intended to go to work and was struck by the employer's truck. The employer argued that the employee should have participated in the state Workmen's Compensation because he was within the zone of his employment and hence his rights were limited under the Act. The court, however, affirmed the judgment for the plaintiff.

Horseplay and altercation have been defined in *Davis v. Industrial Commission*[33] and in *Industrial Commission v. Banks*.[34] In the former case the plaintiff's decedent was involved in an argument at work and a fight ensued which resulted in the plaintiff's death. The court said, "This work was voluntarily abandoned when he became engaged in the fight which it appears was a private affair." The latter case involved horseplay in which the court applied the same rule as above. Here the employee instigated and engaged in horseplay in which the employer did not acquiesce. The court here distinguished this case from the *Industrial Commission v. Weigandt*,[35] decision by saying here the employee himself and not the environment actually created the hazard. In the latter case the employee was struck by a file which flew from the handle during a friendly scuffle for it by two other employees. The accident was held to be compensable because his employment had some casual connection with the injury, either through its activities, conditions or environments.

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[31] 129 N. E. 2d 639 (1954).

[32] 56 O. App. 197 (1937).

[33] 76 O. L. A. 474 (1957).

[34] 127 O. S. 517 (1934).

[35] 102 O. S. 1 (1921).

Free Choice of Physicians

State fund companies remain unaffected by the recent amendments[36] to the law regarding free choice of physicians. Formerly self-insurers had the right of treating an injured workman providing of course that such treatment was adequate. This new provision[37] now permits an employee who is injured or disabled in the course of his employment to have a free choice of such licensed physician he may desire to have serve him.

There are two reported decisions with the Industrial Commission, but none by the Supreme Court which have dealt with the problem of this free choice when the employee and employer have disagreed. These cases have dealt primarily with rules of procedure effective with the new amendments.[38]

In *Youngstown Sheet & Tube Co. v. Terrell,*[39] claimant sustained a knee injury. The employer admitted the injury and was ordered to pay the fee of claimant's physician. It was the employer's position that a change of physicians was not authorized. The employer had rendered treatment on six occasions. The claimant was not satisfied with his progress and went to his own doctor without requesting permission from his employer. The administrator found that the claimant in the exercise of his free choice of physician had selected the self-insuring employer and ordered him to pay his own bills.

In *Youngstown Sheet & Tube Co. v. Kovach,*[40] the claimant sustained a knee injury. The employer admitted the injury and was ordered to pay the fee of claimant's physician. The employer claimed that a change of physicians was not authorized. Claimant was treated by the company doctor on four occasions. Following this, claimant's wife called and requested permission to change doctors. Permission was denied by the employer on the grounds that the employee had made his choice and selection of physician. The claimant went to his own doctor, but the employer did not make a specific notice in writing to the Bureau setting forth the disagreement. The administrator found that the

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[36] Amendments effective Nov. 2, 1959.

[37] § 4123.651.

[38] See Rule 7. Rules of Procedure in Claims against Self-Insuring Employers. Bureau of Workmen's Compensation. The Industrial Commission of Ohio. Effective Nov. 2, 1959.

[39] Reported in Merriman & Sutherly Reports, Vol. 36, p. 322, No. 41, 12-26-60.

[40] Reported in Merriman & Sutherly Reports, Vol. 36, No. 41, p. 323, 12-26-60.

claimant did make his selection to be treated by the company doctor and did notify the employer as required. Since the services rendered were necessary and proper and the employer did not comply properly with published procedure, he ordered the employer to pay the medical fee services.

Conclusion

Presenting a comprehensive study of Ohio Workmen's Compensation would require far more space than is presented here. Anyone who employs three or more workers must carry Workmen's Compensation Insurance. No private insurance may be substituted for Workmen's Compensation, because Ohio's Workmen's Compensation is a monopoly. The law in this field throughout the United States is ever changing. In almost all of the forty-six states whose legislatures met in regular session last year, Workmen's Compensation legislation has been enacted, excluding Ohio. The percentage of benefit increases range from less than 10% to approximately 23%. Ohio's benefits rank with the higher benefit states.

In conclusion, Ohio Workmen's Compensation stands for the following often quoted saying, despite the many abuses of the law:

WE PAY FOR THE TEAR BUT NOT THE WEAR.