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ADMINISTRATIVE LAW - EXTENT TO WHICH HEARSAY EVIDENCE MAY CONSTITUTE BASIS FOR AWARD BY WORKMEN'S COMPENSATION COMMISSION

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RECENT DECISIONS

This section is divided into two parts: notes and abstracts. The abstracts consist merely of summaries of the facts and holdings of recent cases and are distinguished from the notes by the absence of discussion.

NOTES

ADMINISTRATIVE LAW — EXTENT TO WHICH HEARSAY EVIDENCE MAY CONSTITUTE BASIS FOR AWARD BY WORKMEN'S COMPENSATION COMMISSION —Claimant suffered a coronary occlusion and as a result was totally disabled, being unable to speak coherently or to understand what was said to him. The State Industrial Board found that the claimant's total disability was the result of accidental injuries which arose out of and in the course of his employment. An award was made. The claimant was incapable of giving testimony and no witness was produced who saw the accident. The referee who heard the claim admitted hearsay testimony to the effect that claimant complained of a heartburn to fellow employees after having lifted and emptied a boiler of water. This was corroborated to a certain extent by the testimony of a fellow employee who saw claimant in pain and administered medicine to him, after claimant had indicated his suffering was caused by having lifted something. Other hearsay evidence, statements of claimant to his wife upon arriving home from work, was also admitted. On appeal, the question was whether, under the workmen's compensation law,[1] such hearsay testimony might be accepted as sufficient to establish the accident and the injury. *Held*, that while the Industrial Board's inquiry in a workmen's compensation proceeding is not limited by common-law or statutory rules of evidence and it may accept hearsay testimony as to claimant's declarations, an award cannot be made based solely upon hearsay testimony inasmuch as there must be a residuum of legal evidence supporting the claim before compensation can be awarded; award affirmed since established facts and circumstances supported hearsay testimony. *Altschuller v. Bressler*, 289 N. Y. 463, 46 N. E. (2d) 886 (1943).

The extent to which hearsay evidence may constitute a basis for an award by a workmen's compensation commission varies with the statutory provision relative thereto and the corresponding judicial interpretations. In the absence of statutory regulation, the rules of evidence in compensation proceedings are the same as in common-law actions for personal injuries.[2] A type of statute which has proved ineffectual to alter the rule against hearsay is that providing

[1] N. Y. Consol Laws (McKinney, 1938), § 118: "The commissioner, board, referee or deputy commissioner in making an investigation or inquiry or conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure . . . but may make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties. Declarations of a deceased employee concerning the accident shall be received in evidence and shall, if corroborated by circumstances or other evidence, be sufficient to establish the accident and the injury."

[2] Ohlson v. Industrial Commission, 357 Ill. 335, 192 N. E. 196 (1935) (hearsay evidence held properly excluded); Kivish v. Industrial Commission, 312 Ill. 311, 143 N. E. 860 (1924). See Norwood, "Administrative Evidence in Practice," 10 GEO. WASH. L. REV. 15 (1941); Ross, "The Applicability of Common Law Rules of Evidence in Proceedings before Workmen's Compensation Commissions," 36 HARV. L. REV. 263 (1922).

that the commission shall not be "bound by the technical rules of evidence." [3] In interpreting this statute, it has been held that the hearsay rule is not a "mere technical rule of evidence." [4] Where the statute merely provides that "processes and procedure [before the commission] shall be as summary and simple as reasonably possible," [5] the admission of hearsay evidence is not prejudicial error if, independent of such evidence, there is sufficient legally competent evidence to sustain the award.[6] The New York statute in the principal case and similar ones in other states, providing that the commission shall not be bound by "common-law or statutory rules of evidence," [7] have been construed to permit a further relaxation of the hearsay rule but not a complete denial of it. The leading New York case on this point is *Carroll v. Knickerbocker Ice Company*.[8] The court was of the opinion that the statute [9] made it permissible to receive and consider hearsay testimony or any kind of evidence, but that an award could not be made unless there was a "residuum of legal evidence" to support the claim.[10] As later

[3] The California statute so provided prior to amendment in 1915 and 1917. Cal. Stat. (1913), p. 313. Likewise Pennsylvania, Pub. Laws (1915), p. 755, now Pa. Stat. (Purdon, Supp. 1942), § 834. See infra, note 15, for the present California provision.

[4] Englebreston v. Industrial Accident Commission, 170 Cal. 793, 151 P. 421 (1915); McCauley v. Imperial Woolen Co., 261 Pa. 312, 104 A. 617 (1918); Smith v. Philadelphia & Reading Coal & Iron Co., 284 Pa. 35, 130 A. 265 (1925). In Baker v. Freed, 138 Pa. Super. 315, 10 A. (2d) 913 (1940), the court held that where fact that accidental injury occurred in course of employment was sufficiently established by circumstantial evidence, hearsay testimony, not inconsistent therewith, if relevant and material, might be considered for whatever additional light, if any, it threw upon the matter.

[5] Ky. Rev. Stat. (1942), § 342.260 (2).

[6] Valentine v. Weaver, 191 Ky. 37, 228 S. W. 1036 (1921); Consolidation Coal Co. v. Rattiff, 217 Ky. 103, 288 S. W. 1057 (1926). In the former case the court stated, "When the evidence is all in it must be sifted and assorted, the competent separated from the incompetent, and out of the testimony there must come some reliable and substantial evidence, as understood by the common-law rules of evidence, upon which a verdict must rest." 191 Ky at 40-41.

[7] For New York statute, see note 1. The Utah statute is similar. Utah Code Ann., (1943), § 42-1-82. See also, Iowa Code, (1939), § 1441.

[8] 218 N. Y. 435, 113 N. E. 507 (1916).

[9] The statute in 1916 [N. Y. Laws (1914), C. 41, § 68] was the same as at present (see note 1) except for the sentence, "Declarations of a deceased employee concerning the accident shall be received in evidence and shall if corroborated by circumstances or other evidence, be sufficient to establish the accident and the injury." This sentence was added in 1922. N. Y. Laws (1922), C. 615, § 118. The effect of the statute was not altered, rather, as the court in the principal case states, the legislature in 1922 merely took cognizance of the judicial definition of the scope and effect of the statute as enunciated by the court in the Carroll case in 1916.

[10] In Garfield Smelting Co. v. Industrial Commission, 53 Utah 133, 178 P. 57 (1918), the Utah court adopted the rule of the Carroll case. The Iowa statute has been interpreted the same way. De Long v. Iowa State Highway Commission, 229 Iowa, 700, 295 N. W. 91 (1941). See also, National Surety Co. v. Rountree, 152 Va. 150, 147 S. E. 537 (1928) (commission may give probative weight to hearsay evidence); Spearman v. F. S. Royster Guano Co., 188 S. C. 393, 199 S. E. 530 (1939) (hearsay evidence is admissible, but awards based on hearsay evidence uncorroborated by facts, circumstances, or other evidence will not be sustained); White Swan Laundry v. Muzolf, (Ind. App. 1942) 42 N. E. (2d) 391.

stated by the court, "there must be evidence setting forth facts of a probative character, outside of hearsay statements, to prove the award and show it is fair and just.[11] If "facts and circumstances" tend to show that the declarations of a deceased employee may be true, an award may be based upon such declarations.[12] As pointed out by the court in the principal case, the court has never required that the necessary "residuum of legal evidence" should establish the accident independently of the hearsay evidence.[13] The decision is in line with the New York cases on this point. The statute specifically states that declarations of a deceased employee corroborated by circumstances or other evidence shall be sufficient to establish the accident and the injury. The court reasons that in giving this express mandate, "the Legislature did not indicate that the Board was not authorized to receive the declarations of employees who though living and breathing had lost understanding and power of speech, or indeed to receive other 'hearsay' evidence of any kind and to give such evidence its proper probative force." [14] A liberal interpretation of statutes relating to rules of evidence before the commission or board seems desirable. Such a tribunal, dealing continually with cases similar in nature, should not be hindered by rules of evidence designed with reference to a jury of laymen inexperienced in sifting and weighing evidence. It might be noted here that California has gone perhaps as far as any state in giving effect to this principle by statute and judicial decision. Under the California statute [15] the court has held that an award may be based solely upon hearsay testimony if it is otherwise competent evidence.[16]

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[11] Belcher v. Carthage Machine Co., 224 N. Y. 326 at 330, 120 N. E. 735 (1918).

[12] In the Belcher case, supra, the court held that evidence of a "probative character" outside of hearsay was lacking but indicated an award would be sustained if "facts and circumstances" tended to corroborate statements of deceased employee. See also Sorge v. Aldebaran Co., 218 N. Y. 636, 112 N. E. 1077 (1916); Fogarty v. National Biscuit Co., 221 N. Y. 20, 116 N. E. 346 (1917).

[13] Bennet v. Page Bros., 197 App. Div. 745, 189 N. Y. S. 529 (1921) (rule in compensation cases does not require the highest degree of evidence; it is satisfied if there is some evidence of a probative character to support the findings of the commission); McCarthy v. Walsh Construction Co., 228 App. Div. 869, 241 N. Y. S. 841 (1930); Feder v. Sagamor Metal Goods Corp., 251 App. Div. 765, 295 N. Y. S. 515 (1937); Newell v. Thatcher Mfg. Co., 248 App. Div. 838, 290 N. Y. S. 163 (1936).

[14] Principal case, 46 N. E. (2d) at 889.

[15] The California provision, as stated in note 3, was amended twice: Stat. (1915), p. 1102, § 77 (a) and Stat. (1917), p. 871 § 60 (a). After the later amendment, the act provided that the commission should "not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in such manner . . . as is best calculated to ascertain the substantial rights of the parties. . . . No informality in any proceeding or in . . . taking testimony shall invalidate any . . . award . . . made . . . by the commission; nor shall any . . . award . . . be invalidated because of the admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the said common law or statutory rules of evidence and procedure." Now Cal. Labor Code (Deering, 1937), §§ 5708, 5709.

[16] Perry v. Industrial Accident Commission, 180 Cal. 497, 181 P. 788 (1919); Sada v. Industrial Accident Commission, 11 Cal. (2d) 263, 78 P. (2d) 1127 (1938); Pacific Employees Ins. Co. v. Industrial Accident Commission, 77 Cal. App. 424, 246 P. 825 (1926); Pacific Employers Ins. Co. v. Industrial Accident Commission, 47 Cal.