UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 10 | Number 4 Article 18

6-1-1932

Workmen's Compensation -- Disability Resulting from Combination of Accident and Disease

Reeme Moore

Follow this and additional works at: http://scholarship.law.unc.edu/nclr

Part of the Law Commons

Recommended Citation

Reeme Moore, *Workmen's Compensation -- Disability Resulting from Combination of Accident and Disease*, 10 N.C. L. REV. 407 (1932).
Available at: http://scholarship.law.unc.edu/nclr/vol10/iss4/18

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

who lends three hundred dollars or less without the necessity of resorting to the subterfuge of service charges, which are allowed under no pretext. Along the same line, but applying to any size of loan, except as limited by the amount of the bank's capital stock, Michigan's Revised Banking Code of 1929[31] includes a provision allowing a service charge on a graduated scale according to the amount of the loan. The only substantial difference between the two laws lies in the method employed of reaching the same desired result. The small loan law allocates a fixed percentage to the loan by way of interest. The Michigan law allocates a variable amount to the loan by way of service charges. Both are to be commended as fairly successful restrictive legislation.

FRANK P. SPRUILL, JR.

Workmen's Compensation—Disability Resulting from Combination of Accident and Disease.

Plaintiff appeals from the decision of the Compensation Commissioner, which denied him an award for arthritis causing disability one month after he suffered a severe injury when a loaded coal car, in the mine in which he was working, fell on him. On the undisputed facts the court reversed the Commissioner's order, granting plaintiff all reasonable inferences in his favor.[1]

The right to appeal from a decision of the Industrial Commission is for the most part regulated by statute. But it has been generally

Corporation, incorporated in Delaware in 1925, and engaging in the business of small loans secured by chattel mortgages in states which have enacted the Uniform Small Loan Law or similar legislation legalizing this business. It has approximately 150 offices, including Household Finance Corporation of New York, Household Finance Corporation of America (Del.), and Small Loans Corporation of Illinois, wholly owned subsidiaries. MOODY'S MANUAL, BANKS AND FINANCE (1931) 1398. As of March 31, 1932 it had resources of $49,118,-187. MOODY'S MANUAL, BANKS AND FINANCE, Advance Parts (1932) 1481. For a review of the Uniform Small Loan law see Note (1923) 23 COL. L. REV. 484.

[31] " . . . the bank shall have power to charge for a loan made pursuant to this section one dollar for each fifty dollars or fraction thereof loaned for expenses, including any examination or investigation of the character and circumstances of the borrower, co-maker, or surety and for drawing and taking acknowledgement of necessary papers or other expenses incurred in making the loan; no charge shall be collected unless a loan shall have been made and in no case shall such charge exceed fifteen dollars." MICH. COMP. LAWS (1929) §11927.

[1] Goble v. State Compensation Commissioner, 162 S. E. 314 (W. Va. 1932).

held,[2] with North Carolina in accord,[3] that only questions of law are reviewable by the courts on appeal, while the findings of fact of the Commission, where supported by competent evidence, are conclusive and binding on the courts. However, in determining whether such findings do support the order or award, the courts are given an opportunity to dispute the conclusion reached by the Commission.

The North Carolina Workmen's Compensation Act expressly provides in §2 (F)[4]: "Injury and personal injury shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except where it results naturally and unavoidably[5] from the accident." The position of North Carolina in regard to this problem appears to resolve itself into the fact question as to whether the plaintiff succeeds, in the absence of direct positive proof, in establishing causal connection between the injury and the disease. Where the essential link is, by scientific and medical authority, shown to exist between the injury and the disease, compensation is allowed.[6] Where the plaintiff fails to prove that his

[2] Milwaukee v. Industrial Commission, 160 Wis. 238, 151 N. W. 247 (1915); Stephenson v. Industrial Commission, 79 Okla. 228, 192 Pac. 580 (1920); Golden's Case, 240 Mass. 178, 132 N. E. 726 (1921); Driscoll v. McAlister Bros., 294 Pa. 169, 144 Atl. 89 (1928); Neglia v. Zimmerman, 237 N. Y. 131, 142 N. E. 442 (1923).

[3] N. C. CODE ANN. (Michie, 1931) §8081 (ppp) (findings of fact conclusive —errors of law subject to review); Chambers v. Union Oil Co., 199 N. C. 28, 153 S. E. 594 (1930); Bellamy v. Great Falls Mfg. Co., 200 N. C. 676, 158 S. E. 246 (1931) (plaintiff entitled to benefit of every reasonable intendment on the evidence, and every reasonable inference to be drawn therefrom); *In re* Hayes, 200 N. C. 133, 156 S. E. 791, 73 A. L. R. 1179 (1931); Southern v. Cotton Mills Co., 200 N. C. 165, 156 S. E. 861 (1931); Williams v. Thompson, 200 N. C. 463, 157 S. E. 430 (1931) (findings of fact conclusive on appeal where there is competent evidence to sustain the award); Parrish v. Armour Co., 200 N. C. 654, 158 S. E. 188 (1931); West v. Fertilizer Co., 201 N. C. 556, 160 S. E. 171 (1931); Brooks v. Clement Co., 201 N. C. 768 (1931); Cabe v. Parker-Graham-Sexton, Inc., 202 N. C. 176, 162 S. E. 223 (1932); Poole v. Sigmon, 202 N. C. 172, 162 S. E. 198 (1932) (court on appeal has jurisdiction to review all evidence for purpose of determining whether as matter of law there was any evidence tending to support finding of Commission); Aycock v. Cooper, 202 N. C. 500 (1932).

[4] N. C. CODE ANN. (Michie, 1931) §8081 (F.).

[5] One of the earliest cases construed an unavoidable disease to mean a condition where common prudence and foresight cannot prevent it. Williams v. Thompson, 1 N. C. I. C. 124, 200 N. C. 463, 157 S. E. 430 (1931).

[6] Lumsden v. Orrell, 1 N. C. I. C. 376 (1930) (accidental injury developed into nephritis which affected organs); Thompson v. Clement Co., 1 N. C. I. C. 441 (1930) (injury resulted in paralysis, though developed several months later); Edgerton v. Lake Lure Lumber Co., 1 N. C. I. C. 429 (1930) (inflammation of intestines resulting from nervous condition caused by muscle strain); Burns v. Rockwell Casket Co., 1 N. C. I. C. 457 (1930) (accident resulting in brain injury and impediment to speech); Sides v. Dover Mill Co., 1 N. C. I. C. 489 (1930) (kidney stone discovered after injury); Williams v. Thompson, 1 N. C. I. C. 124, 200 N. C. 463, 157 S. E. 430 (1931) (eye infection following injury).

disease follows as a consequence of the accidental injury, compensation is denied.[7] No award is granted in cases of occupational disease,[8] nor in fact for any illness, though contracted in the course of employment, if there is not in addition a specific accident.[9]

The same general principles apply in cases of disease existing prior to the accident. The rule is well established that the pre-existing physical condition will not bar the rights of compensation if the disability is proximately caused by an accident arising in the course of employment.[10] It has been stated that "the employer takes the em-

[7] Wilkins v. Elliott Building Co., 1 N. C. I. C. 90 (1929) (ulcers of stomach not proven by clear and satisfactory evidence to be result of accident during employment); Hepler v. Forsyth Furniture Lines, 1 N. C. I. C. 309 (1930) (death due to apoplexy not connected with fall shortly prior thereto); Brady v. Teer, 1 N. C. I. C. 353 (1930) (lobar pneumonia and pyelitis not result from strained back); Howell v. Rocky Mount, 1 N. C. I. C. 373 (1930) (Bright's Disease not connected with injury); Jackson v. American Enka Corporation, 1 N. C. I. C. 412 (1930) (connection not shown between injury and misplacement of organs); Haney v. Hans Rees' Sons, 2 N. C. I. C. 67 (1930) (Epididymitis not result of strain); Hamby v. Teague, 2 N. C. I. C. 68 (1930) (pneumonia not result of accident); Hart v. Majestic Mfg. Co., 2 N. C. I. C. 83 (1930) (nephritis not result of injury); Williams v. Highland Park Mfg. Co., 2 N. C. I. C. 89 (1930) (paralysis not result of injury); Clayton v. Paperboard Co., 3 N. C. I. C. 27 (1931) (septic meningitis, according to medical testimony, unrelated to injury described); Conder v. News Publishing Co., 3 N. C. I. C. 28 (1931) (death caused by rheumatic fever and not accidental injury); Sanders v. Henrietta Mills, 3 N. C. I. C. 38 (1931) (rheumatism not resulting from accident).

[8] McLean v. Michael, 1 N. C. I. C. 275 (1930); Nance v. Tomlinson Chair Co., 1 N. C. I. C. 276 (1930); Dyer v. Wood Products Co., 1 N. C. I. C. 435 (1930); Cabe v. Parker-Graham-Secton, Inc., 2 N. C. I. C. 135, 202 N. C. 176 (1932).

[9] Stuart v. Rainey Hospital, 2 N. C. I. C. 125 (1931) (nurse denied compensation for smallpox contracted while handling a mattress used by a patient of hospital where she was employed); Burleyson v. Cannon Mills Co., 1 N. C. I. C. 201 (1930); Lawter v. Henrietta Mills, 1 N. C. I. C. 250 (1930); Stegall v. Wade Mfg. Co., 1 N. C. I. C. 313 (1930) (osteo-arthritis, but failed to establish fact of accident); Setzer v. Caldwell Motor Co., 2 N. C. I. C. 5 (1930); Lovingood v. Fontana Mining Corporation, 2 N. C. I. C. 55 (1930) (chronic arthritis not injury); Becker v. Acme Mfg. Co., 2 N. C. I. C. 59 (1930); Shadrack v. Sanders Motor Co., 2 N. C. I. C. 355 (1931); Hemmingway v. Plywood Corporation, 2 N. C. I. C. 269 (1931) (pneumonia resulting from exposure to extreme heat and then cooling off considered not result of specific accident to merit compensation).

[10] Note (1929) 60 A. L. R. 1300; 2 ROCKY MOUNTAIN L. REV. 68 (1930); Hartz v. Hartford Faience Co., 90 Conn. 539, 97 Atl. 1020 (1916); Sanitary Dist. of Chicago v. Industrial Commission, 343 Ill. 236, 175 N. E. 372 (1931); Western Electric Co. v. Industrial Commission of Illinois, 285 Ill. 279, 120 N. E. 774 (1918); Rockford City Traction Co. v. Industrial Commission, 295 Ill. 358, 139 N. E. 135 (1920); Sulzberger & Sons Co. v. Industrial Commission of Illinois, 285 Ill. 223, 120 N. E. 535 (1918); *In re* Bowers, *In re* Williams, *In re* Colan, 65 Ind. App. 128, 116 N. E. 842 (1917); Cambridge Mfg. Co. v. Johnson, 153 Atl. 283 (Md. 1931); Glennon's Case, 236 Mass. 542, 128 N. E. 942 (1920); *In re* Madden, 222 Mass. 487, 111 N. E. 379 (1916); *In re* Brightman, 220 Mass. 17, 107 N. E. 527 (1914); Van Keuren v. Dwight Divine and

ployee as he finds him, and if the accident accelerates or aggravates a pre-existing diseased condition the injured party is entitled to compensation, while, on the other hand, an injury due to the natural progress of the disease itself will not warrant a finding that the injuries were due to an accident."[11] North Carolina's first decision on the question interprets the true intent and meaning of the statute to apply "where, by reason of an accident, either a disease is caused or accelerated or intensified thereby, the employee is entitled to be compensated according to the provisions of the Act."[12] Because of the factual difficulty in determining the exact starting point of a disease, as in the present case, it becomes important to notice that the law applies alike in awarding compensation for disabilities wherein disease plays a part, whether causation or aggravation, if, and only if, it is evident that such causation or aggravation may be traced directly to accidental injury during the course of employment. So much depends on the expert testimony of each case that the law can do little more than lay down general principles, relying on the knowledge and skill of the medical profession in fitting these principles to specific disabilities. Accordingly, numerous cases of arthritis have been judged compensable whether caused or aggravated by an accidental injury.[13]

REEME MOORE.

Sons, 165 N. Y. Supp. 1049 (1917); Finkelday v. Henry Heide, Inc., 183 N. Y. Supp. 912 (1920); Carroll v. What Cheer Stables Co., 38 R. I. 421, 96 Atl. 208 (1916); Ballard v. Cannon Mills, 1 N. C. I. C. 107 (1929) (slight ankle injury aggravated and accelerated pre-existing syphilitic condition); Blackwell v. Winston-Salem Chair Co., 1 N. C. I. C. 163 (1930) (preexisting myocarditis not compensable since not aggravated by injury); Ward v. Cape Fear Hotel Corporation, 2 N. C. I. C. 51 (1930) (compensation granted for aggravation of diabetes caused by bruised foot and gangrene); Duncan v. St. Paul's Mills, 2 N. C. I. C. 156 (1931) (chronic rheumatic carditis accelerated by injury entitled to compensation).

[11] 1 SCHNEIDER, WORKMAN'S COMPENSATION LAW (2d ed. 1932) 952.

[12] Ballard v. Cannon Mills, 1 N. C. I. C. 107, 112 (1929).

[13] Perry Coal Co. v. Industrial Commission, 332 Ill. 328, 163 N. E. 681 (1928); Consolidated Coal Co. v. Industrial Commission, 311 Ill. 59, 142 N. E. 498 (1924); Sunnyside Mining Co. v. Industrial Commission, 320 Ill. 488, 151 N. E. 238 (1926); Blackman v. Hope Engineering & Supply Co., 11 La. App. 92, 120 So. 682 (1929) (facts practically identical with principal case); Hamilton v. Pennsylvania Railroad Co., 298 Pa. 22, 147 Atl. 837 (1929).

Otherwise where the disease is unaffected by the injury. Rosenkranz v. Industrial Commission of Colorado, 83 Colo. 123, 262 Pac. 1014 (1927); Maryland Casualty Co. v. Industrial Commission of Utah, 74 Utah 170, 278 Pac. 60 (1929); Powell v. Ohio Oil Co., 13 La. App. 24, 127 So. 30 (1930); Antley v. La. Central Lumber Co., 11 La. App. 14, 122 So. 78 (1929); Jacksonville & H. R. Co. v. Industrial Commission, 336 Ill. 350, 168 N. E. 302 (1929).