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Workmen's Compensation—Accidental Result—Sufficiency for Recovery

A truck driver for the defendant ice cream company, while lifting a 100-pound table as usual to move it into position to load packages of ice cream onto his truck, suffered a hernia and died after an operation. Although the only unusual event was the injury itself, recovery was awarded under the Virginia Workmen's Compensation Act.[1]

The courts are in agreement that where an accidental means is followed by an accidental result compensation will be awarded;[2] but where there is an accidental result alone, with no separate distinguishable accidental means, there is a diversity of opinion as to the compensability of the injury.[3]

The majority decisions are to the effect that the injury itself should be considered the compensable accident.[4] These decisions are based upon the English case of *Fenton v. Thorley*,[5] where the court adopted a purely subjective test, holding that it is only necessary that the harm or injury be unexpected. Most American courts say that this view effectuates the liberal construction of the act; and that where, as here, the meaning is plain, the words "injury by accident" should be given their popular and ordinary interpretation,[6] including an injury which is itself the accident without necessity for an unusual effort or strain.[7] "If a

[1] Derby v. Swift and Co., 49 S. E. 2d 417 (Va. 1948). The applicable statutes are: VA. CODE ANN., §1887 (2d), "'Injury' and 'personal injury' shall mean only injury by accident arising out of and in the course of the employment." As to hernia: VA. CODE ANN., §1887 (2e), "That the hernia immediately followed an accident." The comparable North Carolina statutes are N. C. GEN. STAT., §97-2(f) and §97-2(r) (1943). The construction of "accident" in the personal injury and hernia statutes is the same. Derby v. Swift and Co., *supra;* Hardware Mut. Casualty Co. v. Sprayberry, 195 Ga. 393, 24 S. E. 2d 315 (1943).

[2] Gabriel v. Town of Newton, 227 N. C. 314, 42 S. E. 2d 96 (1947) (police officer, who arrested a violently resisting drunk weighing 180 pounds, had to carry him up three flights of steps since the jail elevator was out of order and collapsed at the top from dilation of the heart); Fields v. Tompkins-Johnston Plumbing Co., 224 N. C. 841, 32 S. E. 2d 623 (1944) (work of caulking pipe joints with hot lead increased the outside temperature of 104 degrees from ½ degree to 10 degrees more. *Held:* this is "the straw that breaks the camel's back."); Moore v. Engineering and Sales Co., 214 N. C. 424, 199 S. E. 605 (1938) (had not lifted pipes of this weight before); Bates v. Spruce Pine Store, 9615 (1941) N. C. W. C. A. Ann. (1947), p. 25 (while cranking a tractor on a particularly cold morning claimant bursted a blood vessel); Crowell v. Highland Park Mfg. Co., 9871 (1940) N. C. W. C. A. Ann. (1947), p. 25 (lifted especially heavy weight).

[3] 4 SCHNEIDER, WORKMEN'S COMPENSATION LAW 384 (3rd ed. 1946).

[4] *Ibid.*

[5] L. R. App. Cas. 443 (1903). Followed in Clover, Clayton and Co. v. Hughes, 1910 A. C. 242 (tightening nut in usual manner resulted in a ruptured blood vessel); and Walker v. Bairds and Dalmellington, Ltd., 153 L. T. 322 (1935). Note, 47 JURID. REV. 418-9 (1935).

[6] *E.g.*, Sloss-Sheffield Steel and Iron Co. v. Brown, 228 Ala. 460, 153 So. 642 (1934); Connelly v. Hunt Furniture Co., 240 N. Y. 83, 147 N. E. 366 (1925); Giguere v. Whiting Co., 107 Vt. 151, 177 Atl. 313 (1935). *See* Conrad v. Cook-Lewis Foundry Co., 198 N. C. 723, 153 S. E. 266 (1930).

[7] Duff Dotel Co. v. Ficara, 150 Fla. 442, 7 So. 2d 790 (1942) (usual lifting of

workman's physical structure . . . gives way under the stress of his usual labor, his death is an accident which arises out of his employment."[8]

On the other hand, a minority of the courts say that this view would make the act provide for insurance against disease and injury rather than against accident.[9] Those following this view, which England followed before *Fenton v. Thorley*,[10] hold that it is not enough that the result be unusual, unexpected, or unforeseen, but that the means also must be accidental.[11]

The North Carolina decisions are not in accord among themselves as to the proper interpretation to be accorded the act.[12]

There is one line of decisions following the majority view. In *Smith v. Cabarrus Creamery Co.*,[13] where a milk deliveryman suffered a hernia while lifting a smaller ice box out of a larger one as he "usually did every day," it was expressly held that an accidental result alone is sufficient on which to base an award for compensation. Justice Seawell there said that "If the influences, often complex and minute, which bring it (an accident) about were capable of exact analysis, it would lose its character as an accident."[14] There are dicta in other opinions to support this view,[15] as well as at least two decisions of the

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pot of meat); Brown v. Lumberman's Mut. Casualty Co., 49 Ga. App. 99, 174 S. E. 359 (1934) (stooped over to pick up a tool, knee injury, no slip or outside physical force); Hardware Mut. Casualty Co. v. Sprayberry, 195 Ga. 393, 24 S. E. 2d 315 (1943) (no slipping or unusual lift); Roehl v. Graw, 161 Tenn. 461, 32 S. W. 2d 1049 (1930) (hernia from pushing concrete mixer as usual); McCormick Lumber Co. v. Department of Labor, 7 Wash. 2d 40, 108 P. 2d 807 (1941) (injured while cutting trees, no unusual effort or strain). For more cases see Horovitz, *Current Trends in Workmen's Compensation* 12 L. Soc'y J. 499-501 (1947); Horovitz, Injury and Death Under Workmen's Compensation Laws 88 (1944).

[8] Peterson v. Safeway Stores, 158 Kan. 271, 275, 146 P. 2d 657, 659 (1944) (lifted freight caused acute coronary thrombosis). *Accord:* Carroll v. Industrial Commission, 69 Colo. 473, 195 Pac. 1097 (1921); Brown's Case, 123 Me. 424, 123 Atl. 421 (1924) (shoveling snow from roof with dilation of heart resulting); Patrick v. Ham, 119 Me. 517, 111 Atl. 912 (1921) (lifting 100 pound sack of grain as usual caused cerebral hemorrhage).

[9] State *ex rel.* Hussman-Ligonier Co. v. Hughes, 348 Mo. 319, 153 S. W. 2d 40 (1941) (suffered stroke when he picked up a 45 pound bucket of water).

[10] L. R. App. Cas. 443 (1903). Bohlen, *A Problem in the Drafting of Workmen's Compensation Acts*, 25 Harv. L. Rev. 328, 339 (1912).

[11] Pierce v. Phelps Dodge Corp., 42 Ariz. 436, 26 P. 2d 1017 (1933); Marlow v. Huron Mountain Club, 271 Mich. 107, 260 N. W. 130 (1935) (apoplexy from lifting mail sacks as usual); Guthrie v. Detroit Shipbuilding Co., 200 Mich. 355, 167 N. W. 37 (1918); Gottfried v. State Industrial Comm'n, 168 Ore. 65, 120 P. 2d 970 (1942) (stooped over quickly to pick up a fallen bun, recovery denied).

[12] See Keech, Workmen's Compensation in North Carolina, c. 2 (1942) for a general legislative history of the Workmen's Compensation Act in North Carolina.

[13] 217 N. C. 468, 8 S. E. 2d 231 (1940). *Cf.* Buchanan v. State Highway and Public Works Comm'n, 217 N. C. 173, 7 S. E. 2d 382 (1940).

[14] Smith case, *supra*, at 472, 8 S. E. 2d 231, 233.

[15] Love v. Town of Lumberton, 215 N. C. 28, 30, 1 S. E. 2d 121, 122 (1939) ("the words 'undesigned' or 'unforeseen' refer to the result produced, and not to its cause"); Brown v. Aluminum Co., 224 N. C. 766, 767, 32 S. E. 2d 320, 322

Industrial Commission.[16] In an extensive concurring opinion in *Edwards v. Piedmont Publishing Co.*,[17] Justice Seawell reiterates the same views.

But there are also decisions pointing in the direction of the minority holding. Compensation was denied in *Slade v. Willis Hosiery Mills*[18] where deceased, wearing special clothing in cleaning and scouring machines, got wet, and being hot, died from pneumonia after going outside to empty ashes. Chief Justice Stacy said that the conditions were not unusal and unexpected and that the deceased was doing his usual work in his usual and customary way. In *Neely v. City of Statesville*,[19] where a fire chief died of a heart attack from the heat, smoke, excitement, and physical exertion at a fire, Justice Winborne said that since there must be an accident followed by an injury and since deceased was doing his usual work in the expected surrounding conditions recovery should be denied.[20] The majority in *Edwards v. Piedmont Publishing Co.*[21] apparently base their decision on similar grounds. The Industrial Commission has also reached like results.[22]

Since the employee is contributing as much to his employer's benefit when he is injured while doing his usual work in the usual and ordinary way as when he slips or lifts a heavy weight, there appears no good reason why the court should not follow the majority view of the main case. Further, there appears to be no clear line of demarcation between accidental means and accidental result, with cases probably being decided against the injured because this distinction is not made. To placate the fears of the minority that the majority view provides in-

(1944) (an accident is "an unlooked for and untoward event which is not expected or designed by the person who suffers the injury"). Both these cases are distinguishable from the main case on the facts.

[16] Caple v. Woodal and Woodal, 8271 (1938) N. C. W. C. A. Ann. (1947), p. 26 (head of biceps pulled loose from the shoulder when claimant lifted plaster weighing 111 pounds in the ordinary manner); Newton v. Wilmington, 6615 (1937) N. C. W. C. A. Ann. (1947), p. 26 (officer in prior good health had a heart attack while subduing a criminal, no showing of unusual exertion).

[17] 227 N. C. 184, 41 S. E. 2d 592 (1947) (employee had picked up a 40-50 pound plate and was turning in a twisting manner to hand it to another when he ruptured a vertebral disc).

[18] 209 N. C. 823, 184 S. E. 844 (1936).

[19] 212 N. C. 365, 193 S. E. 664 (1937).

[20] In Smith v. Cabarrus Creamery Co., 217 N. C. 468, 8 S. E. 2d 231 (1940), Justice Seawell makes an attempt, apparently futile, to distinguish that case from the *Slade* and *Neely* cases by saying that in the two latter cases the injuries were a natural and probable result of the work being done.

[21] 227 N. C. 184, 41 S. E. 2d 592 (1947) (Justice Seawell concurring, said the facts showed claimant was doing his usual work in the usual way, yet compensation should be given).

[22] Woods v. Construction Dept. of Duke Univ., 8832 (1939) N. C. W. C. A. Ann. (1947), p. 25.

surance against injury,[23] there is still a requirement that the accident arise out of and be in the course of the employment.

It is believed that it will be to the best interests of all concerned for North Carolina to align itself definitely with the majority and hold that the accidental result alone is to be considered the compensable accident.

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[23] Insurance against injury seems to be a very desirable goal, but such an enactment should be left to the legislature, or the employer could voluntarily adopt such a plan.