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Workmen's Compensation

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WORKMEN'S COMPENSATION

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The decisions in the field of workmen's compensation during the survey period represent no significant change in, or departure from, existing law. The volume of cases decided in the appellate courts of Georgia during the year covered is less by one-third than the number in the previous corresponding period. The author of last year's survey[1] on this subject reviewed the workmen's compensation statutes and the principal decisions which serve as landmarks and guideposts through this somewhat special and ever-expanding field of law; it is, therefore, deemed appropriate only to supplement last year's exhaustive survey with those decisions which represent developments in the field.

There were no statutory additions or alterations to the law of workmen's compensation, and the cases dealing with the subject were all decided by the Court of Appeals, a fact which might well indicate that the constitutional questions which in the past have been involved in the subject have been settled by the Supreme Court with the exception of questions arising out of particular factual situations.

Although it is impossible to draw up a list of categories into one of which each of the cases may neatly be placed, the authors have decided upon the following as most typical in the field of workmen's compensation:

(1) Elements necessary to make out a case—
  (a) Existence of the employer-employee relationship,
  (b) Accident arising out of and in the course of the employment,
  (c) Existence of a compensable disability;
(2) Conclusiveness of findings by the State Board of Workmen's Compensation;
(3) Judicial vs. administrative relief;
(4) Authority of the board; and
(5) Cases growing out of a claim for workmen's compensation but turning on a point such as statutory construction, evidence, or domestic relations.

ELEMENTS NECESSARY TO MAKE OUT A CASE

In *General Motors Corp. v. Pruitt*[2] the Court of Appeals, in a succinct opinion, restated the three basic elements which must be established before claimant receives a grant of compensation. One must show: (1) the existence of the employment relation; (2) that one is the victim of an accident arising out of and in the course of the employment; and (3) that one was

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1. O'Neal, *Workmen's Compensation*, 2 MERCER L. REV. 258 (1950).
2. 83 Ga. App. 620, 64 S.E.2d 339 (1951).

disabled as a result of the accident. In this case the claimant was unable to supply all the information relative to the second element listed, but this was supplied by the employer and the court held that the record contained sufficient evidence to sustain an award granting compensation.

Existence of the Employer-Employee Relationship.—A divided court reenunciated the well established guides used for determining the existence of the relationship of employer-employee which must exist before the benefits of the Workmen's Compensation Act[3] accrue to a claimant. In *St. Paul-Mercury Indemnity Co. v. Alexander*[4] the majority asked whether the contract of employment gives or the employer assumes the right to control the time, manner and method of executing the work as distinguished from the right merely to require specified results in the end. The majority found sufficient facts in the record to sustain a finding that the relation did exist for the purpose of awarding compensation. The dissent went on the theory that where the contract is not explicit on the right of the employer to exercise the control, one must then look to what actually took place between the parties in order to determine whether the relation existed. To the writers the opinion filed by the majority seems sound because it is the *right* to exercise control which is important regardless of whether this right is ever exercised.[5]

Accident Arising out of and in the Course of the Employment.—The chief of police of a small town died of a heart attack two days after an automobile chase and liability was resisted on the ground that such an accident did not arise out of and in the course of his employment. The director awarded compensation and this award was sustained on appeal,[6] as there was evidence in the record that the nature of the employment was such that it might contribute to an already pre-existing weakened condition of the employee.

In a case denying compensation,[7] facts were found showing that the deceased was authorized to punch a time clock any time between 7:55 A.M. and 8:10 A.M. for the purpose of changing into work clothes. He was to begin his labors at 8:15 A.M. At some time between 7:35 A.M. and 7:40 A.M. his body was found on the premises of the employer and he had not changed from his street clothes. His widow was granted compensation by the board and the award was affirmed by the superior court. On further appeal, the award was reversed by the Court of Appeals which held that the record showed that the deceased was not engaged in any activities either required by or necessary to his employment and therefore death did not arise out of nor in the course of his employment.

In *Chadwick v. White Provision Co.*,[8] the court was confronted with the interesting factual situation where an insane fellow servant fired a pistol at deceased while deceased was on the job. The insanity was unknown to the

3. GA. CODE ANN., Title 114 (1935) and Supp. 1947).
4. 84 Ga. App. 207, 65 S.E.2d 694 (1951).
5. Gulf Refining Co. v. Brown, 93 F.2d 870, 116 A.L.R. 449 (4th Cir. 1938); Roberts v. United States Fidelity & Guaranty Co., 42 Ga. App. 668, 157 S.E. 537 (1931).
6. Maryland Casualty Co. v. Dixon, 83 Ga. App. 172, 63 S.E.2d 272 (1951).
7. General Acc., Fire & Life Assur. Corp. v. Johnson, 83 Ga. App. 227, 63 S.E.2d 296 (1951).
8. 82 Ga. App. 249, 60 S.E.2d 551 (1950).

employer and deceased. The board and superior court had denied compensation on the ground that the accident did not arise "out of" the employment. This was reversed on further appeal, the court saying:[9]

> The rule is well stated in these cases . . . wherein it is pointed out that should the employee be injured by a latently defective machine, unknown to the employer, such injury would nevertheless arise out of the employment and be compensable. Latently defective machines can no more be anticipated and injuries thereby guarded against than latently defective minds of fellow employees . . .

In a case where claimant was making an effort to get a fellow servant transferred from one division to another, which effort would have been viewed in a very unfavorable light by the employer had it been known, and where claimant had planned to make a trip to Chattanooga to assist in a personal automobile trade, and had made statements to the effect that he was preparing to leave on the trip at the time of the accident, the Court of Appeals held[10] that the accident was one arising out of and in the course of the employment. The record showed that the claimant used his home as a sort of office, and that when he arrived home to get ready for his trip to Chattanooga, he would have read his mail and made out a report. He had also tentatively planned to make a trip to Hawkinsville on business but this did not eventuate. This case and the *Chadwick* case show an attitude of liberality on the part of the courts in construing the workmen's compensation statutes most favorably toward claimants.

Existence of a Compensable Disability.—As a practical matter this element of a complete claim for workmen's compensation seldom comes into question as such. Frequently, the question of the extent of disability or a change in condition after an award has been entered is before the courts. Two such cases appeared during the survey period.

In *Fulton Bag & Cotton Mills v. Dean*[11] the evidence was held sufficient to sustain a finding of a change of condition warranting additional compensation.

Lawyers should read *Georgia Marine Salvage Co. v. Merritt*[12] because it demonstrates the importance of predicating a claim on the correct theory. In this case the claimant had stepped on a nail and the sudden pain caused him to fall on his back, striking a pile of lumber. An agreement award was entered into between the claimant and his employer relating to the foot injury, and this award was subsequently approved by the board " . . . conditioned upon the right of the board to review and correct the same should it be shown that error was committed, or in the event that any party in interest shall question the validity of this agreement." The claimant had suffered an injury to his back at the same time for which he was subsequently operated upon. The operation restored him to a position of only twenty percent disability for heavy labor. When the claimant realized that the agreement was inadequate, he and his lawyers petitioned formally to have the case reopened on the theory that there had been a change in condition. A hearing was had and additional compensation granted. This was reversed by the Court of Appeals with the direction that it be remanded to

9. *Id.* at 252, 60 S.E.2d at 554 (1950).
10. Aetna Casualty & Surety Co. v. Jones, 82 Ga. App. 422, 61 S.E.2d 293 (1950).
11. 82 Ga. App. 494, 61 S.E.2d 584 (1950).
12. 82 Ga. App. 111, 60 S.E.2d 419 (1950).

the board for further action because there was no evidence in the record showing a change in condition. All the evidence showed that the conditions *recited* in the original award were adequately compensated for, but as no mention was made of the condition on the back injury, there could be no change in it.

Conclusiveness of Findings by the Board

Several cases turned solely upon the point of administrative finality of findings of fact by the board. This is as important a problem in the general field of administrative law as can be raised, and the degree of finality to be accorded an administrative finding varies in every jurisdiction and in every agency's field. The Workmen's Compensation Board seems to enjoy a very high discretion in making determinations which are conclusive on appeal.

The difficulty, as usual, results from the impossibility of drawing a visible line between true questions of fact and questions of law. It is the conclusion drawn from ascertained facts that is sometimes found to be a question of law remaining open to investigation by the court.[13]

The rule seems to be that "upon an appeal to the superior court from any final award or any other final decision of the State Board of Workmen's Compensation, the findings of fact made by the board within its power are, in the absence of fraud, conclusive and binding upon all the courts."[14] The question necessary to a determination was whether the injury resulted from an accident arising out of and in the course of the employment, and there seems to be no way to reconcile this holding with the holding in the *Aetna* case.[15]

In *Armour & Co. v. Little*[16] the court dealt with the problem in its most difficult form. The claimant had been denied administrative relief and he appealed to the superior court alleging that an erroneous conclusion had been drawn from the facts and applicable law. Specifically, the question was one of willful misconduct in the claimant's failure to use a safety appliance. The record was held to contain no inference of perversity, obstinacy or intentional wrongdoing, and the award denying compensation was reversed. Had an ordinary jury been confronted with the necessity of making a decision between negligence and willful misconduct, and chosen to say the act amounted to willful misconduct, no court would have set the "finding" aside, yet no such finality attaches to administrative findings.

Another facet of the problem arises from the failure of the record to show any evidence to support a finding. In *Atlantic Co. v. Taylor*,[17] the director found an eighty percent loss of use of an arm resulting from the amputation of the hand two and a half inches above the wrist. This award was set aside by the superior court, and an award for total loss of use of

13. In the Aetna Casualty Co. case, note 10 *supra*, the board had found that the employee was not engaged in the course of his employment at the time of the accident, and this finding was reversed on appeal. The finding was not final because it amounted to a conclusion drawn from secondary facts, although the record disclosed evidence supporting either result.
14. Redd v. United States Casualty Co., 83 Ga. App. 838, 65 S.E.2d 255 (1951).
15. Note 10 *supra*.
16. 83 Ga. App. 762, 64 S.E.2d 707 (1951).
17. 82 Ga. App. 360, 61 S.E.2d 200 (1950).

the arm was entered. The Court of Appeals, without citation of a single authority, reversed the superior court on the principle that the findings of the director are conclusive, particularly in view of the complete absence of testimony in the record as to total loss of use. *Sinyard v. Stokes*[18] is to the same effect.

In *Royal Indemnity Co. v. Bannister*[19] and *Howard v. Murdock*[20] the court found evidence in the record justifying the action taken by the board and affirmed the awards.

The Court of Appeals divided in *American Mutual Liability Ins. Co. v. Duncan*[21] on the question of conclusiveness of findings made by the board. The majority held that sufficient evidence existed to justify the award for silicosis under the occupational disease statute,[22] and disposed of the contention that a medical question existed warranting reference to the Medical Board[23] by holding that no such controversy existed. Judge Felton dissented on the ground that the law provided how silicosis shall be proved and the record failed to demonstrate that it had been proved in the correct manner.

ADMINISTRATIVE V. JUDICIAL RELIEF

In *Mobley v. Durham Iron Co.*[24] the court held that allegations in a simple tort suit raised no presumption that plaintiff's remedy was under workmen's compensation statutes since it was alleged that plaintiff had arrived at his place of employment fifteen to twenty minutes before he was required to begin his labors and that the injury occurred before he was to begin his work. Consequently, the petition was not subject to demurrer for that reason. This case presents difficulties beyond the scope of this section of the survey so far as the policy of the Workmen's Compensation Act is concerned in cases of this type. However, it demonstrates what the compensation laws have done in eliminating the three standard, and usually successful, defenses an employer has against an injured employee. Contributory negligence, the fellow-servant doctrine and assumption of risk are not available to an employer when his employee can frame his action under the statute.[25]

AUTHORITY OF THE BOARD

Only one case decided during the survey period dealt with the authority of the board and its jurisdiction. This was *Howard v. Murdock*[26] in which the court said that the board had authority only to make an award either

18. 82 Ga. App. 454, 61 S.E.2d 504 (1950); see also General Acc. Fire & Life Assur. Corp. v. Rhodes, 83 Ga. App. 837, 65 S.E.2d 254 (1951).
19. 82 Ga. App. 845, 62 S.E.2d 765 (1950).
20. 83 Ga. App. 536, 64 S.E.2d 221 (1951).
21. 83 Ga. App. 863, 65 S.E.2d 59 (1951).
22. GA. CODE ANN. § 114-801 *et seq.* (Supp. 1947).
23. GA. CODE ANN. § 114-819 (Supp. 1947).
24. 83 Ga. App. 690, 64 S.E.2d 469 (1951).
25. GA. CODE §§ 114-204, 114-205 (1933).
26. 83 Ga. App. 536, 64 S.E.2d 221 (1951). See note 20, *supra.*

denying or granting compensation and any other disposition of a case which fails to deal with the question of compensation (so long as filed within the statutory period) is a nullity.

CASES INVOLVING A CLAIM FOR WORKMEN'S COMPENSATION BUT TURNING ON ANOTHER POINT

Several cases each year turn upon points foreign to the field reviewed and have insufficient relation to warrant special treatment. Two cases turned upon domestic relations,[27] one on evidence[28] and three on points of statutory construction.[29]

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27. Brown v. Sheridan, 83 Ga. App. 725, 64 S.E.2d 636 (1951) (there is a conclusive presumption that a stepchild under eighteen years of age is entitled to benefits, but the mother of the child must show her marriage to deceased); Mims v. Hardware Mutual Casualty Co., 82 Ga. App. 210, 60 S.E.2d 501 (1950) (relationship of claimant to deceased must be made out).
28. Liberty Mutual Ins. Co. v. Meeks, 81 Ga. App. 800, 60 S.E.2d 258 (1950) (apparently self-serving declarations of claimant about condition of deceased admitted).
29. Shealy v. Benton, 82 Ga. App. 514, 61 S.E.2d 582 (1950) (five days after accident held to be compliance with statute requiring notice to employer of injury); New Amsterdam Casualty Co. v. Brown, 81 Ga. App. 790, 60 S.E.2d 245 (1950) (construction of "substantially the whole" of thirteen weeks); and Maryland Casualty Co. v. Mitchell, 82 Ga. App. 439, 61 S.E.2d 506 (1950) (construction of GA. CODE §§ 114-409 and 114-410 (1933) on right of claimant to receive compensation for second injury while time for receiving compensation for first injury is still running).

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